

General Insurance Conditions



Z

for Insurance of a Bank Guarantee Issued in Relation
to Fulfilment of Conditions for Winning or Performing
an Export Contract

These General Insurance Conditions are effective from 4 September 2009.



Export Guarantee and Insurance Corporation (EGAP)

Vodickova 34/701

111 21 Prague 1

Czech Republic

P.O.Box 6

Phone: +420 222 841 111

Fax: +420 222 844 001

www.egap.cz

Company Identification No.: 45279314

Tax Registration No.: CZ45279314

Registered in the Commercial Register

kept at the City Court in Prague,

Section B, inset 1619





■ Article I. Basic Provisions

1. These General Insurance Conditions “Z” (hereinafter the “Insurance Conditions”) regulate terms and conditions of insurance for a bank guarantee issued in relation to conditions for winning or performing an Export Contract (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. Shall a Principal or a person acting for the Principal or on behalf of the Principal violate provisions of the special law¹ when negotiating the Export Contract, the Insurer is entitled to refuse the insurance of the Guarantee for a proper performance of the Export Contract.
4. The insurance according to these Insurance Conditions is concluded as an insurance against loss and damage.
5. 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 a bank issuing a bank guarantee for obligations of a Principal (Guarantor),
 - 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) the **Principal** is an Exporter on behalf of whom the Insured issues a Guarantee,
 - f) the **Beneficiary of the Guarantee** is a foreign entity for the benefit of whom the Guarantee is issued (usually an Importer or a person inviting to a Tender), or a person authorized by the Beneficiary of the Guarantee with execution of his rights arising from the Guarantee (usually a bank or other financial institution),
 - g) an **Importer** is a foreign entity who realizes or shall realize the import from the Czech Republic,
 - h) a **Guarantee** is a bank guarantee for the performance of a subject obligation of the Principal related to the Export, which originates by a written declaration of the Insured in a Certificate of Guarantee undertaking to satisfy the Beneficiary of the Guarantee up to the amount of a certain financial sum in accordance with the content and conditions of the Certificate of Guarantee (Guarantee Policy); an indirect Guarantee is also a Guarantee in the sense of the Insurance Conditions. The insurance according to the Insurance Conditions covers the following Guarantees:
 - i. A “**Bid Bond**”, “Provisional Guarantee” is an obligation of the Insured to pay instead of the Principal a predetermined amount in case the Principal has not concluded an Export Contract or has not met conditions of the bid selected (accepted) in a tender,
 - ii. An “**Advance Payment Bond**” is an obligation of the Insured to return to the Beneficiary of the Guarantee payments made by the Beneficiary of the Guarantee to the Principal as an advance payment in case the Principal has not fulfilled the terms and conditions of the Export Contract, particularly from the point of view of volume parameters,

iii. A “**Performance Bond**” is an obligation of the Insured to pay a predetermined amount instead of the Principal in case that the Principal has not fulfilled conditions of the Export Contract, particularly from the point of view of delivery dates, quality and performance parameters. The Guarantee shall usually cover the period until the quality inspection, or it may cover the full validity period of the technical warranty for the equipment,

iv. **Other type of the Guarantee** The subject of insurance may also be other type of the guarantee issued by the Insured for obligations of the Principal towards the Beneficiary of the Guarantee related to the performance of the obligations under the Export Contract provided it is so specified in the Insurance Contract.

- i) an **Export Contract** is a contract concluded by and between the Principal and the Importer for the performance of which the Insurer issues a Guarantee; this contract has to regulate, particularly passing of rights, payment conditions, or method of financing,
- j) the **Export** is a delivery of goods or provision of services, or a delivery of goods and provision of services pursuant to the Export Contract for the purposes of the use outside the territory of the Czech Republic,
- k) 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,
- l) a **Foreign Entity** is a natural person who has no permanent residence on the territory of the Czech Republic or a legal person who has no registered seat on the territory of the Czech Republic,
- m) 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,
- n) the **Self-Retention** means a portion of the Beneficiary on the losses covered by the insurance, expressed in percentage points, for which the Insured is not entitled to negotiate other insurance.

