

LETTER OF UNDERTAKING

BUYER CREDIT

SUPPLIER CREDIT WITH NON-RECOURSE DISCOUNTING OR NON-RECOURSE ASSIGNMENT

DOCUMENTARY CREDIT UNDERTAKING

(LETTER FROM THE EXPORTER TO BPIFRANCE ASSURANCE EXPORT)

Reference:

Country:

File number:

SUBJECT: LETTER OF UNDERTAKING N°1B / CREDIT WITH PROGRESSIVE PAYMENTS

- Recourse in the event of improper performance of the sales contract
- Recourse relating to the foreign share
- Recourse in case of conviction on the grounds of Articles 435-3 et seq. of the French criminal code relating to the fight against bribery
- Aggravation of the risk
- Overcompensation

On _____, we concluded a contract with _____ for an amount
of _____ relating to _____.

This contract (or a portion of this contract) is payable in the amount of _____ :

- by use of a buyer credit from the bank _____ (hereinafter referred to as the “bank”), acting as leader of a banking pool (hereinafter referred to the “banks”) in the amount of _____ repayable in _____ by _____ (hereinafter referred to as the “debtor”);⁽¹⁾
- by use of a supplier credit in which the debt representing the fraction of the price of our contract payable in instalments by _____ (hereinafter referred to as the “debtor”) is purchased without recourse against our company by the bank _____ (hereinafter referred to as the “bank”) pursuant to an agreement entered into on _____ / to be concluded as appropriate;⁽²⁾
- by use of a documentary credit which was opened in our favour on _____ by the issuing bank _____ (hereinafter referred to as the “debtor”) and which has been confirmed by the bank _____ (hereinafter referred to as the “bank”) on _____.⁽³⁾

The issuance of the guarantee by the French State of the risk of non-payment of the credit to the bank(s) is subject to our taking on of various commitments relating to (1) the improper performance of the sales contract, (2) the foreign share, (3) the fight against bribery and (4) the increase in the risk.

(1), (2), (3): Strike out what is not applicable depending on whether the Bank(s) benefit from the guarantee of a buyer credit, the non-recourse discounting or the non-recourse assignment of a supplier credit or the confirmation of a documentary credit.

Accordingly, we irrevocably and unconditionally undertake to fulfil the following obligations:

1) WITH REGARD TO THE IMPROPER PERFORMANCE OF THE SALES CONTRACT

In the event that the debtor's non-payment is recognised as being precisely motivated by breach on our part of the clauses and conditions of our contract, we will pay you at your first request, within the limit of the payments that you have made to the banks in the name, on behalf of and under the control of the State in respect of the aforementioned transaction, any sums which we are recognised as debtors owing to our buyer under our contract, notably following an arbitration award or a final judgment, assigned the ratio:

$$\frac{\text{Total amount of payments}}{\text{Total amount of repayment schedules paid}}$$

In the event that, to justify the non-payment, our buyer raises a dispute over the amount or validity of our rights and claims, we further undertake to initiate and diligently pursue either an out-of-court resolution or judicial proceedings against our buyer to settle this dispute. In this respect, we commit to follow all instructions that you deem pertinent to give us. It is understood that in case of non-compliance with this commitment, as well as in case of non-performance by us of the obligations deriving from policy n° that you have issued to us, in the name of, on behalf of and under the control of the State, you will have the right to require from us, on first demand, full repayment of the payments made to the bank.⁽⁴⁾

2) WITH REGARD TO THE FOREIGN SHARE

We are aware of the limitations of the guarantee on the fraction of the transaction corresponding to the amount of the foreign share included in our contract, as these limitations have been defined in the guarantee undertaking relating to this transaction.

These limitations are expressed, where applicable, in the form of a ratio fixed in the Special Conditions of the policy that will be issued to the banks or that will be issued to us.

We know that, to be guaranteed under the above-mentioned administrative and banking directives, foreign or local supplies and services must be placed under our responsibility.

In the appendix to this letter, we have prepared a breakdown of the amount of our commercial agreement and the foreign share of it according to the information known or foreseeable to date.

In order to enable you to exercise control over our declarations, until full payment by the debtor, we shall put at your disposal all the supporting documents, in particular the customs documents, the accounting documents and the shipping documents. We have noted that these documents could be submitted for verification to the customs authorities. We have noted that these documents could be submitted for verification to the customs authorities.

If it appears that the amount of one of the items of the foreign share is in excess of the limitations established for our contract, we irrevocably and unconditionally undertake to pay you, at your first request, the portion of the payments made to the banks corresponding to the unsecured surplus of the foreign share, calculated according to the following ratio:

$$\frac{\text{Amount of the foreign share in excess}}{\text{Amount of the credit X percentage of cover for banks}}$$

If, in relation to the limits fixed for our contract by the cover undertaking relating to this transaction, the amount of one of the items of the foreign share is in excess of the limitations fixed for our contract, we undertake to participate for each payment made by using the buyer credit against the risks and the cash flow of the transaction for the fraction of the foreign share not guaranteed by the French State, such as this will be determined by application of the ratio fixed in the Special Conditions of the policy that will be issued to the banks.⁽⁵⁾

(4) Strike the entire paragraph in italics if the Bank(s) does (do) not benefit from the guarantee of a non-recourse discount or a non-recourse assignment of supplier credit.

(5) Strike the entire paragraph in italics if the Bank(s) does (do) not benefit from the guarantee of a buyer credit.

