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## Multi-Buyer Exposure Policy in Foreign Currency (MBEP-FC) - Bond

ECGC Limited

(A Government of India Enterprise)

Registered Office: Express Towers, 10th Floor, Nariman Point,  
Mumbai - 400021 India

Paste  
Insurance  
stamp

Policy Number :

Date of Issue :

Place of Issue :

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### INSURING AGREEMENT

This Policy is issued by ECGC Limited, (hereinafter referred to as "ECGC" / "INSURER") to the exporter (hereinafter referred to as "INSURED") whose name and address is specified in Schedule to this Policy ("THE SCHEDULE"), at the place and on the date mentioned in the said Schedule;

**WHEREAS** the Insured has made a proposal (hereinafter referred to as "the PROPOSAL") on the date specified in the Schedule, requesting ECGC to indemnify them against a proportion of the Insured loss that the Insured may sustain by reason of certain risks involved in the export of goods, in pursuance of a contract with the buyer;

**WHEREAS** the Insured has agreed that the said Proposal shall be the basis of this Policy;

**AND WHEREAS** this insurance is in consideration of the insured having paid the due applicable premium to ECGC, as mentioned in the Schedule for issue of this Policy and having agreed to pay further premiums that are payable in terms of this Policy as consideration;

**AND** in reliance on the warranties and declarations made by the Insured under this Policy, including all written statements and materials furnished to ECGC in conjunction with such Policy, the Insured and ECGC agree as follows:

**NOW THEREFORE**, ECGC hereby agrees that in the event of loss suffered by the Insured in respect of exports of goods to the INSURED BUYER, owing to non-realization of the INSURED DEBT by reason of the occurrence of any of the INSURED RISKS herein below specified, ECGC shall indemnify the Insured up to the INSURED PERCENTAGE of the INSURED LOSS, save and except those risks that are specified as EXCLUSIONS and further subject to the DECLINED RISKS and LIMITATIONS specified in this Policy;



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**AND**, subject to all the terms and conditions contained in the Policy including the payment of due premium (upfront and thereafter, as applicable) and other charges specified in the Policy; provided however that under no circumstances the maximum aggregate liability under this Policy to indemnify the Insured shall exceed the AGGREGATE LOSS LIMIT specified in the schedule, and further subject to other limitations to ECGC's liability and in accordance with the other terms and conditions of the Policy hereof.

### NOTES FOR INTERPRETATION

- I. Headings in the **Policy** are used for ease of reference only and are to be disregarded in construing the **Policy**.
- II. Definitions of the terms and phrases are given at the end of the **Policy**.
- III. The words 'you' or 'your' when used in the **Policy** would mean and refer to "the Insured"/"Exporter". The words 'we' or 'us' or 'our' when used in the **Policy** would mean and refer to "Insurer"/ "ECGC".
- IV. Unless repugnant to the context or meaning, in this **Policy**, singular will include plural, masculine will include feminine and animate will include inanimate and vice-versa.

### PART – I

#### 1. INSURED RISKS

##### A. Commercial Risks (Buyer Risks)

- (i) PROTRACTED DEFAULT
- (ii) INSOLVENCY
- (iii) CONTRACT REPUDIATION

##### B. Political Risks (Country Risks)

- (i) INCONVERTIBILITY
- (ii) CONTRACT FRUSTRATION
- (iii) CONTRACT CANCELLATION
- (iv) IMPORT RESTRICTION
- (v) SHIPMENT DIVERSION



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## **PART – II**

### **(TERMS AND CONDITIONS)**

#### **2. YOUR PROPOSAL**

- A.** You have been explained and have fully understood the terms, conditions and requirements of this Policy.
- B.** The contract of insurance evidenced by this Policy is a contract of utmost good faith between the Insurer and the Insured. Both you and we have specifically accepted your Proposal as being the basis of the contract contained in the Policy and that the said Proposal shall form part thereof. By signing the Proposal form and accepting the Policy you warrant that the statements and declarations made in the Proposal were true and correct and you have disclosed all material facts and circumstances (viz., export turnover, previous experience, outstanding, overdue, bad debts, relationship with Buyer etc.,) in any way affecting the risks insured, as at the date of the Proposal and at the date when we agreed to issue the Policy.
- C.** You also warrant that you will immediately notify and disclose to us of any material change to the information supplied in the Proposal form or of any other material facts and circumstances affecting the Policy including any amendment, change, variation and / or addition to the Policy or any information relating to Policy sought by us during the issue of Policy or during the operation of the Policy.
- D.** These warranties do not limit any legal obligation or duty (at common law or otherwise) on you to disclose to us all material facts and circumstances and to act with the utmost good faith at all times.
- E.** If any of the statements or the information contained in the Proposal or the declarations are untrue or incorrect in any respect or any failure on your part to notify and disclose to us of any material facts and circumstances in any way affecting the risks insured and/or any material change to the information supplied in the Proposal form including any amendment, change, variation and / or addition to the Policy, this Policy shall become void ab initio and we may retain any premium that has been paid.

#### **3. YOUR OBLIGATIONS AND WARRANTIES**

- A.** Exercise reasonable care and prudence, skill and foresight in granting credit to the Insured Buyers and continue to take all practicable measures available to you to prevent or minimize any loss which you or your group companies may have incurred or may be likely to incur (to you and / or us) with the same diligence as if were it not insured including any measures which we may require you to take, to



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prevent or minimize loss in respect of your exports to the Insured Buyer. If requested by us to do so, you shall execute such documents and take such actions as we may require of you, to enable us to intervene directly in any proceedings relating to the Insured Debt.

- B.** If you have reason to believe that the Insured Buyer or its group companies is/are unable to or is likely to be unable to perform or comply with its obligations to you under any contract of sale which shall include non-payment of a Bill of Exchange on due date OR in the event of the occurrence of any event/Insured Risk which is likely to cause a loss, you shall notify us in writing immediately but in any case not later than 30 days after you become aware of one or more of such occurrence and continue to notify us of the developments till realization of payments and consider submission of declaration of overdue payments in the prescribed format within the stipulated time period.
- C.** Exercise the right to stop the goods in transit from being delivered and stop shipment of further consignments, to the Insured buyer or its group companies unless ECGC consents in writing to you (the Insured) on your request refraining from doing so, if during the course of transit of goods, it comes to your knowledge that -
- (i) the Insured Buyer has refused to honour its commitment under the contract or payments in respect of any of your earlier shipments to that Insured Buyer are remaining unpaid after its due date of payment; or
  - (ii) you have knowledge of that Insured Buyer having failed and defaulted in meeting its obligations to any other supplier of goods or services; or
  - (iii) the Insured Buyer has become Insolvent or you have received information to the effect that they are facing grave financial problem or are likely to be in Insolvency; or
  - (iv) the Insured Buyer's country has banned the import of goods contracted for; or
  - (v) the Insured Buyer's country has ordered confiscation of goods; or
  - (vi) there are circumstances existing in the Insured Buyer's country that may lead to any loss.
- D.** Furnish in writing to us promptly with all such information as we may require at any time following our receipt of notification or with regard to the shipment of goods pertaining to the Insured Buyer and initiate such measures that we may require you to take with our prior written approval, wherever applicable. The measures that we may require you to take may include -



