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General Conditions of Insurance for ACREDIA Project^A 2019

(GCI ACREDIA Project 2019)

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Definitions

The Insured is the (natural or legal) person who concludes the insurance contract with the Insurer.

The Insurer is ACREDIA Versicherung AG.

The Insured Buyer is the (natural or legal) person who concludes the delivery or service contract with the Insured and who is therefore liable to pay the Insured.

Art. 1 Subject of the insurance

The Insurer shall indemnify the Insured for the loss of receivables in relation to the order specified in the scheduled to the Policy owing to the occurrence of an Insured Event (Art. 9) during the term of the insurance contract. The conditions and the scope of the insurance cover follow from the further provisions of these General

Opći uvjeti osiguranja za zavarovanje ACREDIA Project^A 2019

(OUO ACREDIA Project 2019)

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Objašnjenje pojmova

Ugovaratelj osiguranja je fizička ili pravna osoba, koja sklapa Ugovor o osiguranju s osigurateljem.

Osiguratelj je ACREDIA Versicherung AG.

Kupac je (fizička ili pravna) osoba, s kojom ugovaratelj osiguranja sklapa ugovor o isporuci robe ili pružanju usluga i koja se ugovaratelju osiguranja obvezuje na plaćanje.

Čl. 1 Predmet osiguranja

Osiguratelj nadoknađuje ugovaratelju osiguranja gubitak potraživanja za poslove koji su opisani u polici osiguranja, a koji nastane tijekom trajanja ugovora o osiguranju nastupanjem osiguranog slučaja (Čl. 9). Preduvjeti i opseg osigurateljnog pokrića proizlaze iz daljnjih odredaba OUO te ostalih ugovorenih uvjeta. Oni

Conditions of Insurance (hereinafter: GCI) and the other agreed conditions. The order information provided by the Insured, including, but not limited to the information provided in the questionnaire, form part of the insurance contract.

Art. 2 Scope of the insurance cover

(1) Insurance cover is provided up to the level of the Credit Limit

a) for the purchase price or compensation for work and services, excluding VAT, which the Insured Buyer owes for deliveries/ services which the Insured rendered before the occurrence of the Insured Event, including the agreed credit costs and shipping costs, less any prepayments or down payments ("insured receivable")

and

b) before performance of the service (coverage for work in progress) for costs for work in progress incurred by the Insured as a result of commencing production prior to occurrence of the Insured Event.

Costs for work in progress are those expenses and overheads that, according to the principles of proper cost accounting – without taking any lost profit into account – can demonstrably be allocated to the goods to be produced and are necessary for contractual performance. These include contractually agreed liabilities incurred by the Insured vis-à-vis suppliers, providing that such liabilities were based on the order specified in the scheduled to the Policy.

Costs for work in progress are only insured to the extent that the Credit Limit is not exhausted by the insured receivables (see a) above).

(2) Insurance cover is not provided for

- a) default interest, contractual penalties, claims for damages, costs of litigation and foreign exchange losses,
- b) claims against private individuals if they do not operate commercially, against public companies and against companies in which the Insured either indirectly or directly holds a majority interest or can otherwise exert a controlling influence on management decisions,
- c) receivables

- from transactions for whose performance the necessary official licences are lacking,
- arising from the delivery of goods whose import into the destination country is in violation of an existing ban or whose export is in violation of an existing ban in the country of the Insured,
- from transactions in which the underlying deliveries or services were not rendered in the country in which the Insured Buyer has its registered office (third country exclusion), unless the Insurer has included these receivables in the insurance cover in advance, and
- arising from transactions that are in violation of legally binding international economic sanctions or embargoes, in particular sanctions or embargoes that were imposed by the country of the Insured, the country of the Insured Buyer, the United States of America (USA), the European Union, the United Nations (UN) or

podatci o poslu koje je naveo ugovaratelj osiguranja – posebice podatci iz upitnika – sastavni su dio ugovora o osiguranju.

Čl. 2 Opseg osigurateljnog pokrića

(1) Osigurateljno pokriće postoji do visine svote osiguranja

a) za kupovnu cijenu ili plaću bez poreza na promet, koje kupac duuguje za isporuku dobara/ pružanje usluge, koje je ugovaratelj osiguranja ispunio prije nastupanja osiguranog slučaja, uključujući dogovorene troškove kredita i prijevoza umanjene za eventualne predujmove ili kapare („Osigurano potraživanje“)

i

b) prije isporuke dobara/ pružanja usluge (pokriće proizvodnog rizika) za vlastite troškove koji su nastali ugovaratelju osiguranja preuzimanjem proizvodnje sve do nastanka osiguranog slučaja.

