

QBE European Operations

# QBE Trade Credit

Top-up (EU) Trade Credit Insurance Policy Wording



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### **Policy Wording**

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Date effective: 1st September 2017 PTCT010917

## Policy Wording

### 1 The Insurer's agreement in general

#### 1.1 Parties to this agreement

This Top-Up Trade Credit Insurance Policy is between the Insured and the Insurer as declared in the Schedule. This document, together with its Schedule and any attached endorsements is the Policy which sets out this insurance. It is a legal contract so please read all of it carefully.

#### 1.2 Policy structure

Section 2 sets out the scope of main coverage and some circumstances in which the Insurer's liability to the Insured is limited, or may be excluded. The cover provided by section 2 is only operative if stated as 'insured' in the Schedule.

Section 3 sets out circumstances in which the Insurer's liability to the Insured is limited or excluded, as well as setting out other terms and conditions.

Section 4 sets out the Insured's duties in the event of a claim or potential claim including conditions precedent.

Section 5 sets out general terms and conditions including conditions precedent.

Section 6 sets out definitions and interpretation.

#### 1.3 Capitalised words

Capitalised words used in this Policy document, other than in the headings, have defined meanings as set out in section 6, the Definitions and interpretation section of this document.

#### 1.4 Policy Period and premium

The Policy will provide insurance for the Policy Period provided the premium and Other Charges are paid to and accepted by the Insurer on or before each payment date shown in the Premium and Instalments Schedule.

Taxes, levies and other relevant fiscal charges are payable in addition to the premium and Other Charges which are set out in the Policy Schedule.

The premium and Other Charges are deemed paid and accepted on receipt of cleared funds by the Insurer.

If any premium or Other Charges (including any instalment of premium or Other Charges) are not paid to and accepted by the Insurer on or before the relevant payment date shown in the Premium and Instalments Schedule, the Insurer can give written notice to the Insured at its address shown on the Schedule of the Insurer's intention to cancel the Policy with effect from the thirtieth (30th) day after the notice has been served, but that cancellation will be prevented from taking effect and the Policy will continue if the late premium or Other Charges or instalments of either and any other remaining premium or Other Charges or instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.

The Insurer in its payment of any claim that exceeds 100% of the total annual premium has the right to set off any outstanding premium and Other Charges owed. The provisions of this clause are subject to any additional or adjustment premium or Other Charges which may become owing to the Insurer, which will be payable in addition.

#### 1.5 Limit Management Charges

Limit Management Charges will apply throughout the Policy Period and will include the number of searches and Credit Limit Endorsements the Insured uses. Some searches and charges will be specified in the Schedule and will be due for payment on or before the dates shown in the Premium and Instalments Schedule, others may be invoiced separately.

### 2 Insured section - What is covered

#### 2.1 Trade credit cover

Subject to the terms of this Policy, this insurance provides cover to the Insured for the Insured Percentage of the Insured Loss arising from a Claimable Event as defined in the Schedule provided that each Insured Debt arises from Shipments made during the Policy Period shown in the Schedule:

- a) to Insured Buyers in Approved Countries;
- b) made in the course of the Insured's business specified in the Schedule and in accordance with the Credit Management Procedures; and
- c) that are invoiced to the Insured Buyer within the Maximum Invoicing Period.

Except as provided for in 4.5 (a), the Insurer's liability will not exceed the Maximum Policy Liability or any applicable Maximum Country Liability whichever is the lesser and any amount in excess of the Maximum Policy Liability or applicable Maximum Country Liability will be for the account of the Insured.

#### 2.2 Primary Policy of trade credit insurance

Each of the following is a condition precedent to the Insurer's liability under this Policy:

- a) the Insured has declared to the Insurer full details of the Primary Policy;
- b) the insurer(s) of the Primary Policy has issued an insured credit limit applicable to the Insured Buyer;
- c) the Insured has declared to the Insurer accurate details of such credit limits as are relevant to this Policy; and
- d) the insurer(s) of the Primary Policy has settled in full, and in accordance with the terms and conditions of the Primary Policy, any claim made under this Policy;

and no amendment to the Primary Policy will form part of or be binding upon this Policy until agreed in writing by the Insurer.

#### 2.3 Primary Policy terms and conditions

Other than as expressly provided in this Policy, the terms, limitations, exclusions, conditions and definitions of the Primary Policy apply to this Policy and, if there is any conflict between the provisions of Primary Policy and this Policy, the provisions of this Policy will apply.

#### 2.4 Permitted credit limits

The Insured will only be covered in respect of an Insured Buyer where the Insured has a Credit Limit Endorsement and the Insured has acted within the terms and conditions of it.

The Insurer may at any time, and at the Insurer's sole discretion, give notice in writing to the Insured of:

- a) a reduction in or cancellation of a Permitted Credit Limit in the Credit Limit Endorsement;
- b) a cancellation in respect of any Approved Country;
- c) any combination of the above

and any such notice issued by the Insurer will apply to all Shipments after the date of the notice. Nothing contained in this clause should be construed as limiting in any way the effect of the

Excluded Shipments clause in the Limitation and exclusions section of this Policy.

