

# GENERAL CONDITIONS EXCESS OF LOSS



## DEFINITIONS

- I. **Contract:** The written documents comprising of these General Conditions, the Special Conditions and the Questionnaire which contain the obligations and rights agreed between the Insured and the Company.
  - II. **Customer:** A commercial entity who incurs a debt to the Insured arising out of the Delivery of Goods or Provision of Services.
  - III. **Credit Limit:** The maximum insurable outstanding amount allowed by the Insured to the Customer, based on its Credit Management.
  - IV. **Credit Management:** The procedures set out by the Insured in the Questionnaire together with its attachments and any Credit Procedure Manual, and accepted by the Company regarding the establishment and monitoring of Credit Limits and the pursuit of debt recovery actions against its Customers.
  - V. **Questionnaire:** The document completed truthfully and fully and signed by the Insured giving details of its activity, the profile of its sales ledger, its experience and Credit Management Procedures (including any Credit Procedure Manual). This Questionnaire is attached to and forms an integral part of the Contract (Appendix A).
  - VI. **Loss Threat:** Any event or information discovered by the Insured which is likely to give rise to a Customer's Payment Default.
  - VII. **Loss:** The total amount of the debt that a Customer in Payment Default owes the Insured.
  - VIII. **Claim:** The amount of a Loss that is insured under the conditions established in the Contract.
  - IX. **Indemnity:** The amount of liability owed to the Insured by the Company regarding the eligible Payment Defaults of its Customers according to the terms and conditions of the Contract.
  - X. **Delivery of Goods or Provision of Services:** Goods delivered and invoiced, or in the case of services, provided and invoiced, by the Insured to the Customer and specified in the Special Conditions art.1.
  - XI. **Maximum Payment Period:** The longest period of credit the Insured is permitted to allow the Customer as specified in the Special Conditions art.3.
  - XII. **Due Date:** The initial date, no later than that specified in the invoice or similar written document, by which payment is to be made by the Customer to the Insured.
  - XIII. **Overdue:** When a debt arising out of the Delivery of Goods or Provision of Services has not been paid on the initial Due Date.
  - XIV. **Recovery Agency:** An independent debt recovery professional (such as a debt-collection agency or lawyer), approved by the Company. See Special Conditions art.14.
  - XV. **Delivery Stop:** The date from which Deliveries of Goods or Provisions of Services by the Insured to a Customer is no longer insured. This point in time occurs when, as a result of the prior Delivery of Goods or Provision of Services, Receivables become Overdue for more than the period stated in the Special Conditions art. 4 or if the Customer is in Payment Default or there are Loss Threats.
- Singular and Plural: For the purposes of the Contract, references to any defined or undefined terms in the singular shall include the plural and in the plural shall include the singular as the context requires.
- Days: All references to 'days' in this Contract refer to 24 hour, consecutive days.

## 1. PURPOSE

In accordance with the General and Special Conditions and Questionnaire, the purpose of the Contract is to cover the Losses sustained by the Insured following Payment Default by its Customers and resulting from Delivery of Goods or Provision of Services, as described in the Questionnaire and set out in the Special Conditions art.1.

## 2. AGREEMENT TO RISKS

The Insured undertakes to grant Credit Limits to its Customers, applying the Credit Management on the basis of the information obtained as described and recorded in the Questionnaire. The granting of these Credit Limits shall in every case be based on the creditworthiness of the Customer in question. If the Insured so-decides, a new Credit Limit can be reinstated with a Customer who has been guilty of Payment Default or to whom the Delivery Stop has been applied, once all Overdue debt has been paid and a new, favourable risk assessment has been obtained. Guarantees and any other collateral obtained by the Insured will not influence the established method of calculation; in particular they will not influence the Credit Limit.

## 3. RISKS COVERED

The risks covered are the ultimate finally ascertained losses resulting from unpaid Receivables from Customers in Payment Default, according to the conditions of the Contract.