Vlastiti troškovi su oni izdatci i opći troškovi koje se prema principima urednog obračuna troškova – ne uzimajući u obzir izgublenu dobit – dokazivo može pripisati robu koju valja proizvesti te koji su potrebni za ispunjenje ugovora. U navedeno se ubrajaju također i obaveze ugovaratelja osiguranja prema dobavljačima a koje su preuzete i utemeljene u ugovoru, ukoliko se one temelje na opisu posla koji je naveden u ugovoru o osiguranju.

Vlastiti troškovi su osigurani samo ukoliko u svoti osiguranja uz osigurana potraživanja za njih ostane prostor (sl. a).

(2) Sljedeća potraživanja nisu obuhvaćena osigurateljnim pokrićem:

- a) zatezne kamate, penale, potraživanja za naknadu štete, troškovi pravnih postupaka i tečajni gubitci,
- b) potraživanja prema fizičkim osobama ukoliko one nisu aktivne kao poduzetnici, prema javnim poduzećima te prema poduzećima u kojima ugovaratelj osiguranja izravno ili neizravno ima većinski udio ili može na drugi način odlučujuće utjecati na upravu,
- c) potraživanja

- iz poslova, za čiju su provedbu nedostajale potrebne dozvole državnih tijela,
- nastala od isporuke dobara, čiji uvoz u odredišnu državu krši postojeću zabranu ili čiji izvoz krši važeći propis u zemlji ugovaratelja osiguranja,
- koja proizlaze iz poslova u kojima isporuke roba ili pružanje usluga nisu pružene u zemlji u kojoj kupac ima protokolirano sjedište (isključenje trećih zemalja), osim ako osiguratelj ova potraživanja nije unaprijed uključio u osigurateljno pokriće.
- koji proizlaze iz poslova koji krše pravno obavezujuće međunarodne gospodarske sankcije ili embargo, posebice sankcije i embargo koje je nametnula država ugovaratelja osiguranja, država kupca, Sjedinjene Američke Države (USA), Europska unija, Ujedinjeni narodi (UN) ili neka druga prema međunarodnom pravu priznata međunarodna organizacija.

any other international organisation recognized under international law,

- d) Insured Events in which war, acts of war, internal unrest, riots, revolution, strikes, confiscation, impediment of goods traffic and payment transactions by authorities or state institutions, natural disasters or, directly or indirectly, nuclear power played a role,
- e) Insured Events that occur before the commencement or after the end of the insurance cover (Art. 3 (1) and (2)).

Art. 3 Commencement and end of the insurance cover, extension option

(1) The insurance cover commences

- a) in the case of receivables (Art. 2 (1) a)): upon delivery or provision of the service, but not before commencement of the insurance contract as specified in the scheduled to the Policy and, if a down payment has been agreed with the Insured Buyer, not before receipt of the down payment,
- b) in the case of Costs for work in progress (Art. 2 (1) b)): upon commencement of production, but not before commencement of the insurance contract specified in the scheduled to the Policy and, if a down payment has been agreed with the Insured Buyer, not before receipt of the down payment.

(2) The insurance cover expires

- a) in the case of insured receivables: upon payment of the same,
- b) in the case of costs for work in progress: upon commencement of the insurance cover for the insured receivable pursuant to (1) a),
- c) in the case of insured receivables and costs for work in progress: upon the end of the insurance contract.

(3) If the insured receivables have not yet been fully paid at the end of the term of the insurance contract and the Insured Event has not yet occurred, the Insured may extend the insurance contract by unilateral declaration by one or more complete months, but not beyond the date specified in the scheduled to the Policy ("extension option until..."). Repeated extensions in succession are permissible, but the contract may not be extended beyond the date specified in the scheduled to the Policy. The Insurer is entitled to charge an extension premium as set out in Art. 6 (2) for extension of the contract.

The Insurer must receive the declaration of the Insured that the insurance contract is to be extended by no later than one week following the end of the insurance contract. The Insurer is not bound by any declaration that is not received within the deadline.

Extension beyond the date indicated in the scheduled to the Policy is only possible with the consent of the Insurer.

At each extension, the Credit Limit will be reduced to the amount that the Insured still requires to be covered. The Credit Limit may only be increased with the consent of the Insurer.

- d) osigurani slučajevi koji su suprouzročeni ratom, ratnim događajima, unutarnjim nemirima, ustancima, revolucijom, štrajkom, zapljenom, utjecanjem na promet roba ili plaćanja izazvanih od strane vlasti ili državnih institucija, prirodnim katastrofama ili – neposredno ili posredbo – nuklearnom energijom,
- e) osigurani slučajevi, koji su nastupili prije početka ili nakon okončanja osigurateljnog pokrića (čl. 2 st. 1 i 2).

