

This English translation of the authentic German text serves mainly information purposes.  
In the case of dispute the German text shall prevail.

## **GENERAL BUSINESS CONDITIONS**

for Investment Guarantees (G 4)  
(April 1999)

### **Guarantor, Agent, Terms of Contract**

#### **§ 1**

According to the Export Guarantees Act and the decree based thereon (as applicable at the time) the Federal Minister of Finance is authorized to assume liabilities on behalf of the Republic in Euro, Austrian Schillings or in another currency. An assumption of liability does not constitute a prejudice for approvals which may legally be required.

Oesterreichische Kontrollbank Aktiengesellschaft is authorized to make and receive all declarations on behalf of the Republic in connection with the assumption of liability. Declarations made to Kontrollbank are deemed to have arrived at the Republic on the day they arrive at Kontrollbank. The same applies to all payments to be effected according to the following regulations.

Applications are to be filed in writing or by electronic means. Written form means in the original, by telex or telefax. In the case of dispute the burden of proof is on the respective sender; he shall also be held liable for any abuse of a means of communication.

Provided the policy does not contain any supplementary or differing regulations, the provisions set forth in the following shall be deemed to constitute the terms of contract.

### **Object and Scope of the Guarantee**

#### **§ 2**

- (1) The guarantee covers the integrity of your rights under a participation or a legal transaction resembling a participation (foreign investment) up to the maximum amount specified in the policy plus revenues and contractual interest until maturity, up to a maximum, however, of 20 % p. a.
- (2) Interest on interest and default interest are not covered.

### **Duration and Termination of the Guarantee**

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**§ 3**

- (1) The duration of the guarantee is specified in the policy.
- (2) You are entitled to terminate the guarantee at any time in whole or in part by registered letter, thus waiving your claims.
- (3) The Republic is entitled to terminate the guarantee with immediate effect and under forfeiture of all your claims by registered letter, if you have not paid the premium within one month at the latest upon a written reminder, unless you can prove that you have been prevented from payment by force majeure.

**Uninsured Percentage and Percentage of Cover**

**§ 4**

**Percentage of cover** If you are to participate in any loss, the uninsured percentage shall be specified in the policy. This uninsured portion determines the percentage of cover.

**Obligations of the Policyholder**

**§ 5**

You are obligated to

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| <b>Obligation to report</b>           | 1. take all steps at all times to protect the Republic from damage and to report without delay, at the latest, however, within one month upon knowledge, on any circumstances which have come to your knowledge and which may jeopardize the performance or the existence of your foreign investment unless these circumstances may be deemed notorious; |
| <b>Notification of the book value</b> | 2. notify yearly on the date stipulated in the policy, the book value of your foreign investment as stated in your last final balance sheet; should the book value be higher than the maximum amount of the guarantee, the latter shall be adjusted to the book value;   |
|                                       | 3. provide at any time information on the details and the status of the legal transaction or the right and disclose your and your agents' books and records to the extent necessary for the assessment of the transaction;   |
|                                       | 4. obtain the approval of the Republic prior to a substantial modification of the contractual basis of the legal transaction or right; a substantial modification shall be deemed in particular a change of the proportions of the participation, an extension of the terms of repayment or a change of securities;                                      |
|                                       | 5. notify in writing without delay, but at the latest within two months  |

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**Notification period**

(notification period) upon the occurrence of a loss according to article 6;

6. comply with instructions without delay; you may be instructed at any time in the case of a loss becoming evident or actually occurring;
7. accept the terms agreed in a rescheduling also for the uninsured percentage unless your application for a different procedure is agreed to. In the case of a partial cover, the part not covered by the guarantee shall be represented by you.

**Claims**

**§ 6**

- (1) An application for the admission of a claim shall be submitted in writing; the documents required for the assessment of the application shall be enclosed. The claim will be accepted with declarative effect if you have proven that a fact according to section (2) has occurred.

**Facts**

- (2) Facts are, if for political reasons
  1. rights resulting from participations or from legal transactions resembling participations are withdrawn directly or indirectly, either partly or completely;
  2. such an essential part of the assets is destroyed or withdrawn, that the company cannot run any longer without loss;
  3. the transfer of any revenues resulting from the sale or the liquidation of rights of participation, of revenues resulting from participations, of capital repayments, of interest payments, the transfer of a compensation or the free disposition of such assets is limited or impeded for more than three months.

**Exclusion of Liability**

**§ 7**

- (1) Liability is excluded, if
  1. you have made false statements in the application for the guarantee either deliberately or by gross negligence ;
  2. you have violated a stipulation of the guarantee either deliberately or by gross negligence;
  3. losses have occurred for which you or your agents are responsible;
  4. you have violated domestic or foreign legal regulations, unless you

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can prove that the occurrence of the loss has not been caused by that violation;

- (2) If the exclusion of liability is based on circumstances which have occurred or become apparent only after the admission of the claim, the admission will be revoked.

