

फार्म सं.: PCGB 1105
FORM NO. : PCGB 1105

PACKING CREDIT GUARANTEE (Branch)

भारतीय निर्यात ऋण
गारंटी निगम लि.

(भारत सरकार का उद्यम)

EXPORT CREDIT GUARANTEE
CORPORATION OF INDIA LTD.

(A Government of India Enterprise)

पंजीकृत कार्यालय : एक्सप्रेस टॉवर्स, 10 वी मंजिल,
नरीमन पॉइंट, मुंबई - 400 021.

Registered Office : Express Towers, 10th Floor,
Nariman Point, Mumbai - 400 021. India.



Credit insurance cover by the name "Packing Credit Guarantee (Branch)" issued by Export Credit Guarantee Corporation of India Limited (hereinafter called 'the Corporation') to the Insured, the name and other particulars of which are furnished in the Schedule on the date and at the place specified in the Schedule:

Notes for Interpretation

- Headings are used for ease of reference only and are to be disregarded in construing the document;
- In construing a term shown in **bold italics**, the definitions given to that term at the end of the document only would be relevant and applicable for the purpose of interpretation of this **Guarantee**;
- In this **Guarantee** the singular includes the plural, masculine includes the feminine, animate includes the inanimate and vice versa.

WHEREAS the Insured has made a Proposal in writing on the date specified in the Schedule (hereinafter referred to as 'the Proposal') requesting the Corporation to insure it against a percentage of the **amount of loss** which the Insured may suffer due to non-repayment of the whole or any part of the pre-shipment or export packing credit advances granted by the Insured to its borrowers, the cause of such non-repayment being none other than **protracted default** by and/or the **insolvency** of such borrowers;

AND WHEREAS the Insured has offered for cover under this **Guarantee** the whole of its pre-shipment or export packing credit advances to be granted to **exporters** by the Branch Office specified in the Schedule of the Insured save and except advances granted in those accounts that are individually listed out in the list attached to the Proposal,

NOW, THEREFORE, in consideration of the Processing Fee specified in the Schedule paid by the Insured and the promise to pay premiums payable under this **Guarantee** and at the rates specified in the Schedule, the Corporation hereby insures the Insured subject to all the terms including the provisos, conditions, exclusions, exemptions and definitions of this **Guarantee**, against such percentage of the **amount of loss** ascertained as is specified in the Schedule as the 'Insured Percentage of Loss'.

PART I - PROVISO

The Corporation shall have no liability whatsoever:

- (a) In respect of such part of the **insured debt** as is constituted by advances granted for any period exceeding 360 days or have been outstanding in the books of the Insured for any period exceeding 360 days, unless otherwise previously agreed to specifically in writing by the Corporation;
- (b) In respect of any **insured debt** granted to an **exporter** where the name of the **exporter** or any of its directors/ partners/ guarantors are appearing in the **Specific Approval List** and the advances in question were granted after the name was so included unless the Insured has obtained written approval of the Corporation prior to granting of such advances;

- (c) In respect of an **insured debt** as to which the Insured, without the prior approval in writing of the Corporation, has accepted a composition arrangement with the **exporter**;
- (d) If the Insured has assigned any of its rights under the **Guarantee** without first obtaining the Corporation's approval in writing;
- (e) In respect of an **insured debt** for which a claim has not been made to the Corporation in writing in the prescribed form within six months from the date of filing the Report of Default in pursuance of clause 11(b) of Part II of this **Guarantee** unless the Insured has before the expiry of the said six months, sought extension of the time for filing claim and the Corporation has at its sole discretion granted extension in writing;

- (f) In respect of such part of the **insured debt** as is in excess of the limits admissible under the provisions of clause 7 below;
- (g) Until and unless the Insured has recalled the whole of the debts, including the **insured debt**, due and outstanding from the **exporter** to the Insured under any of the facilities granted by the Insured, by issue of appropriate recall letters and/ or legal notices in accordance with the procedure laid down by the Insured for recall of loans and advances from its constituents save and except where the Insured has been prevented from doing so by any statute or regulation, rule or order having the force of law;
- (h) For any loss suffered by the Insured owing to non-recovery of any interest on the amounts advanced to the **exporter** notwithstanding whether or not the Corporation had accepted any premium on such amounts;
- (i) In respect of so much of the **amount of loss** as exceeds the 'Insured Percentage of Loss' specified in the Schedule.

