

# Buyer Credit

Credit risk

General Conditions nr. 370/09

Export

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This is an English translation of the Dutch original. In case of any discrepancy between the original and the translation the original Dutch text will prevail.

## Part I. Definitions

<b>Insurer</b>	the State of the Netherlands
<b>Atradius</b>	The <i>naamloze vennootschap</i> (public limited company) Atradius Dutch State Business, which pursuant to Article 3, sub-section 5 of the <i>Kaderwet financiële verstrekkingen Financiën</i> (Enabling law on financial Supplies by the Ministry of Finance), issues in the name and for the account and risk of Insurer policies and guarantees to Dutch exporters, investors and financiers of export and investments and manages these policies and guarantees for the account and risk of Insurer, including, but not limited to, the settlement of insurance claims and the pursuance of collection activities.
<b>Loan Agreement</b>	The agreement concluded between the Insured and the Borrower, particulars of which are specified in the Schedule.
<b>Export Contract</b>	The export contract concluded between the Exporter or Contractor and the Buyer, the particulars of which are specified in the Schedule.
<b>Schedule</b>	The Schedule of Names, Particulars of the Export Contract, Particulars of the Loan Agreement and the Policy Particulars, which is part of this policy.
<b>Effective date of the Loan Agreement</b>	The date on which the Loan Agreement was signed by the Insured and the Borrower or, if the Agreement contains conditions regarding the effective date, the date on which such conditions are fulfilled.
<b>Credit Risk</b>	The risk of not receiving Payment of Insured Receivables.
<b>Insured Receivables</b>	The amount(s) receivable by the Insured from the Borrower under the terms of the Loan Agreement relating to: <ol style="list-style-type: none"><li>1. the instalments in which the loan must be repaid;</li><li>2. interest on the amounts referred to in 1 until the agreed due dates on the basis of the agreed rate of interest;</li></ol>
<b>Payment Received</b>	Payment of an Insured Receivable in the place and currency specified in the Schedule.
<b>Insolvency</b>	Exclusively, any of the following situations: <ol style="list-style-type: none"><li>1. the Borrower is declared bankrupt;</li><li>2. the Borrower is granted temporary or permanent suspension of payment;</li><li>3. a settlement out of court offered by the Borrower is accepted with the agreement of Insurer;</li><li>4. enforcement of a judgment which has not or not fully resulted in payment of the Insured Receivables;</li><li>5. a judicial debt-repayment arrangement has been imposed on the Borrower;</li></ol> <p>as well as procedures or situations abroad whose effect is comparable with bankruptcy, suspension of payments or a judicial debt-repayment arrangement.</p>
<b>Moratorium</b>	General suspension of debt repayment announced by the government of the country of the Borrower or by the government of another country through which the payment of an Insured Receivable has to be made.
<b>Transfer Problems</b>	Statutory or administrative measures outside the Netherlands which prohibit local deposits, or a situation in which the transfer of amounts deposited by the Borrower or its guarantor is prevented or delayed as a result of political events, economic difficulties, shortages of foreign currency, or statutory or administrative measures outside the Netherlands.
<b>Conversion Problems</b>	A generally applicable measure taken in the country of the Borrower or its guarantor whereby a deposit made by the Borrower or its guarantor would discharge him, but at the time of transfer generates less than the amount receivable when converted into the currency of the Loan Agreement as a result of a change in exchange rate, or the application by the government of the country of the Borrower or its guarantor of a conversion rate which is less favourable than the generally-used reference rate for converting local currency into a convertible currency.

