

Specific Shipments (Comprehensive Risks) Policy

EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD.

(A GOVT. OF INDIA ENTERPRISE)

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Gram : INDERIC



Policy No. _____

Policy made the _____ day of _____
between M/s. _____

who carries on business at _____

(hereinafter called 'the Exporter') of the one part and the Export Credit & Guarantee Corporation of India Ltd., (hereinafter called 'the Corporation') of the other part.

WHEREAS the Exporter has entered into a contract as specified in the Schedule appended hereto, with Messrs _____

(hereinafter called 'the Buyer') for export from India of _____

(hereinafter referred to as 'the goods').

AND WHEREAS the Exporter has made a proposal dated the _____ day of _____

(hereinafter called 'the Proposal') requesting the Corporation to insure him against a percentage of loss which he may sustain by reason of certain risks involved in the shipments of goods to the buyer under the said contract.

AND WHEREAS the Exporter has agreed that the said Proposal shall be the basis of this Policy.

NOW, THEREFORE, in consideration of the premium of Rs. _____

(Rupees _____) paid by the Exporter to the Corporation, the Corporation hereby insures the Exporter in accordance with the terms and subject to the conditions hereof against a percentage of the amount of any loss as hereinafter defined which may be sustained by the Exporter in respect of shipment of goods from India made under the above contract due to the following causes (hereinafter called the 'Risks Insured').

RISKS INSURED:

- i) the insolvency of the buyer as hereinafter defined; or
- ii) the failure of the buyer to pay to the Exporter within six months after the due date of payment the gross invoice value of goods delivered to and accepted by the buyer; or
- iii) the failure or refusal on the part of the buyer, to accept goods which have already been exported from India where any such failure or refusal is not excused by and does not arise from or in connection with any breach of condition or warranty on the part of the Exporter or from any other cause within his control and provided also that Corporation is satisfied that no good purpose would be served by the institution of legal proceedings against buyer in respect of his said failure or refusal; or
- iv) the operation of a law or of an order, Decree or Regulation having the force of law, which in circumstances outside the control of the Exporter and/or of the buyer prevent, restricts or control the transfer of payment from the buyer's country to India; or
- v) the occurrence of war between the buyer's country and India; or
- vi) the occurrence of war, hostilities, civil war, rebellion, revolution, insurrection, or other disturbance in the buyer's country; or

vii) the imposition of any law or of an order, Decree or Regulation having the force of law, which, in circumstances-outside the control of the Exporter and/or the buyer, prevents the import of the goods into the buyer's country; or

viii) the cancellation in circumstances outside the control of the Exporter and/or the buyer of a previously issued and currently valid authority to import the goods; or

ix) the incurring in respect of good shipped from India of any additional handling transport or insurance charges which are occasioned by interruption or diversion of voyage outside India and which it is impracticable to recover from the buyer; or

x) any other causes not being inherent in the nature of the goods and not being within the control of the Exporter and/or the buyer which arises from an event occurring outside India; or

xi) the failure or refusal on the part of the buyer to fulfil the terms of the contract such failure or refusal not arising from any breach of contract or warranty on the part of the Exporter nor from any other causes within the control of the Exporter.

PROVIDED THAT the Corporation shall not be liable for loss.

- a) in respect of any risk which at the date when the shipment is made can be insured with the Government or any of its organisations other than the Corporation or can normally be insured with Commercial insurers,
- b) which arises from the insolvency of any agent of the Exporter or the insolvency of a collecting bank or from any act or default on the part of such agent or collecting bank.
- c) which arises from any failure or inability to obtain any authority necessary under the regulations of the buyer's country in force at the date of shipment to import the goods and/or to pay for them as contracted and invoiced, and/or to convert at the official-rate of exchange the relative currency into Indian Rupee or other currency permitted by the 2nd Schedule to Government Notification No. 6(8-.EF-11/52) dated 22nd April 1952 or any modification thereof in force from time to time
- d) which arises due to the failure or refusal on the part of the buyer to accept the goods and/or due to the claim of the buyer that he is justified in withholding payment of the contract price or the gross invoice value of the said goods or any part thereof by reason of any payment, credit, set off or counterclaim and/or due to his claim that for any other reasons he is excused from performing his obligations

