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# CONSIGNMENT EXPORTS

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## (Stockholding agent)

## POLICY

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Consignment Exports (Stockholding Agent) Policy issued by Export Credit Guarantee Corporation of India Limited (hereinafter referred to as "the Corporation") to the exporter specified in the Schedule to the Policy (hereinafter referred to as "the insured"), at the place and on the date mentioned in the said Schedule;

NOTES FOR INTERPRETATION

- *In this document –*
  - Headings are used for ease of reference only and are to be disregarded in construing the Policy;*
  - For interpretation of the meaning of the terms given in bold, the definitions given at the end the document shall be applied;*
  - The singular includes the plural and vice versa and;*
  - The animate include the inanimate and vice versa*

WHEREAS the insured has made a proposal (hereinafter referred to as "the Proposal") on the date specified in the Schedule requesting the Corporation to insure him against a proportion of any loss that he may sustain by reason of certain risks in respect of **shipments** sent abroad by him to his **stockholding agent** under a written **agency agreement** for the purpose of sale to **ultimate buyers** in pursuance of and in accordance with the said **agency agreement**;

AND WHEREAS the insured has together with the proposal submitted an authenticated copy of the aforesaid **agency agreement** to the Corporation;

AND WHEREAS the Corporation has accepted the proposal and has agreed to insure him against a percentage of loss which he may sustain by reason any of the risks referred to as the 'risks insured' and described herein-below but subject to the 'excluded risks' specified in the Schedule, in respect of the **shipments** made by him to his **stockholding agent** in pursuance of the said **agency agreement** during the Policy Period specified in the Schedule;

AND WHEREAS the insured has paid to the Corporation the 'Minimum Premium' specified in the Schedule for issue of this Policy, the receipt of which is hereby acknowledged by the Corporation; NOW THEREFORE, in consideration of the said Minimum Premium paid by the insured and the promise to pay further premiums that may become payable in terms of clause 10 of the Policy, the Corporation, in accordance with the terms and conditions hereof and subject to the exclusions to the 'risks insured', limitations to the Corporation's liability and the definitions contained

herein and to the Excluded Risks specified in the Schedule, hereby insures the insured against a percentage of the **Amount of Loss**, which he may sustain due to the following causes (hereinafter referred to as “the risks insured”) in respect of **shipment** of goods by the insured.

## PART – A RISKS INSURED AND EXCLUSIONS

### I. Risks Insured

#### GROUP A: Commercial risks on the stockholding agent:

- (i) The **insolvency** of the **stockholding agent**; or
- (ii) The failure of the **stockholding agent** to remit to the insured in breach of the **agency agreement** the amounts, if any, received by him from the **ultimate buyers** in payment of the value of the goods sold, within four months after the final date for such remittance by the **stockholding agent** in pursuance of the **agency agreement**; or
- (iii) Wrongful refusal or failure on the part of the **stockholding agent** to accept the goods that have already been dispatched by the insured to the **stockholding agent** in pursuance of the **agency agreement** provided that the insured shall if so required by the Corporation establish to the satisfaction of the Corporation through such means or documents as the Corporation may require including by means of appropriate legal proceedings that the said failure of refusal on the part of the stockholding agent was wrongful;

#### GROUP B: Commercial Risks on the ultimate buyer:

- (i) The **insolvency** of the **ultimate buyer**; or
- (ii) The failure of the **ultimate buyer** to pay to the **stockholding agent** or to the insured, as the case may be, within four months after the **due date** of payment the gross invoice value of the goods delivered to and accepted by him;
- (iii) Wrongful refusal or failure on the part of the **ultimate buyer** to accept the goods that have already been dispatched by the **stockholding agent** to the **ultimate buyer** in pursuance of a valid purchase order provided that the insured shall, if so required by the Corporation establish to the satisfaction of the Corporation through such means or documents as the Corporation may require including by means of appropriate legal proceedings against such **ultimate buyer**, that the said failure of refusal on the part of the **ultimate buyer** was wrongful;

