

FEBRUARY 2019



GENERAL TERMS AND CONDITIONS

Hermes Cover click&cover BANK Buyer Credit Guarantees (FKG/CCB)

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EXPORT CREDIT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

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The Government of the Federal Republic of Germany assumes export credit guarantees termed **Hermes Cover click&cover BANK** (FKG/CCB), hereinafter “**Buyer Credit Guarantees**” (Finanzkreditdeckungen), for the repayment claims of banks under loan contracts concluded with foreign debtors in connection with export business transacted by German exporters (tied buyer credits).

The General Terms and Conditions of Cover for Buyer Credit Guarantees shall constitute an integral part of the Guarantee Agreement which the Federal Government concludes in accordance with the Guidelines for the Assumption of Export Credit Guarantees and shall apply unless they are expressly waived, supplemented or replaced in such Guarantee Agreement.

The Federal Government, as contractual partner of the Policyholder, is represented by the Federal Ministry for Economic Affairs and Climate Action (BMWK). The BMWK is in turn represented by Euler Hermes Aktiengesellschaft (Euler Hermes), Hamburg, which acts as agent under a mandate from the Federal Government. Euler Hermes is commissioned and authorized by the Federal Government to issue and receive, on its behalf and subject to its instructions, all declarations relating to the conclusion and execution of the Guarantee Agreement.

ART. 1 REQUIREMENTS REGARDING FORM

The Guarantee Agreement comes into effect if and when the Federal Government accepts the Policyholder's application for a Buyer Credit Guarantee in the form of a readable declaration on a durable medium (Textform) with reference to these General Terms and Conditions. The same shall apply to any amendments to such Buyer Credit Guarantee. Any verbal side agreements shall be invalid.

ART. 2 SUBJECT MATTER OF THE BUYER CREDIT GUARANTEE

- (1) The subject matter of the Buyer Credit Guarantee shall be the claim to repayment of the amount agreed in the loan contract between the Policyholder and his foreign debtor and set forth in the Guarantee Declaration as the amount of credit paid to the German exporter (Guaranteed Amount).
- (2) The Guaranteed Amount further includes any interest and secondary financing costs agreed in the loan contract and set forth in the Guarantee Declaration which accrue up to the agreed maturities. If the Federal Government exercises its right pursuant to Art. 5 para. 1 3rd sentence hereof, the Guaranteed Amount also includes any monetary compensation for loss of interest due to the premature repayment of the Guaranteed Amount, which the Policyholder is entitled to pursuant to the loan contract or statutory provisions (Breakage Costs). **Claims for damages, unless covered pursuant to the 2nd sentence of this paragraph, and any further ancillary claims, e.g. default interest, contractual penalties or forfeit money, shall not be covered by the Buyer Credit Guarantee, even in the event that they are expressly agreed in the contract between the Policyholder and his foreign debtor.**

ART. 3 GUARANTEE PERIOD

- (1) Liability under the Buyer Credit Guarantee commences with the disbursement for the first delivery of goods and/or the provision of the first service under the export transaction to which the Buyer Credit is tied. Liability under the Buyer Credit Guarantee ends when and to the extent the Guaranteed Amount has been discharged.
- (2) In the event and to the extent that the Policyholder has not submitted any claim for indemnification under the Guarantee within 2 years from the respective due date of the Guaranteed Amount notified to the Federal Government, **the Guaranteed Amount shall be deemed to have been discharged.** The time period pursuant to the 1st sentence commences once again when the Guaranteed Amount is reported as being overdue or when the Federal Government receives any other message regarding the status of the collection procedure initiated in respect of the Guaranteed Amount. The Guarantee Declaration shall cease to be valid as soon as, and to the extent that, the Guaranteed Amount has been discharged or is deemed to have been discharged due to expiry of said period.

ART. 4 EVENTS OF LOSS

- (1) An event of loss is deemed to have occurred if and when the Guaranteed Amount has not been paid 1 month after the original due date

and

the Policyholder has, observing the standards of diligence dictated by sound banking practice, taken all due and reasonable measures to collect the debt.

