

# General Conditions of Insurance Capital Goods Credit Insurance 2000 - Single Transaction (version 2008)

## NONCOMMITTAL TRANSLATION

Note: Only the German original shall be legally binding

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| <b>Contents</b>   | <b>§ 1 Credit insurance cover</b>  | any regulations in force or whose exportation is prohibited by the laws of the Federal Republic of Germany,  |
| <b>§ 1 Credit insurance cover</b>                                 | Euler Hermes Kreditversicherungs-AG (hereinafter the Insurer) will indemnify the Insured for losses due to bad debts in respect of receivables due for the transaction described in the Schedule which have proved to be uncollectable. The further terms and conditions of cover are as stipulated by the Schedule, the General Conditions of Insurance (GCI), and any supplementary agreements.  | <b>d)</b> where the loss is in whole or in part attributable to war, hostilities, civil commotion, riots, revolution, strike, confiscation, obstruction of the traffic of goods and the transfer of payments by public authorities or state institutions, natural disasters or the direct or indirect effects of nuclear energy.   |
| <b>§ 2 Scope of cover</b>   |  | <b>3.</b> Value added tax (VAT) is not insured. Late or default interest, contractual penalties, liabilities for damages, legal costs and exchange rate losses are likewise not insured.   |
| <b>§ 3 Commencement and validity of cover</b>                     |  | <b>§ 3 Commencement and validity of cover</b>  |
| <b>§ 4 Loss minimization</b>                                      | <b>§ 2 Scope of cover</b>  | <b>1.</b> Cover on a Buyer commences, unless agreed otherwise, at the date when delivery or services were effected, subject to this not being earlier than the date stipulated in the Schedule.  |
| <b>§ 5 Obligations of the Insured</b>                             | <b>1.</b> Cover is provided for valid and undisputed receivables due for the respective transaction, and for which a Credit Limit for the respective Buyer was stipulated by the Insurer in the Schedule. Cover includes the purchase price due inclusive of any credit and freight costs agreed, subject to reduction by any prepayments or payments on account rendered. The preliminary application for insurance as well as the details of the contract between the Insured and his Buyer given in it are an integral part of this policy. | <b>2.</b> Cover shall continue to run for insured receivables due at the expiry of the policy.   |
| <b>§ 6 Premium</b>  |  | <b>§ 4 Loss minimization</b>   |
| <b>§ 7 Insured Event</b>  |  | <b>1.</b> The Insured agrees, at his own expense, to use all due and reasonable care to ensure that losses are prevented or minimized and will thereby take all appropriate action, will implement instructions given by the Insurer, will make the best use of any security interests he may hold and obtain the consent of the Insurer before concluding any settlement with the Buyer in respect of payments. |
| <b>§ 8 Payment of claims/ Ascertainment of loss</b>               | <b>2.</b> Cover is not provided for losses of receivables  | This duty to minimize any loss remains in force after indemnification by the Insurer.  |
| <b>§ 9 Uninsured Percentage</b>                                   | <b>a)</b> due from public Buyers and private individuals, provided that the latter were not transacting business as a company,   |  |
| <b>§ 10 Subrogation after indemnification</b>                     | <b>b)</b> due from any company in which the Insured directly or indirectly holds a majority interest or can exert a controlling influence on management decisions, or vice versa,  |  |
| <b>§ 11 Assignment of the right to payment of a claim</b>         | <b>c)</b> resulting from transaction where there has been a failure by the Insured to obtain any documents or authorizations required, as well as receivables arising from the delivery of goods whose importation into the country of destination contravenes   |  |
| <b>§ 12 Failure of the Insured to comply with his obligations</b> |  |  |
| <b>§ 13 Policy currency</b>                                       |  |  |
| <b>§ 14 Final provisions</b>                                      |  |  |

2. The Insured hereby authorizes the Insurer to enter into agreements on his behalf with any of his insured Buyers to protect the insured receivables in order to prevent or minimize the risk of loss.

## § 5 Obligations of the Insured

1. The Insured must notify the Insurer of any circumstances known to him when applying for insurance cover which are material for the obtainment of cover and especially for the assessment of the creditworthiness of the Buyer or any other persons liable for payment.

2. The Insured must inform the Insurer whether, during the 6 months preceding the request

a) receivables remained unpaid or were not paid on the due date,

b) bills of exchange were prolonged beyond the original due date or

c) cheques, bills of exchange or direct debits were not honoured for lack of funds.

3. Following the application for cover, the Insured must notify the Insurer immediately by telephone or in writing, by telefax or e-mail of the occurrence of any of the events listed under Par. 2 b) - c) above.

4. The Insured must inform the Insurer of each and every non-payment of a insured account due from his Buyer as soon as the notification period for overdues specified in the Schedule is exceeded (Overdue Report). The notification period begins on the day on which the credit period agreed with the Buyer expires. If the Insured fails to notify the Insurer of overdues, the insurance cover for the account concerned may be jeopardized (cf. § 12 GCI).