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- (i) to take control of the goods and/or to recover costs and damages;
  - (ii) to shift the goods to a bonded warehouse, the goods that were exported but not delivered to or accepted by the Insured Buyer;
  - (iii) to bring back to India or resale to alternate buyer, the goods that were exported but not delivered to or accepted by the Insured Buyer, for which you are required to obtain our prior written approval, wherever applicable and to give a notice to the original buyer for consequential losses, if any;
  - (iv) to get the bills noted and protested, and to institute legal proceedings against the Insured buyer or any other intermediary associated in the transaction;
  - (v) to take assistance of Debt Collection Agencies and Indian Embassy/High Commission / Consulates; etc.
- E.** You shall not agree to a postponement of the original due date for payment of the Insured debt either in the contract of sale or otherwise except when –
  - (i) the contractually agreed terms of payment are not cash against presentation of shipping documents through a bank or payment secured by documentary bill of exchange payable at sight (CAD/ DP terms); and
  - (ii) the need for such extension arises prior to the due date of payment and is in pursuance of a request received by you from the Insured Buyer prior to such due date; and
  - (iii) extension of due date is not being implicitly accepted by you after the failure of the Insured Buyer to pay on the due date; and
  - (iv) the extended credit period is in conformity with all the relevant and applicable regulatory requirements; and
  - (v) you have obtained our written approval before granting such extension.
- F.** You shall not agree to convert the original terms of payment of the Insured debt either in the contract of sale or otherwise except when you have obtained our written approval before granting such conversion.
- G.** You shall bear so much of the amount of loss as is in excess of the insured percentage of loss under this policy to your own account and keep it uninsured.
- H.** In the case of Insolvency of the Insured Buyer, you shall deliver to us evidence satisfactory in our opinion that you have filed / shall file your claim in such Insolvency of the Insured Buyer, and a declaration in writing to us that you have



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done or omitted nothing whereby such claim is liable to be rejected by the Court appointed Receiver, Liquidator etc., in such Insolvency.

- I. In case of Inconvertibility where you experience delays or difficulties in obtaining payment from the country of the Insured Buyer due to exchange transfer restrictions, you shall require the concerned Insured Buyer to pay to your account (or deposit irrevocably with a Bank in the country of the Insured Buyer for your account) on the due date of payment of the Insured Debt or as soon as you are aware of such delays or difficulties, the local currency equivalent of the contract value of the goods, unless we agree otherwise in writing. Where we agree in writing that the Insured Buyer need not make a local currency deposit, then you shall require the concerned Insured Buyer to apply to the relevant authority for approval of the allocation of foreign exchange in respect of the Insured Debt.
- J. After we have made a claim payment to you under the Policy in respect of the Insured Loss or any Insured Risks, you shall take all practicable measures/steps that may be necessary or expedient or which we may at any time advise you to take to effect recoveries or collect or realize the Insured debt, whether from the Insured Buyer or from any other person or institutions or agencies from whom such recoveries may be made. If required by us, you will assign the relevant Insured debt to us and we shall account to you for any uninsured proportion of any recoveries.
- K. **Submission of Declaration of Shipments**
  - (i) You shall submit declaration of shipments made during the period of cover in the prescribed format duly completed on a quarterly basis, giving full details of all the shipments dispatched / Invoices raised by you (such as date of shipment, name & address of buyer, commodity, Gross Invoice Value, terms of payment, amount realized etc.,) during a quarter (as specified in the schedule), not later than the end of the first month of the subsequent quarter.
- L. **Submission of Declaration of Overdue Payment - Report of Default**
  - (i) If as on the last day of a month an Insured debt is remaining unpaid for 30 days or more after its due date of payment, you shall submit declaration of overdue payments pertaining to the shipments dispatched to the Insured Buyer in our prescribed format giving full details of all such payments remaining overdue, whether wholly or partly, by not later than the 15<sup>th</sup> day of the next calendar month.
  - (ii) Further, continue to deliver such declaration of overdue payments to us every month in the prescribed format, so long as any such payments remained outstanding, or until the following, whichever is the earlier—



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- (a) Insolvency of the Insured Buyer has occurred; or
- (b) A claim has been submitted to us in the prescribed format; or
- (c) The Insured Debt has been paid or realized.

**M.** You shall strictly observe and adhere to the terms and conditions of the Policy. It shall be a condition precedent to our liability and your entitlement to any claim, that you have complied fully with the obligations and terms and conditions provided in the Policy.

#### **4. SHIPMENTS COVERED AND EXCLUDED**

**A.** This policy is a Whole Turnover Policy and shall apply to all shipments of goods made by you to any Buyer during the period of cover including those that are specifically agreed to be included for cover additionally, in writing by us, pursuant to any contract or agreement for sale thereof, in any of the countries, except such shipments of goods that are excluded from the purview of cover hereunder including those that are specifically agreed to be excluded additionally, in writing by us.

**B.** The transactions in respect of 'Deemed Exports', 'Merchanting Trade/Third Country Exports', 'Exports to Buyers in Specific Approval List (BSAL)', 'Exports to Buyers in Countries placed in Restricted Cover Category (RCC) or destination of goods being to RCC (excepting where payments are to be received unconditionally from the Buyers of the Countries other than RCC)', 'Exports on Deferred Payment Terms', 'Exports of Services including IT Enabled', 'Exports against Letters of Credit', 'Exports to Associate/Subsidiary of the exporter', 'Exports against Letters of Credit confirmed by a Bank in India', 'Exports against Advance Payment received before the date of shipment', 'Exports under Consignment Sales', or such special export transactions that are unique/different from a normal export transaction (viz., High Sea Sales etc.), are excluded from the purview of cover, unless specifically agreed to be included for cover, in writing by us.

#### **5. REDUCTION, VARIATION, WITHDRAWAL, CANCELLATION AND EXCLUSION OF COVER**

**A.** If at any time during the Period of Cover there is a material change in our credit risk perception in respect of any of the insured Buyers or in respect of any Country or in respect of a transaction, we shall be at liberty at our sole discretion to:

- (i) reduce, cancel, vary the cover or the limit or the terms of payment in respect of the Insured Buyer under the Policy; and/or





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- (ii) exclude that Insured Buyer or the Country from the purview of cover; and/or
  - (iii) modify the classification and/or categorization of the Countries specified in the Schedule, under the Policy.
- B.** Any such reduction, variation, withdrawal, cancellation or exclusion will be notified to you either by communication addressed to you in that regard or through our web-site ([www.ecgc.in](http://www.ecgc.in)) and shall apply to all dispatch of goods made after such notification. As regards exclusion of an Insured Buyer, it may be placed on the website of the Insurer under the 'List of Buyers who have come to the adverse notice of the Insurer' commonly referred to as Buyers Specific Approval List (BSAL) and as regards exclusion of a Country, it may be placed under the list of 'Restricted Cover Category (RCC)' of Countries.
- C.** If after you have been notified of exclusion from cover as aforesaid, any shipment is dispatched to an Insured Buyer or to a Country so excluded and notified, we shall not be liable to indemnify you in respect of any part of the loss that you may suffer on any such shipment unless you have taken our prior written approval for cover before making such shipment, which we are not obliged to give.
- D.** Similarly, if after you have been notified of inclusion of a Buyer or a Country under the Policy, such inclusion shall apply to all dispatch of goods made after such notification on such terms and conditions which we may stipulate.

## **6. POLICY PERIOD, PREMIUM AND FEES**

### **A. Period of Cover and Cancellation/ Termination of Policy**

- (i) This Policy covers shipments made during the Period of cover which is specified in the schedule and it shall lapse on expiry of this Period. This Policy is renewable and upon submission of renewal proposal by you in the prescribed format and within the stipulated time, this Policy may be continued for a consecutive period of 12 months (which shall generally mean 365 days), unless otherwise agreed. In the event of non-submission of renewal proposal, the expired Policy shall be liable to be closed.
- (ii) On renewal, you will obtain a fresh schedule specifying the terms and conditions applicable to the renewed policy with modification in the premium rate, discounts, bonus/malus and other benefits, if any. The fresh schedule will indicate the period of cover applicable to the renewal. Further, as any additional limit approved specifically in respect of any of the buyers under the current policy shall also cease to be in force upon the expiry of the policy, you would be required to submit a fresh limit application for additional limit, wherever required, under the renewed policy.





