

**SINGLE SITUATION Trade Credit Insurance  
Risks Attaching (Insolvency Only)**



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SPECIMEN

## Terms & Conditions

### A. Insuring Agreement

In consideration of the payment of the Premium, subject to and in reliance upon the statements made to the Insurers by the Insured and in strict accordance with the Policy Schedule and endorsements made as part of the Policy and its terms and conditions, the Insurer agrees to indemnify the Insured for the Insured Percentage of the Loss up to the Policy Limit of Liability, caused by the Insolvency of the Obligor resulting in non-payment for Insured Goods delivered under the terms and conditions of the Insured Contract, provided that the Eligible Shipments were incurred during the Policy Period.

### B. Definitions

In this Policy, the Policy Schedule and any endorsements, the following terms shall have the following meanings unless the context requires otherwise.

1. **Change of Control** shall mean a change of ownership directly or indirectly of more than fifty percent (50%) of the voting share capital of the Insured.
2. **Collection Costs** shall mean direct, reasonable and necessary third-party costs incurred in pursuing or obtaining Recoveries.
3. **Confirmation of Debt** shall mean the following:
  - (a) written confirmation from the trustee in bankruptcy, liquidator or equivalent (as may be required by regulations in force in the Obligor's Country), of the amount ranking against the insolvent estate of the Obligor in respect of amounts owing to the Insured; or
  - (b) written confirmation as at the date of appointment from the receiver, administrative receiver, nominee or equivalent (as may be required by regulations in force in the Obligor's Country), of the amount shown as due to the Insured in the financial records of the Obligor.
4. **Contract Currency** shall mean the currency in which the Obligor is obliged to pay the Insured under the terms of the Insured Contract and shall be the currency in which the Loss is payable.
5. **Credit Limit** shall mean the amount specified in the Policy Schedule or in an endorsement which is the maximum amount of credit approved to be outstanding from the Obligor at any one time excluding without limitation sales, value-added or other taxes.
6. **Date of Loss** shall mean the date on which the Obligor fails to meet the Insured's demand following failure of the Obligor to perform its obligations under the Insured Contract, or the date of Insolvency of the Obligor, whichever is earliest.
7. **Due Date** shall mean the date payment is required to be made by the Obligor to the Insured under the terms and conditions of the Insured Contract.
8. **Eligible Shipments** shall mean any and all Shipments of Insured Goods made to the Obligor during the Policy Period pursuant to the Insured Contract, delivered as required under the contract and sold for Contract Currency. The value of Eligible Shipments shall exclude sales, value-added or other taxes.

**9. Insolvent/Insolvency** shall mean when an Obligor including any guarantor shall:

- (a) enter into; and/or
- (b) itself apply for; and/or
- (c) call meetings of members and/or partners and/or creditors with a view to;

One or more of:

- (a) a moratorium of debt,
- (b) an interim order,
- (c) administration or receivership (of any kind),
- (d) liquidation (of any kind including provisional), bankruptcy (including appointment of an interim receiver),
- (e) composition and/or arrangement (whether under deed or otherwise) with creditors

and shall include events under the laws of jurisdictions outside England, which, in the opinion of the Insurer, would have a substantially similar effect.

**10. Insured** shall mean the organisation(s) specified in the Policy Schedule or in an endorsement.

**11. Insured Contract** shall mean the written agreement, written contract or legally binding agreement between the Insured and the Obligor which evidences the terms and conditions for the purchase of Insured Goods by the Obligor.

**12. Insured Goods** shall mean goods and/or services specified in the Policy Schedule or in an endorsement.

**13. Insured Percentage** shall mean the percentage specified in the Policy Schedule or in an endorsement.

**14. Insurer** shall mean the organisation(s) specified in the Policy Schedule or in an endorsement.

**15. Loss(es)** shall mean the total value of all deliveries made to the Obligor under the Insured Contract which have not been repaid. Less:

- (a) Any allowances made by way of discounts or quality settlements or similar;
- (b) Any amount which, prior to the time of the payment by the Insurer hereunder, the Insured has received from any source as or towards repayment under the terms of the Insured Contract including realisation of any security;
- (c) Any amount which the Obligor would have been entitled to take into account by way of payment, credit, set-off or counter claim and any sums or credit which the Insured is entitled to appropriate as or towards repayment under the terms of the Insured Contract;
- (d) Any expenses saved by the Insured by non-payment of agent's commission or otherwise;
- (e) Any post maturity of penalty interest.

