
GENERAL CONDITIONS FOR EKN'S COUNTER GUARANTEE

Guarantee against losses in respect of issued contract guarantees

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Disclaimer: Please note that this is a translation of EKN's General Conditions for the Counter Guarantee in Swedish. In case of any discrepancies, the Swedish version will prevail.

GENERAL CONDITIONS FOR EKN'S COUNTER GUARANTEE

1. DEFINITIONS OF CERTAIN EXPRESSIONS

The following definitions are used in these general conditions

EXPORTER: the party on whose behalf the guarantee holder issues the contract guarantee,

BENEFICIARY: the party in whose favour the contract guarantee is issued,

GUARANTEE INSTRUMENT: the document whereby a counter guarantee is issued,

GUARANTEE PERCENTAGE: the percentage of a loss incurred which is eligible for indemnification under the counter guarantee. See also excess risk,

GUARANTEE HOLDER: the party that has obtained EKN's counter guarantee in accordance with these general conditions,

JOINT SECURITY: security which, in connection with the contract guarantee, has been granted by the exporter in favour of the guarantee holder and, as stated in the guarantee instrument, is shared with EKN,

CALLED CONTRACT GUARANTEE: contract guarantee under which, following a demand from the beneficiary, the guarantee holder has executed payment,

ADJUSTMENT: reduction of the indemnification. In some cases, the indemnification may be reduced to nil,

CONTRACT GUARANTEE: a commitment issued by the guarantee holder for the completion of a bid, work or delivery in accordance with the contract, for repayment of any part of the purchase price that the exporter may have received, or any other commitment approved by EKN, including a commitment issued by the guarantee holder to another issuer.

COUNTER GUARANTEE AMOUNT: the highest amount which may be paid by EKN as indemnification,

INTEREST: the market interest rate, at any point in time, calculated according to STIBOR, LIBOR, EURIBOR, or the equivalent, for one month with the addition of one quarter (0.25) of a percentage point,

EXCESS RISK: the percentage of the incurred loss which is not eligible for indemnification under the counter guarantee. See also guarantee percentage,

INDEMNIFICATION: payment of compensation under the counter guarantee,

RECOVERY: any amount which is received by EKN or the guarantee holder, after indemnification due to a calling on the contract guarantee.

2. SCOPE OF THE COUNTER GUARANTEE

2.1 A counter guarantee covers, in accordance with these general conditions and to the extent provided by the guarantee instrument, certain risks for losses associated with the issuance of contract guarantee in connection with an export transaction.

2.2 A counter guarantee provides a right to compensation, in accordance with the guarantee percentage, for loss incurred by the guarantee holder, following a calling on a contract guarantee.

The counter guarantee amount, and the guarantee percentage are stated in the guarantee Instrument.

Special conditions that supplement or deviate from these general conditions may apply for the counter guarantee. In such case, this is also stated in the guarantee instrument.

2.3 The counter guarantee does not cover loss due to fault or negligence by the guarantee holder.

Nor does the counter guarantee cover loss incurred as a result of measures taken by a Swedish government authority.

The counter guarantee is valid from the date of the issuance of the contract guarantee or from another date which may be stated in the guarantee instrument and covers loss which occurs thereafter.

3. CONDITIONS FOR THE VALIDITY OF THE COUNTER GUARANTEE ETC.

- 3.1 The agreement between the guarantee holder and the exporter in respect of the issuance of a contract guarantee may not include provisions or otherwise be written in a way that may limit the guarantee holder's ability to fulfil its obligations under the terms of the guarantee instrument and these general conditions.
- 3.2 The contract guarantee must accord with what has been stated in connection with the counter guarantee application. The contract guarantee may not be altered thereafter without EKN's written consent.
- 3.3 The guarantee holder may not, without EKN's written consent, wholly or in part, waive any claim for compensation or damages against the exporter, beneficiary or any other party, or any joint security.
- 3.4 In the event that the guarantee holder has failed to comply with the provisions of 3.1-3.3, and such failure has increased EKN's risk of loss, indemnification under the counter guarantee shall be equitably adjusted.

In the event that the guarantee holder has given erroneous, incomplete or misleading information in relation to circumstances of significance to the issuance of the counter guarantee, and if this has increased EKN's risk of loss, the indemnification under the counter guarantee shall be equitably adjusted, provided that the guarantee holder realized or should have realized that the information was erroneous, incomplete or misleading.

If statement of the correct circumstances would have resulted in the counter guarantee not being granted, EKN is entitled to declare the counter guarantee void, fully or in part, irrespective of whether the incorrect statement has increased the risk of loss for EKN or not.

- 3.5 The excess risk may not, without EKN's written consent, by any means of insurance or otherwise, be transferred to a third party. Should the guarantee holder breach this provision, EKN is entitled to declare the guarantee void.

If there are several guarantee holders under one and the same counter guarantee, the foregoing applies only in relation to the guarantee holder who acted in violation of this provision.

