

## GENERAL TERMS AND CONDITIONS

### Wholeturnover policy (APG)

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Only the German text is legally binding.

EXPORT CREDIT GUARANTEES OF THE  
FEDERAL REPUBLIC OF GERMANY

► **Hermes Cover**

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## Wholeturnover policy (APG)

- (1) Upon the conclusion of an APG master contract, the Federal Republic of Germany (the Federal Government) grants export credit cover under a spread policy known as “wholeturnover policy” (APG) for receivables accruing to you under export contracts that are eligible for cover or for which it is in the Federal Government’s particular interest to provide cover and whose credit period is a maximum of twelve months depending on the type of goods.
- (2) These General Terms and Conditions form an integral part of the wholeturnover policy and apply in the absence of any agreement to the contrary in the wholeturnover policy.
- (3) The Federal Government as your contractual partner is represented by Euler Hermes Aktiengesellschaft (Euler Hermes), Hamburg. Euler Hermes acts as agent under a mandate from the Federal Government and is commissioned and authorised to issue and receive all declarations relating to the conclusion and the execution of the wholeturnover policy on behalf and for the account of the Federal Government.
- (4) Part 1 (Articles 5 to 77) of these General Terms and Conditions governs the receivables for which cover is available, what risks are covered by the wholeturnover policy and how you can obtain cover for your receivables.

Part 2 (Articles 78 to 149) governs the indemnification procedure including the occurrence of an event of loss, payment of the indemnification amount and your duties.

Part 3 (Articles 150 to 165) contains provisions governing the assignment of your receivables for which cover has been provided as well as your claims arising from cover.

Part 4 (Articles 166 to 172) contains general concluding provisions.

### PART 1: CONCLUSION OF THE WHOLETURNOVER POLICY, COVERED RECEIVABLES AND RISKS

#### A. HOW IS THE WHOLETURNOVER POLICY EFFECTED?

- (5) The wholeturnover policy comes into effect if and when your application for the conclusion of a master contract is accepted in writing. All amendments to the wholeturnover policy must be made in writing. This means that verbal agreements are void, which is why this requirement of writing cannot be waived verbally. The wholeturnover policy comprises these General Terms and Conditions, the country list (Article 18), the confirmations of cover (Article 32) and the country-related provisions.

#### B. WHAT RECEIVABLES ARE ELIGIBLE FOR COVER?

##### I. Coverable receivables

- (6) Subject to Section II below, cover is available for all monetary receivables owing to you in consideration of deliveries of goods and services (export contract) to foreign debtors (buyers) which become due for payment within a period of up to twelve months (depending on the type of goods) after the delivery of goods or the provision of services.
- (7) Coverable receivables as defined in Article 6 also include the interest and ancillary financing costs agreed upon in the export contract payable by the buyer by the date on which the principal receivable falls due for payment.
- (8) Coverable receivables as defined in Article 6 also include monetary receivables that the buyer is required to pay in consideration of receipt of the

goods and services and that apply in lieu of the principal receivable under the export contract or for other legal reasons. This applies only if the export contract has full legal effect.

## II. Non-coverable receivables are:

- (9) Claims for damages and ancillary claims (e.g. default interest, contractual penalties, forfeit money) even if these are the subject of an express agreement with the buyer;
- (10) Receivables or parts of receivables that must be settled by the buyer prior to dispatch or performance (e.g. cash in advance or down payments);
- (11) Receivables for which a natural or legal person domiciled in the Federal Republic of Germany (resident as defined in Section 2 (15) of the German Foreign Trade and Payments Act) is unconditionally liable;
- (12) Receivables from deliveries for which a permit is required or which come under a ban in accordance with the following legislation in the version in force as of the date of delivery:
  - Annex 1 Annex AL of the Foreign Trade and Payments Ordinance, Export Control List Part I, Section A (list of weapons, ammunition and armaments)
  - Regulation (EC) No 428/2009 Annex I, Category o (nuclear materials, facilities and equipment) and technology coming within the scope of the Nuclear Technology Note (NTN)
  - Firearms Regulation – Regulation (EU) No 258/2012
  - War Weapons Control Act / War Weapons List
  - Act and Regulation implementing the Chemical Weapons Convention, except for goods listed in Annex I of the Dual-Use Regulation (EC) No. 428/2009 (Delegated Regulation

(EU) No. 2015/2420 of 25 December 2012)

- Category I goods of the Missile Technology Control Regime (MTCR)
- Act on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons
- Anti-torture regulation – Regulation (EC) No 1236/2005
- The following items of Regulation (EC) 428/2009 (Dual-Use Regulation) concerning surveillance technology goods and technology: list item 5A001f (mobile phone monitoring); list items 4D004, 4A005, 4E001c (intrusion software), list item 5A001f (satellite radio monitoring) and list item 5A001j (internet surveillance) and the following items of Part I Section B of Appendix 1 (export list) of the Foreign Trade Regulation: List items 5A902, 5D902, 5E902 (monitoring centres, etc. as well as appropriate software and technology)

This also applies in cases in which the goods are not exported from the Federal Republic of Germany but are traded and/or transported between third countries.

- (13) Receivables from the delivery of goods which do not pass a national border (deliveries that merely cross a customs border are not deemed to have passed a national border);
- (14) Receivables that either in part or in full fail to satisfy the country-related provisions in force as of the date of dispatch or the requirements of the confirmation of cover;
- (15) Receivables that are paid from a buyer credit;
- (16) Receivables that arise prior to the wholeturnover policy taking effect;

- (17) Receivables from buyers in the following country (marketable risks/non-eligible countries):

NON-ELIGIBLE COUNTRIES (MARKETABLE RISKS)			
American Samoa	Finland	Lithuania	San Marino
Andorra	France	Luxembourg	Slovak Republic
Australia	French Guyana	Malta	Slovenia
Austria	Gibraltar	Martinique	Spain
Belgium	Greece	Mayotte	St. Pierre et Miquelon
Bulgaria	Greenland	Monaco	Sweden
Canada	Guadeloupe	Netherlands	Switzerland
Canary Islands	Guam	New Zealand	United Kingdom
Ceuta and Melilla	Hungary	Northern Mariana Islands	United States of America
Croatia	Iceland	Norway	United States Virgin Islands
Cyprus	Ireland	Poland	Vatican City
Czech Republic	Italy	Portugal	
Denmark	Japan	Puerto Rico	
Estonia	Latvia	Réunion	
Faroe Islands	Liechtenstein	Romania	

**C. HOW ARE COVERABLE RECEIVABLES INCLUDED IN THE WHOLE-TURNOVER POLICY?**

**I. Definition of the country list/minimum cover**

- (18) When a country that is eligible for cover is included in the country list, all your coverable **receivables arising from deliveries to private customers resident in that country are included in the wholeturnover policy (minimum coverage)**. Excluded from this are receivables that are backed by letters of credit as well as receivables from foreign affiliated companies, inclusion of which is governed by Articles 21 to 27. You may request the inclusion of additional countries that are eligible

for cover at any time – with effect from the date of inclusion until the end of the insurance year – via the online service.