#### GROUP C: Political Risks

- (i) Operation of a law or of an order, decree or regulation having the force of law which, in circumstances outside the control of the insured, the **stockholding agent**, and / or the **ultimate buyer**, as the case may be, prevents, restricts or controls the transfer of funds from that country to India; or
- (ii) Occurrence of war between the **stockholding agents' / ultimate buyers'** country and India;
- (iii) Occurrence of war, hostilities, civil war, rebellion, revolution, insurrection or other disturbances in the **stockholding agents' / ultimate buyers'** country;
- (iv) Imposition of any law or order, decree or regulation having the force of law which, in circumstances outside the control of the Insured, the **stockholding agent** and/or of the **ultimate buyer**, prevents the import of the goods into the **stockholding agents'** country or the **ultimate buyers'** country;
- (v) Cancellation, in circumstances outside the control of the insured and/or of the **stockholding agent / ultimate buyer**, of a previously issued and currently valid authority to import the goods;
- (vi) Diversion or interruption of the voyage outside India in respect of goods shipped from India resulting in the insured's incurring of additional handling, transport or insurance charges and which is impracticable to be recovered from the **ultimate buyers**;
- (vii) The requisition or confiscation of the goods by the Government of the country of the **stockholding agent/ultimate buyer** in circumstances outside the control of the Insured, the **stockholding agent** and/or any person acting for them or on their behalf;

#### **I. Exclusions to the Risks Insured**

The Corporation shall not be liable to indemnify the insured in respect of any loss suffered by him, the proximate cause of which is a risk other than any one of those listed out hereinabove or is a risk that falls within the group of excluded risks in the Schedule. Without limiting the generality of the aforesaid, losses arising out of any of the following causes are expressly excluded from the purview of cover under this policy, i.e., any loss that arises from –

- (a) A risk that falls within the group of risks specified in the Schedule against 'Excluded Risks' ;
- (b) Default, insolvency or an act of omission or commission of any marine or other insurer of goods or of the opening bank, in a letter of credit transaction;
- (c) Default, insolvency or an act of omission or commission of the collecting bank, the carrier of goods or any other agent than the **stockholding agent**;

(d) Failure or inability of the **ultimate buyer** to obtain any authority necessary under the regulations of that country in force as at the date of **shipment**, to import the goods and/ or to pay for them as contracted and invoiced;

(e) Failure or refusal on the part of the **stockholding agent/ ultimate buyer** to accept the goods and / or to pay for the whole or any part of the goods due to his claim that –

(i) he is justified in withholding payment of the whole or any part of the gross invoice value or of the amount due in pursuance of the **agency agreement** by reason of any payment, credit, set-off or counterclaim; and/ or that

(ii) he is excused from performing his obligations under the contract including his obligation to pay, for any reason whatsoever, including but not limited to disputes or allegations relating to the quality, quantity, specifications, delivery Schedule, etc., of the goods supplied to him by the insured whether or not such disputes relate to past or current **shipments**,

unless the insured has, for the amount of his loss, obtained a final judgment enforceable against the **stockholding agent / ultimate buyer**, as the case maybe, from a competent court of law in their respective country provided however that the Corporation may, at its sole discretion and on being satisfied in the light of information gathered by or made available to it that the claim of the **stockholding agent / ultimate buyer** is not tenable or justified, agree to disregard such claim without insisting on any such legal action.

(f) Any of the following causes, namely –

(i) Delay in or prevention of the transfer of any payment from any overseas country of sums due under any contract of insurance taken by the insured;

(ii) Non-receipt by the insured for any reason whatsoever of insurance monies in Indian rupees due under an insurance effected by the **stockholding agent/ ultimate buyer** upon occurrence of the event insured against;

(iii) Failure on the part of the insured or the **stockholding agent / ultimate buyer** to have proper or adequate insurance against a risk that is normally insured with commercial insurers (other than credit risk insurers);

(iv) Any cause whatsoever that is inherent in the nature of the goods;

(v) Prevention of or delay in the transfer of payment from the country of the **stockholding agent / ultimate buyer** unless an irrevocable deposit has been made of a sum in the currency of that country equivalent to the amount due for payment under the contract, for transfer to the insured and the party concerned has complied with all the relevant, if any, exchange control formalities for facilitating the transfer of the funds to the insured except where the party liable to make such deposit was prohibited from making such a deposit by any law, order, decree or regulation having the force of law of the buyer's country;

- (vi) Any adverse movement in the rate of exchange applied for conversion of the amount received in a foreign currency to Indian rupees.