The premium paid under the policy shall not be included in the calculation of any Loss. Loss(es) may include any direct, reasonable and necessary costs incurred in minimising Loss(es), pursuing or obtaining recovery provided that such costs have been specifically authorised in writing and in advance by the Insurer.

**16. Loss Payee** shall mean the entity stated in the Policy Schedule (where applicable).

**17. Maximum Extension Period** shall mean number of consecutive calendar days, specified in the Policy Schedule, from the original Due Date.

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18. **Maximum Terms of Payment** shall mean the number of days stated in the Policy Schedule.
19. **Obligor** shall mean the entity stated in the Policy Schedule.
20. **Obligor's Country** shall mean the country specified in the Policy Schedule or in an endorsement from which the Obligor is obliged to pay the Insured under the terms of the Contract of Sale.
21. **Policy Currency** shall mean the currency specified in the Policy Schedule or an endorsement in which the Premium is payable and the Policy Limit of Liability are stated.
22. **Policy Limit of Liability** shall mean the amount specified in the Policy Schedule or in an endorsement which is the Insurer's maximum liability for the aggregate of all Losses insured under the Policy.
23. **Policy Period** shall mean the period the Policy is in force as specified in the Policy Schedule or in an endorsement.
24. **Policy Schedule** shall mean the Schedule of Terms provided alongside this Wording.
25. **Premium** shall mean the premium payable in respect of the Policy as specified in the Policy Schedule or in an endorsement.
26. **Proposal Form** shall mean the completed 'Single Situation Proposal Form' held on file by the Insurer.
27. **Recoveries** shall mean any monies, securities, guarantees, rights, remedies, advantages or concessions held by the Insured or available to the Insured for the purpose of reducing a Loss.
28. **Shipment** shall mean the delivery of goods and/or services to the Obligor, which shall be deemed to take place when the goods have left the control of the Insured for the purpose of delivery to the Obligor and/or when the services have been performed and invoiced to the Obligor.
29. **Uninsured Percentage** shall mean the percentage of the Credit Limit that is not covered by insurance and in turn, the percentage of any claim that would not be covered by this insurance policy.
30. **Waiting Period** shall mean the number of consecutive calendar days that must elapse after the Date of Loss before any Loss is payable under the Policy and which shall be thirty (30) days after the Insurer has received satisfactory Confirmation of Debt.

### C. Exclusions

The following Losses are excluded and no indemnity shall be payable under the Policy in respect of any Loss caused by any of the following:

1. Disputes between the Insured and the Obligor, unless and until each dispute has been finally resolved and the sum due to the Insured shall be a valid and legally enforceable indebtedness of the Obligor, its administrator, receiver, liquidator or other legally appointed supervisor, or its successor in interest.
2. Wrongful, wilful or dishonest acts and/or omissions of the Insured or its agents.
3. Failure by the Insured or the Obligor to obtain any import or export license or other authorisation necessary for the performance of the Insured Contract unless a previously valid import or export license or other authorisation has been withdrawn after the date of Shipment.
4. Failure of the Insured to fulfil any of the terms and conditions of the Insured Contract with an Obligor.

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5. Insolvency of:
  - (a) any party except the Obligor; and/or  
Insolvency or financial default of:
    - (a) any company and/or other entity in which the Insured has an ownership interest and/or a director or partner in common.
6. Any Shipments made to the Obligor, who, at inception of the policy:
  - (a) is Insolvent, or,  
unless otherwise agreed to in writing by the Insurer,
  - (b) is more than sixty (60) days overdue in any payment obligation to the Insured, or
  - (c) has had the Due Date of any payment obligation rescheduled or extended prior to inception of the Policy; or
  - (d) is in financial difficulties and the Insured had or reasonably should have had knowledge of the Obligor's financial difficulties prior to the inception of the Policy.

Payment obligations that are disputed by the Obligor in writing will not be considered overdue for the purpose of this clause.
7. Any debts that are purchased or otherwise acquired by the Insured from any entity unless agreed in writing by the Insurer and evidenced by an endorsement.
8. Any Loss(es) that are covered under other insurance policies.
9. Any post-maturity, penalty or other interest accrued on balances unpaid after the original Due Date.
10. Loss, damage, liability or expense directly or indirectly caused by, or contributed to by, or arising from:
  - (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
  - (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The Exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
  - (e) any chemical, biological, bio-chemical, or electromagnetic weapon.

### D. Conditions Precedent

The following are conditions precedent to any liability of the Insurer under the Policy.