- (2) If there is a joint liability of a third party in respect of the Guaranteed Amount which is set forth in the Guarantee Declaration as necessary security, an event of loss is only deemed to have occurred if and when legally justified claims against the said jointly liable party are also uncollectable 1 month after its due date and the Policyholder has, observing the standards of diligence dictated by sound banking practice, taken all due and reasonable measures to collect the debt also against said jointly liable third parties.
- (3) The expiry of this period of 1 month after due date is not a precondition if payments of indemnification under the Buyer Credit Guarantee were already made for previous maturities and in the case of para. 1 the default of the foreign debtor or in the case of para. 2 the default of the foreign debtor and the jointly liable third parties persists.

ART. 5 DUE DATE AND LEGAL VALIDITY OF THE GUARANTEED AMOUNT

- (1) A loss is only eligible for indemnification if the due date of the Guaranteed Amount has passed and the claim for payment is legally valid. If the entire balance of the Guaranteed Amount falls due as a result of contractual or statutory provisions, indemnification shall nevertheless be based on the due dates set forth in the loan contract. The Federal Government is entitled, however, at its sole discretion to indemnify before these due dates.

- (2) The Policyholder shall, at his own expense, provide evidence of the legal validity of the Guaranteed Amount and of the security detailed in the Guarantee Declaration, of the existence of the preconditions for the occurrence of the event of loss, as well as the cause and amount of loss. If the legal existence of the claim to the Guaranteed Amount or of the security detailed in the Guarantee Declaration is disputed or if legal defences or other objections are raised against them, the Federal Government is entitled to reject the application for indemnification pending evidence from the Policyholder – if necessary by means of a decision by the court or arbitral tribunal having jurisdiction over the business relationship between him and his foreign debtor or security guarantor – which substantiates the legal validity of the Guaranteed Amount and the security detailed in the Guarantee Declaration; the risks of the applicable law or place of jurisdiction shall be borne by the Policyholder.
- (3) In his relation to the Federal Government, it is the sole responsibility of the Policyholder to ensure the legal validity of the Guaranteed Amount and of any security taken in respect thereof. Contracts and other documents pertaining to the Guaranteed Amount and any security in respect thereof will only be checked by the Federal Government in the event that a claim for indemnification is made. The Policyholder must not rely on the argument that the Federal Government was or should have been aware of the content of such contracts or documents or of individual parts thereof at the time when the Federal Government assumed the Buyer Credit Guarantee.

ART. 6 UNINSURED PERCENTAGE

- (1) The Policyholder shall retain for his own account a percentage of each insured loss ascertained. The uninsured percentage is 5%.
- (2) The uninsured percentage to be retained for his own account by the Policyholder may not be insured elsewhere.

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ART. 7 CALCULATION AND PAYMENT OF INDEMNIFICATION

(1) If the Policyholder has several claims for payment against his foreign debtor arising out of the course of business, any payments made in respect of these claims by the foreign debtor shall be allocated when ascertaining the amount of loss as follows, irrespective of any other allocation that may have been agreed between the Policyholder and his debtor:

1. In the case of payments in respect of covered receivables as well as uncovered receivables which fall due earlier than the due date of the Guaranteed Amount, the payment shall be allocated for the purpose designated by the foreign debtor.
2. Payments in respect of uncovered receivables which fall due at the same time as the Guaranteed Amount or later shall be allocated between covered receivables and uncovered receivables and any interest contractually agreed (with the exception of default interest or surcharge) in the chronological order of their due dates, unless the circumstances of the individual case make it impossible for the Policyholder to have influenced the allocation of the payment concerned.

Moreover, the first sentence above does not apply to payments designated for uncovered repayment claims held by the Policyholder for the account of third parties or which arose from current bank transactions with a maturity not exceeding one year.

3. Payments made by the foreign debtor without the appropriate receivable being designated will be allocated between covered receivables and uncovered receivables and any interest contractually agreed (with the exception of default interest or surcharge) in the chronological order of their due dates.

4. Items 1 - 3 of this paragraph shall apply mutatis mutandis in the case of

- a) payments made by a guarantor, sureties or other third parties; discharge of the debt in any other form by the principal debtor, a guarantor, surety or any other third party;
- b) dividends in insolvency or the proceeds of any disposal of all or part of the insolvent estate;
- c) proceeds from attachments or other security;
- d) rights of set-off, discounts granted, credit notes and any other form of discharge in lieu of payment;
- e) any other financial advantages accruing to the Policyholder as a result of the loss.

