

# **Atradius Modula First Policy - Sample**

## **Trade Credit Insurance for SME's Made Easy**

## Agreement

### 00100.00 Agreement

We, the Insurer, have issued this policy of insurance to you, the Insured named in the Policy Schedule. We agree to indemnify you in accordance with the terms and conditions of this policy for the loss you may sustain in the event that you do not receive full payment for Insured Receivables because of the occurrence of a Covered Cause of Loss.

## Covered causes of loss

### 00300.00 Insolvency

For the purposes of this policy, the Covered Cause of Loss Insolvency shall mean any of the following situations or events:

- a) the institution of a judicial or administrative procedure pursuant to the law of the Buyer's country, whereby the assets and affairs of the Buyer are made subject to control or supervision by the court or a person or body appointed by the court or by law, for the purpose of reorganisation or liquidation of the Buyer or of the rescheduling, settlement or suspension of payment of its debts;
- b) a procedure as described above has been rejected or stopped by the court for lack of assets;
- c) the execution of a judgement fails to satisfy the amount owing in full;
- d) an extrajudicial full and final settlement has been agreed with all or the majority of creditors and we have given our prior approval;
- e) you show to our satisfaction that the financial position of the Buyer is such that to start or continue legal proceedings will have no cost effective result;
- f) such situations or events which, in our sole opinion, in substance or effect are equivalent to the situations and events mentioned in a) to d) above.

For this Covered Cause of Loss, the Date of Loss shall be:

for a) and b) the date of the court order or decision;

for c) the day of the unsuccessful execution of the judgement;

for d) the day on which all or the majority of creditors have agreed to the settlement;

for e) and f) the day on which we have informed you that we have formed such opinion.

## Excluded causes of loss

### 01200.0 Generally excluded losses

Cover shall not apply to:

- a) losses directly or indirectly caused by, contributed to by or arising from the ionising, radioactive, toxic, explosive or other hazardous or contaminating properties or effects of any explosive nuclear assembly or component thereof, nuclear fuel, combustion or waste;
- b) losses caused by or resulting from disputes where the Buyer claims for any reason whatsoever that he is justified in withholding partial or full payment or not performing any of his obligations under the contract.

This exclusion shall no longer apply as soon as and to the extent that the dispute has been resolved in your favour either amicably or by a final court judgement or final arbitration award;

- c) losses caused by or resulting from a failure by you or by any person representing you or acting on your behalf to fulfil any of the terms and conditions of the contract or to comply with the provisions of any law or any order, decree or regulation having the force of law;
- d) losses caused by or resulting from a failure to obtain any import or export licence or other authorisation necessary for the performance of the contract or where performance of the contract would contravene any exchange control regulation. This exclusion does not apply where the necessity arose or exchange control regulation came into force after the date of Commencement of Cover;
- e) where goods are to be despatched to, services or work are to be performed in, or payment is to be made from a country other than the Buyer's country – losses arising in connection with the third country, unless we agree otherwise in writing.

**01300.00 Exclusion of political risk**

Cover shall not apply to any loss directly or indirectly caused by, contributed to by or arising from:

- a) a general moratorium, decreed by the government of the Buyer's country or of any country through which payment must be effected;
- b) political events, economic difficulties, currency shortages, devaluations or fluctuations, or legislative or administrative measures in the Buyer's country which prevent or delay the transfer of amounts deposited by the Buyer;
- c) war (including civil war, hostilities, rebellion and insurrection), revolution or riot;
- d) cyclone, flood, earthquake, volcanic eruption or tidal wave or other forms of natural disaster or force majeure;
- e) the introduction of import or export restrictions or the cancellation of import or export licences or other governmental measures which prevent performance of the contract.

**Insured Receivables****01700.00 Insured Receivables**

Insured Receivables are contractual amounts owing to you:

- a) by Buyers in the countries included in the Schedule of Countries and
- b) that arise from your normal *trade activities* as mentioned in the Policy Schedule and
- c) that relate to goods despatched or services or work performed within the *policy duration* and
- d) for which you have a valid Credit Limit for the Buyer and
- e) for which the payment terms agreed with the Buyer do not exceed the *maximum credit terms* mentioned in the Policy Schedule which shall be calculated from date of invoice and
- f) which comply with the conditions of cover for the Buyer's country as specified in the Schedule of Countries.