The Insured must advise the Insurer:

- a) of the Primary Policy Credit Limit which, for the avoidance of doubt will be the credit limit imposed by the Primary Policy insurer(s) and not a discretionary limit; and
- b) immediately upon any amendment to the Primary Policy Credit Limit.

The Permitted Credit Limit specified in the Credit Limit Endorsement will not exceed the Primary Policy Credit Limit and, if the Primary Policy Credit Limit reduces, the Permitted Credit Limit specified in the Credit Limit Endorsement will automatically and with immediate effect reduce to the same extent and the Insurer will not be liable for any amount greater than the equivalent amount of the reduced Primary Policy Credit Limit.

### 3 Limitations and exclusions

#### 3.1 Limitations and exclusions

In addition to the limitations and exclusions of the Primary Policy, this Policy excludes and does not cover losses:

##### **Assignment**

arising out of the Insured's assignment of any rights or benefits under this Policy, unless the Insurer's written consent has first been obtained;

##### **Breach of Permitted Credit Limit**

arising out of the Insured's breach of any of the following or part of any of them:

- a) the Credit Management Procedures;
- b) entry by the Insured into any other trade credit insurance policy that indemnifies the Insured, except with the Insurer's prior written consent; and
- c) the Insured not retaining for its own account:
  - i. such part of an Insured Debt as exceeds the Insured Percentage; and
  - ii. such indebtedness to the Insured of an Insured Buyer as exceeds the Permitted Credit Limit; and
  - iii. any deductibles specified in the Schedule; and
  - iv. all indebtedness after the Maximum Policy Liability or Maximum Country Liability has been exhausted;

##### **Excluded Shipments**

in respect of Shipments made:

- a) to an Insured Buyer who is Insolvent;
- b) to an Insured Buyer whose debt to the Insured or any part thereof is overdue beyond the specified Maximum Extension Period for any reason other than a legitimate dispute;
- c) that are insured under the Primary Policy to the extent that such loss subsequently falls within the Primary Policy Credit Limit;
- d) after the Primary Policy is no longer in force;
- e) after the applicable Credit Limit Endorsement has been cancelled or reduced, and as a result is no longer available;
- f) outside the Approved Countries;
- g) where the Insured is aware or ought in the ordinary course of business to be aware of a Notifiable Event in respect of the Insured Buyer;
- h) when the maximum policy limit of liability under the Primary Policy has been exhausted;
- i) when the Primary Policy Credit Limit has been reduced or cancelled but the limit under this Policy has not been reduced to the same extent at the time of Shipment; or
- j) in circumstances where it is both legally and practically possible for the Insured, using reasonable means, to stop carriage of the goods before they leave the country of the Insured or the country which they are being exported;

##### **Losses arising from a dishonest or illegal act**

arising directly or indirectly from or caused by any dishonesty or illegal act by the Insured or a director, officer or employee of the Insured;

**Losses arising from a nuclear event**

arising directly or indirectly from or caused by employing any process of nuclear fission or fusion or handling radioactive material including the use of nuclear reactors, the use of radioactive materials, the use of any weapon of war or explosive device employing nuclear fission or fusion;

**Losses arising from Political Risks or Terrorism**

arising directly or indirectly from or caused by Political Risks or Terrorism or a combination of any of these;

**Other Insurances**

for which, at the time of any claim under this Policy, any other valid credit insurance is available to the Insured (other than insurance that has been declared to and accepted by the Insurer as being in excess of this Policy), and the Insurer shall have no liability under this Policy for any claim covered in whole or in part by such other credit insurance;

**Pre Credit Risk**

suffered by the Insured, that relate to pre credit or work in progress costs incurred, prior to Shipment;

Rescheduling of debt or renegotiating terms of trade

after any repayment renegotiations or changes to the terms of trade beyond the Maximum Extension Period unless:

- a) approved in writing by the Insurer; or
- b) notified in writing by the Primary Policy insurer to the Insurer as approved by the Primary Policy insurer(s);

**Shipments made after the Insured is Insolvent**

in respect of Shipments made by the Insured at a time when the Insured was Insolvent;

**Specified Security Proceeds**

any portion to which the Insured has received the benefit under the Primary Policy of any Specified Security Proceeds to which the Insured was entitled; or

**VAT and other taxes and charges**

in respect of that part of any debt which constitutes Value Added Tax (VAT), Goods & Services Tax (GST), any form of sales tax, retention monies, late payment interest, interest charges, penalties, government charges and taxes and consequential losses or damages.

**3.2 Sanctions limitation and exclusion**

The Insurer will not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer or any member of the Insurer's group to any sanction, prohibition or restriction under any United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

**4 Duties in the event of a claim or potential claim**

The Insured must comply with the provisions of clauses 4.1 to 4.7 inclusive, which are each conditions precedent to the Insurer's liability for any claim under this Policy and the Insured must show that its non-compliance with any of these clauses did not increase the risk of any claim for which the Insurer would otherwise have been liable under this Policy.

**4.1 Notification**

The Insured must notify the Insurer within fourteen (14) days of when the Insured becomes aware of:

- a) An event requiring notification under either the Primary Policy or this Policy that occurs to an Insured Buyer; or
- b) an amount which is overdue in relation to an Insured Buyer which, including disputed Shipments, exceeds the Overdue Reporting Limit after the Maximum Extension Period has expired; and

the Insured must notify and update the Insurer in the format required by the Insurer at least on a monthly basis or until either a Notifiable Event no longer exists or a Claimable Event has occurred in respect of that Insured Buyer.