5. Payments set off according to items 2 - 4 of this paragraph against receivables with an identical due date shall be allocated in the proportion of the original amounts due (disregarding any default interest or surcharge).

6. If payments as under item 2 or other financial advantages as set out in item 4 are allocated pursuant to items 2 or 3 of this paragraph, then an appropriate level of legal or collection costs reasonably incurred by the Policyholder will be deducted therefrom. **Costs normally involved in procuring the payment of a receivable, including costs for the protesting of bills, or costs arising in the normal course of the Policyholder's business activities shall be disregarded.**

- (2) The uninsured percentage to be borne by the Policyholder will be deducted from the amount remaining after ascertainment of the loss according to the provisions of para. 1.
- (3) The Federal Government will calculate the amount to be indemnified within 1 month of receiving all the documentation required for ascertainment of the claim for indemnification. The amount resulting from this calculation will be paid to the Policyholder within 5 banking days following notice of such calculation to the Policyholder, provided that the Policyholder has acknowledged the calculation to be correct.

- (4) If it proves impossible to ascertain the loss within 1 month after receiving all the documentation required, then a loss settlement subject to later adjustment will be made and paid within 5 banking days after receipt of a notification that the provisional loss calculation has been accepted. Arts. 10 and 11 are applicable to this extent, too. If and when the Federal Government in such a case determines, subsequent to provisional indemnification, that the Policyholder is entitled to receive only a lower or no indemnification, then the Policyholder is obliged, waiving all defences and objections, to repay on first written demand from the Federal Government the excess amount indemnified, including interest charged from the time it was paid at the relevant refinancing interest rate of the Federal Government pursuant to Art. 9 para. 4 sentence 1.

This shall be without prejudice to Art. 22.

ART. 8 RECOVERIES

- (1) Any payments or other financial advantages received after indemnification was paid under the Buyer Credit Guarantee (Recoveries) will be allocated according to the provisions of Art. 7 para. 1, taking into account the indemnified loss. This does not apply to Recoveries arising out of a loan contract concluded later than 3 years after discharge or indemnification of the latest Guaranteed Amount due in respect of the covered buyer credit.
- (2) The Policyholder shall notify the Federal Government immediately upon receipt of any Recoveries. The Policyholder shall transfer any amounts due to the Federal Government without delay.

ART. 9 REPAYMENT OF INDEMNIFICATION

- (1) If the legal validity of the Guaranteed Amount or the security set forth in the Guarantee Declaration is disputed or if defences or objections are raised against them, then the Policyholder is obliged to notify this immediately during the indemnification procedure. If the Policyholder fails to comply with this obligation, the Federal Government is entitled to reclaim any indemnification paid if and to the extent that knowledge of these circumstances would have led to rejection of the claim for indemnification.
- (2) If it emerges, following the payment of indemnification, that the Policyholder's claim against the foreign debtor indemnified is not, either in whole or in part, legally valid, in particular if in a legal action for the enforcement of the indemnified claim the complaint is completely or partially rejected with finality by a court having jurisdiction, or if it emerges that the Federal Government was not obliged to indemnify for other reasons, the Federal Government is entitled to demand the return of the indemnification paid, including any costs reimbursed to the Policyholder.
- (3) If the Federal Government is released from its obligation to indemnify due to circumstances which occur only after the indemnification has been paid, or if the Policyholder fails to comply with his obligations under Art. 11 para. 1, the Federal Government is entitled to demand the return of the indemnification paid, including any costs reimbursed to the Policyholder.
- (4) To the extent that the Federal Republic has a valid claim to repayment, the Policyholder is obliged to pay interest on the repayable amount calculated, in the cases described under paragraphs 1 and 2, from the point at which indemnification was paid, and in cases described under paragraph 3 from the point at which the Federal Government was released from the obligation to indemnify, whereas the interest rate applicable shall be equal to the Federal Government's funding costs. Upon discharge of the claim to repayment of the Federal Government, any claims or other rights which passed to the Federal Republic pursuant to Art. 10 para. 1 hereof, will insofar be transferred back to the Policyholder.
- (5) This shall be without prejudice to any other legal rights accruing to the Federal Government out of statutory provisions or general principles of law.