**02100.00 Invoicing period**

You must submit your invoices to the Buyer within the *invoicing period* mentioned in the Policy Schedule. The invoicing period shall be calculated:

- a) for the supply of goods: from the date of despatch of the goods;
- b) for the performance of services or work: from the date when you have completed such services or work for which you are entitled to receive payment from the Buyer.

**02400.00 Value Added Tax**

Amounts of Value Added Tax or comparable turnover-related tax or charges on Insured Receivables shall be either included or excluded from cover as indicated in the Policy Schedule.

**05005.00 Run-off cover**

Insured Receivables remaining unpaid or not yet due for payment at the expiry date of this policy shall continue to be covered under the same terms and conditions, until they are paid or a Covered Cause of Loss has occurred.

You must continue to comply with all terms and conditions of the policy in respect of such receivables.

Where the Date of Loss occurs after the expiry date of the policy, the terms and conditions applicable at the expiry date of the policy will continue to apply to claims made in respect of such losses.

**Excluded receivables****05400.00 General exclusions**

Cover shall not apply to any loss:

- a) in respect of any interest accruing after the original due date of payment;
- b) in respect of any penalties or damages, whether contractual or otherwise, which you may be entitled to be paid by the Buyer in addition to the amount owing;
- c) in respect of banking costs, unless contractually agreed to be part of the amount owing from the Buyer;

- d) in respect of any costs which you incur in resolving disputes between you and the Buyer or in defending any proceedings brought against you or initiated by you;
- e) you may sustain where and to the extent that such loss is (or would be but for the existence of this policy) capable of being covered by any other insurance held by you or from which you may be entitled to benefit or receive payment.

**06600.00 Advance payments exclusion**

The policy shall not apply to parts of receivables for which you have received cleared funds to your account before Commencement of Credit Risk Cover.

**07000.00 Cash on delivery exclusion**

The policy shall not apply to any cash on delivery business.

**Excluded buyers****08400.00 Associated buyers exclusion**

The policy shall not apply to amounts owed by Buyers over whom you have direct or indirect control or in whom you have a direct or indirect interest or who have such a control over or interest in you, unless we agree otherwise in writing.

**08500.00 Private individuals exclusion**

The policy shall not apply to amounts owed by private individuals not carrying out a commercial activity.

**08700.00 Public buyers exclusion**

The policy shall not apply to amounts owed by any State or governmental department, institution or organisation or any entity which cannot be declared insolvent.

**Credit Limits****09600.00 Credit Limits**

Credit Limits specify the maximum amount and the conditions on which we accept liability for each Buyer to which the policy applies.

You must have a Credit Limit for every Buyer to which the policy applies.

The Credit Limit must be established without undue delay, but in any event before the Date of Loss.

Outstanding receivables which exceed the Credit Limit shall fall within the Credit Limit as soon as and to the extent that payment is received in respect of earlier receivables which fell within the Credit Limit.

**10020.00 Credit Limits transferred or carried forward**

Any Credit Limit transferred either to a new policy or carried forward at renewal of your existing policy are continuing aggregate limits and not the granting of additional or new cover. The Credit Limit transferred or carried forward represents the aggregate maximum exposure we will cover under both the previous and new policy durations for the particular Buyer. The terms and conditions stated on Credit Limit Decisions will continue to apply and will prevail over the new policy duration.

**10800.01 Credit Limit Decisions / Credit Checks**

You may obtain a Credit Limit Decision using the online Credit Check facility.

A positive Credit Check results in a Credit Limit Decision for the amount specified as *credit check amount* in the Policy Schedule.

A negative Credit Check results in a zero Credit Limit Decision.

We may at any time and for any reason withdraw Credit Checks. Such withdrawals have no retroactive effect.

Credit Checks will be valid until we withdraw them or the policy is terminated.