■ Article III. Subject of Insurance

1. The subject of insurance is a bank guarantee issued in relation to conditions for the winning of an Export Contract or its performance. The insurance covers the risk of an unfair calling of the Guarantee and, optionally, also the risk of a fair calling of the Guarantee. The Insurer shall decide on the insurance against a fair calling of the Guarantee based on an assessment of an export deal and following from proven abilities of the Principal to fulfil obligations arising from the Export Contract or from conditions of the Tender. In case of a partial calling of the Guarantee, each of these partial callings is insured up to the total amount of the Guarantee.
2. The insurance additionally covers the exchange rate risk of movement of the exchange rate of the Czech crown against the currency in which the supplier credit has been extended in case of the indemnification (Art. VIII. par. 12).
3. Depending on the conditions and the extent of cover as defined in the Insurance Contract, the subject of insurance are also costs of the Insured related to calling of the insured Guarantee during the waiting period (the “re-financing costs”).

¹ § 160 and subsequent ones of the Act No. 140/1961 Coll., the Criminal Code



4. Conditions for insurance are, particularly:
 - a) an unequivocal obligation of the Principal to arrange for the issuance of a Guarantee to the Beneficiary of the Guarantee in accordance with conditions of the Export Contract or conditions of the Tender,
 - b) the value of the issued Guarantee shall not exceed the percentage share of the purchase price usual for individual types of Guarantees pursuant to the international business conventions and practices,
 - c) the Guarantee is not contrary to international business conventions and practice; if the Guarantee refers to the Uniform Rules for Guarantees published by the International Chamber of Commerce for the individual types of guarantees, it may not contradict these Rules.
5. The insurance value does not include costs for the issuance of the Guarantee, expenses related to the following Export Credit or to other insurance or financing (e.g. insurance premium for the insurance of the following Export Credit, bank and other fees) unless specified otherwise in the Insurance Contract.

Insurance Promise Contract, Insurance Contract

■ Article IV. Insurance Promise Contract

1. The Insurer undertakes in the Insurance Promise Contract to conclude an Insurance Contract upon fulfilment of agreed terms and conditions and in the time agreed, and to arrange for reservation of the necessary insurance capacity.
2. The applicant for insurance is obligated to pay a fee for the reservation of insurance, which is determined in the Insurance Promise Contract.
3. The Insurer is not obligated to conclude the Insurance Contract if, according to the Insurer's opinion, a substantial change has occurred in the conditions and circumstances, which have increased the insurance risk against the level the Insurer had assumed when concluding the Insurance Promise Contract, especially if a substantial worsening of the financial situation of the applicant, Principal or the Beneficiary of the Guarantee has occurred, if there were substantial changes in terms and conditions of the Export Contract or in terms and conditions of the Tender during the validity period of the Insurance Promise Contract, or if the risk classification of the country or territory related to performance of the Export Contract has worsened substantially.
4. During the validity period of the Insurance Promise Contract, the applicant is bound to adhere to obligations resulting from these Insurance Conditions in a similar way as the Insured.
5. Rights and obligations of contracting parties resulting from the Insurance Promise Contract are governed by provisions of the Commercial Code, especially by the provisions on an agreement on a future contract.

■ Article V. Insurance Contract

1. The Insurance Contract shall define, beside the usual essentials, primarily the commencement and expiration of insurance in relation to the terms and conditions of the Guarantee, Tender and of the Export Contract, the amount of the insurance premium and of the Self-Retention, and identification of the person of the Beneficiary of the Guarantee.
2. The Insurance Contract has to be signed by the Insurer, the Insured and by the Principal, and it is binding for all contracting parties. The Principal acknowledges by his own signature his rights and obligations and takes notice of a possibility of recourse, shall he be responsible for the calling of the Guarantee in the sense of the Article XII.
3. 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 accordance with the scope

of the insured risk, with assessment of the character of the Beneficiary of the Guarantee and of the Principal and their risk rating, the risk classification of the country or territory related to performance of the Export Contract, or terms and conditions of the Tender, with the type of the Guarantee and the percentage of the Self-Retention. 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 the insurance. In this connection, the insurance risk is understood as the classification of the country in accordance with the extent of the export credit risk, or the classification of the country into individual risk categories established by the Insurer.