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ART. 10 SUBROGATION OF RIGHTS AND CLAIMS

- (1) In case that an indemnification has to be paid, the Policyholder assigns already in advance the right to receive payment from the indemnified claim together with the right to any interest or default interest in respect of such repayment for the period following the payment of indemnification, as well as any insurance claims that may exist and any rights to amounts paid into accounts or deposited abroad, including any rights arising out of security in respect of any of these amounts to the Federal Government (assignment subject to a condition precedent) to the extent that this corresponds to the share in the loss that is borne by the Federal Government. The Policyholder is obliged to undertake all necessary acts for the transfer of such claims. If a declaration of intent from the Federal Government is required for the implementation of the subrogation, it shall be deemed to have been made.
- (2) If the transfer of such claims and any other rights proves to be impossible or if the Federal Government waives its right to the transfer, the Policyholder shall hold the rights set forth in paragraph 1 in trust for the Federal Government.

ART. 11 LEGAL ACTION FOLLOWING INDEMNIFICATION

- (1) Without prejudice to the assignment of claims and any other rights pursuant to Art. 10, the Policyholder is obliged to take all measures appropriate for the collection of the indemnified amount, for the realization of any security the Policyholder may hold or for the Recovery of funds in any other way. The Policyholder shall hereby comply with any instructions which may be given by the Federal Government. Legal action through the courts is also deemed to be such an appropriate measure. The Federal Government is entitled to refrain from giving instructions to bring a legal action if and when the place of jurisdiction or the applicable law do not allow to assess the chances of a successful legal action with sufficient accuracy, and the Policyholder has no means of contracting out of the choice of such place of jurisdiction or the applicable law, or if and when the anticipated costs of the legal action are not in proportion to the amount of the claim or the anticipated prospects of success of the enforcement measures.
- (2) The Federal Government will participate in the costs arising from measures mentioned in paragraph 1 hereof on the terms contained in Art. 17.
- (3) If the Policyholder is, at his own request, released from his obligation under paragraph 1 by the Federal Government, then the Policyholder thereby forfeits his right to participate in any Recoveries after indemnification in accordance with the uninsured percentage to be borne for his own account.

ART. 12 ADMISSIBLE CURRENCIES

- (1) Contract currency of the Buyer Credit Guarantee is the currency agreed upon in the loan agreement with the foreign debtor. Admissible currencies are: euro, US dollar, Canadian dollar, Australian dollar, British pound, Swiss franc, Japanese yen, Danish krone, Swedish krona, Icelandic króna.
- (2) The Premium payable under Art. 18 will be charged in the contract currency; indemnification will be paid in the contract currency covered.
- (3) Any costs incurred under the Buyer Credit Guarantee in connection with the transfer of foreign currency amounts shall be borne by the payee.

ART. 13 INTERVENTION IN SCOPE OF COVER

- (1) If circumstances occur which lead to an increase of the risk, the Federal Government is entitled to notify to the Policyholder at any time that loan amounts not yet disbursed at the time of the delivery of this notification are excluded from cover under the Buyer Credit Guarantee.
- (2) If the export business to which the buyer credit is tied is covered under a Supplier Credit Guarantee, the Federal Government's right under para. 1 does not apply in as far as the goods were already dispatched or the services already performed. This restriction is not, however, valid if the Federal Government determines that the exporter failed to comply with his obligations under the guarantee agreement when dispatching the goods or performing the services.

ART. 14 RESCHEDULING AGREEMENTS

- (1) The Federal Government is entitled to enter into rescheduling agreements with the country of the debtor in respect of the Guaranteed Amount (including the uninsured percentage to be borne by the Policyholder); non-guaranteed ancillary claims and non-guaranteed parts of only partially Guaranteed Amounts may be included in these agreements at the sole discretion of the Federal Government.
- (2) The Federal Government shall only be entitled to exercise this right under paragraph 1 if and when it acknowledges, before concluding the rescheduling agreement, that the factual requirements of the event of loss set forth in Art. 4 are satisfied as soon as the preconditions set forth in the rescheduling agreement for applying the agreement to a Guaranteed Amount are fulfilled.

