

# General Insurance Conditions



**P**

**for Insurance of Prospection of Foreign Markets**

These General Insurance Conditions are effective from 4 September 2009.



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## ■ Article I. Basic Provisions

1. These General Insurance Conditions “P” (hereinafter the “Insurance Conditions”) regulate terms and conditions of insurance of prospection of foreign markets against the risk of losses or insufficient income of the Exporter on the basis of the carried-out Prospection (hereinafter the “insurance”). The Insurance Conditions form an inseparable part of the Insurance Contract.
2. The insurance is provided by the Export Guarantee and Insurance Corporation in accordance with the Act No. 58/1995 Coll., on Insuring and Financing of Export with State Support and on Amendment to the Act No. 166/1993 Coll., on the Supreme Audit Office, as amended, as amended.
3. The insurance according to these Insurance Conditions is designated particularly for small and medium-sized enterprises<sup>1</sup>.
4. The Exporter carries out Prospection directly or through a company with seat abroad, which the Exporter controls in relation to the future Export of goods and/or services for covering of costs connected with related marketing activities having as the aim launching of the Export of Czech goods and services or their increase in the foreign market in one or in several states (hereinafter the “foreign market”) and does it on the basis of a Prospection Plan and Prospection Budget.
5. The insurance according to these Insurance Conditions is concluded as an insurance against loss and damage for the purpose of compensation of damage arising as a result of an insurance loss.
6. Provisions of the §15 paragraphs 3 to 5, §22 paragraphs 2 and 3, and §24 paragraph 2 of the Act No. 37/2004 Coll., on Insurance Contract and Amendments to related Acts (the Insurance Contract Act) shall not be applicable to the insurance according to these Insurance Conditions. The §24 paragraph 1, letter a) of the Insurance Contract Act shall only be applicable to answering of written inquiries by the Policyholder, Insured or Beneficiary.

## ■ Article II. Definition of Terms

1. For the purposes of these Insurance Conditions and the Insurance Contract, it shall be understood that:
  - a) the **Insurer** is the Export Guarantee and Insurance Corporation,
  - b) the **Insured** is an Exporter, usually a small and medium-sized entrepreneur, who carries out prospection of foreign markets for the purposes of the Export,
  - c) the **Policyholder** is a person who has concluded an Insurance Contract with the Insurer,
  - d) the **Beneficiary** is a person for whom the right for an indemnification payment has arisen from an insurance loss,
  - e) an **Exporter** is a person realising the Export who is either a natural person with the permanent residence on the territory of the Czech Republic or a legal person with the registered seat on the territory of the Czech Republic, who is an entrepreneur pursuant to the Commercial Code, or a Foreign Company,
  - f) a **Foreign Company** is a legal person with the registered seat abroad who is controlled by a legal person having its registered seat on the territory of the Czech Republic and who is an entrepreneur pursuant to the Commercial Code, and who participates – directly or indirectly – in the basic capital of the Company by more than 50 %, or who controls the majority of voting rights related to the participation in the basic capital of the Company, or who can appoint a majority of members of the Board of Directors, Supervisory Board or other similar managing body of the Company,
  - g) **Prospection** is an activity of an Exporter directed at survey of foreign markets and marketing activities connected with entering the foreign market for the launching or increase of his Export,
  - h) a **Prospection Plan** is the project for launching and increasing of the Export submitted by the Exporter and having as its inseparable part a Prospection Budget,

**i) a Prospection Budget** is a budget drawn up by the Exporter, containing estimated costs and revenues for the Prospection, expected expenses of the Export and expected revenues from the Export to the foreign market; the budget cannot be loss-making,

**j) Prospection Costs** are costs connected with the Prospection as stipulated in the Prospection Budget, **k) Export Expenses** are expenses on production and Export of goods and services to those foreign market the Prospection was designated for in accordance with the calculation of the Exporter without any profit margin, **l) Revenues** are revenues from Exports to foreign market and expected revenues arising from Export Contracts to the foreign market validly concluded during the insured period which will be realized after expiration of the insured period, **m) the Self-Retention** is a share of the Beneficiary in the loss covered by insurance expressed in percentage points.