#### **Computation of the Compensation due under the Guarantee**

##### **§ 8**

- (1) The computation of the compensation due to you will be based on the book value as stated in your last final balance sheet before the fact has occurred. Any changes after the date of this balance sheet until the occurrence of the fact shall be considered in accordance with the applicable rules of accountancy; if you are not obliged to draw up a balance sheet, the value will be assessed in accordance with the principles of due accounting.
- Conversions** (2) Conversions shall be effected either at the fixed rates of the Currency Union or at the reference rates published by the European Central Bank on the day of the application for the admission of the claim.
- (3) If required there shall be a reduction to the maximum amount of the guarantee.
- Proportion of cover** (4) The remaining amount shall be considered in proportion to the book value according to section (1) (proportion of cover).
- (5) Any revenues as well as agreed interest shall be added to the extent of the proportion of cover.
- (6) Payments received after the fact shall be deducted to the extent of the proportion of cover, regardless of their declared use, as well as any revenues resulting from the disposal of assets or securities and any amounts to be excluded in accordance with article 7.
- Compensation** (7) The compensation due under the guarantee results after deduction of the uninsured percentage.
- Proportion of repayment**  
**Proportion of cost refund** (8) The proportion of cover less the uninsured percentage results in the proportion of repayment and in the proportion of refund of costs.

#### **Maturity of the Compensation due under the Guarantee**

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**§ 9**

- (1) The compensation for claims and receivables which according to the contract were due prior to the admission of the claim is payable simultaneously with the admission.

There shall be no improved position by the admission than would be the case if the foreign investment had been duly performed.

- (2) The compensation for claims and receivables which according to the contract would have been due after the admission of the claim is payable at the stipulated maturity dates. A possible acceleration clause in the contract is not valid against the Republic.

**Obligations of the Policyholder  
after Admission of the Claim**

**§ 10**

You are obligated to

**Assignment to the  
Republic**

1. assign your shares and receivables to the extent of the admission to the Republic before payment of the compensation and to take all legal steps required to this effect; existing securities shall be transferred equally;
2. take all steps necessary to enforce the claims in your own name but with the approval of the Republic, provided they are not represented by the Republic itself;
3. comply with instructions to undertake specific recovery measures;

**Repayment obligations**

4. transfer to the Republic all receipts before deducting any commission or bank fees to the extent of the proportion of repayment, regardless of their declared use.

Any other financial benefits, such as interest, interest on interest or default interest paid for the time after the payment of the compensation or any additional revenue resulting from the disposal of goods shall be likewise remitted.

5. accept the terms agreed in a rescheduling also for the uninsured percentage unless your application for a different procedure was agreed to. In the case of a partial cover, the part not covered by the guarantee shall be represented by you.

**Refund of Costs**

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### § 11

- Cost refund**
- (1) Expenses or losses occurring in connection with the enforcement of your claims will be refunded to the extent of the proportion of cost refund if the preconditions for the admission of a claim exist or a claim has already been accepted and the respective measures were taken in accordance with the General Business Conditions, upon instruction or with the approval of the Republic.
  - (2) Costs which usually arise in the course of a foreign investment in your or your agents' business are not covered.

### Handling Fee and Premium

### § 12

- Handling fee**
- (1) The fee for handling the application is 0.1 % of the value of the transaction for which cover is applied, but not less than 10 Euro and not more than 720 Euro or the respective countervalue in Austrian Schillings. It is due to be paid immediately upon receipt of the debit note, even in the case of the rejection of an application.
- Premium**
- (2) The premium is determined by a percentage in the policy for the entire lifetime.
  - (3) The premium is computed on the maximum amount of the guarantee for one year at a time. At the beginning of the guarantee a shorter period may be applied.
  - (4) The premium is in general payable in advance, for the first time at the acceptance of the policy.
- Commitment fee**
- (5) If a guarantee is issued for a foreign investment which is not going to be effected in the next twelve months, a commitment fee of 10 % of the premium percentage according to section (2) may be collected. It will be due immediately upon receipt of the debit order.

### Default Interest

### § 13

- Default interest**
- If amounts due to the Republic - premium, refunds or repayments due to a revocation of the admission of a claim - are not paid immediately, default interest computed at a rate of 300 basis points above the variable interest rate of the Export Financing Scheme of Kontrollbank may be debited.

### Assignment of the Policy

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**§ 14**

**Assignment to third parties**

The first assignment of the policy to a bank needs no approval, but requires notification in writing by you and by the assignee. Any other assignment - except to Kontrol bank – needs the written approval of the Republic.

Your obligations towards the Republic are not affected by any assignment.

**Enforcement of the Claims by Legal Action and Prescription**

**§ 15**

**Prescription**

(1) An application for the admission of the claim must be filed within three years after the guarantee expired; otherwise you lose your rights.

**Legal action**

(2) If the decision of the Republic is not in accordance with your application, you are entitled to take legal action in the ordinary courts of Austria within three months upon the date you were notified of the decision, otherwise you lose your rights.

**Acceptance of the Policy**

**§ 16**

The policy is deemed accepted and legally effective if it has not been returned within fourteen days upon receipt.

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### **Explanatory Notes on the Type of Guarantee**

Guarantees to cover risks arising from participations or legal transactions resembling participations (e. g. shareholder loans) of exporters in foreign enterprises (investment guarantees G 4).