

**EXPORT RECEIVABLES (FACTOR'S RISKS) INSURANCE**  
**AGREEMENT**

AN AGREEMENT OF INSURANCE entered into at MUMBAI on this  
..... day of ....., 20.....

BETWEEN

**EXPORT CREDIT GUARANTEE CORPORATION OF INDIA**  
**LIMITED,**

A Government company incorporated under the Companies Act,  
1956 and having its registered office at Express Towers, 10<sup>th</sup> floor,  
Nariman Point, Mumbai 400021

(hereinafter for the sake of brevity referred to either as “ECGC” or  
as the “the Insurer” ) ... .. PARTY OF THE FIRST  
PART

AND

\_\_\_\_\_

(hereinafter for the sake of brevity referred to as “the Insured);

... .. PARTY OF THE OTHER PART

WHEREAS the said ECGC is providing credit insurance support to  
Indian exporters and their banks through various credit insurance  
schemes or covers for the benefit of Indian exporters;

AND WHEREAS the Insured extends non-recourse export factoring  
service to exporters in India belonging to the Micro, Small and  
Medium Enterprises (MSME) sector, in pursuance of which the  
Insured will be purchasing without recourse the export receivables  
of its MSME Exporter- Clients;

AND WHEREAS the Insured is desirous of availing credit risk protection from ECGC in respect of its **MSME** Exporter Clients and has approached ECGC seeking suitable credit risk protection;

AND WHEREAS ECGC has offered such credit risk protection to the Insured in respect of Insured's **MSME** Exporter Clients subject to and in accordance with certain warranties, terms and conditions, limitations and exclusions under this **Agreement**;

AND WHEREAS the Insured has agreed to the warranties, terms and conditions, limitations and exclusions stated under this **Agreement** and has paid to ECGC an amount of Rs. \_\_\_\_\_ towards the **Minimum Premium** specified in the Schedule of Particulars calculated on the basis of Projected amount of **Insured Receivables** arising from despatches during the period of Cover initially submitted by the Insured;

**NOW THEREFORE** in consideration of the above said amount of Rs. \_\_\_\_\_ paid by the Insured, towards the **Minimum Premium** and the promise to pay further **Premiums** in case the aggregate amount of **Insured Receivables** exceeds the projected amount of **Insured Receivables** submitted by the Insured, that may be payable in terms of this Agreement. ECGC, the Insurer, hereby agrees to indemnify the Insured, upto ninety (90) percentage of the **Amount of Loss**, subject to and in accordance with the warranties, terms and conditions, limitations and exclusions reduced to writing as herein below:

## 1. **INTERPRETATION AND DEFINITIONS**

## **Notes for Interpretation**

- 1.1. In this Agreement, including the Schedules and Annexures, if any, hereof, –
- (a) The headings are inserted for reference only and shall not affect the construction of the Agreement;
  - (b) References to Schedules shall be construed to be references to the respective schedules to this Agreement as amended, modified or revised and applicable and valid at the relevant point of time;
  - (c) Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and pronouns importing a gender include each of the masculine, feminine and neuter genders;
  - (d) The term ‘export of goods’ under this Agreement shall mean and include ‘export of services’ where the context so admits and specifically excludes export of commodities referred to in Schedule of Particulars.
  - (e) Time wherever stipulated in relation to the performance of any of the requirements under the Agreement by the Insured, is of essence;
  - (f) References to the knowledge, information, belief or awareness of the Insured or of any person connected to the Insured shall be deemed to include knowledge, information, belief or awareness, the Insured or such person will be expected to have upon due examination of all information after conducting all due diligence inquiries and investigations that is expected of a person of ordinary prudence.

## **Definitions**

1.2. In this **Agreement**, including the Schedules and Annexures, if any hereof, the following words and expressions shall, unless the context otherwise requires, have no other meaning save and except the meaning ascribed to them hereunder.

- (1) "**Agreement**" means this Export Receivables (Factor's Risks) Insurance Agreement together with the Schedule(s) and Annexure(s) forming part thereof and endorsements, if any, made on the Agreement, as renewed and in force from time to time;
- (2) "**Amount of Loss**" so much of the amount of any Insured Receivable that remained unpaid or unrealized owing to the occurrence of any of the Insured Risks but shall not include the following:
  - (a) any amount that is not acknowledged either expressly or impliedly as debt by an Approved Debtor/Debtor or has remained unpaid by the Approved Debtor/ Debtor owing to his claim that he is justified in withholding payment for whatever reasons, including but not limited to any credit/debit notes, counterclaim, set off, adjustment, or
  - (b) Any loss arising out of an Insured Receivable where the exported goods have not been accepted by the Debtor or where the liability for payment is not accepted by the Debtor.
  - (c) deficiencies in performance of the relevant Export Contract relating to quantity, quality, time schedule, etc. or
  - (d) non performance of any covenant under the Export Contract by the Client or
  - (e) loss due to non-compliance of relevant statutory and regulatory norms by the Insured;

