

GENERAL TERMS AND CONDITIONS

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UFK-GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Untied Loan Finance**

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General Terms and Conditions

PREAMBLE

The Federal Republic of Germany (Federal Government) assumes guarantees for repayment claims under loan contracts concluded with private foreign debtors or a state, a regional or local administrative unit with a separate legal personality or a comparable institution, which loan contracts are not tied to German exports and services and to the extent that they are not given in discharge of obligations in respect of national or foreign supply and service transactions (untied loans).

These general terms and conditions (General Terms and Conditions) for the assumption of guarantees for repayment claims under untied loans (Untied Loan Guarantees) shall constitute an integral part of the guarantee agreement entered into by the Federal Government and the beneficiary of the Untied Loan Guarantee (policyholder, guarantee agreement) and shall apply unless they are expressly waived, supplemented or replaced pursuant to the terms of the guarantee agreement.

The Federal Government, as the contractual partner of the policyholder, is represented by the Federal Ministry for Economic Affairs and Energy (BMWE). The BMWE is in turn represented by Euler Hermes Aktiengesellschaft (Euler Hermes) which acts as agent under a mandate from the Federal Government. Euler Hermes is commissioned and authorised by the Federal Government to issue and receive, on its behalf and subject to its instructions, all declarations relating to the formation and execution of the guarantee agreement.

§ 1 REQUIREMENTS REGARDING FORM

The guarantee agreement comes into effect if and when the Federal Government accepts the policyholder's application for an Untied Loan Guarantee in writing under reference to these General Terms and Conditions. The same applies to any amendment to the guarantee agreement. Verbal side agreements shall not be legally binding.

§ 2 SUBJECT MATTER OF THE UNTIED LOAN GUARANTEE

- (1) The covered obligation under the Untied Loan Guarantee is the policyholder's repayment claim against the foreign debtor as agreed in the loan contract and set forth in the guarantee declaration (guaranteed amount).
- (2) The guaranteed amount further includes any interest agreed in the loan contract and set forth in the guarantee declaration insofar as it accrues up to the agreed maturities. If the Federal Government exercises its right pursuant to § 5 para. 1 sentence 3 hereof, the guaranteed amount also includes any monetary compensation for loss of interest due to the premature repayment of the guaranteed amount, which the policyholder is entitled to pursuant to the loan contract or statutory provisions (breakage costs). Claims for damages, unless covered pursuant to § 2 para. 2 sentence 2, and any further ancillary claims, e. g. default interest, contractual penalties or forfeit money, shall not be covered by the Untied Loan Guarantee, even in the event that they are expressly agreed in the loan contract between the policyholder and the foreign debtor.

§ 3 GUARANTEE PERIOD

- (1) Liability under the Untied Loan Guarantee commences when and to the extent the loan has been disbursed. Liability under the Untied Loan Guarantee ends when and to the extent the guaranteed amount has been discharged.
- (2) In the event and to the extent that the policyholder has not claimed for indemnification under the guarantee agreement within two years from the respective due date of the guaranteed amount by notifying the Federal Government, the guaranteed amount shall be deemed to have been discharged. The time period pursuant to sentence 1 commences once again when the guaranteed amount is reported as being overdue or when the Federal Government receives any other message regarding the status of the collection procedure initiated in respect of the guaranteed amount. The guarantee declaration shall cease to be valid as soon as, and to the extent that, the guaranteed amount has been discharged or is deemed to have been discharged due to expiry of said period.

§ 4 EVENTS OF LOSS

- (1) An event of loss is deemed to have occurred if and when the guaranteed amount is uncollectable as a result of one of the events defined in paragraphs 2–4 below. If there is a joint liability of a third party in respect of the guaranteed amount which is set forth in the guarantee declaration, an event of loss is only deemed to have occurred if and when legally justified repayment claims against the said jointly liable party are uncollectable. Paragraphs 2–4 as set forth below apply mutatis mutandis with respect to determination whether a repayment claim is uncollectable.