<b>Force Majeure</b>	An impediment to the repayment of the Insured Receivables as a result of the occurrence outside the Netherlands of, for example: <ul style="list-style-type: none"> <li>a. <b>international measures:</b> resolutions by international organisations that the Netherlands is obliged to implement;</li> <li>b. <b>war:</b> war, civil war, revolution, civil disturbance, terrorism and sabotage;</li> <li>c. <b>general strike;</b></li> <li>d. <b>catastrophe:</b> hurricane, earthquake, volcanic eruption, flood or other type of natural disaster;</li> <li>e. <b>nuclear disaster:</b> nuclear fusion, nuclear fission or radioactive contamination;</li> <li>f. <b>epidemic.</b></li> </ul>
<b>Government Intervention</b>	An impediment not attributable to the Insured and/or the Borrower of the repayment of the Insured Receivables as a result of measures, actions, decisions or default of a foreign government, other than Moratorium, Transfer Problems, Conversion Problems or Force Majeure.;
<b>Protracted Default</b>	The fact that the Borrower has not paid an Insured Receivable by the date of the expiry of the Waiting Period to the extent that the non-payment is not a consequence of Insolvency, Moratorium, Transfer Problems, Conversion Problems, Force Majeure or Government Intervention.
<b>Waiting Period</b>	The period after the expiry of which the Insured is entitled to make a claim for indemnification. This period, which is specified in the Schedule, shall start on the due date of the relevant Insured Receivable.
<b>Foreign Content</b>	The overall purchase price of all parts and/or services obtained by the Exporter from abroad, whether or not through Dutch agents (though only 70% of parts and/or services obtained from foreign subsidiaries of the Exporter), that are necessary for the performance of the Export Contract, <ul style="list-style-type: none"> <li>- including expenses to be incurred in the country of the Buyer and commission to be paid abroad, and</li> <li>- excluding raw materials and semi-manufactures obtained from countries other than the country of the Buyer.</li> </ul>

## Part II. Description of cover

### Article 1. Risk covered

The insurance shall cover the Credit Risk to the extent specified in the Schedule, as a direct result of:

1. Insolvency;
2. Moratorium;
3. Transfer Problems;
4. Conversion Problems;
5. Force Majeure;
6. Government Intervention;
- or
7. Protracted Default.

### Article 2. Exclusions

A loss shall not be eligible for indemnification if it is a direct result of:

- a. errors or omissions in the wording of the Loan Agreement including security specified in the Schedule under Particulars of the Loan Agreement;
- b. agreements entered into between the Insured and the Borrower or a guarantor which depart from the Loan Agreement;
- c. actions of intermediaries, with the exception of the collecting bank;

- d. tax obligations of the Insured in the country of the Borrower;
- e. the absence of any licence required by the Insured and the absence of any licence required by the Borrower, unless the Insured shows that it exercised due diligence in establishing that the Borrower had obtained all required licences before the effective date of the Loan Agreement, except those which cannot, under the regulations generally applicable in the country of the Borrower, be obtained until a later date;
- f. seizure of the Insured's assets by creditors.

#### **Article 3.**

##### **Basis for the insurance**

The information supplied by the Insured relating to the Loan Agreement for the purpose of establishing the insurance shall serve as the basis for the insurance.

#### **Article 4.**

##### **Duration of Insurer's risk**

- a. The Insurer's risk shall start on the effective date of the Loan Agreement.
- b. The Insurer's risk shall end as soon as and insofar as the Insured has received payment of the Insured Receivables.

#### **Article 5.**

##### **Cover percentage and maximum indemnification**

- a. Insurer shall pay the cover percentage of the loss as specified in the Schedule calculated in accordance with Part IV of this policy.
- b. The total amount of all indemnification under this policy and its endorsements shall not exceed the amount specified as the "Maximum indemnification payable" in the Schedule.

#### **Article 6.**

##### **Conditions for indemnification**

- a. The Insured shall be entitled to claim indemnification only if:
  - 1. the Insured has fully fulfilled its obligations towards the Borrower and any possible guarantors by the due date(s), including full disbursement of the loan, even if the Insured was entitled to suspend compliance with its obligations or to discharge itself of those obligations pursuant to the Loan Agreement or the law governing the Loan Agreement;
  - 2. the Insured has complied with all statutory and administrative obligations to which it is subject in the country of the Borrower with respect to performance of the Loan Agreement;
  - 3. the Insured has received a duly issued statement from the Exporter which declares that the Exporter has received on its account the instalments payable under the Export Contract coming into force, as specified in the Schedule under Particulars of the Export Contract;
  - 4. the Guarantees specified to in the Schedule under Security have been issued in writing for the instalments specified in the Schedule and the interest, in such a way that each guarantor may be held liable for the full amount as if he were the principal debtor and not merely a guarantor.
  - 5. the loss is not connected with a dispute between the Insured and the Borrower or a guarantor in connection with the Loan Agreement, including the Security specified in the Schedule under Particulars of the Loan Agreement;

