



Hrvatska banka za  
obnovu i razvitak

**General Terms and Conditions of Insurance  
of Performance-Related Bank Guarantees  
OU-OG-05/17**

## Preamble

Pursuant to Article 10, paragraph 2 item 6 of the Act on Croatian Bank for Reconstruction and Development (Official Gazette of the Republic of Croatia, Nos. 138/06, 25/13) and the Export Credit Insurance Decree (Official Gazette of the Republic of Croatia, Nos. 53/20), Croatian Bank for Reconstruction and Development, Strossmayerov trg 9, Zagreb, PIN: 26702280390, for and on behalf of the Republic of Croatia (hereinafter: the Insurer), adopts the following

### General Terms and Conditions of Insurance of Performance-Related Bank Guarantees OU-OG-05/17

that determine the terms and conditions for the insurance of performance-related bank guarantees issued by a bank as the Guarantee Issuer (hereinafter: the Insured), for the purpose of concluding or performing an Export Contract, which are insured by the Insurer. The General Terms and Conditions of Insurance of Performance-Related Bank Guarantees OU-OG-05/17 (hereinafter: the General Terms and Conditions) regulate the rights and obligations of the Insurer, the Insured and the Exporter.

## Article 1 Definitions

In the General Terms and Conditions, the Insurance Policy with attachments and the Application for Insurance with attachments, the following terms have the following meanings:

**Guarantee:** a performance-related bank guarantee is a written document by means of which the Insured undertakes, in accordance with the provisions contained in the guarantee, to pay to the Beneficiary pecuniary obligation if the Exporter fails to perform the obligations contained in an Export Contract or a Tender for the award of an Export Contract. The Exporter and the Insured shall enter into the Guarantee Issuance Contract prior to the issuance of a Guarantee.

In accordance with the General Terms and Conditions, insurance is provided for the following Guarantees:

1. **Bid Bond / Tender Guarantee:** An obligation on the part of the Insured to make a payment to a Beneficiary if an Exporter fails to meet the conditions contained in a bid for entering into an Export Contract submitted for a Tender.

2. **Advance Payment Guarantee / Repayment Guarantee:** An obligation on the part of the Insured to reimburse a Beneficiary for an advance payment made by the Beneficiary to an Exporter if the Exporter partially or entirely fails to meet the conditions contained in an Export Contract.
3. **Performance Guarantee:** An obligation on the part of the Insured to make a payment to a Beneficiary if an Exporter fails to meet the conditions contained in an Export Contract.
4. **Other performance-related guarantees** that insure the performance of an Export Contract.

Any counter-guarantee in a chain of counter-guarantees, based on which a guarantee for the concluding or performing of an Export Contract will be issued to a Beneficiary, shall be considered as the Guarantee.

**Recourse Declaration:** The form of Exporter's declaration on the basis of which the Insurer may, for the purpose of collection of the paid Indemnity and/or costs to the Insured, initiate the process of recourse collection from the Exporter in cases provided for in the Insurance Contract. For the purpose of insurance of all amounts receivable of the Insurer arising from the Insurance Contract, by the Recourse Declaration the Exporter undertakes, on the occasion of conclusion of the Insurance Contract, to submit to the Insurer 2 ordinary debentures issued by the Exporter in favour of the Insurer, each in the amount of the Insured Amount, in the form and contents acceptable for the Insurer.

**Export Contract:** A contract entered into between an Exporter and a Beneficiary under which the manufacturing and/or delivery of goods and/or the rendering of services to the Beneficiary is the prevailing part of the obligation on the part of the Exporter, and for the purpose of performance of such order the Insured issues a Guarantee.

An order of the Beneficiary accepted by the Exporter, under which the manufacturing and/or delivery of goods and/or the rendering of services to the Beneficiary is the prevailing part of the obligation on the part of the Exporter, and for the purpose of performance of such order the Insured issues a Guarantee, shall also be deemed an Export Contract.

**Exporter:** A Croatian legal entity or a natural person that participates in a Tender for entering into an Export Contract or that has entered into an Export Contract with a foreign legal entity or a natural person, or a company that is not registered in the territory of the Republic of Croatia, and that is majority-owned by

a Croatian legal entity or a natural person that participates in a Tender for entering into an Export Contract or that has entered into an Export Contract with a foreign legal entity or a natural person and that, as a principal, gives instructions to the Insured to issue a Guarantee under the Guarantee Issuance Contract.

In case when a third person as the principal orders to the Insured to issue a Guarantee under the Guarantee Issuance Contract, the rights and obligations of the Exporter under the Insurance Contract shall appropriately be applied to the mentioned person also.

**Beneficiary:** A foreign buyer, a foreign legal entity or a natural person in whose favour a Guarantee has been issued.

Any domestic or foreign bank, in whose favour a counter-guarantee has been issued for the purpose of issuing a Guarantee, shall also be deemed a Beneficiary.

**Tender:** Procedure and documentation based on which a possibility arises for the concluding of an Export Contract. An Exporter participates in a Tender, and for the purpose of this Tender the Insured issues a Guarantee.

**Indemnity:** An amount of money paid by the Insurer to the Insured as indemnity for Loss.

**Insured Amount:** An amount of money that is the subject matter of insurance that is stated in an Insurance Policy and that cannot exceed the Guarantee amount.

**Insured Risk:** A risk covered by insurance representing a future uncertain event that is independent of the exclusive will of contracting parties as defined in Article 9 of these General Terms and Conditions.

