
**EKN'S GENERAL TERMS AND CONDITIONS
FOR RAW MATERIAL GUARANTEES**

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PART I – DEFINITIONS, CONSTRUCTION AND BASIS FOR THE GUARANTEE

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

“Additional Security” means security and other credit protection provided by an Obligor for the Borrower’s or a guarantor’s obligations under the Finance Documents and being designated as “additional security” in the Special Conditions. Any security or other credit protection provided by an Obligor for the Borrower’s or a guarantor’s obligations under the Finance Documents that, in addition to the Security specified in the Special Conditions, is provided or perfected following the applicable Effective Date, shall constitute Additional Security, unless otherwise agreed between EKN and the Guarantee Holder.

“Affiliate” means, in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company.

“Applicable Waiting Period” means a period of three consecutive months, except in the case of the Insolvency of the Borrower when the period shall be 0 days.

“Application for Guarantee” means the application for the Guarantee submitted by the Guarantee Holder (or any person on its behalf) to EKN and executed by duly authorised representatives of the Guarantee Holder.

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“Borrower” means the legal entity designated as “Borrower” in the Special Conditions.

“Borrower Related Event” means either the Insolvency of the Borrower or that the Borrower for any other reason, except due to a Non-Borrower Related Event, does not pay any amount expressed to be due and payable under the Credit Agreement.

“Break Compensation” means an amount equal to the interest (excluding the margin) which the Guarantee Holder should have received pursuant to the Credit Agreement on the principal amount compensated by EKN for the period from the date of receipt of such compensation to the last day of the current interest period in respect of the relevant loan minus the amount which the Guarantee Holder would reasonably be able to obtain or plus the amount which the Guarantee Holder would reasonably have to pay, in each case by placing an amount equal to the principal amount compensated by EKN on deposit with a leading bank in the relevant interbank market for a period starting on the Business Day following receipt of the compensation from EKN and ending on the last day of the current interest period.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in Stockholm.

“Claim for Compensation” means an application submitted by the Guarantee Holder to EKN in accordance with Clause 12.2 for payment of compensation in relation to a Loss.

“Compensation Due Date” has the meaning ascribed to that term in Clause 13.2.3.

“Confirmed Lender” means a Lender which has given a Lender’s Confirmation to EKN, which Lender’s Confirmation EKN has acknowledged receipt of.

“Controlled Intermediary” means an Affiliate of the Guarantee Holder complying with the requirements set out in Clause 14.3 and being specified in the Special Conditions as the Lender.

“Covered Amounts” means amounts that have been utilised under the Credit Agreement in compliance with the Guarantee Agreement, which are expressed to be due and payable to the Guarantee Holder (or a Lender) in respect of each scheduled repayment of principal under the Credit Agreement, and each scheduled payment of interest thereon as specified in the Special Conditions. The Covered Amounts do not include payment obligations relating to indemnities, damages or default interest.

“Credit Agreement” means the loan agreement or any other credit document made between the Borrower and the Guarantee Holder (and any Lender), as further specified in the Special Conditions.

“Credit Agreement Signing Date” means the date when the Credit Agreement is signed by all parties thereto.

“Credit Currency” means the currency or currencies in which interest and principal under the Credit Agreement are payable, as further specified in the Special Conditions.

“Default Interest Rate” means the Relevant Base Rate plus two per cent. *per annum*.

“Effective Date” means the Business Day on which the Guarantee (or a part thereof, relating to a particular tranche or facility under the Credit Agreement) becomes effective, following (i) the occurrence of the Credit Agreement Signing Date, (ii) the date when all conditions for the first utilisation by the Borrower under the Credit Agreement are fulfilled or waived (other than conditions requiring that the relevant Effective Date for the Guarantee has occurred or that any utilisation request relating to such first utilisation has been delivered), (iii) all actions stipulated in the Special Conditions having been taken (or waived, temporarily or permanently) to the satisfaction of EKN (acting reasonably) by their due dates in accordance with the Special Conditions and (iv) EKN having received (or waived, temporarily or permanently) all documents and other evidence listed in the Special Conditions in form and substance satisfactory to EKN (acting reasonably).

“EKN” means the Swedish Export Credit Agency (*Exportkreditnämnden*), established by the Government of Sweden as the export credit agency of Sweden.

“EKN Agent” has the meaning ascribed to that term in Clause 15.1.

“Environmental Matters” means any matters with respect to (i) the pollution or protection of the environment, (ii) the release, spillage or emission of any substance, including gases, which, alone or in combination with any other, is capable of causing harm to the environment, including any waste and (iii) environmental impacts on people and society, including noise, ecosystem services, traffic, recreation and tourism.

“Euro” or **“EUR”** means the single currency of the participating member states in accordance with the legislation of the European Community relating to Economic and Monetary Union.

“Exchange Rate” means the rate of exchange for foreign currency against the Guarantee Currency for the previous Business Day, as published by the Swedish Central Bank (*Riksbanken*) on its website (www.riksbank.se (or any replacement page)). If no such rate is available, EKN will fix the relevant exchange rate taking into account the exchange rate quotes reasonably available to it.

“Finance Documents” means the Credit Agreement, any agreement regarding Security or guarantee issued in connection therewith, any intercreditor or subordination agreement or any other agreements or documents specified as such in the Special Conditions, in each case as amended from time to time in accordance with the Guarantee Agreement. For the avoidance of doubt, the Guarantee Agreement is not a Finance Document.

“General Conditions” means these general terms and conditions.

“Guarantee” means the raw material guarantee (or, if applicable, any part thereof relating to a particular tranche or facility under the Credit Agreement) provided by EKN in favour of the Guarantee Holder under the Guarantee Agreement.

“Guarantee Agreement” means the guarantee agreement entered into between EKN and the Guarantee Holder, which includes these General Conditions, the Special Conditions, and any appendices, exhibits, supplements, amendments and waivers thereto (other than the Importer Declaration and excluding any provisions in the General Conditions that relate to the Importer’s obligations towards EKN).

“Guarantee Currency” means Euro, Swedish kronor, US dollars or such other currency EKN adopts and uses as a currency for the Guarantee. The relevant Guarantee Currency for the Guarantee is set out in the Special Conditions.

“Guarantee Holder” means the legal entity designated as “Guarantee Holder” in, and who is party to, the Guarantee Agreement.

“Importer” means each legal entity designated as an “Importer”, in the Special Conditions.

“Importer Declaration” means the Importer declaration executed by duly authorised representatives of each Importer, submitted by the relevant Importer (or any person on its behalf) to EKN in connection with the Application for Guarantee.

“Insolvency” means that the relevant person (i) is deemed to be insolvent, (ii) suspends making payments on all of its debts, (iii) is declared bankrupt or insolvent by a competent court or public authority or (iv) is subject to company reorganisation, involuntary winding-up, dissolution or liquidation or similar proceedings.

“Interest Rate” means the interest rate specified as “Interest Rate” in the Special Conditions and referred to in Clause 5.1(a).

“Involved Affiliate” means:

- (a) an Affiliate of the Guarantee Holder, which is directly involved in the transactions to which the Guarantee relates; or
- (b) an Affiliate of the Importer, which is directly involved in the purchase of and/or the processing of the raw materials provided under the Supply Agreement.

“Last Possible Effective Date” means the date specified as “Last Possible Effective Date” in the Special Conditions and referred to in Clause 4.2.

“Legal Reservations” means (i) the time barring of claims under any applicable limitation law, (ii) limitation of enforcement by laws relating to insolvency, reorganisation and other laws or regulations generally affecting the rights of creditors, (iii) limitation of recognition and application of foreign laws as a result of *ordre public*, (iv) limitation of enforceability due to enjoyment of any rights of sovereign immunity and (v) other qualifications as to matters of law which are specified in the Special Conditions or the Importer Declaration (as applicable), or in a legal opinion provided by a legal counsel of the Guarantee Holder or the Importer (as applicable) and being attached to the Special Conditions or the Importer Declaration or subsequently provided and confirmed by EKN as Supplementary Information.

“Lender” means any Original Lender and any other entity which has become a party to the Credit Agreement as a “Lender” from time to time.

“Lender’s Confirmation” means a confirmation from a Lender including the confirmations set out in Clause 15.5.2.

“Loss” means any loss incurred by the Guarantee Holder (or a Lender) as a result of not receiving the Covered Amounts on an account in the country specified in the Special Conditions on or after their originally scheduled due dates (notwithstanding any prior acceleration or mandatory prepayment event), provided that such amounts would have been received by the Guarantee Holder (or a Lender) but for the occurrence of a Borrower Related Event or a Non-Borrower Related Event covered by the Guarantee. Each Covered Amount which is not received by the Guarantee Holder (or a Lender) on or after its originally scheduled due date as a result of a Borrower Related Event or a Non-Borrower Related Event shall constitute a separate Loss.

“Maximum Capital Amount” means the amount specified as “Maximum Capital Amount” in the Special Conditions and referred to in Clause 5.1(a).

“Maximum Compensation of Loss” means the amount calculated in accordance with Clause 5.1(a).

“Non-Borrower Related Event” means any of the following events, which prevents the payment of the Covered Amounts:

- (a) *Force Majeure*: A force majeure event occurring outside (A) Sweden and (B) the country of the Guarantee Holder, provided that it is not the country of any Obligor. This includes war (including civil war), revolution, riot, civil disturbance, cyclone, flood, earthquake, volcanic eruption, tidal wave, and nuclear accident, in so far as its effects are not insured otherwise with the Guarantee Holder as beneficiary.
- (b) *Moratorium*: General suspension of debt and/or interest payment announced by the government or a public authority of the country of the relevant Obligor or by the government or a public authority of another country through which the payment under the Credit Agreement has to be made.

- (c) *Government Intervention*: Any act, decision or administrative measure of the government of:
- (i) a country (other than (A) Sweden and (B) the country of the Guarantee Holder, provided that it is not the country of any Obligor), including any act, decision or administrative measure of public authorities the effect of which is equal to the effects of a government intervention; or
 - (ii) Sweden or the country of the Guarantee Holder, resulting from an international decision (including, but not limited to, measures and decisions by the European Union, relating to trade between a member state of the European Union and third countries, such as ban on imports) by which (A) Sweden or (B) the country of the Guarantee Holder, provided that it is not the country of any Obligor, is bound or deems itself to be bound, in so far as its effects are not covered otherwise by the government concerned.

However, such act, decision or administrative measure shall not constitute a government intervention if it was (A) in effect on the first Effective Date (unless effected retroactively) or (B) effected as a consequence of a breach of an undertaking or legal obligation by the Guarantee Holder.

- (d) *Transfer Restrictions*: Statutory or administrative measures outside (A) Sweden and (B) the country of the Guarantee Holder, provided that it is not also the country of any Obligor, which prevent or delay:
- (i) converting the local currency in the country of the relevant Obligor into the Credit Currency; or
 - (ii) transferring of funds (irrespective of currency) payable under the Finance Documents outside the country of the relevant Obligor and to an account in the country specified in the Special Conditions.

The above shall only constitute a transfer restriction if (A) the Guarantee Holder has, and has used all reasonable efforts to ensure that each of the relevant Obligor(s) has, during the Applicable Waiting Period applied for and failed to effect such conversion or transfer and (B) to the best of the Guarantee Holder's knowledge, each of the relevant Obligor(s) had on the relevant Effective Date the legal right to effect the conversion or transfer (disregarding any effect of retroactive legislation and regulation).

