

General Terms and Conditions on

Insurance of Direct Deliveries of Goods and Services

OU-KD-02/17

**This English translation of the authentic Croatian**

**text serves for information purposes only, and in case**

**of dispute the Croatian text shall prevail**

Preamble

The General Terms and Conditions on Insurance of Direct Deliveries of Goods and Services OU-KD-02/17 (hereinafter: General Terms and Conditions) determine the conditions of insurance of risks arising from Export contracts between the Exporter and the Foreign buyer that are insured by Hrvatska banka za obnovu i razvitak (hereinafter: the Insurer) for and on behalf of the Republic of Croatia.

General provisions

The General Terms and Conditions determine legal relations between the contracting parties based on the concluded Contract on insurance of direct deliveries of goods and services against political and commercial risks (hereinafter: Insurance contract).

The General Terms and Conditions are a constituent part of the Insurance contract and of the Insurance policy for direct deliveries of goods and services against political and commercial risks as written documents on the concluded Insurance contract.

Article 1

Definitions

In the General Terms and Conditions, the accompanying Insurance policy and in all enclosures, definitions in this Article are used in the following meanings:

**Insurer:** HBOR - Hrvatska banka za obnovu i razvitak, with seat in Zagreb, Strossmayerov trg 9, for and on behalf of the Republic of Croatia;

**Export contract:** contract in which the contracting parties are a Croatian legal or natural person as one party, and foreign legal or natural person as the other party, the subject matter of which are obligations of the Croatian party - production and/or delivery of goods and/or rendering of services to the Foreign buyer;

**Insured person:** exporter – Croatian legal or natural person which exports and which concluded an Export contract with a foreign entity, and which as the insured person concludes an Insurance contract with the Insurer;

**Foreign buyer:** foreign legal or natural person importing Croatian goods and/or services under an Export contract;

**Insurance contract**: contract on insurance of direct deliveries of goods and services against political and commercial risks concluded between the Insurer and the Insured person, by which the Insured person’s receivables towards the Foreign buyer are insured against political and/or commercial risks which may arise from Export contracts;

**General Terms and Conditions:** General Terms and Conditions on Insurance of Direct Deliveries of Goods and Services OU-KD-02/17;

**Insurance policy:** written document on a concluded Insurance contract, issued by the Insurer;

**Insured risk:** risk covered by the insurance, a future, contingent event, independent of the exclusive will of the contracting party, as defined by Article 12 of these General Terms and Conditions;

**Insurance premium:** cash amount charged by the insurer on conclusion of the Insurance contract for risk covered;

**Sum insured:** cash amount on which the insurance is concluded and as such stated in the Insurance policy;

**Damage:** loss expressed in cash equivalent amount that occurred for the insured person due to any of the insured risks;

**Indemnity:** cash amount paid to the insured person by the insurer as compensation for damage that occurred for the insured person by fulfilment of any of the insured risks;

**Damage in the course of production:** damage that occurred before the Insured person has made out an invoice to the Foreign buyer;

**Substitute turning to account:** selling of goods that are the subject matter of insurance in the most appropriate way;

**Partial insurance:** insurance of only one part of the Insured person’s claims under the Export contract via Insurance contract concluded between the Insured person and the Insurer;

Article 2

Insurance contract

* 1. The Insurance contract consists of two constituent parts: these General Terms and Conditions and the Insurance policy. The General Terms and Conditions and the Insurance policy together make the complete wording of the Insurance contract. The Insurance policy is a written document on the concluded Insurance contract, stating the company of the Insured person and the Insurer, name of the Foreign buyer, subject matter insured, sum insured, duration of insurance, insured risks, insurance premium, deadline for submission of a claim, special provisions, date of issuance of the insurance policy as well as signatures of the Insured person and the Insurer. Attachments to the Insurance policy, which are considered to be its constituent parts, are:
* Application form for the conclusion of the Insurance contract filled by the Insured person,
* Excerpt from the register of companies of the Insured person’s register court in case of companies or from register of crafts in case of the Insured person - artisan.
	1. In case of non-compliance of any provision of the General Terms and Conditions with the provisions of the Insurance policy, the provisions of the Insurance policy shall apply.