## PART – B CONDITIONS AND WARRANTIES

- **Representations and disclosures by the insured**

### **Proposal and Declaration**

1. The proposal and the declaration therein shall be the basis of this Policy and shall form part thereof and if any of the statements or the declaration contained in the proposal be untrue or incorrect in any respect, this policy shall be void but the Corporation may retain any premium that has been paid.

### **Disclosure of Facts**

2. Without prejudice to any rule of law it is declared that this Policy is given on the condition that the insured has, as at the date of issue of this Policy disclosed and will at all times during the operation of this policy promptly disclose all facts in any way affecting the risks insured.

### **Shipments Covered**

3. Subject to the terms and conditions contained herein, this Policy shall apply to all **shipments** of goods made during the Policy Period by the Insured to the **stockholding agent** pursuant to the **agency agreement** and all sales of those goods made by/ through the **stockholding agent** to **ultimate buyers**.

- **Shipments Excluded**

### **Shipments to Countries under Restricted Cover**

4. **Shipment** by the insured or the **stockholding agent** to **ultimate buyers** in any of the countries specified in the Schedule of Restricted Cover Countries attached to the policy and as modified and notified to the insured from time to time are excluded from the purview of cover under this Policy save and except those **shipments** in respect of which the insured has applied for and obtained from the Corporation prior general or specific written approval to cover those **shipments**. Further, cover in pursuance of any such approval as aforesaid shall be subject to payment of such additional fees and observance of such additional conditions, restrictions and/ or qualifications as the Corporation may stipulate in each such approval.

### **Further Exclusion of Shipments**

5. Except with the approval in writing of the Corporation (which the Corporation shall not be obliged to give), this policy shall not apply to any of the following **shipments** by the insured or by the **stockholding agent**, namely **shipments** –

- (a) That are made to an **ultimate buyer** whose name appears as on the date of **shipment** on the website of the Corporation under the list of buyers who have come to the adverse notice of the Corporation or to an ultimate buyer in respect of whom the Corporation had declined to approve any credit limit against an application made by the insured;
- (b) that are not in pursuance of or not in conformity with the **agency agreement** / sales contract;

- (c) that do not specify the nature, quantity and the price of the goods shipped or the currency in which payment of the invoice value is to be made; or
- (d) that is invoiced in a currency not permitted by the exchange control laws, rules and regulations for the time being in force in India or in the country of the **stockholding agent** or in the country of the **ultimate buyer**.

#### **Withdrawal of Cover**

6. The Corporation shall be at liberty at any time to give written notice to the insured that as from such date (not being earlier than the date of the notice) as may be specified in the notice, this Policy shall not apply to any **shipment** that may be made to an **ultimate buyer** specified in the notice, or to all the **ultimate buyers** in a country specified in the notice, irrespective of whether or not the country in which the said **ultimate buyer** are resident or carrying on business has not been included in the list of countries specified in the Schedule of Restricted Cover Countries.

(**Note:** Dispatch of notice means a notice sent by ordinary post or by courier or by any other means ordinarily used for transmission of such communications, including electronic means, to the latest address registered with the Corporation.)

- **Duties of the Insured**

#### **Obligations of the Insured**

7. The Insured shall –
- (a) Use all reasonable and usual care, skill and foresight and take all practicable measures, including any measures which may be required by the Corporation, (including if so required the institution of legal proceedings) to prevent or minimize loss;
  - (b) Notify to the Corporation in writing of the occurrence of any event likely to cause a loss without any delay but in any case by not later than 30 days of his becoming aware of any such occurrence;
  - (c) Exercise his right to stop the goods in transit from being delivered and stop **shipment** of further consignments unless the Corporation consents in writing to his refraining from so doing if, during the course of transit of goods, it should come to the insured's knowledge that a country –
    - (i) has banned the import of goods contracted for; or
    - (ii) has ordered confiscation of goods; or
    - (iii) has any circumstance existing in it which may lead to any loss.
  - (d) Retain uninsured and at his own risk so much of the amount of loss as is in excess of the percentage of loss the Corporation agrees to indemnify under this policy.