4. Mutual financial obligations between the Insurer and the Insured are payable in Czech crowns unless specified otherwise in the Insurance Contract. For conversion from the other currency for the purposes of determination of the amount of the insurance premium and of the amount of the indemnification, the exchange rate specified in the Insurance Contract shall be used; otherwise, the Czech National Bank's exchange rate, which is valid on the day of signing the Insurance Contract, shall be applied.
5. The insurance premium, the fee for the provision of the Insurance Promise Contract, as well as 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.
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 is paid, unless an earlier day is specified in the Insurance Contract, however, not prior to the day the Insurance Contract has been concluded. The Insurance Contract may specify, in connection with the terms and conditions of the Guarantee, additional conditions precedent for the inception of the insurance.
2. Beside cases, which are specified in the generally binding legal regulations, in the Insurance Contract or in other provisions of Insurance Conditions, the insurance expires also by expiration of the validity period of the Guarantee stated in the Certificate of Guarantee (Guarantee Policy), by the termination of the obligation secured by the Guarantee or, if an insurance loss has occurred, by the Insurer's Decision on Indemnification on the last insured part of the Guarantee.

Insurance Loss and Indemnification

■ Article VII. Insurance Loss

1. Causes for an insurance loss are the unfair calling of the Guarantee and the fair calling of the Guarantee, provided it has been agreed in the Insurance Contract.
2. An unfair calling of the guarantee shall be understood as:
 - a) the unfair calling of the Guarantee by the Beneficiary of the Guarantee without any Principal's breach of obligations arising from an Export Contract or from the terms and conditions of a Tender,
 - b) political and other non-commercial risks arising from political and economical events and measures in the country of the seat of the Beneficiary of the Guarantee or in a third country, which have a nature of force majeure from the point of view of the Principal and of the Beneficiary of the Guarantee, and which have caused the unfair calling of the Guarantee. It is such calling of the Guarantee, which has happened because of one of the following causes:
 - i. political events in the country of the seat of the Beneficiary of the Guarantee, such as war, civil war, revolution, uprising, civil disorder, strike, etc.,



- ii. administrative decisions of authorities of the state of the Beneficiary of the Guarantee,
 - iii. administrative and political measures in third countries through which the Export Contract or the Tender are realized,
 - iv. any measures or decisions of the government of the country of the Insurer or the Policyholder and/or the Insured, including the measures and decisions of the European Community related to trade between the member state and third countries, provided the country of the Policyholder and/or the Insured is a member state of the European Community, unless its consequences are covered in other way by the respective government,
 - v. natural disaster, having as a consequence the inability to perform an Export Contract or the terms and conditions of a Tender.
3. The fair calling of the Guarantee is the calling caused by a breach by the Principal of the terms and conditions of an Export Contract or a Tender. The insurance against the fair calling of the Guarantee excludes the calling of the Guarantee resulting from:
 - a) a wilful decision of the Insured without any economic reason having as a direct result Principal's non-performance of the Export Contract or the terms and conditions of the Tender,
 - b) material and legal defects in the insured Guarantee caused by the Insured.
4. An insurance loss shall arise after expiration of a waiting period in duration of 90 days from the day of the delivery to the Insurer of a notice on existence of a cause for an insurance loss pursuant to the paragraphs 2 and 3 on the Insurer's form of a Notification of a Threat of an Insurance Loss.
5. The Insured is obligated to take all purposeful measures during the waiting period in order to achieve settlement of his insured receivable by the Principal and/or returning of the unused Guarantee by the Beneficiary of the Guarantee.
6. The Insurer may reduce the waiting period by a unilateral declaration.