Article 3

Form, conclusion and effectiveness of the Insurance contract

* 1. The Insurance contract shall be concluded in a written form, by signing the Insurance policy through the authorised representatives of the contracting parties. Generally, the contract shall be concluded by exchange of writs, and exclusively on demand of the Insurer between the present parties.

Article 4

Main obligations of the contracting parties

* 1. On the basis of the Insurance contract, the Insurer is obliged, if the damage occurs as a result of the insured risk and if the claim of the Insured person shall be accepted, to pay to the Insured person, or to a third party from Article 19 of these General Terms and Conditions:
* Indemnity and
* Compensation for expenses

in accordance with Article 14 of these General Terms and Conditions. The Insured person is obliged to pay the premium to the Insurer as determined by this Insurance contract.

Article 5

Currency of the Insurance contract

* 1. The Insurance policy shall be concluded in the currency of the Export contract, whereas all payments of the premium under the Insurance contract shall be effected in Kuna according to the medium exchange rate of the Croatian National Bank on the date of invoice made out by HBOR. All payments under the Insurance contract shall be made in Kuna according to medium rate of the Croatian National Bank on the payment date.

Article 6

Subject matter of insurance

* 1. Should the damage occur as a result of the insured risk, the indemnity in cash shall include:
* Fulfilment of obligations of the Insured person’s Foreign buyer under the Export contract, and
* Contracted interest until the maturity date set forth in the Export contract. In any case, the indemnity may not exceed the sum insured that is mentioned in the Insurance policy.
	1. Subject matter insured cannot be:
* Claims arising from the contracts on export of weapons and/or nuclear equipment, for which necessary export licenses have not been obtained,
* Compound interest and/or interest for default,
* Expenses that would have been incurred by the Insured person if the Foreign buyer had orderly fulfilled its obligations under the Export contract.

Article 7

Duration of insurance

7.1. The insurance shall commence and end on the days set forth in the Insurance policy.

Article 8

Termination of the Insurance contract

* 1. The Insured person may terminate the Insurance contract completely or partially by registered mail to the Insurer, thus waiving all its claims under the contract. The notice on termination shall become effective after the expiry of the calendar quarter in which the notice has reached the Insurer.
	2. The Insurer may terminate the Insurance contract with immediate effect via registered mail to the Insured person, or in another appropriate way, if:
* The data given in the Application for the conclusion of the Insurance contract or in the Insurance policy, as well as all other data submitted to the Insurer by the Insured person are not correct or complete, or if the Insured person has not revealed any circumstance which is of such meaning that the Insurer would not have concluded the Insurance contract had it known of such a circumstance,
* The insured person does not adhere to the provisions of the Insurance contract,
* The Insured person does not pay the premium in the term given in the pro forma invoice.

Article 9

Retention

9.1. The share of the Insured person in the damage under the Export contract shall be defined by percentage of retention that is set forth in the Insurance policy.