Čl. 3 Početak i kraj osigurateljnog pokrića, mogućnost produljenja ugovora

(1) Osigurateljno pokriće započinje

- a) za potraživanja (čl. 2 st 1 sl. a): s isporukom ili uslugom, ali ne prije onog datuma koji je u polici osiguranja naveden kao početni datum te – ukoliko je s kupcem dogovorena kapara – ne prije primitka kapare.
- b) za vlastite troškove (čl. 2 st. 1 sl. b): po početku proizvodnje ali ne prije onog datuma koji je u polici osiguranja naveden kao početni datum te – ukoliko je s kupcem dogovorena kapara – ne prije primanja kapare.

(2) Osigurateljno pokriće prestaje

- a) za osigurana potraživanja: s njihovim plaćanjem,
- b) za vlastite troškove: s početkom osigurateljnog pokrića za osigurana potraživanja st. 1 sl. a),
- c) za osigurana potraživanja i vlastite troškove: sa prestankom ugovora o osiguranju.

(3) Ukoliko osigurana potraživanja sa prestankom trajanja ugovora o osiguranju još nisu u potpunosti plaćena, a još nije nastupio osigurani slučaj, ugovaratelj osiguranja može jednostranom izjavom produljiti policu osiguranja za jedan ili nekoliko cijelih mjeseci – no najviše do dana navedenog u polici osiguranja („Mogućnost produljenja: do...”). Moguće je i nekoliko produljenja za redom, ali sveukupno najviše do dana navedenog u polici osiguranja. Za produljenje osiguratelj ima pravo na premiju za produljenje prema čl. 6 st. 2.

Izjavu ugovaratelja osiguranja o tome da valja produljiti ugovor o osiguranju, osiguratelj mora zaprimiti najkasnije tjedan dana nakon prestanka ugovora o osiguranju. Izjave koje pristignu sa zakašnjenjem za osiguratelja nisu obvezujuće.

Produljenje nakon onog dana koji je naveden u polici osiguraja moguće je samo uz pristanak osiguratelja.

Kod svakog produljenja svota osiguranja se smanjuje na onaj iznos koji je ugovaratelju osiguranja potreban. Povećanje svote osiguranja moguće je samo uz pristanak osiguratelja.

Art. 4 Credit assessment by ACREDIA Services GmbH

Granting of insurance cover is based on a credit assessment performed by ACREDIA Services GmbH.

Art. 5 Self-insured retention

The Insured shall participate in the insured loss calculated in accordance with Art. 10 (3) with the self-insured retention stated in the scheduled to the Policy.

The self-insured retention can not be insured or otherwise secured elsewhere. If the Insured has insured the agreed self-insured retention in another form, then the Insurer is entitled to reduce the indemnity in the amount of the Insured's claim against the other insurer.

Art. 6 Premium

(1) The premium for the term of the insurance contract as agreed upon conclusion of the insurance contract is specified in the scheduled to the Policy and is invoiced in advance on a one-off basis upon conclusion of the contract.

(2) If the Insured exercises its extension option pursuant to Art. 3 (3), the extension premium for the extension period will be calculated on the basis of

- the credit limit to be extended,
- the extension premium rate specified in the scheduled to the Policy and
- the number of months.

(3) In the event of early payment in full of all insured receivables, the premium for the redeemed amount and the unused insurance term (calculated from the date on which the Insurer is notified thereof) will be reimbursed to the extent that the minimum premium is not undercut as a result. The minimum premium is 25 % of the premium set out in (1) above.

(4) The premium plus the statutory insurance tax is payable immediately after receipt of the invoice.

(5) If the Insurer withdraws from the contract due to the Insured's default with the first premium (Section 38 of the Austrian Insurance Contract Act), then the Insurer is entitled to charge a transaction fee in the amount of 25 % of the premium set out in (1) above.

Art. 7 Notification obligations and duties of conduct

(1) The Insured shall notify the Insurer of all circumstances known to it upon applying for the insurance cover or that afterwards become known to it that may influence the granting of the insurance cover, and in particular may influence assessment of the creditworthiness of any party liable to pay.

Čl. 4 Provjera kreditne sposobnosti putem ACREDIA Services GmbH

Preuzimanje osigurateljnog pokrića temelji se na provjeri kreditne sposobnosti koju provodi ACREDIA Services GmbH.

Čl. 5 Samopridržaj

Prema članku 10. stavku 3. prema kojima je izračunat osigurani gubitak ugovaratelj osiguranja sudjeluje s onim samopridržajem koji je naveden u ugovoru o osiguranju.

Samopridržaj ne smije biti osiguran na drugi način ili izdvojeno. Ukoliko je ugovaratelj osiguranja dogovoreni samopridržaj na drugi način osigurao, tada osiguratelj ima pravo umanjiti odštetu u visini zahtjeva ugovaratelja osiguranja naspram drugog osiguratelja.