**II. Options**

- (19) In addition, you are entitled to request the inclusion of further receivables over and above the minimum coverage as defined in Article 18 at any time – with effect from the date of inclusion until the end of the policy year – via the online service in accordance with Articles 20 to 27.

**1. Receivables from public buyers**

- (20) These may be included in the country list on a country-by-country basis. Public buyers include the government of the country in question as well as its agencies and equivalent institutions.

## 2. Receivables that are backed by a letter of credit

- (21) Receivables for which a letter of credit has been opened before dispatch can be included in the wholeturnover policy through inclusion in the country list on a country-by-country basis.

## 3. Receivables from service transactions

- (22) If receivables from service transactions are included, this applies to all countries included in the country list. In this case, the provisions contained in the wholeturnover policy, the confirmations of cover, the country-related provisions or in any other provisions referring to “deliveries” will also apply to “services” by analogy. The inclusion will be documented through corresponding amendments to the wholeturnover policy.

## 4. Receivables due to affiliated companies

- (23) As extension of the scope of Articles 6 et seq. and 18, receivables due to domestic affiliated companies and foreign subsidiaries may by way of exception be included in the wholeturnover cover by making the necessary modifications to the wholeturnover policy provided that the conditions set out in Articles 24 to 26 are satisfied. Your country list (Article 18) and any other options that you have selected under Articles 20 to 22 also apply without any restrictions to these receivables. All rights and obligations under the wholeturnover policy accrue solely to you and you are liable towards the Federal Government for performance of all obligations under the wholeturnover policy.
- (24) **Receivables of domestic companies** in which you hold a share directly or via third parties (domestic affiliated companies) can be included in the wholeturnover policy.
- (25) **Receivables of foreign subsidiaries** from the sale of goods can be included in the wholeturnover policy on a country-by-country basis if and to the extent that they arise from the resale of goods

which the subsidiaries have acquired from you immediately beforehand and these subsidiaries will assign or have assigned the receivables to you prior to dispatch.

A **subsidiary** is defined as a company on which you exert a controlling influence either by directly holding more than 50% of its capital or by any other means of exercising influence, including but not limited to the right to appoint its management.

## (26) Receivables from the deliveries of your foreign subsidiaries can only be included if

- you have exercised the option referred to in Article 25,
- the deliveries involve goods that the subsidiary has previously acquired from you, and
- the receivables that are to be included have been assigned to you prior to delivery.

## 5. Receivables from foreign affiliated companies

- (27) Receivables which you hold against foreign affiliated companies may be placed in the country list on a country-by-country basis for inclusion in the wholeturnover policy provided that you do not simultaneously make use of the option for including the receivables of these affiliated companies in accordance with Article 25. **Cover for these receivables includes the commercial events of loss referred to in Article 68 only to the extent that the insolvency events referred to in that article are due solely to legislative or administrative measures abroad or other political events as well as the political events of loss referred to in Articles 70 et seq.** This is indicated in the confirmations of cover by the words “pol. Insolv.”.

A **foreign affiliated company** is a buyer

- which is a subsidiary as defined in Article 25, or
- in which you hold a majority share directly or via third parties, or

- with whom you have common shareholders that hold more than 50% of your company's capital and of your buyer's capital.

#### D. IN WHAT CURRENCY IS THE WHOLE-TURNOVER POLICY PERFORMED?

- (28) The contract currency for the wholeturnover policy is the euro. Subject to Article 29 below, amounts denominated in a foreign currency are converted into euros either on the basis of the corresponding turnover tax conversion rate or the euro reference exchange rate of the European Central Bank. The applicable conversion rate is governed by these General Terms and Conditions depending on the matter in question.
- (29) In the case of currencies for which the European Central Bank has not fixed any turnover tax conversion rates or euro reference rates, the conversion rate most recently published by Deutsche Bundesbank as the selling price is applied. If such a conversion rate has not been announced, then the Federal Government will fix the conversion rates to be used on the basis of the exchange rates quoted on the major foreign exchange markets.

#### E. WHEN IS A RECEIVABLE THAT IS INCLUDED IN THE WHOLE-TURNOVER POLICY COVERED?

- (30) A receivable that is included in the wholeturnover policy (Article 18 et seq.) is covered when
- a **limit** has been defined for the buyer concerned (see Articles 31 to 34),
  - there is **capacity in the limit** for the corresponding receivable (see Articles 35 to 38), and
  - the receivable **has not been excluded from cover** or the **cover has not been retroactively cancelled** (see Articles 39 to 44).

#### I. Limit granted – obligation to apply for cover

- (31) **You undertake to immediately request a limit for each buyer from the Federal Government** as soon as the total amount of the receivables from this buyer exceeds EUR 15,000. You may also but are under no obligation to request a limit for receivables below this threshold.
- (32) **The limit granted is disclosed in a confirmation of cover** which also stipulates the payment terms for settlement of the receivables (maximum permissible credit period, any collateral that may be necessary) that you must observe and any other details in connection with drawing on the limit (particularly the date on which cover commences). Separate limits are granted for commercial and political risks.
- (33) In addition, you undertake to immediately
- request an **increase in the limit granted** as soon as it is insufficient for your coverable receivables
  - request an **extension of the payment terms stipulated in the confirmation of cover** within the limit specified in Article 6 as soon as they are no longer sufficient.
- (34) On request, the Federal Government may relieve you of your obligation to apply for cover in the case of transactions for which export, transit or transfer licences are required.

#### II. Limit capacity – cover

- (35) **Your (partial) receivable included in the wholeturnover policy is covered if and to the extent that there is capacity for it in the limit on the day of (partial) delivery of goods or (partial)**