- under the contract, unless, except where the Corporation agrees in writing to the contrary, the Exporter has for the amount of his loss obtained by legal proceedings in a competent Court of Law in the country of the buyer, a final judgement enforceable against him;
- e) unless a claim for the loss is made by the Exporter to the Corporation in writing in the form prescribed by it within one year from the due date of payment;
 - f)
 - i) arising from the prevention of or delay in the transfer or any payment from any overseas country of sums due under any contract of insurance effected by the Exporter,
 - ii) whatsoever where the buyer has effected any insurance and an event insured against has occurred and the Exporter has not received payment of insurance money in Indian Rupees
 - iii) whatsoever where an event occurs which would normally be insured against with commercial insurers but against this risk of which a contract of insurance for a sufficient sum has not been effected by either the Exporter or the buyer and is not then in force.

Unless such liability is previously agreed to and accepted by the Corporation in writing.

- g) which arises from prevention of or delay in the transfer of payment from the buyer's country until the buyer has made an irrevocable deposit for transfer to the Exporter, on such terms and in such Bank as are approved by the Corporation in writing, of a sum in the currency of the buyer's country equal to the amount due for payment under the contract, unless the buyer is prohibited from making such a deposit by any law, or by any order. Decree or Regulation having the force of law, of the buyer's country.

TERMS & CONDITIONS

REPRESENTATION AND DISCLOSURES BY EXPORTERS

1. **Proposal and Declaration:** The Proposal and the Declaration therein shall be the basis of this Policy and shall form part thereof and if any of the statements contained in the proposal or the Declaration be untrue or incorrect in any respect, this Policy shall be void but the Corporation may retain any premium that has been paid.
2. **Disclosures of Facts:** Without prejudice to any rule of law, it is declared that this Policy is given on condition that the Exporter has at the date of issue of this Policy disclosed and will at all times during the operation of this Policy promptly disclose all facts in any way affecting the risks insured.
3. **Withdrawal of Cover:** The Corporation shall be at liberty at any time to give written notice to the Exporter that as from such date (not being earlier than the date of the notice) as may be specified in the notice, this Policy shall not apply to any shipment that may be made on or after that date; Note: Dispatch of notice means a notice sent by ordinary post to the latest address registered with the Corporation.

DUTIES OF THE EXPORTER

4. **Exporter's Obligations:** The Exporter shall:
 - a) Use all reasonable and usual care skill and forethought and take all practicable measures, including any measures which may be required by the Corporation, to prevent or minimise loss;

- b) notify to the Corporation in writing of the occurrence of any event likely to cause a loss without delay but in no case later than 15 days of his becoming aware of any such occurrence;
- c) furnish the Corporation promptly with any further information regarding such shipments that the Corporation may from time to time require;
- d) if, during the course of transit of goods it should come to the Exporter's knowledge that a country:
 - i) has banned the import of goods contracted for; or
 - ii) has ordered confiscation of goods; or
 - iii) has any circumstances existing in it which may lead to any loss' exercise his right to stop the goods in transit from being delivered and stop shipment of further consignments unless the Corporation consents in writing to his refraining from his so doing.

5. **Declarations :** The Exporter shall

- a) on or before the 10th day of each calendar month deliver to the Corporation a declaration on the form prescribed by the Corporation of all shipments made by him during the previous months.
- b) on or before the 10th day of each calendar month forward to the Corporation a declaration on the form prescribed by the Corporation of:
 - i) all amounts which at the end of the previous month remained wholly or partly unpaid for more than one month from the due date of payment in respect of shipments insured (such declaration shall continue to be forwarded to the Corporation, so long as any amounts remain outstanding)
 - ii) all shipment insured by the Policy of which delivery could not be taken by the buyer under circumstances outside his control immediately when it is known to the Exporter;
 - iii) furnish the Corporation promptly with any further information regarding such shipments that the Corporation may from time to time require.