■ 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 amount of the called insured guarantee does not exceed the amount of fifty 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 the day of the calling of the Guarantee from causes in accordance with the Article VII., paragraphs 2 or 3.
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 one month from the date the insurance loss had occurred. 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 drawn amount, the Insured is obligated to submit to the Insurer appropriate documentation, records, and other evidence reasonably satisfactory for the Insurer which are decisive for the origination and the amount of the claim for the payment of the indemnification, especially the origination of the insurance loss and reasons for it, amount of the drawing from the Guarantee, documentation of the payment of the insurance premium. Furthermore, the Insured is obligated to present a valid Insurance Contract or

Insurance Certificate (Insurance Policy) together with all other documents and information, which the Insurer may request. In case of an insurance loss on ground of a fair calling of the Guarantee, the Insured is also obligated to prove the validity of the Export Contract in the moment of the calling from the insured Guarantee or to prove that the Principal has not fulfilled terms and conditions of the bid in case of the insurance of a bid bond.

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 indemnification, the amount drawn from the insured Guarantee by the Beneficiary of the Guarantee shall be established as the basis, reduced by all payments accepted by the Insured as a settlement or a cover of the drawn amount before the day of the Decision on Indemnification unless these settlements directly reduce the amount drawn from the Guarantee. The lost profit of the Insured is not covered.
8. The drawing from the Guarantee in the amount according to the paragraph 7 of this Article is reduced by the amount of reciprocal creditable receivables of the Beneficiary and the Insured, the justification of which has been acknowledged by the Insured, or which have been awarded to the Beneficiary of the Guarantee by an enforceable decision in legal or arbitration proceedings unless specified otherwise in the Insurance Contract
9. The indemnification is set for the amount of the basis determined according to the paragraph 7 of this Article, and reduced according to the paragraph 8 of this Article, and further reduced by the amount of the agreed Self-Retention of the Insured.
10. Unless stipulated otherwise in the Insurance Contract, the Self-Retention amounts to:
 - a) at least 5 % in cases of the unfair calling of a Guarantee,
 - b) at least 10 % in case of the fair calling of a Bid Bond, Advance Payment Bond and of other type of the Guarantee unless it has not character of a Performance Bond for an Export Contract,
 - c) at least 20 % in case of the fair calling of a Performance Bond.
11. If it is proven after an indemnification payment that there is other reason for an occurrence of an insurance loss than the reason for the insurance loss established in compliance with the Article VII paragraphs 2 or 3, which had resulted in awarding of the indemnification payment, a settlement between the Insured and the Insurer of the relevant Self-Retention shall be made unless this fact does not establish the right of the Insured for the refund of the indemnification in accordance with the Article VIII. paragraph 1 letter f).
12. The indemnification is paid out in the Czech currency. For conversion from a foreign currency, the exchange rate determined according to the provision of the Article V. paragraph 4 of the Insurance Conditions shall be applied. Regarding the Article III. Par. 2, the exchange rate of the Czech National Bank as valid on the day of the Decision on Indemnification shall be applied for conversion from another currency.
13. 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 rights resulting from the Guarantee have been transferred to a third person without a prior written consent of the Insurer,
 - b) if, without a prior written consent of the Insurer and during the validity period of the insurance, the Insured



and the Principal have become economically or personally related persons, when one person participates, directly or indirectly, in management, control, or capital stock of the other. Participation in the capital stock of the other person means holding of shares or of a portion representing at least 10 % of the capital stock of the person in question.

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) in other cases specified in the Insurance Contract Act.
3. The Insurer has the right to reduce the indemnification in an appropriate extent if the calling of the Guarantee has been caused, directly or indirectly:
 - a) By the Insured or persons acting for the Insured or on behalf of the Insured, especially by violation of the terms and conditions of the Guarantee or by violation of the relevant legal regulations valid in the country of the Beneficiary of the Guarantee or in the country through which the payment was (or should have been) made,
 - b) by application of any provision of the Guarantee or related documentation concluded or issued by the Insured which restrict the rights of the Insured or possibility of their implementation and enforcement,
 - c) by any subsequent agreement between the Insured and the Beneficiary of the Guarantee made after the date of the issuance of the Guarantee which augments the calling from the Guarantee,
 - d) if the Insured has violated the obligations towards the Insurer as specified in the Insurance Contract, Insurance Conditions, and in respective provisions of the generally binding legal regulations related to the insurance, and this violation had a significant influence on an occurrence of an insurance loss, its course or on an increase of its consequences, or on the ascertainment or determination of an amount of an indemnification,
 - e) in other cases specified in the Insurance Contract Act.