POLITICAL EVENTS OF LOSS

- (2) An amount is deemed to be uncollectable for political reasons,

1. **Political event of loss in general**

if, not later than twelve months following the due date, legislative or administrative measures abroad which were passed or came into force after the conclusion of the loan contract in respect of the guaranteed amount

or

war or civil commotion or revolution abroad prevent the payment or collection of the guaranteed amount in any form whatsoever

or

prevent the payment of the guaranteed amount in the currency agreed and there is no possibility of paying the equivalent in another currency for the purposes of transfer due to reasons as per item 2 set forth below, and the Federal Government has not agreed to payment in another currency in discharge of the debt and one month has passed since the due date agreed with the foreign debtor without payment being received;

2. **Conversion and transfer risk**

if, due to restrictions on the international payment system, amounts that represent the equivalent for the guaranteed amount and that have been deposited by the foreign debtor with a solvent bank or another entity recognised by the Federal Government for the purpose of transfer to the policyholder have not been converted into the agreed currency or have not been transferred despite the due performance of all actions and formalities necessary for the conversion and transfer of these amounts, and one month has passed since the due date of the debt, the deposit with the entity mentioned above and the fulfilment of all necessary formalities;

3. **Exchange rate losses on amounts duly deposited**

if, after all existing regulations for the conversion and transfer of the amount have been

fulfilled, exchange rate losses are incurred due exclusively to devaluation in respect of the amounts paid in by the foreign debtor in discharge of the guaranteed amount, in as far as regulations which come into force in the country of the debtor subsequent to the conclusion of the loan contract provide that these payments constitute valid discharge of the debt. Exchange rate losses on the currency agreed with the foreign debtor or on another currency accepted without prior consent of the Federal Government are not covered.

COMMERCIAL EVENTS OF LOSS

- (3) An amount is deemed to be uncollectable for commercial reasons when in respect of the foreign debtor's assets or his estate

1. **Insolvency**

insolvency proceedings have been opened or have been declined for insufficiency of assets;

2. **Settlement in court**

a court order has been passed opening a court-supervised composition or other comparable procedure according the debtor protection from action by individual creditors to recover their debts;

3. **Settlement out of court**

all the debtor's creditors generally or one group of creditors with comparable ranking including the policyholder have agreed to a composition (prolongation-type, quota-type or liquidation-type composition) or other out-of-court settlement;

4. **Unsuccessful execution**

debt enforcement proceedings in respect of the guaranteed amount have failed to satisfy the debt in whole or in part;

5. **Suspension of payment**

the commercial situation has been demonstrated to be so unfavourable that the foreign debtor has suspended his payments either completely or to a considerable extent.

PROTRACTED DEFAULT

- (4) An amount is also deemed to be uncollectable for commercial reasons if and when the guaranteed amount has not been paid one month after the original due date and the policyholder has, observing the standards of diligence dictated by sound banking or business practice, as the case may be, taken all due and reasonable measures to collect the debt. Expiry of the period of one month after due date is not a precondition if payments of indemnification under the Untied Loan Guarantee were already made for previous maturities and according to this event of loss and the default of the foreign debtor persists.

- (5) The basis for indemnification is the event of loss which occurred first. In the case that a political and a commercial event of loss occur simultaneously, the political event of loss shall form the basis for indemnification.

If an event of loss under paragraph 2 item 1 above occurs, then any occurrence of an event of loss under paragraph 4 shall not be considered, provided the policyholder has not made an application for indemnification under this event of loss within twelve months following the original due date of the guaranteed amount.

If, after an event of loss under paragraph 4 has occurred, all the conditions for an event of loss under paragraph 2 item 2 are fulfilled, but the waiting period has not yet expired, then indemnification will only be made on the basis of an event of loss under paragraph 2 item 2. Expiry of the period stipulated

therein is not, however, a precondition if at least two months have elapsed since the original due date of the guaranteed amount.

If the conditions for an event of loss under paragraph 2 item 2 or item 3 are fulfilled subsequent to indemnification under paragraph 4, then the difference between this and any higher amount of indemnification calculated according to these provisions will be paid as additional indemnification.