PART II - TERMS AND CONDITIONS

Due care and Prudence

1. It shall be the duty of the Insured to exercise due and reasonable care and prudence in granting credit to and withholding credits from an **exporter** and the Insured shall continue to exercise such care and prudence at all times during the entire **period of cover**.

Deemed Repayment of Credits Granted

2. Finance granted by the Insured to an **exporter** under its export packing credit facility shall upon delivery of the relevant documents evidencing shipment of goods to the buyer be deemed to be due repayment and adjustment of the amounts outstanding in the corresponding export packing credit account with the Insured to the extent of the value of the exports made.

Retention of Risks by the Insured

3. The Insured shall retain to its own account and uninsured so much of its **insured debt** as exceeds the 'Insured Percentage of Loss' specified in the Schedule.

Insured's Proposal the basis of the Contract of Insurance

4. It is expressly agreed and understood by the Insured and the Corporation that the Proposal made by the Insured is the basis and essence of this contract of insurance contained in the **Guarantee** and by accepting this **Guarantee** the Insured hereby warrants that the statements and disclosure made in the Proposal were true as at the date of the Proposal and continues to remain true as on the Date of Issue of this **Guarantee**. The Insured further agrees, accepts and acknowledges the obligation imposed on the Insured by law to disclose to the Corporation all material circumstances and to observe utmost good faith at all times.

Insured's Duty to make full disclosure of all facts

5. The Insured shall disclose all facts and circumstances directly or indirectly affecting or are likely to affect the assessment of risk by or the liability of the Corporation under this **Guarantee**, immediately on its becoming aware thereof. If any of the statements contained in the Proposal be untrue or incorrect in any respect, this **Guarantee** shall be void and the Insured shall forfeit all its rights under the **Guarantee** including any right for refund of any premium paid.

False or Fraudulent Claims

6. If the Insured makes any claim knowing it to be false or fraudulent in any way or connives at, assists, encourages or abets the **exporter** in creating or bringing about into existence any circumstance leading to a claim under this **Guarantee**, the **Guarantee** shall become void and the Insured shall forfeit all its rights and claims under it. Further, any sum previously paid by the Corporation under this **Guarantee** shall forthwith become refundable by the Insured to the Corporation and the Corporation shall be entitled to retain all payments made to it by way of premium or otherwise.

Limitation of Liability

7. The **amount of loss** admissible under this **Guarantee** for payment of claim in respect of any **insured debt** due and outstanding from an **exporter** shall not exceed the limits specified below, namely –

The limit duly sanctioned by a competent authority of the Insured under its export packing credit facility in accordance with the Insured's extant rules, instructions and guidelines governing sanctioning of such limits AND specified by the Corporation in the Schedule as limit for the **exporter/ account**.

Maximum Liability

8. Notwithstanding anything stated elsewhere in this **Guarantee** and/or its Schedules, the maximum aggregate liability of the Corporation under this **Guarantee** shall not exceed the amount specified in the Schedule as the 'Maximum Liability' but subject to any enhancement or reduction made thereto by an endorsement made to this **Guarantee**.

Period of Cover

9. This **Guarantee** shall apply to the whole of the **insured debts** of the Insured consisting of packing credit advances disbursed during the **period of cover**, the period between the 'Date of Commencement' and the 'Date of Expiry' specified in the Schedule (both dates inclusive) and such of the outstanding balances as on the 'Date of Commencement' in all the accounts listed out in the 'Schedule of Accounts Covered' appended to the Schedule provided. However, advances granted more than 180 days prior to the said 'Date of Commencement' and remaining unadjusted shall, unless otherwise agreed to in

writing by the Corporation on a specific request from the Insured in this regard, stand excluded from cover.