■ Article X. Cession of Rights

1. Concurrently with the partial or full payment of the indemnification, the Insurer is entitled to request the Insured to transfer, cede or otherwise surrender financial claims the Insured has on the Principal and/or the Beneficiary of the Guarantee in a way effective towards the Principal and/or the Beneficiary of the Guarantee. Upon the Insurer's request, the Insured is obligated to transfer, cede, or otherwise convey at the same time, all rights connected with these claims, especially the rights from guarantees or from other forms of security.
2. Notwithstanding the cession of claims, the Insured is always obligated to enable the Insurer to recover the insured receivable from the called Guarantee. For these purposes, the Insured is obligated to submit to the Insurer all documents related to the Guarantee and to provide the Insurer with the necessary co-operation without unnecessary delay.
3. For the reasons of expediency of the recovery of the insured receivables or for simplification of the legal procedures, the Insurer may authorise the Insured or a person appointed by the Insured with the recovery of the insured receivables from the called Guarantee. The Insurer shall undertake to reimburse the Insured for purposefully spent expenses of recovery of the insured receivable on the basis of their proper accounting and evidencing on Insured's part.
4. Payments made by the Principal, Beneficiary of the Guarantee or by a third person as settlements of the insured receivable after the Insurer had paid out the indemnification shall belong to the Insurer and the Insured is obligated to inform the Insurer on such payments without delay and to cede these payments to the Insurer within five days upon their receipt.

5. When rights of the Insured have not been transferred to the Insurer by a contract on cession of receivables in accordance with the Art. 1 for a reason of purposefulness of recovery of the insured receivables, the Insurer and the Insured shall conclude a contract on arrangement of rights and obligations where reciprocal rights and obligations in recovery of the insured receivable shall be regulated.

Rights and Obligations of Participants in Insurance

■ Article XI. 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) cede the insured receivables with a prior written consent of the Insurer to a third person, to establish a lien to the insured receivables or to encumber these insured receivables in any other way,
 - c) request the Insurer to perform the proper investigation necessary to determine the extent of the Insurer's obligation to provide the indemnification, to state the results of investigation in the Decision on Indemnification and to inform the Insured on its contents,
 - d) the payment of the indemnification within the time limit of fifteen days from the date of the Decision on Indemnification.
2. The Insured is obligated to:
 - a) proceed in the process of the issuance of the Guarantee with due care and caution while taking into account international rules for guaranteees,
 - b) negotiate with the Principal a method of submission of relevant documents evidencing these facts for the purposes of the control of the performance of the Export Contract or of the terms and conditions of the Tender; in doing so, the Insurer does not become responsible for the content and form of these contracts and documents,
 - c) when insuring the fair calling of the Guarantee and provided the Guarantee Certificate (Guarantee Policy) refers to the Uniform Rules for Guaranteees payable on demand, publication 458, issued by the International Chamber of Commerce, the Insured has to state in the Guarantee Certificate as a condition for the calling of the Guarantee in the Guarantee Certificate an obligation of the Beneficiary of the Guarantee to submit a written statement on the cause of the calling from the guarantee; in case of a bid bond; it shall be a statement of the Beneficiary of the Guarantee that the Principal has not concluded the Export Contract or he has not complied with obligations of the bid selected in the tender; further details may be regulated in the Insurance Contract,
 - d) when insuring the risk of a fair calling of the Guarantee not covered under the letter c), to inform in co-operation with the Principal on the reason for calling of the Guarantee and to prove that the Export Contract was valid in the moment of the calling of the Guarantee, or to prove that the Principal has not fulfilled terms and conditions of the bid in case of the insurance of a bid bond,
 - e) inform the Insurer without unnecessary delay on all requests of the Beneficiary of the Guarantee to amend the Guarantee and all information known to the Insured which could have influence on its calling,
 - f) provide the Insurer with an exact and true information on own financial situation, and legal status, and all information known to the Insured on economic situation, financial and legal status of the Principal, even without being requested to do so by the Insurer,
 - g) issue the Guarantee corresponding with the terms and conditions of the Export Contract or the Tender,
 - h) inform the Insurer without delay on all circumstances known to the Insured which might lead to an origination of an insurance loss or to an increase in its extent, or which may affect obligations of the Insurer resulting from the Insurance Contract,