Article 10

Special obligations of the Insured person and compensation for expenses

* 1. The Insured person shall:
1. Report to the Insurer completely and accurately all circumstances necessary for the risk evaluation, and all changes in these circumstances before and after the conclusion of the Insurance contract;
2. Take all prescribed, agreed and other actions at any time in order to limit or prevent the realisation of risks insured, protect the Insurer from the damage and inform it in writing immediately, but not later than within 1 month from the day of becoming aware of all the circumstances which are known to it and which might jeopardise the orderly fulfilment of the Export contract. This includes especially the obligation of the Insured person to inform the Insurer on the damage occurred in the course of production;
3. At any time, on request of the Insurer, submit all information on details and implementation of the Export contract, which includes the original text of the Export contract, Certificate on Croatian origin of goods issued by the Croatian Chamber of Commerce, photocopies of the collateral for the Export contract, as well as all other documents related to the Export contract, Foreign buyer, Insured person and the country to which goods and/or services are exported. The Insured person is also obliged to make available all its books and records in the extent necessary for business evaluation;
4. make known to the Insurer the existence of any possible (partial) insurance of the same transaction against non-payment;
5. procure written consent of the Insurer before any material change of the Export contract. Among others, material change shall be considered:
* prolongation of delivery terms and terms for execution relating to the Export contract, if these terms are prolonged by 3 months or more in relation to the terms given at the time of conclusion of the Insurance contract,
* change in collateral,
* deferral of payment terms;
1. without delay, but at the latest after 1 month (reporting period) submit to the Insurer a written report on the occurrence of the mentioned facts:
* exceeding of the delivery terms and terms for execution relating to the Export contract,
* upon non-fulfilment of an obligation by the Foreign buyer, or
* upon the occurrence of damage as a result of an insured event in accordance with Articles 11 and 12 of these General Terms and Conditions;
1. act in accordance with the Insurer's instructions without delay. The Insured person may be given instructions at any time if the Foreign buyer does not meet its obligations under the Export contract, or if the damage occurs;
2. with the consent of the Insurer, take all necessary measures for exercising of the Insured person’s rights towards the Foreign buyer under the contract, e.g. the activation of collateral under the Export contract, as well as all other measures prescribed by law or agreed, or other measures which may be taken in case of the Foreign buyer’s delay;
3. to turn to account the goods included by the insurance on demand of the Insurer;
4. accept (unless on the demand of the Insured person another procedure has been agreed) terms and conditions of rescheduling debts under the Export contract concluded between the Insurer and the Foreign buyer or its successor regarding the collection of receivables under the Export contract. This relates particularly to the refund of the retention amount. The Insured person itself shall try to collect the uninsured part of receivables under the Export contract;
5. suspend the performance of the Export contract, particularly the delivery of goods and rendering of services to the Foreign buyer, immediately upon the delay of the Foreign buyer relating to the payment and other obligations under the Export contract.
	1. Should in connection with the actions taken pursuant to the provisions of paragraph 1, items 7, 8 and 9 of this article any expenses be incurred, they shall, after being reported, be reimbursed to the Insured person to the Insured person in the percentage of insurance in accordance with Article 14 paragraph 11 of these General Terms and Conditions, provided that the actions were taken after the instructions had been received or the consent of the Insurer given, and the preconditions for the acceptance of a claim fulfilled.
	2. Should the Insurer not be obliged to pay the indemnity, because the claim has been paid in its entirety by the Foreign buyer, expenses caused by the payment may be reimbursed in the percentage of insurance as set forth in Article 14 paragraph 11 of these General Terms and Conditions.
	3. Usual expenses incurred during the export transaction in the operations of the Insured person, the Insured person’s agent or the Insured person’s partner in the consortium, shall not be reimbursed.

Article 11

Claim

* 1. Claim can be submitted to the Insurer in a written form after the expiry of the term given in the Insurance policy, starting from the day of maturity of the respective receivable under the Export contract. Documents necessary for appraisal of a claim must be enclosed.
	2. The Insurer may, for the purpose of establishing the accuracy of data given in the claim, request from the Insured person to procure on its own cost the opinion of a chartered accountant and/or a permanent expert witness on these data.
	3. The claim shall be accepted with the right to cancellation should it be proved that:
1. The Insured person has fulfilled its obligations under the Export contract or is prepared to fulfil them, and it has fulfilled its obligations under the Insurance contract; and
2. The Foreign buyer has not fulfilled or cannot fulfil its obligations; and
3. One of the insured commercial or political risks mentioned in Article 12 of these General Terms and Conditions has occurred.