**4.2 Claim conditions**

The Insured must:

- a) notify the Insurer of the Insured's intention to claim within fourteen (14) days of becoming aware of any Claimable Event of the Insured Buyer;
- b) submit a fully completed claim form to the Insurer within three (3) months of the original date of the claim notification, or the Claimable Event Date, if earlier; and
- c) advise the Insurer in writing of the Primary Policy insurer's decision in respect of the amount of any agreed claim settlement, giving the Insurer sufficient detail in respect of any such claim settlement;
 

and, if requested to do so by the Insurer, must:
- d) in the case of Insolvency obtain and submit to the Insurer written Confirmation of Debt for the whole indebtedness claimed as being owed by an Insured Buyer from the person authorised to administer the Insolvent estate of the Insured Buyer; and
- e) in the case of Protracted Default obtain the judgment from a court of competent jurisdiction or local equivalent against the Insured Buyer in respect of an Insured Debt that exceeds GBP5,000 (five thousand pounds) or the equivalent in the Policy Currency.

**4.3 Co-operation**

The Insured must co-operate with the Insurer or its appointed counsel, advisors, agents or representatives and produce for examination, at any time and at a place designated by the Insurer or the Insurer's representatives, any and all such documents in whatever medium as may be reasonably required which relate to any matter arising out of the Policy. When such documents relate to the settlement of any claim under the Primary Policy, the Insurer will be entitled to such further details from the Insured as the Insurer will reasonably require. The Insured will allow extracts and copies to be taken without charge and will take all reasonable steps to obtain such documents that are in the possession or control of third parties. Where documents submitted in support of a claim are in a language other than English, the Insured will at its expense provide a certified translation into English if so required by the Insurer.

#### 4.4 Due diligence

The Insured must use due diligence and do all things reasonable and practicable to avoid or diminish any Insured Debt, must act promptly in accordance with any reasonable instructions that the Insurer gives and must exercise reasonable care and prudence in granting credit to and withholding credit from an Insured Buyer as if the Insured were uninsured.

#### 4.5 Insured's rights

The Insurer shall pay any sum due in respect of a valid claim within a reasonable time, pursuant to section 13A of the Insurance Act 2015.

The Insured must commence any action against the Insurer:

- a) pursuant to section 13A of the Insurance Act 2015 no later than twelve (12) months from the date on which the Insurer has paid all sums due in respect of the claim; and
- b) in relation to any other claim or disputed claim under this Policy no later than twenty-four (24) months following the Claimable Event Date.

#### 4.6 Insurer's rights

The Insurer will be under no obligation to follow settlements in discharge of the liability of the insurers of the Primary Policy.

#### 4.7 Extra-contractual settlements

Any decision of the Primary Policy insurer(s) to accept or settle, without the prior written consent of the Insurer, a claim on an ex-gratia or without prejudice basis or in breach of the provisions of the Primary Policy will not be binding on the Insurer.

#### 4.8 Primary Policy insurer failure

In the event one or more insurer under the Primary Policy fails to pay any claim or any costs and expenses incurred in the investigation, defence or settlement of such claim, the extent of such Primary Policy insurer's liability will not be for the Insurer's account.

#### 4.9 Subrogation

- a) Whether before settlement of any claim under the Policy or at any time thereafter, the Insured must have transferred or assigned to the Insurer all rights and remedies, indemnities and advantages of whatsoever nature held by or available to the Insured whether from the Insured Buyer or from other parties for the purpose of recovering or reducing an Insured Debt in respect of which a claim has been or is to be paid under this Policy or the Primary Policy.
- b) Upon payment of a claim, the Insurer, the various insurers of the Primary Policy and any other top-up insurer (together the Indemnifying Insurers), or all and any of them as applicable will be fully subrogated to all such rights, remedies, indemnities and advantages of whatsoever nature held by or available to the Insured whether from the Insured Buyer or from other parties for the purpose of recovering or reducing any Insured Debt and the Insured must not, and must procure that anyone acting on its behalf must not, waive any right of recourse or recovery against any other person in relation to a Claimable Event.
- c) The Insured will at the request and expense of the Indemnifying Insurers or all and any of them as applicable and whether before or after the Insurer has paid the Insured's claim, do and concur in doing and permit to be done all such acts and things as may reasonably be required by the Indemnifying Insurers or all and any of them as applicable for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Indemnifying Insurers or all and any of them as applicable will be or would become entitled or subrogated upon its paying the Insured's claim.

- d) For the avoidance of doubt, should the Insurer agree to pay the claim, the Insured will have a continuing duty to perform the obligations set out in the Policy and to use every reasonable endeavour to pursue Recoveries in cooperation with, or on behalf of, the Insurer.