- (f) loss due to non-payment by Associate Company being a debtor to the Client.
- (3) **“Approved Countries”** means those countries included in the list of Approved Countries specified in Schedule II, the Schedule of Approved Countries and Approved Debtors;
- (4) **“Approved Debtor”** means a Debtor from any one of the Approved Countries and which is approved by ECGC for the purpose of cover under this Agreement upon receipt of application from the Insured and whose name and other particulars are included for the time being in the ‘Schedule of Approved Countries and Approved Debtors’ ;
- (5) **“Associate Company”**, in relation to any particular Client, means any entity, whether incorporated or otherwise, now existing or hereafter constituted, that is controlled directly or indirectly by that Client; any entity that controls directly or indirectly that Client; any entity that is directly or indirectly under common control with that Client; any entity in the profits of which that Client has a substantial interest or any entity that has a substantial interest in that Client’s profits.
- (6) **“Client”** means an exporter in India belonging to the Micro, Small and Medium Enterprises (MSME) sector, with whom the Insured has entered into an agreement for purchase of export receivables without recourse but shall not include an exporter which is notified for the time being by ECGC in its Specific Approval List (SAL) or by RBI in its Caution List of borrowers;
- (7) **“Credit Limit”** means the limit set for the time being by the Insurer in respect of each of the Approved Debtors and

communicated to the Insured in writing and shall include the amount of 'Discretionary Credit Limit' on debtors, if any, available to the Insured under this Agreement. Such Discretionary Credit Limit shall not be available to Debtors who are **Associate Companies** of the Client.

- (8) "**Date of Despatch**" means the date on which the goods under an export contract are passed to the first carrier for carriage to its overseas destination, including an intermediate destination outside India, if so permitted by the relevant export contract and terms like 'Despatched' be construed accordingly;
- (9) "**Debtors**" means the overseas buyers of goods exported by the Client of the Insured and the export receivables arising out of which are purchased by the Insured under an agreement with the Exporter Client for purchase of export receivables without recourse;;
- (10) "**Declaration Period**" means the period specified in Schedule-I, the 'Schedule of Particulars', for the purpose of submission of relevant returns by the Insured under the terms of this Agreement;
- (11) "**Discretionary Credit Limit**" means the amount specified as such in the Schedule of Particulars , being a credit limit available to the Insured on every overseas Debtor save and except those debtors that are excluded, either specifically or generally, under the provisions of this Agreement. Such Discretionary Credit Limit shall not be available to Debtors who are **Associate Companies** of the Client;

- (12) "**Due Date**" with respect to an Insured Receivable means the date on which payment is due on that receivable and shall include an extended Due Date, if any allowed to the Debtor in accordance with the provisions of this Agreement. In the event of payment on any Insured Receivable is to be made on various dates in instalments or any extended Due Dates are agreed allowing payment in such instalments, the Due Date for the purpose of determining default by the Debtor shall be construed to be the earliest date on which any one or more of the instalments that remained unpaid after becoming due for payment;
- (13) "**Export Contract**" means and includes a Purchase Order, a contract or agreement for export of goods entered into between a Client and a Approved Debtor/ Debtor and excludes contracts for export of commodities which have been specifically excluded under the cover as set out in Schedule of Particulars. ;
- (14) "**Factoring**" means a class of financial services wherein a service provider known as the 'factor' purchases from a trade creditor his outstanding trade receivables for consideration and gives notice of assignment to the respective trade debtors and when the trade receivables being purchased are receivables pertaining to export trade, the factoring is referred to as 'export factoring'. A Factoring Agreement is an agreement between a factor and its trade creditor-client for extending such factoring services.

(15) "**Gross Invoice Value**" means the invoice value of goods exported by a Client to an Approved Debtor/Debtor in terms of an Export Contract and despatched in accordance with the said Export Contract but would exclude (i) any amount that is received or should have been received by the Client on or before the despatch of goods and (ii) any amount that is due for payment under a documentary letter of credit;

(16) "**Insured Risks**" means any or all of the following causes of loss to the exclusion of any and every other causes:

(a) **Protracted Default**

Protracted Default means failure on the part of an Approved Debtor, after having accepted delivery of the goods exported by the Client in accordance with the relevant Export Contract, to pay the relevant amount due thereon to the Client or to whomsoever who is entitled in law to receive the said amount within a period of One Hundred and twenty days (120) days after the expiry of the relevant Due Date;

(b) **Insolvency of Debtor**

There is insolvency (i) when an Approved Debtor/Debtor commences or becomes the subject of any proceedings under the relevant and applicable local bankruptcy or insolvency laws; or (ii) when a Court having jurisdiction over the Approved Debtor/Debtor has appointed a receiver, liquidator, trustee, or other similar official for the assets of the Approved Debtor/Debtor under the relevant and applicable bankruptcy or insolvency laws; or (iii) when the Approved Debtor/ Debtor makes a compromise or arrangement with his creditors; or (iv) a



Court having jurisdiction over the Approved Debtor/Debtors makes an arrangement with the creditors binding on the Approved Debtor/Debtor; or (v) when such circumstances exist as are, in the opinion of the Insurer equivalent to any of the above;

(c) **Contract Cancellation**

Contract Cancellation means the cancellation of a valid Export Contract by the Government of the country of the Approved Debtor, after despatch of goods from India under the Export Contract, which directly prevents or prohibits payment of an Insured Receivable;

(d) **Contract Frustration**

Contract Frustration means the direct prevention of payment of an Insured Receivable owing to the occurrence of any civil war, insurrection, rebellion, or revolution in the country of the Approved Debtor and/ or a war between India and the country of the Approved Debtor (whether declared or otherwise);

(e) **Import Restrictions**

Import Restriction means the implementation by the Government of the Country of the Approved Debtor/ Debtor, after the despatch of goods from India under a valid Export Contract, of any law or regulation having the force of law that prohibits the import of goods despatched, into the country of destination of the goods and/or prevents payment of the Insured Receivables;