- 3.6 The guarantee holder is entitled to assign its rights under the counter guarantee to AB Svensk Exportkredit, Nordiska Investeringsbanken, any Swedish joint stock banking company, a Swedish savings bank, a member bank, a Swedish insurance company, or any bank-owned credit market company referred to in the Banking and Financing Business Act. Such assignment shall be notified in writing to EKN without further delay.

Assignment to any other party requires EKN's written consent. Should the guarantee holder fail to obtain such consent, EKN is entitled to declare the counter guarantee void.

Should there be several guarantee holders under the same counter guarantee, the above shall only apply in relation to the guarantee holder which has breached this provision.

The assignee shall not hold better rights against EKN than the guarantee holder.

Although the rights have been assigned, the guarantee holder's obligations vis-à-vis EKN remain unchanged.

EKN is entitled to reach any agreement with the assignee on matters pertaining to the assigned rights with binding effect also on the guarantee holder. EKN shall, however, notify the guarantee holder before entering into such an agreement.

The provisions above regarding assignment of rights also applies to pledging of the counter guarantee or to granting any other right under the counter guarantee.

- 3.7 If the premium determined for the counter guarantee is not paid within the stipulated time, EKN is entitled to declare the counter guarantee void. However, if the premium is to be paid in instalments EKN may, in the event of delay of any instalment other than the first, declare the guarantee not binding only after a certain time having elapsed from the date when it was due for payment.

- 3.8 Should EKN, in accordance with the provisions 3.4, 3.5 or 3.6, declare the counter guarantee void, EKN shall repay part of the paid premium, with a deduction for administrative costs.

Should a contract guarantee, covered by EKN, have ceased to be valid in advance, without having been called upon, the guarantee holder is entitled to recover part of the premium with a deduction for administrative costs.

Unless otherwise decided at the issuance of the counter guarantee, or later by EKN's specific consent, the guarantee holder is only entitled to any recovery of the paid premium in accordance with this provision.

A decision by EKN to make an adjustment does not constitute grounds for repayment of premium.

4. THE GUARANTEE HOLDER'S OBLIGATIONS IN CASE OF INCREASED RISK OF LOSS AND LOSS

4.1 The guarantee holder is obliged to urgently notify EKN in writing, of any knowledge of circumstances which have increased the risk of calling on the contract guarantee.

4.2 Should a demand for payment under the contract guarantee have been presented, the guarantee holder shall immediately notify EKN of this in writing. If the reason for the demand has been stated, the stated reason for the demand must be included in the notification.

The guarantee holder shall also urgently notify EKN in writing, as soon as payment has been made under the contract guarantee.

4.3 If the guarantee holder has become aware of circumstances that have increased the risk of a calling on the contract guarantee, or if a demand has been made pursuant to 4.2, the guarantee holder must consult with EKN about the measures that may be deemed necessary to avoid or limit loss.

If EKN and the guarantee holder cannot agree on the measures to be taken, or if the guarantee holder evades consultation, EKN alone will, having taken reasonable account of the guarantee holder's interests, then decide, in conjunction with which the guarantee holder will be obliged to act in accordance with EKN's instructions. If the guarantee holder does not fulfil this obligation, EKN is entitled to take measures on behalf of the guarantee holder. To enable EKN to take such measures, the guarantee holder has a duty to issue necessary documents and irrevocably authorise EKN to act on behalf of the guarantee holder, albeit always in accordance with the contract guarantee. If this does not occur, EKN's indemnification may be adjusted or, alternatively, EKN may declare the guarantee void. Adjustment may be made down to nil.

Any costs associated with measures pursuant to this provision are to be borne by EKN and the guarantee holder in proportion to the applicable guarantee percentage rate and the excess risk.

4.4 Should the guarantee holder have neglected the obligation to give notice according to 4.2, and this negligence has increased the risk of loss for EKN under the counter guarantee, or in another guarantee matter concerning the same beneficiary or the same exporter, the indemnification under the counter guarantee shall be equitably adjusted.

5. INDEMNIFICATION

5.1 General

- 5.1.1 Request for indemnification shall be submitted in writing and shall have been received by EKN within one year from the day when the contract guarantee was called upon.

If the request for Indemnification has not been received by EKN within the stipulated time, the guarantee holder will lose its right to the relevant indemnification under the counter guarantee.

- 5.1.2 Before indemnification and if EKN so requests, the guarantee holder is obliged to assign any claim held against the exporter and/or any other party acting on the exporter's behalf, due to the calling on the contract guarantee, to EKN.

- 5.1.3 Indemnification is paid within thirty days after the guarantee holder has proved its right to indemnification under the counter guarantee and has submitted a due investigation of the size of the loss to EKN. Interest on the indemnifiable amount will be paid from and including the date when the contract guarantee was called upon until the date when the indemnification is paid.