Declarations and Payment of Premium

10. The Insured agrees and acknowledges that strict compliance with the requirements of this clause pertaining to timely delivery of the monthly 'Statement of Insured Debts' and payment of the whole of the premium, due regularly and without any delay are conditions precedent to any liability of the Corporation under this **Guarantee**, time being of essence. After commencement of this **Guarantee**, the Insured shall on or before the fifteenth day of every calendar month, --

- (a) Deliver to the Corporation in the form prescribed by the Corporation, a 'Statement of insured Debts' giving information of advances granted to **exporters** and payments received from them during the preceding calendar month in each of the accounts listed out in the 'Schedule of Accounts Covered.' In all such monthly statements, the Insured shall also state the total amounts outstanding in the aforesaid export packing credit accounts as on the reporting date;
- (b) Pay monthly premium at the rates specified in the Schedule on the highest amount outstanding on any day during the month in each of the aforesaid accounts, by not later than the fifteenth day of the month succeeding that month;
- (c) The Insured shall, subject to sub-clause (d) below, continue to deliver to the Corporation the monthly 'Statements of Insured Debts' referred to sub-clause (a) above and pay premium on all such outstanding balances as provided under sub-clause (b) above until the entire outstanding is repaid in full;
- (d) After a 'Report of Default' has been filed in respect of an account in pursuance of clause 11(b) no more premium shall be payable in respect of the balances outstanding in those accounts for the months following the month in which such 'Report of Default' was filed. However, premium is payable for the whole of the month in which such 'Report of Default' was filed.

Consultation and Filing of Report of Default

11. The Insured shall, --
(a) In the event of it receiving information from any source whatsoever of an **exporter** from whom any **insured debt** is outstanding being in financial difficulties, immediately notify the Corporation. The Insured shall also take all such steps as may be necessary or

expedient for minimizing loss or for recovery of the debt from the **exporter** or from any other source from where it can be recovered by way of enforcement of any security or invocation of personal guarantees or otherwise in connection with any loss which the Insured may have incurred or may incur, including if so required by the Corporation in writing in this regard, institution of legal proceedings in a competent court of law and such other steps as the Corporation may require of the Insured in this regard;

- (b) In the event the whole or any part of an **insured debt** remaining unpaid after having become due for payment or upon receiving of information of **insolvency** of the **exporter**, submit a 'Report of Default' to the Corporation in the prescribed form by not later than the earlier of following two periods, namely--
 - 30 (thirty) days from the date of recalling the amount due from the concerned **exporter**; or
 - Within 30 days from the date of receiving information of insolvency; or
 - Four months from the **due date**, including any extension granted, for repayment of the earliest of the outstanding credits.

Percentage of Loss Payable

12. The percentage of loss payable by the Corporation in respect of any loss suffered by the Insured in respect of an **insured debt** shall be such percentage of the **amount of loss** as is specified in the Schedule as the 'Insured Percentage of Loss'.

Lodgement of Claim and Ascertainment of the amount of loss

13. The Corporation shall pay to the Insured the amount of claim payable under this contract of insurance immediately upon the **amount of loss** has been ascertained and admitted by the Corporation. The Corporation shall ascertain the **amount of loss** forthwith upon the receipt of a claim in prescribed Claim Form, provided however that the Corporation shall not proceed with the ascertainment of the **amount of loss** unless --

- (a) The Claim Form submitted by the Insured is complete in all respects and the Insured has furnished to the Corporation all such information and documents that are essential in the opinion of the Corporation for the purpose of verifying the cause of loss, veracity and authenticity of information furnished in the Claim Form, sanctioning of the limits by the Insured and conduct of the **insured debt** account, disclosures made by the Insured in the Proposal form

or otherwise and such other factors;
AND

- (b) The Insured has established to the satisfaction of the Corporation the occurrence of either **protracted default** or **insolvency** as defined in this **Guarantee**; AND
- (c) Where the cause of loss is **insolvency** of the **exporter**, unless otherwise agreed to in writing by the Corporation, either a period of four months after the **due date** of payment or one month after the occurrence of **insolvency** has expired and the Insured has delivered to the Corporation a declaration in writing to the effect that the Insured has done or omitted nothing whereby its claim is liable to be rejected by the court in the insolvency proceedings or by the liquidator in the winding up proceedings and, if so required by the Corporation, such other documents in support as are necessary in the opinion of the Corporation to establish the occurrence of **insolvency** of the **exporter**, that the **insured debt** is due for recovery from the **exporter** and that the Insured's right of recourse against the **exporter's** estate remains valid and enforceable;
- (d) Where the cause of loss is **protracted default**, a period of four months has expired after the **due date** for repayment of the aggregate of the credits granted and the Insured has submitted a Report of Default to the Corporation in pursuance of the requirements under clause 11(b) herein above provided however that where the **exporter** disputes his indebtedness to the Insured by reason of any payment, credit, set off or counter-claim or for any other reason alleges that he is excused from performing his obligations under the contract with the Insured the Corporation may not proceed with ascertainment of the **amount of loss** until the Insured has established to the satisfaction of the Corporation the validity of its claim in such manner as the Corporation may approve including, if so required by the Corporation by institution of legal proceedings in appropriate forum and obtaining a final judgment enforceable against the **exporter**.

