

We pay you when your clients don't

General Terms and Conditions for
TradeLock Commercial Risks Policy



TradeLock

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A. Scope of your *Policy*

1. Insuring agreement

We, Euler Hermes UK, have issued the *Policy* to you, the Insured named in the *Cover Endorsement*, to cover you for the losses you sustain in respect of unpaid *Covered Invoices*. This is in exchange for payment in full of all premiums due, and is subject to all the terms and conditions of the *Policy*.

The words and phrases in italics defined in section E have the same meaning wherever used in the *Policy*.

2. Event and date of loss

The event of loss under the *Policy* will be when the *Buyer* fails to pay you a *Covered Invoice*, because *Default* has occurred.

3. Insured amounts

A *Covered Invoice*, including taxes (except VAT or similar sales taxes) and related transport, packing and insurance costs, is insured if:

- a. the invoice :
 - relates to goods or services *Supplied* by you or on your behalf in accordance with a *Contract*
 - is not outstanding beyond its *Due Date* at the date of your acceptance of the cover
 - has a *Due Date* which is more than 7 days following the date on which you apply for cover.
- b. on the date of *Supply*:
 - your *Buyer* was not *Insolvent* and
 - there were no invoices outstanding more than 60 days beyond *Due Date*,
- c. in the 3 months immediately prior to your acceptance of cover you were not aware of any *Adverse Information* about the *Buyer*,
- d. the *Supply* does not violate any applicable law or regulations (including any economic or trade sanction law or regulations of any international organisation recognised under international law) and all necessary licences, approvals, or authorisations have been obtained,
- e. you have not acquired the invoice from a third party,
- f. the *Supply* was made on credit terms no longer than the *Maximum Terms of Payment*,
- g. you own the invoice and have not irrevocably transferred it to anyone else, and
- h. the *Contract* is legally valid and enforceable. If the *Contract* is for the *Supply* of goods, it must have an *ROT Clause*.

4. Uninsured amounts

4.1 Unless otherwise endorsed to the *Policy*, a *Covered Invoice* is not insured in the following circumstances:

- a. if the invoice arises from or relates to:
 - contractual or legal damages or penalties, or
 - exchange rate fluctuations and currency devaluations, interest on late payment, or banking or financial charges
- b. if the goods or services to which the invoice relates were *Supplied* to an *Affiliated Buyer* or to any of your agents or representatives,
- c. if the obligation to pay the invoice:
 - has been transferred from your *Buyer* to a third party,
 - has been fulfilled on or before the date of *Supply* by payment in cleared funds, or
 - is to be fulfilled by a confirmed or unconfirmed irrevocable documentary letter of credit.
- d. if the invoice is for an amount of less than £200.

4.2 Unless otherwise agreed by us beforehand in writing, a *Covered Invoice* is not insured if non-payment of the invoice results directly or indirectly from

- a. your wrongful actions or the wrongful actions of anyone acting on your behalf,
- b. the **Buyer's** failure to accept your **Supply** of goods or services whether **Disputed** or not (unless you have delivered in accordance with the Incoterm applicable to the contract governing the **Supply**),
- c. any natural disaster, or event arising out of natural causes which no human intervention could have prevented by reasonable care or foresight or any other form of force majeure,
- d. any event arising out of nuclear reaction, nuclear radiation or radioactive contamination,
- e. any armed conflict, war, terrorism, riot, civil disorder or any other form of violent disturbance,
- f. any legislation, order, decree or regulation issued by any government or any international organisation recognised under international law (including if you are prevented from **Supplying** goods or services), or
- g. currency shortages, or difficulties or disruption in transferring currency.

