

General Conditions of Commercial Credit Insurance Basic Finance 2000 (version 2008) (GCI Basic Finance 2000 [version 2008])



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Article 1

Subject of Insurance

The Insurer shall compensate the Policyholder for losses of insured receivables in respect of the delivery of goods and the performance of works or services where such losses occur during the policy period due to the insolvency of insured customers (in accordance with the provisions of Art. 9) having their registered business in the countries listed in the policy.

Article 2

Scope of Insurance Cover

1. Insurance cover is granted for the Policyholder's legally substantiated receivables which have been invoiced as set out in the policy and arise out of

- The delivery of goods and the performance of works or services in the ordinary course of the Policyholder's business in the name and on account of the Policyholder which have been duly and finally accepted by the insured customer in accordance with the contract.
- Freight charges, insurance premiums, discounts on and charges for bills of exchange insofar as incurred with and related to insured receivables.

Insurance cover shall include Value Added Tax for domestic receivables.

2. Receivables shall be insured if and insofar as the Insurer has stipulated a sum insured for the Policyholder's customer by means of a written notification of credit. The subject and scope of insurance cover are governed by the policy unless the notification of credit specifies otherwise.

The following additional conditions shall also apply:

- The period of payment granted by the Policyholder must not exceed the maximum credit period as per Art. 7 No. 1.

b) The insured account balance or the insured turnover must be reported in accordance with the procedure set out in the policy for premium calculation.

3. Insurance cover under the sum insured shall apply in each case on a chronological basis i.e. oldest receivables due since inception of cover. Receivables exceeding the current sum insured for a particular customer only move up into cover if and insofar as they can be accommodated under the sum insured after settlement of pre-existing receivables.

4. The Insurer may at any time reduce or cancel the sum insured due to the aggravation of risk or for any other substantial reason. In the case of a reduction, the sum insured is reduced after settlement of pre-existing receivables and receivables hitherto which are not covered (because they exceed the sum insured) can gradually move up into cover insofar as they can be accommodated under the new sum insured. In the case of cancellation of the sum insured, however, such receivables cannot move up into cover.

Any payment made by the customer received prior to the occurrence of the insured event will be applied against the oldest receivable at that time. Checks and bills of exchange shall not be considered as payment until they have been cashed.

5. In the case of Policyholders having their registered business in Germany, receivables from domestic deliveries of goods and performance of works or services are only covered if and insofar as the aforementioned deliveries were effected subject to a legally valid retention of title including all its versions of prolongation and extension forms.

6. Insurance cover shall not extend to:

- Interest on arrears, contractual penalties, compensation for damages, legal recovery costs and exchange rate losses;
- Receivables from institutions under public law, receivables from private individuals provided they are not engaged in trade and receivables from companies in which the Policyholder holds a direct or indirect majority interest or can be proved to exert significant influence over management in any other way;
- Insured events for which the Insurer can prove that the following factors have contributed to their occurrence: war, military conflicts, riot or civil commotion, strike, embargo, interference with trade by act of governmental authority, natural disasters or by nuclear energy as per regulations of the Atomic Energy Act. Where it cannot be determined whether one of these factors caused the occurrence of the insured event, the matter shall be decided on the basis of the overwhelming probability.

Article 3

Obligation to Apply for a Credit Limit

1. The Policyholder agrees to apply to the Insurer for adequate credit limits that are sufficient to cover all receivables owed to him by his customers.

The Policyholder is responsible for assessing and monitoring all insured customers. In order to fulfil this obligation, the Policyholder will exclusively appoint Zurich Service GmbH (ZSG).

The obligation to apply for a credit limit includes all receivables from present and future customers having their registered business in the countries listed in the policy provided that the current or expected total of receivables from a customer is at least the amount specified in the policy (discretionary limit).

2. If the total of receivables from an insured customer exceeds the agreed credit limit, the Policyholder must apply for a credit limit increase without delay by submitting an open item list to the Insurer no later than the current month's end.

3. If the total of receivables from an insured customer for whom a credit limit has been specified is less than the discretionary limit, receivables shall continue to be covered up to the agreed credit limit.