## ■ Article III. Basic Conditions for Insurance

1. The Insured may be a small and medium-sized entrepreneur<sup>1</sup> who has been producing goods or extending services for which the Prospection will be carried out for at least 2 years. The decision on granting an exception from this rule falls upon the Insurer.
2. The Exporter shall enclose the Prospection Plan to the application for insurance as its inseparable part.
3. Unless specified otherwise in the Insurance Contract, the Prospection shall be carried out for the period not exceeding the first 2 years of the insurance period.
4. The costs related to the Prospection spent domestically may make up at the most 15% of the Prospection Costs unless specified otherwise in the Insurance Contract. The upper limit of the indemnification is the maximum amount of the Prospection Costs as stipulated in the Insurance Contract not exceeding CZK 5,000,000 or its equivalent in a foreign currency at the exchange rate valid on the signing of the contract unless the Insurance Contract specifies otherwise.
5. Unless specified otherwise in the Insurance Contract, the costs related to the Prospection include in the first instance:
  - a) costs of advertising, promotion and of promotional materials,
  - b) costs connected with participation in commercial campaigns abroad with the exception of the travelling expenses and accommodation,
  - c) costs for export and marketing consulting included analyses
  - d) costs of legal services abroad,
  - e) storage costs abroad,
  - f) costs of certification of products on the market for the Prospection
  - g) costs for establishment and operation of a representation of the Exporter abroad.
6. The Exporter shall keep analytical accounting records of Prospection Costs, Export Expenses to the foreign market and Revenues in his own account keeping for the given foreign market and, further the probative evidence on the amount of the Prospection Costs. Inventory checks, balance sheets and income statements shall be kept securely and separately in 2 copies in order to be protected from simultaneous destruction for the duration of insurance. The Insurer has the right to refuse the indemnification in case of breach of these obligations.
7. The Exporter shall submit to the Insurer accounting records of Prospection Costs, Export Expenses and Revenues within 3 months after the end of each accounting period and for the duration of insurance, authenticated by an auditor as a part of complete results, provided the Exporter has an obligation to authenticate the Annual Report by an auditor; otherwise they shall be authenticated by a person responsible for the accounting.

<sup>1</sup> According to the EU definition

#### ■ Article IV. Subject of Insurance

1. The subject of insurance are financial losses of the Insured from the Prospection of the foreign market, provided the Prospection Costs exceed difference between revenues and expenses for the Export during the insured period. The subjects of insurance are only those types of Prospection Costs which have been specified in the Prospection Plan. The maximum insurance value as the upper limit of indemnification is determined by the Insurance Contract. The insurance shall not cover profits of the Insured.



#### Insurance Contract

#### ■ Article V. Insurance Contract

1. The Insurance Contract shall define, beside the usual essentials, primarily the commencement and expiration of the insurance, identification of the person of the Exporter, specification of the Prospection Plan and of the Prospection Budget, determination of the foreign market on which the Prospection is carried out and the amount of the insurance premium.
2. Unless specified otherwise in the Insurance Contract, the Policyholder is obligated to pay the agreed insurance premium in one lump sum and in the time specified in the Insurance Contract. The amount of the insurance premium shall be negotiated in dependence on the scope of the insured risk and degree of the risk of the Prospection Plan. The negotiated amount of the insurance premium already contains a possible increase or decrease of the insurance risk and is unchangeable during the whole duration of insurance. risk categories established by the Insurer.
3. Mutual financial obligations between the Insurer and the Policyholder, or alternatively the Insured, are payable in Czech Crowns unless specified otherwise in the Insurance Contract. For the conversion from other currency for the purposes of determination of the amount of the insurance premium, the exchange rate specified in the Insurance Contract shall be used; otherwise, the Czech National Bank's exchange rate valid on the day of signing the Insurance Contract, shall be applied.
4. The insurance premium and other financial obligations in relation to the Insurer are to be paid on the basis of an invoice issued by the Insurer, unless specified otherwise in the Insurance Contract.
5. Unless specified otherwise in the Insurance Contract, the Self-Retention makes 20 %.
6. In case of a different modification in the Insurance Contract, the wording of the Insurance Contract shall always prevail over the wording of the Insurance Conditions.



#### ■ Article VI. Duration of Insurance

1. Insurance shall commence on the day the insurance premium has been paid, unless an earlier date is specified in the Insurance Contract, however, not prior to the date the Insurance Contract has been concluded. The Insurance Contract may specify additional conditions precedent for the inception of insurance.
2. Beside cases which are specified in the generally binding legal regulations, in the Insurance Contract or in other provisions of these Insurance Conditions, insurance expires also by expiration of the insured period and, if an insurance loss has occurred, by the Insurer's Decision on Indemnification.
3. The insured period shall be at most 5 years.