Čl. 6 Premija

(1) Premija za trajanje ugovora o osiguranju koje je ugovoreno i navedeno u polici osiguranja plaća se jednokratno unaprijed kod zaključenja ugovora.

(2) Ukoliko ugovaratelj osiguranja primjeni mogućnost produljenja ugovora prema čl. 3 st. 3 premija za produljenje bit će izračunata na temelju podataka o

- svoti osiguranja koju treba produljiti,
- premijski stopi za produljenje koja je navedena u polici osiguranja i
- broju mjeseci.

(3) Kod prijevremenog potpunog plaćanja cjelokupnog osiguranog potraživanja nadoknađuje se premija za zamijenjen iznos i trajanje osiguranja koje nije iskorišteno (računajući od onog trenutka, kada za to sazna osiguratelj), ukoliko se time ne padne ispod iznosa minimalne premije. Minimalna premija iznosi 25% premije prema st. 1.

(4) Premiju uvećanu za zakonski propisan porez na osiguranje potrebno je platiti odmah nakon zaprimanja računa.

(5) Ukoliko se osiguratelj povuče od ugovora zbog kašnjenja ugovaratelja osiguranja s prvotnom premijom (čl. 38 Zakona o ugovoru o osiguranju), on ima pravo na poslovnu naknadu u visini od 25% od premije prema st. 1.

Čl. 7 Obaveze obavješćivanja i ophođenja

(1) Ugovaratelj osiguranja javlja osiguratelju sve okolnosti koje su mu poznate kod podnošenja zahtjeva za osigurateljno pokriće te one koje će mu kasnije postati poznate, koje mogu biti od bitnog značaja za preuzimanje osigurateljnog pokrića, a posebice kod procjene kreditne sposobnosti svih obveznika plaćanja.

(2) Any changes to agreements on payment, performance of services or collateral must be reported to the Insurer and jeopardise the insurance cover (cf. Art. 13) if the Insurer has not given its consent.

(3) If the Insured has both uninsured and insured receivables from the Insured Buyer, the Insured may not reach any repayment agreement with the Insured Buyer that disadvantages the Insurer.

(4) The Insured shall notify the Insurer immediately if

- a) a receivable has not been paid within a month of falling due,
- b) cheques or bills of exchange are not honoured or direct debits are returned due to lack of cover or if extensions of bills of exchange are subsequently demanded,
- c) an attorney or a debt collection agency has been engaged to collect the debt or litigation is entered into in order to enforce the claim,
- d) a party liable to pay ceases to make payments or there is a threat of payments ceasing.

The provisions set out in a) to d) apply in respect of all parties liable to pay and in respect of both insured and uninsured receivables.

(5) The Insured shall obtain the approval of the Insurer before reaching a settlement, agreement on payment in instalments or any similar agreement.

(6) If the Insured upon occurrence of the Insured Event (Art. 9) has not yet fully rendered the delivery/service, the Insured shall agree with the Insurer on how to proceed, in particular with respect to the decision on whether to cease production or to partially or fully produce the goods that are under production.

(7) The Insured shall at its own cost take all measures with due commercial care to avoid or minimise the loss, and in doing so shall follow the instructions of the Insurer. This rule also applies after the Insurer has provided indemnity.

(8) The goods are to be liquidated in consultation with the Insurer.

Art. 8 Rights of the insurer

(1) The Insurer has the right to inspect any commercial documents of the Insured that are relevant to the contractual relationship or to have them inspected by an agent, and to require copies or to make copies itself.

(2) The Insured authorises the Insurer to reach agreements, on the Insured's behalf, with parties liable to pay in order to secure the receivables and reduce the loss of risk. The Insurer, however, is under no obligation to do so.

(3) The Insurer may engage an auditor to check the claimed costs for work in progress (Art. 2 (1) b)) and an expert to establish the possibilities of liquidating the goods.

(2) Obavezno je javiti svaku promjenu u dogovoru koji se odnosi na plaćanje, isporuku, pružanje usluge ili instrumente osiguranja, koje – ukoliko se s njima nije složio osiguratelj – u pitanje dovede osigurateljno pokriće (usp. čl. 13).

(3) Ukoliko ugovaratelj osiguranja uz osigurana potraživanja prema kupcu ima i neosigurana potraživanja, ne smije ugovoriti s kupcem dogovor o otplati, koji bi zakinuo osiguratelja.

(4) Ugovaratelj osiguranja će osiguratelja bez odlaganja obavijestiti ukoliko:

- a) potraživanje još nije plaćeno mjesec dana nakon što je dospjelo,
- b) zbog nepostojanja pokrića ne mogu biti unovčeni čekovi ili mjenice ili izravno zaduženje bude vraćeno ili ukoliko naknadno budu potraživanja produljenja za mjenice,
- c) zadatak za naplatu provodi pravnik ili ured za naplatu potraživanja ili se naplata potraživanja zatraži sudskim putem,
- d) obveznik plaćanja stane s plaćanjima ili prijeti nastupanje pres-tanka plaćanja.

