

## **Uniform Rules for Demand Guarantees**

### Article 1

These Rules apply to any demand guarantee and amendment thereto which a Guarantor (as hereinafter described) has been instructed to issue and which states that it is subject to the Uniform Rules for Demand Guarantees of the International Chamber of Commerce (Publication N°458) and are binding on all parties thereto except as otherwise expressly stated in the Guarantee or any amendment thereto.

### Article 2

a) For the purpose of these Rules, a demand guarantee (hereinafter referred to as "Guarantee") means any guarantee, bond or other payment undertaking, however named or described, by a bank, insurance company or other body or person (hereinafter called "the Guarantor") given in writing for the payment of money on presentation in conformity with the terms of the undertaking of a written demand for payment and such other document(s) (for example, a certificate by an architect or engineer, a judgment or an arbitral award) as may be specified in the Guarantee, such undertaking being give i) at the request or on the instructions and under the liability of a party (hereinafter called "the Principal"); or ii) at the request or on the instructions and under the liability of a bank, insurance company or any other body or person (hereinafter "the instructing Party") acting on the instructions of a Principal

b) Guarantees by their nature are separate transactions from the contract(s) or tender conditions on which they may be based, and Guarantors are in no way concerned with or bound by such contract(s), or tender conditions, despite the inclusion of a reference to them in the Guarantee. The duty of a Guarantor under a Guarantee is to pay the sum or sums therein stated on the presentation of a written demand for payment and other documents specified in the Guarantee which appear on their face to be in accordance with the terms of the Guarantee

c) For the purpose of these Rules, "Counter-Guarantee" means any guarantee, bond or other payment undertaking of the Instructing Party, however named or described, given in writing for the payment of money to the Guarantor on presentation in conformity with the terms of the undertaking of a written demand for payment and other documents specified in the Counter-Guarantee which appear on their face to be in accordance with the terms of the Counter-Guarantee. Counter-Guarantees are by their nature separate transactions from the Guarantees to which they relate and from any underlying contract(s) or tender conditions, and Instructing Parties are in no way concerned with or bound by such Guarantees, contract(s) or tender conditions, despite the inclusion of a reference to them in the Counter-Guarantee

d) The expressions "writing" and "written" shall include an authenticated teletransmission or tested electronic data interchange ("EDI") message equivalent thereto.

### Article 3

All instructions for the issue of Guarantees and amendments thereto and Guarantees and amendments themselves should be clear and precise and should avoid excessive detail. Accordingly, all Guarantees should stipulate: a) the Principal; b) the Beneficiary; c) the Guarantor; d) the underlying transaction requiring the issue of the Guarantee; e) the maximum amount payable and the currency in which it is payable; f) the Expiry Date

and/or Expiry Event of the Guarantee; g) the terms for demanding payment h) any provision for reduction of the guarantee amount.

#### Article 4

The Beneficiary's right to make a demand under a Guarantee is not assignable unless expressly stated in the Guarantee or in an amendment thereto. This Article shall not, however, affect the Beneficiary's right to assign any proceeds to which he may be, or may become, entitled under the Guarantee.

#### Article 5

All Guarantees and Counter-Guarantees are irrevocable unless otherwise indicated.

#### Article 6

A Guarantee enters into effect as from the date of its issue unless its terms expressly provide that such entry into effect is to be at a later date or is to be subject to conditions specified in the Guarantee and determinable by the Guarantor on the basis of any documents therein specified.

#### Article 7

a) Where a Guarantor has been given instructions for the issue of a Guarantee but the instructions are such that, if they were to be carried out, the Guarantor would by reason of law or regulation in the country of issue be unable to fulfil the terms of the Guarantee, the instructions shall not be executed and the Guarantor shall immediately inform the party who gave the Guarantor his instructions by telecommunication, or, if that is not possible, by other expeditious means, of the reasons for such inability and request appropriate instructions from that party

b) Nothing in this Article shall oblige the Guarantor to issue a Guarantee where the Guarantor has not agreed to do so.

#### Article 8

A Guarantee may contain express provision for reduction by a specified or determinable amount or amounts on a specified date or dates or upon presentation to the Guarantor of the document(s) specified for this purpose in the Guarantee.

#### Article 9

All documents specified and presented under a Guarantee, including the demand, shall be examined by the Guarantor with reasonable care to ascertain whether or not they appear on their face to conform with the terms of the Guarantee. Where such documents do not appear so to conform or appear on their face to be inconsistent with one another, they shall be refused.

#### Article 10

a) A Guarantor shall have a reasonable time within which to examine a demand under a Guarantee and to decide whether to pay or to refuse the demand.

b) If the Guarantor decides to refuse a demand, he shall immediately give notice thereof to the Beneficiary by teletransmission, or, if that is not possible, by other expeditious means. Any documents presented under the Guarantee shall be held at the disposal of the

Beneficiary.

#### Article 11

Guarantors and Instructing Parties assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification, or legal effect of any document presented to them or for the general and/or particular statements made therein, nor for the good faith or acts or omissions of any person whomsoever.

#### Article 12

Guarantors and Instructing Parties assume no liability or responsibility for the consequences arising out of the delay and/or loss in transit of any messages, letters, demands or documents, or for delay, mutilation or other errors arising in the transmission of any telecommunication. Guarantors and Instructing Parties assume no liability for errors in translation or interpretation of technical terms and reserve the right to transmit Guarantee texts or any parts thereof without translating them.

#### Article 13

Guarantors and Instructing Parties assume no liability or responsibility for consequences arising out of the interruption of their business by acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control or by strikes, lock-outs or industrial actions of whatever nature.