§ 5 DUE DATE AND LEGAL VALIDITY OF THE GUARANTEED AMOUNT

- (1) A loss is only eligible for indemnification if the due date of the guaranteed amount has passed and the repayment claim is legally valid. If the entire balance of the guaranteed amount falls due as a result of contractual or statutory provisions, indemnification shall nevertheless be based on the due dates set forth in the loan contract. The Federal Government is entitled, however, at its sole discretion, to pay indemnifications before these due dates (“one-sum indemnification”). During the indemnification procedure, the policyholder is entitled to request payment of the indemnification amount as a lump sum (“one-off indemnification”) at any time, irrespective of whether the entire remaining amount of the loan has fallen due or not. The amount of the one-off indemnification is limited to the lower of the amounts determined within the scope of a comparative calculation for the one-sum indemnification according to the net present value method.
- (2) The policyholder shall, at his own expense, provide evidence of the legal validity of the guaranteed amount and of the security detailed in the guarantee declaration, of the existence of the preconditions for the occurrence of an event of loss, as well as the cause and amount of loss. If the legal

existence of the repayment claim or of the security detailed in the guarantee declaration is disputed or if legal defenses or other objections are raised against them, the Federal Government is entitled to reject the application for indemnification pending evidence from the policyholder – if necessary by means of a decision of the court or arbitral tribunal having jurisdiction over the business relationship between him and his foreign debtor or security guarantor – which substantiates the legal validity of the guaranteed amount and of the security detailed in the guarantee declaration; the risks of the applicable law and place of jurisdiction shall be borne by the policyholder.

- (3) In his relation to the Federal Government, it is the sole responsibility of the policyholder to ensure the legal validity of the guaranteed amount and of any security taken in respect thereof. Contracts and other documents pertaining to the guaranteed amount and any security in respect thereof will only be checked by the Federal Government in the event that a claim for indemnification is made. The policyholder must not rely on the argument that the Federal Government was or should have been aware of the content of such contracts or documents, or of individual parts thereof, in particular at the time when the Federal Government assumed the Untied Loan Guarantee.

§ 6 RETENTION

- (1) The policyholder shall retain for his own account a percentage of each covered loss ascertained. The retention is 10% unless a different percentage has been specified in the guarantee declaration.
- (2) The retention set forth in the guarantee declaration must not be covered otherwise in the amount of 5% of the loss.

§ 7 CALCULATION AND PAYMENT OF INDEMNIFICATION

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

1. In the case of payments in respect of covered repayment claims as well as of uncovered repayment claims which fall due earlier than the due date of the guaranteed amount, the payments shall be allocated for the purpose designated by the foreign debtor.
2. Payments in respect of uncovered repayment claims which fall due at the same time as the guaranteed amount or later shall, in the case of an event of loss pursuant to § 4 paras. 3 and 4, be allocated between covered repayment claims and uncovered repayment claims and any interest contractually agreed (with the exception of default interest) in the chronological order of their due dates, unless the circumstances of the individual case make it impossible for the policyholder to have influenced the allocation of the payment concerned. In the case of an event of loss pursuant to § 4 para. 2, the payments shall be allocated for the purpose designated by the foreign debtor.

Sentence 1 above does not apply to payments designated for uncovered repayment claims held by the policyholder for the account of third parties or which arose from current bank transactions with a final maturity not exceeding one year.

3. Payments made by the foreign debtor without the appropriate account being designated will, in the case of an event of loss pursuant to § 4 para. 2 item 1, paras. 3 and 4, be allocated between covered repayment claims and uncovered repayment claims and any interest contractually agreed (with the exception of default interest) in the chronological order of their due dates.
4. Items 1–3 of this paragraph shall apply *mutatis mutandis* in the case of
 - a) payments made by a guarantor, sureties or other third parties; discharge of the debt in any other form by the principal debtor, a guarantor, surety or any other third party;
 - b) dividends in insolvency or the proceeds of any disposal of all or part of the insolvent estate;
 - c) proceeds from attachments or other security;
 - d) rights of set-off, discounts granted, credit notes and any other form of discharge in lieu of payment;
 - e) any other financial advantages accruing to the policyholder as a result of the loss.
5. Payments set off according to items 2–4 of this paragraph against repayment claims with an identical due date shall be allocated in the proportion of the original amounts due (disregarding any default interest or surcharge).
6. If payments as under item 2 or other financial advantages as set out in item 4 are allocated pursuant to items 2 or 3 of this paragraph, then an appropriate level of legal or collection costs reasonably incurred by the policyholder will be deducted therefrom. Costs normally involved in procuring the payment of a repayment claim, including costs for the protesting of bills, or costs arising in the normal course

of the policyholder's business activities shall be disregarded.

