

Specific Services Contract' (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 Messrs _____

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 (hereinafter called 'the Contract') with Messrs.

(hereinafter called 'the Buyer') for rendering certain services mentioned herein.

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 contract for rendering of services to the buyer.

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. _____ 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 under the 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 four months after the due date of payment the contract price of services rendered to and accepted by the buyer; or
- (iii) 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 prevents restricts or controls the transfer of payment from the buyer's country to India; or
- (iv) the occurrence of war between the buyer's country and India; or
- (v) the occurrence of war, hostilities, civil war, rebellion, revolution, insurrection, or other disturbance in the buyer's country; or
- (vi) the imposition in India or in the buyer's country, after the date of contract, of any law or of an order Degree or Regulation having the force of law, which, in circumstances outside the control of the Exporter and / or the buyer, prevents the performance of the contract.
- (vii) any other cause not being within the control of the Exporter and/or the buyer which arises from an event occurring outside India;

PROVIDED ALWAYS THAT the Corporation shall not be liable for loss :

- (a) in respect of any risk which at the date when the contract 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 contract to import the services and / or to pay for them as contracted;
 - (d) which arises due to the failure or refusal on the part of the buyer to accept the services and/or to pay for them due to the claim of the buyer that he is justified in withholding payment of the contract price or any part thereof by reason of any payment, credit, set off or counter-claim and/or due to his claim that for any other lawful reason he is excused from performing his obligations under the contract unless the corporation agrees in writing to the contrary;
 - (e) unless a claim for the loss is made by the Exporter to the corporation in writing in the form prescribed by it on or before _____
 - (f) (i) arising from the prevention of or delay in the transfer of 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 the 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 AND CONDITIONS

1. **Proposal and Declarations:** 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. **Disclosure 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 services that may be rendered 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 fore thought and take all measures, including any measures which may be required by the Corporation (including if so required the institution of legal proceedings), 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 30 days of his becoming aware of such occurrence;

(c) furnish the Corporation promptly with any further information regarding the contract that the Corporation may from time to time require;

(d) if, during the course of rendering services it should come to the Exporter's Knowledge that the buyer's country has any circumstances existing in it which may lead to any loss, exercise his right to stop rendering services unless the Corporation consents in writing to his refraining from so doing.

5. **Declarations:** (a) The Exporter shall 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 services rendered by him during the previous month;

(ii) 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 services previously declared. (Such declarations shall be continued to be forwarded to the Corporation in respect of all transactions insured with it so long as such transactions remain outstanding).

(b) the exporter shall furnish the Corporation promptly with any further information regarding the contract and services rendered by the Exporter thereunder that the Corporation may from time to time require.

6. **Contract Price:** In this Policy the contract price of services rendered shall exclude any payments secured at the date of the contract by irrevocable letters of credit confirmed by a bank in India or received from the buyer.

7. **Percentage of Loss Payable:** Subject to the terms and conditions hereof, the Corporation agrees to pay to the Exporter 90 per cent of the loss, as hereinafter

insured immediately after the time hereinafter specified for ascertainment of the loss.

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

(a) as regards services rendered to and accepted by the buyer, be the contract price of those services 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 price of the services; and

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

(b) as regards services not rendered to the buyer, be the contract price thereof, less:

(i) any expenses saved by the non-fulfilment of the contract for rendering the service;

(ii) any sums which, at the date at which the loss is ascertained, the Exporter has recovered from any source, including realisation of any security and any sums of credits in his possession which the Exporter is entitled to appropriate as or towards payment for the services or any part thereof provided that the sums so recovered shall be the sums less all expenses of recovery.

9. **Time for Ascertainment of Loss:** Subject to the submission by the Exporter on the form prescribed by the Corporation 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 buyer's insolvency as hereinafter defined, 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 four months of the due date of payment the contract price of services rendered to and accepted by the buyer, immediately after the expiry of the said period of four months.

(c) where the loss is due to the prevention of or delay in the transfer of payments from the buyer's country in circumstances outside the control of both the Exporter and the buyer, four months after the due date of payment by 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;

(d) 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 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

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 it 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 by the Corporation of a percentage of any loss as herein defined, deliver to the Corporation from the person holding the documents pertaining to the contract insured under this policy a writing acknowledging and agreeing (1) that the documents are held in trust for the Corporation, (2) that upon demand by the Corporation they shall be delivered upto the Corporation, and (3) that if any payments are received against such documents the amounts so received shall be paid according to the directions of the Corporation.

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 contract price of services involved in a foreign currency shall be converted into Indian Rupee at the Bank buying rate of exchange at Mumbai on the date provided in the contract or agreement for the invoicing of such services.

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 any amounts receivable by the Exporter under the contract if the same 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 services and to pay for them is made subject to conditions as to the export of other services from any country or to conditions as to the payment for such other services when so exported.

(d) in respect of any contract the terms of which are altered in any respect without the consent in writing of the Corporation;

(e) if the contract is not legally enforceable in the Buyer's country.

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

RECOVERIES

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

such payment has been made and assign and transfer to the Corporation his right and interest in any such documents;

(d) upon request assign, deliver up or otherwise transfer to the Corporation any negotiable instruments, guarantees or other securities relating to such 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 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 by 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 consent in writing of the Corporation, the date to which the time has been so extended.

GENERAL

18. **Insolvency:** The buyer shall 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, (1) an order has been made for compulsory winding-up, or (2) 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.

Export Credit & Guarantee Corporation of India Ltd.

Express Towers, 10th Floor, Nariman Point, Mumbai-400 021.

SCHEDULE

Schedule attached to and forming part of Specific Services Contract () Policy

No. dated issued to

Messrs _____

1. (a) Name of the Buyer : _____
- (b) Address : _____
- (c) Business : _____
2. Details of the Contract
 - (a) Date of Contract : _____
 - (b) Nature of service to be rendered : _____
 - (c) Period within which the services are to be rendered : _____
 - (d) Place where the services are to be rendered : _____
 - (e) Total value of the Contract : _____
 - (f) Terms of payment : _____
 - (g) Currency of invoice : _____
 - (h) Rate of exchange applied : _____
3. Amount Covered : _____
4. Maximum Liability : _____
5. Percentage of Cover : _____
6. Premium Rate : _____
7. Premium due & paid : _____