Article 4

Inception and Expiry of Insurance Cover

1. The inception date of insurance cover for an insured customer is as stated in the notification of credit.
2. Insurance cover for the insured customer's receivables arising out of future deliveries of goods and performance of works or services shall expire from the earliest of the events below
 - a) Upon cancellation or suspension of insurance cover by means of notification of credit;
 - b) When the credit period is exceeded as per Art. 7 No. 3;
 - c) Upon occurrence of an insured event as per Art. 9.

Insurance cover shall expire for all insured receivables upon cancellation of the policy provided that the insured event has not occurred at that time.

Article 5

Deductible

The Policyholder shall bear his share of each loss calculated in accordance with Art. 10 No. 2 as agreed and specified in the policy unless a different rate has been specified by the Insurer in the relevant notification of credit.

No other insurance cover may be taken out on the deductible.

Article 6

Premium

1. The Policyholder's obligation to pay premium commences when insurance cover for a receivable is granted and ends upon payment of the insured receivable or upon occurrence of the insured event, at the latest however, upon termination of the policy.
2. The type of premium is specified in the policy schedule. The Policyholder agrees to provide the Insurer with all details required for calculation of the premium within the period of time set out in the policy. Insurance cover shall be conditional on provision of details required for calculation of the premium in due time and due form.
 3. The Policyholder guarantees the Insurer a minimum premium per policy year.
 4. The premium is subject to the statutory insurance tax which must be paid promptly to the Insurer.
 5. If the first premium is not paid in due time, the Insurer reserves the right to rescind the policy. Until the first premium has been paid, the Insurer will be released from the obligation to provide indemnity. The provisions of Articles 37 to 39 of the German Insurance Contract Law (VVG) shall apply by analogy¹.

Article 7

Maximum Credit Period and Obligation to Report a Maximum Credit Period Overdue

1. The maximum credit period specified in the policy schedule applies to all insured customers unless otherwise stated in the notification of credit for an individual insured customer. The maximum credit period also applies to customers with receivables existing at inception of the policy and to new insured customers. The maximum credit period begins on the date on which a receivable is invoiced.
2. If receivables remain unpaid once the maximum credit period has been exceeded, the Policyholder must notify the Insurer without delay – but no later than the last day of the current month by submitting an open item list to the Insurer – irrespective of whether the receivables are insured or not or the subject of dispute. This notification requirement also applies if it becomes apparent that the maximum credit period will be

exceeded (e.g. by extension agreements, acceptance or prolongation of bills of exchange).

3. If receivables remain unpaid once the maximum credit period has been exceeded or if it becomes apparent that it will be exceeded as per No. 2 of this Article,
 - a) Insurance cover will cease with immediate effect for receivables arising from future deliveries of goods and performance of works or services;
 - b) Receivables which are in excess of the sum insured (i.e. the discretionary limit or where applicable, the approved credit limit) arising from already completed deliveries of goods and performance of works or services shall only move up into cover to the same extent that payment has been received for pre-existing receivables provided the Insurer expressly confirms in writing the continuation of insurance cover.
4. The Insurer agrees to refrain from invoking a breach of obligations of the Policyholder in accordance with Art. 14 No. 2 and terminating cover in accordance with Art. 14 No. 3 where the maximum credit period overdue dates back more than 12 months from the date of the oldest outstanding invoice.

Article 8

Additional Obligations of Disclosure and other Duties of the Policyholder in case of Aggravation of Risk and Deterioration of the Customer's Creditworthiness

1. The Policyholder agrees to notify the Insurer of all circumstances of which the Policyholder is aware when applying for insurance cover and those of which the Policyholder subsequently becomes aware which might influence the acceptance of risk or continuation of insurance cover, in particular with regard to the assessment of the creditworthiness of the Policyholder's insured customers.
2. The Policyholder shall notify the Insurer without delay of any circumstances which may indicate an aggravation of risk, as well as any information regarding the current or potential insolvency of an insured customer. Circumstances which may aggravate the risk of an insured customer shall be in particular, but not limited to:
 - a) Unfavourable information regarding the insured customer's financial standing, payment behaviour or risk assessment;
 - b) Severely deteriorating payment behaviour;
 - c) Interruption of delivery of goods and the performance of works or services due to deterioration of the customer's creditworthiness;
 - d) Subsequently agreed extension of bills of exchange, non-honoured checks or bills of exchange or direct debits returned for lack of funds;
 - e) Instruction of a legal counsel or collection agency to collect payment;
 - f) Initiation of collection proceedings or legal action.
3. The Policyholder shall be obliged at his own expense to at all times use due diligence, do and concur in doing all things reasonably practicable to avoid or diminish a loss. In so doing, the Policyholder shall be obliged at all times to consult the Insurer and act in accordance with such directions as the Insurer shall reasonably give.