- provision of services or it is subsequently subsumed in the limit in accordance with Article 37.** Cover ceases upon settlement of the covered receivable.
- (36) The limit is utilised in the order of the date of dispatch of the goods or the provision of the services commencing with the first delivery/service which you effect from the first date of cover specified in the confirmation of cover. The receivables are applied to both the limit for political risks and, where granted, the limit for commercial risks as far as there is capacity within the limit available for them.
- (37) **Moreover, the limit is applied on a revolving basis.** As soon as receivables are settled, they are removed from the limit, thus creating new capacity for adding receivables for which there was previously no capacity within the limit. This likewise occurs in order of the date of dispatch of the goods or provision of the services.
- (38) You must convert receivables that are denominated in a foreign currency into the contract currency using the turnover tax conversion rate fixed for the month preceding the month in which you report the turnover (Article 49) (**exchange rate for reporting turnover**); this applies both to receivables that are to be added to and receivables that are to be removed from the limit.
- III. Exclusion of receivables from cover or cancellation of previously granted cover**
- 1. Exclusion from cover**
- a) Intervention in cover**
- (39) **In the event of any risk-increasing circumstances the Federal Government may declare that receivables that are not yet covered as of the date on which this declaration is received (Article 35) are excluded from cover (cancellation of the limit).**
- b) Insolvency of the policyholder**
- (40) Trade receivables arising from supplies and services which you execute after
- insolvency proceedings have been commenced,
  - a request to commence insolvency proceedings is denied due to insufficient funds,
  - an insolvency plan is prepared,
  - or any other liquidation proceedings are initiated
- in respect of your assets or estate are also excluded from cover. The reinstatement of cover can be requested particularly if the insolvency administrator has assumed your contractual obligations.
- c) Trade receivables outside the period for which the limit is granted**
- (41) Trade receivables are also excluded from cover if they arise from supplies and services which you execute
- before the date stipulated in the confirmation of cover on which cover is to commence,
  - after the expiry of the wholeturnover policy or
  - after the cancellation of the limit.
- d) Deliveries that are subject to an export, transit or transfer licence**
- (42) The Federal Government may exclude receivables for which a credit limit must be requested in accordance with Article 31 et seq. and which are for deliveries for which an export, transit or transfer licence is required from cover with respect to certain countries in accordance with the country-related provisions and/or individual buyers under the applicable confirmation of cover. The Federal Government does not have this right to exclude cover if the requirements of a General Export Authorisation of the European Union or of the Federal Office of Economic Affairs and Export Control (BAFA) are satisfied (except for nuclear materials, facilities and equipment and Nuclear Technology Note (NTA) technology).

## 2. Subsequent loss of cover

### a) Delays in invoicing receivables

- (43) **Cover will be cancelled for receivables that you do not invoice within 30 days at the latest of the date of dispatch of the goods or of the provision of services.** This does not apply if notwithstanding the invoicing delay the regular turnover reporting deadline (Article 49) that would have applied had the invoice been issued within the requisite period is retained.

### b) Failure to pay premium

- (44) The Federal Government may also subsequently cancel cover for receivables for which you have failed to remit the corresponding premium within the requisite period (Article 57 et seq.)

## F. WHAT TURNOVER REPORTING DUTIES MUST YOU OBSERVE?

### I. Turnover reporting duty – reportable receivables

- (45) If you have received the confirmation of cover requested for the buyer, **you must report all receivables included in the policy in accordance with Articles 18 to 27 via the online service on or before the regular turnover reporting deadline (Article 49).** This does not apply to receivables excluded from cover (Articles 39 to 42). **Failure to observe the turnover reporting duties may lead to a loss of cover (Article 52).**

### II. Reduced turnover reporting duties for restricted cover

- (46) If the Federal Government does not grant the limit in the amount which you request, your turnover reporting duties under Article 45 are restricted to receivables for which there is capacity within the limit as of the date of the turnover report.

- (47) Receivables for which there is no capacity within a restricted limit as defined in Article 46 may at your discretion be reported in full, in an amount for which there is capacity available within the limit or not at all.

### III. Turnover reporting rights – receivables that may be reported

- (48) You are free
- to additionally report receivables for which a bank based in the EU or in an OECD country has opened or confirmed a letter of credit prior to dispatch where receivables that are backed by a letter of credit are included in the wholeturnover policy;
  - to report receivables which, where a limit has also been granted for commercial risks, merely satisfy the conditions for utilisation of the limit in the case of political risks, or
  - to report receivables if only a limit for political risks has been granted.

## IV. Submission of turnover report

### 1. Regular turnover report

- (49) **You are required to report all reportable receivables (Article 45) via the online service by the 15th day of each month (regular turnover reporting deadline).** The turnover reporting duty applies to all receivables invoiced in the turnover month, i.e. the calendar month preceding the regular turnover reporting deadline. Receivables are assigned to a given turnover month on the basis of the invoice date. **Receivables must be invoiced no later than 30 days after the dispatch of the goods or provision of the services.** Failure to invoice receivables within the stipulated period may lead to a loss of cover (Article 43).

(50) Until such time as the Federal Government has fixed a requested limit, receivables arising from goods delivered or services provided on or after the date of the commencement of cover stated in the confirmation of cover but before receipt of the corresponding confirmation of cover must **be included in the first regular turnover report (Article 49) after receipt of the confirmation of cover**. Receivables that have already been settled on that date do not have to be included. Receivables arising from goods delivered or services provided before the date of the commencement of cover stated in the confirmation of cover need not be reported as they are not covered (Article 41).

(51) If no receivables have arisen in a country included in the wholturnover policy, a corresponding **negative report** must be submitted via the online service within the regular turnover reporting deadline (Article 49).

## 2. Failure to observe your regular turnover reporting duty

(52) **If you fail to report your receivables (Article 49), the Federal Government is released from its liability to indemnify a loss.** It is not released from liability if such failure is not wilful and you **submit the turnover report within two months of the expiry of the regular turnover reporting deadline immediately after becoming aware of your failure to submit the report.** This condition is also deemed to have been met if you submit your report in connection with the next regular turnover report within this two-month period.

(53) If you **wilfully breach** your turnover reporting duty, the Federal Government may also terminate the wholturnover policy without notice.

## 3. Reporting of netted credit notes

(54) Credit notes that have been granted may be netted against trade receivables provided that this is done before the dispatch of the goods/provision of the services. In this case, you only have to report the net amount.

(55) If you have already reported the full amount of the receivable despite the availability of a credit note for netting, the credit note cannot be subsequently included. This means that a turnover report cannot be corrected.

## 4. Exchange rate for converting foreign-currency receivables

(56) Foreign-currency receivables are converted using the exchange rate for reporting turnover (Article 38).

## G. WHEN DO YOU HAVE TO PAY THE PREMIUM FOR COVER FOR YOUR TURNOVER AND HOW MUCH IS IT?

(57) A premium reflecting the risk is calculated for reported receivables. The premium rates are set out in the wholturnover policy. You calculate the premium payable on the basis of these premium rates when you prepare your turnover report. Payment of the premium is due **within 14 days of submission of the report in accordance with Article 49 or 52.**

(58) If payment of the premium is overdue and you fail to remit payment within 21 days of receipt of a corresponding reminder, the Federal Government will be released from its **liability to indemnify any loss occurring after payment of the premium falls due but before payment is remitted** in respect of the receivables for which the premium has been calculated. The reminder will expressly warn you of this deadline as well as the legal consequences outlined above. **Moreover, the Federal**

**Government may cancel cover for the receivables for which the premium has been calculated without any further notice pending payment of the premium.**

- (59) A request for a refund of any excess premium **payment must be submitted within twelve months** after the end of the turnover month (Article 49).
- (60) If the Federal Government has been released from its liability to indemnify a loss under these General Terms and Conditions or the provisions of the wholeturnover policy, **it is nevertheless entitled to receive the premium** which has become due before it became aware of its release from liability.