6. the Exporter has no liability whatsoever for losses under any financing agreement concluded by the Insured and relating to the Export Contract but which is not insured under an Insurer's policy.
- b. Insurer shall not invoke the conditions referred to in (a)1, 2 or 5, if failure to comply with these conditions arises from non-disbursement of a portion of the loan due to the events or circumstances referred to in Article 7(c) and this non-disbursement was done with the written consent of, or as instructed in writing by Insurer.

### **Part III. Management of the risk**

#### **Article 7. General obligations of the Insured**

The Insured is obliged to:

- a. retain as its own risk the percentage not covered by Insurer, insofar as Insurer has not approved the transfer of this own risk to third parties;
- b. take debt-collection measures, in consultation with Insurer, and also to take any necessary measures to prevent or mitigate a loss;
- c. comply with the instructions of Insurer regarding the management of the risk and the debt-collection policy to be pursued, even after indemnification has been paid, without the Insured being able to demand remuneration for its normal office and employee expenses;

Such instructions may only relate to not making disbursements, or not making further disbursements, of the loan if one of the following circumstances applies at that time:

1. the Borrower or a guarantor is more than 30 days in arrears;
  2. the Borrower or a guarantor is in financial difficulties (such as bankruptcy, suspension of payments or voluntary winding-up);
  3. War in the country of the Borrower or a guarantor;
  4. Transfer Problems;
  5. other circumstances which entitle the Insured to refuse disbursement under the Loan Agreement.
- d. transfer the debt collection to Insurer on request;
  - e. pay to Insurer all proceeds (see Article 13(c)) received in connection with the Loan Agreement after indemnification;
  - f. stipulate in the Loan Agreement that the disbursement of the loan may be suspended if Insurer has declared in writing that further disbursements will not be covered;
  - g. not suspend disbursement of the loan unless written approval has been obtained from Insurer;
  - h. not demand accelerated repayment of the loan unless written approval has been obtained from Insurer.

#### **Article 8. Reporting obligations of the Insured**

The Insured is obliged to:

- a. notify Insurer immediately as soon as it is informed or ascertains that:
  1. the Borrower is requesting a change in the conditions of payment or a postponement of payment;
  2. in case it has not received payment 30 days after the due date of any amount receivable from the Borrower;
  3. the Borrower breaches or suspends the Loan Agreement or no longer wishes to see it fulfilled;
  4. detrimental information about the Borrower or a guarantor has become known;
  5. other circumstances have occurred as a result of which a loss may arise.
- b. keep Insurer informed of the performance of the Loan Agreement, and in particular to report disbursements under the Loan Agreement within 30 days of such disbursements taking place;
- c. keep Insurer promptly notified of changes in the circumstances listed in (a).

#### **Article 9.**

##### **Premium**

- a. The Insured is obliged to pay the premium and costs payable by the due date.
- b. If Insurer agrees to an amendment to the Loan Agreement which leads only to a change in the amount of the insured loan concerned, Insurer shall adjust the premium on a pro rata basis. If Insurer agrees to other amendments to the Loan Agreement which lead to a change in the risk of Insurer, the relevant premium shall be determined by Insurer.
- c. If the Insured is not entitled to indemnification owing to non-compliance with the policy conditions, this shall not entitle the Insured to a refund of the premium.