#### 4.10 Recoveries

- a) The Insured must notify the Insurer in writing immediately once it receives any Recoveries and any Recoveries received by the Insured or the Insurer are to be held on trust for the Insured and the Insurer for their respective interests as specified in (b) below.
- b) Subject to (g) below, all Recoveries net of reasonable expenses agreed in writing by the Insurer will, in the first instance, inure for the benefit of the insurer(s) of the Primary Policy, in accordance with its provisions, until the value of the claim payment made to the Insured by the insurer(s) of the Primary Policy is reached. Thereafter, any Recoveries will be shared between the Insurer and the Insured in the same proportion as the Insured Loss paid to the Insured by the Insurer bears to the uninsured loss borne by the Insured for its own account. For clarity, the loss suffered by the Indemnifying Insurers as applicable will be the value of the claim payments made to the Insured, while the loss suffered by the Insured will be the uninsured percentage under each policy.
- c) If the Insurer has agreed to settle the claim, the Insurer may deduct the Recoveries from its calculation of liability under the Policy; otherwise, the Insurer's proportion of any Recoveries received by the Insured and due to the Insurer (as calculated in accordance with (b) above) is to be remitted by the Insured to the Insurer within thirty (30) days of receipt of the Recoveries by the Insured.
- d) If the Insured receives Recoveries before submitting a claim under this insurance or, having submitted such a claim, before the Insurer has agreed to settle it, the Insured will not be required to pay its proportion of such Recoveries to the Insurer. After submission of its claim, the Insured must promptly give written details to the Insurer of any Recoveries the Insured has received.
- e) The Insurer may at any time in respect of any Recoveries bring a claim or take any form of legal action in the name of the Insured against:
  - i an Insured Buyer; or
  - ii any third party against whom the Insured is entitled to take action

and for this purpose the Insured must provide all assistance and cooperation requested by the Insurer in accordance with the subrogation provisions at 4.9 above.

- f) In the event the Insurer elects to bring such a claim or take legal action against an Insured Buyer or any third party against whom the Insured is entitled to take action, the Insurer is entitled to deduct from any Recoveries all of the costs, disbursements and expenses incurred by it, prior to apportioning the Recoveries as set out in b) above.
- g) All sub-paragraphs but (b) above will apply to Specified Security Proceeds. Given that the relevant security or guarantee was a special precondition to the granting of the Credit Limit Endorsement, the basis of appropriation of the Specified Security Proceeds will be as follows, irrespective of whether it occurs before or after submission of a claim:

## Specified Security Proceeds

Any Specified Security Proceeds, despite any request or instruction to the contrary from the relevant Insured Buyer or guarantor or any party holding the security for the benefit of the Insured, will first be applied wholly in reduction of the Insured Debt (as opposed to total indebtedness), and only thereafter, will any remaining Specified Security Proceeds be available to the benefit of the Insured. The Insured must give the Insurer written details of any Specified Security Proceeds to which the Insured may be entitled regardless of whether such Specified Security Proceeds apply in respect of claims to be dealt with by this Policy or the Primary Policy or both.

### 4.11 Settlement of claims

The Insurer will pay to the Insured the Insured Percentage of the Insured Loss within thirty (30) days of receipt of written confirmation to the Insurer's reasonable satisfaction of the extent of the Primary Policy insurer's settlement of the claim, after deducting any interim payments, Recoveries and any applicable deductible, but the Insurer shall be entitled not to do this if the Insured has failed to comply with any provision of this Policy.

## 5 General terms and conditions

### 5.1 Aggregate Liability

The Insurer's liability under this Policy is not additional to any benefit to which the Insured may be entitled under a previous policy of insurance, whether the insurer of that previous policy was the Insurer or another insurer and the Insurer's liability under this Policy will be limited to the Permitted Credit Limit under the Credit Limit Endorsement less any amount still owing for goods Shipped and/or covered under that previous policy.

### 5.2 Allocation of monies

All amounts received in connection with insured or uninsured Shipments will be allocated in chronological order of due dates, unless and until the Insurer's written consent has been obtained.

### 5.3 Applicable law and jurisdiction

This Policy and any matters relating to its formation or validity will be governed by and interpreted in accordance with the governing law specified in the Schedule.

### 5.4 Cancellation

The Insured is not entitled to cancel this Policy, and the Insurer may do so only in accordance with the terms, conditions and exclusions of the Policy or by operation of applicable law or regulation.

### 5.5 Currency

This Policy is issued in the Policy Currency.

The Permitted Credit Limit specified in the Credit Limit Endorsement, any other limits or deductibles, premiums, Limit Management Charges and any Other Charges are expressed in the Policy Currency, and such amounts will not vary according to changes in the exchange rate between the Policy Currency and any other currency, unless the Insurer has expressly given its prior written consent.

If the Insured invoices an Insured Buyer in any currency (including any Approved Claim Currency) other than the Policy Currency, the value of each invoice must be converted into the Policy Currency for any declaration purposes at the relevant Conversion Exchange Rate (all such Conversion Exchange Rates must be recorded in writing by the Insured at or about the time of Shipment of the goods relating to every invoice, and such records must be provided to the Insurer in the event of a claim).

For the purpose of calculating the Insurer's liability in the event of a claim arising:

- a) any part of an Insured Buyer's indebtedness invoiced in a currency other than an Approved Claim Currency will be converted into the Policy Currency at the Financial Times Closing Mid-Point exchange rate on the relevant Claimable Event Date and the resultant liability is to be paid in the Policy Currency;
- b) any part of an Insured Buyer's indebtedness invoiced in an Approved Claim Currency will be converted into the Policy Currency at the Financial Times Closing Mid-Point exchange rate on the relevant Claimable Event Date and the resultant liability as determined in the Policy Currency will be reconverted into and paid in the Approved Claim Currency, such reconversion being made at the same exchange rate.