#### **H. WHEN IS AN EVENT OF LOSS DEEMED TO HAVE OCCURRED?**

- (61) An event of loss is deemed to have occurred if and when legally valid, covered receivables due for payment by the buyer are uncollectible on account of any of the commercial or political circumstances stated in Articles 64 to 74 below.
- (62) **However, if there is a joint liability of any third parties recorded in the confirmation of cover or the country-related provisions for the uncollectible receivable as defined in Article 61, the event of loss will only be deemed to have occurred if and to the extent that the receivables from the jointly liable third party are also uncollectible on account of the commercial and political circumstances stated in Articles 64 to 74.**
- (63) Accordingly, an event of loss will be deemed to have occurred to the extent that the covered receivable cannot be recovered from the buyer or does not arise on account of any of the political circumstances stated in Articles 75 to 77.

#### **I. Commercial events of loss**

- (64) A receivable will be deemed to be uncollectible as a result of commercial circumstances in the following cases:

##### **1. Protracted default**

- (65) Your receivable has not been settled six months after it falls due for payment (waiting period) although you have taken the appropriate and necessary measures required by the standards of diligence dictated by sound business practice to recover the covered receivable.

- (66) With respect to transactions executed on D/P or D/A payment terms, failure to accept the documents will not prevent payment from becoming due in the absence of any provisions to the contrary in the contract with the buyer.

- (67) It is not necessary to await the expiry of the waiting period if indemnification has already been paid for uncollectible receivables on account of protracted default and the buyer remains in default.

##### **2. Insolvency, composition proceedings and judgement execution**

- (68) Your receivable is also deemed to be uncollectible if in respect of your buyer's assets or his estate
- insolvency proceedings have been opened or proceedings have been dismissed due to insufficient assets, or
  - court composition proceedings or any other court proceedings have commenced according to the buyer protection from action by individual creditors to recover their debts, or
  - out-of-court composition proceedings (deferral, quota or liquidation proceedings) have been completed and approved by all creditors or a group of comparable creditors – which also includes you.

The same thing applies in cases in which

- judgment execution measures which you have initiated fail to result in full settlement of your receivable or
- the customer demonstrably suspends its payments either in full or to a significant extent on account of its commercial situation.

### **3. Shortfall in proceeds from sale elsewhere**

(69) Your receivable is also deemed to be uncollectible if you sustained a shortfall in the proceeds from the receivable as a result of the fact that you have sold the goods which have already been dispatched and over which you still have control to another buyer with the Federal Government's prior consent on account of the expected uncollectability of the receivable in accordance with Article 68.

## **II. Political events of loss**

### **1. Events of loss leading to the uncollectability of the receivables**

(70) A receivable will be deemed to be uncollectible for political reasons in the following cases:

#### **a) Political event of loss in general**

(71) The receivable is deemed to be uncollectible if legislative or administrative measures in the foreign country after you have entered into your export contract and impacting the covered receivable or warlike events or riots or revolution in the foreign country prevent your receivable from being settled or collected six months after it is due for settlement (waiting period) or it cannot be settled or collected in the agreed currency as there is no possibility for depositing the equivalent amount in another currency for the purposes of transferring payment in accordance with Article 72 and the Federal Government has not agreed to payment in a currency other than that agreed with debt-discharging effect.

#### **b) Conversion and transfer risk**

(72) The receivable is deemed to be uncollectible if as a result of restrictions on the international payment system monetary amounts which represent the equivalent of the covered receivable and which the buyer has deposited for settlement of the covered receivable in a foreign currency with a solvent bank or any other institution acknowledged by the Federal Government cannot be converted into the agreed currency or transferred despite the fact that all applicable rules and requirements have been satisfied and a period of three months (waiting period) has passed since the date on which the covered receivable became due for payment, the equivalent amount was deposited and the conversion and transfer rules were satisfied.

#### **c) Exchange rate losses on amounts duly deposited**

(73) The receivable is deemed to be uncollectible if after all applicable conversion and transfer rules have been satisfied you sustain exchange rate losses solely as a result of the depreciation of the monetary amounts deposited to settle the covered receivable and any legislation of the debtor country passed only after you have entered into your export contract provides for payment of the amount less the exchange rate losses to have a debt-discharging effect.

No other exchange rate losses are covered.

#### **d) Shortfall in proceeds from sale elsewhere**

(74) Your receivable is also deemed to be uncollectible if you sustained a shortfall in the proceeds from the receivable as a result of the fact that you have sold the goods which have already been dispatched and over which you still have control to another buyer with the Federal Government's prior consent on account of the expected uncollectability of the receivable in accordance with Article 71, 76 or 77.

## 2. Event of loss preventing receivables from being recovered or from arising

(75) An event of loss is also deemed to occur when any of the circumstances set out below prevent the covered receivable from being recovered or from arising.

### a) Impossibility of contract performance

(76) An event of loss is deemed to occur if legislative or administrative measures in the foreign country taken after you have entered into your export contract or warlike events or riots or revolution in the foreign country prevent full performance of the contract for the delivery of goods or the provision of services and you are therefore not entitled to legally enforceable claims for payment for the delivery of goods or the performance of services already made.

### b) Loss of goods prior to passing of risk

(77) An event of loss is deemed to occur if as a result of political circumstances your goods are seized or removed from your control in any other manner or are destroyed, damaged or lost as a result of any action by foreign government agencies during the period commencing with the date on which they are dispatched and ending on the day on which risk passes to the buyer and you do not receive any compensation for the resultant uncollectible receivable within six months of the date stipulated in the export contract on which the covered receivable is due for payment, it is not possible to obtain insurance cover for the aforementioned risks and there is no statutory right to recover compensation.

## PART 2: INDEMNIFICATION PROCESS

### A. WHEN CAN YOU MAKE A CLAIM FOR INDEMNIFICATION?

(78) Claims for indemnification cannot be made until an event of loss has occurred. In the case of events of loss to which a waiting period applies, the loss is not deemed to have occurred until after the expiry of the waiting period.

(79) The claims application must include all information, documents and documentary evidence required by the Federal Government for determining whether it is obliged to indemnify the loss and, if so, in what amount.

### B. WHAT DOES INDEMNIFICATION COVER?

(80) **Indemnification is provided for a covered receivable to the extent that the conditions for indemnification are satisfied and there are no reasons for the Federal Government to be released from liability** as you or, if the receivables of your affiliated companies are also included in the policy in accordance with Articles 23 to 26, the affiliated company concerned have breached any duties.