Notwithstanding the foregoing, there shall only be a transfer restriction if (A) the relevant Obligor has irrevocably deposited sufficient funds (irrespective of currency) with a bank or financial institution authorised to effect the transfer or (B) the Guarantee Holder evidences, to EKN's satisfaction, that the relevant Obligor had and still has sufficient funds (immediately available and irrespective of currency) to make the relevant payment in full on the applicable due date under the Credit Agreement. Otherwise, the prevention or delay of the currency conversion or transferring of funds shall instead be regarded as caused by a Borrower Related Event.

“Obligor” means the Borrower or any party providing a guarantee or Security for the Borrower's payment obligations under the Finance Documents.

“Original Lender” means each lender under the Credit Agreement on the Credit Agreement Signing Date and which is designated as an “Original Lender” in the Special Conditions.

“Percentage of Cover” means such percentage of each Loss for which the Guarantee Holder is entitled to compensation under the Guarantee Agreement, as specified in the Special Conditions. However, the Percentage of Cover may be reduced by EKN in accordance with Clause 9.1 and is further subject to Clause 9.3.

“Primary Security” means security and other credit protection provided by an Obligor for the Borrower’s or a guarantor’s obligations under the Finance Documents and being designated as “primary security” in the Special Conditions.

“Related Party” means:

- (a) in relation to the Guarantee Holder, its and its Involved Affiliates’ respective (i) directors and officers and (ii) employees, agents and representatives, being directly involved in the transactions to which the Guarantee relates; and
- (b) in relation to the Importer, its and its Involved Affiliates’ respective (i) directors and officers and (ii) employees, agents and representatives, being directly involved in the purchase of, and/or the processing of the raw materials provided under the Supply Agreement.

“Relevant Base Rate” means in relation to any amount in:

- (a) Euro, the applicable rate per annum displayed on the appropriate Thomson Reuters screen as of 11.00 a.m. (Brussels time) on the first banking day of each calendar quarter for the offering of deposits in Euro in the European interbank market for a period of three months (EURIBOR 3 month fixing);
- (b) Swedish kronor, the applicable rate per annum displayed on the appropriate Thomson Reuters screen as of 11.00 a.m. (Stockholm time) on the first Business Day of each calendar quarter for the offering of deposits in Swedish kronor in the Stockholm interbank market for a period of three months (STIBOR Fixing 3M);
- (c) US dollars, the applicable rate per annum displayed on the appropriate Thomson Reuters screen as of 11.00 a.m. (London time) on the first banking day of each calendar quarter for the offering of deposits in US dollars in the London interbank market for a period of three months (LIBOR 3 month fixing);

or, in each case, on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters, as reasonably determined by EKN, and

- (d) any other currency, the base rate set out in the Special Conditions.

Notwithstanding the foregoing, (i) if such rate is below zero, the Relevant Base Rate will be deemed to be zero or (ii) if no screen rate is available, the Relevant Base Rate will be the rate *per annum* reasonably determined by EKN.

If the Relevant Base Rate has ceased to exist, is otherwise discontinued or is, in EKN’s opinion, no longer appropriate, EKN shall (acting reasonably) determine (i) the replacement base rate and (ii) a spread, or a formula or methodology for calculating

a spread, as may be necessary to produce an appropriate replacement value for the Relevant Base Rate. From the date determined by EKN, the Relevant Base Rate shall be replaced by such new base rate, including the appropriate spread (if any).

“Residual Risk” means such percentage of each Loss (including the right to receive any recovery in relation to such Loss) that is not covered by the Guarantee, as specified in the Special Conditions.

“Residual Risk Bearer” means each person that bears a portion of the Residual Risk:

- (a) specified in the Special Conditions;
- (b) notified to EKN in accordance with Clause 15.4; or
- (c) otherwise approved by EKN.

“Restricted Party” means a person:

- (a) that is listed on any list of persons published in connection with Sanctions Laws by or on behalf of the United Nations, the European Union, Sweden or any authority acting on behalf of any of them (whether designated by name or by reason of being included in a class of person); or
- (b) that is controlled by a person referred to in paragraph (a) above.

“Sanctions Laws” means the economic or financial sanctions laws and/or regulations, trade embargoes or other restrictive measures imposed, enacted and/or enforced by the United Nations, the European Union, Sweden or any authority acting on behalf of any of them, provided that this definition and any related provision in the Guarantee Agreement shall not apply to a Guarantee Holder to the extent that such Guarantee Holder would be in breach of any law or regulation applicable to it (including without limitation EU Regulation (EC) 2271/96).

“Security” means Primary Security or Additional Security.

“Social Matters” means any business related matter which has an impact on (i) human rights, (ii) labour rights, employment and working conditions, (iii) occupational health and safety, (iv) harm to or the protection of human health, safety and security, (v) livelihood or living standards, including physical and economic displacement, or employment and social protection, (vi) cultural heritage and archaeology, (vii) immigration, indigenous peoples and vulnerable groups and (viii) freedom online.

“Special Conditions” means the agreed special terms and conditions forming part of the Guarantee Agreement.

“Supplementary Information” means:

- (a) in relation to the Application for Guarantee, any information provided by or on behalf of the Guarantee Holder to EKN which amends or supplements the Application for Guarantee; and
- (b) in relation to the Importer Declaration, any information provided by or on behalf of the Importer to EKN which amends or supplements the Importer Declaration,

in each case provided that (i) EKN, no later than together with the confirmation of the first Effective Date, has informed the Guarantee Holder and, where relevant, the Importer that EKN considers the provided information to be Supplementary Information, (ii) the Guarantee Holder has made a request pursuant to Clause 7.1.3 or (iii) the Importer has made a request pursuant to Clause 10.1.3.

“Supply Agreement” means the supply agreement between the Importer and the Borrower or another party, as further specified in the Special Conditions.

“Swedish kronor” or **“SEK”** means the lawful currency of Sweden.

“Transferee” means a permitted transferee of the Guarantee Holder pursuant to Clause 18.1.2.

“US dollars” or **“USD”** means the lawful currency of the United States.

1.2 Construction

- 1.2.1 The terms defined in Clause 1.1 (*Definitions*) and elsewhere in the Guarantee Agreement will have the meanings therein specified for the purpose of the Guarantee Agreement.
- 1.2.2 In the event of any inconsistency between the provisions of the Special Conditions and the other provisions of the Guarantee Agreement, the Special Conditions will prevail.
- 1.2.3 If any obligation to be performed under the Guarantee Agreement falls on a day that is not a Business Day, such obligation shall be performed on the next succeeding Business Day.
- 1.2.4 No delay or omission of EKN to exercise any right or remedy under the Guarantee Agreement shall impair or operate as a waiver of any such right or remedy.
- 1.2.5 When EKN is acting on behalf of the Guarantee Holder in connection with the Guarantee Agreement, EKN shall pay reasonable attention to the interests of the Guarantee Holder and act with normal care.
- 1.2.6 A reference in the Guarantee Agreement to a “month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if (i) the period starts at the last numerically day in a calendar month, or if (ii) there is no numerically corresponding day in the calendar month when the period shall end, in which case the period shall always end on the last numerically day in the following calendar month.
- 1.2.7 A reference in the Guarantee Agreement to the Guarantee Holder shall:
- (a) include a Transferee in relation to the obligations for which such Transferee is jointly and severally liable together with the Guarantee Holder pursuant to Clause 18.1.3;
 - (b) after the appointment of an EKN Agent, be a reference to the EKN Agent acting on behalf of and on the instructions of the Lender(s) and, when relevant, include a reference to the Lender(s); and
 - (c) other than in Clause 14 (*A Controlled Intermediary as Lender*), be a reference to the Controlled Intermediary when relevant.

2. BASIS FOR THE GUARANTEE

- 2.1 The Guarantee is based on the information supplied by the Guarantee Holder in the Application for Guarantee and by the Importer in the Importer Declaration (in each case as amended or supplemented by any Supplementary Information) relating to the Finance Documents and/or the Supply Agreement. The Guarantee Holder is responsible for ensuring that the Finance Documents do not conflict with and reflect the relevant provisions of the Guarantee Agreement.
- 2.2 The Guarantee Holder shall on each Effective Date, subject to the Legal Reservations and Clause 7.2.6, ensure the legal validity and enforceability of the Finance Documents, including all claims arising thereunder, and the legal validity, enforceability and perfection of the Primary Security provided in relation thereto, regardless of EKN's review of or access to the Finance Documents, the Supply Agreement or any document or other information provided in connection therewith.
- 2.3 When performing its rights and obligations under the Finance Documents and when monitoring the credit provided thereunder, the Guarantee Holder shall exercise the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent lender under the same or similar circumstances, but disregarding the Guarantee.

PART II – DESCRIPTION OF THE GUARANTEE COVER

3. DURATION OF THE GUARANTEE AND PROCEDURES FOR AMENDMENTS

- 3.1 The Guarantee Agreement enters into force when it has been duly executed by EKN and duly authorised and executed by the Guarantee Holder. The Guarantee shall be effective when the relevant Effective Date has occurred.
- 3.2 If the Credit Agreement comprises several tranches or facilities and the Guarantee Agreement covers two or more of these tranches or facilities, the Special Conditions may stipulate that there will be more than one Effective Date.
- 3.3 Subject to any early termination or reduction of the whole or part of the Guarantee in accordance with Clause 9 (*Remedies*), EKN's liability under the Guarantee expires when and to the extent the Covered Amounts have been irrevocably received by the Guarantee Holder (or any Confirmed Lender) or when full compensation has finally been paid to the Guarantee Holder (or any Confirmed Lender) and any recoveries have been finally distributed between EKN and the Guarantee Holder (or any Confirmed Lender), in each case in accordance with the Guarantee Agreement.
- 3.4 If the Guarantee Holder requests an amendment to or a waiver under the Guarantee Agreement (including as a result of Supplementary Information being provided after the Guarantee Agreement has been duly executed by EKN), the Guarantee Holder shall submit a written request to EKN specifying the reasons for such amendment or waiver and the Guarantee Holder's view on such amendment or waiver. The proposed amendment or waiver shall only become effective when accepted by EKN in writing after its own analysis and decision. EKN may when accepting a proposed amendment or waiver stipulate certain conditions that shall be fulfilled before it becomes effective. EKN's analysis and decision shall be finalised and communicated in writing to the Guarantee Holder within a reasonable time after having received the request for amendment or waiver.
- 3.5 Following a transfer pursuant to Clause 18.1.3, the Guarantee Agreement may not be amended in a way which adversely affects the relevant Transferee without such Transferee's prior consent.

4. COVERAGE OF THE GUARANTEE

- 4.1 The Guarantee covers Losses with effect from the relevant Effective Date. For the avoidance of doubt, the Guarantee Agreement and the Guarantee provided thereunder will only cover amounts (including accrued interest thereon) that have been utilised under the Credit Agreement in compliance with the Guarantee Agreement.
- 4.2 An Effective Date shall not be deemed to have occurred if any of the conditions for that Effective Date occurs after the date designated as the "Last Possible Effective Date" in the Special Conditions.
- 4.3 EKN shall notify the Guarantee Holder without undue delay upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence required by it and relevant to each Effective Date, listed in the Special Conditions. For the avoidance of doubt, the occurrence of the Effective Date is not dependent on such notice having been given.

