

General Terms and Conditions for Letter of Credit Confirmation Insurances GT&C LC

Schweizerische Exportrisikoversicherung
Assurance suisse contre les risques à l'exportation
Assicurazione svizzera contro i rischi delle esportazioni
Swiss Export Risk Insurance



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The General Terms and Conditions for Letter of Credit Confirmation Insurances (GT&C LC) of the Swiss Export Risk Insurance (SERV) shall apply to the extent that individual regulations are not expressly excluded or amended by special provisions in the insurance policy. The applicability of the GT&C LC shall be governed by the Swiss Export Risk Insurance Act (SERVG) and the Swiss Export Risk Insurance Ordinance (SERV-V) in the version valid on the date of issue of the insurance policy. These GT&C LC and other terms and conditions of SERV, which constitute part of the insurance policy, do not grant the policyholder any rights beyond those contained in SERVG and SERV-V.

1 Object and Scope of Insurance

- 1.1 The insurance covers the fulfilment of the following principal claims of the policyholder from credit transactions against the bank opening the letter of credit (debtor) for credit amounts paid to the exporter upon receipt of the documents specified in the letter of credit, up to the maximum amount specified in the insurance policy:
- 1.1.1 the claim to reimbursement of the credit amount paid to the exporter against the issuing bank, if the policyholder has confirmed the letter of credit by order of the issuing bank; or
 - 1.1.2 the claim to payment from the letter of credit against the issuing bank that the exporter gained by way of legally effective assignment, if the policyholder has silently confirmed the letter of credit for the benefit of the exporter.
- 1.2 The insurance also covers claims that replace the claims originally agreed as compensation due to agreements with the debtor or for other legal reasons.
- 1.3 Contractual reimbursement claims for ancillary financing costs, interest claims up to maturity, and contractually agreed or statutory default interest from the maturity of an insured principal claim up to the occurrence of the insured event are also insured within the scope of the maximum amount documented for this purpose (ancillary claims).
- 1.4 Costs resulting from premature repayment of a refinancing measure ("breakage costs") shall be added to the insured interest claims, provided the debtor is under the contractual obligation to reimburse these costs.
- 1.5 Any further damage compensation claims, contract penalties, or compound interest, in particular, are excluded from the insurance. The same applies to currency losses as primary risk of insured foreign currency claims.
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2 Contract Currency

- 2.1 The Swiss franc (CHF) is the contractual currency of the insurance policy, unless another contract currency is agreed in the insurance policy.
- 2.2 Premiums and insurance benefits shall be paid in the contract currency.
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3 Liability Period

- 3.1 The liability for the insured risks begins upon
- 3.1.1 confirmation of the letter of credit by order of the issuing bank; or

- 3.1.2 silent confirmation for the benefit of the exporter.
 - 3.2 If collateral is required to cover the del credere risk, it must be provided before the commencement of the risk. Otherwise, pursuant to section 4.4, the liability for the del credere risk will only begin when the collateral is provided.
 - 3.3 In the event of risk aggravating factors, SERV may declare that any liability is excluded for letters of credit for which the policyholder has not yet assumed any liability to the exporter through confirming the letter of credit when such declaration is received.
 - 3.4 The liability of SERV expires upon fulfilment of the insured claim. The same shall apply if an insured claim is assigned without the consent of SERV as required pursuant to section 19.1.
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4 Insured Risks