B. Managing your *Policy*

5. Your credit management and reporting obligations

5.1 Your credit management - exercising care and preserving rights

For your **Covered Invoices** to be insured under your **Policy**,

- a. you must exercise reasonable care and prudence as if you were not insured, and
- b. you must take all reasonable measures (including those instructed by us) to prevent or reduce any loss and to maximise **Recoveries**, including but not limited to:
 - protecting and not waiving any rights against your **Buyer** and any third parties including enforcing any guarantee or security and filing your receivable against the **Insolvent Buyer** within the legal timeframe,
 - making all reasonable efforts to enforce any rights under the **ROT Clause**, and
 - taking all appropriate collection action and instructing the Collection Service Provider to start the collection process by filing a **Claim and Collection form** within the required timescale as specified in section 8.2 below, after which any action by you must be taken in line with our instructions. You must not start the collection process with another third party collection company prior to passing the debt to the Collection Service Provider.

5.2 Postponing the *Due Date*

You may not postpone the **Due Date** of a **Covered Invoice** to a date beyond that on which you file your **Claim and Collection form**. This must be submitted within the timeframe specified in section 8.2 below.

6. Premium and payment of premium

You must pay us premium for each of your **Covered Invoices**.

The premium due under the **Policy** will be notified to you via the **Platform** when you request cover for an invoice. You will need to pay the premium (and insurance taxes as required by applicable legislation) to us by credit or debit card in advance of cover commencing when you are electing whether or not to insure invoices as **Covered Invoices**

7. Applying for your cover

In order to benefit from cover under the **Policy** with respect to an invoice you must apply for cover using the **Platform**. The **Platform** will detail for each of your **Buyers** the invoices which may be covered and the premium payable for that cover. By applying for cover you agree to be bound by these General Terms and Conditions of cover.

By accepting the cover:

1. you confirm to us that in the 3 months immediately prior to your acceptance you were not aware of any **Adverse Information** about the **Buyer**, and

2. you agree to pay the corresponding premium and accept that any special conditions contained in the **Cover Endorsement** will apply.

The amount of cover under the **Policy** in respect of your **Covered Invoice** is specified in the **Cover Endorsement** which will be issued to you upon your acceptance of cover. Cover offered by us for your acceptance is based on information supplied to us by the Risk Services Provider named in the Risk Information Services Agreement endorsement.

You are responsible for ensuring that the **Buyer** named in a **Cover Endorsement** is the same legal entity to which you invoice the goods or services **Supplied**.

C. Claims and Debt Collection

8. Making a claim under your **Policy** by filing a **Claim and Collection form**

- 8.1 To make a claim for unpaid **Covered Invoices**, you must file a **Claim and Collection form** including all amounts owed to you by the **Buyer** which relate to those **Covered Invoices** and which are not **Disputed**. You will give us, at our request, additional supporting documents when necessary to evidence your claim against your **Buyer**.
- 8.2 You may file your **Claim and Collection form** at any time after the **Due Date** but it must at the latest be filed within 60 days after the date on which **Default** occurs.

9. Collection mandate on the **Claim and Collection form**

When you file a **Claim and Collection form** with us against the **Buyer**, you give the Collection Service Provider named in the Collection Services Agreement a mandate to collect the invoices and to exercise all rights relating to the invoices, whether they are partly or fully insured, in line with the Collection Service Provider's terms and conditions of business. You must comply with these terms and conditions of business and follow any reasonable instructions you may be given regarding the collection actions carried out by the Collection Service Provider.

10. Recoveries

All **Recoveries** received from your **Buyer** or any third party will be allocated as specified in this section and we will apply this allocation even if your **Buyer** or any third party suggests the **Recoveries** should be allocated differently. Any part of a **Recovery** which relates to VAT (or similar sales taxes) will be allocated to the VAT (or similar sales taxes) element of the outstanding invoices.

10.1 Recoveries before settlement of your **Claim Payment**

- a. Before the date we make a **Claim Payment**, we will allocate all sums recovered in chronological order to reduce the total outstanding debt due from the **Buyer**, irrespective of whether the invoices for that debt are insured or not.
- b. You need to inform us as soon as possible of any **Recovery** received by you or on your behalf by any third party.

