

General Terms and Conditions for Working Capital Insurance GT&C WC

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 Working Capital Insurances (GT&C WC) 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 WC shall be governed by the Swiss Act on the Temporary Extension of the Insurance Services of SERV, 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 WC 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 the Swiss Act on the Temporary Extension of the Insurance Services of SERV, SERVG, and SERV-V.

1 Object and Scope of the Insurance

- 1.1 The insurance covers the fulfilment of the repayment claims against the exporter agreed in the working capital loan agreement for credit amounts paid to the exporter (principal claim) up to the maximum amount determined in the insurance policy. By means of the working capital loan agreement, the policyholder grants the exporter a loan to finance the prime costs for the production of the goods and services for the documented export transaction.
 - 1.2 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 framework of the maximum amount documented for this purpose (ancillary claims).
 - 1.3 Costs resulting from premature redemption of a refinancing measure (“breakage costs”) shall be added to the insured interest claims, provided the exporter is under the contractual obligation to reimburse these costs.
 - 1.4 Any further damage compensation claims, contract penalties, or compound interest, in particular, are excluded from the insurance.
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2 Contract Currency

- 2.1 The currency of the working capital loan is the contract currency of the insurance policy. Only working capital loans denominated in CHF, EUR, or USD are covered.
 - 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 risk begins upon payment of the loan and with each loan payment respectively. The liability for reimbursement claims for ancillary financing costs begins when these become due.
- 3.2 If collateral is required, it must be provided before the commencement of the risk. Otherwise, the liability will only begin when the collateral is provided.
- 3.3 In the event of risk-aggravating factors, SERV may at any time declare to the policyholder and to the exporter that the exporter is to interrupt or terminate production. SERV will only assume liability for loan amounts that the exporter claims for prime costs incurred until the interruption or termination of the production and for breakage costs.

- 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.
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4 Insured Risks

The insurance covers the risk of non-fulfilment of an insured claim due to the exporter's unwillingness or inability to pay at maturity.

5 Occurrence of the Insured Event

- 5.1 The insured event occurs upon expiry of a waiting period of one month from the occurrence of the 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 insured risk in respect of the collateral security and after the expiry of the waiting period.
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6 Conditions for Indemnification

- 6.1 Requests for indemnification payments shall be made in writing by the policyholder and must be accompanied by all documents necessary to determine the incurred loss.
- 6.2 The policyholder shall, at his own expense, provide proof of the existence, the maturity, and the absence of defence 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 exporter, SERV may request that proof of existence of the claim and of the absence of defence be established by order of the competent court.
- 6.4 Indemnity payments are excluded as long as the existence, the maturity, and the absence of defence of a claim to be indemnified are not established beyond doubt.
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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 pay indemnity, including any breakage costs covered by the insurance, at any time before these maturities.
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8 Cover Ratio and Deductible

- 8.1 Unless otherwise specified in the insurance policy, the cover ratio is 80 percent.
- 8.2 The policyholder may not insure the deductible elsewhere without the consent of SERV.
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9 Calculation of Indemnity

- 9.1 SERV will determine the amount of indemnifiable claims, under consideration of all payments made that are eligible for allocation.

- 9.2. If the policyholder has several open claims from his business relationship with the exporter, non-earmarked payments will be allocated as follows:
- 9.2.1 Payments of the exporter 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. Payments of the buyer, his guarantor, or the export creditor for services of the exporter from the documented export transaction will be allocated in proportion of the payment amount to the total shipment value of the export transaction. The down payment is exempted from this regulation.
- 9.5 Indemnities of SERV paid on the basis of an export credit insurance or a working capital insurance for the documented export transaction shall be fully allocated.
- 9.6 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 Payment of the Indemnity

- 10.1 SERV will establish the occurrence of the insured event within one month from the submission of all documents required for the loss assessment.
- 10.2 SERV will pay the indemnity within 30 days of its written acknowledgement of the insured event.
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11 Transfer of the Indemnified Claim

- 11.1 Upon payment of the indemnity, the insured claims, ancillary claims, and collateral shall be transferred to SERV in the amount of the indemnification paid.
- 11.2 At the request of SERV, the policyholder shall perform all legal acts necessary for the transfer of such rights.
- 11.3 If transfer of rights is not possible 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.
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12 Legal Action and Cost Contribution

- 12.1 Notwithstanding the transfer of claims pursuant to section 11, the policyholder shall remain responsible for taking measures to recover assets and mitigate loss.

- 12.2 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.
- 12.3 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.

13 Obligations of the Policyholder

- 13.1 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 immediately notify SERV in writing of any changes relevant to the decision concerning the conclusion of the insurance.
- 13.2 Legal provisions must not be violated in connection with the conclusion or execution of the loan agreement.
- 13.3 The policyholder shall apply a risk margin to the working capital loan, which is usual in the market and shall be calculated on the basis of the total credit without taking the working capital insurance into consideration.
- 13.4 When processing the credit transaction, the policyholder shall not deviate substantially from the factual content documented in the insurance policy without the consent of SERV.
- 13.5 The policyholder shall without delay report any material breaches of obligations by the exporter, risk-aggravating factors, and the occurrence of the insured event. The presence of risk-aggravating factors must be assumed especially if the exporter submits a request for extension or if other information about a general deterioration of the exporter's asset position is available.
- 13.6 Subject to section 3.3, the policyholder shall not make further loan payments without the written consent of SERV if risk-aggravating facts have occurred since the insurance was accepted.
- 13.7 The policyholder may only cancel the loan agreement or suspend the payment of the loan in agreement with SERV.
- 13.8 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.
- 13.9 In the insured event, the policyholder shall inform SERV in writing about any defences and objections raised by the exporter against the defaulted claim.

- 13.10 Upon request, SERV shall be informed at any time about the details and the status of the production, payment, and other circumstances that could be relevant for the working capital insurance.
- 13.11 The policyholder shall grant SERV or its authorised representative access to books, records, and other documents that could be relevant for the working capital insurance.
- 13.12 The policyholder shall treat as confidential all information about the exporter that he receives from SERV in connection with the working capital insurance.
- 13.13. The policyholder shall request evidence that the exporter is using the loan for the production of the goods and services required for the fulfilment of the documented export transaction and review such evidence in accordance with the standards of banking diligence.
- 13.14 The policyholder shall demand the assignment of the exporter's receivables from the documented export transaction and the indemnification claims from the associated export credit and pre-shipment risk insurances of SERV to the extent of the working capital insurance cover.
- 13.15 The policyholder shall ensure that all payments and recoveries in connection with the working capital loan and the insured claims and production risks from the documented export transaction are processed via an account used exclusively for these purposes (working capital loan account). This does not apply to repayments of export credits with whose payments the working capital loan account has already been set to zero.

14 Exclusion of Indemnification

- 14.1 Should the policyholder breach any of his obligations, including the obligations under SERVG or SERV-V, no indemnity will be paid if SERV would not have granted cover or not to the granted extent if the policyholder had fulfilled his obligations or if a loss has occurred or threatens to occur due to the breach of obligations.
- 14.2 Indemnification is not excluded if the policyholder can produce evidence that the breach of obligations was not his fault.
- 14.3 Indemnification is definitely excluded:
 - 14.3.1 in the event of late payment of the premium, if an insured risk already occurred prior to the payment of the premium; or
 - 14.3.2 if the policyholder breached legal provisions in connection with the conclusion or execution of the loan agreement.
- 14.4 Any further claims of SERV based on the policyholder's breach of obligations remain unaffected.

15 Recoveries and Repayments

- 15.1 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.
- 15.2 If it proves, after the indemnity has been paid, that the conditions for indemnification were not fulfilled or subsequently failed to exist, the policyholder shall without delay fully reimburse all costs SERV incurred due to the claim plus five percent interest for the period since SERV made the payment.
- 15.3 In the event of recovery (section 15.1), interest shall be paid on the repayment claim from the date the payment was received. In the event of repayment (section 15.2), 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.
- 15.4 Indemnities that are paid by SERV on the basis of the working capital insurance and that the exporter does not reimburse will be set off against subsequent indemnification claims from export credit or pre-shipment risk insurances for the documented export transaction.

16 Premiums

- 16.1 The premiums and any reimbursement of premiums already paid are governed by the premium tariffs of SERV in effect when the working capital insurance was issued.
- 16.2 The policyholder is the premium payer.

17 Assignment of the Insured claim

- 17.1 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.
- 17.2 The legal relations between SERV and the policyholder remain unaffected by the assignment.

18 Cancellation of the Insurance Policy

SERV may cancel the insurance policy

- 18.1 if the policyholder gives rise to material grounds that render the continuation of the insurance unacceptable for SERV, or
- 18.2 if the policyholder breaches obligations from the insurance policy in an other way, particularly by not paying the premiums within 10 banking days after the due date, 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.

19 Final Provisions

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