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- (iii) The schedule attached to the Policy specifies the currently extant period of cover.
- (iv) During the period of cover, in the first or any subsequent period of cover (as specified in the Schedule) either you or we may elect to terminate the Policy by giving notice to the other in writing before the close of any such period.
- (v) In the event of any breach, failure, negligence, lapse, misrepresentation, non-disclosure of material facts, fraud, non co-operation, or other act of omission or commission on your part including (but not limited to) inadequacy of sufficient credit balance in the Deposit Premium Account to meet the amount of premium due thereon as on the date of making a shipment, delay in submission or non-submission of the relevant declarations, etc., we shall be entitled to cancel the Policy with effect from the date of the default as is notified by us.
- (vi) In the event of any adverse experience/ report on the buyer or the buyer's country or the exporter or due to any other reason having a bearing on the Policy, we shall be at the liberty, at any time, to cancel this Policy and/or the limits, and such cancellation will be effective from the date of the notice issued to you.
- (vii) Upon your Insolvency or the Insolvency of any other party named in the Schedule as the Insured, we may cancel the Policy with effect from the date of such Insolvency.
- (viii) In the event you wish to terminate the Policy before the end of the period of cover or the Policy is cancelled by us for the aforesaid reasons, we shall be entitled to retain the whole of the applicable premium paid by you and to receive forthwith the balance of the premium due and payable that has remained unpaid, if any.

## **B. Payment of Premium and Fees**

- (i) As this Policy is a Whole Turnover Policy, it shall apply to all shipments (save and except shipments exempted or excluded) made by you during the period of cover and the entire amount of premium falls due and payable forthwith upon our acceptance of your Proposal for issue of the Policy, as per the rates set out in the Schedule or as the case may be, at such other rates for the time being in force taking into account Discounts, Bonus-Malus etc. as applicable, on the Aggregate Loss Limit (ALL) approved under this Policy. However, upon your request we may agree for a deferred payment of premium in such number of installments (specified in the Schedule and payable on or before the respective dates) and subject to such conditions as we may, at our sole discretion, stipulate.



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- (ii) We acknowledge having received together with the Proposal the amount of Proposal Processing Fees and the Premium specified in the Schedule from you and to receive the installments, if any, on or before the respective dates. In addition, you will pay to us such other charges/premium, if any, as may be payable to us towards services like the processing of your application for an enhancement in the amount of Aggregate Loss Limit (ALL), Single Loss Limit (SLL), etc., under the Policy.
- (iii) In the event of you preferring a claim under this Policy at any time before the full amount of premium due under the Policy is fully paid, any agreement allowing you installment facility for payment of premium shall stand withdrawn with immediate effect and the whole of the balance amount of premium remaining unpaid shall forthwith become payable by you. No claim under the Policy will be registered or processed by us until the whole of the premium due under the Policy is paid in full.
- (iv) In the event of inadequacy of sufficient credit balance in the Deposit Premium Account due to delay in payment of premium (where installment facility was extended), no cover under the Policy will be available for the shipments effected during the period for which the due premium was not available with us.
- (v) We shall be entitled to cancel this Policy and to retain the premium paid and to demand, receive and retain the full amount that was due towards premium under the Policy (save and except shipments exempted or excluded) notwithstanding whether or not we have ceased of any liability in respect of any such shipment effected during the Period of cover, by reason of any breach, failure, negligence, lapse or other act of omission or commission on your part, including (but not limited to) inadequacy of sufficient credit balance in the Deposit Premium Account to meet the amount of premium due thereon as on the date of making a shipment, delay in submission or non-submission of the relevant declarations, etc.
- (vi) It may be noted that mere acknowledgement of the declaration by us or any payment or tender of premium by you or its acceptance by us shall not be deemed to bind us to undertake liability in respect of such account or bill (or to approval of the renewal or extension).

### **C. Processing Fee**

The amount of Processing Fee, as applicable and paid by you is specified in the Schedule.



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## **7. OUR LIABILITY**

- A.** Our total liability under the Policy for losses arising out of Insured Risks in respect of shipment(s) made to the Insured Buyer shall not exceed the amount of Single Loss Limit (SLL) available to you on that Insured Buyer as on the respective date of dispatch of the relevant shipment(s), provided however that the total liability for the aggregate maximum amount of claims (even on a cumulative basis) shall not exceed the amount of Aggregate Loss Limit available and applicable for the Period of Cover relevant to those shipment(s).
- B.** The SLL shall be subject to the conditions specified in the Schedule including that the buyer is not in the list of buyers who have come to the adverse notice of ECGC commonly referred to as 'Buyers Specific Approval List (BSAL) and/or not in a country classified as Restricted Cover Category (RCC), which are available on our website and Insured is required to access it by obtaining an User ID and password from us.
- C.** In case, an Insured Buyer's Country has been placed in the Restricted Cover Category during the Period of the Policy and after issuance of this Policy to you, in order to cover your shipments to such Buyers, you shall submit an application in our prescribed format along with the application fee as specified by us. Where an application is made by you and we have approved and communicated to you in writing an amount, the amount so specified shall be the Single Loss Limit in respect of that Insured Buyer and the limit so approved shall cease to be in force on its cancellation/termination or the date of expiry/cancellation/termination of the Policy, whichever is earlier.
- D.** A Limit so approved by us shall always be subject to the terms and conditions including the terms of payment specified in or appended to our relevant Single Loss Limit approval and will also be subject to such modifications as we may make and communicate to you from time to time, including its cancellation.

## **8. CURRENCY AND RATE OF EXCHANGE**

- (a) The currency of the POLICY is United States Dollar ("USD").
- (b) The various Limits such as Aggregate Loss Limit / Single Loss Limit, wherever specified under the Policy shall be in USD and any amounts payable (by you or by us) under the Policy shall also be payable in USD.
- (c) The conversion of any other currency, into USD shall be as per the rates mentioned in the extant notification issued by the Central Board of Excise and Customs ("CBEC") applicable on the date of receipt of proposal



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- (d) For the purpose of submission of declaration of shipment, if the invoice value of the goods dispatched is expressed in a currency other than USD, each of the invoice value shall be converted into Indian Rupee and thereafter from Indian Rupee to USD. The rate of conversion shall be the extant rate of exchange as per CBEC Notification on the date on which you dispatched the goods. The rate of exchange relating to date of dispatch of goods for each of your invoices shall be applied and its USD equivalent shall be recorded by you in your books and the amount so recorded shall form the basis for the returns and declaration.
- (e) If a claim arises, it shall be payable in USD irrespective of the currency in which the Invoice was raised. If the currency is other than USD, the Insured debt would be the actual Gross Invoice Value in USD as on the date of shipment or the USD equivalent GIV recorded by you in your books, whichever is less.
- (f) Any part payment, collected or realized in a foreign currency other than USD and applicable towards reducing the Insured debt shall be converted to USD immediately by applying the prevailing rate of exchange as per CBEC notification as on the date of its realization to arrive at the Insured Loss in USD. In all cases the claim value will never exceed the other applicable limits under the Policy.

## **9. CLAIMS**

- A.** For a claim to be payable under the Policy, you must submit a claim on our prescribed form duly completed in all respects and endorsed by your bank(s) that has/have handled your corresponding export documents together with all such supporting documents as we may specify. We will not be liable to ascertain the cause of loss and the amount of Insured loss and no claim shall become due for payment until you have submitted all the relevant information and documents that are necessary in our opinion for the purpose of establishing the occurrence of Insured Risks and for ascertainment of Insured Loss within a reasonable period of time as determined by us. In the event of non-compliance of the conditions of this Clause, within a reasonable period of time as determined by us, the claim would be liable to be rejected.
- B.** The claim should be submitted within 360 days from the respective due date of payment of the relevant Insured debt/shipment or 540 days from the expiry date of the Policy period during which the said Insured debt/shipment was effected, whichever is earlier. The failure on your part in lodging the claim in the prescribed form duly filled in along with requisite documents within the stipulated period, may, however be considered on merits by us, on being satisfied, if such failure has occurred for reasons beyond your control. At the time of lodgment of the delayed claim and not later than that, you shall have to elaborate the reasons for delay in lodgment of claim with justification thereof, to enable us to take a view on the same.