**Insured Event:** Arises when, in accordance with the terms and conditions of the Guarantee and on the basis of occurrence of an Insured Risk, the Insured effects payment to the Beneficiary.

**Insured:** A bank that has issued a Guarantee for the purpose of conclusion or performance of the Export Contract and which jointly with the Exporter enters into an Insurance Contract with the Insurer.

**Insurer:** Croatian Bank for Reconstruction and Development, with headquarters in Zagreb, Strossmayerov trg 9, PIN: 26702280390, for and on behalf of the Republic of Croatia.

**Insurance Policy:** A written deed on the concluded Insurance Contract, issued by the Insurer, containing the name of company and headquarters of the Insurer, the name of company and headquarters of the Insured, the name of company and headquarters, i.e. first name, family name and place of residence of the Exporter, the name of company and headquarters of the Beneficiary, Insured Amount, duration of insurance, manner of calculation and payment of the Insurance Premium, special provisions, list of attachments to the Insurance Policy, the date of issue and signatures of the Insured, the Exporter and the Insurer.

**Insurance Premium:** An amount of money charged by the Insurer on the basis of a concluded Insurance Contract for the assumed risk.

**Waiting Period:** A time period after the lapse of which the Insured is entitled to submit a Claim, generally a period of 30 days from the date of delivery of a notice to the Insurer about the occurrence of Loss, unless otherwise determined by the Insurance Policy.

**Retention:** The Insured's share in the Loss which, if not otherwise determined by the Insurance Contract, amounts to 20%.

**Loss:** Loss arisen on the basis of an amount receivable under the Guarantee Issuance Contract and the occurrence of an Insured Event, up to the Insured Amount.

**Guarantee Issuance Contract:** A contract by which the Insured has undertaken to issue a Guarantee.

**Insurance Contract:** A contract by which the Insurer, under the agreed terms and conditions, undertakes to pay the Indemnity to the Insured if a Loss arises as a result of the occurrence of an Insured Event, and the Insured undertakes, among others, to pay the Insurance Premium to the Insurer.

**Percentage of Cover:** A share of the Insurer in the Loss depending on the agreed Retention, stated as percentage.

**Insurance Application:** A form of application for insurance of a Guarantee filled in and signed by authorised persons of the Insured and the Exporter that contains the Recourse Declaration and other attachments.

## Article 2 Form and Conclusion of Insurance Contract

- 2.1. An Insurance Contract is comprised of three constituent parts: The General Terms and Conditions, The Insurance Policy with attachments and the Insurance Application with attachments (including the Recourse Declaration), which together make up the complete text of the Insurance Contract.
- 2.2. In case of discrepancy between the provisions of the General Terms and Conditions and the provisions of the Insurance Policy, the provisions of the Insurance Policy shall prevail.
- 2.3. An Insurance Application must be received by the Insurer in original by post or courier service or in copy via electronic mail with submission of the original not later than until the conclusion of the Insurance Contract.
- 2.4. An Insurance Contract is concluded in writing, through the signing of an Insurance Policy by authorised representatives of the Insurer, the Insured and the Exporter, in three originals, one for each party to the Contract. The Insurance Policy is submitted to the Insurer in original via mail or courier service, immediately upon signing of the Insurance Policy by the Insured and the Exporter.
- 2.5. All other notices pursuant to the Insurance Contract, except via mail or courier service, can also be sent via electronic mail.
- 2.6. The following shall be deemed evidence of orderly delivery:
  - In case of delivery via mail, duly fulfilled advice of delivery – notice of receipt/delivery or register of the post office,
  - In case of delivery via courier service, acknowledgement, i.e. signature/seal of receipt of document,
  - In case of delivery via electronic mail, computer generated confirmation of due delivery to the e-mail address of the Insured, the Exporter or the Insurer.
- 2.7. When assessing the insurance risk, the Insurer takes into account exclusively the data stated in the Insurance Application, regardless of whether the Insurer has been acquainted with the contents and the terms and conditions of the Guarantee Issuance Contract, the Guarantee, the Export Contract, the Tender

and all other accompanying documents. The Insurer shall check the documents necessary for the assessment of the Claim only after it has received the Claim.

### **Article 3 Main Obligations of the Insurer and the Insured**

- 3.1. By the Insurance Contract, the Insurer is obliged, if a Loss occurs and if the Claim has been accepted, to pay to the Insured or a third party referred to in Article 22 of the General Terms and Conditions:
  - Indemnity and
  - Reimbursement of costs,in accordance with Articles 12 to 15 of the General Terms and Conditions.
- 3.2. The Insured is obliged to pay to the Insurer the Insurance Premium and other fees pursuant to the terms and conditions and deadlines defined in the Insurance Contract.

### **Article 4 Currency of Insurance Contract**

- 4.1. The Insurance Contract shall be concluded in the currency of the Guarantee. Payment of the Insurance Premium and other expenses by the Insured and the Exporter under the Insurance Contract shall be effected in EUR calculated according to the middle exchange rate of the Croatian Bank for Reconstruction and Development on the date when the invoice is issued by the Insurer or, if such contracted by the Insurance Policy, in another currency.
- 4.2. All payments of the Indemnity and/or reimbursement of costs by the Insurer under the Insurance Contract shall be effected in the Guarantee currency, i.e. in the currency in which costs have arisen or in EUR calculated at the middle exchange rate of the Croatian Bank for Reconstruction and Development on the date of payment, if such agreed by the Insurance Policy.