- (2) The retained percentage to be borne by the policyholder will be deducted from the amount remaining after ascertainment of the loss according to the provisions of paragraph 1.
- (3) The Federal Government will calculate the amount to be indemnified within one month of receiving all the documentation required for ascertainment of the claim for indemnification. The amount resulting from this calculation will be paid to the policyholder within five bank days following notice of such calculation to the policyholder, provided that the policyholder has acknowledged the calculation to be correct.
- (4) If it proves impossible to ascertain the loss within one month after receiving all the documentation required, then a provisional loss settlement subject to later adjustment will be made and paid within five banking days after receipt of a notification that the provisional loss calculation has been accepted. §§ 10 and 11 are applicable to this extent, too. If and when the Federal Government in such a case determines, subsequent to provisional indemnification, that the policyholder is entitled to receive only a lower or no indemnification, then the policyholder is obliged, waiving all defences and objections, to repay on first written demand from the Federal Government the excess amount indemnified, including interest charged from the time it was paid at the relevant refinancing interest rate of the Federal Government pursuant to § 9 para. 4 sentence 1. This shall be without prejudice to § 21.

§ 8 RECOVERIES

- (1) Any payments or other financial advantages received after indemnification was paid under the

Untied Loan Guarantee (recoveries) will be allocated according to the provisions of § 7 para. 1, taking into account the indemnified repayment claim. This does not apply to recoveries arising out of a loan contract concluded later than three years after discharge or indemnification of the latest guaranteed amount due in respect of the covered untied loan.

- (2) The policyholder shall notify the Federal Government immediately upon receipt of any recoveries. The policyholder shall transfer any amounts due to the Federal Government without delay.

§ 9 REPAYMENT OF INDEMNIFICATION

- (1) If the legal validity of the guaranteed amount or of the security set forth in the guarantee declaration is disputed or if defences or objections are raised against them, then the policyholder is obliged to notify this immediately during the indemnification procedure. If the policyholder fails to comply with this obligation, the Federal Government is entitled to reclaim any indemnification paid if and to the extent that knowledge of these circumstances would have led to rejection of the claim for indemnification.
- (2) If it emerges, following payment of indemnification, that the policyholder's repayment claim against the foreign debtor indemnified is not, either in whole or in part, legally valid, in particular if in a legal action for the enforcement of the indemnified repayment claim the complaint is completely or partially rejected with finality by a court having jurisdiction, or if it emerges, following payment of indemnification, that the Federal Government was not obliged to indemnify for other reasons, the Federal Government is entitled to demand the return of the indemnification paid, including any costs reimbursed to the policyholder.

- (3) If the Federal Government is released from its obligation to indemnify due to circumstances which occur only after indemnification has been paid, or if the policyholder fails to comply with his obligations under §11 para. 1, the Federal Government is entitled to demand the return of the indemnification paid, including any costs reimbursed to the policyholder.
- (4) To the extent that the Federal Government has a valid claim to repayment, the policyholder is obliged to pay interest on the repayable amount calculated, in the cases described under paragraphs 1 and 2, from the point at which indemnification was paid, and in the cases described under paragraph 3 from the point at which the Federal Government was released from its obligation to indemnify, whereas the interest rate applicable shall be equal to the Federal Government's funding costs. Upon discharge of the claim to repayment of the Federal Government, any repayment claims and other rights which passed to the Federal Government pursuant to §10 para. 1 hereof, shall insofar revert to the policyholder.
- (5) This shall be without prejudice to any other legal rights accruing to the Federal Government out of statutory provisions or general principles of law.

§ 10 SUBROGATION OF RIGHTS AND CLAIMS

- (1) Upon payment of indemnification, the right to receive payment from the indemnified repayment claim, together with the right to any interest or default interest in respect of such repayment claim for the period following the payment of indemnification, and any rights to amounts paid into accounts or deposited abroad, including any rights arising out of security in respect of any of these amounts shall pass to the Federal Government to the extent that this corresponds to the share in the loss that is to be borne by the Federal Government. The pol-

icyholder is obliged to undertake all necessary acts for the transfer of such repayment claims and other rights at the request of the Federal Government.