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- C.** After we have received a claim from you and have ascertained the cause of loss and the amount of Insured loss, any amount payable under the Policy will be paid to you through your bank(s) directly that has/have handled your corresponding export documents and had undertaken collection of the export proceeds pertaining to the relevant shipment(s) concerned, subject to the limitations and provisions of the Policy.
- D.** You must irrevocably authorize your bank to accept such payments on your behalf and you agree that acceptance of payments from us by your bank, shall be in full legal discharge of our liability in respect of such payments and we shall have no further obligations to you under the Policy. The amount so paid would enable the bank to adjust your dues primarily under the post shipment credit account or towards other dues, if any.
- E.** You shall, as a condition precedent to the payment of a percentage of the Insured loss, procure and deliver to us a letter from the Bank which holds the documents pertaining to the shipment concerned acknowledging and agreeing –
- (i) that the bank holds the same in trust for ECGC;
  - (ii) that the Bank shall, upon demand by ECGC, deliver them to ECGC; and
  - (iii) that if the Bank shall receive any payment against such documents, the Bank shall make payment thereof in accordance with the directions of ECGC in writing.
- F.** We will not be liable to ascertain the cause of loss and the amount of Insured loss and no claim shall become due for payment nor shall we be liable to pay any claim under the Policy, if, in the case of Buyer Risks under Insured Risks, the failure or refusal on the part of the Insured Buyer:
- (i) is due to their claim that they are entitled to withhold payment of whole or any part of the Indebtedness for any reason whatsoever including but not limited to their disputes or allegations relating to quality, quantity, specifications, delivery schedule, shipment date etc., in respect of your present or past supplies to the Insured Buyer, or
  - (ii) is due to their counterclaim or claims on you for any set-off, etc.,

And we are satisfied that a dispute exists between you and the Insured Buyer which has not been resolved by legal or other appropriate proceedings; unless you have, for the amount of the Insured loss, obtained a final judgment enforceable against the Insured Buyer from a competent court of law in the Buyer's country and we may, at our sole discretion, are satisfied, that the allegations or claim or the dispute raised by the Insured Buyer as aforesaid is not tenable or justified in the light of information gathered by or made available to including the court's decree in your favour. It is clarified that the disputes raised or allegations made by the Insured Buyer need not necessarily relate to any Insured debt.



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- G.** Where you have obtained a guarantee and/or an undertaking or any other form of arrangement having a similar nature or meaning (with you being the Beneficiary), as the case may be, whether in compliance with a condition stipulated by us for approval of limits etc., or otherwise, in respect of the transaction and a claim by yourself against such guarantor has arisen, then unless we agree in writing to the contrary, no loss shall be ascertained and no payment shall become due from us nor shall we be liable to pay any claim under the Policy, until either you have obtained a judgment against the guarantor in a competent court in the country specified in such condition, or you have satisfied us in such other manner as may be required by us in writing that the claim against the guarantor is valid and subsisting.
- H.** If you have obtained credit insurance cover from any other Insurer or factoring cover from other factor or cover of similar nature, in respect of same insured risk emanating for or from the same entity during the currency of the Policy, no loss shall be ascertained and no payment shall become due from us nor shall we be liable to pay any claim under the Policy, unless we agree in writing to the contrary.

#### **10. TIME FOR ASCERTAINMENT OF LOSS - WAITING PERIOD**

- A.** After we have received a claim from you as aforesaid, we will pay to you an Insured percentage of the Insured Loss, as is hereby insured, within a reasonable period of time, as determined by us, after the cause of loss and amount of the Insured loss has been ascertained, subject to the limitations and provisions of the Policy.
- B.** No amount in respect of any shipment shall become due and payable by us under this policy until and unless the cause of loss and amount of the Insured loss has been ascertained and the relevant waiting period applicable to the respective cause of loss has expired, which shall be:-
- (i)** In the case of **Insolvency**, upon the expiry of four months from the due date of payment or one month after the loss has been admitted to rank against the estate of the insolvent Insured Buyer in your favour, whichever of the two dates is the earlier.
  - (ii)** In the case of **Protracted Default**, four months from the due date of payment or the extended due date, with our prior approval, as the case may be.
  - (iii)** In the case of **Contract Repudiation**, one month from the date on which the goods have been brought back or resold or otherwise disposed of by you, with our approval in writing.



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- (iv) In the case of **Inconvertibility**, upon the expiry of four months from the due date of payment or after the completion of all the formalities necessary in order to obtain transfer to India of the irrevocable deposits made by the Insured Buyer, whichever is the later, unless otherwise specified by us in writing. Where our liability does not extend to the commercial risks specified in the Risks Insured, then unless irrevocable deposits have been made by the Insured Buyer within one month from the due date of payment, no loss shall be ascertained and we shall have no liability whatsoever for the loss occasioned.
- (v) In the case of **Shipment Diversion**, as soon as the proof that is satisfactory to us, to establish the occurrence of loss, due to such shipment diversion is furnished to us.
- (vi) In all other cases, unless otherwise specified by us, four months from the date of occurrence of the event which is the cause of the loss.

(Note: A month shall be considered to be of 30 days for the purpose of waiting period)

## 11. RECOVERIES AND ITS SHARING

- A. After we have made a claim payment to you under the Policy in respect of the Insured Loss or any Insured Risks, you must take all practicable measures/steps that may be necessary or expedient or which we may at any time advise you to take to effect recoveries or collect or realize the Insured debt, whether from the Insured Buyer or from any other person or institutions or agencies from whom such recoveries may be made.
- B. The steps which we may advise you to take may include one or more of the following that you must do so:-
  - (i) Refer it to a debt collection agency;
  - (ii) Appoint an advocate, solicitor or attorney, whom we may nominate, to take legal or other proceedings against the Insured Buyer or against its insolvent estate;
  - (iii) Assign and transfer to us or to our nominee all your rights under the relevant contract of sale in respect of which the loss occurred and such claim payment was made, including your right to receive any monies payable under such contract or your right to damages for any breach thereof, enabling us to have full rights of subrogation;
  - (iv) Deliver up to us or to our nominee any goods or documents relating thereto in respect of which a claim payment has been made and assign and transfer to us your right and interest in any such goods and documents;





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- (v) Assign, deliver or otherwise transfer to us or to our nominee any negotiable instruments, guarantees or other securities relating to such goods or contracts.
  - (vi) Authorize us to take all such measures as we may deem appropriate for effecting recoveries on our behalf and/or on your behalf, including the authority to give up the whole or any part of the insured debt.
- C. The subrogation will not relieve you from any obligation to take any such measures as may be deemed necessary to recover the debt and to comply with our stipulations.
- D. You must remit to us our share in all the sums so recovered forthwith upon its receipt by you or by any person on your behalf. You hereby acknowledge and declare that until such payments are made to us; you will be receiving and holding such sums in trust for us.
- E. All costs and expenses reasonably incurred by you, excluding your administrative costs, for the purpose of effecting recovery of the Insured Debt, as evidenced by invoices rendered to you by the debt collection agency or solicitors / attorneys, will be a prior charge on the amounts collected or recovered thereafter. It is expected that the Insured seeks our advice at the relevant point of time pertaining to all such likely costs and expenses.
- F. The amounts recovered from the Insured Buyer or from any other source, either by you or by us, net of costs and expenses of recovery, shall be shared between you and us, in USD in the same proportion as the relevant losses were borne by each of us respectively.
- Any recovery realized in a foreign currency other than USD and applicable towards sharing with ECGC, shall be converted to USD immediately by applying the prevailing rate of exchange as per CBEC notification as on the date of its realization, whether or not such division results in the retention of a greater or lesser sums by us than that was paid by us (under the indemnity provisions of this Policy), for any cause, circumstances or reasons.
- G. It is a condition precedent to our agreeing to these costs and expenses as being a prior charge on the amounts collected or recovered, that you have complied with all the terms and conditions of the Policy in respect of the Insured debt to which such costs and expenses relate.