#### **10950.01 Maximum aggregate Credit Limit Decisions amount**

The aggregate amount of all Credit Limit Decisions shall not exceed the amount of the *maximum aggregate CLD amount* specified in the Policy Schedule. As soon as the aggregate of your Credit Limit Decisions reaches this figure, we have the right to postpone the processing of any further Credit Limit applications. As soon as we exercise this right you will be informed in writing.

In order to avoid this, you should on a regular basis, reduce the aggregate amount of all Credit Limit Decisions by cancelling or reducing existing Credit Limit Decisions that are no longer in use.

#### **11200.00 Credit limit costs**

You must pay *credit limit costs* as specified in the Policy Schedule. The amounts mentioned are net of any applicable tax, which, if due, will be included in the invoice to you.

#### **Country cover terms**

##### **15600.00 Country cover terms**

We may at any time vary any of the conditions of cover or withdraw cover in respect of a particular country and revise the Schedule of Countries accordingly. Such variation or withdrawal shall have no retroactive effect and shall apply to goods to be despatched or services or work to be performed on or after the effective date specified in the revised Schedule of Countries.

#### **Start and end cover notifications**

##### **16500.00 Commencement of Credit Risk Cover**

Credit Risk Cover for each receivable commences

- a) for the supply of goods: when the goods are despatched. Despatch is deemed to be made when you or anyone acting on your behalf parts with possession of the goods for the purpose of fulfilling your contractual obligations with the Buyer;
- b) for the performance of services or work: when each invoice for such services or work performed is submitted to the Buyer.

##### **16900.00 Extending the due date of payment**

If the need arises, you may agree to or allow extensions of the original due date of payment for a receivable provided that these extensions do not exceed the *maximum extension period* specified in the Policy Schedule, which is calculated from the original due date of payment for the receivable.

The original due date of payment shall remain the date to be used for the application of the terms and conditions of the policy.

Such an extension is not permitted in the case of bills of exchange, promissory notes, cash against documents, documentary sight draft, documents against payment transactions or where payment is to be made by a letter of credit.

##### **17300.01 Automatic stoppage of cover**

Cover shall not apply in respect of any loss you may sustain in relation to goods despatched or, in the case of work or services, invoices submitted after the date of any of the following circumstances of Automatic Stoppage of Cover:

- a) payment of any receivable is still overdue from the Buyer at the expiry of the *maximum extension period* specified in the Policy Schedule. As soon as such receivable is paid, cover shall be reinstated for goods despatched or, in the case of work or services, invoices submitted after the date of payment, provided no other circumstance of Automatic Stoppage of Cover applies.
- b) you have placed for collection amounts owing to you from the Buyer. As soon as these amounts are paid, cover shall be reinstated for goods despatched or, in the case of work or services, invoices submitted after the date of payment, provided no other circumstance of Automatic Stoppage of Cover applies.

- a) the Buyer's Insolvency or
- b) we withdraw the Credit Limit Decision for the Buyer or withdraw cover in respect of the country of the Buyer.

#### **18500.01 Obligation to notify breach of maximum extension period**

You must notify us within 30 days if payment of any receivable is overdue from a Buyer at the expiry of the *maximum extension period*, unless such receivable is paid within these 30 days.

#### **18900.00 Obligation to notify adverse information**

You must notify us without undue delay of the occurrence of any circumstance or event likely to cause a loss. Such a circumstance or event shall include without limitation:

- a) the Buyer requests an extension of the due date of payment beyond the *maximum extension period* ;
- b) the Buyer fails to take up the goods or the documents on first presentation where the payment terms are cash against documents or documents against acceptance;
- c) the imminent or actual Insolvency of the Buyer;
- d) you have reason to believe that the Buyer is unable or is likely to be unable to perform or comply with the terms of the contract;
- e) the Buyer fails to honour a bill of exchange or a cheque due to lack of funds;
- f) the institution of any proceedings against the Buyer for non-payment of an amount owing;
- g) you become aware of unfavourable information concerning the Buyer's financial position, reputation or debt payment performance.

