

General Conditions for Surety Insurance

– GCI Surety 2018 (Version 2024-01) –

Section 1 Subject matter of insurance

After evaluating the policyholder's creditworthiness, the insurer shall provide sureties (by way of surety bonds, guarantees or other assumptions of liability) as instructed by the policyholder on a case-by-case basis subject to premium for each individual case; as a surety, it agrees to make payments to beneficiaries in accordance with the terms of the surety wording.

Section 2 Policyholder's obligations

The policyholder shall

- a) present his respective annual financial statements with any auditor's opinion to the insurer immediately upon their completion and explain them upon request so that the insurer may evaluate his creditworthiness; if the annual financial statements are not completed by a specified date, the policyholder shall submit a preliminary balance sheet with an income statement on request and subsequently submit the annual financial statements with the auditor's opinion,
- b) supply at any time to the insurer any information and documentation that the insurer may request concerning the development of business and any other activities and relationships which the insurer may deem essential to a credit evaluation,
- c) notify the insurer without further request of any significant changes in its legal and economic circumstances which could be relevant to the business relationship and credit evaluation.

Section 3 Execution of sureties

The following terms and conditions apply to the provision, modification and discharge of sureties:

1. The insurer
 - a) shall either provide sureties itself in response to a specific request (direct sureties) or engage another insurer or lending institution (primary surety) to provide sureties (indirect sureties); if the insurer engages a primary surety, it shall only be responsible for exercising due care in selecting and instructing the primary surety; the insurer has no liability in this regard if it is acting on the policyholder's instructions,
 - b) shall maintain a surety account for the policyholder where it recognizes direct sureties on the issue date and indirect sureties on the date on which it sends the engagement letter to the primary surety,
 - c) can refuse to provide sureties,
 - d) can waive statutory liability limitations (e. g. German Civil Code ("BGB") Section 765 et seqq.) in its sureties and make the sureties contingent on the fulfillment of a particular condition,
 - e) shall cancel direct sureties with an unambiguously worded deadline if it fails to receive any claims by the deadline unless the surety is governed by foreign law,
 - f) shall refrain from cancelling any other direct sureties until the sureties have been unconditionally returned to it or it has received an unconditional release of liability from the beneficiary. The insurer shall not cancel any sureties that were extended pending a final court decision ("Prozess-aval") and not directly returned by the beneficiary until it has been expressly released from liability,
 - g) shall cancel indirect sureties once the primary surety has unconditionally released it from any liability.
2. The policyholder
 - a) approves the contents of the sureties (including the content of the sureties issued by the primary surety) wherever he did not stipulate the wording himself, and furthermore approves the contents and terms of the

- b) engagement of primary sureties in the case of indirect sureties,
- b) shall notify the insurer in every single case where damages may result from delays or misrouting in connection with executing a request or from communications in this respect,
- c) shall return executed sureties to the insurer and not use them in the event of imminent insolvency,
- d) consents to allow the beneficiaries to supply the insurer with information regarding the settlement and amount of guaranteed obligations.

Section 4 Collateral

The policyholder will provide collateral upon request by the insurer pursuant to the terms of the insurance contract.

The collateral secures in general all the insurer's present and future, conditional and unconditional rights and remedies under or in connection with the surety contract. This includes the insurer's right to be reimbursed for incurred expenses (see Sections 6 and 7 of these General Conditions). The surety contract and the collateral can regulate details and aspects differently.

The collateral will be released once the insurer's liability under all executed sureties has fully and completely lapsed and all of the insurer's claims against the policyholder are fully and completely satisfied; the policyholder may demand the release of collateral to the extent that the value that can be realized from all collateral for the secured claims not just temporarily exceeds 110% of the secured claims.

Section 5 Claims

1. The policyholder
 - a) shall ensure that the insurer receives no claims under the sureties provided and shall take all measures to prevent the submission of a claim in a timely manner,
 - b) shall immediately notify the insurer of any pleas and defenses to submitted claims and present documentary proof thereof,
 - c) shall, if requested by the insurer, provide separate collateral equal to the sum claimed plus estimated expenses for costs and interest if the insurer conducts a legal dispute at his request and on the basis of his defenses,
 - d) expressly waives pleas and defenses that it may have against the insurer regarding the existence, amount and grounds for any submitted claims.
2. The insurer
 - a) shall notify the policyholder of any sureties being claimed and request that he immediately takes suitable action to defend against the claim and/or provide the insurer with all the information that will enable the insurer to review the claim. If the policyholder fails to honor this request or if his efforts are unsuccessful, the insurer is entitled, after conducting a review, to render payment according to the terms of the sureties. In the event of a surety bond ("Bürgschaft") on demand or a guarantee ("Garantie"), the insurer is entitled, without further review, to immediately pay the beneficiary the requested sum up to the surety amount unless the claim obviously constitutes abuse of a legal right.
 - b) shall notify the beneficiary of any reservations lodged by the policyholder,
 - c) may render payment to whichever party it deems entitled to receive the payment based on a diligent review,
 - d) shall only render payment for claims under cancelled sureties if authorized to do so by the policyholder or if ordered to pay by a court judgment that can be enforced against the insurer in the country in which the judgment was handed down.