All other conditions for the payment of indemnification remain unaffected.

Without prejudice to the provisions above, the Policyholder may demand to be indemnified pursuant to the general provisions regulating indemnification (Articles 4 et seq.).

- (3) The Policyholder and his legal successors further must accept as binding on them provisions of the rescheduling agreement stipulating an interest rate on the amount due for the period following its due date or for a period that starts later which may differ from the interest rate specified in statutory or contractual provisions and on the basis of which the prosecution of further claims arising from payment delays may be precluded.

ART. 15 DUTIES OF THE POLICYHOLDER

In addition to the other obligations under these General Terms and Conditions and the provisions of the Guarantee Declaration, the Policyholder is obliged to observe the following duties:

1. DUTY TO STATE THE TRUTH IN THE APPLICATION FOR COVER

When submitting his application for a Buyer Credit Guarantee, the Policyholder is obliged to notify completely and truthfully all and any information of material significance for the assumption of a Buyer Credit Guarantee in a readable declaration on a durable medium and he must promptly give notice of any changes in the information given in the application, or new information which differs from that given in the application and becomes known prior to his receiving the Guarantee Declaration. All details asked for in the application form or otherwise are deemed to be of material significance.

2. PROHIBITION TO DEVIATE FROM THE DOCUMENTED FACTS

Following the assumption of a Buyer Credit Guarantee, the Policyholder must not, without the approval of the Federal Government in the form of a readable declaration on a durable medium, make any changes or supplements affecting the set of facts (Sachverhalt) set out in the Guarantee Declaration or the agreements made with the debtor or other obligors, unless these changes or supplements are immaterial; Item 1, 2nd sentence hereof applies mutatis mutandis. In particular, the Policyholder is not permitted to accept payment in a currency differing from the contract currency in discharge of the debt.

If the Policyholder fails to satisfy himself with the care customary in banking that the exporter has proved the supplies and services set out in the Guarantee Declaration to which the disbursements are tied or the works progress corresponding to the disbursements in accordance with the prerequisites for disbursement documented in the Guarantee Declaration before making any payments under the buyer credit, this shall be deemed to be equivalent to a prohibited deviation from the documented facts.

3. COMPLIANCE WITH LAWS AND REGULATIONS

The Policyholder may only disburse sums under the loan contract if the documents of approval for the borrowing and the repayment of the loan required at the time of disbursement have been obtained and the relevant regulations in force in the countries concerned are observed.

4. DUTY TO NOTIFY AN INCREASE OF RISK

The Policyholder shall give immediate notice in the form of a readable declaration on a durable medium of any circumstances which come to his attention constituting an increase of risk and indicate what measures he has taken or proposes to take to protect his legal right to payment. In particular, the following circumstances are deemed to constitute an increase of risk:

- a) delay in payment or a request for extension of the payment period by the debtor;
- b) a worsening of the financial situation, the payment record or general market reputation of the debtor or a security guarantor, or an offer from the debtor to discharge the debt in a manner that differs from his contractual obligation;
- c) legislative or administrative measures or other political events abroad which have the effect of making the payment or collection of the Guaranteed Amount appear to be in jeopardy.

5. DUTY TO OBTAIN APPROVAL IN THE CASE OF AN INCREASE OF RISK

In the case of events described under item 4, the Policyholder must obtain the prior approval of the Federal Government in the form of a readable declaration on a durable medium before disbursing any amounts under the loan contract.

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6. DUTY TO PREVENT OR MITIGATE LOSSES

The Policyholder is obliged to exercise all the due and reasonable care dictated by sound banking practice, to take all necessary and appropriate measures to prevent an event of loss or minimize losses and will hereby comply with instructions, if any, given by the Federal Government. In particular he must check before disbursing any loan amounts whether the foreign debtor has met his previous contractual obligations to pay and to provide collateral security in respect of the underlying export transaction to be financed. The Policyholder is obliged to carry out these measures at his own expense, in so far as the Federal Government does not participate in these costs based on Art. 17. If an event of loss threatens or has already occurred, then the Policyholder must, at the request of the Federal Government, commission either the Federal Government or a third party designated by the Federal Government to represent the interests of the two parties to the Guarantee Agreement, provided that the anticipated costs for commissioning the Federal Government or such a third party are in proportion to the Guaranteed Amount and the anticipated chances of success of the measures taken to pursue the interests of the parties.