(f) **Legislative Restrictions**

Legislative Restriction means the occurrence of an event in the country of the Approved Debtor/Debtor or any

legislative or administrative measures taken in that country, which delays or restricts transfer of a payment made against an Insured Receivable (or part thereof) to the Insured's account in India (such delay or difficulty being not the consequence of any act of omission or commission on the part of the Approved Debtor/Debtor or the Insured);

- (17) "**Insured Receivable**" means the Gross Invoice Value of any and every shipment despatched by a Client to any of the Approved Debtors at any time during the Period of Cover under this Agreement, irrespective of the amount of Credit Limit available on that Approved Debtor;
- (18) "**Minimum Premium**" means the minimum amount paid by the Insured to the Insurer as consideration, calculated on the basis of Projected amount of Insured Receivables arising from despatches during the period of Cover initially submitted by the Insured under this Agreement specified in the Schedule of Particulars and is non-refundable;
- (19) "**MSME**" means Indian exporters belonging to the Micro, Small and Medium Enterprises Sector as defined in Micro, Small and Medium Enterprises Development Act, 2006 and any amendments, thereto;
- (20) "**Premium**" means the additional premium calculated at the relevant and applicable rates on the aggregate amount of the Insured Receivables which is in excess of the Minimum Premium and agreed to be paid by the Insured to the Insurer at any time during the period of Cover.

- (21) "**Turnover**" means the aggregate amount of Insured Receivables arising from Despatches made by the Client under the Export Contract during the Period of Cover in favour of any of the Approved Debtors/Debtors.
- (22) "**Uninsured Risks**" means any and every cause of loss to the insured in respect of the Insured Receivables, that is not specified and defined under 'Insured Risks' in this Agreement.

## **2. GENERAL PARTICULARS**

### **Commencement of Cover**

- 2.1 Credit insurance cover under this **Agreement** shall commence with effect from the Date of Commencement specified in the 'Schedule of Particulars'.

### **Period of Cover**

- 2.2 The "**Period of Cover**" means the period specified as such in the 'Schedule of Particulars' and which shall be the extant period of validity of the **Agreement**. In the event of the **Agreement** getting terminated in accordance with the provisions hereof at any time prior to the completion of the said twelve-months' period specified in the Schedule of Particulars, the period lapsed between the Date of Commencement/Date of Renewal, as the case may be, and the date of termination shall constitute the Period of Cover.

### **Amount Covered**

- 2.3 The amount covered under this **Agreement** shall be the **Turnover**, that is, the whole of the **Insured Receivables** coming into existence at any time during the Period of Cover and shall form the basis for calculation of amount of **Premium** payable by the Insured to the Insurer.

### **Percentage of Loss Covered**

2.4 The percentage of loss payable by ECGC under this **Agreement** is the percentage specified as such in the 'Schedule of Particulars'.

### **3. Approval of Debtors, Credit Limits and Discretionary Credit Limits**

#### **APPROVED DEBTORS, CREDIT LIMITS AND DISCRETIONARY CREDIT LIMIT**

3.1 ECGC's liability to indemnify the Insured for losses on **Insured Receivables** due and remaining unpaid or unrealized against Despatches made in favour of any single Approved Debtor shall not exceed the amount of **Credit Limit** available on that particular Approved Debtor as on the date of relevant Despatch.

The exclusive list of **Approved Debtors** and the respective **Credit Limits** approved and available on each one of them as on the date of Commencement of Cover are given in the 'Schedule of **Approved Countries** and **Approved Debtors**'; Once the Approved Debtor is sanctioned by ECGC, it is the duty of the Insured to ensure that the Client is routing all the invoices raised on Approved Debtor through the Insured and not through any other Bank/Institution/Factor with respect to the concerned Approved Debtor.

### **Discretionary Credit Limit**

3.2 **Credit Limit** not exceeding the amount of **Discretionary Credit Limit** specified in the Schedule of Particulars shall be available to the Insured on every overseas Debtor save and except a Debtor –

- (a) who is notified by ECGC in its website ([www.ecgc.in](http://www.ecgc.in)) in the page under “The List of Buyers who have come to the adverse notice of ECGC” (including modification, if any, to the title of the page from time to time); or
- (b) in respect of whom the Insured had made an application to ECGC requesting for approval of the said Debtor under this **Agreement** and ECGC has already conveyed to the Insured its decision of non approval on the said application ; or
- (c) whose name was previously appearing under **Approved Debtors** in the ‘Schedule of **Approved Countries** and **Approved Debtors**’ but was subsequently deleted and removed by ECGC and has not been restored to the said Schedule as on the relevant **Date of Despatch**; or
- (d) who is not from any of the countries specified in Part A of the Schedule of **Approved Countries and Approved Debtors**.
- (e) who is an **Associate Company** of the Client.

3.3 If the Insured is desirous of seeking a higher Discretionary Credit Limit than what is fixed in the Schedule of Particulars, the Insured would be required to submit an application in the prescribed form to ECGC together with the prescribed fee, furnishing full and complete information therein. ECGC shall consider the application and either approve or decline to approve the application and communicate the decision to the Insured in writing. The decision so made by ECGC shall be final and binding on the Insured.

#### **Additions and Deletions in the list of Approved Debtors and Variations in Credit Limits**

3.4 The Insured may seek an addition to the list of **Approved Debtors** or an enhancement to the amount of **Credit Limit** available on any particular Approved Debtor by making an application in the prescribed form to ECGC together with the prescribed fee, furnishing full and complete information therein. ECGC shall consider the application and either approve or decline to approve the application and communicate the decision to the Insured in writing. The decision so made by ECGC shall be final and binding on the Insured. When ECGC approves an application for addition of a name to the list of **Approved Debtors**, it shall also specify the amount of **Credit Limit** on that **Approved Debtor** which amount could be either to the full extent or to a lesser extent of the **Credit Limit** sought for by the Insured.