Odredbe sl. a) do sl. d) odnose se na sve obveznike plaćanja te također na osigurana kao i neosigurana potraživanja.

(5) Prije zaključenja usporedbe, dogovora o plaćanju u ratama ili kakvog sličnog dogovora, ugovaratelj osiguranja mora pribaviti suglasnost osiguratelja.

(6) Ukoliko ugovaratelj osiguranja kod nastupanja osiguranog slučaja (čl. 9) isporuku/ uslugu još nije u cjelosti izvršio, o dalj-njem će se postupanju usuglasiti s osigurateljem, posebice kada se radi o odluci o zaustavljanju proizvodnje ili pak o potpunom ili djelomičnom završetku robe koja je u procesu proizvodnje.

(7) Ugovaratelj osiguranja će s pažnjom urednog poduzetnika o vlastiti trošak poduzeti sve mjere kako bi spriječio gubitak ili ga sveo na najmanju moguću mjeru te će pritom slijediti napatke osi-guratelja. To također vrijedi nakon što je osiguratelj isplatio osigur-ninu.

(8) Robu se mora koristiti u dogovoru s osigurateljem.

Čl. 8 Prava osiguratelja

(1) Osiguratelj ima pravo sam ili putem opunomoćenika steći uvid u poslovne dokumente ugovaratelja osiguranja koji su bitni za ugo-vorni odnos te smije zatražiti izradu kopiju i sam ih učiniti.

(2) Ugovaratelj osiguranja osiguratelju daje punomoć da u njegovo ime donosi dogovore s obveznicima plaćanja kako bi se osigurala potraživanja i smanjio rizik od gubitka. Ipak, osiguratelj se na nave-deno ne obavezuje.

(3) Osiguratelj smije koristiti usluge revizora kako bi provjerio vlas-tite troškove nastale u osiguranome slučaju (čl. 2 st. 1 sl. b)), a za procjenu upotrebljivosti robe može koristiti usluge stručnjaka.

Art. 9 Insured Event

(1) An Insured Event shall be deemed to occur

- a) if an insured receivable has not been paid in full within six months of initiating debt collection despite conscientious efforts to collect the debt. Debt collection is deemed to mean the engagement of an attorney or a debt collection agency approved by the Insurer to collect any due receivables or any other measure agreed with the Insurer (in the event of "payment default").
- b) once all parties liable to pay are insolvent. Insolvency pursuant to this insurance contract shall only be deemed to occur if

- aa) pursuant to the insolvency law provisions in the country of the party liable to pay, the court of the duly authorised administrative authority has launched insolvency proceedings for the purpose of reorganisation or liquidation, rejected the application for launching insolvency proceedings on the grounds of lack of assets or, based on the application, before launching of the proceedings appointed a temporary administrator to attain the purpose of the proceedings or otherwise placed the assets and business operations of the party liable to pay under supervision such that the possibility of foreclosure by individual creditors is excluded, or
- bb) an extra-judicial settlement (with the exception of a mere moratorium) is reached with all creditors, or
- cc) foreclosure undertaken by the Insured has not led to full satisfaction of the Insured's claims, or
- dd) unfavourable circumstances are proven that mean measures (e.g. foreclosure, insolvency petition) of the Insured against the party liable to pay have no prospect of success.

(2) The date of occurrence of insolvency pursuant to (1) b) in the case of

- aa) is deemed to be the date on which the insolvency proceedings are opened, the petition for opening of the insolvency proceedings is rejected or a measure to attain the purpose of the proceedings is decided;
- bb) is deemed to be the date on which all creditors have consented to settlement;
- cc) is deemed to be the date of foreclosure;
- dd) is deemed to be the date on which the Insured obtains written proof thereof.

(3) An Insured Event is also deemed to occur if, owing to worsening of the Insured Buyer's creditworthiness, there is a threat of insolvency, prior to delivery or provision of the service, and the goods, providing that they were still at the disposal of the Insured or were taken back by the Insured, have been liquidated in agreement with the Insurer under the best possible terms, resulting in reduced proceeds.

In this case the date of occurrence of the Insured Event is deemed to be the date on which the loss is definitively established following liquidation of the goods.

