

QBE European Operations

QBE Trade Credit

Commercial Tenant Default (EU) Insurance Policy Wording



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Policy Wording

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Policy Wording

1. The Insurer's agreement in general

1.1 Parties to this agreement

This Commercial Tenant Default 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 and Future Window 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 loss, as described in the Trade Credit and Rental Income clauses below arising from a Claimable Event provided that:

- a) the Claimable Event Date occurs during the Policy Period; and
- b) the Insured Tenants are in Approved Countries; and
- c) the lease agreement between the insured and the Insured Tenant has been viewed and accepted by the Insurer; and
- d) in accordance with the endorsements that are shown as Insured in the Schedule.

2.2 Rental Income

This clause covers the Insured for the loss of any Rent due after the Claimable Event Date for a maximum period of twelve (12) months, but in no event not beyond the earliest of the following:

- a) the sale, re-letting or re-leasing of the Premises; or
- b) the end of the Lease; or
- c) the end of the Policy Period plus the Future Window;

2.3 Permitted credit limits

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

Permitted Credit Limits will be effective from the date of issue and will be valid for the duration of the Policy Period unless otherwise stated within the Credit Limit Endorsement.

3. Limitations and exclusions

3.1 Limitations and exclusions

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) 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 Tenant 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;

Claimable Loss Period

arising from any Lease payments or obligations beyond twelve (12) months from the date of the first outstanding and claimed Insured Debt.

In no event shall the insurer provide indemnity for more than twelve (12) months' Insured Debt regardless as to whether the debt is accrued prior to the Claimable Event Date or as Loss of Rental Income.

Nevertheless, the insurer shall not provide any indemnity beyond the end of the Future window;

Contracts exceeding Maximum Terms of Payment

arising out of contracts in which the terms of trade granted to an Insured Tenant exceed the Maximum Terms of Payment as specified in either the Approved Countries & Conditions Table in the Schedule or by Policy endorsement;

Dilapidations and Other Payments

for that part of any debt which relates to Dilapidations and Other Payments or in respect of any adverse difference between the amount of Rent and Service Obligations due pursuant to the Lease and the amount of Rent and Service Obligations due pursuant to any re-lease of the Premises;

Disputed indebtedness (Disputes)

involving any indebtedness which is the subject of a dispute between the Insured and an Insured Tenant, pending final resolution of such dispute in the Insured's favour by determination or agreement. Following resolution of the dispute any amounts determined or agreed owing to the Insured, must be paid by the Insured Tenant within thirty (30) days of the date of such resolution or the expiry of the Maximum Extension Period whichever is the later. Thereafter the sum will be overdue constituting a Notifiable Event. Any Maximum Extension Period is hereby deemed to be adjusted to include any such thirty (30) day period;

Excluded contracts

in respect of contracts with or between the Insured and:

- a) any group companies, associated companies, parent company or subsidiary companies of the Insured;
- b) a Public Tenant;
- c) a customer resident outside the Approved Countries;
- d) any registered charity;
- e) where the contract is a Consumer Contract;

Excluded Rents

in respect of Rent payable in one or more of the following circumstances by an Insured Tenant:

- a) that was insolvent at the time of entering into the tenancy agreement and/or at the commencement of this Insurance Contract;
- b) that prior to entering into the tenancy agreement and/or the commencement of this Policy the Insured was aware or ought, in the ordinary course of business to be aware of a Notifiable Event in respect of the tenant;
- c) outside the Approved Countries;

Legally enforceable indebtedness

for Rents where the Insured or any of its agents or assigns, has failed to comply with any law, order, decree and regulation of any competent authority of the relevant Approved Country or has failed to comply with any law, order, decree or regulation of any competent authority of any other country with jurisdiction over the Insured;

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 a natural disaster (force majeure)

arising directly from or caused by:

- a) storm; or
- b) flood; or
- c) earthquake, landslide, tsunami or volcanic activity; or
- d) any natural disasters as declared by any government;

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 including any actions taken by government in suppressing any Terrorism;

Non-Binding Lease Agreements

attaching to a Lease agreement that is not legally enforceable within the country of its issue. It is the responsibility of the Insured that such agreement is legally enforceable in the jurisdiction to which it relates, should the Lease be contested;

Other Insurances

for which, at the time of any claim under this Policy, any other valid 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 insurances;

Protracted Default applying to sitting tenants

where more than one rental instalment has not been honoured by the Insured Tenant and the Insured Tenant still occupies the Premises at the end of the Protracted Default Period.