3.5 ECGC reserves the right to delete and remove, with due notice in writing to the Insured, the name of an **Approved Debtor** from the list of **Approved Debtors** and/ or to cancel or reduce the **Credit Limit** available on any **Approved Debtor** and/ or to add or delete any country from the list of **Approved Countries**. Any such notice by ECGC to the Insured shall be final and binding on the Insured but shall have no retrospective effect.

3.6 Any modification or amendment to the Schedule of **Approved Debtors** by way of addition or deletion of names of the **Approved Debtors** and/ or any variation in the amount of **Credit Limit** and/ or any modification to the Schedule of **Approved Countries** in Part B of the said Schedule shall be by way of a written communication to that effect duly signed by ECGC. Any such communication in writing from ECGC to the Insured shall be construed to be an endorsement on the

Schedule of **Approved Debtors** and will be effective and binding on the Insured.

#### **4. COMMENCEMENT, VALIDITY AND RENEWAL OF THE AGREEMENT.**

##### **Commencement and Renewal**

- 4.1 This **Agreement** will be valid during the Period of Cover specified in the Schedule of Particulars, being a period of twelve calendar months beginning from the month of the Date of Commencement.
- 4.2 After the initial period of twelve months, cover under this **Agreement** can be renewed for further period of twelve months at a time by mutual consent and against payment of necessary consideration by the Insured at the discretion of ECGC. When the period of validity of the **Agreement** is renewed for a further period of twelve months, a fresh 'Schedule of Particulars', will be issued specifying the renewed terms including the period of cover. The fresh Schedule of Particulars shall substitute and replace 'the Schedule of Particulars' for the expired period of cover.

#### **5. OBLIGATIONS OF THE INSURED**

##### **Rate of Premium and Payment of Premium and other Charges**

- 5.1. The minimum amount payable by the Insured irrespective of the **Turnover** shall be the amount specified as the **Minimum Premium** in the Schedule of Particulars.

5.2. The **Minimum Premium** shall be paid in advance before the commencement of the respective risk, that is, the date on which the Insured Receivable is purchased by the Insured.

5.3. If the **Premium** to be paid, calculated at the relevant and applicable rates on the aggregate amount of **Insured Receivables** purchased by the Insured during any particular month, is in excess of the proportionate amount of **Minimum Premium** already paid and available for adjustment upto the close of the said month, the Insured shall pay further **Premium** forthwith to make up for the shortfall. It is clarified that the onus shall be entirely on the Insured to ascertain whether or not any further **Premium** has become due on the value of **Insured Receivables** for any particular month.

5.4. The Insured acknowledges and agrees that ECGC shall be entitled to receive **Premium** on the **Turnover** while ECGC's liability to indemnify the Insured for losses shall not exceed the percentage of loss covered or the relevant and applicable amount of **Credit Limit** (including Discretionary Credit Limit) available to the respective **Approved Debtor/Debtor** or Maximum liability specified in the Schedule of Particulars, whichever is lower;

5.5. In the event of termination of the **Agreement** by the Insured at any time prior to the expiry of its extant period of cover, ECGC shall be entitled to retain and or demand the amount of **Premium** due on the aggregate amount of **Turnover** until the date of termination.



5.6. Payment of **Minimum Premium**, further **Premiums**, if any, and other charges in accordance with the terms of this **Agreement** shall be a condition precedent to any liability on ECGC under the **Agreement**.

#### **Periodical Returns and its Timely Submission**

5.7. The Insured shall, by not later than the tenth day of every calendar month submit to ECGC in the format prescribed by ECGC the following monthly returns, namely –

- (1) Monthly Declaration of **Insured Receivables** furnishing full particulars of all the **Insured Receivables** purchased by the Insured from Exporter Client under an agreement for purchase of export receivables without recourse, during the immediately preceding calendar month;
- (2) Monthly Declaration of Realizations and Overdue Receivables furnishing full details of **Insured Receivables** that were realized or recovered and of **Insured Receivables** that had fallen overdue for payment but remained overdue and unpaid during the immediately preceding calendar month.

#### **Assignment and Transfer of Rights and Interests in the Insured Receivables**

5.8. Insured shall prior to making claim on ECGC under this **Agreement** for indemnification of losses in respect of any **Insured Receivable**, assign and transfer in favour of ECGC or its nominee in such form as may be approved or prescribed by ECGC all rights and interests of the Insured and/ or the **Client** in the relevant **Insured Receivable** together with all supporting and connected documents so as to facilitate expeditious exercise of right of recourse against the Approved

Debtor. Any failure on the part of the Insured in this regard or any defect in the title so assigned and transferred by the Insured shall absolve ECGC of all its liability to indemnify the Insured for losses suffered on the corresponding **Insured Receivables**;

5.9. Without prejudice to foregoing, the Insured shall, if so required by ECGC, execute in favour of ECGC a power of attorney or a substituted power of attorney, as the case may be, granting ECGC full right and authority to recover the **Insured Receivables** from the Approved Debtor through appropriate legal proceedings or otherwise and to give discharge in respect of the **Insured Receivables**.