Čl. 9 Osigurani slučaj

(1) Osigurani slučaj nastupa,

- a) ukoliko osigurano potraživanje usprkos pomne naplate potraživanja šest mjeseci nakon pokretanja naplate potraživanja nije u potpunosti plaćeno. Naplatom potraživanja smatra se opunomoćenje pravnika ili ureda za naplatu potraživanja kojeg prihvaća osiguratelj da naplate pristiglo potraživanje ili neka druga mjera koja je dogovorena s osigurateljem (osigurani slučaj „Kašnjenje s plaćanjem”); ili
- b) čim obveznici plaćanja postanu platežno nesposobni. Platežna nesposobnost u smislu ovog ugovora o osiguranju postoji samo ukoliko

- aa) prema stečajnopravnim odredbama u državi obveznika plaćanja sud ili za to zaduženo upravno tijelo pokrene stečajni postupak u svrhu reorganizacije ili likvidacije, zahtjev za pokretanjem bude odbijen zbog pomanjkanja mase ili na temelju zahtjeva prije pokretanja postupka u svrhu osiguranja cilja postupka imenuje privremenog upravitelja ili je imovinu ili poslovni pogon na takav način stavljen pod nadzor da je isključena ovrha putem pojedinačnih vjerovnika, ili
- bb) je sa svim vjerovnicima postignuta izvansudska nagodba – izuzevši puki moratorij, ili
- cc) ovrha koju je proveo ugovaratelj osiguranja nije rezultirala potpunim zadovoljenjem, ili
- dd) budu dokazane nepovoljne okolnosti zbog kojih neizglednom djeluje mjera ugovaratelja osiguranja prema obveznicima osiguranja (npr. ovrha, stečaj).

(2) Trenutkom nastupanja nesposobnosti plaćanja prema st. 1 lit. b, smatra se

- aa) dan pokretanja stečajnog postupka, odbijanja zahtjeva za pokretanjem stečaja ili ugovaranja mjere koja jamči postizanje svrhe postupka.
- bb) dan kojeg su svi vjerovnici dali svoj pristanak za nagodbu.
- cc) dan ovrhe.
- dd) dan na koji je ugovaratelju osiguranja predložen pisani dokaz.

(3) Osigurani slučaj nastupa i onda kada kupcu prijete platežna nesposobnost nakon isporuke ili izvršenja usluge zbog pogoršanja njegovog boniteta, a roba, ukoliko njome još uvijek raspolaže ugovaratelj osiguranja ili je uzeta natrag, te je u dogovoru s osigurateljem upotrebljena na najbolji mogući alternativni način te je pritom ostvaren neki minimalni prihod.

Dan nastupanja osiguranog slučaja ovdje se smatra onaj dan, kojeg je nakon alternative upotrebe robe utvrđen gubitak.

Art. 10 Deadline for filing claims, liquidation of collateral, loss calculation

(1) The Insured shall file its claim to indemnification with the Insurer no later than within six months of becoming aware of the occurrence of the Insured Event. The claim to indemnification will lapse if the notification is not received by the Insurer within that deadline – it will lapse at the latest three years after occurrence of the Insured Event irrespective of when the Insured becomes aware of the Insured Event (the claim is precluded).

(2) The Insured shall enforce all of its rights in agreement with the Insurer and shall liquidate collateral under the best terms possible. The Insured shall provide the Insurer with all documents that the Insurer deems necessary as proof of the occurrence of the Insured Event and the validity of the receivable, as well as for calculation of the insured loss.

(3) When calculating the insured loss, the following shall be deducted in the following order from the level of the insured receivable upon occurrence of the Insured Event:

- a) the credit costs for the portion of the agreed credit term that had not yet expired upon occurrence of the insured event,
- b) the proceeds from the liquidation of the goods, less the costs entailed by the liquidation as agreed with the Insurer,
- c) following occurrence of "payment default" (Art. 9 (1) a)), all payments and proceeds that are allocated to the insured receivable or are paid or collected without such allocation; however, in the event of insolvency (Art. 9 (1) b)), all payments, any claims that can be offset, return shipments, revenues from collateral and other rights and the insolvency dividend, providing that they relate to the insured receivable, will be deducted; if it cannot be established whether they apply to insured or uninsured receivables, they will be deducted pro rata.

(4) The Insurer shall provide indemnity for the insured loss, less the self-insured retention (Art. 5).

Art. 11 Indemnification, transfer of rights

(1) The Insurer shall provide indemnity as soon as the definitive insured loss is proven. If the level of the loss has not yet been definitively established, the Insurer shall prepare a provisional loss calculation within three months of the occurrence of the Insured Event. In doing so, the Insurer shall estimate the amounts which are to be deducted according to Art. 10 (3) and whose level has not yet been definitively established (with the following exception: no estimate will be made in the event of "payment default" as described in Art. 9 (1) a)). The final calculation will be made as soon as the required proof has been furnished.

(2) If the validity of the receivables is disputed, the receivables will only be indemnified if and to the extent that the Insured provides a non-appealable title that can be enforced at the seat of the debtor (e.g. ruling or acknowledgement of the receivable).