10.2 Recoveries after settlement of your **Claim Payment**

- a. In order for you to remain entitled to the **Claim Payment** received, it is a condition precedent that you must remit to us up to the amount of the **Claim Payment** any **Recovery** received by you or any third party on your behalf within 30 days of receipt.
- b. We will allocate all sums we or you collect to the amount of the **Claim Payment** until this amount has been recovered in full. Any **Recoveries** in excess of this amount will be due to you.

11. Claim Payment

We will calculate your **Claim Payment** in accordance with the steps set out below.

11.1 Calculation of your Insured Debt

We will take the total amount of the **Covered Invoices** filed in the **Claim and Collection form** from which we will deduct where applicable :

- amounts not covered under your **Policy**, and
- **Disputed** amounts.

We will also deduct the pro rata share of:

- the value of any guarantees or other security which you have not enforced, and
- the value of any rights under the **ROT Clause** which you have not made all reasonable efforts to enforce

calculated on the basis of the ratio between the indebtedness of the **Buyer** relating to **Covered Invoices** and the total indebtedness of the **Buyer**.

- a. We will then deduct the value of any applicable VAT (or similar sales taxes) from the amount calculated above.
- b. The resulting amount will be your Insured Debt for the **Buyer**.

11.2 Calculation of your Insured Loss

- a. We will deduct from your Insured Debt the amount of any **Recoveries** which are allocated to your Insured Debt in line with section 10.
- b. The resulting amount will be your Insured Loss.

11.3 Calculation of your Claim Payment

- a. We will then multiply your Insured Loss by the Insured Percentage specified in the **Cover Endorsement**.
- b. Your **Claim Payment** will be the amount resulting from the calculation above.

11.4 Making your Claim Payment

- a. We will make your **Claim Payment** within 20 days from the date we receive your completed **Claim and Collection form** and any additional documents or information we may reasonably request.
- b. If you receive a **Claim Payment** from us to which you are not entitled under the **Policy**, you will repay it to us within 30 days of our written **Notice** or of you becoming aware that you are not entitled to it.

12. Maximum Liability

We will have no further liability to you for a buyer when the total amount of **Claim Payments** made for **Covered Invoices** relating to that buyer first reaches the **Maximum Liability** for the buyer, the amount of which is equal to the sum of **Covered Invoices** outstanding and due for payment.

13. Subrogation

- 13.1 As soon as we make a **Claim Payment**, we become entitled to enforce all of your rights, claims, guarantees, security, collateral, causes of action and defences against the **Buyer** (or other third parties) relating to all receivables included in the applicable **Claim and Collection form** (our Subrogation Rights). For each **Claim Payment** made, our Subrogation Rights will end once the **Claim Payment** amount has been fully repaid to us.
- 13.2 If our Subrogation Rights are not transferred to us automatically by law, then for you to be entitled to retain the **Claim Payment** we have made, you will execute all assignments and other documents and take all other actions necessary to effect a transfer to us of such rights in full.

14. Shared risk

- 14.1 Unless otherwise endorsed to the **Policy**, you will remain solely responsible for any part of the **Covered Invoices** owed to you by the **Buyer** which do not qualify for a **Claim Payment**. You must not assign the invoices wholly or in part to any third party (including but not limited to any financial institution(s)) or insure the invoices with any other insurer. If you fail to comply with the above, we will not be liable for any **Claim Payment** relating to these **Covered Invoices** even if you have not made a claim or received a claim payment under that policy or facility.

14.2 In addition, we will not be liable for your **Claim Payment** if the applicable **Covered Invoices** are insured or covered under any other insurance policy or facility even if you have not made a claim under that policy or facility.

15. Assignment of your **Policy** or of your **Claim Payment**

You may not assign the **Policy** or the right to receive any **Claim Payment** to any third party.