5. Any change in the terms of payment, conditions of sale/services or

agreements on security instruments must be notified and may lead without written consent from the Insurer to cancellation of cover (cf. § 12 GCI).

6. The Insured must immediately notify the Insurer in writing, by telephone, by telefax or e-mail of the imminent or actual insolvency of his Buyer.

7. The Insured will provide all information and any documents which the Insurer deems necessary for the verification of the loss and the ascertainment of the amount of the loss.

8. The Insured agrees to give the Insurer the right to examine any documents material to the policy and to make or require to be made copies thereof.

9. The Insured agrees to comply with the provisions of Par. 7 and 8 above after indemnification by the Insurer.

10. The Insured will treat all information received from the Insurer concerning the creditworthiness of his Buyer or of third parties in the strictest confidence. The Insured further undertakes to protect the Insurer from any claims of third parties which may arise through confidential information becoming known to such third parties through wilful or negligent disregard of this confidentiality on the part of the Insured.

11. If the Insured fails to comply with any of the obligations, the insurance cover may be jeopardized (cf. § 12 GCI).

## § 6 Premium

1. Details of the premium are given in the Schedule; premium will be calculated on the basis of the insured account and the credit period agreed (premium for the period - in German: "Laufzeitprämie"). It will be invoiced as a one-off payment in

advance at the time of conclusion of the insurance contract.

2. Premium, together with statutory insurance premium tax, is payable immediately on receipt of the invoices.

3. In the case that the credit period is prolonged, an additional premium amount will be calculated based on the amount prolonged for each month of the prolongation at the time consent is received from the Insurer (premium for the prolongation - in German: "Prolongationsprämie").

4. If the agreed premium for the period is not paid on time, the Insurer is entitled to rescind the insurance contract as long as the payment is not made. Until the premium is paid, the Insurer is freed from its obligation to indemnify.

Any other questions relating to premiums shall be regulated as provided in the German Insurance Contract Law (VVG §§ 37 - 39).

If the insurance contract is rescinded, the Insured is liable to pay an administration fee amounting to 25 % of the agreed premium for the period.

5. If an insured account is paid before the expiry of the agreed credit period, a pro rata premium refund will be paid - subject to the pro rata minimum premium - for the premium calculated in respect to the instalments for the part of the credit period not utilised. This is calculated from the point at which the Insurer learned that the insurable interest had ceased to exist.

## § 7 Insured Event

1. An insured event is deemed to have occurred on the date when the insured receivables become uncollectable.

Receivables are only deemed to be uncollectable when:

**a)** the instalment of the insured receivables due has not been paid in whole or in part within the period defined below (protracted default) and the collection procedure agreed in the following has been observed.

Protracted default is deemed to be an insured event only if the Insured has concluded a contract for debt collection services with Euler Hermes Collections GmbH (hereinafter Euler Hermes Collections) and has placed a collection order with Euler Hermes Collections at his own expense no later than two months after the original due date.

If the Insured fails to place a collection order or does not do so within the period stipulated above, a claim may only be made when one of the insured events listed under Par. 1 b) - f) below occurs.

or

**b)** court insolvency proceedings have been opened or proceedings have been rejected by the court for lack of sufficient assets, or

**c)** the insolvency court has formally noted that a plan for the repayment of creditors in a personal insolvency has been accepted, or

**d)** all the Buyer's creditors generally have agreed to a composition or other out-of-court settlement, or

**e)** the execution of a judgement title in respect of the Buyer's assets obtained by the Insured has failed to satisfy the debt in whole or in part, or

**f)** any event has occurred with respect to a buyer domiciled abroad which by any other system of law is substantially equivalent to any of the above.

**2.** Insolvency is deemed to have occurred on the date when in case

**a)** above the period stipulated in the Schedule for protracted default has expired,

**b)** and **c)** the court order was passed,

**d)** all the Buyer's creditors generally agreed to the settlement,

**e)** the competent authority confirmed in writing the failure of the execution to satisfy the debt,

**f)** the day on which the equivalent event under the system of law applicable occurred.

**3.** An Insured Event is also deemed to have occurred in the case that, following the delivery or the performance of services, insolvency of the Buyer appears imminent due to deterioration of his creditworthiness and any goods which are still at the Insured's disposal or have been reclaimed by the Insured and, with the consent of the Insurer, have been sold at the best price realizable elsewhere, and the proceeds of the sale are still lower than the receivables due from the original Buyer.

The Insured Event here is deemed to have occurred on the date on which the loss due to the sale of the goods at a lower price is ascertained.

## § 8 Payment of claims / Ascertainment of loss

**1.** The Insurer will pay a claim within the period stipulated in the Schedule if and when an Insured Event has occurred, the required documentation has been submitted and the final insured loss has been ascertained. In the case of protracted default the basis for the loss settlement is the instalment due.