#### Insurance Loss and Indemnification

#### ■ Article VII. Insurance Loss

1. An insurance loss means a full or a partial failure of the Prospection or non-fulfilment of the Prospection Plan or

a non-fulfilment of expected (planned) revenues from the realized Export (insured peril) consisting in an occurrence of a financial loss of the Insured from the Prospection of the foreign market when Prospection Costs exceed the difference between Export Revenues and Expenses during the insured period.

2. The insurance loss shall not be the failure of the Prospection caused by an intentional decision of the Insured having no objective reasons not to continue in the Prospection or not to deliver to the foreign market which was made without a prior written consent of the Insurer.
3. Objective reasons lie:
  - a) in the commercial risk of the Prospection which is understood primarily as such long-term and irreversible development in demand on the foreign market which substantially differs from the development expected in the Prospection,
  - b) in the political risk of the Prospection which is understood as
    - i. administrative decisions or legislative measures or intervention of authorities of the country where the Prospection has been carried out, which prevent carrying out of the Prospection or the following delivery without the Insured's fault or impulse
    - ii. any measure or decision of the government of the country of the Insurer or the Policyholder, including the measure and decision of the European Community related to trade between the member state and third countries unless its consequences are covered in other way by the respective government,
    - iii. impossibility, delay or restriction of the transfer or conversion of payments as a result of political events, legislative or administrative measures or serious economic difficulties in the country of the Prospection or in the country through which the payments are to be executed (especially declaration of insolvency of the country, declaration of the payments moratorium or introduction of a foreign exchange regime disallowing the conversion of the domestic currency or limiting in any other way the transfer of payments abroad or conversion of the currency) provided the Borrower has deposited an appropriate counter-value of the due amount in the domestic currency and has taken all necessary steps for the transfer of the payments or for the conversion of the currency,
    - iv. other political events influencing the foreign market, especially war, revolution, uprising, civil war, civil riots, general strike,
    - v. natural disaster influencing the foreign market.
4. The insurance loss shall occur on the day of a notification to the Insurer on existence of a reason according to the par. 1 on the form Notification of a Threat of an Insurance Loss.

#### ■ Article VIII. Indemnification

1. The obligation of the Insurer to indemnify arises upon an occurrence of the insurance loss.
2. The Insurer shall not indemnify in case the financial loss does not exceed the amount of twenty thousand Czech Crowns, unless specified otherwise in the Insurance Contract.
3. The obligation of the Insurer to indemnify shall not arise in case the Insured delivers to the Insurer the Notification of a Threat of an Insurance Loss later than six months after expiration of the insured period.
4. Upon obtaining the Notification of a Threat of an Insurance Loss, the Insurer is obligated to initiate an investigation necessary for a confirmation of the Insured's claim and for determining the extent of the Insurer's obligation to indemnify without unnecessary delay. The Insurer concludes the investigation, if possible or unless the parties do not agree otherwise, within three months from the date the insurance loss had occurred. This period shall not be running if the investigation has been made impossible or more difficult by Beneficiary's, Policyholder's or Insured's fault.



The Insurer shall mention results of the investigation in the Decision on Indemnification.

5. For the purposes of the investigation of the insurance loss and determination of the amount of the financial loss, the Insured is obligated to submit to the Insurer appropriate documentation, records, and other evidence requested by the Insurer in order to evaluate occurrence and extent of the insurance loss, particularly assessment of the fulfilment of the Prospection Plan and Prospection Budget carried out by the Insured and evidenced by the accounting records of Prospection Costs, Export Revenues and Expenses and documents on payment of the insurance premium.
6. The Insurer reserves the right to verify the truthfulness and accuracy of submitted documents, and of all data and information provided by the Insured, which the Insurer considers significant or necessary for the purposes of the investigation.
7. For the purposes of establishing the amount of the financial loss, really spent Prospection Costs mentioned in the Prospection Budget incurred in the first 2 years of the insured period shall be established as the basis for the indemnification, reduced by the difference of Export Revenues and Expenses arising during the insured period. The exchange rate at which the expenses and revenues had been converted from the foreign currency when entered in the accounts shall be used for their conversion.
8. The indemnification is set for the amount of the financial loss determined according to the par. 7 of this Article reduced by the amount of the Self-Retention. If the financial loss is higher than the maximum insurance value, the indemnification shall be set at the amount of the maximum insurance value reduced by the Self-Retention
9. The indemnification is provided in the Czech currency.
10. The indemnification is payable within fifteen days from the date of the issuance of the Decision on Indemnification.