Any compromise settlement or payment agreement or similar agreements are subject to the Insurer's prior approval.

4. In order to minimise the risk of loss, the Insurer is entitled although not obliged to enter into agreements with insured customers on the Policyholder's behalf in order to secure receivables due to the Policyholder.
5. The Insurer or his representatives shall be entitled at any time to inspect substantial business documents which are relevant for the contractual relationship and to make or request copies of such documents.
6. The insurer may at any time reduce or cancel a sum insured for future receivables from an insured customer in case of aggravation of risk or for any other substantial reason which the Insurer deems justifiable.

Such actions by the Insurer shall become effective upon the Policyholder's receipt of the notification of credit. However, the insurance cover provided under the terms and conditions of the policy shall remain unaffected for receivables arising out of the

¹ A copy of these provisions can be provided by the Insurer upon request.

delivery of goods and the performance of works or services which were completed before receipt of the notification of credit.

Article 9

Insured Event

1. The insured event shall be deemed to have arisen with the insolvency of the insured customer.

Insolvency means the occurrence of any of the following events:

- a) Insolvency proceedings have been instituted by the court or insolvency proceedings have been dismissed by the court for lack of assets;
- b) A composition, scheme of arrangement or insolvency plan has been approved by the court;
- c) An out of court assignment, composition or other arrangement has been made with the approval of all creditors;
- d) An execution of a judgment performed by or on behalf of the Policyholder has not resulted in full satisfaction of the debt due;
- e) Where subsequent to evidence of unfavourable circumstances there is no prospect of payment being made because an enforcement order, insolvency proceedings or any equivalent or similar measures taken against the customer by the Policyholder do not seem promising;
- f) Where a foreign customer appears likely to default on payment for a completed delivery of goods or performance of works and services due to deterioration in creditworthiness and a loss results despite goods – insofar as they are still in the possession of the Policyholder or have been reclaimed – having been utilised otherwise in the best possible way with the Insurer's approval.

2. The date of occurrence of insolvency shall be deemed to be:

in respect of a) and b) above, the date of issuance of the court order;

in respect of c) above, the date on which all creditors approved the assignment, composition or other arrangement;

in respect of d) above, the date on which the failure of the execution of the judgment has been certified;

in respect of e) above, the date on which based on relevant evidence it must be accepted that further measures against the customer will be of no avail and

in respect of f) above, the date on which the loss can be determined despite goods having been otherwise utilised in the best possible way with the Insurer's approval.

3. Additional insurance events to the above mentioned may be defined by separate contractual agreement.

Article 10

Realisation of Securities and Calculation of Loss

1. The Policyholder shall assert all rights due to him and realise securities in the best possible way.

The Policyholder agrees to provide the Insurer with all information and all documents which the Insurer deems necessary for determining insolvency and the amount of the loss.

2. When calculating the insured loss, the following items (in addition to the Policyholder's deductible in accordance with Art. 5) will be deducted from receivables already existing at the time that the insured event occurs:

- a) Non-insured receivables or parts thereof;
- b) Receivables subject to a set-off;
- c) Credits and proceeds from retention of title insofar as they relate to the insured receivables;
- d) Proceeds from other rights and securities which have served as a precondition for insurance cover;
- e) Proceeds from other rights and securities which have not served as a precondition for insurance cover provided and insofar as they relate to the insured receivables and
- f) All payments and proceeds received following the occurrence of the insured event insofar as they relate to the insured receivables. This shall include all amounts or dividends received

from insolvency proceedings, an insolvency plan or a debt repayment plan.

Should it not be possible to determine whether the payments and proceeds in question relate to insured or non-insured receivables, recoveries will be calculated on a pro rata basis.

The above provisions shall apply equally to reductions in receivables occurring between the termination or restriction of insurance cover and the insured event.