- (2) If the transfer of such claims and any other rights proves to be impossible or if the Federal Government waives its right to the transfer, the policyholder shall hold the rights set forth in paragraph 1 in trust for the Federal Government.

§ 11 LEGAL ACTION FOLLOWING INDEMNIFICATION

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

eries after indemnification in accordance with the retention to be borne for his own account.

§ 12 CONVERSION OF AMOUNTS IN FOREIGN CURRENCY

(1) The contract currency of the Untied Loan Guarantee is the Euro. Amounts denominated in other currencies will be converted, subject to the provisions of paragraph 2, into Euro as follows:

1. For the premium payable under § 18, amounts in other currencies will be converted at the last turnover tax conversion rate (Umsatzsteuer-Umrechnungskurs; premium conversion rate [Entgeltkurs]) published in the Federal Gazette (Bundesanzeiger).
2. Amounts of indemnification will be converted on the basis of the reference exchange rate for the Euro fixed by the European Central Bank
 - a) on the day payment was effected in an event of loss under § 4 para. 2 item 2
 - b) on the due date in the other events of loss.

In the event that no reference exchange rate was fixed for the Euro on the relevant day, the next reference exchange rate to be fixed shall be used.

If, as a result of the event of loss that has occurred, the guaranteed amount does not fall due or if indemnification is paid before the due dates fixed in the loan contract, then the indemnification will be calculated on the basis of the Euro reference exchange rate of the European Central Bank that applies on the day before the notification of indemnification was sent.

In all cases the conversion rate for indemnification is subject to an upper limit corresponding to the premium conversion rate.

3. Recoveries in respect of the guaranteed amount are to be converted at the Euro reference exchange rate of the European Central Bank on the day payment is received by the policyholder.
 4. If the Federal Government has converted the indemnification into Euro pursuant to item 2 and the amount recovered exceeds the total amount paid for indemnifying the repayment claims arising out of the relevant loan contract, thus leading to an exchange rate gain for the Federal Government, then such exchange rate gain belongs to the policyholder up to the amount corresponding to the difference between the premium conversion rate and the Euro reference exchange rate of the European Central Bank on the day of deposit in the case of an event of loss pursuant to § 4 para. 2 item 2 or on the due date in the case of all other events of loss.
- (2) Amounts in currencies for which no turnover tax conversion rate or no Euro reference exchange rate has been fixed by the European Central Bank will be converted at the last rate announced by the Deutsche Bundesbank as the selling rate. If no such conversion rate has been announced, then the Federal Government will fix the rates to be used under paragraph 1 taking into account the exchange rates quoted on the major foreign stock exchanges.

§ 13 INTERVENTION IN SCOPE OF COVER

If circumstances occur which lead to an increase of risk, the Federal Government is entitled to notify to the poli-

cyholder at any time that loan amounts not yet disbursed at the time of delivery of this notification are excluded from cover under the Untied Loan Guarantee.

§ 14 RESCHEDULING AGREEMENTS

- (1) The Federal Government is entitled to enter into rescheduling agreements with the country of the debtor in respect of the guaranteed amount (including the retention to be borne by the policyholder); non-guaranteed ancillary claims and non-guaranteed parts of only partially guaranteed amounts may be included in these agreements at the sole discretion of the Federal Government.
- (2) The Federal Government shall only be entitled to exercise this right under paragraph 1 if and when it acknowledges, before concluding the rescheduling agreement, under which of the events of loss set forth in § 4 the guaranteed amount is deemed to be uncollectable as soon as the preconditions set forth in the rescheduling agreement for applying such agreement to a guaranteed amount are fulfilled. The applicability of § 4 para. 5 shall remain unaffected hereby.

In the case of repayment claims included in such agreements for which the risk of uncollectability persists as a result of commercial circumstances pursuant to § 4 para. 3, the Federal Government may restrict the amount of any indemnification to the retention as stipulated for events of loss pursuant to § 4 para. 3 hereof or with regard to the amount of retention for this event of loss respectively.

All other conditions for the payment of indemnification remain unaffected.