7. DUTY OF INFORMATION

The Policyholder is obliged to keep the Federal Government or its designated representative informed at all times of the details and the current state of implementation of the loan contract and the export transaction and of any other circumstances with a potential material bearing on the Buyer Credit Guarantee. This duty includes the timely, truthful and complete response to questions asked for the preparation of a rescheduling agreement, as well as the furnishing of documents required as evidence of the amounts due.

8. FEDERAL GOVERNMENT'S RIGHT OF EXAMINATION

The Federal Government, the Federal Audit Office or their designated representatives are entitled to examine at any time the records, books of account and other documents which are potentially material to the Buyer Credit Guarantee and to make or require to be made copies thereof. The Policyholder must, at the request of the Federal Government, arrange at his own expense to have documents which are in a foreign language translated into German.

ART. 16 LEGAL CONSEQUENCES OF NON-COMPLIANCE WITH DUTIES

(1) RELEASE OF THE FEDERAL GOVERNMENT FROM LIABILITY IN THE CASE OF FALSE INFORMATION

If the Policyholder fails to comply with the duty laid upon him under Art. 15 item 1 hereof, then the Federal Government is released from its obligation to indemnify a loss, unless the Federal Government determines that the incomplete or incorrect information constituting non-compliance would have had no influence on its decision to assume a Buyer Credit Guarantee. There will be no release from liability of the Federal Government if the Policyholder neither knew nor could be expected to know that the information given by him was inaccurate or incomplete.

(2) RELEASE OF THE FEDERAL GOVERNMENT FROM LIABILITY IN THE CASE OF DEFECTIVE SECURITY

If the security set forth in the Guarantee Declaration has not been created, or is not legally effective, the Federal Government is released from its obligation to indemnify a loss, unless the Federal Government determines that the missing or defective security would have had no influence on its decision to assume a Buyer Credit Guarantee.

(3) RELEASE OF THE FEDERAL GOVERNMENT FROM LIABILITY IN THE CASE OF OTHER FAILURE TO COMPLY WITH THE POLICYHOLDER'S DUTIES

If the Policyholder fails to comply with one of the duties laid upon him under Art. 15 items 2 - 8 and infringes his duty to exercise due and reasonable care in accordance with sound banking practice, then the Federal Government shall be released from its obligation to indemnify a loss, unless the infringement of the relevant duty neither caused a loss nor is of such a nature as to expect that it may result in a loss.

Irrespective of whether a loss occurred or is expected to occur, the Federal Government is released from its obligation to indemnify a loss in the case of non-compliance with a duty pursuant to Art. 15 item 2 hereof if it determines that, under the normal practice it follows when deciding on assuming cover, it would not have approved the changes or supplements concerned. This shall apply accordingly in the event that the Policyholder fails to satisfy himself that the prerequisites for the disbursement of a loan amount set out in the Guarantee Declaration have been met unless he can prove after the occurrence of a loss that the prerequisites for disbursement were actually met.

In the case of non-compliance with a duty pursuant to Art. 15 item 4 hereof, the Federal Government is released from the obligation to indemnify a loss if the fact that information which should have been notified was unknown to the Federal Government has led to a situation whereby the risk for the Federal Government in connection with other export credit guarantees has been increased, or has prevented the Federal Government from taking steps to mitigate the risk.

- (4) The Federal Government may, at its sole discretion, partially waive its release from the obligation to indemnify a loss, depending on the circumstances of the individual case, particularly taking into account the risk which has materialized and the severity of the non-compliance.
- (5) As far as there are no legal consequences prescribed separately for infringements of other duties laid upon the Policyholder by these General Terms and Conditions and the provisions of the Guarantee Declaration, paragraphs 1 - 4 shall apply mutatis mutandis.
- (6) Any claims and other rights of the Federal Government based on statutory law or the application of the general principles of law shall not be affected by the provisions of these General Terms and Conditions and the provisions of the Guarantee Declaration.
- (7) The Federal Government shall not be liable for circumstances and risks which result from the failure by the Policyholder to comply with the standards of due and reasonable care to be expected of the Policyholder in accordance with sound banking practices.