### 3.1. Payment Default (insured event)

- 3.1.1. A Customer is deemed to be in Payment Default when any of the following steps (or equivalent in effect under the laws of any court having jurisdiction) have been taken against it:
  - (i) a bankruptcy or winding-up order has been made;
  - (ii) an administration order has been made over its affairs;
  - (iii) an effective resolution or order for the voluntary winding up has been made of the Customer's affairs;
  - (iv) a voluntary arrangement, composition or compromise, supervised by an insolvency practitioner or the like has been made which is binding on the Customer and all of the Customer's creditors;
  - (v) an administrator, receiver or liquidator or other similar official has been appointed on behalf of creditors of the Customer;or where
  - (vi) circumstances exist which in the opinion of the Company are equivalent to any of these steps; or
  - (vii) the Insured demonstrates to the Company's reasonable satisfaction that it will be unproductive or uneconomical to pursue any legal proceedings, enforce or continue to enforce any judgment or to pursue or participate in any of these procedures against the Customer.

- 3.1.2. For the purposes of the Contract, Payment Defaults to be taken into account shall be those occurring no later than one calendar year after the expiry date of the Contract.

### 3.2. Claims: In accordance with the conditions of this Contract, Losses of the Insured are covered, provided always that:

- 3.2.1. the Insured has granted a Credit Limit for the Delivery of Goods or Provision of Services to the Customer in accordance with art. 2.
- 3.2.2. Receivables result from the Delivery of Goods or Provision of Services within the dates specified in the special conditions art. 2 and before the expiry date of the Contract,
- 3.2.3. the Receivables have been invoiced within 30 days of the date of the Delivery of Goods or Provision of Services,
- 3.2.4. there are no disputes in respect of the Receivables and they are accepted as part of the Customer's liabilities in the context of the circumstances set out in article 3.1.1. above,
- 3.2.5. no refunding or pay-back in respect of the Receivables has been officially published or announced in the frame of the circumstances set out in article 3.1.1.
- 3.2.6. the Maximum Payment Period does not exceed that recorded in the Special Conditions art. 3.
- 3.2.7. the Insured has exhausted all reasonably possible collection actions including enforcement of guarantees and other collaterals and exercising any right to retention of title, and finally
- 3.2.8. the losses are in respect of a single debtor, and exceed the sum specified in the Special Conditions art. 10a, and do not constitute a Non Qualifying Loss (NQL).

### 3.3. Insured Customers: In accordance with the conditions of this Contract, the sums due from Customers in Payment Default are insured provided that those Customers:

- 3.3.1. are registered as traders with the Registry of Commerce or other legal registry in accordance with the legislation of the country in which they are established,
- 3.3.2. have their domicile in one of the countries set out in the Special Conditions art. 5,
- 3.3.3. are independent of the Insured, both legally and financially, and neither the Insured nor the Customer exercises any control nor takes part in any way in the management or administration of each other's businesses, and
- 3.3.4. at the time of the signature of the Contract they do not have any earlier undisputed invoices Overdue from the original initial Due Date for more than the days set out in the Special Conditions art. 4.

### 3.4. Onus on proof: in the event of a dispute arising between the Insured and the Company regarding a claim, it shall be incumbent upon the Insured to prove that it has complied with all the conditions of the Contract and has followed the credit and recovery procedures defined in the Questionnaire. In particular and for the avoidance of doubt, the communication by the Insured of the name of a Customer in the Questionnaire or in any other document before or after the signature of the Contract does not in any way imply the insurance of the risks associated with the nominated Customer.

## 4. CREDIT MANAGEMENT

The Insured shall manage the risks covered by the present Contract as if it was not insured by the Company and act at all times with due diligence, and in particular:

- 4.1. The Insured is obliged to:
- 4.1.1. analyse the creditworthiness of the Customer on the basis of all available information as set out in the Questionnaire and apply its Credit Management before granting a Credit Limit;
  - 4.1.2. impose upon its Customer the General Terms and Conditions of Sale attached to the Questionnaire, setting out, in particular, the Credit Period, the sanctions for non-payment on the Due Date and, depending on the country of the Customer, any retention of title clauses, or equivalent, intended to be enforceable against the Customer and third parties in the event of Payment Default;
  - 4.1.3. monitor Due Dates, request payment and update the accounts in accordance with the procedures detailed in the Questionnaire and any Credit Procedure Manual;  
and with regard to a Customer in Payment Default:
  - 4.1.4. carry out all necessary and reasonable steps in order to avoid and minimise any losses resulting from unpaid Receivables;
  - 4.1.5. submit details of Overdue debt at the latest when specified in the Special Conditions art.15 to the Recovery Agency nominated in the Special Conditions art.14,
  - 4.1.6. if and insofar as required, grant a full power of attorney to the Recovery Agency
  - 4.1.7. follow the recommendations of the Recovery Agency regarding the Overdue debt.
- 4.2. The Company will be also bound by the recommendations of the Recovery Agency. In cases where the Company wishes to take over the recovery of a debt, the Insured, if required, is obliged to give a power of attorney to the Company to exercise, in its name and place, all the rights which it holds over the debt and cooperate closely in the debt's recovery. Where appropriate, and to the same end, the Company may require the assignment of the debt in its favour.
- 4.3. Should the Insured carry out Delivery of Goods or Provision of Services to Customers:
- > beyond the Delivery Stop established in the Special Conditions art. 4.
  - > who are in Payment Default
  - > when the Insured is aware of any event that may reasonably be expected to result in a Payment Default; or
  - > when the Insured has extended the initial Due Date longer than the days stated in the Special Conditions art. 3,
  - > then these Delivery of Goods or Provision of Services are excluded from coverage under the Contract.
- 4.4. The Insured is obliged to authorise the External Information Providers and the Recovery Agencies specified in Special Conditions art. 13 and 14 to deal directly with the Company regarding any Claims and to deliver all information required by the Company if and when available.
- 4.5. The Company may request additional reporting at any time, and in particular for the purpose of verifying the Insured's compliance with the obligations contained in this section of the Contract and the truthfulness and completeness of the information contained in the Questionnaire. The Company has the right to carry out, through the Company's own employees or external agencies, any inquiries it deems necessary. The Insured shall co-operate fully in the carrying out of these inquiries.

## 5. CONTRACT ADMINISTRATION

The Insured undertakes:

- 5.1. To advise the Company, within 30 days of the end of each insurance year:
- > the turnover achieved during that year. The Insured shall make a separate declaration of turnover for each country and for the total turnover. The turnover expected for the insurance year at the commencement date of the Contract is stated in the Special Conditions art. 6.
  - > the movement in the Days Sales Outstanding (DSO) which is the measure of the average payment taken, calculated by the following formula:  
  

$$\frac{\text{Average outstanding balance for the given period including VAT}}{\text{Annual turnover including VAT}} \times 360$$
  - > The DSO at the commencement date of the Contract is stated in the Special Conditions art. 7.
  - > the detailed Ageing Balance of the credits to its Customers, stating the credits already matured and the ones which are going to mature, with express reference to their seniority.
- 5.2. To complete the Questionnaire truthfully and fully before the commencement of the Contract and to inform the Company in writing immediately of any modification to material facts and the declarations made in the Questionnaire or changes to the Credit Management, including in particular any changes in the granting of Credit Limits, the Due Date and debt recovery procedures. Together with the information required in art. 5.1, this information is fundamental to the assessment of risks, the decision to conclude the Contract, its terms and the calculation of the premium by the Company.
- 5.3. To inform the Company immediately in writing of Loss Threats.
- 5.4. To communicate in writing to the Company all information useful for checking its performance of the Contract terms and conditions and in particular information relating to the calculation of Premium and the analysis of Claims submitted.
- 5.5. To give written notice of Claims within 30 days of the date on which the Insured becomes aware of a Payment Default within the meaning of article 3.1.1., using a form approved by the Company, duly completed and signed (a pro forma of which is attached to the present Contract). The Insured shall in addition forward

evidence of its compliance with articles 2 and 4 of these General Conditions. The Insured shall also forward, as soon as possible, the proof of the debt's admission to the Customer's liabilities or similar recognition by the judicial official responsible for the administration of the collective procedure.