#### **Inspection of Documents**

5.10. The Insured agrees and acknowledges that ECGC shall always at any time have a right to inspect the books, documents and records pertaining to the **Insured Receivables** and the relevant **Clients** and to examine and/or to take copies of any letters, accounts or other documents in their possession or control which relate to or are directly connected with the **Insured Receivables**. The Insured shall allow reasonable and necessary access to ECGC's duly authorised officials to exercise such right of inspection and shall co-operate with, facilitate and assist ECGC in its endeavours, including taking all reasonable steps to obtain for ECGC any information or document that is in the possession of the **Client** or within the power of the Insured.

#### **Local Currency Deposit and Application for Allocation of Foreign Exchange**

5.11. In the event of the Insured or an **Approved Debtor/Debtor** experiencing or becoming aware of delays or difficulties or restrictions in obtaining transferable foreign exchange allocated for transfer to India of a payment made in local currency against an **Insured Receivable** by reason of **Legislative Restrictions** imposed by the **Approved Country** concerned, the Insured shall promptly and without any delay advise and require the **Approved Debtor** concerned to pay in local currency to the credit of the Insured's account in country of the **Approved Debtor**, if any, or to have the amount deposited irrevocably with a bank in that country in favour of the Insured's account as soon as the payment had become due on the **Insured Receivable** and to have all necessary statutory and regulatory formalities duly complied with for due transfer of the amount to India.

#### **Other Obligations**

5.12. ECGC shall not have any liability to indemnify the Insured unless the Insured at all times diligently performs and observes all his obligations under this **Agreement**. Without limiting or restricting the generality of the foregoing, the Insured at all times, shall –

- (a) act in good faith and disclose and notify to the Insurer immediately of any and all material facts and circumstances that might have a bearing on the risks insured under this **Agreement** and of any variation to any such information already furnished any time earlier by the Insured;
- (b) disclose and inform the Insurer at the time of seeking any approval under the **Agreement** or any modification in the **Agreement**, of all relevant and material facts and circumstances that can have a bearing on the risks insured.

Any non-disclosure, inadequate disclosure, incorrect and misleading information, or suppression of information (in the knowledge of the Insured) in this regard shall render any such approval or modification null and void ab initio.

- (c) exercise normal and reasonable care and prudence in identifying and contacting **Clients** for offering Export Factoring Services and in approving **Debtors** for such **Clients**;
- (d) ensure that it holds absolute, transferable legal rights for enforcing legal recourse against **Approved Debtors** for recovery of the amounts remaining unpaid and due for recovery from them and shall take all necessary measures to safeguard properly and sufficiently such legal rights from being vitiated by any technical, procedural or other infirmity;
- (e) while seeking indemnification under this **Agreement** against any unrealized Insured Receivable, assign and transfer at its own cost all rights and interests in the relevant **Insured Receivable** in favour of the Insurer or in favour of such other person or firm as may be nominated by the Insurer in this regard in such form and in such manner as may be approved and advised by the Insurer;
- (f) provide or agree to provide the Insurer with all such information, correspondence and other documents in its possession or under its power as are, in opinion of the Insurer relevant or necessary to the enforcement of right of recourse against the **Insured Receivable**; and shall always extend full co-operation and assistance to the Insurer and/ or to its nominees to facilitate recovery of any and all monies pertaining to the unpaid **Insured Receivable**.

## **6. CLAIMS**

- 6.1 In the event of the Insured suffering a loss in respect of any of the **Insured Receivables** owing to the occurrence of an **Insured Risks**, the Insured may make a claim on ECGC for indemnification in accordance with the provisions of this **Agreement**. ECGC shall have no liability to indemnify the Insured unless the proximate cause of loss is the occurrence of an **Insured Risk** covered under this **Agreement** and/or the right and interest of the Insured in the relevant Insured Receivable has been assigned and transferred by the Insured in favour of ECGC.
- 6.2 Any claim made by the Insured under this Agreement for indemnification of loss shall invariably be in the Claim Form prescribed by ECGC and shall satisfy each of the following requirements, namely –
- (a) A minimum of one hundred twenty days (120) shall have elapsed after the relevant **Due Date**;
  - (b) Not more than one year has elapsed after the expiry of **Due Date** of payment. It is clarified that if there are more than one invoice in default and due for indemnification, the relevant **Due Date** for this purpose would be that of the earliest of one in default;
  - (c) Each Claim form shall pertain to **Insured Receivables** overdue and remaining unpaid from a single Approved Debtor only;
  - (d) The Claim Form should be complete in all respects furnishing full and complete information sought for therein;
  - (e) All supporting documents such as originals/ authenticated copies of relevant purchase orders, invoices, acknowledgement of liability and correspondence exchanged,

if any, with the **Approved Debtor**, proof of cause of loss, etc., be submitted together with the Claim Form,

- (f) Document evidencing valid legal assignment of the Debt in favour of ECGC or its nominee in such form as may be approved or prescribed by ECGC, duly executed by the Insured and/or the **Client**, as the case may be, should precede or accompany the Claim Form.

6.3 Upon the Insured filing a claim under this Agreement in the prescribed Claim Form together with all relevant and necessary supporting documents and information complete in all respects, ECGC shall forthwith process the claim. If any further information and/or additional documents are found necessary in respect of the claim filed by the Insured, ECGC shall advise the Insured about such additional requirement and await satisfaction of the said requirement by the Insured.

6.4 ECGC shall not be liable to process the claim filed by the Insured any further until the Insured has submitted all the additional information and/ or documents called for by ECGC.

6.5 Upon receipt by ECGC of all the relevant and necessary information and documents, including such additional information/ documents, if any, as aforesaid, and after being satisfied that there exists an undisputed debt , ECGC shall forthwith proceed to process the claim.