For the purpose of calculating Recoveries in the event Recoveries are received in a currency other than the Policy Currency:



- c) Recoveries accruing in a currency other than an Approved Claim Currency are to be converted into the Policy Currency by reference to the Financial Times Closing Mid-Point exchange rate (between such currency and the Policy Currency) at close of business on the day of receipt, whether or not such currency is actually converted into the Policy Currency on receipt. The Insurer's share of any such Recoveries accruing after payment of a claim must be paid to the Insurer in the Policy Currency.
- d) Recoveries accruing in the Approved Claim Currency are to be converted into the Policy Currency at the Financial Times Closing Mid-Point exchange rate on the relevant Claimable Event Date. The Insurer's share of any such Recoveries accruing after payment of a claim must be paid to the Insurer in the relevant Approved Claim Currency.

### 5.6 Document management

The Insurer may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

### 5.7 Fraudulent Claims

If the Insured or anyone acting on its behalf makes a fraudulent claim under this Policy, the Insurer:

- a) is not liable to pay the claim;
- b) may recover any part of the claim already paid from the relevant Insured; and
- c) may by notice to the Insured treat this Policy as having been terminated with effect from the time of the first fraudulent act, in which case the Insurer is not liable to that Insured in respect of a relevant event occurring after that time and may retain any premium.

These remedies shall not be available against any other entity insured under this Policy that was not implicated in the fraud.

### 5.8 Insolvency of the Insured

In the event of the Insolvency of the Insured this Policy will terminate immediately. The Insurer will then have no liability under the Policy for any claims that have not already been submitted at the date of Insolvency.

The Insurer will be entitled to retain all premiums and other monies paid and to receive and retain all premiums and other monies due and payable to the Insurer up to and including the effective date of such Insolvency but always not less than the Minimum Premium.

For the purpose of this condition the definition of Insolvency will be the same as that applying to an Insured Buyer under this Policy.

### 5.9 Joint Insureds

In the event there is more than one Insured, each of the Insureds together will be treated for all purposes under this Policy as a single entity.

Representations by any of the Insureds will be considered representations of all, and breaches of any provision of this Policy by one will be considered breaches by all. The performance by any of the Insureds of any duty or obligation of the Insured under this Policy will be considered performance by all. Any limits imposed upon the Insured under this Policy will apply to all Insureds in the aggregate and not to each individually.

### 5.10 Maintenance of Primary Policy

It is a condition precedent to the Insurer's liability under this Policy that the Primary Policy remains in force during the Policy Period and, if the Primary Policy is terminated, lapses or expires, this Policy will terminate automatically with immediate effect and without notice to the Insured. Upon such termination, all unpaid premiums will immediately become payable to the Insurer.

### 5.11 Duty of fair presentation

The Insured must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.

#### Remedies for breach of the duty of fair presentation - proposing for this insurance

If the Insured or anyone acting on its behalf breaches the Insured's duty of fair presentation then the Insurer's remedies shall be

as follows:

- a) If such breach is deliberate or reckless, the Insurer may:
  - i treat this Policy as having been terminated from its inception; and
  - ii retain this premium;
- b) if such breach is not deliberate or reckless and the Insurer would not have entered into this Policy but for the breach, the Insurer may by notice to the Insured treat this Policy as having been terminated from its inception in which case the Insurer shall return the premium; and
- c) in all other cases if, but for the said breach, the Insurer would have entered into this Policy but:
  - i on different terms (other than terms relating to the premium), the Insurer may require that this Policy is treated as if it had been entered into on those different terms from the outset; or
  - ii would have charged a higher premium, the Insurer may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged} / \text{higher premium}) \times 100$ .

#### Material changes during the Policy Period

The Insured must notify the Insurer within thirty (30) days of any material change to the Insured, its business or the risks insured if indemnity under this insurance is sought in relation to any such change.

The Insurer shall not indemnify the Insured for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless the Insurer has provided valid confirmation of cover, whether by an express term of this Policy, endorsement, written confirmation or otherwise.

#### Remedies for breach of the duty of fair presentation - variation

If the Insured or anyone acting on its behalf breaches the Insured's duty of fair presentation in relation to a variation of this Policy, the Insurer's remedies shall be as follows:

- a) If such breach is deliberate or reckless, the Insurer may:
  - i by notice to the Insured treat this Policy as having been terminated from the time when the variation was concluded; and
  - ii retain this premium;



- b) if such breach is not deliberate or reckless, and the Insurer would not have entered into the variation but for the breach, the Insurer may treat this Policy as if the variation was never made, in which case the Insurer shall return any additional premium relating to the variation; and
- c) in all other cases if, but for the said breach, the Insurer would have entered into the variation but:
  - i) on different terms (other than terms relating to the premium), the Insurer may require that the variation is treated as if it had been entered into on those different terms;
  - ii) would have increased the premium by more than it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged} / \text{higher premium}) \times 100$ ; or
  - iii) would not have reduced the premium by as much as it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged} / \text{reduced total premium}) \times 100$ .