#### 1. Contract Alteration

The Insured must ensure that at the time of risk attachment to this Policy, the Insured Contract will not be materially altered or amended whereby such amendment increases the risk to Insurers without Insurer's prior written consent, such agreement not to be unreasonably withheld or delayed.

## **2. Enforceable Debt**

The Eligible Shipments and related payment obligations shall be a valid and legally enforceable indebtedness of the Obligor to the Insured in the Obligor's Country.

## **3. Duty To Disclose Information**

The Insured is under a duty to make a fair presentation of the risk when completing the Proposal Form and also following requests by the Insurer for additional information during the application for insurance or renewal of insurance. The Insured must continue to disclose promptly all new information that may affect the Insurer's decision to provide insurance cover and the terms upon which cover is offered.

If the Insured breaches the duty to make a fair presentation of the risk, the Insurer may have the right to avoid the Policy and reclaim from the Insured any claim payments that have been made; the Policy may be treated as if it had been entered into on different terms and/or there may be a reduction in the amount payable in respect of any claim. For ease of reference, a copy of the Proposal Form is appended to this Policy.

## **4. Terms of Payment**

The Insured shall not extend terms of payment to the Obligor that are greater than the Maximum Terms of Payment detailed within the Policy Schedule without prior written consent of the Insurer. Such consent not to be unreasonably delayed or withheld.

## **E. General Conditions**

### **1. Acceleration**

If the Insured accelerates the repayment of all or part of the money owed to them by the Obligor in accordance with the terms and conditions of the Insured Contract, a default by the Obligor on an accelerated payment obligation shall not automatically give rise to a corresponding acceleration of the Insurer's obligation to indemnify a claim hereunder. Indemnification for a claim shall be paid in accordance with the original Due Dates established by the Insured Contract and the Insured shall be obligated to pay Premium in accordance with the terms of this Policy up to the original Due Date of each payment. The Insurer shall have the option, at their sole discretion, to accelerate the payment of any indemnification for a claim in which case the Insured shall be obligated to pay the Insurers the unpaid portion of the total Premium due for the balance of the Policy Period, which amount shall be credited against and shall reduce such indemnification.

### **2. Allocation of Moneys Received Prior to the Date of Loss**

Unless agreed otherwise in writing by the Insurer, any monies or other benefits received by or on behalf of the Insured prior to the Date of Loss in respect of Shipments of goods and/or services made by the Insured to the Obligor, shall for the purpose of the Policy be applied to the total sum outstanding to the Insured from the Obligor in the chronological order of the Due Dates.

### **3. Arbitration**

Any dispute arising out of or in connection with this policy, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this clause.

The tribunal shall consist of three arbitrators, two of them shall be nominated by the respective parties.

The place arbitration shall be London, England.

The language of the arbitration shall be English.

#### **4. Assessors and Auditors**

The Insurer is entitled to appoint assessors and auditors to verify and advise the Insurer on all aspects of any claim including but not limited to Confirmation of Debt, the calculation of the claim amount, recovery action and Collection Costs.

#### **5. Calculation of Claim Amount**

The Insurer will pay the Insured Percentage of the Loss, subject to the Policy Limit of Liability. Each payment made by the Insurer in respect of a Loss hereunder shall reduce the Policy Limit of Liability by the amount of each payment.

#### **6. Cease Shipments**

The Insured shall not incur any further exposure following the occurrence of an event of circumstances that may reasonably be expected to result in a Loss.

The Insurer has no liability for further Shipments made to an Obligor:

- a) Which has become overdue in any payment obligation (whether or not insured under the Policy) to the Insured, beyond 30 days, unless postponed in accordance with the Postponement of Due Date clause; and/or
- b) If a payment is not made on a Due Date postponed in accordance with the Postponement of Due Date clause.

#### **7. Change of Control of an Obligor**

The Insured shall notify the Insurer in writing should the Insured become aware of a Change of Control of the Obligor.

#### **8. Changes to Policy Terms**

The terms of the Policy cannot be varied or amended except by endorsement issued to form a part of the Policy, signed by a duly authorised representative of the Insurer.

#### **9. Confidentiality**

The Insured shall not disclose the existence of the Policy, at any time, either before or after a Loss occurs and whether before or after the expiry of the Policy, to any third party other than to a named Loss Payee or its own professional, financial and legal advisors, without the prior consent of the Insurer, such approval not to be unreasonably withheld or delayed.

