Anadi Bank

FOREIGN GUARANTEE

Dear customer,

In this brochure, we would like to provide you with some information about guarantees.

A guarantee establishes a contractual relationship that is independent of the underlying transaction and under which the guarantor has a separate obligation to fulfil. The guarantor does not have the rights and duties of the principal debtor and therefore does not himself have to perform the obligations the principal debtor is contractually bound to fulfil. The guarantor merely has to provide financial compensation in the event of the beneficiary's claim that the obligation in question has not been performed.

The guarantee is independent of the existence of the principal obligation. Therefore, the guarantor bank does not have to verify the existence or legal validity of the principal obligation.

Likewise, the guarantor bank is not in a position to verify the material correctness of the beneficiary's claim that the principal has not fulfilled its contractual obligations. Accordingly, the bank cannot accept any "proofs" (e.g. copies of delivery documents) which may be sent to it by the principal in order to defend itself against claims asserted under a guarantee if the guarantee contains a promise of "payment on first request, waiving all pleas and objections".

The most important types of guarantee in international trade

The "Bid Bond"

This form of security is required in connection with public tenders. If a company takes part in a public tendering procedure, it must submit a bid bond together with its offer. This guarantees the payment of the guaranteed amount in the event that the offer is withdrawn before the expiry date, or if the contract, once awarded, is not accepted by the tenderer, or if the bid bond, once the contract is awarded, is not replaced by a performance bond.

Guarantee amount: 1% to 5% of the bid amount

Duration of validity: Up to the signing of the contract/provision of the performance pond, usually between 3 and 6 months

The "Performance Bond"

With the performance bond, the bank undertakes, on the instruction of the seller, to pay the beneficiary the guaranteed amount if the supplier does not fulfil its contractual obligations of delivery, or does not do so as contractually agreed.

Guarantee amount: Usually 10% of the contract value

Duration of validity: In respect of the full amount, up to performance of the contract, which in most cases includes the contractually agreed guarantee period, e.g. for the proper functioning of the machine or system. The duration of validity of performance bonds can be two or more years.

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The “Advance Payment Guarantee”

In most cases the payment conditions for large export orders envisage that the buyer has to make an advance payment for the purchase of raw materials and for production costs. However, the buyer will only provide such an advance payment after it has received an advance payment guarantee, which envisages the reimbursement of the advance payment in the event that the seller does not fulfil its delivery obligations.

Guarantee amount:	Amount of the advance payment
Duration of validity:	The duration of the advance payment guarantee should be limited so as to expire upon delivery of the contractually agreed object of purchase.

Entry into force: Since the advance payment guarantee usually has to be provided before receipt of the advance payment, it should only come into force after the advance payment has been received. If possible, a statement to this effect should be included in the guarantee.

The “Payment Guarantee”

The payment guarantee is used in particular to provide cover for the “open account” payment method. Different variants are possible: for example, the guarantee can be provided as security for payment in full for the delivery of goods or provision of services. A claim is usually made on the basis of a written statement by the beneficiary that the goods have been delivered/ services have been provided but no payment has been received per the due date.

A further possible application of the payment guarantee consists in the provision of partial security for an annual agreement concluded between the buyer and the seller for the delivery of consumables or the execution of services, in which the parties agree on monthly deliveries, payable on an open account basis, e.g. 10 days after receipt, by bank transfer. Instead of a documentary credit for the total amount, the contracting parties agree on the provision of a payment guarantee, which is intended to cover the payment risk for delivery over a period of 1 to 3 months. This obligation of the bank continues to apply until the annual agreement has been fully transacted, and a claim will only arise if payment of a due amount is not made directly by the buyer of the goods or services.

Time limitation of a bank guarantee

The time limitation of a bank guarantee is extremely important. Only if the date on which a guarantee obligation expires is clearly and unmistakably specified will the bank automatically cancel it upon expiry. The return of the original document by the recipient is not a requirement in such cases.

ICC Uniform Rules for Demand Guarantees, 2010 Revision, URDG 758

If guarantees are subject to URDG 758, they will govern the liability and responsibility of the contracting parties during the period of validity of a guarantee on a standardised basis worldwide. This gives rise to greater legal security and calculability, in spite of the applicability of different local laws. The Rules are a comprehensive set of regulations for practice-oriented application in guarantee business and take into account the interests of all parties. In addition, they contain sample texts for guarantees which are based on a standard approach and can therefore be used for all types of guarantees, and they also contain special clauses for specific types of guarantees.