Section 6 Recourse

1. If the insurer incurs costs, or if the insurer incurs expenses which, given the circumstances, it may reasonably deem necessary for the performance of the insurance contract, including, but not limited to, expenses for reviewing and paying justified claims or defending against unjustified claims, the policyholder must refund these costs or expenses without prejudice to any further claims for refunds or damages, including interest on amounts in default.

Payment claims accrue interest from the charge date to the refund date at a rate of eight percent above the applicable base interest rate (BGB Sections 247, 288 and German Commercial Code ("HGB") Section 352); the policyholder is free to prove that the insurer has sustained significantly lower damages.

2. In each case, the insurer may charge a processing fee (BGB Section 315) based on the general fee for out-of-court work under the German Lawyers' Remuneration Act ("RVG") or agree to a separate flat fee with the policyholder

- a) as compensation for its own expenses in the event of claims under the sureties,
- b) as compensation for its own administrative expenses if the policyholder becomes insolvent.

The insurer may refuse to issue any further sureties until these obligations have been fully and completely satisfied.

3. The policyholder's refund obligation under no. 1 also includes expenses incurred by the insurer after insolvency proceedings are initiated against the policyholder.

Section 7 Premiums, expenses and costs, due date, default

1. The policyholder
 - a) shall immediately pay all premiums due,
 - b) shall, in the event of default, pay interest at a rate of eight percent above the applicable base interest rate (BGB Sections 247, 288 and HGB Section 352) and a payment reminder fee; the policyholder is free to prove that the insurer has sustained significantly lower damages.
2. The insurer
 - a) charges premiums in exchange for providing sureties as well as processing fees; the insurer calculates the premium stipulated in the surety contract based on (i) the surety amounts to be recognized and (ii) the period starting on the recognition date and ending on the cancellation date, and may also charge an additional stipulated premium for providing the credit facility if applicable. The premium is payable up-front and generally invoiced and collected for a period of one year,
 - b) shall, if the surety is returned early or reduced, refund excess premium payments except for minimum premiums; this shall not apply to premiums for providing the credit facility,
 - c) shall bill the policyholder for additional documented expenses/costs (e. g. third-party fees and premiums, delivery and notary costs),
 - d) may suspend the issuance of additional sureties in the event of a default on premium payments.

Section 8 Termination of surety insurance

1. The policyholder may terminate the surety contract with immediate effect at any time.
2. The insurer
 - a) may terminate the surety contract with three months' prior notice at any time unless it is a fixed term contract,
 - b) may terminate the surety contract for good cause with immediate effect at any time; good causes include, but are not limited to,
 - if the policyholder violates his obligations to the insurer, e. g. by providing misinformation to the insurer, or
 - if, in the insurer's sole discretion, the policyholder has suffered a significant deterioration or threat to his economic circumstances or if the insurer learns of such a threat or deterioration, or
 - if the policyholder fails to furnish collateral requested, collateral provided to the insurer is lost or the insurer, upon careful examination, can no longer consider the collateral adequate, or
 - any other good cause in the sense of BGB Section 314;

- c) may, if the surety contract is terminated, revoke or terminate the beneficiaries' ability to continue to use the sureties, especially in the case of revolving sureties (e. g. rent sureties, customs sureties, et al.).

Section 9 Release/collateral

Upon request by the insurer, the policyholder shall

- a) furnish separate cash collateral to the insurer in the cases described in Section 8 (2) (b) without the contract relationship having to be terminated,
- b) upon termination of the surety contract, release the insurer from any liability under the sureties and for the time period until such a release has been provided, upon request by the insurer, furnish the insurer with cash collateral or another form of collateral acceptable to the insurer worth the same amount as the sureties that have not yet been unconditionally cancelled,
- c) pay double premiums from the date of the receipt of the demand for collateral to the date on which all the sureties are finally discharged or the collateral demanded in b) has been fully furnished.

Section 10 Exclusions

The insurer shall not be liable to the policyholder for any damages wherever any of the following factors contributed to their occurrence: war, warlike events, civil commotion, terrorist attacks, strike, confiscation, interference with trade and monetary transactions by governmental authorities, natural disasters or nuclear energy.

Section 11 Sanction clause

Notwithstanding other provisions in this surety insurance contract, the insurer does not grant any insurance coverage or make any payments or render any other performance or other benefits for the policy holder or any third party, to the extent this or actions by the insured party violate applicable regulations, laws or economic or trade sanctions.

The economic and trade sanctions also include lists of persons, companies and other legal entities, ships or aircrafts subject to sanctions (e. g. for the EU: Consolidated list of persons, groups and entities subject to EU financial sanctions).

Section 12 Final provisions

Modifications and amendments to the surety contract shall only apply if and insofar as they are stipulated in an endorsement or confirmed in writing by the insurer in some other form. Verbal agreements shall not be valid. Modifications to this clause must be made in written form.

Any declarations of intent and notifications pertaining to the surety relationship shall be made in written form, including in electronic form.

German law shall apply. Wherever permitted by law, the place of performance and the place of jurisdiction shall be Frankfurt am Main.

The competent supervisory authority is:

Federal Financial Supervisory Authority (BaFin)
– Insurance department –
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53117 Bonn, Germany