

# General Conditions for Guarantee for Unfair Calling

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**Disclaimer:**

**Please note that this is a translation of EKN's General Conditions for Guarantee for Unfair Calling. In case of any discrepancies, the Swedish version will prevail.**



# General Conditions for Guarantee for Unfair Calling

## 1 Definitions

**The following definitions are used in these General Conditions:**

**Export Agreement:** Offer from the Guarantee Holder to the Beneficiary on export or agreement between the Guarantee Holder and Beneficiary on export and the conditions in accordance with which Security is issued, or shall be issued for the Guarantee Holder's undertaking in accordance with such an offer or agreement.

**Loss:** The Loss, calculated in accordance with 6.2, incurred by the Guarantee Holder as a result of Unfair Calling.

**Beneficiary:** The party on whose behalf the Security is issued.

**Guarantee Instrument:** The document whereby the Guarantee for Unfair Calling is issued.

**Guarantee Percentage:** The percentage of incurred Loss compensated under the Guarantee for Unfair Calling. Cf. Excess Risk.

**Guarantee Holder:** The party that has received EKN's Guarantee for Unfair Calling in accordance with these General Conditions.

**Called Security:** Security that has been called after a claim has been advanced from the Beneficiary.

**Adjustment:** Reduction of Indemnification, in certain cases to zero (0) SEK.

**Counter Indemnity:** Undertaking by the Guarantee Holder for compensation to the issuer for a Called Security.

**Counter Guarantee:** Guarantee issued by EKN in accordance with its General Conditions for Counter Guarantees.

**Received Security:** Parent company guarantee, surety, collateral or other security, which the Guarantee Holder has received for the Beneficiary's rightful settlement of the repayment of a Called Security.

**Unfair Calling:** Such calling by the Beneficiary as specified in 2.1.

**Interest:** Current market interest rate calculated according to STIBOR, LIBOR, EURIBOR or the equivalent for three months, with the addition of one quarter (0.25) of a percentage point.

**Excess Risk:** The percentage of incurred Loss that is not compensated under the Guarantee for Unfair Calling. Cf. Guarantee Percentage.

**Indemnification:** Payment of Indemnification under the Guarantee for Unfair Calling.

**Security:** Contract guarantee, indemnity or other Security issued by, or on the assignment of, the Guarantee Holder for fulfilment of the Guarantee Holder's undertaking in

accordance with an Export Agreement, or for repayment of what the Guarantee Holder has received of the purchase sum or compensation concerning an Export Agreement.

**Guarantee for Unfair Calling:** Guarantee issued by EKN in accordance with these General Conditions.

**Amount of Guarantee for Unfair Calling:** The highest amount that EKN may be obliged to pay as Indemnification.

**Issuer:** The party commissioned by the Guarantee Holder to issue, or who has issued, Security.

**Recovery:** The amount received by EKN or the Guarantee Holder after paid Indemnification, following a Called Security.

## **2 Scope of the Guarantee for Unfair Calling**

- 2.1 In accordance with these General Conditions and on the scope defined in the Guarantee Instrument, a Guarantee for Unfair Calling offers right to claim Indemnification in accordance with the Guarantee Percentage for Loss, caused by calling of the Security and where such call is not based on the failure of the Guarantee Holder to fulfil the undertaking for which the guarantee was issued in accordance with the Export Agreement, and referred to as Unfair Calling.
- 2.2 A Guarantee for Unfair Calling does not cover Indemnification for Loss resulting from measures taken by Swedish authorities.
- 2.3 A Guarantee for Unfair Calling is valid from the date of issue, or from the date specified in the Guarantee Instrument.

## **3 Conditions for the validity of Guarantee for Unfair Calling**

- 3.1 All conditions, as defined in the Export Agreement, for the issue of the Security shall be met at the date on which the Security is issued. The Export Agreement shall have come into force, in connection to this or shortly thereafter, for the Guarantee for Unfair Calling to be valid.
- 3.2 The Security issued and the conditions for such Security shall be in accordance with what has been specified in the application for a Guarantee for Unfair Calling. The scope and content of the issued Security and the conditions for the issued Security may not be changed thereafter without EKN's written consent.
- 3.3 The Guarantee Holder shall pay the premium set for the Guarantee for Unfair Calling within the stipulated period of time.