### **Article 5 Subject Matter of Insurance**

- 5.1. The subject matter of insurance is the Insured's amount receivable from the Exporter under the Guarantee Issuance Contract arisen from payment under the Guarantee.

- 5.2. The subject matter of insurance shall not be expenses and fees arisen for the Insured related to the issuing of a Guarantee or interest charged to the Exporter by the Insured on the amounts paid under the Guarantee.
- 5.3. In case of partial payment under the Guarantee, each partial payment is covered in the agreed Percentage of cover up to the total Insured Amount.

#### **Article 6 Duration of Insurance**

- 6.1. The duration of insurance shall commence and end on the date set forth in the Insurance Policy.

Insurance commencement date can also be a date prior to the date of conclusion of the Insurance Contract, if on the date of conclusion of the Insurance Contract, the terms and conditions set by the Insurer have been met.

- 6.2. If the insurance termination date is not set forth in the Insurance Policy or if any of the following events:
- expiry of the Guarantee validity period,
  - release of obligations by the Beneficiary under the Guarantee,
  - return of the original guarantee document by the Beneficiary in case the return of the document, pursuant to the governing law relating to the Guarantee or the terms and conditions set forth in the Guarantee, also means the cessation of obligation under the Guarantee,
  - changes of material conditions of the Guarantee Issuance Contract or of the Guarantee without the consent from the Insurer, as defined by Article 16 of the General Terms and Conditions,
  - in the case of the occurrence of Loss, decision made by the Insurer to pay total Indemnity that is equal to the Insured Amount reduced by the Retention and possible reimbursement of costs,
  - termination of the Insurance Contract in accordance with Article 8 of the General Terms and Conditions,
  - in other cases prescribed by regulations in force,

occurs prior to the insurance termination date set forth in the Insurance Policy, the insurance

shall terminate on the earliest of the dates of the above listed events.

- 6.3. On the basis of a written notice on the prolongation of the Guarantee validity period sent to the Insurer by the Insured, provided that a non-material change to the Guarantee Issuance Contract and of the Guarantee is in question, pursuant to Article 16 paragraph 2 item I) of the General Terms and Conditions, the duration of insurance will be extended until the new Guarantee validity period and no annex to the Insurance Contract shall be concluded.

#### **Article 7 Amendments to Insurance Conditions**

Terms and conditions of insurance can be amended by the conclusion of an appropriate annex to the Insurance Policy and, exceptionally, in another manner, when such a possibility is explicitly provided for in the Insurance Contract.

#### **Article 8 Termination of Insurance Contract**

- 8.1. Insurance Contract can be terminated by a written agreement between the Insurer and the Insured that shall also determine the Insurance Contract termination date.
- 8.2. The Insurer may terminate the Insurance Contract with immediate effect or make conditional upon changes and amendments to the Insurance Contract for the Insured, pursuant to its own decision, if one of the conditions for exclusion of the Insurer's liabilities set forth in Article 20 paragraph 1 of the General Terms and Conditions occurs.
- 8.3. If in accordance with paragraph 2 of this Article the Insurer cancels the Insurance Contract unilaterally, the Insured shall have no right to the reimbursement of the Insurance Premium paid until the date of occurrence of legal effects of unilateral cancellation of the Insurance Contract.

#### **Article 9 Insured Risk and Insured Event**

- 9.1. Insured risk is the risk of calling for payment under the Guarantee.

- 9.2. Insured Event has occurred when, in accordance with the terms and conditions of the Guarantee and on the basis of occurrence of the Insured Risk, the Insured has effected payment under the Guarantee.

#### **Article 10**

##### **Call for Payment under a Guarantee**

For the purpose of determining rights and obligations of the Exporter under the Insurance Contract by the Insurer, the General Terms and Conditions makes distinction between the following callings for payment under a Guarantee:

1. calling for payment under a Guarantee, where the Exporter has not violated an obligation under an Export Contract or a Tender (PK1),
2. calling for payment under a Guarantee due to non-fulfilment of Exporter's obligations under an Export Contract or a Tender, due to the occurrence of one or more political risks in the Beneficiary's country or in a third country, such as:
  - political event in the country of Beneficiary's headquarters or residence, such as war, civil war, revolution, uprising, civil unrest, general strikes,
  - decision made by government bodies of Beneficiary's country,
  - administrative and political measures in third countries by whose intermediation an Export Contract, or a Tender, is being performed, embargo or any other measure or decision made by the government or the country of the Insurer or the Insured, including the measures and decisions of the European Union preventing the performance of an Export Contract (PK2),
3. calling for payment under a Guarantee due to the non-fulfilment of Exporter's obligations under an Export Contract or a Tender, due to the occurrence of force majeure, such as due to:
  - the occurrence of risk of disasters (earthquake, floods, volcano eruptions),
  - occurrence of nuclear incident,
  - occurrence of risk of terrorist attacks (PK3),
4. calling for payment under a Guarantee due to the non-fulfilment of Exporter's obligations under an Export Contract or a

Tender, due to the reason of Exporter's responsibility (PK4),

5. calling for payment under a Guarantee owing to non-performance by an Exporter under an Export Contract or a Tender due to Exporter's bankruptcy or liquidation (PK5).

#### **Article 11**

##### **Retention**

Unless otherwise determined by the Insurance Contract, the Retention shall be 20%.