#### **10. Confirmation of Debt**

The Insured shall provide the Insurer with Confirmation of Debt in a form satisfactory to the Insurer.

#### **11. Contracts (Rights of Third Parties) Act 1999**

A person who is not party to this contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### **12. Cooperation**

The Insured shall at all times cooperate with the Insurer and shall act in accordance with any directions that the Insurer shall reasonably give.

### **13. Costs and Expenses**

All costs that are incurred in the process of loss minimisation shall be borne by the Insured except any extraordinary costs incurred as a result of specific instruction by Insurers to minimise a potential Loss under this Policy and in such event such costs shall be shared by Insurers and the Insured in the proportion of the Insured Percentage and Uninsured Percentage. Upon expiry of the Waiting Period, all external costs and expenses incurred by the Insured in the course of taking reasonable measures relating to the prevention or minimising of a Loss shall be for the account of the Insurer and the Insured in accordance with the relative proportions of the Insured Percentage and Uninsured Percentage.

### **14. Due Diligence**

The Insured shall at all times act prudently and as though uninsured, use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any Loss.

### **15. Examination of Documents**

At the request of the Insurer, the officers of the Insured shall submit to examination under oath and shall produce for examination at such reasonable time and place as designated by the Insurer all documents in the Insured's possession or control, whether stored physically, electronically or otherwise, which relate to any matter arising under or relating to the Policy and shall permit extracts and copies thereof to be made available without charge to the Insurer. The Insured shall take all reasonable steps to obtain for the Insurer any documents in the possession or control of a third party.

### **16. Fraudulent Claims**

- (a) If the Insured makes a fraudulent claim under this Policy, the Insurer:
  - (i) shall not be liable to pay the claim;
  - (ii) may recover from the Insured any sums paid by the insurer to the insured in respect of any claim; and
  - (iii) may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.
- (b) If the Insurer exercises their rights under Article E.16 (a) (iii) above, the Insurer shall:
  - (i) Not be liable to the Insured in respect of any Loss occurring after the time of the fraudulent act; and
  - (ii) Retain any premiums paid.

### **17. Governing Law and Jurisdiction**

The Policy shall be construed under and governed by the law of England and Wales. The Courts of England and Wales shall have exclusive jurisdiction of any dispute hereunder.

### **18. Insured Contract**

The Insured Contract must specify the nature and quantity of the goods and/or services to be sold, the Contract Currency and the terms of payment.

### **19. Insured's Retention**

The Insured is to retain for its own account the Uninsured Percentage and, if applicable, any amount which exceeds the Credit Limit.

## **20. Non-assignment**

The Insured may not assign this Policy to a third party ("the Assignee") without the prior written approval of the Insurer, evidenced by an endorsement agreed by the Insured, the Insurers and the Assignee in which case the Insured's obligations under this Policy shall be transferred to the Assignee. Alternatively, the Insured may require any payments under this Policy to be made to a named loss payee ("the Loss Payee") subject to the Insurer's prior written approval evidenced by an endorsement agreed by the Insured, the Insurer and the Loss Payee in which case the Insured's obligations under this Policy shall remain unaffected.

## **21. Non-cancellable Policy**

The Policy may not be cancelled by any party, except that:

- (a) the Insurer may cancel for non-payment of Premium, or non-payment of any instalment where the Premium is payable by instalments, in which case the Policy shall be cancelled retroactively to the start of the period for which the Premium is due and unpaid and all subsequent periods. No Loss shall be payable for those periods, whether suffered before or after the date the payment of Premium or instalment fell due; and
- (b) the Insurer may cancel with effect from the date of any Change of Control of the Insured; and
- (c) the Policy shall automatically terminate upon the Insolvency of the Insured.

## **22. Notification of Loss**

The Insured shall notify the Insurer in writing promptly after becoming aware of a Loss.

## **23. Observance of Law**

The Insured shall observe and comply with all laws and regulations of the Insured's and the Obligor's Country of which it should reasonably be aware, unless and until prohibited from so complying by a law, order, decree or regulation in force in the Insured's or the Obligor's Country.

## **24. Payment of Claim**

The Insurer shall pay the indemnity due to the Insured promptly upon of the Insurer's decision or the end of any applicable Waiting Period, whichever is earliest.