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

- (3) The policyholder and his legal successors further must accept as binding on them provisions of the rescheduling agreement stipulating an interest rate on the repayment claim due for the period following its due date or for a period that starts later which may differ from the interest rate specified in statutory or contractual provisions and on the basis of which the prosecution of further repayment claims arising from payment delays may be precluded.
- (4) In converting the amount of indemnification, § 12 para. 1 item 2 shall be the basis even if the Euro conversion rate stipulated by the rescheduling agreement for amounts denominated in currencies other than the Euro differs from that specified in this provision. The policyholder and his legal successors are obliged to accept as binding on them the interest rate stipulated in the rescheduling agreement in respect of the retention, non-guaranteed ancillary claims and non-guaranteed parts of only partly guaranteed amounts.

§ 15 DUTIES OF THE POLICYHOLDER

In addition to the other obligations under these General Terms and Conditions and the provisions of the guarantee declaration, the policyholder is obliged to observe the following duties:

DUTY OF PERFECT GOOD FAITH IN APPLICATION FOR COVER

- (1) When submitting his application, the policyholder is obliged to notify completely and truthfully in writing all and any information of material significance for the assumption of an Untied Loan Guarantee and he must promptly give notice of any changes in the information given in the application, or new information which differs from that given in the application and becomes known prior to his receiving the guarantee declaration. All details asked for in

the application form or otherwise are deemed to be of material significance.

PROHIBITION TO DEVIATE FROM FACTS SET OUT IN APPLICATION

- (2) Following the assumption of an Untied Loan Guarantee, the policyholder must not, without the prior written approval of the Federal Government, make changes or supplements affecting the set of facts (Sachverhalt) set out in the guarantee declaration or agreements made with the debtor or other obligors, unless these changes or supplements are immaterial; item 1 sentence 2 hereof applies mutatis mutandis. In particular, the policyholder is not permitted to accept payment in a currency differing from the contract currency in discharge of the debt.

COMPLIANCE WITH LAWS AND REGULATIONS

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

DUTY TO NOTIFY AN INCREASE OF RISK

- (4) The policyholder shall give immediate written notice of any circumstances which come to his attention constituting an increase of risk and indicate what measures he has taken or proposes to take to protect his legal right to payment. In particular, the following circumstances are deemed to constitute an increase of risk:

1. delay in payment or a request for extension of the payment period by the debtor;
2. a worsening of the financial situation, the payment record or general market reputation of the debtor or a security guarantor, or an offer from the debtor to discharge the debt in a manner that differs from his contractual obligation;

3. legislative or administrative measures or other political events abroad which have the effect of making the payment or collection of the guaranteed amount appear to be in jeopardy.

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

- (5) In the case of the events described under item 4, the policyholder must obtain the prior written approval of the Federal Government before disbursing any amounts under the loan contract.

DUTY TO PREVENT OR MITIGATE LOSSES

- (6) The policyholder is obliged to exercise all due and reasonable care dictated by sound banking or business practice, as the case may be, to take all necessary or appropriate measures to prevent an event of loss or to minimize losses, and will hereby comply with instructions, if any, given by the Federal Government.

The policyholder is obliged to carry out these measures at his own expense, insofar as the Federal Government does not participate in the costs based on § 17. If an event of loss threatens or has already occurred, then the policyholder must at the request of the Federal Government commission either the Federal Government or a third party designated by the Federal Government to represent the interests of the two parties to the guarantee agreement, provided that the anticipated costs for commissioning the Federal Government or such a third party are in proportion to the guaranteed amount and the anticipated chances of success of the measures taken to pursue the interests of the parties.

DUTY OF INFORMATION

- (7) The policyholder is obliged to keep the Federal Government or its designated representative informed at all times of the details and the current state of implementation of the loan contract and of any other circumstances with a potentially ma-

terial bearing on the Untied Loan Guarantee. This duty includes the timely, truthful and complete response to questions asked for the preparation of a rescheduling agreement, as well as the furnishing of documents required as evidence of the repayment claims.

FEDERAL GOVERNMENT'S RIGHT OF EXAMINATION

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

UTILISATION OF BORROWED FUNDS ACCORDING TO AGREED PURPOSE

- (9) The policyholder is obliged to ensure that the loans covered under the Untied Loan Guarantee shall be used in accordance with the agreed purpose thereof.