#### **Article 10.**

##### **Sanctions**

- a. An incorrect or incomplete statement of facts or information prior to the conclusion of the Insurance Contract which, at the time of the statement, the Insured was aware or ought to have understood was or might be relevant for the assessment by Insurer of the risk to be insured, may result in the lapse of entitlement to indemnification.
- b. The failure of the Insured to comply with its obligations as specified in Articles 7 and 8 and any increase in the risk due to its fault shall result in the lapse of its rights under the Insurance Contract. Insurer may, however, mitigate the consequences of such lapse, with due regard to the seriousness of the default.
- c. If the premium and the costs payable are not paid by the due date, interest equal to the statutory interest on arrears as referred to in Article 6:120(2) of the "*Burgerlijk Wetboek*" (Dutch Civil Code) shall be payable by the Insured from the due date.
- d. Without prejudice to the obligation of the Insured to pay the premium and costs payable, if the premium and costs payable have not been paid 15 days after written demand has been made, Insurer shall have a full discharge from its obligations.

**Article 11.****Claims procedure**

- a. The Insured shall be entitled to make a claim for indemnification after the expiry of the Waiting Period. However, if it is an established fact before the due date that (i) an Insured Receivable will not be paid within the Waiting Period and (ii) the selling-off of security within the Waiting Period will not generate any proceeds, the Insured shall be entitled to make a claim for indemnification after expiry of the due date of the Insured Receivable.
- b. If the Insured makes claims for indemnification, it shall supply all information and allow Insurer to inspect and take copies of all documents which Insurer considers necessary in order to assess such claims and calculate the loss. The Insured shall also co-operate fully in order that Insurer may also receive information from third parties or may inspect documents as referred to above.
- c. Insurer shall forward the calculation of indemnification to the Insured not later than the latest of the following two dates:
  - 30 days after expiry of the point at which the Insured is entitled to make claims of indemnification;
  - 60 days after receipt of all the above-mentioned information and documents.
- d. Within 14 days of receipt of the written declaration by the Insured that it agrees to the calculation of indemnification, Insurer shall pay the indemnification in exchange for the legally valid assignment of the Insured Receivable in respect of which a loss is to be indemnified and of all rights and security which the Insured has in connection with the Loan Agreement. If the Insured has already assigned its rights and security to third parties, such assignment must first be negated.
- e. Indemnification shall be determined and paid in the currency in which the Insured Receivable must be paid. However, indemnification shall not exceed an amount equal to the equivalent value in euros following conversion at the exchange rate specified in Article 15(d).
- f. If Insurer has rejected a claim for indemnification in writing and by reference to this article and the Insured has failed to summon Insurer before a competent court within six months of the date of such letter, the right to claim this indemnification shall expire.

**Article 12.****Advance indemnification in the event of a dispute**

- a. If a dispute arises between the Insured and the Borrower or a guarantor with regard to the Loan Agreement and
  1. the Insured, in accordance with the provisions of the Loan Agreement or the rules of the law which otherwise apply, has instituted judicial or arbitration proceedings in order to resolve the dispute, and
  2. Insurer is of the opinion, on the basis of the information known to it at that time, that the position of the Borrower or a guarantor is not well-founded,

Insurer may pay an advance on any indemnification subject to such conditions as it may specify.

- b. As soon as the dispute between the Insured and the Borrower has been resolved in the proceedings referred to in (a) 1 above, the calculation of indemnification shall be made on this basis and the advance must be repaid.

**Article 13.****Calculation of indemnification**

- a. The calculation of indemnification shall include

**DEBIT:**

- the Insured Receivables be it that with respect to the interest, the maximum interest rate to be indemnified is the interest rate mentioned in the SCHEDULE under the Maximum Interest;
- interest on arrears;  
Interest on arrears shall only be reimbursed if this is payable by the Borrower pursuant to the Loan Agreement and indemnification is paid for the Insured Receivable to which the interest on arrears relates. The interest on arrears shall be reimbursed for a period not exceeding the Waiting Period on the basis of the rate stated in the Loan Agreement, but shall not exceed the prevailing interbank rate for the currency in which the Insured Receivable must be paid (EURIBOR for euros and LIBOR for other currencies) for a period equal to the Waiting Period on the date on which the Insured Receivable fell due, subject to the amount of interest on arrears reimbursed not exceeding the maximum interest on arrears specified in the Schedule under Policy Particulars.
- the additional costs as specified in (b),  
and

**CREDIT:**

- the proceeds as specified in (c);
- the excluded losses as specified in Article 2.