6.6 After verifying and ascertaining the occurrence of an **Insured Risks** and upon being satisfied that such **Insured Risks** was the proximate cause of loss, ECGC shall settle the claim by payment of amount not exceeding the percentage of loss

covered or the relevant and applicable amount of **Credit Limit** (including Discretionary Credit Limit) available on the Approved Debtor, whichever is lower in terms of Clause 7.3, 7.4 and 7.5 of this Agreement. After settlement of the Claim by ECGC, the Insured shall have no obligation to pursue or initiate recovery proceedings against the Approved Debtor, as the same stands transferred to ECGC.

6.7 In the unlikely event of ECGC finding that the cause of loss was not any of the **Insured Risks** or that the non-payment of the Insured Receivable by the **Approved Debtor** was owing to his claim that he was justified in withholding payment (by reason of any counterclaim, set-off, dispute relating to due performance of the **Export Contract**, etc.) ECGC shall not be liable to indemnify the loss and shall reject the claim with reasons. Under such circumstances ECGC shall either cancel and nullify the assignment in favour of ECGC of the relevant Insured Receivable or shall reassign it back to the Insured.

## **7. EXCLUSIONS & LIMITATIONS TO INSURER'S LIABILITY**

### **Exclusions**

7.1. Any loss that the Insured may suffer and which falls under any of the following categories shall not be eligible for indemnification under this Agreement and is expressly excluded from the purview of ECGC's liability, namely –

(a) Any loss arising out of an Insured Receivable the proximate cause for which was not any of the **Insured Risks**;

(b) Any loss arising out of an Insured Receivable in cases where the **Client** of the Insured had not routed all **Insured Receivables** from an Approved Debtor through the Insured.

- (c) Any loss arising out of an Insured Receivable where the exported goods have not been accepted by the Debtor or where the liability for payment is not accepted by the Debtor.
- (d) Any loss arising out of any act of omission, neglect, failure or commission on the part of the Insured or of the **Client** or of any of the agents of either the Insured or the **Client**;
- (e) Any loss arising out of an Insured Receivable that has become irrecoverable or in respect of which the right of recourse against the Approved Debtor/**Debtor** is lost or impaired owing to an act of negligence or omission or commission on the part of the Insured or the **Client** or any of the agents of either the Insured or the **Client**;
- (f) Any loss arising from a receivable that is not due and payable by an Approved Debtor;
- (g) Any such part of a loss arising out of an Insured Receivable that is in excess of the Percentage of Loss Covered specified in the Schedule of Particulars;
- (h) Any loss arising out of **Insured Receivables** due and outstanding from any single Approved Debtor/Debtor that is in excess of the relevant **Credit Limit** (including Discretionary Credit Limit) available on that Approved Debtor/ Debtor;
- (i) Any loss or part of any loss which, together with the aggregate amount until then paid by the Insurer in indemnification of losses suffered on Despatch made during



the relevant Period of Cover, is in excess of the amount of Maximum Liability specified in the Schedule of Particulars;

- (j) Any loss arising out of an Insured Receivable the right of recourse in respect of which is not validly or properly transferred by the Insured in favour of ECGC or its nominee unless ECGC has expressly agreed otherwise in writing;
- (k) Any loss arising from export receivables under the relevant **Export Contract** which provides for payment to be made under a documentary letter of credit;
- (l) Any loss arising from export receivables that is due from an **Approved Debtor** which is an **Associate Company** or subsidiary or the holding company of the **Client** of the Insured or from a debtor in which the **Client** of the Insured is financially or managerially interested or from a debtor which has a similar interest as aforesaid in the **Client** of the Insured's affairs;;
- (m) Any loss arising from non-payment of Insured Receivables by an **Approved Debtor** for the reason that there exists unresolved disputes or issues between the Approved Debtor and the respective **Client** or the Insured whether or not such dispute or issue pertains to the **Insured Receivables** remaining unpaid, it is clarified hereby that the dispute contemplated under this Clause is not restricted to the **Insured Receivables** and/or the payment thereof;
- (n) Any loss arising out of an Insured Receivable due to non-compliance of relevant statutory or regulatory norms governing such trade transactions;

(o) Any loss arising out of an Insured Receivable due to non performance of the covenants/obligations stipulated in the Export Contract by the **Client**/its Associates/Agents;

(p) Any loss arising from Insured Receivables that is due from an **Approved Debtor** which as at the time of purchase of the relevant export receivable by the Insured was already subject to –

- proceedings initiated under the relevant local bankruptcy or insolvency law; or
- appointment of an administrator, receiver, liquidator, trustee or other similar official for the assets of the Approved Debtor under the relevant local bankruptcy or insolvency laws by a competent Court of law; or
- any such other or similar proceedings under the relevant local laws.

(q) Any loss arising from Insured Receivables in respect of export of commodities which are specifically excluded from cover as per Schedule of Particulars and any amendments thereto.

### **Limitations to Insurer's Liability & Sharing of Losses**

7.2. The percentage of loss payable under this Agreement and the limitations for the amount of claim shall be as follows:

#### **Sharing of Loss**

7.3. Any loss arising in respect of **Insured Receivables** and eligible for indemnification in terms of this Agreement shall be shared between the Insured and ECGC. Under no circumstances, ECGC's share of loss arising from or in connection with an **Insured Receivable** shall exceed such percentage of the

**Insured Receivable** as is specified in the ‘Schedule of Particulars’ as the Percentage of Loss Covered. Any amount that is in excess of ECGC’s share shall be the Insured’s share and the Insured agrees and undertakes to keep the Insured’s share of loss to its own account and uninsured with any other insurer.