Corporation in the same proportion as the losses are shared between them. For the purpose of determining the proportion in which such recoveries in respect of an **insured debt** are to be shared between the Insured and the Corporation, the ratio of the claim paid to the Insured's loss in respect of the **insured debt** shall be computed in relation to the total amount outstanding in the **insured debt** account as on the earliest of the following dates, namely, recall of advance or 'Report of Default' or the account becoming a 'Non Performing Asset';

- (a) Upon payment by the Corporation of the amount of claim due on the **amount of loss** ascertained under this **Guarantee** to the Insured, the Insured shall take all steps that may be necessary or the Corporation may at any time advise to effect **recovery** of the **insured debt** whether from the **exporter** or any other person from whom such **recoveries** may be made including, if so required, by institution of legal or other proceedings in a competent court of law or other appropriate forum and shall carry such proceedings to final execution;
- (b) Upon **recovery** by the Insured or by the Corporation the whole or any part of the **insured debt** in respect of which a claim has been paid by the Corporation to the Insured, subject to clause 15 herein below, the amount **recovered**, shall be shared between the Insured and the Corporation in the same proportion as the **amount of loss** on the said **insured debt** was borne by the Insured and the Corporation;
- (c) The Insured shall forthwith pay to the Corporation all sums that constitute the share of the Corporation in the said **recoveries**; the Insured hereby acknowledges and declares that until such payments are made to the Corporation; the Insured receives and holds such sums in trust for the Corporation. Any delay on the part of the Insured in remitting to the Corporation its share in the **recoveries** will entitle the Corporation to claim interest thereon at prevailing bank rate for the period from the date of **recovery** to the date of actual remittance to the Corporation;
- (d) Any amount paid by the Corporation to the Insured under this **Guarantee** in respect of an **insured debt** shall become due and refundable by the Insured to the Corporation together with interest thereon at the prevailing bank rate if in the opinion of the Corporation, the Insured failed or neglected to take all necessary measures or actions as required in pursuance of sub-clause (a) above or to effectively carry on any such measures or

Recovery Steps and Sharing of Recoveries

14. Any amount **recovered** in respect of an **insured debt** whether from the **exporter** or any other person from whom such **recoveries** may be made either by or on behalf of the **exporter** shall be shared between the Insured and the

actions taken to its logical conclusion to recover the *insured debt*.

Recovery Expenses

15. Any expense reasonably incurred by the Insured with the consent of the Corporation or by the Corporation for the purpose of effecting recoveries from the *exporter* or from any other source in respect of an *insured debt* for which a claim has been paid by the Corporation, shall be a prior charge on any amount *recovered* by either of the parties.

Disclosure

16. The Corporation may at any time examine or take extract from or copies of any letters, accounts or other documents in the possession or control of the Insured relating to or connected with the *insured debt* and the Insured shall at the request of the Corporation furnish the Corporation with any information or copy of any document in its possession, control or power or take at its own cost any reasonable step to obtain for the Corporation any such information or copy of any documents in the possession of any third party relating to or connected with the *insured debt*. It shall be the duty of the Insured to secure any authority or permission that it may require to part with any such information or document referred to herein above whether available with it or with any third party. Any neglect or failure on the part of the Insured in complying with the requirements under this clause shall absolve the Corporation of its obligation to proceed with ascertainment of the *amount of loss* under clause 13 of this *Guarantee*.