The Insurer reserves the right to request legal proof that the tenant has been evicted from the property;

Re-letting of Premises

in respect of the non-payment of Rent by a new tenant to whom the Insured has re-let or re-leased the Premises unless the Insurer has agreed otherwise in writing;

Rent payable after the Insured is insolvent

Rent payable by an Insured Tenant at a time when the Insured was Insolvent;

Rescheduling of debt or renegotiating terms of the Lease

after any repayment renegotiations or changes to the terms of trade beyond the Maximum Extension Period or any changes to the Lease unless approved in writing by the Insurer;

Service charges

any operating costs, services charges or any other levies to be paid by the Insured Tenant to the Insured as may be specified in the Lease; or

VAT and other taxes and charges

for 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.

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) a Notifiable Event that occurs to an Insured Tenant; or
- b) an amount which is overdue in relation to an Insured Tenant which, including disputed Rents, and the Maximum Extension Period has expired; and

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

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 Tenant;
- 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;
- c) in the case of Insolvency obtain and submit to the Insurer
 - 1) written Confirmation of Debt for the outstanding Lease payments claimed as being owed by an Insured Tenant from the person authorised to administer the insolvent estate of the Insured Tenant, and
 - 2) for any Loss of Rental Income claim, such documents as satisfactory to the Insurer; and
- d) in the case of Protracted Default obtain the judgment from a court of competent jurisdiction or local equivalent against the Insured Tenant in respect of an Insured Debt that exceeds GBP5,000 (five thousand pounds) or the equivalent in the Policy Currency.

4.3 Due diligence

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

It is the responsibility of the Insured to identify for the persons authorised to administer the insolvent estate the maximum entitlement under the terms of the Lease. This may include but not be limited to any charges, penalties, notice periods or rent reviews over and above the rental payments that may have the effect of increasing the value of the Insureds total debt.

4.4 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.

4.5 Insurer's rights

The Insured must 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 pertaining to this insurance. The Insured will allow extracts and copies to be taken without charge and will take all reasonable steps to obtain any 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 their expense provide a certified translation into English if so required by the Insurer.

4.6 Subrogation

- a) Whether before settlement of any claim under the Policy or at any time thereafter, the Insured must at the request of the Insurer transfer or assign to the Insurer all rights and remedies, indemnities and advantages of whatsoever nature held by or available to the Insured whether from the Insured Tenant 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.
- b) Upon payment of a claim the Insurer 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 Tenant 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 Insurer, 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 Insurer for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Insurer 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 effort to pursue Recoveries in cooperation with, or on behalf of, the Insurer.

4.7 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 are to be divided between the Insured and the Insurer as follows:
 - i) the Insurer is entitled to the sum of:
 - A) such proportion as the Insured Percentage of the Insured Debt bears to the total indebtedness of the Insured Tenant to the Insured at the date that a Notifiable Event first occurs; plus

- (B) any other monies owing to the Insurer for arrears of premiums or monies due under this Policy; plus
 - (C) any monies required to maintain the impact of any deductible; plus
 - ii) the Insured is entitled to the balance.
 - 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 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 claim, before the Insurer has agreed to settle it, the Insured will not be required to pay its proportion of 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 Tenant; 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 4.6 above.
- f) In the event the Insurer elects to bring such a claim or take legal action against an Insured Tenant 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 Permitted Credit Limit, 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:

Any Specified Security Proceeds, despite any request or instruction to the contrary from the relevant Insured Tenant 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.

4.8 Settlement of claims

The Insurer will pay to the Insured the Insured Percentage of the Insured Loss within thirty (30) days of receipt of a Confirmation of Debt (for Insolvency claims) or the judgment (if applicable) of a court of competent jurisdiction (for Protracted Default claims), 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 shall not be 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 less any amount still owing for Rents due and/or covered under that previous policy.

5.2 Allocation of monies

All amounts received in connection with insured or uninsured Rents 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 pertaining 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 Limits under the Policy, 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 contracts with an Insured Tenant in any currency (including any Approved Claim Currency) other than the Policy Currency, the value of each Rental amount 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 Rent is due, 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 Tenant's indebtedness due 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 Tenant's indebtedness due 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 Tenant 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 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 $X = (\text{premium actually charged/higher premium}) \times 100$.

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 $X = (\text{premium actually charged/higher premium}) \times 100$; 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 $X = (\text{premium actually charged/reduced total premium}) \times 100$.

5.11 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.

5.12 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.

5.13 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.

5.14 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 Tenant means either Insolvency, Protracted Default or any other named Claimable Event in the Schedule that has occurred before a claim can be 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 and such date must occur within the Policy Period.