- i) refrain from concluding any subsequent insurance of the Self-Retention,
- j) inform the Insurer in writing without unnecessary delay within 5 working days from discovery on an occurrence of a threat of an insurance loss and subsequently to submit a report on causes, circumstances and the extent of the real or threatening insurance loss.
- k) co-ordinate with the Insurer procedures taken in order to prevent a threat of an insurance loss to occur or to reduce its consequences; to take all steps against the Beneficiary of the Guarantee or the Principal with a prior consent of the Insurer only; in case the Insurer does not inform the Insured on his opinion to the proposed procedure within 10 working days since receiving the request of the Insured, or does not agree with the Insured any other deadline for the giving his opinion, it is considered as if the Insurer gave his consent to the proposed procedure,
- l) verify feasibility and profitability of the costing for the performance of the Export Contract and of securing of a sufficient amount of resources for the financing of the production for the Export, or to verify also further risks related to the performance of the Export Contract in case of a request from the Insurer or the Insured may arrange contractually for this verification with a third party. Its selection shall be approved by the Insurer; further details shall be defined in the Insurance Contract. In case the Insured has arranged for this obligation with a third party, the Insured is obligated to ensure by contractual means accountability of this third person for proper performance of its obligations,
- m) check purposefulness of the drawing and utilization of the advance payment by the Principal when insuring an Advance Payment Bond,
- n) conclude, simultaneously with the indemnification payment and on suggestion of the Insurer, a contract on cession of receivables which the Insurer has indemnified, or to conclude, in compliance with the Article X., par. 4 a contract on arrangement of rights and obligations,
- o) return to the Insurer the paid-out indemnification if the Insured prevented the Insurer to carry out the rights ceded to him, or the Insured refused their cession to the Insurer, or the Insured has not enabled the Insurer to carry them out properly, or if the Insured has complicated the ability to collect the insured receivables from which the Insurer paid the indemnification,
- p) return to the Insurer the indemnification if it had been paid out without the rightful claim for the payment of the indemnification arising to the Insured or if such claim ceased to exist later,
- q) return to the Insurer the paid-out indemnification or compensation of damages which the Insurer incurred, in case that the indemnification has been provided on the basis of an incomplete and untruthful information, or if it had come out that facts mentioned in the Article IX. had occurred.
3. The Insured may not, without a prior written consent of the Insurer:
- a) Agree with the Beneficiary of the Guarantee on a change in terms and conditions of the Guarantee,
- b) cede the claims arising from the Insurance Contract to a third person.

■ Article XII. Obligations of the Principal

1. The Principal is obligated to provide the Insurer with full co-operation and information in the matter of the insured Guarantee and the Export Contract, in relation to which the Guarantee is issued and to inform the Insurer without unnecessary delay on all requests of the Beneficiary of the Guarantee for changes in the Export Contract, which could have influence on the calling of the insured Guarantee.
2. In case the Bank Guarantee is called by the Beneficiary of the Guarantee, the Principal shall be obligated to:
- a) give the Insurer an opinion on causes and justifiability of the calling of the Guarantee and to evidence it by the relevant documentation on Insurer's request,

b) in the event of the unfair calling, take, in compliance with instructions of the Insurer, all steps leading to recovery of the drawn amount against the Beneficiary of the Guarantee and/or against a third person whose decision caused the calling of the Guarantee,

c) take on request of the Insurer legal steps against the Beneficiary of the Guarantee leading to proof of the unfair calling of the Guarantee and to the obligation of the Beneficiary to return the drawn amount.