#### **Article 12**

##### **Claim**

- 12.1. A Claim must be submitted to the Insurer in writing upon the expiry of the Waiting Period.
- 12.2. Documents to be submitted with the Claim are: the Insurance Policy, Guarantee and the Guarantee Issuance Contract, all with appropriate changes and amendments, and documents evidencing the occurrence of an Insured Risk, the occurrence of an Insured Event, the occurrence and amount of Loss, as well as the fulfilment of obligations under the Insurance Contract, such as:
  - calling for payment under a Guarantee and documents evidencing compliance of the calling for payment under a Guarantee,
  - evidence of payment under a Guarantee,
  - evidence on the existence and amount of the Insured's amount receivable from the Exporter in accordance with the Guarantee Issuance Contract arisen as a result of the payment under a Guarantee,
  - evidence on providing of collateral for the amount receivable under the Guarantee Issuance Contract mentioned in the Insurance Contract,
  - Export Contract, or Tender, respectively, all with accompanying annexes,
  - Exporter's order, on the basis of which a Guarantee and its changes and amendments have been issued,
  - report on the measures taken set forth in Article 16 paragraph 2 item i) of the General Terms and Conditions.

Documents are submitted either in the original or in a copy certified by the Insured as true to the original, and in the latter case, the Insurer retains the right to demand from the Insured to

get insight into the original of a particular document.

- 12.3. Should the Insurer establish that the submitted Claim does not contain documents prescribed by Article 12 paragraph 2 of the General Terms and Conditions and/or that for the evaluation of the Claim additional documentation shall be necessary, the Insurer shall within the period of 45 days from the receipt of the Claim demand from the Insured to amend it. Should the Insurer not demand from the Insured to amend the Claim in the mentioned period, the Claim shall be deemed complete.
- 12.4. Documents necessary for the appraisal of a Claim that are not in Croatian or English shall be submitted at the request of the Insurer also in translation into Croatian made by a permanent court interpreter at the expense of the Insured.
- 12.5. A Claim shall be accepted, with the right to revocation pursuant to Article 20 paragraph 2 of the General Terms and Conditions, provided that the Insurer has established, on the basis of submitted documentation, that:
- the Insured has fulfilled the obligations under the Insurance Contract,
  - the Exporter has not fulfilled the obligations under the Guarantee Issuance Contract,
  - the Insured Risk, the Insured Event and Loss have occurred.
- 12.6. A Claim can be submitted no later than one year after the date of the occurrence of an Insured Event.
- 12.7. The Insured is obliged to submit a Claim to the Insurer and amend it pursuant to the provisions of this Article, otherwise the Insurer shall not be obliged to pay either the Indemnity or the reimbursement of costs.
- 12.8. The Insurer is obliged to give its final opinion on the Claim within 45 days from the day of receipt of the complete Claim, with all documentation provided for by paragraphs 2, 3 and 4 of this Article.

### **Article 13 Calculation of Indemnity**

- 13.1. The Insurer shall cover Loss not exceeding the approved Insured Amount stated in the

Insurance Policy, in the agreed Percentage of Cover.

- 13.2. The basis for the determination of Indemnity is the amount paid under the Guarantee not exceeding the Insured Amount, less the amount collected by the Insured pursuant to the Guarantee Issuance Contract.
- 13.3. The amount of Indemnity shall be determined in the agreed Percentage of Cover of the basis amount determined pursuant to the provisions of the above paragraph.

### **Article 14 Reimbursement of Costs**

- 14.1. Should in connection with actions undertaken pursuant to Article 16 paragraph 2 item i) and Article 17 paragraph 3 of the General Terms and Conditions costs arise, they shall be reimbursed to the Insured in proportion to the share of potential and paid Indemnity in the total uncollected amount receivable under the Guarantee Issuance Contract, after having been reported to the Insurer, provided that such actions were undertaken by the Insured after the Insurer's instructions were received or consent obtained, previous or subsequent, regardless of whether the Claim has been submitted or not. The Insurer shall be obliged to give its final opinion on the submitted Insured's application for issuing of a consent without delay, and not later than within 5 working days. Should the Insured not receive the Insurer's consent within the mentioned period, provided that the Insurer has not agreed another deadline for possible giving of a consent with the Insured, the consent shall be deemed given by the Insurer.

By way of exemption from the mentioned, costs of the lawyer hired for undertaking of the mentioned actions shall be reimbursed to the Insured only with a prior written consent of the Insurer.

- 14.2. Should the Claim not be accepted due to a default by the Insured, the Insured shall be obliged to return to the Insurer the costs reimbursed by the Insurer pursuant to paragraph 1 of this Article.

Should the Insurer not be obliged to pay the Indemnity, because the Insured collected the amount receivable under the Guarantee



Issuance Contract in whole, costs caused by the collection of the amount receivable for which the instruction or consent of the Insurer was in place, shall be reimbursed on demand of the Insured on the terms and conditions set forth in paragraph 1 of this Article.

- 14.3. Usual costs arisen in the course of operations of the Insured and costs arisen for the Insured when taking actions under the Insurance Contract without instructions or consent of the Insurer, shall not be reimbursed to the Insured.

**Article 15**  
**Maturity of Indemnity and Reimbursement of Costs**

Should the Claim be accepted, the Insurer shall pay the determined amount of Indemnity, provided that the Insured acted in accordance with the Insurance Contract, and particularly in respect of the obligation of concluding a contract on regulating mutual rights and obligations set forth in Article 17 of the General Terms and Conditions, within 15 days from the date of submission of a decision to the Insured by which the Insurer accepts the Claim.