If the amount of the loss has not been definitely established by the expiry of the period stipulated in the Schedule, the Insurer will make a

provisional loss settlement. In this connection the Insurer will estimate the amounts which are deductible in so far as these amounts have not yet been established.

**2.** In ascertaining the insured loss, the amount due at the time of the Insured Event will be reduced by the following in the order of their appearance here:

**a)** the credit costs for the still remaining part of the agreed credit period from the date at which the insured event occurred,

**b)** the following reductions

- proceeds from the realization of the goods after deducting the costs of sale incurred, subject to a minimum corresponding to the minimum acceptable value calculated on the original insured account and stipulated in the Schedule. Deduction of the minimum acceptable value is not permissible, unless otherwise agreed, in the case of customized goods or in cases in which the Insured is precluded by legal restrictions from taking possession of the goods for the purpose of realizing proceeds.

- rights of set-off

- payments recovered and proceeds from the realization of any other rights or security interests

- dividends in liquidation.

These reductions will be set off in the amount remaining after deduction of the insolvency administrator's realization and ascertainment costs.

If it is not possible to establish whether the reductions mentioned above are in respect of insured or uninsured accounts, they will be set off against the loss in the proportion of insured and uninsured receivables.

3. Any payments recovered or the proceeds from relevant sales of goods received by the Insured after occurrence of the Insured Event must be notified immediately to the Insurer. The Insurer will then make a revised loss settlement where appropriate.

If it is not possible to establish whether the reductions mentioned above refer to insured or uninsured accounts, they will be set off against the loss in the proportion of insured to uninsured receivables.

4. The Insured must submit a claim for indemnification within 6 months of learning of the occurrence of an Insured Event. Claims submitted later than this will not be indemnified.

### § 9 Uninsured Percentage

1. The Insured shall retain for his own account the percentage stipulated in the Schedule of each insured loss ascertained according to § 8 GCI.

2. The uninsured percentage to be retained for his own account by the Insured may not be insured elsewhere or otherwise covered by any form of protection. If the Insured has insured the amount which he agreed to retain for his own account elsewhere, the Insurer reserves the right to deduct an amount equivalent to the Insured's claim against the other insurer from its claims payment.

### § 10 Subrogation after indemnification

The Insurer will be subrogated to any legal rights and remedies the Insured has against his buyer or third parties up to the amount indemnified. The Insured agrees to undertake all necessary actions for the transfer of such rights at the request of the Insurer.

The Insured's obligations under § 5 Par. 7 and 8 GCI remain in force after the transfer of all rights and remedies in respect of the receivables, claims and any other such legal rights.

### § 11 Assignment of the right to payment of a claim

Assignment of the right to payment of a claim under this policy is only admissible with prior written consent from the Insurer. Any legal remedies available to the Insurer, as well as the right of set-off, shall also be valid against the assignees. The amount of the indemnification will however only be ascertained in consultation with the Insured.

### § 12 Failure of the Insured to comply with his obligations

1. The Insurer is released from its liability to indemnify a claim in respect of an insured single risk, without it being necessary to cancel the policy, if the Insured fails to comply with any of his legal or contractual obligations regarding the respective insured single risk and if the Insured can be held responsible for such non-fulfilment. This does however not apply if the non-fulfilment has had no effect either on the verification or the occurrence of the Insured Event or the ascertainment or the amount of the indemnification to be paid by the Insurer.

2. The Insurer is released from its liability to indemnify a claim if the Insured fails to inform the Insurer about the deterioration of a risk and if the Insured can be held responsible for such non-fulfilment and if the Insured Event occurs after the date this information should have been received. The Insurer remains liable to indemnify a claim if the Insurer knew of the deterioration of the risk at the date this information should have been received or if the deterioration of the risk has had no effect

either on the occurrence of the Insured Event or the amount of the indemnification to be paid by the Insurer.

### § 13 Policy currency

The policy currency is that specified in the Schedule. Invoices denominated in currencies other than the policy currency will be converted at the rate of exchange used by the European Central Bank on the day the delivery or services were effected.

The rate of exchange used by the European Central Bank on the day the Insured Event occurred will be used in calculating the amount of indemnification, subject to this not being higher than that of the day when delivery or services were effected. Recoveries are to be converted at the rate of exchange used on the day payment is received.

Currencies which are not officially quoted will be converted at the rate fixed as the mean rate of exchange by the Deutsche Bundesbank or alternatively by the European Central Bank on the dates stipulated above.

### § 14 Final provisions

1. In addition to the contractual provisions, this policy is to be governed and construed in all aspects according to the Laws of the Federal Republic of Germany, and in particular the German Insurance Contract Law, unless any other agreement has been fixed in writing.

2. Place of performance and of jurisdiction shall be Hamburg in the case of companies and merchants (Kaufleute as defined by the German Commercial Code (HGB)).