- 4.4 EKN has the right to, within three months of becoming aware of any circumstance listed below, notify the Guarantee Holder (i) that the Guarantee will not extend to or will apply with a reduced cover in relation to amounts not yet utilised under the Credit Agreement or (ii) that the terms of the Guarantee will be amended in any other respect in relation to amounts not yet utilised under the Credit Agreement, in each case together with EKN's reasons for such decision, if,
- (a) the risk for Loss has materially increased; or
 - (b) the Supply Agreement is terminated or cancelled in whole or in part or otherwise become invalid, illegal, ineffective or unenforceable, or
 - (c) the Supply Agreement is subject to, in the reasonable opinion of EKN, any material amendment, supplement or modification that affects the type, quantity or origin of the raw material to be supplied, the identity of the supplier or the Importer, the tenor or any provision set out in the Special Conditions.
- 4.5 The Guarantee may cover either (i) Non-Borrower Related Events and Borrower Related Events or (ii) Non-Borrower Related Events only.
- 4.6 If the Guarantee covers both Non-Borrower Related Events and Borrower Related Events and the Percentage of Cover differs between the two categories, a Loss shall be deemed to have resulted from:
- (a) a Non-Borrower Related Event (provided that all conditions relating to the relevant Non-Borrower Related Event have been fulfilled), if a Non-Borrower Related Event and a Borrower Related Event occur simultaneously or in close connection with each other and paragraph (b) below does not apply; or
 - (b) a Borrower Related Event, if, after consultation with the Guarantee Holder, it is not clear from the information available to EKN whether a Loss has resulted from a Non-Borrower Related Event or a Borrower Related Event.

5. LIMITATIONS IN COVERAGE

- 5.1 The Percentage of Cover is set out in the Special Conditions. The maximum compensation paid by EKN under the Guarantee shall not exceed:
- (a) the Percentage of Cover of the amount specified as "Maximum Capital Amount" in the Special Conditions plus interest thereon (if any) at the interest rate specified as "Interest Rate" in the Special Conditions; and
 - (b) any compensation payable pursuant to Clause 7.9.1, the interest payable pursuant to Clauses 13.2.4 and 13.2.5 and/or the break compensation (if any) payable by EKN pursuant to Clauses 13.3.2 and 13.3.3.
- 5.2 The Guarantee Holder shall retain for its own account and may not transfer the Residual Risk, unless otherwise stated in the Special Conditions or in Clause 15.4, or EKN has approved the transfer of such Residual Risk to another party. Any agreement or arrangement having a similar economic effect to a transfer of credit risk (whether pursuant to a derivative instrument, insurance, sub-participation or otherwise) shall be deemed a transfer pursuant to this Clause 5.2.

6. EXCLUSIONS AND CONDITIONS FOR CLAIMING COMPENSATION

6.1 Exclusions

6.1.1 Unless expressly stated in the Special Conditions, EKN shall not be liable for any Loss to the extent caused by:

- (a) any action or omission by the Guarantee Holder, or by any person acting on its behalf, in conflict with the Guarantee Agreement or the Finance Documents;
- (b) any agreement in relation to the transactions to which the Guarantee relates between the Guarantee Holder and an Obligor which are inconsistent with the Finance Documents and that have not been approved by EKN in writing; or
- (c) the absence of any Authorisation required to be obtained and maintained by each Obligor under any law or regulation of any relevant jurisdiction on the applicable Effective Date to enable each such Obligor to perform its obligations under the Finance Documents.

6.1.2 The exclusion in Clause 6.1.1(c) shall not apply if the Guarantee Holder shows that it exercised reasonable due diligence in establishing that each Obligor had obtained all such required Authorisations on or before the applicable Effective Date.

6.2 Conditions for claiming compensation

The Guarantee Holder shall be entitled to claim compensation for a Loss only if:

- (a) the Guarantee Holder has fulfilled all its material obligations towards the Obligors under the Finance Documents, including making disbursements for utilisations of loans in accordance with the Credit Agreement (unless EKN pursuant to Clause 7.7 (*EKN's instructions and the Guarantee Holder's actions*) has instructed the Guarantee Holder not to make disbursement for such utilisation);
- (b) the Guarantee Holder has received a confirmation from the Importer, or other evidence satisfactory to EKN, that the Supply Agreement as described in the Importer Declaration remains in full force and effect prior to each utilisation under the Credit Agreement;
- (c) the Guarantee Holder has notified EKN of a payment default by the Borrower under the Credit Agreement within six months from its due date, unless otherwise set out in the Special Conditions or as otherwise agreed with EKN prior to such date; and
- (d) the other conditions (if any) specified in the Special Conditions as conditions for claiming compensation have been complied with.

PART III – DUTIES AND OBLIGATIONS OF THE GUARANTEE HOLDER

7. UNDERTAKINGS BY THE GUARANTEE HOLDER

The Guarantee Holder's duties and obligations apply for so long as the Guarantee Holder may make a Claim for Compensation under the Guarantee and, if a Claim for Compensation has been made (and has not subsequently been revoked by the Guarantee Holder or rejected by EKN), extend until EKN's or the Guarantee Holder's legal rights of recovery from the Obligors have been exhausted or time barred.

7.1 Application for Guarantee

7.1.1 The Guarantee Holder shall procure that all information provided in the Application for Guarantee, as amended or supplemented by any Supplementary Information, originating from:

- (a) the Guarantee Holder (including each Lender) or its Involved Affiliates is true, accurate, complete and not misleading in any material respect as of the first Effective Date; and
- (b) other parties than those set out in paragraph (a) above is, to the best of the Guarantee Holder's knowledge, true, accurate, complete and not misleading in any material respect as of the first Effective Date.

7.1.2 The Guarantee Holder shall upon becoming aware thereof without undue delay notify EKN of any changes to the information relevant for the purposes of the Guarantee provided in the Application for Guarantee which have occurred prior to the first Effective Date.

7.1.3 The Guarantee Holder may request that any information provided by it to EKN before the first Effective Date shall be treated as Supplementary Information. Supplementary Information provided after EKN's execution of the Guarantee Agreement may require an amendment to or waiver of the Guarantee Agreement in accordance with Clause 3.4.

7.1.4 All Security provided in favour, or for the benefit, of the Guarantee Holder under the Finance Documents shall be specified in the Application for Guarantee as either Primary Security or Additional Security. If the Guarantee Holder designates any Security as Additional Security, it shall provide EKN with the reasons for such designation.

7.2 The Finance Documents

7.2.1 The Guarantee Holder shall procure that the Credit Agreement incorporates a provision to the effect that the payment obligations under the Finance Documents shall be independent from and shall not be affected by any interpretation, disputes, claims or counterclaims arising from or related to the Supply Agreement.

7.2.2 The Guarantee Holder shall procure that the Finance Documents:

- (a) are in writing;
- (b) reflect the relevant information provided in the Application for Guarantee (including any Supplementary Information that the Guarantee Holder has knowledge of prior to the signing of the relevant Finance Document);

- (c) conform to the requirements of the Guarantee Agreement;
- (d) following a payment default by an Obligor, permit a transfer by the Guarantee Holder of its rights to receive payment and other compensation under the Finance Documents to EKN;
- (e) do not contain anything that would restrict the Guarantee Holder's ability to fulfil its obligations under the Guarantee Agreement;
- (f) include (in the Credit Agreement) a condition that the utilisation of a loan may be suspended if EKN has declared that further utilisations will not be covered by the Guarantee, that the Guarantee will apply with a reduced cover or that the terms of the Guarantee will be amended in any other respect in accordance with Clause 4.4;
- (g) include (in the Credit Agreement) an undertaking to the effect that the Borrower shall inform the Guarantee Holder without delay of (i) any material amendments, supplements, modifications to the Supply Agreement or if any material right or obligation thereunder is released, waived, transferred or assigned; and (ii) the Supply Agreement being, or the occurrence of any event or circumstance that is likely to result in the Supply Agreement being, terminated or cancelled in whole or in part, or otherwise become invalid, illegal, ineffective or unenforceable; and
- (h) include (in the Credit Agreement) a condition that pre-payment of a loan shall be made [in case any of the circumstances stated in Clause 4.4 (b)-(c) occurs], if and to the extent stated in the Special conditions.

7.2.3 The Guarantee Holder shall procure that the Credit Agreement includes undertakings to the effect that (i) neither the Borrower nor any Affiliate of the Borrower (or any person acting on their behalf) may use the funds utilised under the Credit Agreement for any purpose which would breach any anti-corruption, anti-bribery, anti-money laundering and anti-terrorist financing laws applicable to it or for any purpose prohibited by any Sanctions Laws applicable to it and that (ii) each Obligor shall comply in all material respects with all mandatory laws and regulations relating to Environmental Matters and Social Matters applicable to the relevant Obligor in connection with its operations related to the Finance Documents or under the Supply Contract.

7.2.4 Following the first Effective Date, no Finance Document may be amended, supplemented or terminated and no right thereunder may be released or waived without the prior consent of EKN, which consent shall not be unreasonably withheld or delayed, other than as explicitly permitted by the Special Conditions, if such amendment, supplement, termination, release or waiver would affect:

- (a) the tenor of the credit, the total commitment of the credit, the scheduled amortisations, the pricing of the credit, the Credit Currency, the purpose of the credit (including the reference to the Supply Agreement), the identity of the borrower(s), the availability period(s) for the credit, the place of payment, any guarantee or Primary Security provided for the Borrower's obligations under the Credit Agreement or any provision set out in the Special Conditions; and/or
- (b) subject to Clause 7.2.5, any other parts of the Finance Documents which, in substance, reflect the information provided in the Application for Guarantee (including Supplementary Information).

- 7.2.5 Following consultation with EKN, the Guarantee Holder may amend, supplement or terminate any document governing Additional Security or release or waive any Additional Security, in each case, provided that EKN has consented to such action or has not within ten Business Days following the consultation objected to the requested action.
- 7.2.6 On each Effective Date, and unless otherwise is stated in the Special Conditions, the Guarantee Holder shall, subject to (i) the Legal Reservations and (ii) the occurrence of any Non-Borrower Related Event preventing it:
- (a) procure that each Obligor's payment obligations under the Finance Documents are irrevocable and that they constitute legal, valid and binding obligations of and are enforceable against the party which, under the Finance Documents, is expressed to have assumed such payment obligations and that no payment obligations become time barred;
 - (b) procure that the Primary Security constitutes legal, valid and binding obligations of and are enforceable against the relevant Obligor, constitutes first ranking security in favour of the Guarantee Holder and is perfected; and
 - (c) procure that each guarantee provided for the Borrower's obligations under the Finance Documents shall be made irrevocably and unconditionally by the guarantor as principal obligor or on demand. If there is more than one guarantor for a guarantee, the guarantee shall be made jointly and severally by each guarantor.
- 7.2.7 From each Effective Date and for as long as the Guarantee is in force, the Guarantee Holder shall take all commercially reasonable efforts within its control to fulfil the obligations set out in Clause 7.2.6.
- 7.2.8 The funds utilised under the Credit Agreement shall be paid (i) to the Borrower or (ii) as otherwise set out in the Special Conditions. If the payment of the premium is funded under the Credit Agreement, funds utilised under the Credit Agreement shall, with respect to the premium, be paid to EKN or, if the Guarantee Holder or the Borrower has paid the premium in advance in accordance with Clause 8.4, to the Guarantee Holder or the Borrower (as the case may be).

7.3 Authorisation

The Guarantee Holder shall use all reasonable efforts to obtain on or before each Effective Date and, unless prevented to do so by any subsequent Non-Borrower Related Event, thereafter comply with and maintain in full force and effect any Authorisation required under any applicable law or regulation to (i) enable it to perform its material obligations under the Finance Documents, (ii) subject to the Legal Reservations, ensure the legality, validity and enforceability of the Finance Documents and (iii) receive all payments under the Credit Agreement in the Credit Currency on an account in the country specified in the Special Conditions.