**Article 16**  
**Rights and Obligations of the Insured**

- 16.1. The Insured shall have the right:

- a) with a prior written consent of the Insurer, to assign insured receivables to a third party, to create mortgage on the insured receivables or encumber them in any other way,
- b) to submit a Claim after the expiry of the Waiting Period,
- c) to receive an opinion about the Claim from the Insurer within 45 days from the date of receipt of the complete Claim.

- 16.2. The Insured shall:

- a) provide instruments of security for amounts receivable under the Guarantee Issuance Contract referred to in the Insurance Contract,
- b) when issuing a Guarantee, executing any amendments to the Guarantee and making payments under the Guarantee, act with due diligence and in compliance with the

rules of the banking profession pertaining to the issuing of a Guarantee,

- c) issue a Guarantee that suits the requirements of the Export Contract, the Tender and/or the instructions of the Exporter,
- d) issue a Guarantee that is in compliance with the international trade practices. Any deviation from them and any deviation from ICC Uniform Rules for Demand Guarantees, if they apply to the Guarantee, must be stipulated in the Insurance Application,
- e) at the Insurer's request, immediately give true and accurate data on its financial standing and legal status, as well as data on the financial standing and legal status of the Exporter provided that such data are available to it or should be available to it in accordance with the regulations in effect that oblige the Insured and with the usual banking practice as well as inform the Insurer about any changes in such information with respect to which the Insured can reasonably estimate, by applying due diligence customary in the banking business, that they can lead to the Insured Event and Loss,
- f) when submitting Insurance Application and when executing Insurance Contract, give accurate and complete data to the Insurer that the Insured considers to be necessary for the assessment of risk by acting in accordance with due diligence customary in the banking business and inform the Insurer about any changes in such circumstances before and after the execution of the Insurance Contract,
- g) without delay inform the Insurer in writing that an Insured Risk threatens to occur and/or has occurred,
- h) inform the Insurer in writing about the occurrence of the Insured Event no later than one month after the occurrence of the Insured Event as well as about all circumstances pertaining to that,
- i) take measures aimed at diminishing and/or preventing the occurrence of the Insured Event and Loss in the period until the payment of Indemnity, including the measures aimed at settling the amounts receivable under the Guarantee Issuance



Contract, which are appropriate in the light of the regulations in effect and the banking practice usually followed by the Insured in its operations in the cases where the amounts receivable under individual guarantee issuance contracts are not covered by an Insurance Policy, where the Insured is not obliged to put a placement covered by an Insurance Policy in a more favourable position with regard to the other placements of the respective Exporter with the Insured,

- j) submit, at the Insurer's request, without delay and in the shortest period possible all notices on the implementation of the Guarantee Issuance Contract, which particularly includes the photocopy of the Guarantee Issuance Contract, the photocopy of the Guarantee and the other documents pertaining to the Guarantee Issuance Contract. In addition, the Insured shall make all its business books and records available to the extent necessary for the assessment of the business,
- k) pay the Insurance Premium for PK4 and PK5 as well as other expenses in accordance with the terms and conditions referred to in the Insurance Policy,
- l) obtain a written consent of the Insurer before any material amendment to the Guarantee Issuance Contract and the Guarantee, where any of the following changes shall be considered to constitute the material amendment:
  - change of the parties to the Guarantee Issuance Contract,
  - change of the Beneficiary,
  - increase in the amount of the Guarantee,
  - change in the currency of the Guarantee,
  - change in the validity period of the Guarantee by more than 2 years,
  - change in the validity period of the Guarantee not specified by a date,
  - change in the validity period of the Guarantee not resulting from the change in the Export Contract or in the Exporter's instructions or consent,

- change in the amount of Guarantee issuance fee referred to in the Insurance Contract,
- change in the instruments of security for amounts receivable under the Guarantee Issuance Contract referred to in the Insurance Contract,
- change in the guaranteed event.

The Insurer shall be deemed to have given its consent to any material amendment to the Guarantee Issuance Contract resulting from amendments to the regulations in force.

The Insured shall without delay and in the shortest period possible inform the Insurer in writing about any other changes that are not considered to be material amendments for the purposes of this provision. Such written notice of the Insured shall be considered to constitute an annex to the Insurance Policy and shall represent a constituent part of the Insurance Contract.

- m) in the case of the extension of the validity period of the Guarantee, even if such a change is not considered to constitute material amendment and, consequently, no consent is requested from the Insurer for such a change, the Insured shall ensure that all instruments of security for amounts receivable under the Guarantee Issuance Contract referred to in the Insurance Contract are in full force and effect for the entire duration of the existence of the amounts receivable of the Insured under the Guarantee Issuance Contract and the Insured shall pay the Insurance Premium for PK4 and PK5 for the period until the new validity deadline of the Guarantee in accordance with the agreed terms and conditions for payment.

16.3. The Insured shall be responsible for the legal validity of the Guarantee Issuance Contract and the legal validity and enforceability of the instruments of security for amounts receivable under the Guarantee Issuance Contract referred to in the Insurance Contract as well as for the verification of the fulfilment of conditions for the issuing and/or amending the Guarantee and the payment conditions under the Guarantee.

- 16.4. The Insured must not obtain additional security for the Retention without the prior written consent of the Insurer.