## **4 Obligations of the Guarantee Holder**

- 4.1 The Guarantee Holder shall take equal care and act with equal prudence as he would have done in the absence of a Guarantee for Unfair Calling. The Guarantee Holder is thereby obliged to take the requisite measures and to act in such a way as can reasonably be expected of him to prevent or limit any Loss.
- 4.2 The Guarantee Holder is obliged to immediately notify EKN about the following in writing:
- (i) If the Guarantee Holder has become aware of any circumstances that have increased the risk of calling on a Security
  - (ii) if a claim had been submitted for calling on a Security, or
  - (iii) if the Security has been called in full or in part.
- The notification shall contain information on the reason for the increased risk (i), the claim (ii) or the calling (iii).
- 4.3 After the notification has been submitted in accordance with 4.2, the Guarantee Holder shall consult with and keep EKN informed of the measures that may be considered necessary to avoid or prevent Loss.
- 4.4 Without EKN's written consent the Guarantee Holder may not waive, either in full or in part, any claim for compensation or claim for damages against the Beneficiary or issuer, or from Received Security.
- 4.5 The Excess Risk may not without EKN's written consent be transferred to another party through insurance or other similar means.
- 4.6 The Guarantee Holder is obliged to keep such records that clearly indicate the information required for investigation of the size of the incurred Loss.

The Guarantee Holder is also obliged on request to provide EKN, or an external expert of EKN, the accounts and other documents concerning the Security for which the Guarantee for Unfair Calling has been issued, and to disclose all such information as is available to him, or which he can acquire and which can be of significance to EKN.

## **5. Assignment**

- 5.1 The assignment of the rights in accordance with the Guarantee for Unfair Calling requires EKN's written consent.
- 5.2 The assignee shall not hold the better rights against EKN than the Guarantee Holder. Regardless of whether the rights have been assigned, the obligations of the Guarantee Holder in relation to EKN remain unchanged.

EKN is entitled make agreement with the assignee in issues regarding these rights, with binding effect also for the Guarantee Holder. EKN shall, however, notify the Guarantee Holder before entering such an agreement.

- 5.3 The above shall be equally applicable to the pledging of the Guarantee for Unfair Calling or the surrender of any particular right under the Guarantee for Unfair Calling.

## **6 Indemnification**

### **6.1 Basic provisions**

- 6.1.1 Under these General Conditions the date for a Called Security shall constitute the date when payment is made by the issuer in relation to a Security in the form of a contract guarantee or an indemnity.
- 6.1.2 Request for Indemnification shall be made in writing and shall have been received by EKN within one year of the date of the Called Security. The right to compensation under the Guarantee for Unfair Calling expires if the request is not received within this period.
- 6.1.3 Upon Indemnification of a claim the Guarantee Holder is obliged to assign to EKN all the Guarantee Holder's rights against the Beneficiary in reference to the Called Security, and any claims in relation to the issuer and rights to Received Security.
- 6.1.4 The Guarantee Holder shall via judgement in court or an arbitration award, or by another means acceptable to EKN, show that the Beneficiary called on the Security unfairly.
- 6.1.5 The Indemnification shall be paid within thirty days after the Guarantee Holder has submitted a claim from Indemnification and presented an investigation that shows the right to Indemnification under the Guarantee for Unfair Calling. Interest on the Indemnification amount is due from the date for the Called Security until Indemnification is paid.

### **6.2 Calculation of Loss**

- 6.2.1 The Loss consists of the called amount in accordance with the issued Security with a deduction for (i) the amount received from the Beneficiary in reference to the calling, (ii) an amount corresponding to a counterclaim the Beneficiary may claim, and (iii) the amount received in accordance with the Received Security.

If Security has been issued by the issuer the Loss consists of the called amount in accordance with the issued Security if, and to the extent, this corresponds to the payment obligation for, or effected payment of the

Guarantee Holder in accordance with the counter indemnity, with a deduction for the amount specified in (i)-(iii) above in this point.

- 6.2.2 In the event the called amount of the Security consists of Swedish Kronor, the Indemnification will also be paid in Swedish Kronor. In the event the called amount of the Security consists of foreign currency it shall be indicated in the Guarantee Instrument whether the Indemnification is to be paid in foreign currency, and in this case the Amount of the Guarantee for Unfair Calling is specified in this currency. In all other cases, the Indemnification is determined by conversion to Swedish Kronor, based on the average of the buying rates quoted for the foreign currency by two of the large Swedish foreign exchange banks at 11.00 a.m. in Stockholm at the date for the Called Security. However, a higher rate shall never be applied for the conversion than the rate specified in the guarantee instrument.

If no set buying rate is established on the due date, the conversion shall instead be based on the last buying rate published by Reuters in Swedish Kronor, or if such buying rate is not available, on another applicable cross-rate at the date for the Called Security.