(3) All claims of the Insured against all debtors and all ancillary rights will be transferred to the Insurer in the amount of the indem-

Čl. 10 Prijava štete, naplata osiguranja, izračun gubitka

(1) Ugovaratelj osiguranja podnosi svoj zahtjev za isplatu osigurnine osiguratelju najkasnije šest mjeseci od saznanja o nastupanju osiguranog slučaja. Podnošenje zahtjeva za isplatom osigurnine nije moguć ukoliko osiguratelj unutar navedenog roka nije zaprimio navedeni zahtjev, neovisno o saznanjima ugovaratelja osiguranja, no najkasnije tri godine nakon nastupanja osiguranog slučaja (prekluzija).

(2) Ugovaratelj osiguranja u suglasnosti s osigurateljem ostvaruje prava koja mu pripadaju, a instrumentima osiguranja upravlja na najbolji mogući način. On podnosi informacije te daje na uvid sve one dokumente koji su osiguratelju potrebni kako bi dokazao nastupanje osiguranog slučaja i ispravnog sadržaja potraživanja te za izračun osiguranog gubitka.

(3) Za izračun osiguranog gubitka navedenim se redoslijedom od osiguranog potraživanja kod nastupanja osiguranog slučaja odbijaju:

- a) troškovi kredita za onaj dio ugovorenog trajanja kredita koji pri nastupanju osiguranog slučaja još nije bio istekao,
- b) prihodi iz upotrebe robe nakon odbijanja za njega potrebnih a s osigurateljem dogovorenih troškova,
- c) nakon nastupanja osiguranog slučaja „Kašnjenje s plaćanjem“ (čl. 9 st. 1 sl. a)): sva plaćanja i prihodi koja su posvećena osiguranome potraživanju ili su ispunjena ili ostvarena bez posvete; nakon nastupanja platežne nesposobnosti (čl. 9 st. 1 sl. b)) ipak sva plaćanja, iznosi potraživanja, povrati, prihodi od instrumenata osiguranja i drugih prava te stečajna kvota, ukoliko se odnose na osigurano potraživanje; ukoliko nije moguće ustanoviti odnose li se na osigurana ili neosigurana potraživanja, odbit će se srazmjerno.

(4) Osiguratelj isplaćuje osigurninu za osigurani gubitak umanjenju za samoprdržaj (čl. 5).

Čl. 11 Isplata osigurnine, upis prijenosa

(1) Osiguratelj isplaćuje osigurninu čim je dokazano konačno nastupanje osiguranog gubitka. Ukoliko iznos gubitka još nije konačno utvrđen, osiguratelj će najprije unutar tri mjeseca nakon nastupanja osiguranog slučaja izraditi privremeni izračun štete. Pritom osiguratelj procjenjuje iznose koje treba odbiti prema čl. 10 st. 3 i čija visina još nije utvrđena (izuzetak: ukoliko je nastupio osigurani slučaj „Kašnjenje s plaćanjem“ prema čl. 9 st. 1 sl. a), tada se ne pristupa procjeni). Završni izračun slijedi onda kada budu predloženi potrebni dokazi.

(2) Ukoliko je važeći pravni status potraživanja sporan tada će osiguratelj isplatiti odštetu samo ukoliko ugovaratelj osiguranja posjeduje važeću izvršnu ispravu koju je moguće provesti prema sjedištu dužnika (primjerice presuda, priznanje).

(3) U visini iznosa isplaćene osigurnine na osiguratelja prelaze svi zahtjevi ugovaratelja osiguranja naspram svih obveznika te sva pomoćna prava. Ugovaratelj osiguranja poduzima na zahtjev osi-

nity provided. Upon the request of the Insurer, the Insured shall take all measures required for the transfer of rights. If the insured receivable was assigned as collateral, the Insurer may retain the indemnity until the assignee has obliged it to reassign the receivable.

(4) The Insured shall notify the Insurer of any payments or reductions to the receivable that were not included in the loss calculation (Art. 10 (3)). Where applicable, the Insurer shall make a new loss calculation.

Art. 12 Assignment or pledging of the claim to indemnity

Pledging of the claim to indemnification is not permitted. In the event of assignment, the pleas available to the Insurer and the right of set-off shall also apply vis-à-vis the assignees. The loss will only be settled with the Insured.

Art. 13 Consequences of failing to comply with duties and obligations

(1) If the Insured has failed to meet a legal or contractual obligation or has breached a duty, then the Insurer is released from the obligation to provide performance, irrespectively of termination of the insurance contract.

(2) The Insurer is not released from the obligation to provide performance

- if the Insured was not to blame for the breach of its duties of conduct, or
- if the breach did not have any influence on the occurrence of the Insured Event, or
- to the extent that the breach of the duties of conduct had no influence on the scope of the indemnification to be provided by the Insurer.