D. General conditions

16. Fair presentation of the risk

You must make a fair presentation of the risk to us prior to entering into or varying the **Policy**. If you fail to do so, we will apply any remedy available to us in law.

17. Inspection of documents

17.1 At our request you must allow us or any of our representatives to inspect and take copies of any information, documents or records in your possession relating to your **Covered Invoices** and the **Policy**. You must take all reasonable and necessary steps to obtain and produce the information, documents or records in the possession of third parties.

17.2 Our right of inspection continues after termination of your **Policy** for all obligations arising under the **Policy** while it was in force.

18. Waiver

We do not waive any material breach by you of any term or condition of the **Policy** unless we have specifically agreed to do so in writing.

19. **Policy** currency

19.1 We will cover invoices denominated in any currency. However, premium, **Recoveries**, Insured Debt and Insured Loss (as defined in section 11), and **Claim Payments** will be in Pound sterling.

19.2 We will use the spot rate of exchange ruling in the London foreign exchange market at the close of business on the last working day of the month in which the invoice was raised when calculating the amount of your Insured Debt and any related **Claim Payment**. The value of any **Recoveries** will be converted into the **Policy** currency using the spot rate of exchange ruling in the London foreign exchange market at the close of business on the date the **Recoveries** arise or are received.

20. Set-off

20.1 We alone may use any amounts you owe us or any Euler Hermes affiliate to pay off any amounts we are due to pay you under the **Policy**.

20.2 You may not use any **Claim Payment** due to you as a reason to refuse or defer payment of amounts you owe us.

21. Applicable taxes, duties and other charges

21.1 You alone will be responsible for paying all current and future taxes, duties and bank receipt and transfer charges arising under or in connection with the **Policy**.

21.2 We will determine your liability to pay taxes and duties on the basis of the information you give us.

22. **Policy** duration

22.1 Start, continuation and termination of cover

- a. The **Policy** will commence immediately upon your first request for cover via the **Platform**. You may purchase cover for your invoices at any time after the **Policy** commences. Unless the **Policy** is terminated earlier in line with its terms, your **Policy** will continue until such time as you or we give the other party **Notice** of termination. If such **Notice** is given, our liability under the **Policy** for invoices

already accepted for cover as **Covered Invoices** will, subject to the terms and conditions of the **Policy**, continue.

- b. Cover applies to a **Covered Invoice** once you have paid your premium for that **Covered Invoice**. and we have issued the corresponding **Cover Endorsement**. We retain the right at our own sole discretion to not issue a **Cover Endorsement** in response to your acceptance of cover and in such circumstances we will immediately refund to you the premium you have paid for that cover. We have no liability under the **Policy** other than with respect to your **Covered Invoices**.
- c. The issuance of this **Policy** is not an indication that we will provide cover for any specific invoice. We retain the right at our own sole discretion to offer or refuse to offer such cover.

If you make a false or fraudulent claim, the fraudulent claim will be forfeited and you must immediately repay any sums we have previously paid you under the **Policy** which relate to it. We may also elect to terminate the **Policy** with effect from the date of any fraudulent act by you.

22.2 Specific events of termination

Upon **Notice**, we may terminate your **Policy** with immediate effect if:

- a. you become **Insolvent**, or
- b. you agree a compromise with your creditors
- c. we have withdrawn your access to the **Platform** in accordance with our rights under the **Platform's** terms of use.

23. Language, applicable law and jurisdiction

23.1 Language

If the **Policy** has been provided to you in different languages, the binding version will be English.