**Credit Limit on Approved Debtors**

- 7.4. The amount of claim payable by ECGC to the Insured for losses suffered by the Insured owing to non-realization of the **Insured Receivables** remaining unrealized in the account of any single **Approved Debtor** shall not exceed the relevant and applicable amount of **Credit Limit** (which shall include the Discretionary Credit Limit, if any) available to the Insured in respect of that **Approved Debtor** in terms of this Agreement as on the relevant dates of despatch.

**Maximum Liability**

- 7.5. The aggregate total liability of ECGC for payment of claims under this Agreement for all losses arising from all despatches made during an entire Period of Cover shall not exceed the amount of Maximum Liability specified for that period in the extant the Schedule of Particulars.

**8. FRAUDULENT CLAIMS**

- 8.1. In an unlikely event of the Insured filing a claim under this Agreement intentionally and knowing it to be false or fraudulent in any way, the Agreement will be terminated with immediate effect and ECGC shall no more have any obligation to indemnify the Insured, whether already preferred or not. Further, if ECGC had paid any amount to the Insured in settlement of any prior claims under this agreement, the

Insured shall be liable to refund all such amounts to ECGC, if so demanded by ECGC. Under such circumstances ECGC shall be entitled to retain all premiums and other charges already paid by the Insured under the Agreement but may refund to the Insured any amount paid in advance towards future premiums and lying to the credit of the Insured.

## **9. RECOVERY**

- 9.1. All the rights and obligations in an **Insured Receivable** that remained unrealized and in respect of which ECGC had settled or agreed to settle a claim in favour of the Insured, shall vest in ECGC.
  
- 9.2. The Insured shall diligently and prudently acquire and preserve all rights of recourse for the recovery of such overdue and unrealized **Insured Receivables** against an **Approved Debtor** and shall transfer such rights of recourse in favour of ECGC or its nominee as when such transfer is due.
  
- 9.3. Until the right of recourse is assigned or otherwise transferred in favour of ECGC or its nominee as aforesaid, it shall be the bounden duty of the Insured to do all such things as may be warranted or necessary for minimising loss or for due enforcement of the right of recourse and effective recovery of the debt, including but not limited to, if so advised by ECGC, refer an Insured Receivable on such terms as may be advised or agreed to by ECGC to a debt-collecting agent or to a lawyer or attorney for the purpose of expediting recovery and/or for initiating legal proceedings for recovery.

9.4. All costs and expenses of recovery reasonably incurred by ECGC or by the Insured with the due concurrence of ECGC shall be a first charge on the gross amount recovered.

9.5. Any amount recovered against an **Insured Receivable** and in respect of which a claim is settled by ECGC in favour of the Insured, shall first be adjusted against the relevant recovery expenses and the net amount of recovery shall be shared between ECGC and the Insured in the same ratio as the relevant losses are shared.

**Recovery by the Insured of an Insured Receivable Subsequent to Claim**

9.6. In the event of the Insured or the **Client**, as the case may be, realizing or recovering an **Insured Receivable** at any time subsequent to all the rights and interests in the said **Insured Receivable** is transferred in favour of ECGC or its nominee, such realization or recovery should forthwith be reported to ECGC.

9.7. If a claim had already been settled by ECGC under this **Agreement** in respect of such an **Insured Receivable** that is subsequently recovered or realized by the Insured, the Insured shall forthwith upon its receipt but in any event within seven working days from the date of such receipt, transfer to ECGC the whole of the amount so received without any adjustment or deduction to enable ECGC to subject it for prior charges, if any, and to apportion the net amount of recovery between the Insured and ECGC.

9.8. As a matter of abundant caution, it is clarified –

- that any such receipt of amounts by the Insured as is referred to in the foregoing paragraph shall be received and held by the Insured in trust for ECGC until it is duly transferred to ECGC; and
- that any delay or neglect on the part of the Insured to transfer to ECGC such amounts received by it within the said time limit of seven working days shall be deemed a serious breach of this agreement and ECGC shall be entitled to terminate the Agreement with immediate effect on that single ground alone with all relevant consequences of such termination.

## **10. NOTICES**

10.1. A notice to be served upon the Insured by ECGC under this Agreement shall be in writing and will be deemed to have been duly served if it is sent by ordinary post or through a reputed private courier after putting the relevant postal address of the Insured or is transmitted by facsimile transmission at the relevant facsimile (fax) number of the Insured or is transmitted electronically by e-mail at the relevant e-mail address of the Insured. For the purpose hereof, the postal address, facsimile number and e-mail address / id of the Insured as specified for the time being in the Schedule of Particulars shall be deemed to be the relevant one address/ number / id.

10.2. A notice duly served as aforesaid will come into force with immediate effect no sooner it is received by the Insured and in any case –

- (a) When sent by ordinary post or private courier, by not later than two working days from the date of its dispatch;

- (b) When sent by fax / facsimile transmission, by not later than the commencement of working hours on the very first working day immediately following the successful transmission to and receipt of the notice by the Insured's facsimile equipment;
- (c) When sent electronically by e-mail, no sooner the message containing the notice is seen or opened by the Insured and in any case by not later than the commencement of the very first working day immediately following the day on which it was sent at the relevant e-mail address / id of the insured.