5.2 Calculation of loss

- 5.2.1 The loss is the difference between

on the one hand

- the sum demanded to be paid under the contract guarantee; and

on the other hand

- sums received from the exporter and/or from any other party acting on the exporter's behalf insofar as the amount received relates to the payment demanded under the contract guarantee;

- sums received from the beneficiary and/or from any other party acting on the beneficiary's behalf insofar as the amount received relates to the payment demanded under the contract guarantee;

- sums received following realisation of joint security; and

- sums received following realisation of other security provided to the guarantee holder insofar as the sum received relates to the payment demanded under the contract guarantee.

- 5.2.2 Should the amount called upon under the contract guarantee be in Swedish kronor, the indemnification will be paid in Swedish kronor. If the amount called upon is in a foreign currency, the guarantee instrument states whether indemnification is to be paid in such currency, and if so, stating the guarantee amount in this currency. If indemnification is not paid in the foreign currency, the amount of indemnification is determined by conversion into Swedish kronor using the average of the buying rates for the foreign currency, applied by two of the largest Swedish currency banks at 11 am in Stockholm at the time when the contract guarantee was called upon. However, a higher exchange rate than what is stated in the guarantee instrument may not be applied.

If there is no established buying rate at the time when the contract guarantee is called on, the conversion shall instead be made using the buying rate in Swedish kronor on the international currency market.

5.3 Measures to be taken after indemnification

- 5.3.1 After indemnification, the guarantee holder shall consult with EKN in respect of measures to be taken in order to recover the claim arising from the calling on the contract guarantee and the realisation of joint security. Any costs incurred in taking these measures are to be borne by EKN and the guarantee holder in proportion to the applicable guarantee percentage rate and the excess risk.

If EKN and the guarantee holder cannot agree on the measures to be taken, or if the guarantee holder evades consultation, EKN alone will, having taken reasonable account of the guarantee holder's interests, then decide. In this case the guarantee holder is under a duty to act in accordance with EKN's instructions, subject to the provisions of 4.3, second paragraph. EKN alone is responsible for costs incurred as a result of its decisions.

- 5.3.2 Any amount received after first payment of indemnification is to be used to cover costs incurred by EKN and the guarantee holder in applying these conditions. Any remaining amount thereafter is to be allocated proportionally between EKN and the guarantee holder on the basis of EKN's guarantee percentage rate and the guarantee holder's excess risk.

Any amount received after recovery measure decisions taken solely by EKN and where costs of these measures have been solely borne by EKN must first cover EKN's costs and secondly the indemnification paid out by EKN plus interest. The guarantee holder will receive any remaining amounts.

6. CERTAIN GENERAL OBLIGATIONS FOR THE GUARANTEE HOLDER

6.1 The guarantee holder must show the same care and diligence as if no counter guarantee had been issued. The guarantee holder is thereby obliged to take measures and act in such manner as can be reasonably expected to prevent or limit loss. If the counter guarantee is subject to indemnification and the guarantee holder has failed to fulfil these obligations and such failure has increased EKN's risk of loss, the indemnification which EKN otherwise would have paid, shall be equitably adjusted.

6.2 The guarantee holder is obliged to keep such accounting records that clearly present the information required for determining the size of the loss incurred.

The guarantee holder is further obliged to, upon demand, make available to EKN or to an expert appointed by EKN, its accounting records and other documents pertaining to the guaranteed contract guarantee, and provide all such information which is available to the guarantee holder or can be obtained, and which can be of relevance to EKN.

6.3 The guarantee holder is obliged to compensate EKN for any cost and loss caused by the guarantee holder's fraudulent or negligent behaviour or by its failure to observe its obligations under the guarantee instrument and these general conditions.

However, the obligation to pay such compensation is, except when the guarantee holder has acted fraudulently or grossly negligently, limited to the amount which the guarantee holder has received in indemnification, including interest.

If there are several guarantee holders under the same counter guarantee, the following applies. Only the guarantee holder which is at fault is obliged to compensate EKN for any cost and loss.

The guarantee holder's obligation to pay compensation is limited, except when the guarantee holder has acted fraudulently or grossly negligently, to a maximum amount corresponding to the guarantee holder's share of the counter guarantee amount under the guarantee, including interest. In the event of uncertainty regarding which guarantee holder is at fault, the guarantee holders shall be jointly and severally liable.

7. DISPUTES REGARDING COUNTER GUARANTEE

7.1 Swedish law is applicable for the counter guarantee.

7.2 Any dispute in connection with the counter guarantee shall be settled by arbitrators in accordance with Swedish law on arbitrators, in force at the time when the dispute arises.

Arbitration proceedings shall take place in Stockholm.

Should the guarantee holder wish to refer a decision taken by EKN to arbitration, such demand must be filed within twelve months of receiving the decision in question. If the guarantee holder fails to do so it shall forfeit its right of action.

Should the arbitrators arrive at different decisions concerning a valuation matter, the average value shall apply as the decision of the arbitrators.