- ▮ **Monthly Declarations of Shipments and Other Periodical Returns to be Filed**

8. On or before the 15<sup>th</sup> day of each calendar month, the Insured shall deliver to the Corporation in the prescribed form –
- (a) A statement containing –

- (i) a '*Declaration of Shipments*' giving particulars of all the **shipments** made by him to the **stockholding agent** during the preceding month. If no **shipment** has been made during a month, a 'NIL' declaration shall nevertheless be submitted;
  - (ii) a '*Statement of Sales*' giving full information on all sales made to **ultimate buyers** by / through the **stockholding agent** during the preceding month;
  - (iii) a '*Statement of Stocks Position*' giving full information pertaining to the preceding month on the opening stock, movement of goods and closing stock in respect of the stock maintained with the **stockholding agent** ;
- (b) A '*Statement of Overdue Payments*' giving full information on all payments which remained wholly or partly unpaid for more than 30 days after its **due date** of payment as at the end of the previous month in respect of amounts receivable from the stockholding agent in pursuance of the agency agreement or sales made to **ultimate buyers** from out of the **shipments** made by the Insured to the **stockholding agent** during the policy period. The Insured shall continue to include information on all such payments overdue and remaining so unpaid in all its subsequent monthly Declarations of Overdue Payments even after the expiry of the policy period, until the payments are realized or a claim in respect of that unpaid bill is lodged under the Policy.

(Note: The Insured shall also furnish to the Corporation promptly with any further information that the Corporation may from time to time require in respect of the **shipments** effected by him during the policy period.)

▮ **Premium and Advance Deposit of Premium**

**Minimum Premium**

9. No part the Minimum Premium paid by the insured against issue of this Policy shall be refundable or be carried forward. However, the said amount shall be available to the insured for adjustment against premium computed and payable on the **shipments** declared by him to the Corporation in pursuance of clause 8(a) above.

**Incidence of premium, Deposit Premium Account and Adjustment of Premium**

10. Premium is payable at the rate specified in the Schedule on the **insured value** of every **shipment** made during the Policy Period by the insured to the **stockholding agent** in pursuance of the **agency agreement** and shall fall due for payment forthwith upon making every such **shipment**.

- (a) The insured will maintain a Deposit Premium Account with the Corporation to facilitate due adjustment of premium on **shipments** made and declared by the insured. The onus shall be on the insured to ensure that as on the date of making every single **shipment** there is adequate credit balance in his Deposit Premium account for adjustment towards the premium due thereon;
- (b) The Corporation will adjust the premium due on every **shipment** declared by the insured as above upon receipt of the relevant Declaration of **Shipments**

provided adequate credit balance is available in his Deposit Premium Account. Until the relevant **shipment** declaration is duly submitted, premium due on that **shipment** shall be deemed to remain unpaid notwithstanding availability of adequate credit balance in his Deposit Premium Account;

- (c) Delay in submission of the relevant monthly Declaration of **Shipment** or failure / omission to declare a **shipment** will be a material breach of condition and will absolve the Corporation of all liability for any loss in respect of that **shipment**. However, the Corporation shall be entitled to receive and retain the amount that was due towards premium on such **shipment** as the insured was obliged to duly declare in time but failed to do so.

#### **Insured Value of Shipments**

11. In this Policy, the **insured value** of **shipments** shall include any insurance, freight or other charges paid or to be paid by the insured and included in the relevant invoice but shall exclude any payments secured by irrevocable Letters of Credit confirmed by a bank in India or payments received by the insured in advance prior to the **shipment**.

#### **Variation of Premium Rates**

12. The Corporation may, upon a material change in the risk perception attached to the country of the **stockholding agent**, prospectively revise the rate of premium payable by the insured on his future shipments to the **stockholding agent**. Any such revision during the course of the Policy Period shall be notified to the insured and in the event of such a revision resulting in an increase in the rate of premium payable by the insured he may, within fourteen days from the date of the relevant notification but not thereafter, discontinue this Policy with immediate effect.

#### **Percentage of the amount of loss payable**

13. The portion of the **amount of loss** that the Corporation hereby agrees to pay shall, subject to clauses 20 and 21 hereof be as specified in the Schedule.

#### **Amount of Loss**

14. The '**amount of loss**' for the purpose of this policy shall be arrived at as explained herein below subject to condition that the **amount of loss** in respect of a **shipment** or any part thereof shall under no circumstance whatsoever exceed the corresponding **insured value** or proportionate **insured value**.