#### **Article 17**

##### **Special obligations of the Insured pertaining to the payment of Indemnity**

- 17.1. The parties to the contract agree that, at the moment of the payment of Indemnity and/or expenses to the Insured, all amounts receivable under the Guarantee Issuance Contract shall be transferred to the Insurer together with the subsidiary rights, instruments of security included, up to the amount of the total paid Indemnity and/or expenses (hereinafter: the Amount Receivable).

- 17.2. After the acceptance of the Claim and before the payment of Indemnity and/or expenses, the Insured and the Insurer shall execute a contract regulating the mutual rights and obligations that shall regulate their rights and obligations pertaining to the collection of all amounts receivable under the Guarantee Issuance Contract and the Insurance Contract after the payment of Indemnity and/or expenses (hereinafter: Contract Regulating the Mutual Rights and Obligations).

The form and the contents of the executed Contract Regulating the Mutual Rights and Obligations shall be in compliance with the wording of the contract enclosed as an annex to the Insurance Policy and representing a constituent part of the Insurance Contract. The Contract Regulating the Mutual Rights and Obligations that has been signed by the Insurer shall be submitted to the Insured together with the decision on the acceptance of the Claim and the breakdown of the calculation determining the amount of Indemnity and/or expenses.

- 17.3. By the Contract Regulating the Mutual Rights and Obligations the Insurer shall make, in favour of the Insured, an assignment for the purpose of performance of the Amount Receivable increased by statutory default interest that belongs to the Insurer and that accrues from the date of payment until the date of settlement of the Insurer's Amount of Receivable and shall authorise the Insured to carry out any necessary collection measures and procedures, whereas the Insured shall, on its own, carry out all measures and procedures

aiming to collect the Amount Receivable increased by statutory default interest that belongs to the Insurer, which, for example, includes the activation of instruments of security, all in compliance with the usual banking practice:

- in case of occurrence of the Insured Event due to the Beneficiary's call on the Guarantee referred to in Article 10, item 4 (PK4) and/or item 5 (PK5) of the General Terms and Conditions, or
- in case of occurrence of the Insured Event due to the Beneficiary's call on the Guarantee referred to in Article 10, item 1 (PK1) and/or item 2 (PK2) and/or item 3 (PK3), provided that the Insurer establishes that, by the date of the execution of the Contract Regulating the Mutual Rights and Obligations, the Exporter has violated any of the obligations referred to in the Insurance Contract.

The Insured shall act in accordance with the written instructions of the Insurer that shall be submitted by the Insurer to the Insured when it estimates, on the basis of the circumstances pertaining to the respective case, that they are required, where the acting in accordance with such instructions can in no case affect the rights of the Insured with regard to the Exporter arising from the Retention.

The Insured shall, after the payment of Indemnity and/or expenses, forward to the Insurer, in accordance with the Percentage of Cover, all amounts that the Insured receives under the Guarantee Issuance Contract and the Insurance Contract, regardless of the purpose, up to the Amount Receivable increased by statutory default interest that belongs to the Insurer.

The Insurer shall be authorised, at any moment by a unilateral written notice sent to the Insured, to take back the Amount Receivable from the Insured and to inform the Insured that the Insurer shall, from that moment and on its own, carry out all necessary measures and procedures of collecting the Amount Receivable increased by statutory default interest that belongs to the Insurer, and the Insured shall perform all permitted legal actions in order to transfer to the Insurer all rights under the Guarantee Issuance Contract in proportion to the Amount Receivable. The

costs of taking back the Amount Receivable and of actions performed for that purpose shall be borne by the Insurer.

- 17.4. As an exception from the provision of paragraph 3 of this Article, the Insurer may, by the Contract Regulating the Mutual Rights and Obligations, determine that the Insurer shall on its own carry out all necessary measures necessary for the collection of the Amount Receivable increased by statutory default interest that belongs to the Insurer or the entire amount receivable under the Guarantee Issuance Contract and the Insurance Contract. In such a case, the Insured shall timely take all necessary measures and conclude adequate legal actions that are required for the purpose of carrying out the procedures of collecting the amount receivable by the Insurer.
- 17.5. In case of occurrence of the Insured Event due to the Beneficiary's call on the Guarantee referred to in Article 10, item 1 (PK1) and/or item 2 (PK2) and/or item 3 (PK3), provided that the Insurer establishes that, until the date of the execution of the Contract Regulating the Mutual Rights and Obligations, the Exporter has not violated any of the obligations referred to in the Insurance Contract, the Insured shall, by the Contract Regulating the Mutual Rights and Obligations, oblige itself to take, without delay, all necessary measures, conclude adequate legal actions and submit statements that are required for the purpose of transferring to the Insurer all rights under the Guarantee Issuance Contract, instruments of security included, in proportion to the Amount Receivable increased by statutory default interest that belongs to the Insurer.