(81) If there are any reasons releasing the Federal Government from its obligation to indemnify a loss, it may waive all or part of such release from liability on the merits of the individual case, particularly the risk that has materialised and the severity of the breach.

#### I. Conditions for indemnification

##### 1. Occurrence of an event of loss

(82) A commercial or political event of loss impacting the reported receivable has occurred.

## 2. Legally valid collateral

- (83) The **requisite** collateral stipulated in the country-related provisions and confirmations of cover are legally valid.

## II. Proof that conditions for indemnification have been satisfied

- (84) **You must provide evidence at your own expense that the preconditions for indemnification are satisfied.** This particularly applies to the conditions governing the occurrence of an event of loss, the amount of the loss sustained as a result and – where applicable – the legal validity of the covered receivable and the requisite collateral.

- (85) **If the buyer disputes the legal validity of the receivable or raises any defences or objections, the Federal Government must be notified immediately.** The Federal Government may reject the claim for indemnification until you have proven the legal validity of the receivable – if necessary in the form of a decision by the competent court or arbitration tribunal ruling on the relation between you and the buyer or the provider of the collateral. **You bear any risks arising from the applicable law and competent court.**

- (86) **For the purposes of your relationship with the Federal Government, you solely are responsible for the legal validity of the covered receivable and the requisite collateral.** You cannot argue as a defence that the Federal Government was or could reasonably be expected to have been previously aware of the contents of your contracts or documents or any parts of them. The Federal Government does not inspect any contracts or other documents evidencing the covered receivables and collateral rights until the indemnification process is commenced.

## III. Federal Government's release from liability

- (87) **The Federal Government will be released from its obligation to indemnify a loss (release from liability) if you culpably breach any of the following duties and – in the absence of any provisions to the contrary in Articles 89, 92, 94 or 96 – such breach of duty is the cause of the loss.**

### 1. Breach of anti-bribery rules and observance of statutory provisions

- (88) You must notify the Federal Government in writing without undue delay if
- any employee of your company or any other person (agent) involved in the execution of a transaction covered by the wholeturnover policy has been **indicted or sentenced by a national court on account of bribery or any criminal proceedings against such an employee or agent have been discontinued in accordance with Section 153a of the German Penal Code subject to the observance of conditions or instructions,**
  - a fine has been imposed on your company under **Section 30 of the Act on Regulatory Offences (OWiG)** on account of any criminal bribery committed by an executive employee or due to the failure of sufficient supervision to prevent any criminal deeds of bribery.
- (89) **If the export contract has been entered into as a result of a criminal offence, particularly bribery, the Federal Government will be released from liability regardless of whether the breach of duty was the cause of the loss.** However, it will not be released from liability if you were not or could not reasonably be expected to have been aware of the above circumstances.

(90) **You may only execute the export contract** if the export rules and regulations of the Federal Republic of Germany, the export rules and regulations issued by supranational bodies which are directly applicable in the Federal Republic of Germany as well as the import rules and regulations of the country of destination are duly observed.

## 2. Breach of your duty to tell the truth during the application process

(91) **You must inform the Federal Government in writing and free of any errors or omissions of all circumstances relevant to the wholeturnover policy and the limits granted and immediately correct and/or supplement such information in the event of any changes occurring before receipt of the wholeturnover policy or the confirmation of cover.** In particular, all information requested by the Federal Government in the application form or in any other way is deemed to be important. This also applies to any other applications that you submit in connection with the wholeturnover policy.

(92) **If you breach this duty, the Federal Government will be released from liability regardless of whether the breach of duty was the cause of the loss.** However, the Federal Government will not be released from liability if you were not aware or could not reasonably be expected to have been aware of any errors or omissions in the information provided or the breach of duty did not have any influence on the Federal Government's decision to issue the wholeturnover policy or to accept any applications submitted by you in connection with the wholeturnover policy.

## 3. No changes to payment terms or collateral

(93) After cover commences, you may not make any changes to the agreed payment terms causing the maximum permissible payment terms specified in the confirmation of cover (Article 32) to be ex-

ceeded **except with the Federal Government's written consent.** The same thing applies to any prolongations or changes to the collateral specified in the confirmation of cover or country-related provisions. In addition, you may not accept any payments in a currency other than the contractual currency in full settlement of the receivable.

(94) **If you breach this duty, the Federal Government will be released from liability regardless of whether the breach of duty was the cause of the loss.** However, the Federal Government will not be released from liability if it determines that it would have consented to the changes or additions on the basis of the principles underlying its decision-making practices.

## 4. Failure to report risk-aggravating circumstances

(95) **If you become aware of any risk-aggravating circumstances, you must notify the Federal Government of these in writing without delay, stating what precautions you intend to take or have already taken to protect your claims.**

a) **Risk is deemed to have been aggravated if the receivable is overdue by more than three months.**

b) Risk-aggravating circumstances particularly also include circumstances which increase the probability of an event of loss occurring.

Here are some examples of such circumstances:

- i. Your customer asks you to extend the payment period but this would result in the permissible credit period determined by the Federal Government for the buyer being exceeded.
- ii. There is a deterioration in the buyer's or guarantor's financial position or general market reputation or it offers to return goods that have already been delivered or to provide consideration other than that agreed upon.

- iii. Legislative or administrative actions in the foreign country or other political events threaten to jeopardise the settlement or collection of the covered receivable.

(96) **If you breach the above duty, the Federal Government will also be released from liability if your failure to report risk-aggravating circumstances has aggravated the risk for the Federal Government in connection with other export credit guarantees or has prevented it from taking precautions to mitigate the risk.**

#### 5. Requirement of approval in connection with a deterioration of the risk

(97) If there are any circumstances that aggravate the risk (Article 95), **the Federal Government's prior written approval must be obtained before any further deliveries are made or any further services provided.**

#### 6. Breach of duties to avert or mitigate loss

(98) **You must take all precautions necessary and appropriate for avoiding an event of loss or for mitigating a loss in line with the due and reasonable care dictated by sound business practice and follow any instructions issued by the Federal Government.** If an event of loss is likely or has already occurred, you must at the Federal Government's request instruct it or a third party determined by the Federal Government to represent both sides' interests provided that the likely costs of instructing the Federal Government or a third party are reasonable in the light of the amount of the receivable and the prospects of success through the representation of both sides' interests.

#### 7. Breach of duty to provide information

(99) You must furnish the Federal Government or its representative at any time with information on the particulars and status of the export transaction as well as any circumstances which may be of significance for the Federal Government's obligation to indemnify a loss. This includes answering questions asked to prepare a rescheduling agreement within the requisite period and free of any errors or omissions and providing documentary evidence of the receivables.

#### 8. Federal Government's right of examination

(100) The Federal Government and the Federal Audit Office and their respective agents hold comprehensive inspection rights. You undertake to ensure that the Federal Government, the Federal Audit Office and their respective representatives are able at all times to inspect any records, books, documents and other written information which may be of relevance for the wholeturnover policy at your offices or those of an affiliated company. On request, you agree to provide copies and to have documents in a foreign language translated at your expense.