- (a) Where the loss is due to the diversion risks specified in sub-clause (vi) under Group C of 'risks insured' in Part-A of the policy, be the amount of any additional handling, transport or insurance charges which are occasioned by interruption or diversion of voyage outside the Union of India and which is impracticable to be recovered from the **ultimate buyer** less any allowance, rebate or refund to which the insured is entitled by reason of the interruption or diversion of voyage;
- (b) Where the loss is due to the non-payment risks specified in sub-clause (ii) under either Group A or Group B of 'risks insured' in Part-A of the policy, be the corresponding **insured value** of the goods, less –
- (i) the amount which, as on the date at which the loss is ascertained the **stockholding agent / ultimate buyer** would have been entitled to take into account by way of payment, credit, set-off or counter-claim or



- which the insured is entitled to appropriate in whole or in part -payment of the price of the goods; and
- (i) any expenses saved, by non-payment of any agency commission or otherwise; and
  - (ii) any part of the **insured value** of the goods which represents interest payable for credit facilities in respect of any period subsequent to payment by the Corporation.
- (c) Where the loss is due to the non-acceptance risks specified in sub-clause (iii) under either Group A or Group B of 'risks insured' in Part-A of the policy, be the **insured value** thereof, less –
- (i) any expenses saved by the non-fulfilment of the contract for the sale of those goods;
  - (ii) any sums which, as at the date at which the loss is ascertained, the insured has recovered from any source, including realization of any security, resale of the goods or materials and appropriation of any sums or credits in his possession which the insured is entitled to appropriate as or towards payment of the purchase price or any part thereof, provided that the sums so recovered or realized from any security or resale of any goods or material shall be the sums net of all expenses of recovery, realization or resale; and
  - (iii) any part of the **insured value** of the goods which represents interest payable by the buyer for credit facilities in respect of any period subsequent to payment by the Corporation;

PROVIDED ALWAYS THAT –

- (i) the goods not delivered to the **stockholding agent / ultimate buyer** shall remain the property of the insured and any resale thereof by the insured shall be with the prior approval of the Corporation. In case the goods not delivered is resold or otherwise disposed off without the prior approval of the Corporation, the Corporation shall not be liable for any loss suffered by the insured in that regard;
- (ii) if so required by the Corporation, the goods not delivered to or accepted by the **stockholding agent** shall be brought back by the insured to India. Likewise, goods not delivered to or accepted by the **ultimate buyer** shall be brought back into the possession and custody of the **stockholding agent**. In all such cases the **amount of loss** shall be the actual expenses incurred by or on account of the insured in respect of those goods.

### **Adjustment of Amounts**

**13.** Unless expressly agreed to otherwise by the Corporation in writing on another method of accounting, adjustments of amounts received from time to time by the insured from the **stockholding agent** against shipments made in pursuance of the agency agreement shall be in the form of a running account and to arrive at the amounts due and outstanding to the insured from the **stockholding agent** at any given point of time for the purpose of this policy, every remittance received shall be adjusted against the amount outstanding earliest in point of time by applying the Clayton's Rule of 'First In First Out'.

### **Time for ascertainment of the amount of loss and for payment of claim**

14. A claim by the insured for payment of loss under this policy shall not be entertained by the Corporation until the time for ascertainment of loss has arrived. No amount in respect of any **shipment** shall become due and payable by the Corporation under this policy until the **amount of loss** is ascertained in accordance with the provisions of this policy. Subject to the submission by the insured of a claim in the prescribed form duly supported by evidence which, in the opinion of the Corporation is sufficient to verify the cause of loss and to ascertain the **amount of loss** suffered, the Corporation will pay to the insured such percentage of the amount of loss as is hereby insured immediately after the loss has been ascertained. It shall be time for ascertainment of the **amount of loss** –