23.2 Applicable law and jurisdiction

- a. The **Policy** will be interpreted and governed in all respects by English law.
- b. We intend to resolve any dispute or difference between you and us amicably. If that fails, then any question, difference or dispute between you and us which may arise concerning the construction, meaning or effect of the **Policy** or concerning your or our rights and liabilities under the **Policy** or any other matter arising out of or in connection with the **Policy** will be referred to a sole Arbitrator in London who will apply English Law.
- c. The Arbitrator will be chosen and appointed by you and us, or failing agreement, by the Registrar of the London Court of International Arbitration (LCIA). The Arbitrator must have relevant commercial insurance and legal experience. The arbitration procedure will be agreed by you and us or, failing agreement, determined by the Arbitrator. The Arbitrator will have the widest discretion permitted under the law and rules governing the arbitration to make such orders and directions considered necessary. The decision of the Arbitrator will be final and binding upon you and us.

E. Definitions under your *Policy*

“**Adverse Information**” means any of the following occurrences with respect to a **Buyer**. The **Buyer**:

- being unable to pay its debts when they fall due,
- having a cheque rejected for lack of available funds,
- having a direct debit discontinued,
- having admitted cash flow difficulties
- having legal action commenced against it in respect of a statutory demand or winding up petition
- being the subject matter of commencement or preparation for the commencement of any insolvency proceedings
- sustaining any event which would give reasonable grounds for the belief that the **Buyer** might not be able to fulfil its contractual obligations to you.

“**Affiliated Buyer**” means a **Buyer** (i) over which you or any company in your group has direct or indirect control through participation in its management, administration or capital, or (ii) which has similar control over you or a company in your group or (iii) is part of the same group as you.

“**Buyer**” means the legal entity to which you have **Supplied** the goods or services, which is responsible for the payment of the related invoice and which is named in the **Cover Endorsement**.

“**Claim and Collection form**” means our form, completed using the **Platform**, by which you (i) notify a claim to us and (ii) give a mandate to the Collection Service Provider, in line with section C. The **Claim and Collection form** specifies supporting documents which you need to provide to us on filing.

“**Claim Payment**” means an amount payable to you under the **Policy** to compensate you for the losses you have sustained from unpaid **Covered Invoices**.

“**Contract**” means the agreement for the **Supply** of goods and/or services to the **Buyer**.

“**Cover Endorsement**” means the part of the **Policy** named the **Cover Endorsement** which sets out the details of the **Covered Invoice** and the **Buyer** to which it relates together with any further conditions of cover.

“**Covered Invoice**” means an invoice that you have issued to a **Buyer** in respect of goods and services **Supplied** by you, for which:

- you have elected to purchase cover via the **Platform** and
- you have paid the corresponding premium.

“**Default**” means the non-payment by a **Buyer** of all or part of the **Covered Invoice** at the earlier of:

- the **Due Date** of the **Covered Invoice**; and
- if applicable, the **Buyer's Insolvency**.

“**Dispute**” / “**Disputed**” means any unresolved genuine and documented disagreement between you and the **Buyer** that results in the **Buyer** refusing to pay you all or part of any **Covered Invoice**.

“**Due Date**” means the original date when the **Buyer** must pay an invoice under the terms of your **Contract**.

“**Insolvency**” / “**Insolvent**” means when:

- an insolvency practitioner or other similar official is appointed over you or your **Buyer** (but only if this affects your rights as a creditor of the **Buyer**),
- a debt restructuring arrangement is approved and made binding on you or your **Buyer** and all its creditors, or
- circumstances exist that are equivalent to those specified above.

“**Maximum Terms of Payment**” means the maximum period specified in the **Cover Endorsement** for the **Buyer** to pay a receivable.

“**Notice**” means the following agreed methods of communication:

- a. **Policy** notifications between you and us will be in writing by mail, fax or email
- b. You and we will issue any notice of termination or suspension of your **Policy** in writing by mail,
- c. Notices will be addressed to you in accordance with the information provided by you at the inception of your **Policy** or as subsequently notified by you in writing.
- d. Notices sent to you will be deemed valid notices under the **Policy** upon your receipt but in any event no later than:
 - by mail: the close of business on the second working day after mailing.
 - by fax or electronically: the first working day after transmission.
- e. A working day means any day except a Saturday or Sunday or a public holiday in the place to which the notice is addressed.