7.4 Information undertaking and audit right

- 7.4.1 To the extent permitted by applicable law and regulation, the Guarantee Holder shall, at the request of EKN, without undue delay provide EKN with certified copies of the Finance Documents.
- 7.4.2 The Guarantee Holder shall report utilisations under the Credit Agreement as soon as possible and in any event within one month of such utilisations taking place. At each

such occasion the Guarantee Holder shall, if relevant, provide EKN with an updated repayment schedule with relevant dates and relevant amounts.

- 7.4.3 To the extent permitted by applicable law and regulation, the Guarantee Holder shall without undue delay notify EKN in writing:
- (a) if an Obligor requests a change in the conditions of payment or a postponement of payment under the Finance Documents;
 - (b) in case it (or any of its Involved Affiliates) has not received payment (i) within one month from the due date of any Covered Amount or (ii) within two months from the due date of any material amount owed by any Obligor to the Guarantee Holder or any of its Involved Affiliates under any arrangement in relation to indebtedness (including under the Finance Documents, other than Covered Amounts), in each case unless otherwise agreed in the Special Conditions;
 - (c) upon receipt of any amount under the Finance Documents, which the Guarantee Holder, pursuant to paragraph (b) above, previously has reported being overdue;
 - (d) when it becomes aware that it is, pursuant to the Finance Documents, entitled to suspend any utilisation, cancel any commitment, declare all or part of the loans under the Credit Agreement immediately due and payable or payable on demand, enforce any Security and/or demand payment under any guarantee;
 - (e) upon becoming aware that an Obligor materially breaches, suspends, rescinds or repudiates any Finance Document or intends to materially breach, suspend, rescind or repudiate any Finance Document;
 - (f) upon becoming aware of (i) any material amendments, supplements, modifications to the Supply Agreement or if any material right or obligation thereunder is released, waived, transferred or assigned; or (ii) the Supply Agreement being, or the occurrence of any event or circumstance that is likely to result in the Supply Agreement being, terminated or cancelled in whole or in part, or otherwise become invalid, illegal, ineffective or unenforceable;
 - (g) upon becoming aware of any event or circumstance that is reasonably likely to cause, or materially increase the risk of, a Loss (including the Insolvency of any Obligor);
 - (h) of any event or circumstance which adversely impacts the Guarantee Holder's ability to perform its material obligations under the Finance Documents;
 - (i) upon becoming aware of (i) a material breach by an Obligor of laws and regulations relating to Environmental Matters or Social Matters applicable to it or (ii) a breach by an Obligor of Sanctions Laws, laws and regulations relating to anti-corruption, anti-bribery, anti-money laundering or anti-terrorist financing applicable to it, in each case in connection with its operations related to the Finance Documents or the Supply Agreement;
 - (j) upon becoming aware of it, any Involved Affiliate or any Related Party being a Restricted Party; and
 - (k) of any other event or circumstance requiring notification as set out in the Special Conditions.

7.4.4 To the extent permitted by applicable law and regulation, the Guarantee Holder shall (and shall ensure that each of its Involved Affiliates will) without undue delay from EKN's request provide EKN with such accounts, documents and information, which is in its or its Involved Affiliates' possession or reasonably accessible to them, as EKN may reasonably request from time to time and permit EKN's representatives to examine and make copies of audits, accounts, books, financial statements, forecasts, budgets and any other information, in each case relating to the Finance Documents, the Supply Agreement and the Guarantee for the purpose of verifying that the Guarantee Holder has complied with its obligations under the Guarantee Agreement.

7.4.5 Subject to applicable laws and regulations, the Guarantee Holder shall without undue delay following EKN's request, permit EKN or EKN's professional advisors to access, inspect and survey the Obligors' assets that are under the Guarantee Holder's control and have been the subject of an enforcement of any Security for the purpose of protecting EKN's rights under the Guarantee Agreement.

7.5 Mitigation

The Guarantee Holder shall use all reasonable efforts to preserve, perfect and protect its rights under the Finance Documents. Furthermore, the Guarantee Holder shall take all reasonable measures, including making use of any administrative, judicial, arbitral or other available remedies, to prevent a Loss or, if a Loss occurs, minimise such Loss. Costs incurred by the Guarantee Holder when taking mitigating efforts or measures will, provided that such costs are reasonable and proportional, be compensated by EKN and allocated in accordance with Clause 7.9.1.

7.6 Compliance with Sanctions Laws, laws and regulations relating to anti-corruption, anti-bribery etc.

7.6.1 On the first Effective Date, the Guarantee Holder shall ensure that neither it, any Involved Affiliate nor any Related Party is a Restricted Party.

7.6.2 From the first Effective Date and for as long as the Guarantee is in force, the Guarantee Holder shall in relation to the transactions to which the Guarantee relates:

- (a) ensure that neither it nor any of its Involved Affiliates is in breach of applicable Sanctions Laws;
- (b) not conduct (and shall ensure that no Involved Affiliate will conduct) its businesses in breach of applicable anti-corruption, anti-bribery, anti-money laundering and anti-terrorist financing laws; and
- (c) ensure that neither it, nor any of its Involved Affiliates or any of its Related Parties has been engaged or will engage in bribery.

7.6.3 From the first Effective Date and for as long as the Guarantee is in force, the Guarantee Holder shall, in relation to the transactions to which the Guarantee relates, use all reasonable efforts to ensure that:

- (a) none of its Related Parties is in breach of applicable Sanctions Laws; and
- (b) none of its Related Parties will conduct its businesses in breach of applicable anti-corruption, anti-money laundering and anti-terrorist financing laws.

- 7.6.4 The Guarantee Holder shall institute and maintain policies and procedures, or ensure that policies are instituted and maintained, with respect to itself, its Involved Affiliates and its Related Parties, designed to, promote and achieve compliance with applicable anti-corruption, anti-money laundering and anti-terrorist financing laws.
- 7.6.5 If a breach of the requirements set out in Clause 7.6.3 occurs, the Guarantee Holder shall upon becoming aware of it, to the extent permitted by applicable laws and regulations, without undue delay (i) notify EKN thereof and (ii) initiate appropriate actions, if applicable in accordance with its code of conduct. Provided the Guarantee Holder is able to do so, it shall use all reasonable efforts to procure that the underlying reason for the breach is remedied as soon as practically possible given the circumstances. During the period which the breach is continuing, the Guarantee Holder shall, to the extent permitted by applicable laws and regulations, keep EKN regularly informed of any developments that it becomes aware of and take any actions reasonably requested by EKN to mitigate the negative effects of the breach.
- 7.6.6 The Guarantee Holder shall comply with any further environmental and social requirements applicable to it, as set out in the Special Conditions.

7.7 EKN's instructions and the Guarantee Holder's actions

- 7.7.1 The Guarantee Holder may only cancel a commitment, declare all or part of the loans under the Credit Agreement immediately due and payable or payable on demand, enforce any Security and/or demand payment under any guarantee with the prior consent of EKN, which consent shall not be unreasonably withheld or delayed, unless otherwise set out in the Special Conditions or if it would be contrary to any law or regulation applicable to the Guarantee Holder to maintain the loan.
- 7.7.2 Unless otherwise set out in the Special Conditions, the Guarantee Holder shall (and shall ensure that each of its Involved Affiliates will) act in accordance with EKN's reasonable instructions with respect to the Finance Documents, which may include (but are not limited to):
- (a) taking commercially reasonable debt-collection and other necessary measures to prevent or mitigate a Loss, even after compensation for such Loss has been paid;
 - (b) following (i) an event or circumstance that, in EKN's reasonable opinion, is likely to cause, or materially increase the risk of, a Loss, (ii) the Borrower's, its Involved Affiliates' or its Related Parties' non-compliance with applicable Sanctions Laws or (iii) any such person becoming a Restricted Party, suspending any utilisation under the Credit Agreement, unless such suspension would be violating any law or regulation applicable to the Guarantee Holder;
 - (c) perfecting, or requesting the relevant Obligor to perfect, any un-perfected security or other credit protection available to the Guarantee Holder pursuant to the Finance Documents; and
 - (d) enforcing its rights against any Obligor in accordance with the terms of the Finance Documents.

7.8 EKN's right to act

If the Guarantee Holder does not act substantially in accordance with EKN's instructions issued in accordance with the Guarantee Agreement, EKN shall have

the right to take such actions on behalf of the Guarantee Holder and at the Guarantee Holder's cost in accordance with Clause 7.9.4. Before doing so, EKN must give the Guarantee Holder ten Business Days' notice referring specifically to this Clause 7.8. The Guarantee Holder irrevocably authorises and empowers EKN, and any of EKN's professional advisers, to act on behalf of the Guarantee Holder for these purposes but always in compliance with the Finance Documents. The Guarantee Holder shall take all reasonable actions and issue all documents necessary to enable EKN to exercise these rights. Should the Guarantee Holder fail to take necessary actions required by it pursuant to this Clause 7.8 in order to enable EKN to act, EKN shall instead have the rights available to it pursuant to Clause 9 (*Remedies*).

7.9 Costs

- 7.9.1 Subject to Clause 7.9.5, EKN shall compensate the Guarantee Holder for the reasonable and verifiable direct costs incurred by the Guarantee Holder when acting in accordance with EKN's instructions or taking actions that have been specifically approved by EKN. However, the compensation shall be limited to the Percentage of Cover of such costs.
- 7.9.2 Reasonable and verifiable direct costs incurred by EKN when exercising its rights under the Guarantee Agreement shall be allocated to EKN in relation to the Percentage of Cover and to the Guarantee Holder in relation to the Residual Risk, except for costs that shall be paid in full by the Guarantee Holder pursuant to Clauses 7.9.4 or 9.5.
- 7.9.3 Notwithstanding Clause 7.9.1, unless otherwise agreed, neither the Guarantee Holder nor EKN shall receive any cost compensation for internal costs or indirect costs incurred by any of them or any of their Affiliates in fulfilling their respective obligations under the Guarantee Agreement.
- 7.9.4 The Guarantee Holder shall, within 20 Business Days of demand, pay to EKN the amount of all reasonable and verifiable direct costs and expenses incurred by EKN in connection with fulfilling any of the Guarantee Holder's obligations under the Guarantee Agreement following application of Clause 7.8 (*EKN's right to act*).
- 7.9.5 If the Guarantee Holder or EKN has incurred costs in accordance with this Clause 7.9, a request for cost compensation shall be received by EKN or the Guarantee Holder, as applicable, within twelve months of the date on which the relevant cost was incurred, unless otherwise set out in the Special Conditions or as otherwise agreed in writing between the parties prior to such date. Otherwise, the Guarantee Holder or EKN, as applicable, has no right to receive compensation for such cost.

8. PREMIUM AND OTHER FEES, COSTS AND EXPENSES

- 8.1 The Guarantee Holder is obligated to pay the premium for the Guarantee and other fees, costs and expenses payable by it pursuant to the Special Conditions or any separate arrangement on their due dates.
- 8.2 Based on the information set out in the Application for Guarantee (as amended or supplemented by any Supplementary Information provided by or on behalf of the Guarantee Holder), the preliminary premium rate will be set out in the Special Conditions. The premium will be finally calculated by EKN taking into consideration (a) the total credit amount actually disbursed by the Guarantee Holder for utilisations of loans under the Credit Agreement and (b) any changes to the Guarantee Agreement affecting the premium. Any surplus premium payment resulting from the final

calculation in accordance with paragraph (a) above will be refunded by EKN to the Guarantee Holder, without any deduction of administrative fees and with no interest paid on the surplus premium payment.