### **Article 18**

#### **Rights and obligations of the Exporter**

- 18.1. The Exporter shall at any time provide to the Insurer and the Insured at their request all data and documents in respect of the Guarantee, the Export Contract and the Tender and make available all its business books and records.
- 18.2. The Exporter shall, without delay, inform the Insurer about all requirements of the Beneficiary to amend the Export Contract that may affect the Guarantee, about non-performance of its and Beneficiary's obligations under the Export Contract.
- 18.3. By signing the Insurance Application, the Exporter gives to the Insured its prior consent for the submission to the Insurer of the data on the financial standing and legal status of the Exporter and on any changes in such information with respect to which the Insured can reasonably estimate by applying due diligence customary in the banking business that they can lead to the Insured Event and Loss, and the Exporter, by signing the Insurance Application, gives consent allowing the Insurer access to and use of such information.
- 18.4. In case of occurrence of the Insured Risk, the Exporter shall, in order that the Insurer establishes the type of the calling of the Guarantee referred to in Article 10 of the General Terms and Conditions and evaluates the possible Claim, immediately submit to the Insurer an opinion and all data and documents pertaining to the Guarantee, the Export Contract and the Tender that the Insurer requests from the Exporter.
- Documents are submitted in the form of photocopies certified by the Exporter as true photocopies of the originals, provided that the Insurer retains the right of requesting from the Exporter the gaining of insight into the original copies of the respective documents.
- Documents that are not in Croatian or English shall be submitted by the Exporter at the request of the Insurer also in a translation into Croatian made by a permanent court interpreter at the expense of the Exporter.
- The Insurer may, for the purpose of verifying the accuracy of data submitted by the Exporter, request from the Exporter to obtain, at its own expense, an opinion of a chartered auditor and/or permanent court expert witness or any other expert.
- 18.5. In case of occurrence of the Insured Event due to the Beneficiary's call on the Guarantee referred to in Article 10, item 1 (PK1) and/or item 2 (PK2) and/or item 3 (PK3), the Exporter shall take, either on its own or at the request of the Insurer, all actions with regard to the Beneficiary and/or third persons that lead to the refund of the amounts paid under the Guarantee.
- 18.6. In case of occurrence of the Insured Event, the Exporter shall, at the request of the Insurer,

take all actions with regard to the Beneficiary and/or third persons for the purpose of establishing the type of the Beneficiary's calling of the Guarantee referred to in Article 10 of the General Terms and Conditions.

18.7. The costs arisen on the occasion of taking the actions referred to in paragraphs 5 and 6 of this Article shall be, after the reporting to the Insurer, reimbursed to the Exporter in accordance with the Percentage of Cover provided that such actions have been taken with consent or upon instructions of the Insurer.

18.8. The Exporter shall, after the payment of Indemnity, forward to the Insurer all payments that it shall receive from the Beneficiary and/or third persons regardless of the purpose, up to the Amount Receivable of the Insurer increased by statutory default interest that belongs to the Insurer and shall, at the request of the Insurer, assign to the Insurer all or individual rights towards the Beneficiary or third persons.

18.9. The Insurer may, for the purpose of collecting the Indemnity and/or expenses paid to the Insured, initiate a procedure of recourse against the Exporter if the Insured Event occurs due to the Beneficiary's call on the Guarantee referred to in Article 10, item 4 (PK4) and/or 5 (PK5) of the General Terms and Conditions or if the Exporter fails to meet the obligations under the Insurance Contract, particularly in the following cases:

- a) if the Exporter fails to take, in accordance with the Insurer's instructions, all measures with regard to the Beneficiary and/or third persons that lead to the refund of the amounts paid under the Guarantee in case of occurrence of the Insured Event due to the Beneficiary's call on the Guarantee referred to in Article 10, item 1 (PK1) and/or item 2 (PK2) and/or item 3 (PK3),
- b) in case of acceptance by the Exporter of the provisions of the Export Contract that are not in compliance with the international conventions and usual practices and that limit significantly the rights of the Exporter in case of occurrence of the Insured Event (e.g. uncommon reducing of the Exporter's right to

a recourse, uncommon right of termination of the Export Contract by the Beneficiary),

- c) in case of violation of provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions by the Exporter or the person acting on behalf of the Exporter during the negotiations on the Export Contract.

18.10. Provisions referred to in paragraph 9 of this Article on the possibility of recourse against the Exporter shall not in any way limit the rights which the Insurer has, upon the payment of Indemnity and/or expenses to the Insured, on the basis of Article 17 of the General Terms and Conditions.

18.11. Liabilities of the Exporter towards the Insurer based on the recourse referred to in paragraph 9 of this Article shall be regulated by the Recourse Declaration that the Exporter is obliged to sign at the moment of submitting Insurance Application.

18.12. In case of a court, arbitration or other procedure against the Beneficiary, the Exporter shall, if it has been established by a final ruling that the payment under the Guarantee occurred as a consequence of the Beneficiary's call on the Guarantee referred to in Article 10, item 4 (PK4) and/or item 5 (PK5) of the General Terms and Conditions, reimburse to the Insurer the paid Indemnity and costs together with the statutory default interest accruing on such amounts from the date of payment until the date of reimbursement, within 14 days from the date when the respective ruling becomes final.

18.13. If the Insured has collected payment from the Exporter (in full or in part) under the Guarantee Issuance Contract, but only provided that the Insurer has established that:

- the Insured Event has occurred due to the Beneficiary's call on the Guarantee referred to in Article 10, item 1 (PK1) and/or item 2 (PK2) and/or item 3 (PK3), and
- neither the Exporter nor the Insured has violated any of the obligations referred to in the Insurance Contract,

the Exporter shall, on the basis of the Insurance Contract, be authorised to submit a Claim to

the Insurer in the amount that the Exporter has settled to the Insured with regard to the amount receivable arisen from the payment under the Guarantee, where the provisions of the Insurance Contract shall apply to the rights and obligations of the Insured and the Exporter as appropriate.

For the avoidance of any doubt, the Insurer shall under no circumstances be obliged to pay to the Insured and/or Exporter, jointly or individually, an Indemnity exceeding the amount paid under the Guarantee or the amount of the Insured Amount, depending on which of these two amounts is lower, all by applying the Percentage of Cover.