If the Policyholder breaches his obligation to apply for a credit limit, the insured loss will be reduced in accordance with the provisions of Art. 14 No. 4.

3. Proceeds obtained from the realisation of securities will be calculated on a net basis, i.e. the costs of realisation and determination retained by the trustee and the value added tax withheld will not be included in the calculation of the amounts to be deducted and will be recognised as an insured loss. This shall not apply in the case of an internal receiver.

4. The value added tax to be refunded in accordance with the Value Added Tax Act for payments not received will not be deducted.

Article 11

Indemnity and Subrogation

1. The Insurer will pay compensation as soon as evidence has been furnished of the final insured loss. If the amount of loss has not been finally determined within six months after occurrence of the insured event, the Insurer will prepare a provisional claim settlement. For this purpose, the Insurer will estimate the amounts to be offset in accordance with Art. 10 No. 2 b) to f) insofar as the exact amount of loss has not yet been determined. Should it not be possible to calculate a reasonable estimate, 50 per cent of the probable insured loss, less the deductible, will be paid as provisional compensation.

If a composition, scheme of arrangement or insolvency plan has been approved by the court and the Policyholder has submitted all documents required for calculating the amount of loss, the Insurer will base the calculation of the loss provisionally on the relevant plan.

If the insolvency plan in question foresees the debtor to effect repayments to creditors after more than 12 months from the court's approval of the insolvency plan, the Insurer will make a provisional compensation to the Policyholder subject to the following conditions and in deviation from Art. 11 paragraph 1:

- a) The full repayment amount shall not be offset but wether only the proportional amount foreseen by the insolvency plan for the first 12 months after its approval; Art. 10 No. 2 f) notwithstanding.
 - b) If the repayment stipulated by the court for the first 12 months is not effected or made in full, the Insurer will make a further provisional payment of compensation, at the Policyholder's written request for repayments not received, and based on the outstanding balance of insured receivables.
 - c) In accordance with No. 2 below, the Insurer is entitled at any time to request the Policyholder to formally subrogate all rights, remedies and advantages arising out of the insolvency plan in the amount of compensation paid.
 - d) The Policyholder is obliged as per No. 3 below to remit without delay to the Insurer any monies arising out of the insolvency plan which are received after the compensation payment has been paid. In the event of a provisional compensation payment by the Insurer, the Policyholder must reimburse any monies arising out of the insolvency plan in proportion relating to the insured receivables.
2. All claims of the Policyholder against the debtor and all ancillary rights shall be subrogated to the Insurer in the amount of compensation paid. The Policyholder shall be obliged at the Insurer's request to take all necessary measures for the subrogation of such rights.

3. Any payment or compensation made to the Policyholder which was not considered in the loss calculation in accordance with Art. 10 No. 2 must be reported to the Insurer who will then prepare a new calculation of settlement.

4. Any claim for compensation shall be deemed to have lapsed if the Policyholder fails to assert such claim within 12 months after occurrence of the insured event (prescriptive period).

Article 12

Annual Limit of Indemnity

The total compensation payable by the Insurer for insured events occurring within one single policy year shall be limited to that multiple of the premium paid for the same policy year as set out in the policy schedule.

Article 13

Assignment of Compensation Payments

The right of assigning compensation payments to a third party is subject to the Insurer's written approval. The Insurer's objections and voidable rights, as well as the right to offset payments remain in effect towards the assignee.

If no such approval has been given, the Insurer may discharge his obligations by effecting compensation payment to the previous beneficiary.

All claim settlements will be agreed exclusively with the Policyholder.

Article 14

Breach of Obligations by the Policyholder

1. Breach of Obligation to Apply for a Credit Limit

- a) If the Policyholder breaches an obligation under Art. 3, the Insurer shall be released from providing indemnity for any loss related to the insured customer in question. However, this shall not apply if the breach of such terms and conditions occurred nor deliberately neither grossly negligent and the Policyholder fulfils without delay the obligation to apply for a credit limit (as per Art. 3 No. 2) after gaining knowledge of this failure.