Art. 14 Currency of the contract

The currency of the contract is the euro (EUR). Amounts in other currencies will be converted to the currency of the contract according to the foreign exchange reference rate of the European Central Bank on the date on which the insurance contract commences. The reference rate on the date of occurrence of the Insured Event will be applicable to the calculation of the indemnity. However, the rate may not be higher than that of the date of commencement of the insurance contract. Proceeds will be converted according to the rate on the date of receipt of payment.

Currencies for which there is no reference rate of the European Central Bank will be converted according to the foreign exchange rate published by the National Bank of Austria (Oesterreichische Nationalbank). If no rate is published for the date in question, then the rate of the first preceding day for which a rate was published will be used.

guratelja sve radnje potrebne za prijenos prava. Ukoliko je osigurano potraživanje preneseno kao instrument osiguranja (Cezija instrumenta osiguranja), osiguratelj se može onoliko dugo suzdržati od isplate osigurnine, sve dok se cezionar (primatelj prijenosa) njemu ne obaveže na preraspodjelu potraživanja.

(4) Ugovaratelj osiguranja će osiguratelja obavijestiti o plaćanjima i umanjenjima potraživanja, koja nisu uzeta u obzir kod izračuna gubitka (čl. 10 st. 3). Osiguratelj će tada prema potrebi napraviti novi izračun štete.

Čl. 12 Prijenos ili zalaganje zahtjeva za isplatu osigurnine

Zalaganje zahtjeva za odštetom nije dopušten. U slučaju prijenosa osigurnine osiguratelj zadržava sva prava osporavanja i prava prijenosa i prema vjerovnicima. Iznos osigurnine obračunava se samo u dogovoru s ugovarateljem osiguranja.

Čl. 13 Posljedice povrede dužnosti ili obveza

(1) Ako ugovaratelj osiguranja nije ispunio neku zakonsku ili ugovornu obvezu ili ju je prekršio, osiguratelj u tom slučaju ne isplaćuje osigurninu. To pravilo vrijedi neovisno o raskidu ugovora o osiguranju,

(2) Osiguratelj se neće pozvati na ugovorom dogovorenu mogućnost neisplate osigurnine ako,

- nepoštivanje obveza nije nastalo krivnjom ugovaratelja osiguranja ili
- nepoštivanje obveza nije utjecalo na nastupanje osiguranog slučaja ili
- ukoliko povreda nije utjecala na opseg usluge koju je osiguravatelj morao provesti.

Čl. 14 Ugovorna valuta

Ugovorna valuta je Euro (EUR). Iznosi u drugim valutama preračunavaju se u ugovornu valutu prema referentnome tečaju Europske središnje banke onoga dana kojeg započinje ugovor o osiguranju. U izračunavanju isplate osigurnine mjerodavan je referentni tečaj onoga dana kojeg je nastupio osigurani slučaj, ali ne tečaj viši od onog na dan početka ugovora o osiguranju. Dobici se izračunavaju prema tečaju na dan primitka plaćanja.

Valute za koje ne postoji referentni tečaj preračunat će se prema tečaju koji je za taj dan odredila Austrijska narodna banka. Ukoliko za navedeni dan nije objavljen mjerodavan tečaj, tada vrijedi tečaj onog prethodnog dana, za koji je objavljen tečaj.

Art. 15 Closing provisions

(1) Declarations concerning the existence or content of the insurance relationship (in particular amendments to the contract, termination or withdrawal) must be made in writing with handwritten signature (Section 886 Austrian General Civil Code (ABGB)). The written form is sufficient for all other declarations (Section 1b Austrian Insurance Contract Act (VersVG)). Verbal ancillary agreements are not valid. The contractual language is German.

(2) Austrian law applies to the exclusion of the conflict of laws and the UN commercial law. In addition, provisions including, but not limited to, the provisions of the Austrian Insurance Contract Act, the Austrian Commercial Code and the Austrian General Civil Code apply. The place of performance and sole place of jurisdiction is Vienna. ■

Čl. 15 Završne odredbe

(1) Izjave, koje se odnose na stanje ili sadržaj osigurateljnih odnosa – a osobito na raskid, odustanak ili prijenos zahtjeva za isplatu osigurnine – potrebno je dostaviti u pisanom obliku (čl. 886 Općeg građanskog zakonika). Za sva ostala objašnjenja dovoljan je pisani formular (čl. 1b Zakona o ugovoru o osiguranju). Ugovorni jezik je njemački.

(2) Primjenjuje se austrijsko pravo uz isključenje pravila o rješenju sukoba nadležnosti i trgovačkog prava UN-a. Kao nadopuna se prije svega primjenjuju regulacije Zakona o ugovoru o osiguranju, Zakona o poduzetništvu i Općeg građanskog zakonika. Mjesto izvršenja i nadležni sud je u Beču. ■