3) WITH REGARD TO THE FIGHT AGAINST BRIBERY

In the event our company, or of any person acting on our behalf in connection with the export contract, is convicted by a final court decision made on the grounds of Articles 435-3 et seq. of the French criminal code in relation to the fight against bribery and non-payment of the aforementioned transaction, we undertake to pay you, at your first request, the total amount of the insurance payments you have paid or that you are required to pay to the banks in the name, on behalf and under the control of the State under their credit insurance policy.

4) WITH REGARD TO THE AGGRAVATION OF THE RISK

We undertake to follow any instructions that you deem pertinent to give us in order to avoid a loss under the aforementioned credit or to limit the effects thereof, and in particular, on your request, to interrupt or, conversely, to continue performance of our export contract.

5) WITH REGARD TO THE OVERCOMPENSATION

We are aware that the risks assumed by the French State during the performance period should not be greater than the loss to our company in the event of interrupting the performance of our contract.

We have therefore noted that, in the event that an interruption of the performance of our contract is followed by the debtor's non-payment of the aforementioned transaction, you have the right to receive, within the limits of the sums paid to the banks, any excess of our revenue over our expenditures, calculated in accordance with the definitions below:

- **EXPENDITURES:** all expenses incurred by our company for the performance of the commercial agreement as of the date of its entry into force, including (i) the amount of our company's overhead costs attributable to the contract, calculated for each fiscal year corresponding to the period of performance of the contract, according to the ratio between the total amount of the Insured Party's overhead and the overall turnover of the Insured Party, applied to the turnover of the Insured Contract, (ii) the additional costs resulting from the interruption of the contract, incurred with your agreement or your instructions, including the costs of security or storage, charged in proportion to the amounts secured and unsecured or prosecution costs arising from the continued manufacture of goods or performance of the services, with your agreement or your instructions, when it appears that these costs would not have been incurred if the performance of the contract continued in the absence of any cause of loss or a breach of contract, (iii) litigation costs incurred with your agreement or your instructions to avoid or limit a claim, (iv) expenses incurred in connection with the acquisition of foreign goods or services within the limits of the amounts approved by you, and excluding (i) expenses relating to the supply of second-hand goods, (ii) expenses incurred for the purchase or rental of business equipment used in the debtor's country for the performance of the commercial agreement, net of any depreciation already made on the contract or rent already paid and (iii) premiums due that we owe the French State under the commercial agreement and which you will collect in accordance with the provisions of Article L.432-4 of the French Insurance Code.
- **REVENUE:** all revenue received by our company under the commercial agreement, without time limitation, and in particular (i) the instalments paid by the buyer, (ii) the sums made available to us by the banks, (iii) the proceeds from the resale or the reusable value of the goods being manufactured or manufactured but not delivered, as well as the materials supplied, (iv) the amounts collected or to be collected by way of setoff and (v) the proceed from the enforcement of security interests and the collection of indemnities of all kinds.

Thus being duly aware of these constraints, we irrevocably and unconditionally undertake, in the event of interruption of the performance of our service:

- to provide to you all the necessary documents, and in particular all our accounting books, to enable you to exercise control of the transaction;
- to pay you at the first request, within the limits of the payments made to the banks, the sum corresponding to the excess of the revenue over the expenditures, calculated according to the rules mentioned above. Of course, any recovery occurring after your payment of an indemnity in the name, on behalf of and under the control of the State, would give rise to repayment in our favour, to the extent of the excess revenue included in this recovery and retained by you.

We agree that, if you deem it necessary, the revenue and expenditures items shall be verified by an expert appointed by you.

- as a guarantee of this obligation to provide, at your request, a surety bond up to the amount of the excess of our revenue over our expenditures, once this surplus has been established.

Failure by our company to comply with any of the obligations referred to above shall automatically entail the termination of the insurance cover that we receive, if any, for our export contract, under the credit insurance policy, without prejudice to any recourse you might be entitled to exercise against us.

All amounts that are not paid by our company within 10 days of their due date shall automatically bear interest calculated, as from such due date, at a rate equal to three times the legal rate of interest in force on such date. These penalties will be payable upon receipt of the notice informing us that you have charged them to us. Furthermore, ex officio we will owe a fixed allowance for recovery costs the amount of which is set by the laws and regulations in effect. If the recovery costs actually incurred are higher than such fixed allowance, you (acting in the name, on behalf of and under the control of the State) will be entitled to request from us an additional compensation upon justification. No discount will be granted in case of advance payment.

Any disputes that may arise in connection with the application of the policy shall be submitted to the jurisdiction of the relevant courts in Paris.

Signed in

On

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Company seal

Name and position of the duly authorised signatory(*)

Signature

Attachment Appendix "Breakdown of the amount of the commercial agreement".

The following translation does not constitute and should not be construed as a legally binding document. In any case, the French version of the document shall prevail over this translation and only the French version of the document shall bear contractual force.

This document is a translation into English language of the original document entitled "Lettre d'engagement n° 1B en cas de crédit avec paiements progressifs" and is provided by **Bpifrance Assurance Export** for convenience only. **Bpifrance Assurance Export** has made its best effort to ensure that the information provided is as complete and correct as possible. Nevertheless, **Bpifrance Assurance Export** cannot be held responsible for any errors, mistakes, or discrepancies between this translated version and the original document and cannot be held liable for any loss or damage resulting out of reliance on this translation.

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For more information please contact myriam.crosnier@bpifrance.fr

* Attach copies of the valid national identity card or passport of the signatory, and his power(s) of attorney if he is not the legal representative of the company.

Bpifrance Assurance Export

Acting in the name, on behalf and under the control of the State, in accordance with article L. 432-2 of the French Insurance Code.

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