### **6.3 Measures after Indemnification**

- 6.3.1 After payment of Indemnification the Guarantee Holder shall consult with EKN on measures for Recovery of the outstanding claim to be taken against the Beneficiary, issuer or other party regarding to the Called Security and for the calling of any Received Security.

If such a procedure involves costs, they shall be divided proportionally between the Guarantee Holder and EKN in accordance with the Guarantee Percentage.

- 6.3.2 The Recovery received shall be divided proportionally between EKN and the Guarantee Holder in accordance with the Guarantee Percentage.
- 6.3.3 If EKN and the Guarantee Holder are not in agreement as to the measures to be taken, EKN shall make the decision solely but with reasonable consideration to the interests of the Guarantee Holder. EKN is solely responsible for the costs incurred by EKN's decision. From the amount received after such measures EKN shall first cover all its costs and paid Indemnification, plus Interest. The Guarantee Holder shall receive the excess amount.

## **7 Special conditions when a Counter Guarantee is issued to the issuer of guaranteed Security**

- 7.1 In the event that a Security pertaining to a Guarantee for Unfair Calling becomes the object of a Counter Guarantee, the following shall apply.

Indemnification shall not be paid to the Guarantee Holder for the amount for which EKN has a counterclaim in relation to the Guarantee Holder, as a result of Indemnification paid under a Counter Guarantee. EKN's Indemnification and such a counter claim shall instead be set off.

If the Guarantee Holder has transferred the right to the Guarantee for Unfair Calling, the party to which the transfer has been made is entitled to Indemnification to the corresponding extent as the Guarantee Holder has fulfilled his recourse obligation in relation to EKN in accordance with the Counter Guarantee.

For EKN to be able to pay Indemnification under the Guarantee for Unfair Calling before the payment of Indemnification under the Counter Guarantee, it is necessary for the guarantee holder of the Counter Guarantee to waive his right to Indemnification under the Counter Guarantee.

## **8 Invalidity and Adjustment**

- 8.1 The Guarantee for Unfair Calling is not binding in its entirety, or is in part not binding, if any of the conditions specified in point 3 above are not fulfilled, or if the Guarantee Holder has breached clauses 4.4, 4.5 or 5.1.
- 8.2 In the event the Guarantee Holder has breached his obligations in accordance with, the guarantee instrument or these general conditions, or if the Guarantee Holder has given EKN incorrect, incomplete or misleading information concerning circumstances of importance for the issue of the Guarantee for Unfair Calling, the Indemnification shall be duly adjusted.

Such Adjustment can in certain cases be made to zero (0).

- 8.3 What has been stipulated in the clause 8.1 above in relation to the Guarantee Holder who breached clauses 4.5 or 5.1 also apply if there are several Guarantee Holders under one and the same Guarantee for Unfair Calling.
- 8.4 The Guarantee Holder is obliged to indemnify EKN for costs and damages resulting from fraudulent or negligent behaviour on his part, or by his failure to observe his obligations in accordance with the guarantee instrument and these general conditions.



The liability to indemnify EKN is limited, however, with the exception of when the Guarantee Holder has been fraudulent or shown gross negligence, to the amount the Guarantee Holder received in Indemnification plus Interest.

## **9. Repayment of premium in certain cases**

- 9.1 If Security has been returned or ceased to be valid in advance without being called, the Guarantee Holder is entitled to receive part of the paid premium after a deduction for administration costs.
- 9.2 If EKN declares in accordance with the clause 8.1 that the Guarantee for Unfair Calling is not binding for EKN, the part of the premium paid shall be repaid by EKN with a deduction for administration costs.
- 9.3 The Guarantee Holder is entitled to recover a paid premium, or part of it, only in those cases specified in this section 9.

## **10 Disputes concerning Guarantee for Unfair Calling**

- 10.1 Swedish law is applicable for the Guarantee for Unfair Calling.
- 10.2 Disputes concerning a Guarantee for Unfair Calling shall be resolved by arbitration in accordance with the Swedish Arbitration Act.

The arbitration proceedings shall take place in Stockholm. The Swedish language is to be used in arbitration proceedings, and the settlement will be worded in Swedish.

Should the Guarantee Holder wish to refer a decision taken by EKN to arbitration, he shall file such demand within twelve months from receipt of the decision. He shall forfeit his right of action in the event of failure to do so.

If the arbitrators arrive at different decisions concerning a valuation matter, the average value shall apply.

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