### C. HOW IS THE INDEMNIFICATION PAYMENT CALCULATED?

(101) If the Federal Government is able to calculate the amount of the indemnifiable loss on the basis of the information and documents that you have provided, it will deduct the following items to calculate the final indemnification amount accruing to you.

#### I. Uninsured percentage

(102) An uninsured percentage is deducted from all losses. In the absence of any indication to the contrary in the wholeturnover policy, the confirmation of cover or the country-related provisions, **the uninsured percentage is 10%.**

(103) You have the possibility of requesting a reduction in the uninsured percentage to 5%.

(104) **You may not take out any cover elsewhere for your risk from the uninsured percentage.** This does not operate to prevent you from passing the risk arising from the uninsured percentage to your subcontractors.

## II. Netting

(105) If you hold multiple receivables under your business activities with the buyer, any payments received towards settling these must be reported to the Federal Government without undue delay and are handled as follows:

### 1. Payments received from the buyer for a defined purpose

(106) Payments received towards the covered receivables are deducted from the amount of the identified loss. Payments received towards uncovered receivables which fell due prior to the covered receivable are not deducted from the amount of the identified loss.

(107) If the buyer has made payments towards uncovered receivables which did not fall due prior to the covered receivable,

- the payments towards covered and uncovered receivables as well as contractual interest payments (excluding default interest or surcharge) are applied in the order of their due dates in the case of a commercial event of loss. If in the light of the circumstances of the specific case it is possible to rule out that you have exerted any influence on the buyer in the stipulation of the purpose of the payment made, the payments are not applied to covered receivables,
- the payments are not applied to covered receivables in the case of a political event of loss.

### 2. Payments received from the buyer for an undefined purpose

(108) Payments made by the buyer are applied to covered and uncovered receivables as well as contractual interest payments (excluding default interest or surcharge) in the order of their due dates.

### 3. Other payments and monetary benefits

(109) The following are equivalent to payments made by the buyer in accordance with Articles 105 to 108:

- payments made by the guarantor, surety or a third party; any other benefits provided by the buyer, guarantor, surety or a third party;
- distributions or proceeds from the buyer's insolvency assets;
- proceeds from return deliveries or alternative realisation of the goods, liens, insurance claims and other collateral;
- nettable receivables, rebates on receivables, credit notes and benefits in lieu of payments;
- any other monetary benefits accruing to you in connection with the occurrence of the event of loss.

### 4. Miscellaneous provisions relating to netting

(110) If payments received are applied to covered and uncovered receivables in accordance with provisions set out in Articles 105 to 109 and these receivables fall due at the same time, payments are applied proportionately on the basis of the amounts of these receivables (net of default interest or surcharge).

(111) Of the payments and monetary benefits that must be applied to covered receivables in accordance with Articles 105 to 109, reasonable legal and collection costs incurred by you in recovering these payments and monetary benefits may be deducted from the amount applied to such receivables.

**However, the customary costs of collecting receivables (including protest costs) and the costs arising in the course of ordinary business activities cannot be deducted.**

- (112) The uninsured percentage is deducted from the balance remaining after payments have been duly applied.

**D. WHEN IS INDEMNIFICATION PAID?**

- (113) The Federal Government will notify you of the results of the examination of your claim for indemnification and send you a calculation of the loss within two months of receipt of all information and documents required to evaluate your application.
- (114) As a result, the amount shown in the calculation of loss is paid to you within five banking days, however no later than one month after the submission of the calculation of loss in an amount equalling the result shown in the calculation of loss previously acknowledged by you in writing.
- (115) If it is not possible to calculate the loss within two months for reasons beyond your control, you may request a provisional payment equalling the minimum indemnification amount determined on the basis of the evaluation completed to date.
- (116) If the entire remaining balance of the covered receivable is due as a result of the event of loss or the operation of statutory or contractual provisions, indemnification will nevertheless be paid on the basis of the payment dates stipulated in the export contract. However, the Federal Government may also pay indemnification prior to these dates.

**E. AT WHAT EXCHANGE RATE IS THE INDEMNIFICATION AMOUNT CONVERTED?**

- (117) In the case of receivables denominated in a foreign currency, indemnification is converted using the euro reference rate fixed by the European Central Bank.
- (118) In the case of the “conversion and transfer” event of loss (Article 72), the exchange rate prevailing on the day on which your customer deposits the corresponding amount in the foreign currency for remittance of the payment is applied.
- (119) In all other cases, the exchange rate prevailing on the date on which the covered receivable falls due for payment is applied.
- (120) If the euro reference exchange rate was not fixed on the applicable day, the one immediately following it is applied.
- (121) If as a result of the event of loss that has occurred the covered receivable is no longer due for payment or indemnification predates the payment dates specified in the export contract, indemnification is calculated on the basis of the exchange rate that prevailed on the day before the notice of indemnification was sent.

**F. WHAT ADDITIONAL DUTIES MUST YOU OBSERVE AFTER RECEIVING THE INDEMNIFICATION PAYMENT?**

**I. Duty to provide information**

- (122) **If the legal validity of the covered receivable or of any collateral requested by the Federal Government is disputed or objections are raised, you must notify the Federal Government without undue delay.**

## II. Assignment of the receivable to the Federal Government

(123) In case you receive indemnification, you assign to the Federal Government in advance the indemnified receivables, claims for interest and default interest and surcharge for the period after indemnification has been paid as well as any insurance claims and claims to amounts deposited in a foreign country including the collateral provided for these receivables and claims up to an amount equalling the Federal Government's share in the loss of the indemnified receivables **(assignment of receivables subject to a condition precedent). You are required to perform all the legal acts necessary to assign the claims. If a declaration of acceptance by the Federal Government is required to effect the assignment of the receivables, this is deemed to have been given.**

(124) If the assignment is legally not possible or the Federal Government waives it, you hold the aforementioned receivables, claims and other rights in trust for the Federal Government.

## III. Notification and transfer of recoveries

(125) **You are required to inform the Federal Government without undue delay of any recoveries that you receive towards indemnified receivables (payments and other monetary benefits) and to transfer any amounts due to the Federal Government without delay.**

(126) All recoveries received after indemnification has been paid will be applied in accordance with the netting rules (Articles 105 et seq.).

(127) Excluded from this are recoveries under a contract that was entered into more than three years after payment or indemnification of the last receivable to become due for payment under the covered transaction.

## IV. Conversion rate for calculating recoveries denominated in a foreign currency

(128) Recoveries of an indemnified receivable denominated in a foreign currency are converted on the basis of the euro reference rate fixed by the European Central Bank on the date on which you receive the recovery.