- 8.3 The Special Conditions specify the method for paying the premium and when the premium, or any part thereof, will be invoiced. The payment terms for any premium invoice will not be less than one month after the invoice date.
- 8.4 The Guarantee Holder (or the Borrower on its behalf) may at its option make an advance payment of the premium and other fee(s) payable under the Guarantee Agreement. Upon the Guarantee Holder's request, EKN shall provide instructions for such advance payment, provided that such request is made no later than the date of notifying the Effective Date. Subsequent invoices for such premium or fee(s) shall be set off against that advance payment. The advance payment shall not carry interest and any remaining amount following the set off shall be repaid by EKN to the Guarantee Holder.
- 8.5 If the premium or any other fees, costs or expenses payable by the Guarantee Holder are not paid by their respective due dates, interest at the Default Interest Rate shall be payable by the Guarantee Holder from the applicable due date up to the date of actual payment.
- 8.6 If (a) EKN consents to a change in the content or scope of the Guarantee with the effect that the Covered Amounts or the duration of the Guarantee is altered or (b) Covered Amounts are voluntarily prepaid (in whole or in part), the premium will be recalculated by EKN, taking into consideration the altered risk profile for the Guarantee and any exchange rate fluctuations between the first Effective Date and (i) the date EKN consented to the change or (ii) when the prepayment is made.
- 8.7 Any surplus premium payment resulting from the recalculation in accordance with Clause 8.6 will be refunded by EKN to the Guarantee Holder after deduction of administrative fees of up to 15 per cent. of the surplus premium and with no interest paid on the surplus premium payment, provided that (i) no Loss has occurred and (ii), in the case of prepayment, a request for such refund has been received by EKN within twelve months of the date when the prepayment was made.
- 8.8 If the Guarantee Holder is not entitled to compensation for a Loss due to a breach of the terms of the Guarantee Agreement, no refund of the premium to the Guarantee Holder shall be made.
- 8.9 Following a transfer pursuant to Clause 18.1.3 the Transferee shall have the right to pay premium and other fees, costs and expenses payable by the Guarantee Holder to EKN on behalf of the Guarantee Holder. EKN shall not be obligated to send invoices or other demands of payment to the Transferee.

9. REMEDIES

- 9.1 In addition to Clause 6.1 (*Exclusions*) and Clause 6.2 (*Conditions for claiming compensation*), a material breach by the Guarantee Holder of its obligations specified in the Guarantee Agreement may result in a termination of the Guarantee or a reduction of the cover under the Guarantee (including by way of reducing the Percentage of Cover). When determining if the Guarantee shall be terminated or the cover under the Guarantee be reduced, EKN shall act reasonably and take into consideration the nature and gravity of the breach and whether the risk of a Loss has increased as a result thereof. A breach of Clause 7.6.2 is always material and when EKN is determining

the remedy for such breach, EKN shall act reasonably and take into consideration the nature and gravity of the breach. Following a material breach of Clause 7.6.3, EKN may not terminate the Guarantee or reduce the cover under the Guarantee if the Guarantee Holder has taken requisite actions pursuant to Clause 7.6.5.

- 9.2 Notwithstanding Clause 9.1, a failure by the Importer to comply with its obligations under the Importer Declaration and these General Conditions will not affect the validity or the cover of the Guarantee. Equally, a failure by the Guarantee Holder to ensure that its Affiliates (other than in relation to its, direct and indirect, subsidiaries and other Affiliates which for regulatory capital adequacy purposes, together with the Guarantee Holder, are deemed to be one institution (including, being part of a consolidated situation)) or its Related Parties comply with their respective obligations under the Guarantee Agreement will not affect the validity or the cover of the Guarantee.
- 9.3 A failure to comply with the requirements in Clauses 6.2(c), 7.9.5 or 12.1 has the only effect that no compensation will be paid for the relevant Losses or costs.
- 9.4 If the premium (or any portion thereof) payable in connection with the first Effective Date has not been paid on its due date, EKN may terminate and cancel the Guarantee as if the first Effective Date had never occurred. If any portion of the premium payable after the first Effective Date is not paid on its due date, EKN may declare that the Guarantee will not extend to or will apply with reduced cover in relation to amounts (i) utilised under the Credit Agreement in relation to which the relevant portion of the premium relates and (ii) not yet utilised under the Credit Agreement. However, EKN must give the Guarantee Holder 20 Business Days' prior notice with a right for the Guarantee Holder to make the payment during that period before being entitled to take any action described in this Clause 9.4. EKN's right to take action pursuant to this Clause 9.4 does not affect the Guarantee Holder's obligation to pay the premium.
- 9.5 The Guarantee Holder shall indemnify EKN against any reasonable and verifiable direct costs and direct loss or liability, in each case incurred by EKN as a result of the Guarantee Holder's breach of the terms of, or failure to comply with its obligations under, the Guarantee Agreement. Unless caused as a result of the Guarantee Holder's gross negligence or wilful misconduct, the Guarantee Holder's liability for EKN's direct loss or liability shall be limited to what it has actually received as compensation for Losses under the Guarantee.
- 9.6 EKN shall indemnify the Guarantee Holder against any reasonable and verifiable direct costs and direct loss or liability, in each case incurred by the Guarantee Holder as a result of EKN's breach of the terms of, or failure to comply with its obligations under, the Guarantee Agreement.

PART IV – DUTIES AND OBLIGATIONS OF THE IMPORTER

10. UNDERTAKINGS BY THE IMPORTER

10.1 Importer Declaration

- 10.1.1 The Importer shall procure that all information provided in the Importer Declaration, as amended or supplemented by any Supplementary Information, originating from:
- (a) it or its Involved Affiliates, is true, accurate, complete and not misleading in any material respect as per the date of signing of the Supply Agreement
 - (b) other parties than those set out in paragraph (a) above is, to the best of its knowledge, true, accurate, complete and not misleading in any material respect as per the date of signing of the Supply Agreement .
- 10.1.2 The Importer shall upon becoming aware thereof without undue delay notify EKN of any changes to the information relevant for the purposes of the Guarantee provided in the Importer Declaration.
- 10.1.3 The Importer may request that any information provided by it to EKN before the first Effective Date shall be treated as Supplementary Information.

10.2 Authorisation

The Importer shall use all reasonable efforts to obtain, comply with and maintain in full force and effect any Authorisation required from time to time under any applicable law or regulation of any relevant jurisdiction to (i) enable it to perform its material obligations under the Supply Agreement and (ii) ensure, subject to the Legal Reservations, the legality, validity and enforceability of the Supply Agreement.

10.3 Compliance with Sanctions Laws, laws and regulations relating to anti-corruption, anti-bribery etc.

- 10.3.1 On the date of the signing of the Supply Agreement, the Importer shall ensure that neither it, any Involved Affiliate nor any Related Party is a Restricted Party.
- 10.3.2 From the date set out in Clause 10.3.1 and for as long as the Guarantee is in force, the Importer shall in relation to the transactions to which the Supply Agreement relates:
- (a) ensure that neither it nor any of its Involved Affiliates is in breach of applicable Sanctions Laws;
 - (b) not conduct (and shall ensure that no Involved Affiliate will conduct) its businesses in breach of applicable anti-corruption, anti-bribery, anti-money laundering and anti-terrorist financing laws; and
 - (c) ensure that neither it, nor any of its Involved Affiliates or any of its Related Parties has been engaged or will engage in bribery.

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- 10.3.3 From the date set out in Clause 10.3.1 and for as long as the Guarantee is in force, the Importer shall, in relation to the transactions to which the Supply Agreement relates, use all reasonable efforts to ensure that:
- (a) none of its Related Parties is in breach of applicable Sanctions Laws; and
 - (b) none of its Related Parties will conduct its businesses in breach of applicable anti-corruption, anti-money laundering and anti-terrorist financing laws.
- 10.3.4 If a breach of the requirements set out in Clause 10.3.3 occurs, the Importer shall upon becoming aware of it, to the extent permitted by applicable laws and regulations, without undue delay (i) notify EKN thereof and (ii) initiate appropriate actions, if applicable in accordance with its code of conduct. Provided the Importer is able to do so, it shall use all reasonable efforts to procure that the underlying reason for the breach is remedied as soon as practically possible given the circumstances. During the period which the breach is continuing, the Importer shall, to the extent permitted by applicable laws and regulations, keep EKN regularly informed of any developments that it becomes aware of and take any actions reasonably requested by EKN to mitigate the negative effects of the breach.
- 10.3.5 The Importer shall comply with the further environmental and social requirements applicable to it, as set out in the Supply Agreement and in the Importer Declaration.
- 10.4 Information undertaking and audit right**
- 10.4.1 At the request of EKN, the Importer shall without undue delay provide EKN with a certified copy of the Supply Agreement.
- 10.4.2 At the request of EKN, the Importer shall provide EKN with such necessary and appropriate information about the Supply Agreement as EKN may reasonably request, including the confirmation referred to in Clauses 6.2(b).
- 10.4.3 To the extent permitted by applicable law and regulation, the Importer shall without undue delay notify EKN in writing upon becoming aware of it, any Involved Affiliate or any Related Party being a Restricted Party.
- 10.4.4 To the extent permitted by applicable law and regulation, the Importer shall (and shall ensure that each of its Involved Affiliates will) without undue delay from EKN's request provide EKN with such accounts, documents and information relating to the Supply Agreement, which is in its or its Involved Affiliates' possession or reasonably accessible to them, as EKN may reasonably request from time to time.
- 10.5 EKN's instructions**
- 10.5.1 Unless otherwise set out in the Importer Declaration, the Importer shall, following EKN's request provide such assistance and services as EKN may reasonably require in relation to the Supply Agreement for the purpose of limiting the Loss to be compensated under the Guarantee.
- 10.5.2 EKN shall pay reasonable fees to the Importer for the assistance provided in accordance with Clause 10.5.1.

11. INDEMNITY

- 11.1 The Importer shall indemnify EKN against any reasonable and verifiable direct costs and direct loss or liability, in each case incurred by EKN as a result of the Importer's breach of the terms of, or failure to comply with its obligations under, the Importer Declaration, including the obligations specified in Clause 10 (*Undertakings by the Importer*). If there is a breach of the obligations in Clause 10.3.2 in relation to the Supply Agreement, the Importer shall reimburse EKN for the compensation (or a part thereof) paid by EKN to the Guarantee Holder under the Guarantee. When determining the reimbursement amount, EKN shall act reasonably, taking into account the nature and gravity of the breach.
- 11.2 EKN shall indemnify the Importer against any reasonable and verifiable direct costs and direct loss or liability, in each case incurred by the Importer as a result of EKN's breach of the terms of, or failure to comply with its obligations under, the Guarantee Agreement.