6. **Gross Invoice Value:** In this Policy, the gross invoice value of shipments shall include any insurance freight or other charges paid or to be paid by the Exporter on the buyer's behalf but shall exclude any payments secured by irrevocable letters of credit confirmed by a bank in India or payments received from the buyer as advance.

7. **Percentage of loss payable. :** (1) The percentage of the amount of any loss which the Corporation hereby agrees to pay shall be 90% where the loss is due to the occurrence of the causes specified in sub-clauses (i), (ii) and (iv) to (xi) of the Risks Insured under the Policy.

(2) Where the loss is due to the occurrence of the cause specified in sub-clauses (iii) of the Risks Insured under this Policy, the Exporter shall bear a first loss equal to 20% of the gross invoice value of the goods and the Corporation hereby agree to pay 90% of the balance of the amount of loss provided that in no case shall the Corporation pay a sum in excess of 90% of 40% of the gross invoice value of the goods.

8. **Amount of Loss:** The amount of loss shall:

(A) where the loss is due to the diversion risk as defined in sub-clause (ix) of Risks Insured under this Policy be the amount of any additional handling

transport or insurance charges which are occasioned by interruption or diversion of voyage outside the Union of India and which it is impracticable to recover from the buyer less any allowance, rebate or refund to which the Exporter is entitled by reason of the interruption or diversion of voyage;

(B) in all other cases.

(a) as regards goods delivered to and accepted by the buyer be the gross invoice value of those goods less.

(i) the amount which at the date at which the loss is ascertained the buyer would have been entitled to take into account by way of payment, credit, set-off or counter-claim or which the Exporter is entitled to appropriate in whole or in part payment of the prices of the goods; and

(ii) any expenses saved by the non-payment of agent's commission or otherwise; and

(iii) any part of the gross invoice value of the goods which represents interest payable by the buyer for credit facilities in respect of any period subsequent to payment by the Corporation.

(b) as regards goods not delivered to or not accepted by the buyer, be the gross invoice value thereof less:

(i) any expenses saved by the nonfulfilment of the contract for the sale of those goods;

(ii) any sums which, at the date at which the loss ascertained, the Exporter has recovered from any source, including realisation of any security, resale of any goods or material and any sums or credits in his possession which the Exporter is entitled to appropriate as or towards payment of the purchase price or any part thereof

Provided that the sums so recovered or realised by any security or resale of any goods or materials shall be the sums less all expenses of recovery, realisation or resale.

(iii) any part of the gross invoice value of the goods which represents interest payable by the buyer for credit facilities in respect of any period subsequent to payment by the Corporation.

Provided always that (a) the goods not delivered shall remain the property of the Exporter and any resale thereof by the Exporter shall be with the prior approval of the Corporation, In case the sale of goods not delivered is made without the prior approval of the Corporation, the Corporation shall not be liable for any loss suffered by the Exporter in connection with the particular shipment concerned.

(b) Where goods are not accepted by the buyer and/or Sub-Clause (d) of the proviso to 'Risks Insured' applies the amount of loss shall be as defined herein above or the amount for which final judgement is obtained by the Exporter against the buyer, whichever is the lesser.