## V. Recourse measures

(129) Even after you have assigned the receivables, claims and other rights to the Federal Government (Article 123 et seq.), **you are still required to take all measures to collect the indemnified receivable, liquidate the collateral or otherwise recover any funds.**

(130) **The Federal Government is entitled to issue instructions for you to take appropriate action.** Such appropriate action may also include the institution of legal proceedings. The Federal Government may refrain from issuing instructions to institute legal proceedings if in the light of the place of jurisdiction or applicable law the outcome of the legal proceedings cannot be satisfactorily assessed and you are not able to override a stipulation concerning the court or the law to be applied or if the expected costs of the litigation are disproportionately high in the light of the amount of the receivable or the likelihood of the recovery proceedings being successful.

(131) You may ask the Federal Government to release you from this duty to recover the receivables. If the Federal Government accepts this request, you will forfeit your right to a share of the recoveries.

## G. UNDER WHAT CIRCUMSTANCES MUST INDEMNIFICATION BE PAID BACK?

- (132) **If you breach your duties under Article 85 (duty to inform the Federal Government if the buyer raises any objections to the legal validity of the receivable before indemnification) or the duties specified in Articles 122 to 125 and 129 to 130 to be observed after receipt of the indemnification payment, the Federal Government is entitled to ask you to return the indemnification paid.** If you breach your duty to provide information, this applies only if the Federal Government would have rejected the application for indemnification had it been aware of the information that you have failed to provide.
- (133) **If after indemnification is paid it is discovered that the receivable does not exist at all or in the full amount,** if in legal proceedings to collect the indemnified receivable the competent court conclusively rejects all or part of the claim or **if it becomes evident for any other reason that the Federal Government was not under any obligation to indemnify the loss,** the Federal Government is entitled to ask you to return the indemnification paid. The same thing applies to circumstances that arise only after indemnification has been paid and that release the Federal Government from liability.
- (134) If the Federal Government is entitled to reclaim the indemnification payment on account of circumstances arising before indemnification was paid, **the amount that you return is subject to interest from the date on which the indemnification was paid at a rate** equalling the cost for the Federal Government of raising this sum in the credit market from this date. If these circumstances do not arise until after indemnification is paid, the amount repaid is subject to interest at the aforementioned rate from the date on which the Federal Republic

ceases to be under any obligation to indemnify a loss. Upon repayment of the indemnification amount, the receivables, claims and other rights assigned to the Federal Government will revert to you.

- (135) This does not prejudice any other claims that the Federal Government may have under statute or general legal principles.

## H. TO WHAT EXTENT DOES THE FEDERAL GOVERNMENT REIMBURSE YOU FOR COSTS INCURRED?

### I. Your duty to cover your own costs

- (136) **You must take the measures required to perform your duties at your own expense.** The same thing applies to the documents and information that you are required to submit as evidence for
- the existence of a receivable for which indemnification is being sought,
  - the existence of the collateral specified in the confirmation of cover or country-related provisions,
  - the existence of the preconditions for the occurrence of an event of loss and the conditions for indemnification, and
  - the reason for and amount of the loss.
- (137) **Similarly, you must bear the customary costs of collecting receivables (including protest costs) and the costs arising in the course of ordinary business activities.**
- (138) At the Federal Government's request, you agree to have foreign-language documents translated at your expense.

## II. Reimbursement by Federal Government of costs

### 1. Prior to payment of indemnification

(139) Prior to indemnification, the Federal Government may reimburse reasonably incurred costs for measures for preventing or mitigating losses as far as such measures are pursued with the consent or under the instructions of the Federal Government, **the measures go beyond customary measures for preventing or mitigating losses and the costs exert significant strain on you in the light of the type and scope of your business activities.**

### 2. After payment of indemnification

(140) After indemnification, the Federal Government may reimburse reasonably incurred legal expenses for measures which you are required to take in the performance of your duties provided that this is **done with the consent or under the instructions of the Federal Government.**

### 3. Extent of reimbursement

(141) The amount of the reimbursement paid by the Federal Government depends on the extent to which the covered receivable in connection with which the aforementioned measures are taken has been indemnified or, if the event of loss has occurred, could be indemnified.

### 4. Repayment of costs reimbursed by the Federal Government

(142) The Federal Government may request repayment of any costs that it has reimbursed if

- it is discovered that the indemnified receivable does not exist at all or in the full amount, particularly if in legal proceedings to collect the indemnified receivable the competent court conclusively rejects all or part of the claim or if it becomes evident for any other

reason after indemnification has been paid that the Federal Government was not under any obligation to indemnify the loss or the Federal Government is entitled to reclaim the indemnification paid.

- the costs you incurred are reimbursed by the buyer or a third party or are settled in any other way.

(143) **The amount to be repaid is subject to interest in accordance with Article 134.** Upon repayment of the reimbursed costs, the receivables, claims and other rights assigned to the Federal Government will revert to you. Article 135 governs any further claims.

## J. WHAT DO I NEED TO CONSIDER IF THE FEDERAL GOVERNMENT WANTS TO ENTER INTO RESCHEDULING AGREEMENTS WITH RESPECT TO THE COVERED RECEIVABLE?

(144) **The Federal Government is entitled to enter into rescheduling agreements with the country in which the buyer is domiciled with respect to the covered receivables (including the uninsured percentage). It may include non-covered ancillary claims and the non-covered parts of receivables that are only partially covered in these agreements.**

(145) The Federal Government may only exercise the aforementioned right if prior to entering into the rescheduling agreement it confirms which of the events of loss coming within the scope of these General Terms and Conditions are relevant as soon as the conditions specified in the rescheduling agreement for the application of this agreement to the covered receivable are satisfied.

(146) This will not prejudice any of the other conditions for indemnification.

(147) Notwithstanding the above provision, you can request indemnification on the basis of the provisions of these General Terms and Conditions.

(148) **You and your legal successors must agree to be bound by the provisions of the rescheduling agreement** under which the interest payable on the receivable for the period commencing on the date on which it falls due or for a period commencing on a later date is determined in derogation of the statutory or contractual provisions governing the calculation of interest and on the basis of which no further claims can be asserted on account of default.

(149) The provisions of the wholeturnover policy including the General Terms and Conditions still apply to the conversion of the indemnification even if the rescheduling agreement provides for the application of a different conversion rate for receivables denominated in a foreign currency. **With respect to the uninsured percentage, non-covered ancillary claims and the non-covered parts of receivables that are only partially covered, you and your legal successors agree to accept the conversion rate stipulated in the rescheduling agreement.**

### PART 3: ASSIGNMENT

#### A. IS CONSENT REQUIRED FOR THE ASSIGNMENT OF COVERED EXPORT RECEIVABLES AND CLAIMS UNDER THE WHOLETURNOVER POLICY?

##### I. Assignment of covered (export) receivable

###### 1. Assignment for collateralisation and collection purposes

(150) If the export receivable is assigned for collateralisation or collection purposes, **the assignment does not require the Federal Government's consent.** This applies regardless of the person to whom the export receivable has been assigned, whether the export receivable has been assigned in full or in part and whether the assigned receivable has been sub-assigned.