#### 5.12 Compliance with the Policy terms

The Insured and anyone acting on its behalf must each comply with every applicable provision of the Policy.

To the extent this insurance provides a benefit to any other party, the Insured shall arrange for each Insured party to comply with every applicable provision of this Policy.

If the Insured or anyone acting on its behalf breaches any provision of the Policy, the Insurer may, without prejudice to any of the Insurer's other rights, reject or reduce sums payable to the extent that the Insurer's liability under the Policy has been incurred or increased by reason of the breach.

If the Insurer has paid any sums to the Insured or anyone acting on its behalf for which the Insurer was not liable (whether by reason of breach of any provision of the Policy by the Insured or anyone acting on its behalf or for any other reason) the Insured shall promptly repay such sums to the Insurer.

#### 5.13 Online terms and conditions

The Insured acknowledges that additional terms and conditions relating to and set out in an online support system may apply to the Insured and the Insured will ensure it and its relevant employees are familiar with all the terms and conditions contained within the system.

#### 5.14 Representation

The Insured consents to any person falling within the definition of the Insured having authority to give any notice to the Insurer and to receive any notice from the Insurer or its representatives in connection with this insurance.

The Insured acknowledges that payment made by the Insurer of any return premium to such person falling within the definition of the Insured will discharge in full the Insurer's obligations under the Policy.

#### 5.15 Severability, construction and conformance to statute

If any provision contained in this Policy is, for any reason, held to be invalid, illegal, or unenforceable in any respect, it is hereby deemed to be severed and to have no effect on any other valid, legal and enforceable provision of this Policy.

If any provision contained in this Policy is, for any reason, held to be invalid, illegal, or unenforceable, it will be construed by limiting it so as to be valid, legal, and enforceable to the extent compatible with applicable law.

Any provisions of this Policy which are in conflict with the statutes or regulations of the state wherein this Policy is issued are hereby amended to conform to such statutes or regulations.

## 6 Definitions and interpretation

The following words will have the same meaning attached each time they appear capitalised in this Policy.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the Policy are included for convenience only and will not form part of this Policy.

### 6.1 Approved Claim Currency

Approved Claim Currencies are specified in the Schedule and are the currencies in which the Insured is entitled to lodge a claim.

### 6.2 Approved Countries

Approved Countries means those countries which are specified in the Approved Countries & Conditions Table contained in or otherwise referred to in the Schedule.

### 6.3 Claimable Event

Claimable Event in respect of an Insured Buyer means Insolvency, Protracted Default or any other named claimable event in the Schedule that has occurred before a claim is submitted.

### 6.4 Claimable Event Date

Claimable Event Date means the date on which a Claimable Event occurs and is specified in the definition of the respective Claimable Event.

### 6.5 Confirmation of Debt

Confirmation of Debt means the written confirmation of a debt owed to the Insured by an Insured Buyer either:

- a) at the date of Insolvency which is shown within the books and records of the Insured Buyer; or
- b) will rank for participation in any distribution in the Insolvency of the Insured Buyer;

by the person authorised to administer the Insolvent estate of the Insured Buyer.

### 6.6 Conversion Exchange Rate

Conversion Exchange Rate in respect of an invoice means the rate of exchange between the currency in which that invoice is issued and the Policy Currency, as determined:

- a) by reference to the Financial Times Closing Mid-Point exchange rate as at the close of business on the day the relevant goods were Shipped; or
- b) by the forward exchange rate contract, if one has been entered into with the Insured's bank in relation to determining in advance the amount the Insured is to receive in terms of the Policy Currency, if payment is made in the Approved Claim Currency as contracted by the Insured Buyer; or
- c) by reference to the Insured's internal treasury rate as agreed in writing by the Insurer at the inception of the Policy.

### 6.7 Credit Limit Endorsement

A Credit Limit Endorsement means an endorsement issued by the Insurer that specifies the approved Permitted Credit Limit in respect of the named Insured Buyer or specifies that the Permitted Credit Limit is "Nil" or "0" reflecting that no cover is available. It may contain special conditions adding to or amending the existing terms and conditions of this Policy in relation to the Insured Buyer.

A Credit Limit Endorsement is effective from the date of endorsement unless stated otherwise.

### 6.8 Credit Management Procedures

Credit Management Procedures means the procedures relating to or associated with or consisting of procedures of credit management which are described in the Insured's credit control procedures, and as declared to and accepted by the Primary Policy insurer.

### 6.9 Insolvency

Insolvency is a Claimable Event and occurs in respect of an Insured Buyer when any of the following steps has been taken:

- a) an Insured Buyer initiates or becomes the subject of any procedure or action or proceedings pursuant to local bankruptcy or insolvency legislation which is uncontested and results in the Insured Buyer being recognised at law as being subject to a moratorium or in external administration or insolvency or winding up in insolvency; or
- b) a court appoints a receiver, liquidator, trustee or other similar external administrator or official under local bankruptcy or insolvency legislation to administer all or substantially all the assets of an Insured Buyer; or
- c) a composition by an Insured Buyer has been approved by a court having jurisdiction or a compromise or arrangement has been made binding by the court on that Insured Buyer and all that Insured Buyer's creditors; or
- d) an Insured Buyer enters into an unofficial compromise or settlement, in full and final settlement of its debts, with a majority of its creditors

and which the Insured is a party to with the Insurer's prior written approval; or

- e) such circumstances exist which in the opinion of the Insurer is equivalent to any one of the above and "Insolvent" will be construed accordingly.