- (a) Where the loss is due to the **insolvency** of the **stockholding agent / ultimate buyer** then, upon the expiry of four months after the respective **due date** of payment or one month after the loss has been admitted to rank against the estate of the insolvent in favour of the insured (or the **stockholding agent** if insolvency is that of the **ultimate buyer** and, in pursuance of the **agency agreement**, payment for **shipments** made to him is to be received by the **stockholding agent**), whichever of the two dates is the earlier, provided that the insured shall deliver to the Corporation -
  - (i) evidence satisfactory in the opinion of the Corporation that the insured has filed or caused to file his claim in such insolvency, and
  - (ii) a declaration in writing that he has done or omitted nothing whereby such claim is liable to be rejected by the Court in such insolvency;
- (b) Where the loss is due to the failure of the **stockholding agent / ultimate buyer** to pay the amount due, then immediately after the expiry of four months from the respective **due date** of payment;
- (c) Where the loss is due to prevention of or delay in transfer of payments from the country of the **stockholding agent** or the **ultimate buyer**, as the case may be, to India in circumstances outside the control of the insured and the **stockholding agent / ultimate buyer** then, upon the expiry of four months after the **due date** of payment or one month after irrevocable deposit is made of the amounts due in local currency and all the formalities necessary to obtain transfer of those funds to India is completed, whichever is the later. However, where the Group A and / or Group B risks are shown as excluded risks in the Schedule, then unless the aforesaid irrevocable deposits are made by the **stockholding agent / ultimate buyer** within one month from the **due date** of payment, no loss shall be ascertained and the Corporation shall have no liability whatsoever for the loss occasioned;
- (d) Where the loss is due to diversion risk as defined in sub-clause (vi) under Group C of the 'risks insured' then as soon as the proof of loss to the satisfaction of the Corporation is furnished; and
- (e) In all other cases, upon the expiry of four months after the occurrence of the event which is the cause of the loss, unless otherwise specified by the Corporation.

PROVIDED THAT, where the insured has obtained a guarantee whether in compliance with a condition imposed by the Corporation for approval of credit limit

or otherwise and a situation has arisen to invoke the guarantee and demand payment from such guarantor then, unless the Corporation agrees in writing to the contrary, no loss shall be ascertained by the Corporation and no payment shall become due under this policy until default by the guarantor too has been established under such guarantee.

#### **Payment of Loss**

16. The insured shall, as a condition precedent to the payment of a percentage of the **amount of loss** under this policy, procure and deliver to the Corporation a letter from the Bank which holds the documents pertaining to the **shipment** concerned acknowledging and agreeing that upon payment of a claim by the Corporation, (i) the bank shall hold all those documents in trust for the Corporation, (ii) that the Bank shall upon demand by the Corporation deliver them to the Corporation and (iii) that if any payment is received against those documents, the Bank shall make payment thereof according to the written directions of the Corporation.

#### **Rate of Exchange**

17. All payments by the Corporation under this policy shall be in Indian rupees and, for the purpose of payment of premiums and losses, the gross invoice value of **shipments** invoiced in a foreign currency shall be converted into Indian rupee at the relevant rate of exchange specified or applied by the Insured's bank as at the time of **shipment** provided however that if devaluation of the currency in which the buyer has to pay takes place before the claim is paid, the amount claimed in Indian currency shall be based on such devalued rate.

#### **• Limitations to the Corporation's Liability**

##### **Limitation of Corporation's Liability**

18. The Corporation shall not be liable for payment of any loss –
- (a) in respect of a **shipment** if the whole or any part of the gross invoice value receivable by the insured has been assigned by the insured without full recourse to the insured, save and except where prior approval in writing of the Corporation has been obtained for such assignment; or
  - (b) in respect of a debt as to which the insured has extended the period for payment or has accepted a composition arrangement with the buyer without the prior approval in writing of the Corporation; or
  - (c) in respect of any contract in respect of which the relevant authority to import the goods and to pay for them is made subject to conditions relating to the export of any goods from any country or to conditions relating to the payment for such goods when exported;

PROVIDED THAT in any of the aforesaid cases the insured shall be liable to pay the full premium that was due on such **shipments** if the **shipment** is one that is required to be declared in terms of clause 8(a).

##### **Exclusions to Corporation's Liability**

19. Notwithstanding anything to the contrary stated elsewhere in this policy, unless otherwise agreed to by the Corporation in writing the Corporation shall cease to have any liability in respect of the **insured value** of any **shipment** or part thereof –

- (a) If the insured has failed to duly declare to the Corporation in time, strictly in compliance with the requirements under condition 8(a) of the policy, information on the **shipments** that were required to be declared under the said condition and/ or to pay the full premium that was due thereon in terms of condition 10 of the policy; or
- (b) In respect of which the insured has failed to deliver to the Corporation in time the relevant Statement of Overdue payments in strict compliance with the requirements under condition 8(b) of the policy; or
- (c) In cases where payment terms are cash against documents (CAD) or documents against payment (DP) and the insured has authorized release of the documents and/ or of the goods to the buyer on any terms other than payment of the full amount due.