10.3. Any notice required to be served upon ECGC by the Insured under this Agreement shall be deemed to have been duly served when dispatched by ordinary post or through a reputed private courier service or delivered by a special messenger at the address of our controlling branch office specified in the Schedule of Particulars.

## **11. CURRENCIES AND RATES OF EXCHANGE**

### **Currencies**

11.1. The currency of the Agreement is Indian Rupees and all payments under this Agreement shall be in Indian rupees.

### **Applicable Rate of Exchange for Conversion**

11.2. The **Gross Invoice Value** expressed in any currency other than Indian Rupees of goods Despatched and to which this Agreement applies shall for the purpose of arriving at the corresponding value of the Insured Receivable under this Agreement shall be converted into Indian Rupees applying the RBI reference rate of exchange as on the **Date of Despatch**. (If for any particular currency and/or on any particular **Date of**

**Despatch**, no such reference rate is issued by RBI then such rates as may be deemed reasonable and acceptable to ECGC shall be applicable].

11.3. The same rate of exchange as referred to above and applicable for the purpose of arriving at the value of an Insured Receivable shall be relevant and applicable for the purpose of arriving at the **Amount of Loss** and the respective shares of ECGC and the Insured in respect of that Insured Receivable.

11.4. Notwithstanding what is stated above, the relevant rate of exchange applicable in respect of recoveries and realizations subsequent to settlement of claim in respect of an Insured Receivable shall be the actual rate of exchange applied by the bank that receives the amount in India and converts it to Indian Rupees.

## **12. TERMINATION OF THE AGREEMENT**

### **Termination of the Agreement**

12.1. This Agreement may be terminated by either party as at the close of the extant Period of Cover of twelve months by giving notice in writing to the other to that effect at any time before the Agreement is renewed by mutual consent.

12.2. If the Insured terminates this Agreement at any time before the then extant Period of Cover of twelve months have elapsed, ECGC shall be entitled to retain and or demand the amount of **Premium** due on the aggregate amount of **Turnover** until the date of termination. .

12.3. In the event of breach in terms of Clause 9.8 of this Agreement, ECGC shall on termination of this Agreement be



entitled to claim refund of the entire claim amount settled with the Insured in respect of **Insured Receivables** or demand the entire amount recovered by the Insured from the **Approved Debtor** without any deductions, whichever is higher.

- 12.4. Notwithstanding what is stated above, this Agreement may be terminated forthwith by either of the Parties if the other Party –
- becomes the subject of any voluntary or involuntary bankruptcy, insolvency, reorganisation or liquidation proceeding, makes an assignment for the benefit of its creditors, convenes a meeting of its creditors, admits in writing its insolvency or inability to pay its debts and/ or a floating charge over all or a material part of its assets crystallises by reason of default (however described); or
  - is in serious breach of any condition of this Agreement and fails to remedy it even after reasonable notice.

### **13. LAW AND JURISDICTION**

13.1. The construction, validity and performance of this Agreement and any disputes in connection with, arising out of, relating to or concerning this Agreement shall be interpreted and governed by in all respects in accordance with Indian law.

13.2. Both the parties agree and acknowledge that they shall always endeavour to resolve disputes, if any, arising out of or concerning this Agreement or its interpretation amicably between themselves through discussions and negotiations and that legal proceeding would be resorted to only after exhausting avenues for an amicable resolution.

13.3. The Insured and ECGC agree and acknowledge that no other Court (which expression shall include tribunals and other judicial forums constituted under any special statute) other than those at Mumbai shall have jurisdiction over any matter arising out of, concerning or relating to this Agreement.

Schedules I, the Schedules of Particulars and Schedule II, the Schedule of Approved Countries & **Approved Debtors** are attached hereto and forms part of this Agreement.

**SIGNED AND DELIVERED BY THE**

within - named Insurer, Export Credit Guarantee Corporation of India Limited,  
by its Authorised Signatory, Shri/ Smt.

.....  
( )

**Witnesses:**

- 1.
- 2.

**SIGNED AND DELIVERED BY THE**

within - named Insured, .....

.....  
by its Authorised Signatory Shri / Smt.  
.....  
( )

**Witnesses:**

- 1.
- 2.

**SCHEDULE -I**

**The Schedule of Particulars**

**1. THE INSURED:**

- a. Name of the Insured:
- b. Address of the Insured:
  
- c. Contact Person:
- d. Telephone Number:
- e. Fax Number:
- f. E-mail id:

**2. THE INSURER:**

- a. The Controlling Branch:
- b. Address of Controlling Branch:
  
- c. Contact Person:
- d. Telephone Number:
- e. Fax Number:
- f. E-mail id:

**3. THE POLICY:**

- a. The Agreement Date:
- b. The Date of Commencement:
- c. The Period of Cover:
- d. The Declaration Period:
- e. The Minimum Premium:

**4. PERCENTAGE OF LOSS COVERED:**

**5. DISCRETIONARY LIMIT:**

**6. TURNOVER COVERED:**

**7. MAXIMUM LIABILITY:**

**8. RATES OF PREMIUM:**

**9. EXCLUSION OF COMMODITY:**

## **SCHEDULE II**

### **The Schedule of Approved Countries and Approved Debtors**

#### **PART 'A': APPROVED COUNTRIES**

ALL COUNTRIES LISTED IN A1 AND A2 GROUP AS PER THE LIST OF COUNTRIES ATTACHED.

#### **PART'B' APPROVED DEBTORS**

- 1.
- 2.
- 3.
- 4.
- 5.
- 6
- 7.
- 8.
- 9.
- 10.