ART. 17 PARTICIPATION OF THE FEDERAL GOVERNMENT IN COSTS ARISING FROM LEGAL PROCEEDINGS AS WELL AS FROM THE PREVENTION OR MITIGATION OF LOSSES

- (1) Following indemnification, the Federal Government will participate in reasonably incurred costs of legal proceedings pursuant to Art. 11 para. 1, to the extent that such legal proceedings are pursued with the consent of or upon instruction by the Federal Government. Prior to indemnification, the Federal Government may participate in reasonably incurred costs of measures for the purpose of prevention or mitigation of losses pursuant to Art. 15 item 6 hereof as far as such measures are pursued with the consent of or upon instruction by the Federal Government, the action transcends customary measures of prevention or mitigation of losses and the costs thereby incurred are substantial.
- (2) The participation of the Federal Government is dependent on the extent to which the repayment claim subject to the measures determined in paragraph 1 has been indemnified or could be indemnified if an event loss occurs.
- (3) Costs normally involved in collecting a repayment claim, including costs for the protesting of bills, or costs arising in the normal course of the Policyholder's business activities shall be borne by the Policyholder.
- (4) Art. 9 paras. 2 and 4 hereof apply mutatis mutandis.

ART. 18 PREMIUM

- (1) A premium commensurate with the type and size of the risk to be covered will be charged for assuming a Buyer Credit Guarantee. **The premium is payable at the time of the first delivery of goods and/or the first performance of services** under the export transaction to which the Buyer Credit Guarantee is tied.
- (2) **If the premium due is not paid within 14 days of a reminder being sent** which states this deadline and the legal consequences set out below, **the Federal Government is**, after the lapse of 6 weeks,
 - a) **released from the obligation to indemnify** in the case of events of loss, which occur after the due date of the premium, but before the same is being paid,
 - b) in addition thereto **entitled to terminate** the Buyer Credit Guarantee without further notice as long as the premium remains unpaid.
- (3) If the Federal Government gives its approval to a change in the content or scope of the Buyer Credit Guarantee, the premium will only be recalculated in the event that, as a consequence, the Guaranteed Amount or the horizon of risk increases. **A premium refund is excluded.**
- (4) **If the Federal Government, under the provisions of these General Terms and Conditions or the provisions of the Guarantee Declaration, is released from its obligation to indemnify a loss, it nevertheless shall be entitled to receive the premium**, provided that this has fallen due before the Federal Government learned of its release from obligation to indemnify.

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ART. 19 ASSIGNMENT OF THE GUARANTEED AMOUNT

- (1) Any assignment of the Guaranteed Amount by the Policyholder for purposes other than security and collection arrangements requires the prior written consent of the Federal Government in the form of a readable declaration on a durable medium.
- (2) Except for assignments of partial amounts and subsequent assignments, **the Federal Government's consent is deemed to have been given** if the Guaranteed Amount is assigned to one of the following assignees:
 - a) Banks which are domiciled in a country belonging to the European Economic Area (EEA) or in Australia, Canada, Japan, Switzerland or the United States;
 - b) Domestic financial services companies which are licensed by BaFin and regularly buy receivables on the basis of general agreements (forfaiting and factoring companies).

As far as subsequent assignments to AKA or KfW are concerned, the consent of the Federal Government is automatically deemed to have been given.

- (3) Assignments made after a claim has been recognised always require the prior consent of the Federal Government in the form of a readable declaration on a durable medium.
- (4) If the Guaranteed Amount is assigned without prior consent, the Federal Government shall be released from its liability to indemnify a loss, unless the Federal Government determines that it would have given its consent to the assignment.
- (5) Any risks that may additionally arise from the assignment of the Guaranteed Amount are excluded from cover. This shall apply especially to the validity of assignment of the Guaranteed Amount pursuant to the applicable law and to any objections and defences against the claim resulting from the conduct of the assignee as well as the risk that the assignment violates any ban on assignments which may exist at the time when the Guaranteed Amount is assigned.