Cancellation and Reduction

17. The Corporation may at any time at its sole discretion –

- (a) Issue notifications from time to time notifying the names of exporters' firms/ persons connected with such exporters as associates/ partners/ directors/ guarantors as having been included in the *Specific Approval List*. Any advance granted to any of those exporters, firms or persons or to any other in which any of the aforesaid are connected in any of the abovementioned capacity after the date of notification shall be excluded from the purview of the cover under this *Guarantee* unless the Corporation's prior written approval has been obtained;
- (b) Notify the Insured in writing specifying a reduced percentage of cover and/ or reduced level for limits on which cover is available to the Insured under this *Guarantee* in respect of any particular *exporter* and/ or the exclusion of any

particular *exporter* entirely from the purview of this *Guarantee*. Any such reduction in the percentage of cover/ reduced level for limits/ exclusion of *exporter* shall apply prospectively to all credits granted by the Insured from the date of receipt of such notice by the Insured.

PART III - DEFINITIONS

(1) "*Amount of Loss*" means so much of the outstanding balance in the *insured debt* account pertaining to an exporter as shall be within the admissible limits in pursuance of provisions of clause 7 and arrived at after taking into account the following adjustments, that is, deducting there from –

- the whole of the amount of any relevant recoveries, realizations or repayments upto the date of ascertainment of loss pursuant to clause 13;
- any amount pertaining to interest accrued on the advances granted to the exporter;
- any credits received by the Insured that should have been credited to the packing credit account but was not credited;
- any amount pertaining to a claim for set-off or counter-claim raised by the exporter against the Insured that was verified and found by the Corporation to be prima facie valid and maintainable;
- value of export bill tendered by the exporter to the Insured that was not credited to the export packing credit account; and
- any other amount that, in the opinion of the Corporation, was an inappropriate or irregular debit into the export packing credit account of the exporter in the light of the relevant regulatory guidelines and/ or accepted banking practices.

(2) "*Due Date*" in respect of an insured debt means the date fixed by the Insured for the repayment of that insured debt by the exporter including the extension granted for such repayment, or where a credit has been granted as repayable on demand, the date on which the Insured made a written demand on the exporter for repayment of the insured debt.

(3) "*Exporter*" means a client of the Insured (not being a subsidiary or an associate of the Insured) who is availing export packing credit facility from the Insured whether or not listed out in the 'Schedule of Accounts Covered' and whether or not such a borrower is actually exporting goods or services from India.

(4) "*Guarantee*" in the context of this document shall mean a contract of credit insurance issued by the Corporation to the Insured which extends short term credit facility to exporters for financing their exports to insure the Insured's risk of loss in extending such credit facility to the exporters.

(5) **"Insolvency"** in the context of an exporter occurs when -

- The exporter becomes the subject of any proceedings or case under relevant bankruptcy or insolvency legislation or the exporter commences such proceedings which is uncontested or the exporter, being a incorporated company, passes a valid resolution for voluntary winding up; or
- A court appoints a receiver/ liquidator/ trustee or other similar official under the relevant bankruptcy or insolvency legislation; or
- A composition by the exporter is approved by the court having jurisdiction or a compromise or arrangement is made binding by the court on the exporter and all the creditors of the exporter; or
- Such circumstances exist as are in the opinion of the Corporation, equivalent to any of the above.

(6) **"Insured Debt"** means the whole of the amounts in the export packing credit accounts of the Insured pertaining to all of the exporters listed out in the 'Schedule of Accounts Covered'.

(7) **"Period of Cover"** means the period of validity of this Guarantee being the period between the dates of commencement and expiry (both dates inclusive) shown in the Schedule.

(8) **"Protracted Default"** means neglect or failure of an exporter to repay any outstanding insured debt due to the Insured by the due date for its repayment but non-payment by an exporter the whole or any part of the outstanding insured debt owing to a genuine dispute with regard to his liability to the Insured may not amount to protracted default.

(9) **"Recovery"** includes any amount of money that may be realized (including dividends received out of an insolvent's estate) from securities, indemnities, guarantees, rights of action, counterclaims or set off or other rights or advantages held by the Insured or otherwise available to the Insured to apply to or to reduce the amount of any indebtedness of an exporter in respect of the insured debt. The terms "recover", "recovered", etc., would be construed accordingly.

(10) **"Schedule of Accounts Covered"** means the exclusive list of exporters appended to the Schedule listing out those exporters whose export packing credit accounts with Insured are subject matter of cover under this Guarantee.

(11) **"Specific Approval List"** means the list containing a compilation of the names of exporters, directors, partners, guarantors which/ who are all notified from time to time by the Corporation in pursuance of clause 17 (a) and includes such names that are notified but remaining to be added to the list.

For EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD.

Place: _____ Date: _____