PART V – CLAIM SETTLEMENT

12. CLAIM PROCEDURE

- 12.1 When the Guarantee Holder is entitled to claim compensation for a Loss in accordance with Clause 6.2 (*Conditions for claiming compensation*), a Claim for Compensation must be received by EKN within twelve months of the due date of the Covered Amount, unless otherwise set out in the Special Conditions or as otherwise agreed with EKN in writing prior to such date. Otherwise, the Guarantee Holder has no right to receive compensation for such Loss.
- 12.2 In order to make a Claim for Compensation, the Guarantee Holder shall submit a signed application containing the following information and documentation:
- (a) the overdue amount and a calculation of the Loss together with the documentation required to calculate such Loss;
 - (b) the due date of the overdue amount;
 - (c) the reason for the payment default (to the extent known to the Guarantee Holder);
 - (d) what actions (if any) have been taken to collect the overdue amount;
 - (e) that the Guarantee Holder has performed all its material obligations under the Finance Documents;
 - (f) whether the Guarantee Holder's claim against any Obligor is subject to any set off or counterclaim;
 - (g) that, as per the first Effective Date, the Guarantee Holder's claim against each Obligor was, subject to the Legal Reservations, legally valid and either that (as far as the Guarantee Holder is aware) the status has not changed or the reasons for any change, to the extent known to the Guarantee Holder;
 - (h) that the Guarantee Holder's claim against each Obligor is undisputed (or which objections have been made); and
 - (i) if permitted by applicable law and regulation and subject to confidentiality obligations, the details of any other claims for payments that the Guarantee Holder has or may have against the Obligors.
- 12.3 Following EKN's request, the Guarantee Holder shall, at its own expense and to the extent not covered by the application submitted pursuant to Clause 12.2, supply all relevant information, which is in its possession or reasonably accessible to it, reasonably required by EKN in connection with the relevant Claim for Compensation.
- 12.4 In connection with a Claim for Compensation and subject to applicable laws and regulations, the Guarantee Holder shall allow EKN to inspect and take copies of all documents which EKN considers necessary in order to assess such Claim for Compensation and calculate the Loss. The Guarantee Holder shall, to the extent reasonably and practically possible, co-operate fully to procure that EKN may also receive necessary and appropriate information from third parties or may inspect documents in the possession of third parties, as referred to above.

- 12.5 If an Obligor has disputed the circumstances resulting in a Loss that is subject to an application for a Claim for Compensation, EKN may, provided that such dispute is not frivolous or vexatious or, in EKN's reasonable opinion, in any other way can be viewed as being without merit, defer payment of compensation in relation to the portion of such Loss being disputed. Such payment may be deferred until (i) the dispute is settled by legal proceedings or arbitration in accordance with the Finance Documents or settled in another way acceptable to EKN (acting reasonably), or (ii) the Guarantee Holder has evidenced, to EKN's reasonable satisfaction, that the relevant Obligor's performance under the Credit Agreement was prevented by a Non-Borrower Related Event and that the disputed Loss has occurred as a result thereof.

13. CALCULATION AND PAYMENT OF COMPENSATION

13.1 Calculation of compensation

- 13.1.1 Subject to Clause 5.1, the compensation payable by EKN for a Loss shall be the Percentage of Cover of the amount of such Loss (as reduced in accordance with Clauses 13.1.3 and 13.1.4), calculated as of the due date for payment under the Finance Documents. Notwithstanding the above, if there are several Losses, any reduction pursuant to Clauses 13.1.3 and 13.1.4 shall be applied in chronological order of the incurrance of such Losses.
- 13.1.2 If the Credit Currency is not the relevant Guarantee Currency, the amount of a Loss denominated in the Credit Currency shall be converted to that Guarantee Currency. The conversion shall be made with the Exchange Rate seven calendar days before the date on which EKN pays compensation for the Loss and with any exchange rate restrictions specified in the Special Conditions.
- 13.1.3 Subject to Clause 13.1.4, before the compensation is calculated in accordance with Clause 13.1.1, each Loss shall be reduced by:
- (a) any payment received by or for the benefit of the Guarantee Holder from or on behalf of the Borrower, including (i) distributions received from the receiver in bankruptcy, the liquidator or such other relevant person distributing the assets of the Borrower or the relevant Obligor following Insolvency, (ii) by way of set off or (iii) following the enforcement of any Security under or in connection with the Finance Documents;
 - (b) any other compensation or benefit irrevocably received or due to be received prior to EKN's payment of compensation for the relevant Loss by or for the benefit of the Guarantee Holder from any source in respect of the Loss, including any portion of the Loss compensated by any other insurer or guarantor unless otherwise specified in the Special Conditions; and
 - (c) any claim by an Obligor against the Guarantee Holder that the Guarantee Holder is entitled to set off.

All amounts decreasing the Loss which are not denominated in the Credit Currency shall be converted to the Credit Currency. The conversion shall be made with the Exchange Rate one Business Day after the date on which the relevant amounts are received (as regards (a) and (b) above) or was determined (as regards (c) above).

- 13.1.4 If the Guarantee Holder has several claims for payment against the Borrower (including any part of a claim not covered by the Guarantee), any allocation made by

the Guarantee Holder or an Obligor among those claims shall be disregarded when the compensation for a Loss is calculated in accordance with Clause 13.1.1 (unless (i) required by applicable law or regulation or (ii) the amount received is clearly allocated to a specific claim). The amount received by or for the benefit of the Guarantee Holder from or on behalf of the Borrower shall instead be allocated between those claims as follows:

- (a) as designated by a liquidator, receiver, administrator or other similar officer in respect of the Borrower or its assets; or
- (b) if paragraph (a) above is not applicable, (i) in chronological order of their due dates or (ii) if more than one claim is due on the same date and the available funds are insufficient to discharge the amounts then due, *pro rata* between such claims based on the gross amount of such claims.

13.2 Payment of compensation for a Loss

- 13.2.1 EKN shall not be liable to pay compensation for a Loss to the Guarantee Holder earlier than the originally scheduled due date of the relevant payment as set out in the Credit Agreement (with the addition of the Applicable Waiting Period), irrespective of whether such payment has been accelerated.
- 13.2.2 If the Guarantee Holder has not notified EKN of the relevant payment default by the Borrower under the Finance Documents within two months from its due date, the Applicable Waiting Period shall be extended by a period of two months. The period shall be further extended by two months on a rolling basis at the commencement of each additional one month of delay.
- 13.2.3 EKN shall pay the amount of compensation to the Guarantee Holder no later than the later of (i) 30 calendar days after receiving a complete application, including the information and documentation required pursuant to Clause 12.2, in relation to the Loss to which the Claim for Compensation relates and (ii) the expiry of the Applicable Waiting Period (the “**Compensation Due Date**”).
- 13.2.4 If the Borrower is obligated to pay default interest to the Guarantee Holder under the Credit Agreement on any amount not being paid on its due date, EKN shall from the due date of payment under the Credit Agreement until (and including) the Compensation Due Date pay interest on the amount of compensation determined to be due by EKN under the Guarantee Agreement at an interest rate corresponding to the lower of (i) the default interest rate stipulated in the Credit Agreement and (ii) the Relevant Base Rate plus a margin of 0.25 per cent *per annum* (unless otherwise set out in the Special Conditions). However, EKN will not pay any interest compensation if the overdue amount is paid to the Guarantee Holder before compensation for the relevant Loss is paid by EKN.
- 13.2.5 EKN shall pay interest at the Default Interest Rate on any amount of compensation determined to be due by EKN under the Guarantee Agreement from the Compensation Due Date up to and including the date when payment is made, such liability being in lieu of any other liability as a result of such late payment.
- 13.2.6 From the compensation to be paid for a Loss, EKN may deduct any unpaid amount which is payable by the Guarantee Holder to EKN.
- 13.2.7 At the Guarantee Holder’s request, EKN may pay compensation for a Loss before the Loss has been finally determined. Should the compensation paid exceed the final amount of compensation being payable, the Guarantee Holder shall immediately

repay the excess together with interest thereon (as set out in the decision for advance indemnification). In addition, EKN may request that the Guarantee Holder provides cash collateral (or other acceptable credit protection) as security for the due fulfilment of its repayment obligation.

13.3 Advance payment of compensation

- 13.3.1 Notwithstanding Clause 13.2.1, EKN shall following receipt of a Claim for Compensation have the option to at any time prior to the scheduled due dates pay the Percentage of Cover for the outstanding principal under the Credit Agreement, plus the Percentage of Cover of all accrued and unpaid interest thereon (if any) on the date such compensation is paid by EKN. EKN shall notify the Guarantee Holder before making any advance payment of compensation.
- 13.3.2 If EKN elects to pay advance compensation to the Guarantee Holder in accordance with Clause 13.3.1 and the principal amount under the Credit Agreement carries floating rate interest, Break Compensation shall, if the calculation results in a positive amount, be paid by EKN to the Guarantee Holder and, if the calculation results in a negative amount, be deducted from the compensation for Losses payable by EKN to the Guarantee Holder or otherwise be paid by the Guarantee Holder to EKN. The Break Compensation shall be calculated by the Guarantee Holder (acting in good faith) and the Guarantee Holder shall provide EKN with a certificate confirming the amount of Break Compensation.
- 13.3.3 EKN may not make advance payments of compensation in relation to any principal amount that carries fixed rate interest unless (i) the method for calculating the break compensation is set out in the Special Conditions or (ii) EKN and the Guarantee Holder have agreed on the method for calculating the break compensation before such payment is made.

13.4 Transfer of claims and other contractual rights

- 13.4.1 Simultaneously with EKN's first payment of compensation for a Loss, EKN shall automatically become the beneficiary (as between EKN and the Guarantee Holder) of the Guarantee Holder's rights under and interest in the Finance Documents (including all Covered Amounts and the whole Residual Risk) and all rights to Security associated therewith, free and clear of any claim, counterclaim, right of set off, liens or other encumbrances other than those arising by operation of law by no default or omission by the Guarantee Holder or under the Finance Documents. EKN shall also be fully subrogated to all claims, recoveries and other rights the Guarantee Holder has against any Obligor under the Finance Documents.
- 13.4.2 At EKN's request, at any time following EKN's payment of compensation for a Loss, the Guarantee Holder shall from time to time:
- (a) without undue delay and at its own expense, take all required actions and duly execute and deliver any and all such transfers, powers of attorney, notifications, confirmations and other documents as EKN reasonably deems necessary for the purpose of effecting and perfecting the transfer, in whole or in part, of the Guarantee Holder's rights under and interest in the Finance Documents and all rights to Security associated therewith to EKN; and/or
 - (b) take reasonable debt-collection, security enforcement and related measures against third parties, either in its own name or as EKN's representative, in accordance with EKN's reasonable instructions.

- 13.4.3 After payment of compensation to the Guarantee Holder has been made in full under the Guarantee Agreement and provided that (i) EKN has no outstanding claims against the Guarantee Holder or any of the Obligors under the Guarantee Agreement or the Finance Documents and (ii) no further Losses or claims for compensation are, in EKN's reasonable opinion, likely to occur under the Finance Documents or the Guarantee Agreement, EKN shall at the request of the Guarantee Holder without undue delay re-transfer to the Guarantee Holder, or a third party nominated by the Guarantee Holder, all rights under and interest in the Finance Documents (including, but not limited to, the Residual Risk) and all rights to Security associated therewith which have been transferred to EKN pursuant to Clauses 13.4.1 and 13.4.2.
- 13.4.4 Notwithstanding Clauses 13.4.1 to 13.4.3, if EKN so determines and notifies the Guarantee Holder, no rights shall be subrogated or transferred to EKN in relation to any potential investment claim based on an investment treaty or another type of investment protection binding on the country of an Obligor, until EKN determines otherwise and notifies the Guarantee Holder thereof. If EKN determines that there is a reasonable case for bringing an investment claim based on a Loss covered by the Guarantee, the Guarantee Holder shall pursue such claim in accordance with EKN's instructions, provided that all costs and expenses for such dispute are fully covered by EKN.