PROVIDED THAT in any of the aforesaid cases the insured shall be liable to pay and the Corporation shall be entitled to retain or to demand and receive full premium that was due on all such **shipments** as are required to be declared in terms of condition 8(a).

- **Credit Limits and Sharing of Commercial Risks**

**Credit Limit**

20. The total liability of the Corporation under this policy for losses occasioned to the insured owing to any of the commercial risks described under Group A or Group B of the risks insured in Part A in respect of **shipments** made under this policy shall not exceed the respective amount of credit limit obtaining on the **stockholding agent** or the **ultimate buyer**, as the case may be, as on the date of the **shipment**.

**Amount of Credit Limit**

21. The amount of credit limit shall be as follows:

- (a) Credit limit on the **stockholding agent**, shall be the amount specified in that regard in the Schedule to the Policy, subject any subsequent endorsements modifying the amount so specified;
- (b) Credit limit on an **ultimate buyer** shall be –
  - (i) The amount specified as the 'Discretionary Credit Limit' in the Schedule to the policy, provided however that no such credit limit shall be applicable in respect of an **ultimate buyer** referred to in sub-clause (a) of clause 5 of this policy; or
  - (ii) Where on an application made by the insured the Corporation has approved and communicated to the insured any amount as the credit limit in respect of an **ultimate buyer**, the amount so specified.

**Maximum Liability**

22. The maximum liability of the Corporation under this policy shall be the amount so specified in that regard in the Schedule, as modified from time to time. The aggregate liability of the Corporation to pay claims in respect of **shipments** made during any one **policy year** shall not exceed the amount of maximum liability for the time being in force.

- **Recoveries**

**Action after payment of claim**

23. Upon payment of a claim under this Policy by the Corporation, the insured shall take all steps which may be necessary or expedient or which the Corporation may at any time require to effect recoveries whether from the **stockholding agent/ ultimate buyer** or from any other person from whom such recoveries may be made including, if so required, through institution of legal or other proceedings. If so advised by the Corporation, the insured shall –

- (a) assign and transfer to the Corporation his rights under the relevant contract in respect of which the loss occurred, including his right to receive any monies payable under such contract or his right to damages for any breach thereof;
- (b) deliver up to the Corporation any goods that remains in the possession or control of the insured and in respect of which such payment has been made together with any documents relating thereto and assign and transfer to the Corporation his right and interest in any such goods and documents; and
- (c) assign, deliver or otherwise transfer to the Corporation any negotiable instruments, guarantees or other securities relating to such goods or contracts.

**Recovery expenses**

24. Any expense incurred by the Insured with the consent of the Corporation or by the Corporation for the purpose of effecting recoveries from the **ultimate buyer** or any other source shall be a first charge on any amounts recovered thereafter.

**Sharing of Recoveries**

25. Any sums recovered by the insured or by the Corporation after the date at which the loss is ascertained from the **ultimate buyer** or from any other source shall be divided between the Corporation and the insured in the same proportion as the **amount of loss** was borne by each of them respectively, whether or not such division results in the retention by the Corporation of a greater or lesser sum than the amount paid by the Corporation under this policy in connection with the **amount of loss**, irrespective of the circumstances that resulted in such retention of a greater sum. The Insured shall pay all sums so recovered to the Corporation forthwith upon being received by him or by any person on his behalf, the insured hereby acknowledging and declaring that until such payment is made to the Corporation he receives and holds such sums in trust for the Corporation.

- **General**

**Assignment**

26. The Policy or any amount payable hereunder shall not be assigned without the prior approval in writing of the Corporation.

**Fraudulent Claims**

27. If the insured makes any claim hereunder knowing the same to be false or fraudulent or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under this policy -

- the Corporation shall cease to have any liability hereunder;
- the insured shall have no claim hereunder and shall on demand repay to the Corporation all sums paid by the Corporation; and
- the Corporation shall be entitled to retain all payments made to it by way of premium or otherwise.

### **Observance of Conditions**

28. Due performance and observance of each condition and warranty contained herein or in the proposal or declaration shall be a condition precedent to any liability of the Corporation under this policy and to the enforcement thereof by the insured.

