Anadi Bank

BANK GUARANTEES FOR INTERNATIONAL TRANSACTIONS

Dear customer,

We would like to pass on to you the following notes with regard to guarantees.

A guarantee creates an obligation relationship which is independent of the underlying transaction, with the guarantor being required to fulfil a separate obligation. Thus the guarantor (which does not have the rights and duties of the principal debtor) does not itself have to provide the service performed by the principal debtor, but merely has to provide financial compensation in the event of a claim of non performance.

The guarantee is independent of the existence of the principal debt, and the guarantor bank does not have to verify the existence or validity of the principal debt.

Neither is it possible for the guarantor to verify the material correctness of the allegation made by the beneficiary of the guarantee that the ordering party has not fulfilled its contractual obligations: consequently, if the guarantee contains a promise to make "payment on first request, waiving any pleas or objections", the bank may not accept any "evidence items" (e.g. copies of delivery documents) which may be submitted by the ordering party in order to defend itself against the take up of the guarantee.

The most important types of guarantee in international trade

Bid bond

This type of security is required in connection with public tenders. If a company takes part in a public tender, it must submit a bid bond with its bid. This guarantees payment of the guaranteed amount if the bid is withdrawn before the expiry date, in the event that the contract is not accepted by the bidding company after the contract is awarded, or in the event that the bid bond is not replaced by a performance bond after the contract is awarded.

Guarantee amount: 1 – 5 % of the bid amount

Period of validity: Up to the date of signing of the contract or provision of the performance bond, usually between 3 and 6 months.

Performance bond

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

Guarantee amount: Usually 10 % of the contract value.

Period of validity: In regard to the full amount, up to the date of performance of the contract, which in most cases includes the warranty period (for example with regard to the proper functioning of the machine or the system) as agreed in the contract for the provision of services. The period of validity for performance bonds can amount to two or more years.

Advance payment guarantee

The payment conditions for large export contracts mostly envisage that the purchaser has to make an advance payment for the purchase of raw materials and manufacturing costs. However, the purchaser will only make any such advance payment after it has received an "advance payment guarantee" envisaging the reimbursement of the advance payment in the event that the seller does not fulfil its contractual delivery obligations.

Guarantee amount:	Amount of the advance payment
Period of validity:	The period of validity should be limited so that the guarantee lapses upon delivery of the contractual item.
Entry into force:	Since the advance payment guarantee usually has to be provided before the advance payment has been received, it should only come into force after receipt of the advance payment. A note to this effect should be included in the guarantee wherever possible.

Payment guarantee

The payment guarantee is used in particular to secure the "open account" payment method, with a number of variants being possible. For example, a bank guarantee can be provided as security for full payment for goods delivered or services provided. The beneficiary can usually claim under this guarantee by providing a written statement that it has delivered the goods but has not received payment when due.

A further use of the payment guarantee consists in the provision of partial security for an annual contract which the buyer and the seller have concluded for the delivery of consumables or the execution of services. Monthly deliveries are agreed, payable against open account, e.g. 10 days following receipt, by bank transfer. Instead of a letter of credit for the total amount, the contracting parties agree on a payment guarantee which is intended to cover the payment risk for a 1-3 month delivery. This obligation of the bank remains valid until complete execution of the annual contract, and would only be utilised if a due amount is not paid directly by the purchaser of the goods or services.

Limited period of a bank guarantee

It is extremely important for a bank guarantee to be provided for a defined period. Only if it is clearly and unambiguously specified when the obligation in question ceases to apply will the bank automatically cancel that obligation upon expiry. The return of the original document by the recipient is not required in such cases.

ICC Uniform Rules for Demand Guarantees, 2010 revision, URDG 758)

Guarantees that are subject to URDG 758 regulate the liability and responsibility of the contracting parties on a standardised basis worldwide for the period of validity of the guarantee in question. This provides greater legal certainty and predictability in spite of any local legislative differences that may apply. The rules are a comprehensive set of regulations for the practice-oriented application of guarantees, and take account of the interests of all parties. In addition they contain sample texts for guarantees, which are based on a uniform approach and can therefore be used for all types of guarantees as well as special clauses for certain types of guarantee.