- 4.1 Political risk
 - 4.1.1 The insurance covers the risk that the settlement of an insured claim at maturity may be impossible as the direct result of political causes.
 - 4.1.2 Political causes are unforeseeable, extraordinary measures of foreign states, war or war-like events, revolution, annexation, or civil unrest abroad as well as domestic government measures (export prohibitions).
- 4.2 Transfer risk and payment moratorium
 - 4.2.1 The insurance covers the risk that amounts that the debtor has paid in for transfer to the policyholder may not be converted to the agreed currency or not transferred to the policyholder at maturity of the receivable due to impairments of the international payment transactions.
 - 4.2.2 A payment moratorium causes the insured default of a receivable if the debtor is unable to pay at maturity due to an official or statutory payment prohibition.
- 4.3 Force majeure
 - 4.3.1. The insurance covers the risk of inability to fulfil an insured claim at maturity directly due to force majeure.
 - 4.3.2. Force majeure refers to events like whirlwinds, flooding, earthquakes, volcanic eruptions, flood tides, and nuclear accidents outside Switzerland.
 - 4.3.3. The liability of SERV for these risks is subject to the condition that the policyholder was unable to insure these risks with private insurance companies at market conditions prior to the commencement of the risks.

4.4 Del credere risk

The insurance covers the economic risk of default of an insured claim due to the debtor's unwillingness or inability to pay at maturity.

5 Occurrence of the Insured Event

5.1 The insured event shall occur upon expiry of a waiting period of one month from the occurrence of an insured risk.

5.2 If a joint liability of third parties (collateral) is documented in the insurance policy, the insured event shall only occur after the occurrence of the risk in respect of the collateral that is insured pursuant to section 4 and after the expiry of the waiting period.

6 Conditions for Indemnification

6.1 Requests for indemnification payments shall be made in writing and must be accompanied by all documents required to determine the loss incurred.

6.2 The policyholder shall, at his own expense, provide proof of the existence, the maturity, and the legal enforceability of the insured claim and of the collateral listed in the insurance policy. The burden of proof also applies to the causal connection between the insured risk and the loss incurred.

6.3 If the claim for which indemnity is requested, or collateral for the claim, is disputed by the debtor, SERV may request that proof of existence of the claim be established by order of the court of jurisdiction.

6.4 Indemnity payments are excluded as long as the existence, the maturity, and the legal enforceability of a claim to be indemnified are not established beyond doubt.

7 SERV's Option Right

7.1 If the entire balance of the insured claims becomes due immediately because of contractual or statutory regulations, SERV shall nevertheless be entitled to pay indemnity in accordance with the originally agreed payment terms and maturities as documented in the insurance policy.

7.2 SERV may at all times pay indemnity, including any breakage costs covered by the insurance, before these maturities.

8 Cover Ratio and Deductible

8.1 Unless otherwise specified in the insurance policy, the standard cover ratio for all insured risks is 95 percent.

8.2 The policyholder may not insure the deductible of 5 percent elsewhere or shift it to the exporter.

9 Calculation of Indemnity

9.1 SERV will determine the amount of indemnifiable claims under consideration of all payments made by the debtor or guarantor that are eligible for allocation.

- 9.2. If the policyholder has several open claims from his business relationship with the debtor, non-earmarked payments will be allocated as follows:
- 9.2.1 Payments of the debtor will be set off against insured and uninsured claims in the order of their maturity.
- 9.2.2 If insured and uninsured claims become due at the same time, allocation will take place on a pro-rata basis.
- 9.3 Payments made by a guarantor, surety, or third party as well as other pecuniary gains that the policyholder receives in connection with the occurrence of an insured event, will be set off pursuant to section 9.2.
- 9.4 The insured claim amount remaining after the allocation will be multiplied with the cover ratio documented in the insurance policy.
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10 Conversion of Foreign Currency Claims

- 10.1 Indemnifiable foreign currency claims will be converted at the reference rate of the Swiss National Bank on the date of occurrence of the insured event (indemnification conversion rate).
- 10.2 The indemnification conversion rate is limited to the amount of the premium conversion rate, unless the suspension of this rate limitation is documented in the insurance policy at the policyholder's request against premium supplement.
- 10.3 The conversion rate (premium conversion rate) that is relevant for the calculation of the premium is the reference rate of the Swiss National Bank on the day before SERV reaches a final decision on whether to accept the insurance application.
- 10.4 Recoveries in foreign currency will be converted at the reference rate of the Swiss National Bank on the date on which the policyholder receives the payment.
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11 Payment of the Indemnity