Article 12

Insured risks

* 1. Commercial risks are:
1. Non-payment or non-fulfilment of the Foreign buyer’s obligations, after which the Foreign buyer has been warned in a written recorded notice to fulfil its obligations. The submission of collateral under the Export contract shall have the same effects (risk KR-1);
2. insolvency, bankruptcy or execution on the property of the Foreign buyer (risk KR- 2);
3. impossibility of the Export contract fulfilment by the Insured person or its agents due to facts for which the insured person is not responsible and which occurred abroad. This definition includes the damage occurred in the course of production, whereby the Foreign buyer is a private law entity (risk KR-3).
	1. Political risks are:
4. War or similar events (risk PR-1);
5. Rebellion or revolution (risk PR-2);
6. Government measures limiting and impeding transfer or free disposal of payments owed to the Insured person for more than 3 months; the delay of payment for more than 3 months if the Foreign buyer or its guarantor represents governmental authority and may not go into bankruptcy by a court or administrative decision (the Foreign buyer is a public law entity), shall have the same effects (risk PR-3);
7. Impossibility to fulfil an obligation under the Export contract due to other political events. This definition includes the damage occurred in the course of production, as well as the impossibility of fulfilment by the Insured person or its agent due to reasons for which the insured person is not responsible and which occurred abroad, whereby the Foreign buyer is a public law entity (risk PR-4).

Article 13

Exclusion of the Insurer’s obligations

* 1. The Insurer’s obligations under the Insurance contract are excluded if:
1. The premium determined in the Insurance policy has not been paid in its entirety;
2. The damage has occurred for which the Insured person, its agent or its partner in the consortium are responsible;
3. The advance payment that the parties to the Insurance contract have agreed has not been paid;
4. The Insured person violates any provision of the Insurance contract, particularly in case of disregarding terms set forth in the Insurance contract;
5. The Insured person violates the Export contract or local or foreign legal regulations
6. The Insured person, at the moment of submitting an application for the conclusion of the Insurance contract and/or at the moment of signing the Insurance policy, knew or had to know that:
* It was impossible for the Foreign buyer to fulfil the Export contract,
* The Foreign buyer had made a default in connection with another agreement with the same Insured person within the last two years from the date of submitting application for the conclusion of the Insurance contract,
* The Foreign buyer was insolvent or that a bankruptcy or execution procedure had been introduced over its business;
1. The Insured person has given incorrect or incomplete statements to the Insurer, particularly if given in the Application for the conclusion of an Insurance contract, or if the Insured person did not reveal any circumstance of such significance that, had the Insurer known about it, it would not have concluded the Insurance contract;
2. The damage occurred for which the Insured person, in accordance with commercial practice, could have provided the insurance, except for the receivables insurance by the insurance companies with the seat in the Republic of Croatia.

Should the Insurer accept the claim, but should later on circumstances arise that would cause the exclusion of the Insurer’s liability, the primary acceptance shall be revoked. In such cases, sums already paid shall be refunded to the Insurer together with interest in an amount prescribed by law.