## 12. COLLECTION AND LEGAL COSTS

- A. In order to obtain payment from the Insured Buyer in respect of any **undisputed Indebtedness**, when we require you -



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- (i) to refer to a debt collection agency, which we may nominate, you must do so; or
  - (ii) to appoint an advocate, solicitor or attorney, whom we may nominate, to take legal or other proceedings against the Insured Buyer or against its insolvent estate, you must do so.
- B.** We may not contribute towards collection and legal costs, unless agreed otherwise in writing. In the event we agree to contribute towards your collection and legal cost, our contribution to collection and legal costs relating to the Insured debt will not exceed the percentage we shall be entitled to as our share if and when the debt is collected or recovered. Where the Indebtedness of the Insured Buyer at the relevant time exceeds the Insured debt, our contribution will not exceed such percentage share in the proportionate costs that is apportioned to the Insured debt.
- C.** We will not contribute towards:
  - (i) Your administrative costs; or
  - (ii) Collection and legal costs incurred for the purpose of establishing Insured Buyer's liability in respect of any **disputed Indebtedness**;
- D.** It is a condition precedent to our agreeing to contribute towards collection and legal costs that you have complied with all the terms and conditions of the Policy in respect of the Insured debt to which the collection and legal costs relate.

### **13. INSPECTION OF DOCUMENTS**

- A.** We may inspect your documents, records, and take copies of any letters, e-mails, accounts or other documents in your possession or control whether stored physically, electronically or otherwise, which relate to or are connected with the Policy or any transaction between you and the Insured Buyer, at appropriate point of time and more so at the time of claim, for examination.
- B.** If we so request, you shall make available to us the extracts and copies or any information in your possession and must also take all reasonable steps to obtain for us any information or the sight of any documents in the possession or control of any third party relating to or connected with the Policy or any transaction between you and the Insured Buyer, in connection with claim or otherwise, without any charge to us.



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#### **14. GIVING NOTICE / NOTIFICATION**

- A.** Any written notice or notification which we may give to you under the Policy including any notice relating to Single Loss Limit, and / or the reduction or cancellation of cover and / or modification in country classification, other communications, etc. may be given –
- (i) by ordinary post or by recorded delivery through a reputed private courier service to your address as stated in the Schedule or to any other address of which we have been notified by you for this purpose; or
  - (ii) by facsimile or electronically.
- B.** Any notice sent by ordinary post or by courier service shall be deemed to be served on the third working day after posting or handing over to the courier or on your receipt, whichever is the earliest. For the purpose of this condition a working day means any day other than a Saturday or Sunday or a day that is a public holiday in the place to which the notice is addressed.
- C.** Any notice sent electronically, including by facsimile, shall be deemed to be served on viewing by you or on the first working day after transmission, whichever is the earlier.

#### **15. ASSIGNMENT OF YOUR RIGHTS UNDER THE POLICY**

- A.** You shall not assign the Policy including recovery rights or any benefits under the Policy except with our prior written consent and complying with any requirements we may make.
- B.** If you assign the Policy without first obtaining our consent then the Policy will be void from the date of such assignment.
- C.** If you assign any benefits under the Policy without first obtaining our consent then we shall not be bound by such assignment in respect of payment of any claim under the Policy.

#### **16. FRAUDULENT CLAIMS**

- A.** If you make any claim hereunder knowing the same to be false or fraudulent in any way or if any fraudulent or dishonest means or devices are used by you or any one acting on your behalf to obtain any benefit under this Policy, our liability hereunder shall cease and the Policy will be void. Also, you shall have no claim hereunder and all claims under the Policy will be forfeited.



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- B.** In addition, you will immediately have to repay all sums that we have previously paid under any Policy, on our demand. In such circumstances, we shall be entitled to retain all the payments made by you towards premiums or otherwise under the Policy.

## **17. OBSERVANCE OF CONDITIONS**

- A.** You agree and acknowledge that the due performance and observance of each term and condition contained herein or in the Proposal or Declaration including payment of due premium in advance (upfront and thereafter, as applicable) and other charges, shall be a condition precedent to any of our liability hereunder and to the enforcement thereof by you.
- B.** Any failure or negligence on your part to comply with any of the said terms and conditions may discharge us from our obligation to indemnify you and we shall have the right to repudiate all liability for payment under the Policy.

## **18. FAILURE TO COMPLY WITH CONDITIONS**

No failure by you to comply with the terms and conditions shall be deemed to have been waived, excused or accepted by us unless the same is expressly so waived, excused or accepted by us in writing at our sole discretion and such waiver, excuse or acceptance shall be subject to such terms and conditions as we may stipulate, including a reduction in the Insured percentage specified under this Policy, being the percentage of loss payable by us.

## **19. LAW AND JURISDICTION**

It is understood and agreed by the Parties that the construction, validity and performance of this Policy and any disputes between you and us concerning the interpretation of the terms, conditions, limitations, and/or exclusions contained herein, shall be in accordance with and governed in all respects by Indian Law. Each party agrees that no other courts (which expression shall include tribunals and other judicial forums constituted under any special statute) than those either at Mumbai or at the Place of Issue specified in the Schedule shall have jurisdiction over any matter arising out of, concerning or relating to this Policy.

## **20. WAIVER**

No action or inaction by the Insurer will be an affirmation of the Policy or a waiver of any provision and will not prevent the Insurer from relying on any such term or condition or condition precedent in the future.



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## **21. SEVERABILITY, CONSTRUCTION AND CONFORMANCE TO STATUTE**

- A.** If any provision contained in this Policy is, for any reason, held to be invalid, illegal, or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this Policy
- B.** If any provision contained in this Policy is, for any reason, held to be invalid, illegal, or unenforceable, it will be construed by limiting it so as to be valid, legal, and enforceable to the extent compatible with applicable law.

## **22. GRIEVANCE REDRESSAL**

In case you have any grievance or wish to represent a matter for redress/review including claim representations, you may approach the Insurer's Grievance Department set up under its Grievance Redressal Mechanism.

### **PART – III**

#### **(EXCLUSIONS, DECLINED RISKS AND LIMITATIONS)**

- 23. EXCLUSIONS:** We shall not be liable to you for any loss that you may suffer arising out of dispatch of goods in respect of the Gross Invoice Value of any shipment or part thereof, the proximate cause for which is a risk other than any of those specifically listed under the 'Risks insured' herein above. Without limiting the generality of the aforesaid, losses arising out of any of the following causes or transactions are specifically excluded from the purview of cover under this policy:-
  - A.** The Policy shall cover Invoices denominated in all permitted currencies, except INR.
  - B.** In respect of that category of all such shipments (viz., LC shipments, commodity, country, buyer, etc.) which are excluded from the purview of cover under the Policy in pursuance of your requirement as stated in the Proposal including those that are specifically agreed to be excluded by us additionally as per the Schedule, unless we have agreed otherwise in writing.
  - C.** Failure or breach to fulfill any of the terms and conditions by the agents with whom either you or the Insured Buyer has/have entered into a contract relating to the transaction, including an act of omissions or commission, default or insolvency, or failure to transfer the money on the part of such agents namely, collecting bank, carrier of the goods (marine, air, lorry, etc.), courier, any insurer of the goods, commission-agents, buying-agents, procuring-agents, an opening bank/confirming bank in a letter of credit transaction, etc.