#### Article 14

a) Guarantors and Instructing Parties utilising the services of another party for the purpose of giving effect to the instructions of a Principal do so for the account and at the risk of that Principal.

b) Guarantors and Instructing Parties assume no liability or responsibility should the instructions they transmit not be carried out even if they have themselves taken the initiative in the choice of such other party.

c) The Principal shall be liable to indemnify the Guarantor or the Instructing Party, as the case may be, against all obligations and responsibilities imposed by foreign laws and usages.

#### Article 15

Guarantors and Instructing Parties shall not be excluded from liability or responsibility under the terms of Articles 11, 12 and 14 above for their failure to act in good faith and with reasonable care.

#### Article 16

A Guarantor is liable to the Beneficiary only in accordance with the terms specified in the Guarantee and any amendment(s) thereto and in these Rules, and up to an amount not exceeding that stated in the Guarantee and any amendment(s) thereto.

#### Article 17

Without prejudice to the terms of Article 10, in the event of a demand the Guarantor shall without delay so inform the Principal or, where applicable, his Instructing Party, and in that case the Instructing Party shall so inform the Principal.

#### Article 18

The amount payable under a Guarantee shall be reduced by the amount of any payment made by the Guarantor in satisfaction of a demand in respect thereof and, where the maximum amount payable under a Guarantee has been satisfied by payment and/or reduction, the Guarantee shall thereupon terminate whether or not the Guarantee and any amendment(s) thereto are returned.

#### Article 19

A demand shall be made in accordance with the terms of the Guarantee before its expiry, that is, on or before its Expiry Date and before any Expiry Event as defined in

#### Article 22

In particular, all documents specified in the Guarantee for the purpose of the demand, and any statement required by Article 20, shall be presented to the Guarantor before its expiry at its place of issue; otherwise the demand shall be refused by the Guarantor.

#### Article 20

a) Any demand for payment under the Guarantee shall be in writing and shall (in addition to such other documents as may be specified in the Guarantee) be supported by a written statement (whether in the demand itself or in a separate document or documents accompanying the demand and referred to in it) stating: i) that the Principal is in breach of this obligation(s) under the underlying contract(s) or, in the case of a tender guarantee, the tender conditions; and ii) the respect in which the Principal is in breach.

b) Any demand under the Counter-Guarantee shall be supported by a written statement that the Guarantor has received a demand for payment under the Guarantee in accordance with its terms and with this Article.

c) Paragraph a) of this Article applies except to the extent that it is expressly excluded by the terms of the Guarantee. Paragraph b) of this Article applies except to the extent that it is expressly excluded by the terms of the Counter-Guarantee.

d) Nothing in this Article affects the application of Articles 2b) and 2c) , 9 and 11.

#### Article 21

The Guarantor shall without delay transmit the Beneficiary's demand and any related documents to the Principal or, where applicable, to the Instructing Party for transmission to the Principal.

#### Article 22

Expiry of the time specified in a Guarantee for the presentation of demands shall be upon a specified calendar date ("Expiry Date") or upon presentation to the Guarantor of the document(s) specified for the purpose of expiry ("Expiry Event"). If both an Expiry Date and an Expiry Event are specified in a Guarantee, the Guarantee shall expire on whichever of the Expiry Date or Expiry Event occurs first, whether or not the Guarantee and any amendment(s) thereto are returned.

#### Article 23

Irrespective of any expiry provision contained therein, a Guarantee shall be cancelled on

presentation to the Guarantor of the Guarantee itself or the Beneficiary's written statement of release from liability under the Guarantee, whether or not, in the latter case, the Guarantee or any amendments thereto are returned.

#### Article 24

Where a Guarantee has terminated by payment, expiry, cancellation or otherwise, retention of the Guarantee or of any amendments thereto shall not preserve any rights of the Beneficiary under the Guarantee.

#### Article 25

Where to the knowledge of the Guarantor the Guarantee has terminated by payment, expiry, cancellation or otherwise, or there has been a reduction of the total amount payable thereunder, the Guarantor shall without delay so notify the Principal or, where applicable, the Instructing Party and, in that case, the Instructing Party shall so notify the Principal.

#### Article 26

If the Beneficiary requests an extension of the validity of the Guarantee as an alternative to a demand for payment submitted in accordance with the terms and conditions of the Guarantee and these Rules, the Guarantor shall without delay so inform the party who gave the Guarantor his instructions. The Guarantor shall then suspend payment of the demand for such time as is reasonable to permit the Principal and the Beneficiary to reach agreement on the granting of such extension and for the Principal to arrange for such extension to be issued. Unless an extension is granted within the time provided by the preceding paragraph, the Guarantor is obliged to pay the Beneficiary's conforming demand without requiring any further action on the Beneficiary's part. The Guarantor shall incur no liability (for interest or otherwise) should any payment to the Beneficiary be delayed as a result of the above-mentioned procedure. Even if the Principal agrees to or requests such extension, it shall not be granted unless the Guarantor and the Instructing Party or Parties also agree thereto.

#### Article 27

Unless otherwise provided in the Guarantee or Counter-Guarantee, its governing law shall be that of the place of business of the Guarantor or Instructing Party (as the case may be), or, if the Guarantor or Instructing Party has more than one place of business, that of the branch that issued the Guarantee or Counter-Guarantee.

#### Article 28

Unless otherwise provided in the Guarantee or Counter-Guarantee, any dispute between the Guarantor and the Beneficiary relating to the Guarantee or between the Instructing Party and the Guarantor relating to the Counter-Guarantee shall be settled exclusively by the competent court of the country of the place of business of the Guarantor or Instructing Party (as the case may be), or, if the Guarantor or Instructing Party has more than one place of business, by the competent court of the country of the branch which issued the Guarantee or Counter-Guarantee.