- 5.6. The Company is not responsible for the information/documentation provided by the policyholder and/or its broker towards legal and tax authorities. The Company esteems that the provided data are correct and resort to the responsibility of the policyholder.

## 6. PREMIUM

- 6.1. The amount and method of calculation of the annual Premium is set out in the Special Conditions art. 8. The Premium is payable within 30 days of the date the debit note is sent by the Company. The debit note will show:
- > the Minimum Annual Premium due at the time of signature of the Contract and then in case of renewal at the beginning of the new year of insurance
  - > any Additional Premium, if due by virtue of the Special Conditions Art. 8, immediately after the year of insurance.
- 6.2. The Minimum Annual Premium as specified in the Special Conditions art. 8 is non-refundable by the Company.
- 6.3. The Premium may be subject to any applicable insurance premium tax, which is payable at the same time as the Premium.
- 6.4. It is agreed that the Company may set off Premium due from the Insured against Indemnities due from the Company. This also applies if any Indemnity is due to be paid to a third party, for instance because of assignment. The Insured only has a right to set-off or a right of retention if its Claim against the Company is undisputed or final and binding as a result of judicial decision. The Insured may only assign its claims against the Company with the prior written consent of the Company. If the Company has consented, any claims correspondence and claims calculation will continue to be handled between the Company and the Insured.
- 6.5. The Premium, including all Additional Premium due to the Company, must be fully paid for the Insured to be eligible to receive an indemnity.

## 7. INDEMNITY

Any Claim will be allocated to that year of insurance in which the first unpaid Receivable for that Claim arose; the invoice date of the first unpaid invoice will be decisive. For each Claim the insurance conditions that are applicable will be those that are in force during that year, and will take into account the following:

- 7.1. Annual Aggregate Deductible (AAD): the aggregate sum of Claims to which the Insured is otherwise entitled under the Contract in each year of insurance, up to the amount specified in the Special Conditions art. 9 before the Insured is eligible for any Indemnity.
- 7.2. Percentage of Cover: the percentage of claims covered in excess of the Annual Aggregate Deductible is that specified in the Special Conditions art. 11. The uninsured percentage shall be borne by the Insured.
- 7.3. Limit of Liability: the maximum amount of Indemnity payable by the Company in each year of insurance. The Limit of Liability is specified in the Special Conditions art. 12. It is reduced by the Indemnities paid and/or payable by the Company and increased by the recoveries obtained by the Company. See Article 8 of these General Conditions.
- 7.4. Deductible per claim: the amount deducted from each Indemnity as specified in the Special Conditions art. 10.b.
- 7.5. Calculation of the Indemnity: the Indemnity is:
- > the amount of the Claim relating to the Delivery of Goods or Provision of Services covered in accordance with art. 3.2. and 3.3. of these General Conditions as may be limited by:
    - the Credit Limit and
    - the Limit of Liability
  - > less the deductible Recoveries and the Receivables capable of off-set according to art. 8.2 of these General Conditions
  - > less any part of the Annual Aggregate Deductible not yet used
  - > the result then being multiplied by the applicable Percentage of cover and the Deductible per Claim then being applied - see Special Conditions art. 10.
- 7.6. Indemnity date of payment: the Insured may at any time request the Company in writing to pay the Indemnity due to it in accordance with the Contract's terms and conditions. The Company shall pay the amount of this Indemnity within 30 days of the receipt of all documentation and information requested by the Company for the acceptance of the Claim.
- 7.7. Subrogation: Upon payment of the Indemnity by the Company, the Insured will subrogate the Company in respect of all the rights and actions which may belong to the Insured against the Customer or other third parties for recovery up to the amount of the Indemnity.

## 8. PAYMENTS, RECOVERIES

- 8.1. Allocation of payments: for the purpose of the Contract any amounts received from a Customer are allocated to all Receivables due from the same Customer in chronological order of Due Date. After a Delivery Stop, unless there is a different decision by the Recovery Agency, any amounts are allocated pro rata and in proportion to insured and uninsured Receivables at the moment of the Delivery Stop back to the oldest unpaid Receivable. If the Credit Limit has been exceeded, Receivables can only become covered as and when there is a payment in respect of the oldest unpaid Receivable. After a Delivery Stop coverage is no longer available.