- 11.1 SERV will establish the occurrence of the insured event within one month from the submission of all documents required for the loss assessment.
- 11.2 SERV will pay the indemnity within thirty days of its written acknowledgement of the insured event.
- 11.3 Any costs for payment into an account outside Switzerland shall be borne by the policyholder.
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12 Transfer of the Indemnified Claims

- 12.1 Upon payment of the indemnity, the insured claims, ancillary claims, and collateral shall be transferred to SERV in the amount of the indemnification paid.
- 12.2 At the request of SERV, the policyholder shall perform all legal acts necessary for the transfer of such rights.

- 12.3 If transfer of rights is not possible under applicable law and SERV waives the required transfer of rights for the time being, the policyholder shall keep such rights on a fiduciary basis on behalf of SERV.

13 Legal Action and Cost Contribution

- 13.1 Notwithstanding the transfer of claims pursuant to section 12, the policyholder shall remain responsible for taking measures to recover assets and mitigate loss.
- 13.2 SERV will contribute proportionally to all appropriate and reasonable costs and expenses that the policyholder incurs with the consent of SERV after the occurrence of an insured event acknowledged by SERV and that are not part of normal business, dunning, or collection activities.
- 13.3 In individual cases, SERV may also contribute to the costs of loss avoidance or mitigation measures taken before the occurrence of an insured event, provided it consented in writing to such a request.

14 Debt Rescheduling and Restructuring

- 14.1 SERV is entitled to conclude debt rescheduling agreements for insured claims including the policyholder's deductible with the debtor country. In this context, it may include uninsured ancillary claims and uninsured portions of only partly insured claims. The policyholder, his legal successor, or assignees must accept these agreements even without their consent.
- 14.2 SERV is entitled to agree concessions on interest and debt remission or debt relief of up to 100 percent, also at the expense of the included claim portion of the policyholder. SERV may also accept currencies other than the one originally agreed. Concerning the included claim and claim portions, the policyholder is bound to the conversion rate agreed in the debt rescheduling agreement.
- 14.3 The settlement of losses by means of debt rescheduling agreements is governed by Art. 25 SERV-V. Disadvantages, particularly lost interest income or breakage costs that the policyholder incurs due to premature repayments accepted by SERV are not reimbursable.
- 14.4 The aforesaid principles apply analogously to restructuring agreements with private debtors.
- 14.5 Upon request, SERV may also include uninsured claims in a debt rescheduling agreement. It may make this conditional upon the payment of additional premiums.
- 14.6 SERV shall forward incoming payments under a debt rescheduling or restructuring agreement to the policyholder on a pro-rata basis in proportion to the cover ratio.
- 14.7 Recoveries in foreign currency will be converted at the reference rate of the Swiss National Bank on the date on which SERV receives the payment.

15 Obligations of the Policyholder

- 15.1 The policyholder shall fully and accurately present all material circumstances of relevance to the acceptance of the insurance and the entitlement to indemnification and shall imme-

diately notify SERV in writing of any changes relevant to the decision concerning the conclusion of the insurance.