ART. 20 ASSIGNMENT OF THE BENEFIT OF THE GUARANTEE

- (1) Partial and subsequent assignments of the benefit of the Buyer Credit Guarantee are only admissible with prior consent of the Federal Government in the form of a readable declaration on a durable medium. The consent of the Federal Government to a subsequent assignment to AKA or KfW is deemed to have been given.
- (2) Any assignment made without the Federal government's consent in the form of a readable declaration on a durable medium is nevertheless valid pursuant to Section 354 a HGB (German Commercial Code); however, **in cases of an assignment made without its consent, the Federal Government shall remain entitled to discharge its obligation by making payment to the Policyholder.**

ART. 21 CONDITIONS OF ASSIGNMENT PURSUANT TO ART. 19 AND 20

- (1) **CONTRACTUAL OBLIGATIONS**
Also in cases in which the assignment of the Guaranteed Amount is effective, the Policyholder shall continue to be the Federal Government's contractual partner; his contractual obligations towards the Federal Government shall remain unchanged. He must ensure that he can continue to perform his obligations or that these obligations can be performed by the assignee.
- (2) **LIABILITY IN RESPECT OF STATEMENTS**
The assignee must accept as binding on him all statements which the Policyholder has made vis-à-vis the Federal Government in connection with the export credit guarantee and in the course of the application procedure until the notification of the assignment of the benefit of the guarantee is received; in cases of an undisclosed assignment of the Guaranteed Amount this shall apply also to all statements made after the assignment.
- (3) **PRACTICAL INDEMNIFICATION PROCEDURE**
The right to assert claims for indemnification against the Federal Government is held by the Policyholder. However, he can declare that such a claim will be asserted by the assignee in lieu of him and that the loss shall be settled with the assignee provided that the assignee is a bank which is approved as assignee pursuant to Art. 19, para 2 and – where banks not domiciled in a member country of the European Economic Area or Switzerland are concerned – has named an authorized agent in one of the afore-mentioned countries to the Federal Government with whom the claim for indemnification can be settled (in German).

(4) PAYMENT OF THE INDEMNIFICATION AMOUNT

Any indemnification amounts that have been ascertained will be paid out to the assignee if and when a notice of assignment from the Policyholder in the form of a readable declaration on a durable medium is on the records. The Federal Government is entitled to set off any claims for money it may have against the Policyholder under the guarantee agreement against the assignee's claim for payment prior to disbursing the indemnification amounts.

(5) PROVISIONS FOR OFFSETTING

In cases of an undisclosed assignment of the Guaranteed Amount any setoff will be governed by the relationship between the Policyholder and the foreign debtor and in cases of a disclosed assignment any setoff will be governed by the relationship between the assignee and the foreign debtor; the Policyholder shall obtain the foreign debtor's consent to the disclosed assignment.

ART. 22 TERM OF PRECLUSION

Claims against the Federal Government arising out of or in connection with the Buyer Credit Guarantee must be filed with a court within an exclusion period of 6 months following notification in writing by the Federal Government to the Policyholder that it rejects the claim with reference to its release from liability resulting from the expiry of such term of preclusion.

ART. 23 JURISDICTION

Any disputes arising between the Federal Government and the Policyholder out of or in connection with the Buyer Credit Guarantee shall be settled by the courts of general jurisdiction in Hamburg.

Export Credit Guarantees and Untied Loan Guarantees:
instruments to promote foreign trade and investment
provided by the



Federal Ministry
for Economic Affairs
and Climate Action

Commissioned to implement the federal
funding instruments Export Credit Guarantees
and Untied Loan Guarantees:



EULER HERMES

Cover from the Federal Republic of Germany for foreign business

Export Credit Guarantees and Untied Loan Guarantees have been established and effective foreign trade promotion instruments of the Federal Government for decades. Export Credit Guarantees (so-called Hermes Cover) protect German exporters and banks financing exports against political and commercial risks. Untied Loan Guarantees are to support raw material projects abroad regarded as eligible for promotion by the Federal Government. Both promotion instruments play an important role in fostering economic growth as well as in protecting and creating jobs. Federal Government commissioned Euler Hermes Aktiengesellschaft to manage the federal funding instruments Export Credit Guarantees and Untied Loan Guarantees.

Information on other foreign trade promotion instruments of the Federal Government can be found at www.bmwk.de/en under the heading Promotion of Foreign Trade and Investment.

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