### **Failure to comply with Conditions**

29. No failure by the insured to comply with the conditions and warranties shall be deemed to have been waived, excused or accepted by the Corporation unless the same is expressly so waived, excused or accepted by the Corporation in writing and such waiver, excuse or acceptance shall be subject to such terms and conditions as the Corporation may stipulate, including a reduction in the percentage of the amount of loss payable specified in the Schedule read clause 13 of this policy.

### **Uncovered Risks**

30. If any account or bill (or any extension or renewal thereof) in respect of any **shipment** declared hereunder exceeds the limits hereinbefore provided or is otherwise not in accordance with the policy, no acknowledgement of the declaration by the Corporation and no payment or tender of premium by the Insured shall be deemed to bind the Corporation to undertake liability in respect of such account or bill (or to approval of the renewal or extension).

### **Payment of Claim**

31. If a claim for any loss shall be made by the insured under this policy or under any endorsement which may at any time be attached to this policy and the claim shall be admitted by the Corporation (but not otherwise), it shall be paid by the Corporation to the insured's bank which handled the export documents pertaining to the relevant **shipment** to the credit of the insured and the bank's acknowledgement and receipt of the amount would be in full legal discharge to the Corporation in respect of the payment so made under this policy and the Corporation shall have no further obligations to the insured to the extent of the sum paid to the bank.

- **Definitions**

32. In this policy, unless repugnant to the context or meaning, the following words, group of words and phrases shall have the meaning assigned to them herein.

(1) **Agency Agreement**

Agency agreement means the agreement concluded between the insured and the stockholding agent (the particulars of which are furnished in the Schedule) and under which insured will be making shipments to the stockholding agent who will receive the shipments and arrange for its sale to ultimate buyers.

(2) **Amount of Loss**

Amount of Loss means the amount arrived at with reference to the relevant cause of loss and in accordance with the provisions of clause 14 of the policy;

(3) **Due Date**

Due Date means the date on which payment falls due from the stockholding agent to the insured under the agency agreement or from the ultimate buyer to the stockholding agent / insured under the sale contract in respect of the shipments made by the insured to the stockholding agent and where an extension of the due date has been agreed to by the insured with the written consent of the Corporation, will include such extended due date.

**(4) Insolvency**

The stockholding agency / ultimate buyer shall be deemed to be insolvent for the purpose of this policy when –

- (a) He is declared bankrupt, or
- (b) He has made a valid assignment, composition or other arrangement for the benefit of his creditors generally, or
- (c) A receiver has been appointed to manage his estate, or
- (d) The stockholding agent / ultimate buyer being an incorporated body, –
  - (i) an order has been made for its compulsory winding up or;
  - (ii) an effective resolution has been made for voluntary winding up provided that such resolution is not merely for the purpose of reconstruction or amalgamation, or
  - (iii) an arrangement binding on all the creditors has been sanctioned by the Court, or
- (e) Whether the overseas unit/ ultimate buyer be an incorporated or unincorporated body, such conditions exist as are substantially equivalent in effect to any of the foregoing conditions;

**(5) Insured Value**

Insured value means the value as per the relevant invoice in respect of each shipment made in pursuance of the agency agreement and declared by the insured to the Corporation in the relevant shipment declaration and on which value premium is paid. When the amount of loss is to be computed in respect of a part of a shipment, the relevant insured value would be the proportionate declared value attributed to that portion of the shipment.

**(6) Policy Year**

Policy Year means consecutive periods of twelve months each commencing from the date of commencement of the policy specified in the Schedule and ending with the last day of the twelfth month.

**(7) Shipment**

Shipment would include goods despatched by the insured to the stockholding agent in pursuance of the agency agreement by land, sea, air or by any other means or a combination of any or all of the above and may also include any part of the aforesaid goods despatched to ultimate buyers in further sale.

**(8) Stockholding Agent**

Stockholding Agent means an independent business entity outside India which is not a subsidiary company of the insured and is not controlled or managed by the insured and with which the insured has entered into an agency agreement (the particulars of which are provided in the Schedule) with the objective of receiving and selling the goods exported by the insured abroad in pursuance of the agency agreement.

**(9) Ultimate Buyer**

Ultimate Buyer means the buyer abroad to whom the stockholding agent sells under a valid contract of sale the goods despatched by the insured in pursuance of the agency agreement.

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