“**Platform**” means the TradeLock platform, which is owned and operated by Euler Hermes, through which services are provided together with access to Euler Hermes telecommunications network and computer processes which support the operation of the Platform and such other computer processes that Euler Hermes may use from time to time.

“**Policy**” means this Credit Insurance agreement including these terms and conditions, the **Cover Endorsements**, and any amendment or endorsement issued under or in connection with the **Policy**.

“**Recovery**” / “**Recoveries**” means any:

- a. money received from the **Buyer** or any third party on behalf of the **Buyer**, including dividends received out of the **Buyer's Insolvent** estate,
- b. indemnities, guarantees or other security obtained and realised,
- c. goods recovered and sold,
- d. counter claims or set-off applied or available, and/or
- e. other advantages or rights of actions available against the **Buyer** or any third party.

“**ROT Clause**” means a clause that:

- a. is legally valid and incorporated into your contract for the sale of goods to a **Buyer**, and
- b. states that title to your goods being sold will only pass to the **Buyer** when you have received payment in full in respect of those goods being sold and all other goods you have sold or agreed to sell to the **Buyer**.

“**Supply**” / “**Supplied**” means (and a “**Supply**” will be interpreted accordingly):

- a. the goods have been passed to the first independent carrier for transport to the place where the **Buyer** is obliged to accept them in accordance with the **Contract**,
- b. if there is no independent carrier, the goods have been deposited into the possession of the **Buyer** or a third party agent who agrees to hold the goods to the order of the **Buyer** in accordance with the **Contract**, or
- c. the services have been completed in accordance with the **Contract**.

F. Complaints Procedure

Euler Hermes UK, a branch of Euler Hermes SA (NV), is authorised by the National Bank of Belgium and the Belgian Financial Services and Markets Authority, and subject to limited regulation by the Financial Conduct Authority. We are committed to providing the highest standards of service to our customers. Should you be dissatisfied with any aspect of our performance, please follow the procedure set out below, so that we can address and resolve your complaint as quickly and effectively as possible.

- Approach your regular Euler Hermes contact (usually your Account Manager), either verbally or in writing, and provide details of your complaint, including copies of any relevant documentation. You may wish to make your complaint direct, or through your insurance broker.
- We will then promptly acknowledge and record your complaint, investigate it thoroughly, and attempt to resolve it without delay (If possible within a maximum of 40 business days from receipt).
- Unless exceptional circumstances exist, we will respond to you within the following time limits from receipt of your complaint:
 - Within 5 business days of receiving your complaint, we will inform you of the identity of the person appointed to investigate it.
 - Within 20 business days of receiving your complaint, we will either provide you with a written response dealing with all aspects of the complaint, or will inform you of our progress in investigating it.
 - If we have not provided you with a full written response within 40 business days, we will inform you of the progress of our investigations and give you an estimate of when we expect to provide you with a full written response.
 - At any time during our investigation we may request additional information in relation to your complaint.
- Should you have any concerns arising during the procedure or you are dissatisfied with how your complaint is being dealt with, you may contact:

Jekaterina Winter
Legal & Compliance
Euler Hermes UK
1 Canada Square
London E14 5DX

Tel: +44 (0)20 7860 2921

E-mail: jekaterina.winter@eulerhermes.com

If your complaint is not resolved to your satisfaction by the above process, and your business has a group annual turnover of less than €2million (or equivalent in GBP (£) at the time of the complaint) and fewer than 10 employees, you may refer your complaint to:

The Financial Ombudsman Service (FOS)

Exchange Tower
London E14 9SR

Tel: 0800 023 4567

E-mail: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

You may wish to consult the information leaflet "Your Complaint and the Ombudsman", which is available from the Financial Ombudsman Service or your usual contact at Euler Hermes, for details of the applicable procedure.