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- D.** In cases where payment terms are Cash Against Documents (CAD), Documentary Sight draft or Documents against Payment (DP), you or anyone acting for or on your behalf has/have released or has/have caused the release of the documents and/or of the goods to the Insured Buyer on any other terms of payment other than on payment, for onward transmission to you of the full amount that was due thereon. Also, in cases where payment terms are Documents Against Acceptance (DA), you or anyone acting for or on your behalf has/have released or has/have caused the release of the documents and/or of the goods to the Insured Buyer without acceptance/payment, for onward transmission to you of the full amount that was due thereon.
- E.** If, in the case of Buyer Risks under Insured Risks, the failure or refusal on the part of the Insured Buyer is due to their claim that they are entitled to withhold payment of whole or any part of the Indebtedness for any reason whatsoever including but not limited to their disputes or allegations relating to quality, quantity, specifications, delivery schedule, shipment date etc., in respect of your present or past supplies to the Insured Buyer, or they raise a counterclaim or claims on you for any set-off, etc., and we are satisfied that a dispute exists between you and the Insured Buyer which has not been resolved by legal or other appropriate proceedings.
- F.** Arising out of any cause whatsoever that is inherent in the nature of the goods exported.
- G.** Failure or inability of the Insured Buyer, as at the date of dispatch of goods, to obtain any authority in force and necessary under the regulations of the Buyer's country or of the country into which the goods are to be delivered or countries through which the goods are routed, to import the goods and / or to pay for them, as contracted and invoiced. Also, failure or inability on your part or the agents to comply with local laws and regulations unless prevented from such compliance by a law, order, decree or regulation in force in that country.
- H.** Your failure to fulfill any of the terms and conditions of or relating to the contract of sale with the Insured Buyer or of your contract with the agent.
- I.** Arising due to bank charges including but not limited to any shortfall between the Insured Debt and the value of the local currency deposit at the date of that deposit or at the date of completion of transfer formalities, whichever is the later.
- J.** Where the Insured Buyer is one of your subsidiaries or associated companies or you have any direct or indirect interest in or connection with them, other than that between a seller and purchaser, unless we have agreed otherwise in writing.
- K.** If at the time of dispatch, the buyer or the Buyer's country is one which is excluded from the purview of cover in pursuance of any of the provisions



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contained in the Policy (such as being in BSAL or RCC etc), unless we have agreed otherwise in writing.

- L.** Arising out of your shipments to a buyer in a Restricted Cover Category (RCC) Country specified in the Schedule (as modified by us from time to time and notified to you), unless we have agreed otherwise in writing through a specific approval on your request (as Single Loss Limits are not available on buyers in RCC) and is further subject to compliance of payment of such additional fees and to such additional conditions, restrictions and/or qualifications as we may specify or stipulate in each such approvals.
- M.** Delay in or prevention of the transfer of any payment from any overseas country of sums due under any contract of insurance effected by you.
- N.** Non-receipt by you, for any reason whatsoever, of insurance monies due under an insurance effected by the Insured Buyer upon occurrence of the event insured against.
- O.** Failure on your part or the Insured Buyer to have proper or adequate insurance in force against a risk that should have normally been insured against, with the commercial insurers (other than credit risk insurers).
- P.** Prevention of or delay in the transfer of payment from the Insured Buyer's country until and unless the Insured Buyer has made an irrevocable deposit for transfer to you, of a sum in the currency of the Insured Buyer's country equal to the amount due for payment under the contract and have complied with all the relevant exchange control formalities, if any, for facilitating the transfer of the funds to you unless the Insured Buyer was prohibited from making such a transfer by operation of any law, order, decree or regulation having the force of law in the Insured Buyer's country.
- Q.** Which arises from a contract under which the relevant authority of the Insured Buyer to import the goods and/or remittance by them is made subject to (i) exports of any goods from any country or (ii) realization of payment for such goods when exported
- R.** In respect of a shipment, if the whole or any part of the Gross Invoice Value receivable by you has been assigned by you without full recourse to the Insured Buyer, save and except where our prior approval in writing has been obtained for such assignment.
- S.** Any losses arising due to occurrence of events such as hacking, masquerading, eavesdropping, phishing, cloning, etc. broadly known as Cyber Risks.





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- T. Any losses arising at the pre-shipment stage where dispatches are not made and it has no date of shipment.
  - U. Any losses arising due to frauds, acts of dishonesty, omission and commission and non-compliance on the part of your employees.
  - V. If it is invoiced to the Insured Buyer in a currency not permitted by the exchange control laws, rules and/or regulations for the time being in force in India.
  - W. If it involves granting of credit for a period longer than the period applicable for short terms exports from the date of shipment as per the extant regulatory guidelines.
  - X. Exports made in contravention to the extant law of land or not adhering to the extant regulatory or statutory applicable guidelines governing such trade.
- 24. DECLINED RISKS:** We shall not be liable to you for any loss that you may suffer arising out of dispatch of goods in respect of the Gross Invoice Value of any shipment or part thereof, the proximate cause for which is a risk other than any of those specifically listed under the 'Risks insured' herein above. Without limiting the generality of the aforesaid, losses arising out of any of the following causes or transactions are declined from the purview of cover under this policy, unless otherwise agreed by us specifically at our sole discretion:-
- A. If the dispatch is prior to commencement date of Policy or as at the time of dispatch, the Period of cover specified in the Schedule has expired (unless a fresh schedule is issued and attached to the Policy indicating that the shipment is made during the Period of cover specified in the fresh schedule) or the Policy is no more valid and is liable to be cancelled in pursuance of the provisions contained in the Policy.
  - B. If, at the time of your application for issue or renewal of a Policy (including any enhancement in Aggregate Loss Limit) or at the time of your receipt of our approval for the Policy thereof, any payment due to you from any Insured Buyers is remaining overdue and unpaid; such approval of issuance or renewal of Policy on such buyer shall be deemed void and ineffective ab initio.
  - C. If, at the time of your application for enhancement of Single Loss Limit on the Insured Buyer or at the time of your receipt of our approval for enhancement thereof, any payment due to you from that Insured Buyer is remaining overdue and unpaid; such enhancement shall be deemed void and ineffective ab initio.
  - D. If you have failed or neglected to submit to us in the prescribed format duly completed, within the stipulated time, the declaration of shipments pertaining to any one or more of the shipments that were required to be declared and/or to pay the full premium that was due thereon.



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- E.** If you have failed or neglected to submit to us in the prescribed format duly completed, within the stipulated time, the declarations of overdue payments to any one or more of the shipments that were required to be declared.
- F.** If you have failed or neglected to duly lodge a claim with us in the prescribed form duly completed in all respects and duly endorsed by the bank(s) that has/have handled the corresponding export documents within the stipulated time.
- G.** If you have failed or neglected to obtain our prior written approval by submitting the proposal in the prescribed format duly completed at the material point of time, in respect of loss minimization measures such as extension of due date, conversion of terms of payment, resale to alternate buyer, reimport of goods, compromise settlement, composition arrangement, auctioning, abandonment etc. and has failed or neglected to comply with the relevant and applicable regulatory requirements in respect of the transaction.
- H.** If further dispatch of goods is made to the Insured Buyer at a time when whole or any part of a debt owed to you by that buyer (for previous shipments or otherwise) is remaining overdue and unpaid and/or after the date of the occurrence of any of the Insured Risks, whichever is the earlier.
- I.** If the dispatch is made under an agreement / contract of sale which does not specify the nature, quantity and price of the goods sold or agreed to be sold or the due date of payment and the currency in which the payment is to be made.