9. Time for Ascertainment of Loss : Subject to the submission by the Exporter of a claim supported by evidence which, in the opinion of the Corporation, is sufficient and by a verification of the cause of loss the Corporation will pay to the Exporter in Mumbai the amount of loss hereby insured immediately after the loss has been ascertained and such loss shall be ascertained.

a) where the loss is due to the buyers insolvency as hereinafter defined, then, unless otherwise agreed to in writing by the Corporation, six months after the due date of payment or four months after the due date of payment where an authorisation letter is registered in favour of a bank or one month after the loss has

been admitted to rank against the insolvent's estate in favour of the Exporter, whichever of the two dates is the earlier, provided that (1) the Exporter shall deliver to the Corporation evidence satisfactory in the opinion of the Corporation that the Exporter has filed his claim in such Insolvency of the Buyer and (2) that he shall deliver to the Corporation a Declaration in writing that he has done or omitted nothing whereby such claim is liable to be rejected by the Court in such Insolvency;

b) Where the loss is due to the buyer's failure to pay within six months of the due date of payment the gross invoice value of goods delivered to and accepted by the buyer, immediately after the expiry of the said period of six months; but in case, where the authorisation letter is registered in favour of a bank, the time for ascertainment of loss shall be four months of the due date of payment;

c) Where the loss due to the goods not having been delivered to the buyer, one month after the due date on which, with the Corporation's approval in writing the goods have been resold or otherwise disposed of by the Exporter.

d) where the loss is due to the prevention of or delay in the transfer of payments from the buyer's country to India in circumstances outside the control of both the Exporter and the buyer, or, if the buyer has made an irrevocable deposit for the transfer to the Exporter, four months after making of such deposit whichever of the two is the earlier;

e) where the loss is due to diversion risk as defined in (ix) of the Risks Insured, as soon as the proof of loss to the satisfaction of the Corporation is furnished,

f) in all other cases, four months after the occurrence of the event which is the cause of the loss.

PROVIDED THAT where the Exporter has obtained a guarantee or, as the case may be a guarantee and undertaking, in compliance with a condition imposed by the Corporation for approval of a Credit limit or otherwise and a claim by the Exporter against the Guarantor who is specified in such condition as aforesaid has arisen, the loss shall not be ascertained, unless the Corporation agrees in writing to the contrary, until either the Guarantor has paid the amount claimed by the Exporter or the Exporter has obtained a judgement against the Guarantor in a competent Court in the country specified in such condition, or the Exporter has satisfied the Corporation in such other manner as they may approve in writing that his claim against the Guarantor is valid and subsisting, but in any case not earlier than at the appropriate time hereinbefore specified in the provisions of this clause.

10. Payment of Loss: The Exporter shall, as a condition precedent to the payment of the amount of a percentage of any loss as herein defined procure and deliver to the Corporation a writing from the bank which holds the documents pertaining to the shipment concerned acknowledging and agreeing (1) that the Bank holds the same in trust for the Corporation (2) that the Bank shall, upon demand by the Corporation, deliver them up to the Corporation and (3) that if the Bank shall receive any payments against such documents the bank shall make payment thereof according to the directions of the Corporation in writing.

11. **Rate of Exchange:** All payments under this Policy shall be made in Indian Rupee at the Head Office of the Corporation and for the purpose of payment of premiums and losses, the gross invoice value of shipments invoiced in a foreign currency shall be converted into Indian Rupee at the Bank buying rate of exchange at Mumbai on the date of the relative shipment or at the exchange rate prescribed in the Schedule attached to the policy.

PROVIDED THAT, if devaluation of the currency in which the buyer has to pay takes place before the claim is paid, the amount claimed in Indian currency shall be based on the devalued rate.

LIMITATION OF CORPORATION'S LIABILITY

12. **Limitation of Liability:** The Corporation shall not be liable for loss.

- a) in respect of a shipment if all or any part of the gross invoice value thereof receivable by the Exporter has been assigned without full recourse to the Exporter unless the prior approval in writing of the Corporation thereto has been obtained; or
- b) in respect of a debt as to which the Exporter has extended the period for payment, or has accepted a composition arrangement with the buyer without the prior approval in writing of the Corporation; or
- c) in respect of any contract in respect of which the relevant authority to import the goods and to pay for them is made subject to conditions as to the export of other goods from any country or to conditions as to the payment for such other goods when so exported.