#### **19300.01 Reporting threshold**

Where the total of the unpaid amount(s) for which the *maximum extension period* has expired is less than or equal to the *reporting threshold* mentioned in the Policy Schedule, the following shall apply:

- a) you need not notify us thereof and
- b) the non-payment of such amount(s) shall not be deemed to be a circumstance that automatically stops cover for further trade with the Buyer until the occurrence of a Covered Cause of Loss.

However, your obligation to notify us without undue delay of the occurrence of any circumstance or event likely to cause a loss remains unaffected.

#### **19700.01 Queried invoices**

Where the Buyer disputes or queries that an amount is owing and the total of such queried or disputed amounts is less than 100% of the total amount outstanding on the Buyer, the non-payment of such an amount at the expiry of the *maximum extension period* shall not be deemed to be a circumstance that stops cover for further trade with the Buyer.

Your obligation to notify us if payment of the disputed or queried amount is overdue from a Buyer is no longer required.

However, your obligation to notify us without undue delay of the occurrence of any circumstance or event likely to cause a loss remains unaffected.

### **Loss prevention and debt collection**

#### **20100.00 Actions to minimise loss**

In all your dealings with Buyers, you must use due care and diligence as if you were uninsured. You must take all practicable measures to effect payment of the amount owing from the Buyer and to prevent and minimise loss. This includes, without limitation, ensuring that all rights against contract goods, Buyers and third parties are properly preserved and exercised. You must also take all steps that we may require in connection with a potential or actual loss - either before or after indemnification - including the institution of legal proceedings.

#### **20800.00 No contribution to costs**

We shall not contribute to any costs that you incur in fulfilling your obligation to prevent or minimise loss or in collecting the amount owing.

## Claims

### 21300.00 Allocation of payments

All amounts received by you, by any person acting on your behalf or by us before the Date of Loss shall for the purposes of the policy be allocated to all receivables due from the same Buyer in chronological order of due dates.

All amounts received by you, by any person acting on your behalf or by us after the Date of Loss shall be divided between you and us in the proportion in which the loss is borne by each of us. You must notify us immediately of the receipt of such amounts.

### 21310.00 Amounts held in trust

All amounts received by you or by any person acting on your behalf after the Date of Loss should immediately be remitted to us. Until this remittance is made, you hold such amounts in trust for us.

### 21700.00 Claims

#### 1. Latest date for submission

Any claim, including all available information, must be submitted at the latest 6 months from the Date of Loss.

You must submit all information and documents we require for assessment of the claim at the latest 1 months from the date of our request for such information and documents.

#### 2. Our response

We will provide you with the results of our claims examination within 30 days of the receipt of all information and documents required by us.

#### 3. Calculation of loss

Your loss shall be calculated as the amount owing to you from the Buyer at the Date of Loss less any credits due to the account of the Buyer and any savings that you make through non-fulfilment of the contract (including Agent's commission not payable).

For the application of the terms and conditions of the policy, credits are:

- a) payments by the Buyer (including cash on delivery) or by third parties but excluding cheques or bills of exchange not yet honoured or paid;
- b) credit notes;
- c) set offs;
- d) counterclaims;
- e) proceeds from securities or guarantees and
- f) proceeds from the resale of repossessed goods.

The Insured Loss shall be your loss in so far as it relates to unpaid Insured Receivables. The amount of our indemnification shall be the *insured percentage* either of the Insured Loss or of the amount of the Credit Limit for the Buyer, whichever is lower.

#### 4. Assignment and approval

If we so require, claims payments may be made subject to assignment to us of the total amount owing from the Buyer, including all rights and securities.

If we so require, claims payments may be made subject to your prior approval of our calculation of liability.

### 22900.01 Obligatory refund of payments to the insolvent estate

If under the law applicable to the Buyer's Insolvency, you are obliged to refund any payments which you received from the Buyer before their Insolvency due to a rightful claim to refund preferential payments or revocatory action from the insolvent estate or on the basis of a court ruling, you may submit a claim for any subsequent loss you sustain, provided that such loss relates to Insured Receivables and the terms and conditions of the policy have been met.