Article 14

Indemnity calculation

* 1. Should an insured risk arise, the Insurer shall pay the indemnity **(O)** in the total amount that may not exceed the insured sum set forth in the insurance policy. Requests for payment of a possible penalty under the Export contract are not the subject matter of this insurance.
	2. Calculation of indemnity **(O)** that the Insurer must pay to the Insured person shall be based on the amount of the accounts receivable **(A)** of the Insured person towards the Foreign buyer (without interest) at the moment of occurrence of the insured risk and expressed in the currency of the Export contract, reduced by the parts of receivables that had arisen before the coverage under the Insurance contract began **(B).**
	3. For the Damage in the course of production, the calculation shall be based on the amount of actual expenses already incurred in the course of production or procurement of goods, or in the course of rendering of services **(A1)**. Expenses incurred in the course of ordinary business operations of the Insured person **(A2)** may be included only if they were included in the calculation of order under the Export contract.
	4. From the sum gained in such a manner, the parts of receivables that are not a subject matter of the insurance **(C)** shall be deducted in accordance with article 6 paragraph 2 of these General terms and Conditions.
	5. If there is a partial insurance **(D),** it will be taken into account.
	6. The sum gained in such a manner shall, if necessary, be reduced to the insured sum given in the Insurance policy, which makes the cover amount **(E).**
	7. The cover amount **(E)** shall be divided by the amount of accounts receivable **(A)** of the Insured person under the Export contract (without interest) at the moment of the occurrence of the insured risk. The fraction gained in such a way, converted into percentage, shall represent the cover percentage **(F).**
	8. The contracted interest **(G)** shall be calculated in accordance with the Export contract and converted into an absolute amount in the currency of the Export contract. The absolute amount gained in such a way shall be multiplied by the cover percentage **(F)**, which makes the cover amount of contracted interest **(H).**
	9. From the cover amount **(E)** and the cover amount of contracted interest **(H),** the percentage of retention **(S)** givenin theInsurance policyshall be deducted, which makes the interim sum **(L).**
	10. The interim sum **(L)** shall be reduced by the amounts of payments under the Export contract received after the occurrence of the insured risk **(I)**, regardless of the declared purpose, possible income from substitute turning to account **(J),** as well as by all possible amounts for which the liability of the Insurer is excluded **(K)** in accordance with Article 13 of these General Terms and Conditions. By such calculation, the indemnity **(O)** amount shall be gained**.**
	11. Interim sum **(L)** divided by the amount of accounts receivable due **(A**) makes the insurance percentage **(P).**
	12. Insurance percentage **(P)** shall be multiplied by the sum of costs amount **(Z)** in accordance with Article 10 paragraphs 2 and 3 and Article 16 paragraph 2 of these General Terms and Conditions. By such calculation, compensation for expenses shall be obtained **(T).**

Article 15

Maturity of indemnity and compensation for expenses under the Insurance contract

* 1. Provided that the Insured person acted according to the Insurer’s instructions and requirements in accordance with this contract, particularly in connection with the obligation of cession in accordance with Article 16 paragraph 1 item 1 of these General Terms and Conditions,
* Indemnity and compensation for expenses for receivables which were due under the Export contract before acceptance of a claim, or whose maturity was not determined, become due 15 days after the acceptance of a claim, and
* Indemnity and compensation for expenses for receivables under the Export contract which become due upon the acceptance of a claim, become due on the dates set forth in the Export contract. The acceleration of maturity in case of contract violation, for which there is an agreement with the Foreign buyer, shall not be applied in relation to the Insurer.

Article 16

Special obligations of the Insured person upon acceptance of claim

* 1. The Insured person shall:
1. On demand of the Insurer, without delay before the disbursement of indemnity, assign to the Insurer through a special assignment contract, all its rights and obligations under the Export contract, to the amount of indemnity, and take all legal actions in that respect. If the collateral has been obtained, it shall be assigned pro rata and in the same extent. In any case, if the Insurer does not demand such assignment of receivables, even if such assignment of receivables has been performed, the Insured person shall take all actions necessary for the payment of receivables under the Export contract by itself;
2. To the extent to which the acceptance of a claim includes the goods included in the insurance which the insured person has at its disposal, they will be turned to account and the income realised in such a manner assigned to the Insurer in the amount of indemnity. On demand of the Insurer, these goods shall be pledged with the Insurer;
3. Take all necessary actions for the purpose of exercising its contractual rights under the Export contract (e.g., activate the collateral under the Export contract, and other measures prescribed by law or agreed upon, or other necessary measures which may be taken in case of the Foreign buyer’s delay) in its own name, but with the consent of the Insurer, unless the Insurer has accepted the assignment of receivables and represents these demands on its own;
4. follow the instructions of the Insurer on taking certain measures in order to effect recovery;
5. leave to the Insurer, on its request, all that the Insurer shall have received on the basis of the Export contract, regardless of the purpose declared, to the indemnity amount. This includes also other cash receipts as compound interest or default interest paid for the period after the indemnity payment under the Insurance contract, as well as other income realised on the occasion of substitute turning to account.
	1. Should in connection with the actions taken pursuant to the provisions of paragraph 1 items 2, 3 and 4 of this article any costs be incurred, they shall be refunded to the Insured person on its request in the percentage of insurance in accordance with Article 14 paragraph 11 of these General Terms and Conditions, provided that these actions were taken according to the instructions or with the consent of the Insurer. Expenses that usually arise in the course of the export transaction within the business operations of the Insured person, its agent or its partner in the consortium shall not be reimbursed.
	2. The Insured person shall accept (unless otherwise another procedure has been agreed upon the request of the Insured person) the deadlines and the terms and conditions of debt rescheduling under the Export contract that the Insurer, after paying the indemnity to the insured person, shall agree upon with the Foreign buyer or its successor regarding the collection of receivables under the Export contract. This relates particularly to the amount and the repayment period of the retention. The Insured person itself shall try to collect the uninsured part if receivables under the Export contract.