6.5 Confirmation of Debt

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

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

by the person authorised to administer the insolvent estate of the Insured Tenant.

It is noted that the Loss of Rental Income element of the Insured Debt may not always all form part of the Confirmation of Debt. This can vary at the discretion of the person authorised to administer the insolvent estate of the Insured Tenant.

6.6 Consumer Contract

Consumer Contract means a contract concluded between the Insured and a natural person who is acting in his or her personal capacity for purposes which are outside his or her business, and/or, who would have the benefit of consumer protection legislation.

6.7 Conversion Exchange Rate

Conversion Exchange Rate in respect of an invoice means the rate of exchange between the currency in which that Rent is payable in 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 Rents were due; 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 Tenant; or
- c) by reference to the Insured's internal treasury rate as agreed in writing by the Insurer at the inception of the Policy.

6.8 Credit Limit Endorsement

A Credit Limit Endorsement means an endorsement issued by the Insurer and specifies the approved Permitted Credit Limit in respect of the named Insured Tenant (also referred to as an Insured Buyer). It may contain special conditions adding to or amending the existing terms and conditions of this Policy in relation to the Insured Tenant.

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

6.9 Credit Management Procedures

Credit Management Procedures means such procedures relating to or associated with or consisting of procedures of credit management as may be described in the credit management questionnaire, Proposal, renewal form, and the Insured's credit control procedures.

6.10 Dilapidations and Other Payments

Dilapidations and Other Payments include but are not limited to:

- a) payments by way of interest or penalty on any monies due to be paid under the Lease
- b) any fees associated with independent investigations, loss adjustors or disagreements between the Insured Tenant and the Insured;
- c) all payments made in respect of repairs to or maintenance or rebuilding or replacement (whether of a structural nature or not) of the premises or any part thereof;
- d) any payment in consideration for the goodwill of any business;
- e) money that the Insured Tenant is to pay, or any benefit that the Insured Tenant is to confer, by way of a premium or anything of a like nature in consideration of the granting of or agreeing to grant the Lease or the renewal of the Lease or the consenting to an assignment of the Lease or to the sub-leasing of the premises and any legal and other associated costs; and
- f) any costs associated with returning the property, or not returning it, to the standard agreed in the Lease at the end of the leasehold period (Reinstatement Costs).

6.11 Future Window

Future window means a period of six (6) months (unless otherwise stated by endorsement in the Policy) beyond the end of the Policy Period during which Rental Income payments shall be made in respect of a Claimable Event Date occurring during the Policy Period;

6.12 Insolvency

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

- a) an Insured Tenant 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 Tenant 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 Tenant; or
- c) a composition by an Insured Tenant has been approved by a court having jurisdiction or a compromise or arrangement has been made binding by the court on that Insured Tenant and all that Insured Tenant's creditors; or

- d) an Insured Tenant 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.

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.

6.13 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.

6.14 Insured Tenant (Insured Buyer)

Insured Tenant means any commercial tenant of the Insured which is domiciled in an Approved Country for whom the Insured has a Permitted Credit Limit during the Policy Period. Insured Tenant may be referred to as Insured Buyer in associated or complementary documentation issued by the Insurer from time to time in relation to the Policy (especially in a Credit Limit Endorsement).

6.15 Insured Debt

Insured Debt means as much of any Rent owed by the Insured Tenant as at the Claimable Event Date of an Insured Tenant together with any Loss of Rental Income during the Policy Period and Future Window always provided the Insured held a valid Permitted Credit Limit in the Policy Period during which the Claimable Event Date occurred.

The Insured Debt will be no more than the Permitted Credit Limit and does not include collection costs, which will be for the account of the Insured.

5.16 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 Tenant; or
- (b) in the case of Protracted Default or Loss of Rental Income 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 Tenant;

each after deducting any Recoveries.

6.17 Insured Percentage

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

6.18 Insurer

Insurer means the party specified in the Schedule.

6.19 Lease

Lease is the tenancy agreement contract signed by the Insured Tenant. A copy of the Lease must be provided to and accepted by the Insurer and the Lease must not be amended without the approval of the Insurer (such approval to an amendment must be provided in writing by the Insurer prior to implementation of the amendment).

5.20 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

6.21 Loss of Rental Income

Loss of Rental Income means the loss of any Rent due after the Claimable Event Date up to the following date whichever is the earlier:

- i. the sale or re-letting or re-leasing of the Premises (subject to Recoveries);
- ii. the end of the Lease; or
- iii. expiry of the Future Window beyond the end of the Policy Period.