The Claimable Event Date in respect of any of the above instances will be:

1. In the case of (a) above, the date on which the bankruptcy, Insolvency, moratoria, or arrangement is deemed to have occurred according to the relevant law or regulations.
2. In the case of (b) above, the date on which the relevant court order or decision was made.
3. In the case of (c) above, the date on which the majority of creditors agreed to the compromise or settlement.
4. In the case of (d) and (e) above, such effective date as the Insurer may specify.

### 6.10 Insured

Insured means the partnership, company, corporation, institution, licensee, or such other entity named in the Schedule or such individual as agreed in writing by the Insurer and includes all joint Insured as endorsed to this Policy.

### 6.11 Insured Buyer

Insured Buyer means any customer of the Insured which is domiciled in an Approved Country in respect of whom the Insured has a Credit Limit Endorsement during the Policy Period.

### 6.12 Insured Debt

Insured Debt means as much of any indebtedness (not including any collection costs) arising out of the trade falling within the description of trade in the Schedule and:

- a) is owing by an Insured Buyer to the Insured; and
- b) does not exceed the Permitted Credit Limit under the Credit Limit Endorsement in excess of the Primary Policy Credit Limit; and

- c) is in respect of the invoice value of Shipments all of which must:
- i) have occurred during the Policy Period;
  - ii) are pursuant to a contract of sale providing for repayment of the debt within the terms of payment specified for the Approved Country of the Insured Buyer in the Approved Countries & Conditions Table in the Schedule; and
  - iii) have been invoiced by the Insured within the Maximum Invoicing Period.

The indebtedness of an Insured Buyer to the Insured will not cease to be an Insured Debt under the policy by reason only that it is factored or discounted with recourse to the Insured with a factor or other financial institution, provided always that:

- d) if the Insurer requires the Insured to regain title to such debt in order to pursue the Insured's rights in relation to the indebtedness the Insured must be able to, and do so, within three business days of the Insurer's request to the Insured; and
- e) all the provisions of the original contract of sale must remain; and
- f) the Insurer has been advised of and accepted such factoring or discounting facility in writing.

### 6.13 Insured Loss

Insured Loss means the amount of the Insured Debt that is either:

- a) admitted to rank against the Insolvent estate of the Insured Buyer; or
- b) in the case of Protracted Default only, so much of the Insured Debt as is confirmed to the Insurer by evidence that is satisfactory to the Insurer of a valid debt and which is not in dispute between the Insured and the Insured Buyer;

each after deducting any Recoveries.

### 6.14 Insured Percentage

Insured Percentage means the percentage of any Insured Debt for which this Policy provides an indemnity.

### 6.15 Insurer

Insurer means the party specified in the Schedule.

### 6.16 Limit Management Charges

Limit Management Charges means those fees and charges specified in the Schedule and can also be additional amounts that can be raised during the Policy Period dependent on usage by the Insured of Credit Limit Endorsements or other products and services offered by the Insurer.

### 6.17 Maximum Country Liability

Maximum Country Liability means the maximum aggregated value of claim payments available under this Policy for all Claimable Events in the relevant Approved Country and when this Maximum Country Liability has been exhausted the Insured is not entitled to submit any further claims for that Approved Country under this Policy. Any Maximum Country Liability is part of and is not additional to the Maximum Policy Liability.

### 6.18 Maximum Extension Period

Maximum Extension Period means the maximum number of days by which the Insurer has agreed that the Insured may extend the original due date of an Insured Debt.

### 6.19 Maximum Invoicing Period

Maximum Invoicing Period means the maximum number of days specified in the Schedule after the date of the Shipment and within which the Insured must invoice the Insured Buyer.

### 6.20 Maximum Policy Liability

Maximum Policy Liability means the maximum aggregated value of claim payments available during the Policy Period for all Claimable Events and when this Maximum Policy Liability has been exhausted the Insured is not entitled to an indemnity under this Policy.

### 6.21 Notifiable Event

Notifiable Event means either:

- a) any event defined in the Primary Policy as notifiable under the Primary Policy; or
- b) any of the following events, each of which will be deemed to have occurred when the Insured is aware of an Insured Buyer:
  - i) being unable to pay its debts as and when they fall due;
  - ii) having any cheque which has been rejected returned, stating "refer to drawer";
  - iii) having a cheque returned stating "refer to drawer, please represent", which, when represented, is rejected again;
  - iv) having any direct debit dishonoured;
  - v) having any non-payment or extension or rescheduling of a debt past the Maximum Extension Period;
  - vi) having admitted cash flow difficulties;
  - vii) having any legal action instigated where solicitors are instructed to serve a county court judgment, statutory demand or a winding up petition;
  - viii) being in or about to be in any form of Insolvency; or
  - ix) being impacted by any event that would give grounds for the belief that the Insured Buyer may not perform or comply with its obligations under a contract of sale with the Insured.