We will assess your claim in accordance with the policy terms and conditions in force at the date of the Insolvency of the Buyer. However, this cannot result in us paying in total more than the insured percentage of the Credit Limit for the Buyer. The following conditions shall apply:

- a) You must notify us without undue delay as soon as you become aware of the claim to refund, revocatory action or court ruling;
- b) You pursue, in a timely and appropriate manner, any valid defences available to you under the applicable (Insolvency) law;
- c) You must provide evidence that these payments have been refunded to the insolvent estate of the Buyer and that the underlying receivables have been filed in the creditor's list.

#### **23300.00 Insurer's maximum liability**

The maximum amount which we shall be liable to pay per *insurance year* shall be either the amount of the *insurer's maximum liability* or the *multiple* of the premium (nett of any applicable tax) paid in respect of the *insurance year*, whichever is higher, notwithstanding that the *insurer's maximum liability* may be less than the *insured percentage* of any individual Credit Limit or aggregate of Credit Limits. The amount of the *insurer's maximum liability* and the *multiple* are specified in the Policy Schedule.

#### **24100.00 Allocation of claims liability**

Any claims payment shall be allocated to the *insurance year* in which cover commenced.

#### **26500.00 Each and every first loss**

After applying the *insured percentage* to the Insured Loss we shall deduct the amount of the *each and every first loss* specified in the Policy Schedule effective at the Date of Loss and pay you the balance. Receivables or parts of them below the amount of the *each and every first loss* may not be deducted from your declarations, if required under this policy.

### **General obligations and non - observance**

#### **27350.00 Providing information and disclosure of facts**

Your proposal is incorporated into and forms part of the policy.

You must provide us with all information and documents that we may require in order to confirm your compliance with the terms and conditions of this policy including, at the time of making a claim, details of any other insurance policies and claims which cover or may cover your loss. Where we require, you must also co-operate with a certified auditor or other independent party that we may employ to verify the accuracy of information and documents you have provided.

You must provide information and documents which are to the best of your knowledge and belief correct and you must disclose promptly and at all times continue to disclose promptly all material information and documents which might affect the risks insured under this policy or might influence our acceptance or assessment of the risks and Buyers insured under the policy.

#### **27700.00 Retained risk**

You must retain exclusively for your own account as an uninsured risk and must not insure elsewhere, any amount which exceeds the amount we are liable to pay you under the policy.

#### **29800.00 Consequences of failure to comply**

Failure to comply with any term or condition of the policy, including payment of premiums and charges and provision and disclosure to us of material information and documents during the *policy duration*, or any non-disclosure or misrepresentation by you in your proposal, shall entitle us to cancel the policy (including all Credit Limits) and may entitle us to reduce or refuse to pay any claim. If any non-disclosure or



misrepresentation is fraudulent, we may avoid the policy – that is, treat this policy as if it was never effected. If we cancel or avoid the policy, we may also retain any premium, charges and other fees paid.

#### **Waiver and variation**

No waiver or variation relating to cover provided or the terms and conditions of the policy shall be binding unless we have specifically agreed in writing. Any non-compliance with the terms and conditions of the policy by you shall not be deemed to have been accepted or excused by us unless expressly accepted or excused by us in writing. Any specific waiver made by us in respect of any term or condition of this policy shall not be construed as a general waiver of the same term or condition or any other term or condition of the policy.

#### **Instalment premium**

If you are permitted to pay your premium in monthly instalments, it will be specified in the Policy Schedule and:

- a) if you are 14 days (or more) late in paying at least one instalment, we may refuse to pay your claims; and
- b) if you are one month (or more) late in paying an instalment, we may cancel the policy immediately without notice to you.

#### **Cancellation by us**

We may cancel the policy:

- a) for failure by you to comply with your duty of utmost good faith;
- b) or failure by you to comply with your duty of disclosure;
- c) for misrepresentation by you at the time you entered into the policy;
- d) for breach by you of a term or condition of the policy, including non-payment of premium;
- e) where you make a fraudulent claim during the *policy duration*, under any contract of insurance;
- f) where an act or omission occurs which is required to be notified by you to us; or
- g) where an act or omission occurs in respect of which, under the terms and conditions of the policy, we may refuse to pay a claim.