## **25. LIMITATIONS:**

- A.** We shall not be liable for payment of any loss if at the time of dispatch, there was NIL Single Loss Limit on the buyer.
- B.** Each Single Loss Limit on an Insured Buyer under this Policy and preceding or future Policies / approvals issued by us for you is non-cumulative.
- C.** When more than one Single Loss Limit / Policy is issued/renewed for an Insured buyer to you, the applicable limit in effect for the Insured buyer will be the maximum among all the limits available (and not cumulative) and the respective limits in force as on the relevant shipment date(s) in claim in a chronological order are also to be taken, for arriving at the Insured loss.
- D.** No more than one Single Loss Limit / Policy shall be in effect for any one buyer regardless of the number of years this limit/policy or any prior, replacement or renewal Policy is in force.
- E.** The following sums are not insured under the Policy and it is warranted that those sums are not insured under any other policy and remain at your own risk –



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- (i) so much of any Insured Loss as exceeds the Insured Percentage; and
- (ii) so much of any Insured Loss occasioned by any Insured Risks, as exceeds the specified Single Loss Limit for the Insured Buyer under the Policy but not exceeding the Aggregate Loss Limit even on a cumulative basis at any time during the Policy period.

## **PART – IV**

### **(DEFINITIONS)**

In this policy, unless repugnant to the context or meaning, the following words or group of words, as the case may be, shall have the meaning assigned to them herein.

#### **26. EXPORTER**

The Proposer mentioned in the Proposal Form is the Exporter who is also the Insured named in the Schedule and shown as the Exporter in the extant export documents prescribed by the regulatory authorities.

#### **27. CONTRACT OF SALE**

Contract of sale means the contract (including a purchase order) between the Insured and Insured Buyer which is written and legally valid against which exports shall take place and includes a negotiable debt instrument (such as promissory notes, draft or Bills of Exchange) including an Invoice evidencing transaction against the said contract / purchase order and the Buyer acknowledging its obligation to the Insured against shipping documents evidencing exports of goods under such transaction.

#### **28. INSURED BUYER**

An Insured Buyer is any buyer or a legal entity including a natural person that is liable to the Insured for payment of the Insured Debt in respect of shipments that are dispatched by the Insured in pursuance of a contract of sale, being not a buyer or such buyer in a country, excluded from the purview of cover under any provisions of the Policy.

#### **29. INSURED PERCENTAGE**

Insured Percentage means the share of ECGC, in the Insured Loss suffered by the Insured and agreed to be indemnified by ECGC in pursuance of the provisions of the Policy and as specified in the schedule to the Policy.

#### **30. INDEBTEDNESS**

Indebtedness, in respect of the Insured Buyer shall mean any and all the amounts owed by the Insured Buyer to the Insured whether payable now or at a future date.



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### **31. INSURED DEBT**

An Insured Debt is so much of any Indebtedness that shall never exceed the relevant Gross Invoice Value and:

- (i) is owed to the Insured and acknowledged by the Insured Buyer ; and
- (ii) is in respect of the invoice value of goods sold by the Insured and dispatched to the Insured Buyer within the period of cover specified in the Schedule plus any contractual interest payable up to the original due date for payment and included in the invoice; and
- (iii) is in accordance with a legally valid contract of sale; and
- (iv) neither shall include any interest payable nor shall include any consequential losses relating to refund of Goods & Service Tax (GST), duty drawback, etc.

### **32. INSURED LOSS**

An Insured Loss at the date at which the loss is ascertained, is so much of any Insured Debt by reason of its non-realization, as shall not be in dispute, less whole or part-payment, credit, set-off or adjustment which the buyer is entitled to take into account, whole or part amount and/or credit in possession of the Insured which the Insured is entitled to appropriate, any interim payments, any expenses saved (on unpaid Commission, etc.) by the non-fulfillment of the contract for the sale of those goods, realization of any security and recoveries from any source. Further:-

- (i) In the event of Insolvency, the Insured Loss shall be confirmed by the relevant authority (such as the Court, Liquidator, Receiver or Administrator) as being owed to the Insured by the Insured Buyer, as at the date of Insolvency;
- (ii) In the event of Protracted Default, the Insured Loss shall be so much of any Insured Debt in respect of goods delivered to and accepted by the Insured Buyer as being owed to the Insured by the Insured Buyer, as at the due date of payment; provided always that in the event of any unresolved dispute, the amount for which a final decree from the competent court of law is obtained by the Insured against the Insured buyer, whichever is lesser;
- (iii) In the event of Contract Repudiation -
  - (a) the Insured Loss shall be so much of the loss suffered or direct expenses reasonably incurred by the Insured for its export and to bring it back such as freight, insurance, demurrage, handling,



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warehousing, custom duties etc., but shall not include any consequential or indirect losses and further not exceeding the amount of Insured Debt in the aggregate provided however that the Insured have obtained prior approval of ECGC in writing for bringing back the undelivered goods to the Insured's country; or

- (b) the Insured Loss shall be so much of the loss suffered after adjusting the resale proceeds (net of discounts allowed to the alternate buyer and other direct expenses reasonably incurred, if any) with the Insured Debt or direct expenses reasonably incurred by the Insured for arranging for its resale to alternate buyer, such as freight, insurance, demurrage, handling, warehousing etc., but not exceeding the amount of Insured Debt in the aggregate provided however that the Insured have obtained prior approval of ECGC in writing for the resale of the undelivered goods.

PROVIDED ALWAYS THAT, in the event of any unresolved dispute in case of Contract Repudiation, the amount for which a final decree from the competent court of law is obtained by the Insured against the Insured buyer, whichever is lesser;

- (iv) In the event of Inconvertibility, the Insured Loss shall be so much of any Insured Debt –
  - (a) as shall equal the value of the local currency deposit made by the Insured Buyer for your account as at the date of deposit or as at the date of completion of the necessary transfer formalities, whichever is the later; or
  - (b) for which approval of the foreign exchange allocation has been refused by the Central Bank of the Insured Buyer's country and which remains unpaid at the end of the relevant Waiting Period.
- (v) In the event of Shipment Diversion, the Insured Loss shall be so much of the extra costs and expenses incurred by the Insured towards additional handling, transportation or insurance charges occasioned by Shipment Diversion and found to be impracticable to recover from the Insured Buyer, less any allowance, rebate or refund to which the Insured is entitled by reason of the Shipment Diversion.
- (vi) In the event of any other Insured Risk, the Insured Loss shall be so much of any Insured Debt as is remaining unpaid or outstanding at the end of the relevant Waiting Period by reason of the occurrence of an Insured Risk.

### **33. INSURED RISKS**

Insured Risk means any of the Risks defined herein below and Insured under the Policy-

#### **(i) PROTRACTED DEFAULT**

There is Protracted Default when the Insured Buyer having accepted delivery of goods under a valid contract of sale, has failed to pay to the Insured, whole or any part of an Insured Debt, and it remains overdue and unpaid for a considerable long time. Under this Policy, the said time is considered as four months after the due date of payment.

#### **(ii) INSOLVENCY**

There is Insolvency when:

- (a) The Insured Buyer has been declared Bankrupt; or
- (b) The Insured Buyer has commenced or becomes the subject of any proceedings or case for being declared bankrupt or insolvent which is uncontested under local bankruptcy or insolvency legislation, or a Court appoints a Receiver, Liquidator, Trustee, or other similar official under local bankruptcy or insolvency legislation to manage the estate of Insured Buyer; or
- (c) a valid assignment or composition by the Insured Buyer has been approved by the Court having jurisdiction or a compromise or arrangement has been made binding by the Court on the Insured Buyer and all the creditors of Insured Buyer generally; or
- (d) an order has been made in case of incorporated body for compulsory winding up or an effective resolution has been made for voluntary winding up provided that such resolution is not merely for the purpose of reconstruction or amalgamation; or
- (e) any circumstances exists or have come into existence which in the opinion of ECGC are equivalent to any of the aforesaid conditions.