The calculation shall be made in the currency in which the Insured Receivable must be paid.

**b. Additional costs.**

Collection costs and other costs incurred in mitigating and preventing the loss shall be included in the calculation of indemnification, provided that they have been incurred with the written approval of, or as instructed by, Insurer.

If expenses are incurred in a currency other than that in which the Insured Receivable has to be paid, conversion shall be at the exchange rate specified in Article 15(c). This conversion shall not apply to expenses incurred in euros.

**c. Proceeds.**

The following shall be deemed to be Proceeds:

1. payments received from or on behalf of the Borrower;
2. credit notes in the name of the Borrower or a guarantor;
3. set-off between the Insured and the Borrower or a guarantor;
4. proceeds of the realisation of security or insurance payments;
5. discounts and set-off to which the Borrower or a guarantor is entitled;
6. expenditure which the Insured has saved by not receiving Payment of its Insured Receivable, such as agent's commission;
7. expenditure (including payments to intermediaries) which depends upon the payment of indemnification under this policy.

**Article 14.****Proceeds after payment of indemnification**

All proceeds Insurer receives in the Netherlands on account of rights and security which the Insured has assigned to Insurer shall, after deduction of the costs incurred, be divided between the Insured and Insurer in proportion to each party's share in the loss as evidenced by the calculation of indemnification. The ultimate share of Insurer shall not, however, exceed the total amount of all indemnification paid under the policy, plus any interest paid by the Borrower and attributable to the indemnification.

**Article 15.****Exchange rates**

- a. Foreign currency shall be converted at the indicative exchange rate quoted by the European Central Bank on the date on which the said exchange rate is to apply. In the case of currencies for which no indicative exchange rate is quoted, the exchange rate given by De Nederlandsche Bank N.V. to Insurer, calculated on the basis of market quotations, shall apply.
- b. The premium shall be calculated using the exchange rate prevailing on the effective date of the Loan Agreement.
- c. Additional costs as defined in Article 13(b) shall be converted at the exchange rate prevailing on the date on which the costs were incurred.
- d. The indemnification shall be calculated using the exchange rate prevailing one business day prior to the expiry of the Waiting Period, provided that this does not exceed the maximum exchange rate specified in the Schedule under Policy Particulars.

**Article 16.****Rescheduling**

If an arrangement applicable to the Loan Agreement is agreed between the Netherlands and the country of the Borrower for the settlement of debts, including any postponement of payment and/or debt reduction, the Insured shall be obliged to accept the consequences thereof. This means that:

- at the request of Insurer, the Insured shall co-operate in carrying out the rescheduling;
- the rights of the Insured under the policy shall not be affected.

**Article 17.****Assignment or pledge of rights under the policy**

The Insured shall be entitled to assign or pledge its rights under the insurance to a third party insofar as Insurer has been notified of this pledge or assignment in writing.

**Article 18.****Transfer of the insured interest**

Transfer of the insured interest shall not result in the insurance continuing to the benefit of the new interested party, unless Insurer has approved the transfer in writing.

**Article 19.****Scope of Insurer's liability**

Insurer shall be bound only by what has been confirmed in writing in the policy or its endorsements. The extent of Insurer's liability shall never be altered by virtue of the charging or receipt of a premium.

**Article 20.****Communication**

Communication with reference to the insurance contract in question, including notices to the Insurer, to which the Insured may be obliged pursuant to the policy conditions, will have to pass through Atradius. All acts of Atradius, including - but not limited to - instructions and financial proceedings, are considered as acts of Insurer.

**Article 21.****Applicable law and jurisdiction**

This insurance contract shall be governed by Dutch law and in first instance the court of Amsterdam is the competent judge. In all disputes summons and possible other documents introducing a court case shall exclusively be served to the name and the adress of Atradius. Atradius will, in its own name, on instruction and for the account of Insurer, act as the formal procedural party. Insurer shall be fully bound by judgements passed on Atradius.



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