#### ■ Article IX. Exclusions from Insurance, Refusal and Reduction of Indemnification

1. The obligation of the Insurer to indemnify shall not arise (exclusions from insurance):
  - a) If the Insured or a person acting for the Insured or on behalf of the Insured violates norms and usages of international law which are binding for the Czech republic when carrying out the Prospection.<sup>2</sup>
  - b) if the Insured or a person acting for the Insured or on behalf of the Insured violates legal norms of Czech law and/or legal norms of the country in which the Prospection is being realized when carrying out the Prospection and if this act influenced occurrence or extent of the insurance loss,
  - c) for the Prospection Costs spent after the Exporter is in bankruptcy in the sense of the Act on Insolvency,
  - d) for the Prospection Costs spent in contradiction to the Prospection Plan and Prospection Budget without a prior written consent of the Insurer.
2. The Insurer has the right to refuse the indemnification:
  - a) In case the Beneficiary has knowingly stated untruthful or grossly distorted information relating to the scope of the insurance loss or has withheld essential data concerning this loss when making a claim for the indemnification,
  - b) When there is violation of obligations according to the Article III., par. 6,
  - c) in other cases stipulated by the law.
3. The Insurer has the right to reduce the indemnification in an appropriate extent:
  - a) If the Insured violated obligations toward the Insurer stipulated in the Insurance Contract, Insurance Conditions and in relevant provisions of generally binding legislation related to insurance and these violations had substantial influence on an occurrence of an insurance loss, its course or on an increase in the extent of its consequences, or on an ascertainment or determination of the amount of the indemnification,

- b) if the Exporter, without any objective reasons, did not keep the Export Expenses and Revenues in such way as they had been stipulated in the Prospection Budget and this had substantial influence on the occurrence of an insurance loss, its course or on an increase in the extent of its consequences, or on an ascertainment or determination of the indemnification,
- c) if the Exporter, without any objective reasons, did not utilize results of the Prospection, did not start or stopped exports to the foreign market and this had substantial influence on the occurrence of an insurance loss, its course or on an increase in the extent of its consequences, or on an ascertainment or determination of the indemnification,
- d) in other cases stipulated by the law.

#### Rights and Obligations of Contracting Parties

##### ■ Article X. Rights and Obligations of the Insured

1. The Insured has the right to:
  - a) Indemnification resulting from the occurrence of an insurance loss provided the Insured is simultaneously a Beneficiary,
  - b) to amend the Prospection Plan with the prior written consent of the Insurer,
  - c) to request from the Insurer to carry out the proper investigation necessary to determine the extent of the Insurer's obligation to provide an indemnification, to state the results of the investigation in the Decision on Indemnification and to inform the Insured on its contents,
  - d) payment of the indemnification within the time limit of 15 days from the date of the Decision on Indemnification,
  - e) request an advance on the indemnification payment in case the Insured has decided not to export to the foreign market during the insured period on the basis of objective reasons and the Insurer had agreed with this decision in writing in advance.
2. The Insured is obligated to:
  - a) Take into account possible negative price movements, i.e. prices usual on the foreign market and their development, alternatively increase of production costs when preparing the Prospection Budget,
  - b) carry out the Prospection and subsequent exports with due care of a proper thrifty person and to behave as if the Insured were not insured,
  - c) comply with the Prospection Plan and Prospection Budget,
  - d) keep provable accounting records of the Prospection which shall record on the debit side Prospection Costs spent within the framework of the approved Prospection Budget and Export Expenses, and on the credit side revenues from the realized Export to the foreign market which are used to reimbursement of spent Prospection Costs,
  - e) submit to the Insurer the Prospection account kept in own accounting records within 3 months after expiration of the insured period,
  - f) provide the Insurer with an exact and true information on own economic situation, financial and legal status and on problems in the fulfilment of the Prospection Plan as well as on other factors which influence or could influence carrying out of the Prospection in such way that there will be danger of an occurrence of a financial loss, even without being requested to do so by the Insurer,
  - g) stop spending the Prospection Costs in case of own insolvency,
  - h) stop the Prospection of the foreign market on the basis of Insurer's decision,
  - i) inform the Insurer without delay on an agreement on a concurrent insurance with another Insurer against the same or similar risk,

<sup>2</sup> E.g. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Communication of the Ministry of Foreign Affairs No. 25/2000 Collection of International Agreements)