#### **Article 19 Rights of the Insurer**

19.1. The Insurer shall be particularly entitled to:

- a) for the purpose of control of performance of the Export Contract or fulfilment of the terms and conditions of the Tender, respectively, determine the manner for the Exporter of submitting appropriate documentation,
- b) verify the truthfulness and accuracy of submitted documentation and all data stated by the Insured, while abiding by the regulations on data secrecy and banking confidentiality,
- c) establish the type of the calling of the Guarantee referred to in Article 10 of the General Terms and Conditions,
- d) on the basis of notification on an occurred Loss, make appropriate verifications relating to the establishment of occurrence, causes and extent of the Insured Event,
- e) request the Insured to exercise its rights towards the Exporter and/or third persons within the framework of its rights and obligations under the Insurance Contract,
- f) request the Exporter to exercise its rights towards the Beneficiary and/or third persons,
- g) a reimbursement of paid Indemnity and the related costs from the Insured should subsequently existence of any circumstances

referred to in Article 20 of the General Terms and Conditions be established,

- h) a recourse against the Exporter in cases referred to in the Insurance Contract,
- i) the collection of the Amount Receivable increased by statutory default interest that belongs to the Insurer pursuant to Article 17 of the General Terms and Conditions.

#### **Article 20**

##### **Exclusion of the Insurer's obligations**

20.1. The Insurer shall not be obliged to pay the Indemnity and reimburse costs if the Insured violates any of the provisions of the Insurance Contract, particularly if:

- a) the Insured Event has not occurred,
- b) the Insurance Premium for PK4 and PK5 has not been paid in full or in a reasonable period after the maturity stated at the premium payment invoice,
- c) the Loss occurs for which the Insured is responsible,
- d) the Insured does not act with due diligence or in compliance with the regulations in force or the usual banking practice pertaining to the issue of a Guarantee when issuing the Guarantee, executing possible amendments to the Guarantee and making payments under the Guarantee,
- e) at the moment of submitting the Insurance Application and/or at the moment of executing the Insurance Contract, the Insured has not given accurate and complete information to the Insurer that the Insured, by acting with due diligence that is customary in the banking business, considers necessary for the assessment of risk and/or has not reported to the Insurer any change in such circumstances,
- f) the Insured fails to submit the Claim in accordance with the provisions of Article 12 of the General Terms and Conditions,
- g) the Beneficiary's call for payment under the Guarantee is non-compliant.

20.2. If the Insurer accepts the Claim and if it is subsequently established that some of the circumstances referred to in paragraph 1 of this Article of the General Terms and Conditions are in place, the original acceptance shall be revoked. In such cases, if the Insurer has paid the Indemnity and the related costs, the Insured shall refund to the Insurer all amounts already received together with the statutory default interest accruing on such amounts from the date of payment until the date of their refund within 14 days from the day of receipt of the Insurer's written notification.

#### **Article 21 Insurance Premium**

21.1. The Insurance Premium, manner of calculation and payment are set forth in the Insurance Policy. The Insurance Premium for PK4 and PK5 is paid by the Insured throughout the entire duration of the insurance. The Insurance Premium for PK1, PK2 and PK3 is paid by the Exporter as one-off payment made when executing the Insurance Contract. If it has been agreed that the Insurance Premium is to be paid in instalments, all remaining instalments up to the amount of the total Insurance Premium shall mature on the date when the Claim is submitted.

Payment of the total amount of the Insurance Premium for PK4 and PK5 by the Insured, before the submission of the Claim, is, among others, a precondition for the payment of Indemnity.

If the validity period of the Guarantee is extended, the Exporter shall pay the Insurance Premium for PK1, PK2 and PK3 for the period of the new validity period of the Guarantee in accordance with the agreed payment terms and conditions.

21.2. The Insurer determines the amount of the Insurance Premium in accordance with its own premium system.

21.3. If the Insurance Premium is paid after the date of the maturity of payment, the Insurer may, for the period from its maturity until the date of payment, charge the statutory default interest.

21.4. The Insurer may, at the request of the Insured and/or the Exporter, agree to refund the Insurance Premium if the Guarantee has not been issued.

#### **Article 22 Transfer of Indemnity payment right**

22.1. The Insured may, by means of a contract, transfer the right to the payment of Indemnity under the Insurance Contract to another person with the prior written consent of the Insurer.

22.2. The transfer referred to in the preceding paragraph of this Article shall not affect the existence of the obligations of the Insured towards the Insurer under the Insurance Contract.

#### **Article 23 Governing law and jurisdiction in case of dispute**

23.1. The parties to the contract mutually agree that the Insurance Contract shall be governed by the laws of the Republic of Croatia in force.

23.2. The parties to the contracting agree that they shall endeavour to resolve any possible misunderstandings and/or disputes arising from the Insurance Contract primarily by negotiation during the entire lifetime of the Insurance Contract. Should the negotiations prove not to be successful, the parties to the contract may try to resolve the disputes out of court, and, otherwise, they agree upon the jurisdiction of the competent court in Zagreb.

#### **Article 24 Severability clause**

Should it subsequently be established that any of the provisions of this Insurance Contract is invalid, illegal or unenforceable, the remaining provisions of the Insurance Contract shall remain in full force and effect, and the parties to the contract shall replace the invalid, illegal or unenforceable provision with the valid one that comes as close to the original intention of the invalid, illegal or unenforceable provision as possible.