3. In the event of the fair calling of the Guarantee, the Principal undertakes to pay to the Insured any settlements from the Guarantee paid by the Insured and costs which the Insured incurred in relation to the calling of the Guarantee by the Beneficiary of the Guarantee.
4. In the event of the fair calling of the Guarantee and upon the payment of the indemnification to the Insured, the Insurer may take recourse against the Principal or his legal successor in title for damages caused by the Principal or by a person to which the Principal transferred the rights and obligations from the Export Contract. The right of the Insurer to take recourse against the Principal shall be governed by the recourse declaration of the Principal and by appropriate provisions of the generally binding legal regulations.
5. The recourse shall be taken especially:
- a) in the event of violation of the conditions of the Tender or when the Export Contract has not been concluded although the bid was successful in the Tender,
- b) in the event of faulty technical and financial concept of the Export Contract and incorrect assessment of costs related to its realization,
- c) in the event of violation of the conditions of the Export Contract on Principal's part, particularly by the non-fulfilment of delivery time, type, quality and quantity of exported goods or services, by noncompliance with performance parameters of the delivered product or equipment, by breach of conditions of the warranty for the delivered goods,
- d) in the event of acceptance of such conditions of the Export Contract, which substantially deviate from common international conventions and practice, and which constitute extraordinary restriction of the rights of the Principal in case of an insurance loss (e.g. unusual recourse, unjustified possibility of withdrawal of the Export Contract on part of the Beneficiary of the Guarantee, etc.)
- e) in the insurance of a Performance Bond on an Export Contract, in case of violation of norms and practices of the international law regarding the bribery of foreign public officials in international business transactions, which are binding for the Czech Republic², by fault of the Principal or a person acting on behalf of the Principal when negotiating the Export Contract,
- f) in the event of an unfair calling of the Guarantee by the Beneficiary of the Guarantee, in case the Principal should not file the motion to start court or other proceedings against the Beneficiary of the Guarantee with regard to the payment of the amount corresponding to the amount of the unfair calling of the Guarantee,
- g) if, within the framework of his obligation to co-operate with the Insured, in fulfilling the Insured's obligation arising from the Art. XI., paragraph 2, letter d) and Art. VIII. paragraph 5 of the Insurance Conditions, the Principal does not report on reasons for the calling of the Guarantee and does not provide further information necessary for the proof that the Export Contract was valid at the moment of the calling of the Guarantee, or that the Principal had not fulfilled terms and conditions of the bid in case of insurance of a bid bond, or if information provided by the Principal has been untruthful.
6. Provision concerning recourse against the Principal shall in no way restrict the rights against the Principal, which were ceded to the Insurer or which were transferred to the Insurer in relation to the payment of the indemnification.

² For example the 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)

■ Article XIII. Rights and Obligations of the Insurer

1. The Insurer has the particular right to:
 - a) the insurance premium for the whole period of duration of the insurance,
 - b) negotiate with the Principal, for the purposes of the control of the performance of the Export Contract or of the terms and conditions of the Tender, a method of submission of relevant documents evidencing these facts; in doing so, the Insurer does not become responsible for the content and form of these contracts and documents,
 - c) verify the truthfulness and exactness of the submitted documents and of all data and information given by the Insured, while respecting the generally binding regulations on the banking and business secrecy,
 - d) request from the Insured a proper enforcement of the claims against the Beneficiary of the Guarantee, against the Principal or third persons,
 - e) demand from the Principal a proper lodging of claims against the Beneficiary of the Guarantee or third persons,
 - f) claim from the Insured the repayment 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 a claim later ceased to exist,
 - g) claim from the Insured the repayment of the paid indemnification and compensation of damages, which the Insurer incurred, in case that the indemnification has been provided on the basis of an incomplete and untruthful information, or if it had come out that facts mentioned in the Article IX. had occurred.
2. The Insurer is obligated to:
 - a) perform, on the basis of a Notice of a Threat of an Insurance Loss, a proper investigation connected with ascertainment of origin, cause and extent of the insurance loss and discuss them with the Insured,
 - 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.

■ Article XIV. 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 banking licence, forced administration was imposed on the Insured, or if a court has decided on insolvency of the Insured or refused the petition for declaration of the insolvency 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 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, which is related to 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, etc.).
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.