13.5 Recoveries after the calculation of compensation for the first Loss

- 13.5.1 Subject to Clause 13.5.5, all amounts received by or for the benefit of the Guarantee Holder or EKN from or on behalf of the Borrower after the compensation for a Loss has been calculated in accordance with Clause 13.1 (*Calculation of compensation*) shall in relation to all Losses be applied in accordance with the principles set out in Clauses 13.1.3 and 13.1.4 and:
- (a) in relation to each Loss for which compensation has been paid or calculated by EKN, be applied:
 - (i) first, in or towards payment of costs incurred by EKN and the Guarantee Holder in accordance with the Guarantee Agreement; and
 - (ii) secondly, in or towards compensation to EKN and the Guarantee Holder in proportion to each party's share of the Loss to the extent compensation has been paid, and otherwise to the Guarantee Holder in reduction of such Loss; and
 - (b) in relation to Losses for which compensation has not yet been calculated, be applied in reduction of such Loss.
- 13.5.2 Any surplus amount remaining after an allocation pursuant to Clause 13.5.1 relating to reasonably foreseeable future costs and Losses shall, after deduction of the amount relating to the Residual Risk of such Losses, be held in escrow by EKN (unless otherwise agreed with EKN) for the purposes of settling such costs and Losses or be used by EKN in paying advance compensation to the Guarantee Holder pursuant to Clause 13.3.1.
- 13.5.3 If any amounts that are to be allocated pursuant to Clause 13.5.1 are received by or on behalf of the Guarantee Holder, the Guarantee Holder shall without undue delay notify EKN.
- 13.5.4 To the extent amounts that have been allocated pursuant to Clauses 13.5.1 or 13.5.2 are held by a party other than the party to which such amounts are allocated, such amounts

shall promptly be transferred to the other party together with interest at the Default Interest Rate from the fifth calendar day after receipt of the amount up to and including the date of the transfer of the amount to the other party.

- 13.5.5 If EKN has granted several guarantees to several guarantee holders (including the Guarantee Holder) which are creditors to the same Borrower and which are all eligible to receive compensation from EKN following the occurrence of the relevant Borrower Related Event or Non-Borrower Related Event (as the case may be), EKN shall allocate amounts received by or on behalf of it towards the claim to which the received amount clearly relates, unless another allocation shall be made pursuant to applicable law or regulation. However, if the amount received shall not be allocated pursuant to applicable law or regulation and cannot be clearly allocated to a specific claim, EKN shall allocate the amount between the guarantee holders *pro rata* in relation to the guarantee holders' due but unpaid claims on the Borrower (which shall include accrued interest).
- 13.5.6 All amounts received, which are not denominated in the Guarantee Currency, shall be converted to the Guarantee Currency. The conversion shall be made with the Exchange Rate one Business Day after the date on which the relevant amounts are received and with any exchange rate restrictions specified in the Special Conditions.

13.6 Repayment of compensation

- 13.6.1 EKN may reclaim any compensation paid to the Guarantee Holder, which the Guarantee Holder was not entitled to pursuant to the Guarantee Agreement. EKN shall, when relevant, determine the amount to be repaid in the same manner as when determining a termination or reduction in accordance with Clause 9.1.
- 13.6.2 EKN is entitled to receive interest on any amount specified in Clause 13.6.1 (other than if such amount was paid to the Guarantee Holder by reason of default, negligence or breach of contract by EKN) from the date such amount was paid to the Guarantee Holder up to and including when it is repaid to EKN at the Default Interest Rate.

PART VI – OTHER PROVISIONS**14. A CONTROLLED INTERMEDIARY AS LENDER**

- 14.1 If it is specified in the Special Conditions that a Controlled Intermediary is the Lender, the terms of this Clause 14 shall apply.
- 14.2 The Controlled Intermediary must be located in the same jurisdiction as the Borrower, unless otherwise specified in the Special Conditions.
- 14.3 The Guarantee Holder shall ensure that the Controlled Intermediary is and remains either a, direct or indirect, wholly-owned subsidiary (i) of the Guarantee Holder or (ii) of the, direct or indirect, sole parent company of the Guarantee Holder (in each case unless otherwise specified in the Special Conditions) for so long as the Guarantee Holder may make a Claim for Compensation under the Guarantee and, if a Claim for Compensation has been made, until EKN's or the Guarantee Holder's legal rights of recovery from the Obligors have been exhausted or time barred.
- 14.4 The Guarantee Holder shall ensure that the Controlled Intermediary fulfils all of the Guarantee Holder's obligations towards EKN under the Guarantee Agreement, to the extent applicable to it, as if such obligations had applied directly to the Controlled Intermediary. If the Controlled Intermediary cannot for any reason make a payment due to EKN under the Guarantee Agreement or transfer to EKN any amounts recovered pursuant to Clause 13.5 (*Recoveries after the calculation of compensation for the first Loss*), the Guarantee Holder shall make such payment or transfer instead of the Controlled Intermediary.
- 14.5 EKN shall only be obligated to communicate with the Guarantee Holder and may in relation to the Controlled Intermediary rely on any representation, notice, document or other information provided by (or on behalf of) the Guarantee Holder. EKN shall have no duties, obligations or liabilities towards the Controlled Intermediary.
- 14.6 The Controlled Intermediary may not (other than through the Guarantee Holder) bring any proceedings or take any other action whatsoever against EKN under or in connection with the Guarantee Agreement.
- 14.7 Notwithstanding that the Controlled Intermediary may be beneficially entitled to any compensation payable by EKN under the Guarantee, only the Guarantee Holder shall be:
- (a) entitled to any payment due under the Guarantee Agreement; and
 - (b) entitled to receive and act upon any notice, request, document or communication, or make any decision or determination, under the Guarantee Agreement.
- 14.8 For the avoidance of doubt, the Covered Amounts do not extend to any claims, payments or agreements between the Guarantee Holder and the Controlled Intermediary and the Guarantee Holder may not submit a Claim for Compensation in relation to Covered Amounts received by the Controlled Intermediary, irrespective of whether any Non-Borrower Related Event may prevent the transfer of such amounts to the Guarantee Holder.
- 14.9 Clause 15 (*The EKN Agent as Guarantee Holder and the Lenders*) will not be applicable.

14.10 Notwithstanding Clause 18.1 (*Transfers by the Guarantee Holder*), neither the Guarantee Holder nor the Controlled Intermediary may transfer or pledge any of its respective rights and/or obligations under the Guarantee Agreement or any corresponding rights and/or obligations under the Finance Documents without the prior written consent of EKN, unless otherwise set out in the Special Conditions.

15. THE EKN AGENT AS GUARANTEE HOLDER AND THE LENDERS

15.1 The EKN Agent

15.1.1 A Lender may, and if there is more than one Lender under the Credit Agreement, the Lenders shall, appoint an agent (the “**EKN Agent**”) which shall represent the Lender(s) under the Credit Agreement in relation to EKN for the purposes of the Guarantee Agreement. EKN shall record the EKN Agent as the Guarantee Holder and Clause 1.2.7(b) shall apply.

15.2 Transfers by the EKN Agent

15.2.1 The EKN Agent may not transfer or pledge any of its rights and obligations under the Guarantee Agreement without the prior written consent of EKN (acting reasonably) provided that such new EKN Agent accedes as Guarantee Holder to the Guarantee Agreement with effect from the date of the transfer.

15.2.2 If there is only one Lender under the Credit Agreement, that Lender may instead of appointing a new EKN Agent, following EKN’s consent (acting reasonably), become the Guarantee Holder and cease to be represented by an EKN Agent, in which case this Clause 15 (*The EKN Agent as Guarantee Holder and the Lenders*) shall cease to apply.

15.2.3 The EKN Agent may not transfer or pledge any of its rights under the Guarantee Agreement without the prior written consent of EKN.

15.2.4 Clauses 18.1.2 to 18.1.5 shall not apply to the EKN Agent.

15.3 Transfers by the Lenders

15.3.1 A Lender may not transfer or pledge any of its rights under the Guarantee Agreement or any corresponding rights under the Finance Documents without the prior written consent of EKN (which consent shall not be unreasonably withheld or delayed), other than to:

- (a) a person specified in the Special Conditions; or
- (b) a credit institution which (i) has a long-term credit rating of at least A- from Standard & Poor’s Rating Services or Fitch Ratings Ltd, A3 from Moody’s Investor Services Limited or an equivalent rating from another rating institute approved by EKN and (ii) has at any time during the two years preceding the transfer been a lender and/or a transferee under a guarantee provided by EKN,

in each case provided that the EKN Agent notifies EKN of such transfer or pledge without undue delay.

15.3.2 Subject to 15.3.3, a Lender may not transfer any of its obligations under the Guarantee Agreement or any corresponding obligations under the Finance Documents without the prior written consent of EKN, unless otherwise set out in the Special Conditions.

15.3.3 Notwithstanding Clause 15.3.2, if such a transfer is to be made to:

- (a) another existing Lender; or
- (b) an Affiliate of any existing Lender,

EKN's consent shall not be unreasonably withheld or delayed.

15.3.4 The Guarantee Agreement shall set out the Lenders and their pro rata shares of the amount outstanding and/or committed under the Credit Agreement. The EKN Agent shall notify EKN as soon as possible after a transfer of any portion of the outstanding and/or committed amount from an existing Lender to a new Lender has been made.

15.3.5 Clauses 18.1.2 to 18.1.5 shall not apply to any Lender represented by the EKN Agent.

15.4 Transfers of Residual Risk by Lenders

15.4.1 The Residual Risk shall at all times be borne by the Residual Risk Bearer(s). The initial Residual Risk Bearer(s) and their *pro rata* share of the Residual Risk, shall be set out in the Special Conditions. The EKN Agent and the existing Lender(s) may apportion the Residual Risk borne by them collectively between themselves as they agree, unless otherwise set out in the Special Conditions. The EKN Agent shall notify EKN as soon as possible after a transfer of any portion (and the size thereof) of Residual Risk from one Residual Risk Bearer, being the EKN Agent or an existing Lender, to another of these Residual Risk Bearers.

15.5 Confirmed Lenders

15.5.1 A Lender may become a Confirmed Lender by giving a Lender's Confirmation to EKN, which Lender's Confirmation EKN has acknowledged receipt of. If a Lender does not provide a Lender's Confirmation, the Guarantee Holder shall vis-à-vis EKN be entitled to the compensation under the Guarantee in lieu of that Lender.

15.5.2 A Lender's Confirmation shall contain the following confirmations from the relevant Lender:

- (a) that it is a Lender to a portion of the amount (including accrued interest thereon) outstanding or which may become outstanding under the Credit Agreement;
- (b) that when the Guarantee Holder, in its capacity as EKN Agent, is acting on behalf of the Lenders under or in relation to the Guarantee Agreement, the Lender shall be jointly and severally liable with the EKN Agent for the Guarantee Holder's obligations under the Guarantee Agreement in relation to that Lender's portion of the Covered Amounts; and
- (c) that EKN's rights under the Guarantee Agreement are exercisable directly against it in relation to that Lender's portion of the Covered Amounts.

15.5.3 EKN agrees that in relation to each Confirmed Lender:

- (a) all rights of the Guarantee Holder under the Guarantee Agreement shall be for the benefit of each Confirmed Lender in relation to its portion of the Covered Amounts;
- (b) Loss shall be calculated and settled for each Confirmed Lender separately in accordance with Clause 13 (*Calculation and payment of compensation*) unless EKN is instructed otherwise by the EKN Agent;
- (c) a Confirmed Lender is beneficially entitled to all compensation payable by EKN under the Guarantee in relation to its *pro rata* share of the Covered Amounts; and
- (d) a Confirmed Lender shall be entitled to require that any compensation due to it is paid directly to the Confirmed Lender and not to the EKN Agent.