13. **Maximum Liability:** The total Liability of the Corporation under this Policy shall be limited to Rs.

(Rupees

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or such other total sum as may be agreed in writing between the Exporter and the Corporation.

RECOVERIES

14. **Action after payment of claim:** Upon payment by the Corporation of the amount due hereunder to the Exporter, the Exporter shall :

- a) take all steps which may be necessary or expedient or which the Corporation may at any time require to effect recoveries whether from the buyer or any other source from whom such recoveries may be made;
- b) upon request assign and transfer to the Corporation his rights under any contract in respect of which such payment has been made including his right to receive any moneys payable under such contract or his right to damages from any breach thereof;
- c) upon request deliver up to the Corporation any goods in respect of which such payment has been made and any documents relating thereto and assign and transfer to the Corporation his right and interest in any such goods and documents;
- d) upon request assign deliver up or otherwise transfer to the Corporation any negotiable instruments, guarantees or other securities relating to such goods or contract.

15. **Recovery Expenses:** Any expenses incurred by the Exporter with the consent of the Corporation or by the Corporation for the purpose of effecting recoveries from the buyer or any other source shall be a first charge on any amounts recovered thereafter.

16. **Recoveries:** Any sums recovered by the Exporter or the Corporation in respect of a loss to which this Policy applies after the date at which the loss is ascertained, from the buyer or any other source shall be divided between the Corporation and the Exporter.

- a) if the ground of claim is the occurrence of the cause specified in sub-clause (iii) of Risks Insured under this Policy, in the proportion of 90 and 10 provided that the Corporation shall not recover by virtue of this sub-clause more than the amount it has paid to the Exporter under this Policy in respect of that claim;
- b) in any other case in the proportion of 90 and 10.

The Exporter shall pay all sums so recovered to the Corporation forthwith upon their being received by him or any person on his behalf, the Exporter hereby acknowledging and declaring that until such payment is made to the Corporation he receives and holds such sums in trust for the Corporation.

17. **Due date of Payment:** The words 'Due date of Payment' in Risks Insured under this Policy and clauses 4 and 8 of this Policy shall include and be deemed to include where the time of payment has been extended by the Exporter with the consent in writing of the Corporation, the date to which the time has been so extended.

GENERAL

18. **Insolvency:** The buyer shall be deemed to be insolvent for the purpose of this Policy when

- a) he is declared bankrupt or (b) he has made a valid assignment, composition or other arrangement for the benefit of his creditors generally, or (c) a Receiver has been appointed to manage his estate, or (d) if the buyer be an incorporated body: (i) an order has been made for compulsory winding-up or (ii) an effective resolution has been passed for voluntary winding-up provided that such resolution is not merely for the purpose of reconstruction or amalgamation, or (e) an arrangement binding on all creditors has been sanctioned by the court; or (f) whether the buyer be an incorporated or unincorporated body, such conditions exist as are substantially equivalent in effect to any of the foregoing conditions.

19. **Assignment:** This policy or any amount payable hereunder is assignable only with the previous approval in writing of the Corporation.

20. **Fraudulent Claims:** If the Exporter makes any claim hereunder, knowing the same to be false or fraudulent or if any fraudulent means or devices are used by the Exporter or any one acting on his behalf to obtain any benefit under this Policy the liability of the Corporation hereunder shall cease and the Exporter shall have no claim hereunder and shall repay to the Corporation on demand all sums paid by the Corporation and the Corporation shall be entitled to retain all payments made to it by way of premiums or otherwise.

21. **Observance of Conditions:** The due performance and observance of each term and condition contained herein or in the proposal or declaration shall be a condition precedent to any liability of the Corporation hereunder and to the enforcement thereof by the Exporter.

22. **Failure to comply with Conditions:** No failure by the Exporter to comply with the terms and conditions of the Policy shall be deemed to have been waived, excused or accepted by the Corporation unless the same is expressly so waived, excused or accepted by the Corporation in writing.