In Australia, any such cancellation will be in accordance with the cancellation procedure specified in the Insurance Contracts Act 1984 (Cth).

### **Premium**

#### **34100.00 Fixed premium**

Premium and any insurance premium tax or other applicable tax or charges are payable on all of your business to which this policy applies. The *fixed premium amount* and date of payment are specified in the Policy Schedule.

The *fixed premium amount* mentioned in the Policy Schedule is nett of any insurance premium tax or other applicable tax or charges which, if due, will be included in the invoice to you.

### **Policy duration and termination**

#### **38900.00 Policy duration and renewal**

The *policy start date* and the *policy duration* are specified in the Policy Schedule.

We will send you a proposal of policy renewal terms or a notification of non-renewal at least 14 days before the expiry date.

## Miscellaneous

### 44700.00 Communication

In your communications with us in respect of the policy administration and in fulfilling your policy obligations, you should make use of those facilities of your online connection with us that we make available for that purpose.

In our communications with you in respect of the policy administration and in announcing changes to the policy (such as, but not limited to, variations in the country cover terms) we may make use of our online connection with you.

### 45100.00 Transfer of the policy

You can assign or transfer this policy or any of its benefits only with our prior written consent.

### 45900.00 Set off

We have the right to apply any amount payable by us under this policy in or towards payment of any amount owing from you (paying cost and interest before principal) under this policy.

You have no right to apply any amount payable by you to us under this policy in or towards payment of any amount owing from us to you under this policy.

### 46400.00 Local taxes and duties

Payment of Premiums and Other Charges

You must pay to us all amounts specified in our invoice including premiums, fees, taxes and any other amounts on account of other charges.

### Goods and Services Tax (GST)

All references in the policy to Value Added Tax (VAT) are deleted and replaced with Goods and Services Tax (GST) which is defined for Australia, in A New Tax System (Goods and Services Tax) Act 1999 (Cth) or any replacement legislation and for New Zealand, Goods and Services Tax as imposed by the Goods and Services Tax Act 1985 or any replacement legislation.

If any GST is payable by you to us under this policy, the GST must be paid by you at the earlier of:

- a) when we are required to remit the GST; or
- b) no later than the payment date specified on our invoice to you.

### Stamp Duty

In Australia, stamp duty is payable at the applicable rate determined by each Australian State or Territory and may be subject to change.

### 46700.00 Policy currency and conversion

The *policy currency* is specified in the Policy Schedule.

For the purpose of making declarations and calculating any loss, amounts in a currency other than the *policy currency* shall be converted to the *policy currency* using the applicable exchange rate on the last working day of the month during which cover commenced.

Amounts received by you, by any person acting on your behalf or by us after the Date of Loss in a currency other than the *policy currency*, shall be converted to the *policy currency* using the applicable exchange rate on the date of receipt.

The applicable exchange rate on a given date shall be the closing mid-point rate quoted on that date by the European Central Bank or, if the European Central Bank has not quoted such rate, in the London Foreign

Exchange Market, or if not quoted in the London Foreign Exchange Market, by the Central Bank of your country.

**47100.00 Direct debit**

Premium and Credit Limit costs including any applicable tax or charges are payable by way of direct debit.

**47500.00 Applicable law, jurisdiction and language**

The policy shall be governed by the *applicable law* specified in the Policy Schedule.

Any disputes between you and us arising under, out of or in connection with this policy shall be subject to the *jurisdiction* of the competent court or arbitral tribunal specified in the Policy Schedule.

The *language of the policy* shall be that specified in the Policy Schedule. Where we provide translations of the policy the version in the language of the policy shall prevail in the event of any conflict or difference in meaning or effect.

**47900.00 List of terms used**

**Buyer:** any company established in a country included in the Schedule of Countries which can be considered a debtor by virtue of a trade contract concluded with you.

**Credit Limit:** the amount which indicates the maximum acceptable risk for us on the Buyer.

**Credit Limit Decision:** a Credit Limit established by us or by the information company.

**Recoveries:** any amounts or payments in respect of any loss that are received by you or by us, or by someone acting on your or our behalf, after the Date of Loss.