Article 17

Right of the Insured person to recourse

* 1. In case of receivables assignment under Article 16 paragraph 1 item 1 of these General Terms and Conditions, the Insurer shall, after the collection of receivables under the Export contract, assign to the Insured person all amounts exceeding the amount of paid indemnity.

Article 18

Premium

* 1. The Premium is determined by the Insurer, whereas the premium amount and rate are set forth in the Insurance policy for the entire duration of the Insurance contract.
	2. The premium is calculated on the basis of sum insured, reduced by the lowest retention set forth in the Insurance policy, and with regard to the premium rate, included risks and the duration of coverage. The duration of coverage results from the terms set forth in the Export contract. For the purpose of premium calculation, the duration of cover shall be calculated on the basis of full calendar quarters rounded upwards.
	3. The premium must generally be paid entirely in advance.
	4. The Insurer may recalculate the premium and the difference in premiums that may possibly arise, shall become due immediately if:
* The Insurer gives its consent to the change of the subject matter insured or to a significant extension of the insurance contract duration,
* The Insurer finds out that the data given by the Insured person are not correct or complete or that the Insured person did not reveal any circumstance of such significance that, had the Insurer known about it, it would not have concluded the Insurance contract, but does not terminate the Insurance contract.
	1. The Insurer may, on request of the Insured person, consent to the return of premium in the following cases:
* If the Export contract has not become effective,
* If the Insured person is not able to adhere to the provisions of the Insurance contract, and therefore cancels the contract,
* If the Export contract has been repaid before maturity and therefore the period of cover significantly shortened.
	1. If the Insurer agrees to the refund, it shall retain a lump sum for the purpose of management amounting to 0.1% of the sum insured, the lowest amount being HRK 500.00 and the highest HRK 15,000.00.
	2. Should the premium be not paid immediately upon its maturity as determined under this Insurance contract, the Insurer may, for the period from the maturity date until the actual payment, charge interest for default in the amount prescribed by law.

Article 19

Transfer of rights under the Insurance contract

* 1. The Insured person may transfer its rights under the Insurance contract to another person via contract. The Insured person must inform the Insurer in writing on any intended transfer of rights under the Insurance contract. Such a transfer shall be valid only if and after the Insurer accepts it explicitly in writing. Further, for any subsequent transfer, an explicit prior written acceptance by the Insurer shall be necessary.
	2. The transfer shall not affect the existence of other Insured person’s obligations towards the Insurer under the Insurance contract, and particularly of Articles 10 and 16 of these General Terms and Conditions.

Article 20

Procedure for realisation of claim

* 1. Before requesting protection by a court, the Insured person shall submit a claim to the Insurer.
	2. Should the Insurer:
* Refuse the claim or revoke the acceptance of the claim, or
* Not make a decision about the claim within 2 months after the Insured person has submitted the claim,

the Insured person may initiate legal proceedings for the protection of its rights under the Insurance contract.

Article 21

Governing law and jurisdiction in case of dispute

* 1. The contracting parties agree that the Insurance Contract shall be governed by the laws of the Republic of Croatia in force.
	2. The contracting parties agree that they shall endeavour to resolve any possible misunderstandings and/or disputes arising from the Insurance Contract primarily by negotiation during the lifetime of the Insurance Contract. Should the negotiations prove not to be successful, the contracting parties may try to resolve the disputes by mediation and/or arbitration, and, otherwise, they agree upon the jurisdiction of the competent court in Zagreb.



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