###### 2. Other assignments

(151) **All other assignments require the Federal Government's written approval.**

(152) This approval is **deemed to have been given** if prior to acknowledgement of an event of loss **the entire receivable** is assigned to the following **recognised assignees**:

- a) Credit institutions domiciled in a country which is a member of the European Economic Area (EEA) or in Australia, Japan, Canada, Switzerland or the United States;
- b) Domestic financial services companies which are licensed by the Federal Financial Supervisory Authority (BaFin) to buy receivables on a recurring basis under framework contracts (forfeiting and factoring companies).

(153) **The Federal Government’s written approval must be obtained** for the following types of assignment as approval is not automatically deemed to have been granted:

- Assignments to assignees other than those recognised under Article 152;
- Partial assignments;
- Sub-assignments with the exception of those to KfW or AKA;
- Assignments after an event of loss has been confirmed.

**3. Consequences of the failure to obtain the necessary approval**

(154) **If you fail to obtain the necessary approval, the Federal Government will be released from liability.** The only exception is if the Federal Government subsequently determines that it would have granted its approval at the time of the assignment.

**II. Assignment of claims under the wholeturnover policy**

**1. Assignments for which the Federal Government’s prior approval is not necessary**

(155) The assignment of **all the claims** under the wholeturnover policy do not require the Federal Government’s approval regardless of the assignee. This also applies to sub-assignments to AKA and KfW.

**2. Assignments for which the Federal Government’s prior approval is necessary**

(156) All **partial assignments or sub-assignments** other than to AKA and KfW require the Federal Government’s approval.

**3. Consequences of the failure to obtain the necessary approval**

(157) If you fail to obtain the necessary approval, this will not prejudice your cover. The assignment will remain legally effective under Section 354a of the German Commercial Code. **However, the Federal Government can pay indemnification to you as the original holder of the receivable with full discharging effect.**

**B. WHAT TERMS AND CONDITIONS APPLY WITH RESPECT TO THE ASSIGNMENT?**

**I. Contractual obligations**

(158) **You remain the Federal Government’s contractual partner notwithstanding the legally effective assignment. This means that your contractual obligations towards the Federal Government remain in full force.** You are responsible for ensuring that you are still able to perform these obligations or that the assignee performs them.

**II. Allocation of declarations**

(159) The assignee is bound by all declarations that you make towards the Federal Government in connection with the cover and the application process up until receipt of notification that the claims under the cover have been assigned; in the case of an undisclosed assignment of the covered receivables this also applies to any declarations made after the assignment.

### III. Exclusion of risk

(160) **All risks additionally arising from the assignment of the receivables are excluded from cover.** This particularly applies to the legal effectiveness of the assignment of the covered receivables under applicable law as well as any objections and defences in respect of the receivables arising from the assignee's conduct as well as the risk of the assignment of the receivables breaching a ban on assignment in force on the date of the assignment.

(161) In the case of the disclosed assignment of covered receivables, you must obtain the buyer's approval.

## C. WHAT FORM DOES THE INDEMNIFICATION PROCESS TAKE WHEN THE CLAIMS UNDER THE WHOLE-TURNOVER POLICY ARE ASSIGNED?

### I. Assertion of claims

(162) You still have the right to assert claims against the Federal Government for indemnification. However, you may declare that this claim will be asserted by the assignee in lieu of yourself and that the loss is to be settled with the assignee provided that the assignee is a credit institution acknowledged as an assignee under Article 152 and – if it is not domiciled in a country of the European Economic Area or Switzerland – specifies to the Federal Government an authorised representative domiciled in one of these countries, via which the indemnification process can be completed (in German).

### II. Payment of indemnification

(163) If you have submitted written notice of assignment and the Federal Government has approved the assignment, indemnification will be paid to the assignee.

(164) **Prior to paying the indemnification, the Federal Government may net any receivables which it holds against you under a guarantee agreement with any indemnification payable to the assignee.**

### III. Allocation of indemnification payments

(165) In the case of an undisclosed assignment, the application of the allocation rules is based on your relationship with the buyer and, in the case of a disclosed assignment, the relationship between the assignee and the buyer.

## PART 4: MISCELLANEOUS PROVISIONS

### A. WHEN DO INDEMNIFICATION CLAIMS BECOME TIME-BARRIED?

(166) **The covered receivables are deemed to have been settled if you do not submit any application for indemnification within two years of the date on which it falls due for payment.** This period starts again if you have reported a receivable as overdue to the Federal Government prior to the expiry of that period or the Federal Government receives any other report on the status of efforts to collect the covered receivable.

(167) **If the Federal Government rejects in writing any claims asserted by you against it under the wholeturnover policy, you must commence court proceedings within six months.** This only applies if the Federal Government states in the letter of rejection that it will be released from its obligation to indemnify a loss upon expiry of the period.

**B. UNDER WHAT CIRCUMSTANCES MAY THE FEDERAL GOVERNMENT TERMINATE THE WHOLETURNOVER POLICY WITHOUT NOTICE?**

(168) The Federal Government may terminate the wholeturnover policy without notice **if you culpably fail to perform your contractual duties, particularly the duty to offer receivables for cover, report turnover and pay the necessary premiums, on repeated occasions in full or within the requisite period.** This will not prejudice the Federal Government's rights under Section 314 of the German Civil Code (BGB).

**C. WHAT ARE THE CONSEQUENCES OF ANY OTHER BREACH OF DUTY?**

(169) If you breach any of the other duties under these General Terms and Conditions, the wholeturnover policy, the confirmations of cover or in connection with any instructions issued by the Federal Government, the rights accruing to the Federal Government as a result of breaches of duty will be determined through the application of the above provisions governing a breach of duties (Articles 87 et seq.).

(170) The provisions contained in these General Terms and Conditions and the wholeturnover policy will not prejudice any claims or other rights accruing to the Federal Government under statute or the application of general legal principles.

(171) The Federal Government will not be liable for any circumstances or risks for which you are responsible in accordance with the generally acknowledged principles of good management and sound business practice.

**D. TO WHAT COURTS ARE ANY DISPUTES ARISING FROM THE WHOLETURNOVER POLICY REFERRED?**

(172) Any disputes arising under the wholeturnover policy are referred to the ordinary courts of law of the City of Hamburg.

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



Federal Ministry  
for Economic Affairs  
and Energy

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



### 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.bundeswirtschaftsministerium.de/en](http://www.bundeswirtschaftsministerium.de/en) under the heading Promotion of Foreign Trade and Investment.

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