6.22 Maximum Country Liability

Maximum Country Liability represents 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.

6.23 Maximum Extension Period

Maximum Extension Period means the maximum number of days the Insurer is permitted to wait for payment after the due date before it constitutes a Notifiable Event.

6.24 Maximum Policy Liability

Maximum Policy Liability represents the maximum aggregated value of claim payments available under this Policy for all Claimable Events and when this limit has been exhausted the Insured is not entitled to submit any further claims under this Policy.

6.25 Maximum Terms of Payment

Maximum Terms of Payment are as specified in the Approved Countries & Conditions Table in the Schedule or as varied by Credit Limit Endorsement and are the maximum terms and type of payment that are allowable by the Insurer for each Permitted Credit Limit.

6.26 Notifiable Event

Notifiable Event means any of the following events which is deemed to have occurred when the Insured is aware of an Insured Tenant:

- a) being unable to pay its debts as and when they fall due or at least within the Maximum Extension Period;
- b) having any cheque stating "refer to drawer";
- c) having any direct debit dishonoured;
- d) having any non-payment or extension or rescheduling of Rent;
- e) having admitted cash flow difficulties;
- f) having any legal action instigated where solicitors are instructed to serve a county court judgment, statutory demand or a winding up petition;

- g) being in or about to be in any form of Insolvency; or
- h) being impacted by any event that would give grounds for the belief that the Insured Tenant may not perform or comply with its obligations under a contract of sale with the Insured.

6.27 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.

6.28 Permitted Credit Limit

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

6.29 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.

6.30 Policy Currency

Policy Currency means the currency specified in the Schedule.

6.31 Policy Period

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

6.32 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.

6.33 Premises

Premises means the property subject to the Lease as specified in the Schedule.

6.34 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 may have received or require.

6.35 Protracted Default

Protracted Default means a Claimable Event and means the failure of an Insured Tenant 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.

6.36 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 Lease 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 Tenant exists or while the Insured Tenant:

- 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 Tenant which has not been resolved by the parties to the relevant contract or by arbitration, or by legal proceedings.

6.37 Public Tenant

Public Tenant means an entity which conforms to at least one of the following criteria:

- a) a government or a ministry, department or agency thereof (hereinafter referred to as Government);
- b) a regional or local authority or a department or agency thereof (hereinafter referred to as Local Authority);
- c) a nationalised undertaking (including a public corporation) or a state trading organisation or an entity which the Government or Local Authority directly controls provided always that the Government or Local Authority has clear explicit and constitutionally sanctioned financial responsibility and a fundamental commitment to the continuing existence of such undertaking corporation, organisation or entity.

6.38 Recoveries

Recoveries means the value of all monies (including dividends or distributions out of an insolvent estate), securities, indemnities, guarantees, rights of action, escrow monies, counterclaim or set-off, deposits (including any security deposits), bailiff repossessions, or other advantage received or held by the Insured or available for the purpose of reducing the amount of any indebtedness or Loss of Rental Income of an Insured Tenant to the Insured which had not been paid at the earliest Notifiable Event which remains unremedied, excluding any Specified Security Proceeds.

For the purpose of this Policy, following a Claimable Event of the original Insured Tenant, the Insured can only re-lease the Premises with the Insurer's prior written agreement and all Rent due for payment from any new tenant up until the date of the last period of Rent claimed and paid by the Insurer.

5.39 Rent

Rent means the amount agreed and specified within the Lease as rent due to the Insured in relation to the occupation or tenancy of buildings or premises by the Insured Tenant during the Policy Period and Future Window. Rent does not include any operating costs to be paid by the Insured Tenant as may be specified in the Lease. Monies must be due and payable during the Policy Period.

Rent will be subject to the following:

- a) where in the Lease it is provided that a reduced amount of rent will be accepted by the Insured upon any condition to be performed by the Insured Tenant, that reduced amount will be deemed to be the Rent payable under the Lease;

- b) where any rebate, discount, allowance, holiday period or other reduction is provided for, the amount payable after each such reduction is made will be deemed to be the Rent payable under the Lease;
- c) Rent excludes all Dilapidations and all other charges.

6.40 Schedule

Schedule means the document titled Schedule that includes the name and address of the Insured, the premium and other variables to this Policy (including endorsement clauses) and is incorporated in this Policy and accepted by the Insured. Schedules may be re-issued from time to time where each successor overrides the earlier document.

6.41 Specified Security Proceeds

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

6.42 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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