**j)** inform the Insurer without delay on all circumstances known to the Insured which could lead to an occurrence of an insurance loss or to an increase in its extent or could influence obligations of the Insurer arising from the Insurance Contract,

**k)** coordinate with the Insurer course of action in order to prevent a threat of an insurance loss or mitigation of its consequences and to take all steps with the prior consent of the Insurer; shall the Insurer fail to communicate its own opinion on the proposed course of action within the period of 10 working days since receiving the Insured's request, or unless the Insurer agrees with the Insured other period in which the opinion shall be given, it is understood that the Insurer is in agreement with the proposed course of action,

**l)** return to the Insurer the already paid-out indemnification if it had been paid on the basis of incomplete or untruthful information without the rightful title to the payment of the indemnification or if such claim later ceased to exist, or it came out that events according to the Art. IX. have occurred,

**m)** meet other obligations arising from these Insurance Conditions and Insurance Contract.

**3.** The Insured may not, without a prior written consent of the Insurer:

**a)** incur Prospection Costs in violation of the Prospection Plan and Prospection Budget,

**b)** interrupt performance of the Prospection which is in compliance with the Prospection Plan,

**c)** interrupt the Export to the foreign market during the insured period.

#### ■ Article XI. Rights and Obligations of the Insurer

**1.** The Insurer is obligated to:

**a)** perform a proper investigation necessary to determine the extent of the Insurer's obligation to provide the indemnification,

**b)** state the results of the investigation in the Decision on Indemnification and to inform the Insured on its contents,

**c)** pay the indemnification within the time limit of fifteen days from the date of the Decision on Indemnification,

**d)** preserve the documents entrusted and provided to the Insurer with due care.

**2.** The Insurer has the particular right to:

**a)** request payment of the insurance premium for the whole period of validity of the insurance,

**b)** request full cooperation of the Exporter before conclusion of the Insurance Contract in verification of feasibility of the Prospection Plan and prospection Budget; the Insurer can entrust a third person to do it,

**c)** monitor how the Exporter complies with the Prospection Plan, or alternatively, the Insurer may entrust a third party with this examination,

**d)** verify the truthfulness and exactness of the submitted documents and of all data and information given by the Insured, while respecting the generally binding regulation on business secrecy,

**e)** claim from the Insured the return of the paid-out indemnification or compensation of damages in case that the indemnification has been provided on the basis of untruthful information or without the rightful title for payment of the indemnification, or if such claim later ceased to exist.

#### Final and Closing Provisions

##### ■ Article XII. Final Provisions

**1.** Relations unregulated by the Insurance Contract or by the Insurance Conditions, are governed by the appropriate provisions of the Insurance Contract Act and of the Civil Code.

**2.** Wordings of the Insurance Conditions and of the Insurance Contract in the Czech language are decisive.

**3.** The Insurer is entitled to terminate the Insurance Contract if:

**a)** The Insured has been withdrawn the licence for entrepreneurial activities, the court has decided on insolvency of the Insured or the petition for declaration of insolvency proceedings has been refused for the lack of assets of the Insured,

**b)** it is so stated in the Insurance Contract,

**c)** it is so stated in the Insurance Contract Act, Civil Code or in other legal regulations.

**4.** The notice of termination must be in writing. The term of notice starts to run on the day of delivery of the notice of termination to the other party and it lasts 6 weeks, unless stipulated otherwise by law.

**5.** If any provision of the Insurance Conditions or the Insurance Contract becomes at least partially inefficient or non-applicable as a result of a change in legal regulations, this does not make the remaining provisions invalid or void.

**6.** Information provided in any form by the contracting parties to each other in connection with the conclusion of the Insurance Contract and to the fulfilment of obligations resulting from it, is confidential. The party, which has received such information may not provide it to a third person without consent of the other party, nor may it use such information for a purpose different from the one for which it has been provided unless stipulated otherwise by law (e.g. the Act on Insurance).

**7.** Unless agreed otherwise by the contracting parties in the Insurance Contract, any possible disputes arising between them from legal relations established by this Insurance Contract or related to it (including issues of validity or invalidity of the Insurance Contract), which cannot be resolved by an amicable settlement with exclusion of jurisdiction of ordinary courts in a reasonable time, shall be finally decided in arbitration proceedings at the Arbitration Court at the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic in accordance with its Order by 3 arbitrators appointed pursuant to this Order. Parties undertake to meet all obligations imposed on them in the arbitration decision within the time prescribed therein.

**8.** Insurance under these Insurance Conditions shall be governed by the rule of law of the Czech Republic.