### 6.22 Other Charges

Other charges means Limit Management Charges, or any other charges made by the Insurer and payable by the Insured, salvage, Recoveries or any other monies owing where the Insurer has advised the Insured of a payment due date.

### 6.23 Overdue Reporting Limit

Overdue Reporting Limit means the amount specified in the Schedule below which any non-adverse disputed indebtedness is not required to be notified to the Insurer under this Policy pursuant to the Notification clause at 4.1b).

### 6.24 Permitted Credit Limit

Permitted Credit Limit is the limit specified by the Insurer in a Credit Limit Endorsement.

### 6.25 Policy

Policy means this document, the Schedule (including any Schedules issued in substitution), the Proposal and any endorsements attaching to this document or the Schedule that will be considered part of the legal contract and any capitalised word or expression in any of these documents will bear the specific meaning stated in these definitions, pursuant to clause 1.3.

### 6.26 Policy Currency

Policy Currency means the currency specified in the Schedule.

### 6.27 Policy Period

Policy Period means the period of insurance specified in the Schedule.

### 6.28 Political Risks

Political Risks means any:

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, expropriation, nationalisation;
- b) requisition, sequestration or confiscation by order of any public authority or government de jure or de facto or martial law;
- c) act or order of any government, public or local authority restricting trade transfers;

but not including Terrorism.

### 6.29 Primary Policy

Primary Policy means the in force trade credit insurance policy:

- a) of which this Policy is the Top-Up policy;
- b) which is accepted by the Insurer; and
- c) specified in the Schedule.

### 6.30 Primary Policy Credit Limit

Primary Policy Credit Limit is the limit specified in writing by the insurer of the Primary Policy which is not any form of discretionary limit.

### 6.31 Proposal

Proposal means any information as identified on the Schedule supplied by or on behalf of the Insured, a completed proposal form, Credit Management Procedures or questionnaire, renewal form or application form and other relevant or supplementary information that the Insurer has received.

### 6.32 Protracted Default

Protracted Default means a Claimable Event and means the failure of an Insured Buyer to pay an Insured Debt, or any part of it, within the Protracted Default Period stated in the Schedule and the Claimable Event Date in respect of Protracted Default will be the date of the expiry of the Protracted Default Period.

### 6.33 Protracted Default Period

The Protracted Default Period means the period specified in the Schedule and which commences on the original due date for payment of an Insured Debt under the relevant contract of sale or, if that original due date is postponed, such postponed due date. The Protracted Default Period cannot commence or continue to run while an Insolvency of the Insured Buyer exists or while the Insured Buyer:

- a) is entitled or obliged to refuse payment of an Insured Debt under any applicable law or regulation or is obliged to refuse payment by a person exercising powers of government; or
- b) claims that it is entitled to withhold payment of any part of an Insured Debt and the Insurer is satisfied that a dispute exists between the Insured and the Insured Buyer which has not been resolved by the parties to the relevant contract or by arbitration, or by legal proceedings.

### 6.34 Recoveries

Recoveries means the value of all goods recovered (whether under retention of title or otherwise), all monies (including dividends or distributions out of an Insolvent estate), securities, indemnities, guarantees, rights of action, escrow monies, counterclaim, set-off or other advantage received or held by the Insured or available for the purpose of reducing the amount of any indebtedness of an Insured Buyer to the Insured (whether in respect of the payment for goods or otherwise) unpaid at the earliest Notifiable Event and which remains unremedied, excluding any Specified Security Proceeds.

### 6.35 Schedule

Schedule means the document titled Schedule that includes the name and address of the Insured, the premium and other variables to this Policy and any endorsements and which is incorporated into this Policy and accepted by the Insured. Schedules may be re-issued from time to time where each successor overrides the earlier document.

### 6.36 Shipped and Shipment

Shipped and Shipment mean:

- a) in respect of goods:
  - i if an Insured Buyer is located in the same country as the Insured, the time (which must be within the Policy Period) at which the goods physically pass from the Insured into the exclusive physical control of the Insured Buyer or the Insured Buyer's agent; or
  - ii if an Insured Buyer is not located in the same country as the Insured, the time (which must be within the Policy Period) at which the goods pass to the first independent carrier in the process of being carried to the place where the Insured Buyer or its agent is required to accept them; and
- b) in respect of services, the time (which must be within the Policy Period) when the service has been rendered to the Insured Buyer provided that the Insured has invoiced the Insured Buyer within the Maximum Invoicing Period after the work has been completed or services have been rendered.

### 6.37 Specified Security Proceeds

Specified Security Proceeds in relation to an Insured Buyer consist of monies or the monetary value of any items of tangible or intangible assets that the Insured recovers or realises from any security, security interest(s), guarantee(s) or indemnity(ies) and which are expressed to be the subject of a special condition of cover under a Credit Limit Endorsement without which cover would not have been made available by the Insurer but Specified Security Proceeds excludes the proceeds of any security or security interest, guarantee or indemnity not so stipulated as a special condition of cover but which the Insured has instead obtained on its own accord or initiative.

### 6.38 Terrorism

Terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political or religious or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

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135004GC/Top-up(EU)TradeCreditInsurancePolicyWording/OCTOBER2018