A breach of pre-contractual, contractual or statutory obligations and or standards of conduct shall have the following consequences:

- b) If the obligation to apply for a credit limit has been deliberately breached by the Policyholder, the Insurer reserves the right to cancel the policy without notice.
- 2. Breach of Pre-Contractual, Contractual Obligations of Disclosure and Duties of the Policyholder in case of Aggravation of Risk**

If the Policyholder breaches pre-contractual obligations of disclosure by misrepresenting or concealing any material fact or circumstance, the Insurer reserves the right to cancel the policy and refuse indemnity within 30 days from the date the Insurer becomes aware thereof.

However, the Insurer shall remain obligated to provide indemnity insofar as the breach of obligation of disclosure (i.e. failure to notify the Insurer accordingly) had no bearing either on the occurrence of the insured event or on the amount payable by the Insurer as a result of the insured event. In deviation from Art. 56, No. 2 of the German Insurance Contract Act (VVG), the Policyholder shall not be entitled to cancel the policy following the Insurer's refusal of indemnity as above mentioned in the first sentence.

3. Breach of Obligation to Notify the Insurer in case of Aggravation of Risk

The Policyholder must notify the Insurer without delay of any change in risk.

In case of a breach of such terms and conditions, the Insurer shall be released to provide indemnity if the insured event occurs after the point in time when the Insurer should have received such information. The Insurer shall remain obligated to provide indemnity in any of the following cases:

- a) If the Insurer was already aware of the aggravation of risk at the time notification should have been received;
- b) If the Policyholder is not responsible for breaching this obligation;
- c) Insofar as the aggravation of risk had no bearing either on the occurrence of the insured event or on the amount payable by the Insurer as a result of the insured event.

4. Breach of Obligations of Disclosure and other Duties regarding Premium Calculation

The requirement to provide the Insurer with all information required for calculation of the premium as per Art. 6 No. 1. is an obligation to be complied with by the Policyholder.

If the Policyholder breaches the aforementioned obligation, the Insurer shall be released from the obligation to provide indemnity without having to cancel the policy.

5. Breach of other Obligations

If the Policyholder has deliberately breached any term or condition of the policy prior to the occurrence of an insured event, the Insurer shall be released from the obligation to provide indemnity for any loss related to the insured customer in question.

However, the Insurer shall not be released from providing indemnity insofar as the breach in question had no bearing either on the occurrence of the insured event or on the amount payable by the Insurer as a result of the insured event.

Article 15

Cancellation and Expiry of the Insurance Policy

The policy period shall be as specified in the policy schedule. The policy renews tacitly from year to year at the end of the current policy period unless the policy is cancelled in writing by one of the contractual parties within the period of notice of cancellation agreed in the policy.

The Insurer shall have the right to cancel the policy within one month from the occurrence of the Policyholder becoming insolvent as defined in the GCl Basic Finance under Art. 9 No. 1 a) (second alternative) to Art. 9 No. 1 f). This shall not apply, however, if the court has opened insolvency proceedings against the Policyholder's assets.

This shall not prejudice the Insurer's right to the contractually agreed minimum premium pro rata temporis.

Article 16

Policy Currency

- 1.** The policy currency shall be the currency agreed in the policy schedule.
- 2.** Insofar as the policy currency is replaced by the Euro, all amounts arising out of the insurance contract shall be converted into Euros at the fixed exchange rate of the other currency in question.
- 3.** All amounts invoiced in a currency other than the policy currency shall be converted into the policy currency at the official average rate of the Frankfurt Stock Exchange ruling on the date of the delivery of goods and the performance of works or services for the purpose of determining receivables. The amount of compensation is based on the official average rate of the Frankfurt Stock Exchange ruling on the date of the occurrence of the insured event shall apply for calculating the compensation payable by the Insurer; however, the rate applied shall not be higher than the official average rate applicable on the date of the delivery of goods and the performance of works or services.

Article 17

Closing Provisions

- 1.** Any amendment in, modification of, or addendum to the policy shall not be effective except when made by written endorsement to the policy or otherwise confirmed in writing by the Insurer. Any side-agreements verbally made shall not be valid.
- 2.** Unless otherwise agreed in writing, the policy shall be governed by the laws of Germany and in particular by the German Insurance Contract Act (VVG) in addition to the policy contractually agreed provisions. The Commercial Credit Insurance Policy shall be deemed an open insurance policy as defined by Art. 53 VVG et seq.
- 3.** Place of performance and jurisdiction shall be – to the extent permitted by law – the Insurer's place of domicile or registered address.