- 8.2. All payments and recoveries as well as Receivables that are capable of being off-set shall be deducted from the indemnification between the Insured and the Company pro rata and in proportion to insured and uninsured Receivables at the moment the insured event occurs.
- 8.3. The Insured shall be entitled to retain all sums recovered in respect of Claims borne by the Insured alone, in accordance with art. 7.1 of these General Conditions, but they will be added to the AAD in the appropriate amount.
- 8.4. The Insured is obliged to give written notice of and provide evidence of any payments and Receivables immediately to the Company. This applies in particular to Claims borne by the Insured alone in accordance with art. 7.1 of these General Conditions and to Claims where the Insured receives payments and recoveries after it has already been indemnified by the Company. In such cases the Company will provide a new calculation of the Indemnity and the Insured is obliged to refund to the Company any Indemnity overpaid to the Insured.

## 9. EXCLUSIONS

- 9.1. Cover under the Contract shall be excluded for Claims resulting from war, occupation of territory by a foreign power, revolution, general strike, riots, acts of terrorism; confiscation, requisition or destruction of goods ordered by public authorities, any phenomenon having a nuclear origin, whether directly or indirectly, or damage due to the direct or indirect effects of explosions or exothermic reaction; direct or indirect consequences of a volcanic eruption, an earthquake or other natural calamity, subsidence of earth or landslide or any natural catastrophe; exchange rate fluctuations and/or currency devaluation and the impossibility of transferring funds; any transactions made in breach of the laws or regulations of the country of destination, of the country of dispatch or of the Customer; the introduction of sanctions and import or export restrictions or any other form of embargo; breach of the laws of the country of the Insured and/or the Customer.
- 9.2. The following claims are also not covered: sums due from any state, province, department, town or local authority or other public body which cannot be declared insolvent or subjected to another form of collective procedure permitted by the civil courts of the Customer's country; from members of the public who are not engaged in commerce (for example, private consumers); from Customers who are dependent upon the Insured either legally or financially or over which the Insured exercises control or takes part in any way in the management or administration of their affairs; Losses covered by other insurance.
- 9.3. The following sums are also excluded from cover under this Contract: sums relating to VAT, other tax and customs arising from cross-border trade, loss on exchange, invoices issued which lead to exceeding the Credit Limit and Delivery of Goods or Provision of Services in contravention of article 4.4; late payment interest, liquidated damages and interest, contractual penalties and costs relating to the resolution of disputes or litigation with Customers and any other Receivables arising from notification of defects or other complaints, goods manufactured or unfinished services that are not performed by the time the insured event occurs.

## 10. INCEPTION, DURATION, RENEWAL

- 10.1. The present Contract is underwritten for the period specified in the Special Conditions art. 16.
- 10.2. In the absence of any provision to the contrary contained in the Special Conditions, the Contract shall commence upon signature by the Insured and the Company, subject to the condition precedent of payment of the annual Minimum Annual Premium in accordance with article 6 of these General Conditions.
- 10.3. In the absence of any provision to the contrary contained in the Special Conditions, the Contract is renewable by tacit agreement for a new period of the same duration and on the same terms and conditions as specified in the Special Conditions, unless one of the parties notifies its intention not to renew the Contract by giving notice by registered letter at least two calendar months prior to the expiry of the Contract.