NOTIFICATION OF THE FEDERAL GOVERNMENT IN THE CASE OF DISBURSEMENT AND REPAYMENT

- (10) The policyholder must notify the Federal Government in writing immediately
1. when he disburses loan amounts to the debtor,
 2. after payment of the guaranteed amount by the debtor and its receipt thereof.

§ 16 LEGAL CONSEQUENCES OF NON-COMPLIANCE WITH DUTIES

RELEASE OF THE FEDERAL GOVERNMENT FROM LIABILITY IN THE CASE OF FALSE INFORMATION

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

RELEASE OF THE FEDERAL GOVERNMENT FROM LIABILITY IN THE CASE OF DEFECTIVE SECURITY

- (2) If the security set forth in the guarantee declaration has not been created, or is not legally effective, then the Federal Government is released from its obligation to indemnify a loss, unless the Federal Government determines that the missing or defective security would have had no influence on its decision to assume an Untied Loan Guarantee.

RELEASE OF THE FEDERAL GOVERNMENT FROM LIABILITY IN THE CASE OF OTHER FAILURE TO COMPLY WITH THE POLICYHOLDER'S OBLIGATIONS

- (3) If the policyholder fails to comply with one of the duties laid upon him under § 15 items 2–10 and infringes his duty to exercise due and reasonable care in accordance with sound banking or business practice, as the case may be, then the Federal Government shall be released from its obligation to indemnify a loss, unless the infringement of the relevant duty neither caused a loss nor is of such a nature as to expect that it may result in a loss.

Irrespective of whether a loss occurred or is expected to occur, the Federal Government is released from its obligation to indemnify a loss in the case of non-compliance with a duty pursuant to §15 item 2 hereof, if it determines that, under the normal practice it follows when deciding on assuming cover, it would not have approved the changes or supplements concerned.

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

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

due and reasonable care to be expected of the policyholder in accordance with sound banking and business practices, as the case may be.

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

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

§ 18 PREMIUM

- (1) A premium commensurate with the type and size of the risk to be covered will be charged for assuming an Untied Loan Guarantee. The fees and premiums are calculated, charged and if necessary reimbursed in accordance with the schedule of fees and premiums (Publikation Prämien UFK) applicable at the time of the conclusion of the guarantee agreement.
- (2) If the premium due is not paid within 14 days of a reminder being sent which states this deadline and the legal consequences set out below, the Federal Government is, after the lapse of six weeks,
 1. released from the obligation to indemnify in the case of events of loss, which occur after the due date of the premium, but before the same is being paid,
 2. in addition thereto entitled to terminate the Untied Loan Guarantee without further notice as long as the premium remains unpaid.
- (3) If the Federal Government, under the provisions of these General Terms and Conditions or the provisions of the guarantee declaration, is released from its obligation to indemnify a loss, it nevertheless is entitled to receive the premium, provided that this has fallen due before the Federal Government learned of its release from obligation to indemnify.

§ 19 ASSIGNMENT OF THE GUARANTEED AMOUNT

- (1) Any assignment of the guaranteed amount by the policyholder for purposes other than security and collection arrangements requires the prior written consent of the Federal Government.

- (2) If the guaranteed amount is assigned without prior or written consent, the Federal Government shall be released from its liability to indemnify a loss, unless the Federal Government determines that it would have given its consent to the assignment.

§ 20 ASSIGNMENT OF THE BENEFIT OF THE GUARANTEE

- (1) Any assignment of rights to payment under an Untied Loan Guarantee requires the prior written consent of the Federal Government.
- (2) In any event the privity of the guarantee agreement shall remain unaffected by any assignment, either with or without the approval of the Federal Government. Any payment of indemnification will exclusively be effected between the Federal Government and the policyholder.

§ 21 TERM OF PRECLUSION

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

§ 22 JURISDICTION

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

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



Federal Ministry
for Economic Affairs
and Energy

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



EULER HERMES

Cover from the Federal Republic of Germany for foreign business

Export Credit Guarantees and Untied Loan Guarantees as well as effective foreign trade promotion instruments of the Federal Government have been established 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. The 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 under the heading Promotion of Foreign Trade and Investment.

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