- 15.2 Swiss or foreign legal provisions must not be violated in connection with the conclusion or processing of the letter of credit transaction.
- 15.3 When processing the letter of credit transaction, the policyholder shall not deviate substantially from the factual content documented in the insurance policy without the consent of SERV.
- 15.4 The policyholder shall inform SERV about the fulfilment of the insured claims without delay.
- 15.5 The policyholder shall without delay report any material breaches of obligations by the debtor, risk-aggravating factors, and the occurrence of the insured event. The presence of risk-aggravating factors must be assumed especially if the debtor submits a request for extension or if other information about a general deterioration of the debtor's or guarantor's asset position is available.
- 15.6 The policyholder shall take all measures required and suitable to avoid an insured event or to mitigate a loss in accordance with the standards of banking diligence. The policyholder shall without delay follow any instructions of SERV in this regard.
- 15.7 In the insured event, the policyholder shall inform SERV in writing as to any defences and objections raised by the debtor or guarantor against the defaulted claim.
- 15.8 Upon request, SERV shall be informed at any time about the details and the processing status of the export transaction and other circumstances that could be relevant for the letter of credit confirmation insurance.
- 15.9 The policyholder shall grant SERV or its authorised representative access to books, records, and other documents that could be relevant for the letter of credit confirmation insurance.
- 15.10 The policyholder shall treat as confidential all information that he receives in connection with the decision of SERV concerning the creditworthiness of the debtor or guarantor.

16 Exclusion of Indemnification

- 16.1 Should the policyholder breach any of his obligations, including obligations under SERV G and SERV-V, no indemnity will be paid if SERV would not have granted cover, or not to the extent accorded, if the policyholder had fulfilled his obligations or if a loss has occurred or threatens to occur due to the breach of obligations.
- 16.2 Indemnification is not excluded if the policyholder can produce evidence that the breach of obligations was not his fault.
- 16.3 Indemnification is definitely excluded:
 - 16.3.1 in the event of late payment of the premium, if an insured risk already occurred prior to the payment of the premium; or

16.3.2 if the policyholder breached Swiss or foreign legal regulations in connection with the conclusion or processing of the letter of credit credit transaction.

16.4 Any further claims of SERV based on the policyholder's breach of obligations remain unaffected.

17 Recovery and Repayment of Indemnity

17.1 After the indemnity is paid, the policyholder shall promptly advise SERV of any incoming payments or payments eligible for allocation and of any realisation or enforcement proceeds or other pecuniary gains received in connection with the insured event (recoveries), and shall transfer such to SERV on a pro-rata basis in proportion to the cover ratio. The policyholder may deduct any eligible costs of legal action from the recovered amounts.

17.2 If it proves, after the indemnity has been paid, that the conditions for indemnification were not fulfilled or subsequently ceased to exist, the indemnity paid shall be refunded, along with any reimbursed costs of legal action.

17.3 In the event of recovery pursuant to section 17.1, interest shall be paid on the repayment claim from the date the payment was received. In the event of repayment pursuant to section 17.2, the obligation to pay interest shall commence from the date of indemnification or cost contribution, but no later than the date on which the conditions for indemnification ceased to exist.

18 Premiums

18.1 The premiums and any reimbursement of premiums already paid are governed by the premium tariffs of SERV in effect when the letter of credit confirmation insurance was issued.

18.2 The policyholder is the premium payer.

19 Assignment of the Insured Claim

19.1 The insured claim may only be assigned together with the entitlement from the insurance policy. The assignment is subject to the written consent of SERV. SERV may make its consent conditional upon the fulfilment of special provisions.

19.2 The legal relations between SERV and the policyholder remain unaffected by the assignment.

20 Cancellation of the Insurance Policy

20.1 SERV may cancel the insurance policy

20.1.1 if the policyholder gives rise to material grounds that render the continuation of the insurance unacceptable for SERV, or

20.1.2 if the policyholder breaches obligations from the insurance policy in an other way, particularly by falling into arrears on his premium payments, and SERV has requested him to restore the contractual state within a set period and has threatened cancellation if the situation is not remedied by the time the deadline expires.

20.2 The policyholder may cancel the insurance policy at any time without prior notice.

21 Final Provisions

- 21.1 All amendments and supplements to the insurance policy must be made in writing.
- 21.2 All notifications and declarations of the policyholder shall be submitted in writing to the registered office of SERV.
- 21.3 The federal administrative law of Switzerland shall apply. The Federal Administrative Court shall have sole jurisdiction over disputes in connection with the letter of credit confirmation insurance (Art. 35 lit. a of the Swiss Administrative Court Act).