## **25. Payment of Premium**

The Insured shall pay all amounts due to the Insurer in respect of Premium as provided in the Policy Schedule or in an endorsement which specifies the method and basis of premium calculation. The Premium will be payable in the number of instalments and the amounts specified, each instalment being payable to the Insurer on or before the dates stated. All Premiums are payable in the Policy Currency. The Insurer shall not be liable for Loss until and unless Premiums due are paid. In the event of a Loss, all premium would be due to Insurers.

## **26. Postponement of Due Date**

The Insured shall not postpone, reschedule, extend (including by the use of payment plans), accelerate or otherwise change any Due Date without the prior written consent of the Insurer.

However, in the event that an Obligor is unable or unwilling to make a payment on the original Due Date, the Insured may grant without the prior written consent of the Insurer one postponement to the Obligor for a period not exceeding the Maximum Extension Period, provided that:

- (a) the Due Date is not evidenced by any of the following: bill of exchange, promissory note, cash against documents terms, documentary sight draft, documents against payments transaction or payment under a letter of credit; and
- (b) the Insured knows no adverse information about the Obligor; and
- (c) the request for extended terms is made shortly before or after the original Due Date.

In the event of the Insured agreeing to a postponement in this way, the new Due Date shall become the Due Date for all purposes under the Policy.

Payment obligations that are disputed by the Obligor in writing will not be considered overdue for the purpose of this clause.

## **27. Prompt Notification and Submission of Claim**

The Insured shall submit to the Insurer a properly completed claim form within ninety (90) days of first notifying the Insurer of the Loss.

## **28. Proof of Loss**

The Insured must provide proof of Loss, including such evidence as the Insurer reasonably determines is necessary to prove the Loss. If the Insured does not provide such evidence within six (6) months of the date of the Insurer's request, then the Insurer may deem the claim withdrawn and shall not pay the Loss. The Insured shall not be entitled to submit another claim based upon the same or substantially same Loss.

## **29. Recoveries**

The Insured shall pursue any available Recoveries and shall secure compensation for any Loss insured under the Policy and at all times shall act in accordance with all directions as the Insurer shall reasonably give. The provisions of this condition shall apply equally before and after payment of a Loss by the Insurer.

After the date of payment of a Loss by the Insurer, any Recoveries shall immediately be remitted to the Insurer, and until so remitted, shall be held in trust by the Insured for the Insurer. After receipt by the Insurer, Recoveries shall be divided between the Insured and the Insurer as follows:

- (a) The Insurer shall receive the Insured Percentage of all amounts recovered until the amount of the payment of the Loss and the Insurer's cost of recovery have been fully reimbursed.
- (b) All further amounts recovered shall be for the benefit of the Insured.

For any Recoveries received in a currency other than Policy Currency, the rate of exchange shall be the rate as offered by the Insurer's London clearing bank on the date that cleared funds are received into the account of the Insured, or of the Insurer where paid directly to the Insurer.

### **30. Reporting Procedures**

(a) Overdue Accounts

The Insured shall notify the Insurer in writing of all debts overdue by more than the Maximum Extension Period as at the end of each month, by providing a report thereof within fourteen (14) working days of the end of each month.

(b) Adverse Information and Potential Losses

Where the Insured has knowledge of any information or circumstance which indicates that the Obligor may not be able to perform or comply with their payment obligations to the Insured under the Insured Contract, or circumstances which may reasonably be expected to result in a Loss, the Insured shall promptly notify the Insurer in writing upon becoming aware of this information or circumstance, irrespective of whether or not the Obligor is overdue in any payment obligation to the Insured.

### **31. Sanction Limitation and Exclusion Clause**

No Insurer shall be deemed to provide cover and no Insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that Insurer to any sanction, prohibition or

restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

### **32. Set-Off**

The Insurer shall be entitled to set off any amount payable by the Insurer to the Insured under the Policy against any amount that is or may become due by the Insured to the Insurer under the Policy.

### **33. Subrogation**

The Insured shall subrogate and assign to the Insurer all right, title and interest with respect to all Losses, which are the subject of a claim and all related security interests and claims against third parties. Should the Insurer so request, the Insured shall retain legal title to any interests or rights to which the Insurer is entitled.

The Insured shall not permit, to the maximum extent permissible by law, any receivables and/or other sources of recovery to which the Insurer shall be subrogated to be subject to any lien, security interest, or other third party claim superior to that of the Insurer.

The Insured shall not take any action which would impair the Insurer's rights of subrogation.

### **34. Suit Limitation**

Any action arising out of this Policy must be brought against the Insurer within twelve (12) months from the date of the Insurer's claim determination or shall be deemed waived.