15.6 Other provisions

- 15.6.1 EKN shall only be obligated to communicate with the EKN Agent and may rely on any representation, notice, document or other information provided by (or on behalf of) the EKN Agent. Other than as set out in Clause 15.5.3, EKN has no duties, obligations or liabilities towards any Lender, other than towards the EKN Agent.
- 15.6.2 No Lender is, except as otherwise stated in the Guarantee Agreement or as otherwise agreed separately between the Lenders and EKN, responsible for the obligations or undertakings of any other Lender under the Guarantee Agreement, and no breach by any Lender or the Guarantee Holder (other than when such Lender or Guarantee Holder is acting in its capacity as EKN Agent on behalf of the Lenders) of its obligations or undertakings shall affect the rights of any other Lender under the Guarantee Agreement.
- 15.6.3 Subject to Clauses 15.5.3 and 15.6.4, a Lender (other than the EKN Agent) may not take any steps whatsoever against EKN under or in connection with the Guarantee Agreement. Such steps may only be taken by the EKN Agent.
- 15.6.4 Clause 15.6.3 shall not apply if the EKN Agent has been duly instructed by the Lender(s) to take certain actions but fails for any reason to take, or is unable to take, such actions within a reasonable period of time and such failure or inability is continuing.
- 15.6.5 If there is more than one Lender, the Guarantee Holder (as EKN Agent) shall not be obliged to repay or pay any amount under Clauses 13.6.1 or 13.6.2 to the extent the amount has been distributed by it to a Lender, unless it has recovered the amount from such Lender, using all reasonable efforts. EKN shall be entitled to make a claim for amounts mentioned in Clauses 13.6.1 or 13.6.2 directly against a Lender.

16. RESCHEDULING OF DEBT

- 16.1 The Guarantee Holder shall assist EKN, both prior to and after compensation for a Loss has been paid to the Guarantee Holder, to carry out a rescheduling of the debt owed by the Obligors under the Finance Documents, as requested by EKN, in order to decrease the likelihood of a future Loss or to reduce the effects of a Loss already incurred. However, any amendment to the Finance Documents shall require the consent of the Guarantee Holder.

- 16.2 If the Guarantee Holder does not consent to a rescheduling proposed by EKN, EKN may require the Guarantee Holder to transfer its rights under and interest in the Finance Documents (including all rights to Security associated therewith) to EKN, in accordance with Clause 13.4 (*Transfer of claims and other contractual rights*) in return for which EKN shall pay compensation to the Guarantee Holder in accordance with Clause 13.2 (*Payment of compensation for a Loss*) plus the market value of the Residual Risk (as reasonably determined by EKN) as per the transfer date, reduced by all costs and expenses incurred by EKN (acting reasonably) in connection with such transfer.
- 16.3 If an arrangement for the settlement of debts, including any postponement of payment and/or debt reduction, is agreed between Sweden (or EKN) and the country of the Borrower and is applicable to the Finance Documents, the Guarantee Holder shall be obligated to accept the consequences thereof. This means that:
- (a) at the request of EKN, the Guarantee Holder shall co-operate in carrying out the rescheduling; and
 - (b) the rights of the Guarantee Holder under the Guarantee Agreement and the cover under the Guarantee shall not be affected, including that the Guarantee Holder will receive payment of compensation for a Loss in accordance with Clause 13.2 (*Payment of compensation for a Loss*) as if the settlement had not occurred.

17. DISCLOSURE OF INFORMATION

- 17.1 EKN may disclose information about the Guarantee Holder, the Lenders, any Obligor, the Importer and any of their Involved Affiliates in respect of the Finance Documents, the Guarantee Agreement, the Supply Contract and the underlying transactions:
- (a) to the Guarantee Holder (subject to customary confidentiality undertakings from such party);
 - (b) to the Importer (subject to customary confidentiality undertakings from such party), except for any Finance Document;
 - (c) to a third party for the purpose of obtaining reinsurance or similar risk protection (subject to customary confidentiality undertakings from such third party);
 - (d) as required by any court or regulatory authority or pursuant to any applicable mandatory law or regulation (including but not limited to the Swedish Public Access to Information and Secrecy Act);
 - (e) as required by inter-governmental agreements, standards and recommendations applicable to the Kingdom of Sweden, applicable to the transactions subject to the Guarantee Agreement or to EKN when acting as guarantor under the Guarantee Agreement;
 - (f) as required in connection with any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (g) to a potential purchaser in connection with the contemplated enforcement of Security provided by any Obligor (but only to the extent relevant for such enforcement and subject to customary confidentiality undertakings);

- (h) to its professional advisers (subject to customary confidentiality undertakings from such advisers); or
- (i) in summary form for reporting purposes in its financial statements.

Each of the Guarantee Holder and the Importer consents to the information disclosures set out in this Clause 17.1.

17.2 If any information provided by the Guarantee Holder or the Importer to EKN is for any reason subject to confidentiality restrictions that follow from mandatory laws and regulations or stock exchange rules applicable to price-sensitive information, the Guarantee Holder or the Importer, as applicable, shall promptly notify EKN hereof.

17.3 Following receipt of a notification pursuant to Clause 17.2:

- (a) EKN undertakes to treat all price-sensitive information received by it as strictly confidential and not disclose such information to any third party, otherwise than as expressly permitted by the Guarantee Agreement, or use it for any purpose other than in relation to the Guarantee Agreement, except to the extent required by mandatory laws or regulations (including but not limited to the Swedish Public Access to Information and Secrecy Act); and
- (b) each of the Guarantee Holder and the Importer shall, at the request of EKN, make any requisite disclosure and take such other actions as may be necessary to ensure that EKN and the Kingdom of Sweden can lawfully fulfil each of their obligations pursuant to inter-governmental agreements, standards and recommendations applicable to any of them and the transactions subject to the Guarantee Agreement.

18. TRANSFER OF RIGHTS AND OBLIGATIONS

18.1 Transfers by the Guarantee Holder

18.1.1 For the avoidance of doubt, Clauses 18.1.2 to 18.1.5 shall not apply:

- (a) to the EKN Agent or any Lender represented by the EKN Agent, in which case the relevant provisions in Clause 15 (The EKN Agent as Guarantee Holder and the Lenders) shall apply instead; and
- (b) if Clause 14 (A Controlled Intermediary as Lender) is applicable, in which case Clause 14.10 shall apply instead.

18.1.2 The Guarantee Holder may not transfer or pledge any of its rights under the Guarantee Agreement or any corresponding rights under the Finance Documents without the prior written consent of EKN (which consent shall not be unreasonably withheld or delayed), other than to:

- (a) a person specified in the Special Conditions; or
- (b) a credit institution which (i) has a long-term credit rating of at least A- from Standard & Poor's Rating Services or Fitch Ratings Ltd, A3 from Moody's Investor Services Limited or an equivalent rating from another rating institute approved by EKN and (ii) has at any time during the two years preceding the transfer been a guarantee holder and/or a transferee under a guarantee provided by EKN,

in each case provided that the Guarantee Holder notifies EKN of such transfer or pledge without undue delay.

- 18.1.3 Before the Guarantee Holder transfers or pledges any of its rights under the Guarantee Agreement and any corresponding rights under the Finance Documents to a Transferee, the Guarantee Holder shall ensure that the Transferee confirms to EKN that it shall be jointly and severally liable for the Guarantee Holder's obligations under the Guarantee Agreement corresponding to the transferred rights, unless also all the relevant obligations of the Guarantee Holder have been transferred to the Transferee.
- 18.1.4 Unless otherwise set out in the Special Conditions, the Guarantee Holder may not without the prior written consent of EKN transfer any of its obligations under the Guarantee Agreement or any corresponding obligations under the Finance Document. If such transfer is to be made to an Affiliate of the Guarantee Holder, EKN's consent shall not be unreasonably withheld or delayed. Following such transfer and provided that the Transferee is also the holder of the corresponding rights, the Transferee shall, in relation to its share of the Covered Amounts, accede as Guarantee Holder to the Guarantee Agreement and the existing Guarantee Holder shall be released from the corresponding obligations under the Guarantee Agreement with effect from the date of such transfer.
- 18.1.5 All rights of EKN under the Guarantee Agreement, including any rights to set off or right to reduce the cover under the Guarantee, may also be exercised against a Transferee.

18.2 Transfers by EKN

- 18.2.1 Subject to Clause 18.2.2 and unless otherwise set out in the Special Conditions, EKN may not transfer or pledge its rights or obligations under the Guarantee Agreement without the prior consent of the Guarantee Holder, and, when applicable, of the Transferee.
- 18.2.2 Notwithstanding Clause 18.2.1, EKN may always transfer or pledge its rights under the Guarantee Agreement to a reinsurer for the purposes of reinsuring its obligations under the Guarantee Agreement without the prior consent of the Guarantee Holder.
- 18.2.3 The consent of the Guarantee Holder to a transfer or pledge of EKN's rights must not be unreasonably withheld or delayed. The Guarantee Holder will be deemed to have given its consent 15 Business Days after EKN has requested it unless consent is expressly refused by the Guarantee Holder within that time.

19. NOTICES

- 19.1 Any communication to be made under or in connection with the Guarantee Agreement or the Importer Declaration shall be made in writing, include a reference to the relevant guarantee number and, unless otherwise stated, may be made via "EKN Online", by letter or email.
- 19.2 Any notice and other communication given or document provided under or in connection with the Guarantee Agreement or the Importer Declaration must be in English or Swedish or if not in English or Swedish, accompanied by an accurate translation to English or Swedish and, in this case, the English or Swedish translation (as the case may be) will prevail.

- 19.3 The address of each party for any communication under or in connection with the Guarantee Agreement or the Importer Declaration is set out in the Guarantee Agreement or the Importer Declaration, as the case may be, or as subsequently notified by a party to the other parties by not less than five Business Days' notice.
- 19.4 Any communication or document made or delivered by one person to another under or in connection with the Guarantee Agreement or the Importer Declaration will only be effective:
- (a) if by way of using "EKN Online", when properly submitted;
 - (b) if by way of letter, when it has been left at the relevant address, or five Business Days after being deposited in the post, postage prepaid in an envelope addressed to it at that address; or
 - (c) if by way of email, when received in readable form, and
- if a particular department or officer is specified as part of the Guarantee Holder's address details, if addressed to that department or officer of the Guarantee Holder.
- 19.5 Any notice received on a non-working day or after business hours in the place of receipt will only be deemed to be given on the next working day in that place.
- 19.6 Any communication or document sent via email under or in connection with the Guarantee Agreement or under or in connection with the Importer Declaration shall be sent from the same domain as the email addresses provided pursuant to Clause 19.3. The receiving party shall be entitled to rely on, and the other party shall be bound by, any communication received which on its face appears to have been sent from these email addresses or from another email address at the same domain.

20. APPLICABLE LAW AND DISPUTE RESOLUTION

- 20.1 The Guarantee, the Guarantee Agreement, the Importer Declaration and any non-contractual obligations arising out of or in connection therewith are governed by Swedish law.
- 20.2 Any dispute, controversy or claim arising out of or in connection with the Guarantee, the Guarantee Agreement, the Importer Declaration or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be Stockholm. The language to be used in the arbitral proceedings shall be English.
- 20.3 Claims against EKN arising out of or in connection with the Guarantee must be filed with the Arbitration Institute of the Stockholm Chamber of Commerce within twelve months following the Guarantee Holder or the Importer (as the case may be) being informed of the decision by EKN which has given rise to such claim. If the Guarantee Holder or the Importer fails to do so, it shall forfeit its right to such claim.
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