#### **(iii) CONTRACT REPUDIATION**

Contract Repudiation means the wrongful failure or refusal on the part of the Insured buyer (or the named Consignee in terms of the contract of sale) to accept delivery of a shipment after it has been dispatched by the Insured from India in accordance with a legally valid contract of sale provided however that the goods remain the property of the Insured. Further, any such failure or refusal is not excused by and does not arise from



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or in connection with any breach of contract or warranty on the part of Insured or from any other cause within its control provided that the Insured shall, if so required by ECGC, establish to the satisfaction of ECGC through such means or documents as ECGC may require including appropriate legal proceedings against the Insured buyer, if necessary, that the said failure or refusal on the part of Insured buyer was wrongful.

**(iv) INCONVERTIBILITY-- Transfer Delay**

There is Inconvertibility (also known as Transfer Delay) when events occur in the Insured Buyer's country or legislative or administrative measures are taken in that country (such as, operation of a law or of an order, decree or regulation having the force of law) which in circumstances outside the control of the Insured and / or the Insured Buyer, prevent, restrict or delay the transfer of payment of the Insured Debt (or part of it) to the Insured, by the country of the Insured Buyer.

Further, Inconvertibility shall be deemed to occur either -

- (a) at the date when the local currency deposit is made and the necessary transfer formalities are completed by the Insured Buyer ; or
- (b) at the date on which any application made for currency is refused.

**(v) CONTRACT FRUSTRATION**

Contract Frustration means the direct prevention of the payment of the Insured Debt as a result of the occurrence of war, hostilities, civil war, insurrection, rebellion, revolution and / or other disturbances within the Insured Buyer's country or as a result of the occurrence of war between India and the Buyer's country.

**(vi) CONTRACT CANCELLATION**

Contract Cancellation means the cancellation of a legally valid contract of sale between the Insured and the Insured Buyer including cancellation, of a previously issued and currently valid authority/license of the Insured Buyer to Import the goods, by the Government of the Insured Buyer's country after dispatch of the goods by the Insured, which in circumstances outside the control of the Insured and / or the Insured Buyer and such cancellation directly prevents payment of the Insured Debt.

**(vii) IMPORT RESTRICTION**

Import Restriction means the implementation of any law or order, decree or regulation having the force of law, by the Government of the Insured Buyer's country, after dispatch of the goods by the Insured, which in circumstances outside the control of the Insured and / or the Insured Buyer, prohibits the import of goods into the Insured Buyer's country and which directly prevents payment of the Insured Debt.





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#### (viii) **SHIPMENT DIVERSION**

Shipment Diversion means the occurrence of interruption or diversion of voyage outside India that result in incurring of extra costs and expenses by the Insured towards additional handling, transportation or insurance in respect of goods dispatched by the Insured to the Insured Buyer. The Insured Buyer will be deemed to have been prevented / excused from paying the Insured such additional costs and expenses if it is impracticable for the Insured to recover it from the buyer.

#### **34. AGGREGATE LOSS LIMIT**

The Aggregate Loss Limit of ECGC for payment of claims under the Policy for losses suffered by the Insured in respect of any part of the Insured Loss remaining unpaid or unrealized owing to the occurrence of any of the Insured Risks during the Policy Period shall not under any circumstances exceed the amount specified in the Schedule as the Aggregate Loss Limit. The Aggregate Loss Limit is the aggregate maximum amount of claims (even on a cumulative basis) arising from the Insured Loss on all shipments made to all the Insured Buyers during the Period of cover under the Policy including any modifications as may be agreed to from time to time between the Insured and ECGC.

#### **35. SINGLE LOSS LIMIT**

Single Loss Limit means the maximum limit beyond which no claim shall be payable by ECGC under this Policy in respect of Insured Loss on shipments made to an Insured buyer owing to the occurrence of any of the Insured Risks during the Policy Period. The Single Loss Limit applicable to this Policy is specified in the Schedule and shall be such an amount which is approved and communicated to you by us in writing in respect of an Insured Buyer, on your request through a separate Limit application. The limit so approved shall cease to be in force on its cancellation/termination or the date of expiry/cancellation/termination of the Policy, whichever is earlier.

#### **36. GROSS INVOICE VALUE**

Gross Invoice Value is the invoice value of goods sold, in pursuance of a valid contract of sale, by the Insured including any insurance, freight or other charges paid or to be paid by the Insured on behalf of the buyer and dispatched to the Insured Buyer at any time during the period of cover specified in the Schedule but excluding the invoice value of goods for which the payment is received from the buyer on or before the dispatch of goods.

#### **37. DEEMED EXPORTS**

Deemed Exports refers to those transactions in which the goods supplied do not leave the country (India) and the payment for such supplies is received either in Indian rupees or in free foreign currency but shall exclude any transaction with SEZ as such transactions are considered as Exports. (**Note:** If the invoice is raised in free foreign



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currency, an endorsement duly approved by ECGC on the basis of a specific request of the Insured for covering such exports, is required).

### **38. MERCHANTING EXPORTS**

Merchanting Exports, unless repugnant to the context, shall have the same meaning assigned to that term by the Reserve Bank of India in the context of international trade transactions by Indian exporters where the goods or merchandise are sourced from abroad and exported directly to the buyer without those goods crossing the Indian custom boundaries.

### **39. EXPORT UNDER CONSIGNMENT SALES**

When the goods have been exported on Consignment basis i.e., those shipments that are despatched by the exporter to the overseas stock holding agent or overseas unit of the exporter in pursuance of an agency agreement or arrangement or otherwise including warehousing and may also include any part of the aforesaid goods despatched to ultimate buyers in further sale. (**Note:** Such transactions are not covered under this policy, however there is a separate policy to cover such transactions which you may consider to opt, if required).

### **40. ASSOCIATE / SUBSIDIARY / SISTER CONCERN**

If the Insured is associated/related with a business entity (in India or overseas) in the capacity as managerial, financial or controlled by members of same family or close relatives and/or vice-versa, shall constitute an associate/subsidiary/sister concern relationship among them.

### **41. DISPATCH OR DISPATCHED**

Dispatch or Dispatched means passing or handing over of the goods to the first carrier for through carriage to the place where the Insured Buyer or their nominee is to accept them, dispatched will be construed accordingly.

### **42. DATE OF SHIPMENT**

The date of shipment in respect of exports will be reckoned in accordance with the extant guidelines issued by Director General of Foreign Trade (DGFT).

### **43. EXPORT/SHIPMENT**

The term Export/Shipment would mean the dispatch of goods from India (shall include Union of India) by the Insured to the Insured Buyer or to their nominee in pursuance of a contract of sale, by land, sea, air or by any other means or a combination of any or all of the above and shall include those dispatches that are dispatched during the Period of Cover.



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#### **44. BUYER'S COUNTRY**

Buyer's Country means the country of the Insured Buyer in which they are resident, but where the delivery of the shipment is due in another country, would also include such other country provided however that payments are received unconditionally from the Insured buyer and being not a country, excluded from the purview of cover under any provisions of the Policy.

#### **45. DUE DATE OF PAYMENT AND OVERDUE**

Due date of Payment shall mean the date on which the Insured Debt is due for payment by the Insured Buyer to the Insured and shall also include any extension of the original due date of payment duly agreed in writing between the Insured and the Insured Buyer with ECGC's prior written approval. In the event of any extension being agreed which allows for payment in installments, the due date shall be the due date of the first installment not duly paid. A payment not received on or before the aforesaid due date, shall be deemed to be Overdue.

#### **46. POLICY PERIOD/ PERIOD OF COVER**

Policy Period/ Period of Cover means the period of validity of this Policy specified in the Schedule.

#### **47. POLICY**

Policy means the Proposal Form including any modifications/ additions to it, the Cover-Letter and the Bond, issued to the Insured whose name and address is specified in the Schedule and, unless repugnant to the context or meaning will include the Schedule, Endorsement, Addendum, Supplement, Corrigendum etc., if any, attached to it.

#### **48. SCHEDULE**

Schedule means the schedule attached to and forming part of the Policy.

For ECGC Limited

Signature:

Designation:

Office of Issue and Seal: