

## **General Conditions for Export Receivables Guarantees**

### **Covering receivables that an exporter has from a foreign buyer**

15 April 2008

The Export Receivables Guarantee entitles the Exporter to indemnification from Finnvera, in accordance with the Guarantee Agreement and these General Conditions, in a situation where the Exporter has not received payment for undisputed and overdue receivables as per the Delivery Contract.

#### **1 Definitions**

Capitalised terms used in these General Conditions shall have the following meanings:

Banking Day	A day on which banks are generally open for business in Helsinki.
Buyer	The foreign buyer defined in the Guarantee Agreement.
Delivery Contract	The written contract concerning the exports, or some other document containing the payment terms and other main terms of the transaction, as specified in the Guarantee Agreement.
ECB Exchange Rate	The euro foreign exchange reference rate published by the European Central Bank. Should no such rate be available, the exchange rate shall be the average exchange rate quoted by three major international banks for the purchase of such currency.
Exporter	The exporter specified in the Guarantee Agreement.
Finnvera	Finnvera plc, operating as the official export credit agency in Finland.
Goods	The goods to be exported under the Delivery Contract, specified in the Guarantee Agreement. The exports may also consist of services, either in full or in part.
Guarantee Agreement	The guarantee agreement entered into between the Exporter and Finnvera, including any amendments made thereto.
Guarantee Premium	The premium specified in the Guarantee Agreement, charged by Finnvera from the Exporter.
Guaranteed Receivables	The Exporter's receivables from the Buyer as per the Delivery Contract and specified in the Guarantee Agreement. Guaranteed Receivables do not include any default interest.
Handling Fee	A handling fee defined in the Guarantee Agreement that Finnvera charges from the Exporter for the handling of applications pertaining to the guarantee and for amendments made to the Guarantee Agreement. No Handling Fee is charged for the handling of claims for indemnification.

Percentage of Cover	The percentage of Guaranteed Receivables covered by the guarantee.
Self-risk Portion	The share of the Guaranteed Receivables not covered by Finnvera.
Waiting Period	A continuous period of 90 days starting on the due date of the receivables as per the Delivery Contract.

## **2 Losses for Indemnification**

- 2.1 Based on the guarantee, the Exporter is entitled to indemnification from Finnvera for a loss that has arisen after the Guarantee Agreement was signed and that results from the fact that the Exporter has not received payment for undisputed and overdue Guaranteed Receivables as per the Delivery Contract.
- 2.2 The right to indemnification shall exist after the expiry of the Waiting Period. However, a Waiting Period shall not be applied in a situation where the Buyer has been placed into liquidation or bankruptcy, the Buyer is under ongoing company restructuring or in a process with similar effects, or if Finnvera deems that, owing to other circumstances, it is justified to conclude that the Buyer is effectively insolvent.
- 2.3 According to the guarantee, the Exporter is not entitled to indemnification when the Buyer has suspended or cancelled the Delivery Contract or has refused to receive the Goods in a situation where the Buyer has had the right to do the same.

## **3 Transfer of the Self risk Portion and the Rights under the Guarantee**

- 3.1 The Exporter may not cover the Self-risk Portion with a separate insurance, or otherwise transfer it to a third party, without Finnvera's prior written consent.
- 3.2 The Exporter may transfer the right to indemnification, based on the guarantee, to a bank or to some other financial institution by notifying Finnvera of the transfer. Any other transfer of rights requires Finnvera's written consent. The transferee shall under no circumstances obtain any better rights towards Finnvera than the Exporter would have had. After such transfer of rights the Exporter continues to be responsible for fulfilling the obligations specified in the Guarantee Agreement and in these General Conditions.

## **4 The Exporter's Obligations**

- 4.1 The Exporter agrees to pay Finnvera the Handling Fee and the Guarantee Premium specified in the Guarantee Agreement.
- 4.2 In all matters associated with the Delivery Contract, the Exporter shall exercise the same care as in a situation where there would be no guarantee. In accordance with the requirement to exercise care, the Exporter is responsible for ensuring that the Delivery Contract is binding and that any security granted for the fulfilment of the Buyer's obligations binds its providers. The Exporter's responsibility is not reduced by the fact that even when Finnvera is reserved the opportunity to review the Delivery Contract or when Finnvera has commented the same.
- 4.3 The Exporter shall comply with laws and other regulations issued by the authorities. In accordance with the requirement to exercise care, as specified in Section 4.2, the Exporter is also responsible for ensuring that all domestic and foreign permits and registrations required for implementing and fulfilling the Delivery Contract have been obtained and are valid.

- 4.4 The payment terms and other main terms of the Delivery Contract that were presented to Finnvera in connection with the guarantee application may not be changed without Finnvera's written consent, and the Exporter may not waive any rights based on the Delivery Contract or on the associated security. The same applies to the termination of the Delivery Contract.
- 4.5 The Exporter shall inform Finnvera without delay in writing if the Buyer is late in meeting payments, if the Buyer's financial situation has weakened or if there are any other changes in circumstances that increase the probability of a loss.

## **5 Claim for Indemnification**

- 5.1 The Exporter shall provide its claim to Finnvera in writing. For handling the claim, the Exporter shall present all documents and information in its possession or otherwise reasonably available. The Exporter must also give notice if the Buyer has contested its payment obligation or has presented some other claim pertaining to the Delivery Contract. In the event that the claim for indemnification lacks sufficient information, Finnvera requests the Exporter to provide the necessary additional information within a certain time limit.
- 5.2 The claim for indemnification shall have been received by Finnvera within 180 days from the date when the Guaranteed Receivables have fallen due in accordance with the Delivery Contract.
- 5.3 A claim in respect of expenses caused by the limitation of losses, the recovery of Guaranteed Receivables, and enforcement shall reach Finnvera within 180 days of the date when the expenses were paid.
- 5.4 If the last day of the time limit defined for the arrival of the claim is not a Banking Day, the time limit is extended to the next Banking Day.
- 5.5 If the Buyer has contested the payment obligation based on the Delivery Contract, and Finnvera does not consider the contestation to be obviously unfounded, the matter must be decided by a competent court or by arbitrators before a decision on the claim is made. The Exporter will be responsible for the costs of the above proceedings in the event that the Buyer is not required to pay the Guaranteed Receivables.

## **6 Calculation of Loss and Amount of Indemnification**

- 6.1 The amount of the loss is calculated so that the following amounts, which can be allocated to the Guaranteed Receivables, are deducted:
- a) payments received from the Buyer or some other party liable for payment;
  - b) assets accumulated from the realisation of Goods;
  - c) counterclaims eligible for set-off that the Buyer or some other party liable for payment has against the Exporter;
  - d) any compensations and discounts granted by the Exporter to the Buyer, and contractual penalties and damages received by the Exporter as per the Delivery Contract; and
  - e) any expenses included in the Guaranteed Receivables that the Exporter has not incurred owing to materialisation of the loss (including uncharged agent's fees).
- 6.2 If the amounts to be deducted from the Guaranteed Receivables are denominated in a currency other than that of the Guaranteed Receivables, the amounts to be deducted shall be converted into the currency of the Guaranteed Receivables. The rate shall be the ECB

Exchange Rate published on the date on which the amounts were received or a set-off in respect of the counterclaim is made, or on the date of the refund invoice.

- 6.3 The amount of the indemnification shall be calculated by multiplying the loss by the Percentage of Cover.

## **7 Indemnification for Collection and Enforcement Expenses**

In accordance with the Percentage of Cover, Finnvera shall pay indemnification to the Exporter for the necessary and reasonable collection and enforcement expenses incurred in meeting the obligations set forth in these General Conditions. If there are any other receivables to which the expenses relate the expenses shall be divided between such other receivables that the Buyer owes to the Exporter and the Guaranteed Receivables proportionally. Finnvera does not indemnify any default interest or other interest accumulated on the expenses.

## **8 Decision on and Payment of Indemnification**

- 8.1 Finnvera shall make the decision on indemnification within 30 days of having received the claim and all the necessary information for making the decision. Should the Exporter not have provided Finnvera with the additional information requested, Finnvera makes the decision on the basis of the information available within 30 days of the deadline specified in the request for additional information.
- 8.2 Finnvera shall pay the indemnification in the currency of the Guaranteed Receivables without delay once the decision to pay has been made. However, the indemnification is not paid until the Waiting Period referred to in Section 2.2 has expired.
- 8.3 Finnvera shall pay the collection and enforcement expenses in the currency in which these expenses were paid. Should this not be possible, expenses pertaining to the Guaranteed Receivables shall be converted into euros. The exchange rate is the ECB Exchange Rate on the date when the expenses were paid.
- 8.4 If Finnvera has given some other guarantee as security for a credit granted to the Exporter, and the credit or part of it is outstanding when the decision on indemnification is made, Finnvera is entitled to pay the indemnification for the guarantee to the lender. Finnvera is also entitled to use the indemnification towards receivables that Finnvera or the State of Finland have from the Exporter and that are based on credits, guarantees or other commitments given by Finnvera or its predecessors.

## **9 Collection and Limitation of Losses**

- 9.1 The Exporter shall take all the necessary actions to safeguard the Guaranteed Receivables, to limit losses and to recover the receivables. If the actions involve major expenses or if the Exporter is uncertain about their necessity, the Exporter must consult Finnvera before taking the actions. The Exporter shall consult with Finnvera when Goods need to be realised. The Exporter must adhere to the instructions given by Finnvera. However, no consultation is required if actions need to be initiated urgently or if the costs involved are minor.
- 9.2 At any time of payment of indemnification is paid, the Exporter must transfer its rights based on the Delivery Contract to Finnvera, to the extent deemed appropriate by Finnvera. The Exporter must assist Finnvera in all reasonable ways to recover the Guaranteed Receivables and to realise the Goods after the transfer. At its discretion, Finnvera is entitled to redeem the

Goods or to require that the Exporter sells the Goods to a third party at fair value. The fair value is determined by an outside expert appointed by Finnvera.

- 9.3 In the event that the rights determined in the Delivery Contract have been transferred to Finnvera, the Exporter shall pay its share of the costs arisen after the transfer for measures taken to limit losses, to recover receivables or to realise Goods. The Exporter's share corresponds to the Self-risk Portion.

If the expenses do not only relate to the Guaranteed Receivables, the expenses are divided proportionally among all receivables subject to collection activities. However, the Exporter may give up collection insofar as the Self-risk Portion is concerned. At its discretion, Finnvera may then continue collection on its own account. In this case, Finnvera alone is responsible for expenses incurred after the Exporter's notification. Correspondingly, Finnvera shall have a right to retain all proceeds that it manages to recover.

## **10 Order of Allocation**

- 10.1 Payments relating to any of the Exporter's receivables from the Buyer shall be allocated to the receivables in the order in which they fall due, unless otherwise determined in the Delivery Contract.
- 10.2 If the payments allocated to the Guaranteed Receivables are not sufficient to cover the Guaranteed Receivables in full, the payments are allocated to expenses arising from the limitation of losses, collection of receivables and enforcement, to the principal of the Guaranteed Receivables in the order in which they fall due and, lastly, to interest and default interest specified in the Delivery Contract.
- 10.3 After the payment of indemnification, any payments that are received with respect to the Guaranteed Receivables shall be divided between Finnvera and the Exporter in relation to the Percentage of Cover and the Self-risk Portion. The party that has received the payment shall pay the share belonging to the other party within a reasonable time.

## **11 Release of Finnvera from Liability**

- 11.1 Finnvera shall be released from liability to pay indemnification if:
- a) The Exporter has not paid the Guarantee Premium specified in the Guarantee Agreement; or
  - b) The Exporter has not submitted a claim for indemnification to Finnvera within the time limit set for the same.
- 11.2 Finnvera shall also be released from liability to pay indemnification if:
- a) The Exporter has given Finnvera false or misleading information or has not disclosed information that the Exporter knew or should have known to be significant when processing the guarantee application, or
  - b) The Exporter has failed to comply with these General Conditions and/or with the terms and conditions of the Guarantee Agreement, and such non-compliance cannot be considered to have only insignificant consequences in relation to the cause or amount of the loss.

However, notwithstanding the provisions of this Section 11.2, Finnvera may decide to pay indemnification or not to reclaim any indemnification already paid, in part or in full, if the

Exporter's negligence is to be regarded as irrelevant or if releasing Finnvera from liability or reclaiming the indemnification paid would be unreasonable.

- 11.3 In the event that Finnvera is released from liability either in full or in part, the Exporter shall – on demand of Finnvera – repay part or all of the indemnification paid and shall indemnify Finnvera for all expenses incurred in the recovery. The sum to be returned and the expenses are subject to an annual interest, determined in accordance with the Interest Act (633/1982). The interest is calculated from the date of payment of indemnification (or from the day when Finnvera paid the expenses) up to the actual repayment date. The interest is calculated on the basis of the actual number of days elapsed in a year of 360 days.

## **12 Default Interest**

In the event that any amount which the Exporter or Finnvera is obliged to pay under the Guarantee Agreement and these General Conditions is delayed, the relevant party shall pay annual default interest determined in accordance with the Interest Act (633/1982). The default interest shall be calculated on the basis of the actual number of days elapsed in a year of 360 days.

## **13 Confidentiality**

Finnvera shall keep confidential all information disclosed by the Exporter to Finnvera with respect to the guarantee, unless otherwise required by law, other regulations or Finnvera's international cooperation, or unless the Exporter has consented to publication of the information.

## **14 Applicable Law and Dispute Settlement**

- 14.1 The guarantee shall be governed by Finnish law.
- 14.2 Disputes arising from the guarantee shall be decided by the District Court of Helsinki.
- 14.3 In the event that the Exporter is not satisfied with Finnvera's decision on indemnification, the Exporter shall institute legal proceedings regarding the decision on indemnification in the Helsinki District Court within 180 days after having received the decision. If the Exporter fails to do so, the Exporter shall forfeit its right to contest against the decision.