## 11. MODIFICATION, TERMINATION OR CANCELLATION OF THE CONTRACT

- 11.1. Increase in the risk: In the event of a declaration made by the Insured in compliance with art. 5.1 and 5.2 of these General Conditions, or which reveals an increase in DSO as stated in the Special Conditions art. 7, the Company may either offer new terms of insurance to take effect from the date of the declaration made by the Insured or cancel the Contract with effect from this same date in accordance with these General Conditions art. 11.3. In the absence of any reaction from the Company within 30 days of receipt of such a declaration, the Contract shall be deemed to remain in force on the same terms and conditions. The Insured may also cancel the Contract within 30 days of notification of the new terms and conditions proposed by the Company.
- 11.2. Insolvency of the Insured: In the event of the Insured's insolvency, the Contract shall be cancelled automatically, and without the need for formal notice from the Company. Without limitation, the Insured will be considered insolvent should a bankruptcy, winding up or administration order be made against the Insured; an assignment, composition or other arrangement be made for the benefit of the Insured's creditors generally; an effective resolution is passed for the winding-up of the Insured; or an administrator or other receiver or manager of any of the Insured's property is appointed.
- 11.3. Terms and Conditions of Cancellation: If the Contract is cancelled by the application of art. 11.1 or 11.2 of these General Conditions, and if no insurance Indemnity has been paid or is due to be paid to the Insured for the then current year of insurance, the Company shall reimburse the Premium paid pro rata, together with any applicable insurance premium tax. If an Indemnity has been paid or is due, the total Premium relating to the current year of insurance shall belong to the Company and shall be payable to the Company if it has not already been paid.

- 11.4. Non-Disclosure, false statements: The discovery of any non-disclosure, false statement, omission or inexact declaration by the Insured in the Questionnaire or in any correspondence with the Company shall give rise to the immediate and automatic retroactive cancellation of the Contract without the requirement for formal notice to be given.

In this event, the Contract shall be deemed never to have been agreed nor to have existed and the Insured shall pay back all Indemnities paid by the Company whilst the Company shall retain the Premium paid by way of liquidated damages for its administrative time and interest. The Company and the Insured agree to apply set off if appropriate.

Failure to communicate events foreseen in art. 5.1. and 5.2. of these General Conditions will be dealt with by the Company in accordance with art. 11.1. or the terms of this sub-article, whichever at its absolute discretion it deems more reasonably suitable for the particular case.

- 11.5. The Company is adhering to the legislation of the Insurance Act of 2015.

## 12. CONSEQUENCES OF BREACHES OF THE CONTRACT

In addition, if the Insured fails completely and accurately to describe and/or to comply with any of the obligations expressed in the Contract with regard to the Delivery of Goods or Provision of Services; the Maximum Payment Period; the Delivery Stop; the Insured Countries; the DSO; the Payment of Premium; the External Information Provider and/or the Recovery Agency, the Company is not bound by any of its obligations as expressly or impliedly set out in the Contract.

The Company has used the questionnaire and other information provided by the Insured to structure the policy. Therefore if this is not a fair representation of the risk to the Company, we reserve the right to invoke the remedies available under the Insurance Act of 2015.

## 13. TIME LIMITATION

The time limit for all disputes, claims or actions which might arise from the Contract is two years from the end of the calendar year in which the claim under the Contract arose.

## 14. JURISDICTION OF COURTS AND APPLICABLE LAW

The construction, validity and performance of the Contract shall be governed exclusively by the laws of England and Wales without regard to any conflict of law principles. All disputes which may arise under or in connection with this Contract, including any determination of Indemnity, shall be subject to the exclusive jurisdiction of the English Commercial Court in London.

Documentation concerning conflict of interests, inducement policy and complaints handling are available on our public website.

Issued in London in 3 copies on:

The Insured:

Authorised Signatories:

Signature: \_\_\_\_\_

Name:

Title:

Place:

Date:

Signature: \_\_\_\_\_

Name:

Title:

Place:

Date:

The Company: Credendo – Excess & Surety, Floor 28, 30 St Mary Axe, London EC3A 8BF, United Kingdom, branch of Credendo – Excess & Surety SA | NV with registered office in Avenue Roger Vandendriessche, 18, B-1150 Brussels, Belgium, duly authorised by the Banque Nationale de Belgique with n° 2364.

Authorised Signatories:

Signature: \_\_\_\_\_

Name:

Title:

Place:

Date:

Signature: \_\_\_\_\_

Name:

Title:

Place:

Date:

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