

PO Box 2200 2 Exchange Tower Harbour Exchange Square London E14 9GS



**APPLICATION FOR AN ECGD BUYER CREDIT GUARANTEE**

**IMPORTANT INFORMATION**

Corruption and Money Laundering

*Please note that the OECD countries, including the United Kingdom, are committed to combating corruption and money laundering. The law in the UK has been strengthened in order to do so. Whilst you are responsible for ensuring that your activities comply with all laws that are relevant to the transaction in respect of which you are applying for our support, we draw your attention in particular to the amendments to the applicable law on corruption contained in the Anti-terrorism, Crime and Security Act 2001 and to the applicable law on money laundering contained in the Proceeds of Crime Act 2002. Certain acts committed abroad now constitute criminal offences in the UK. You should also be aware that ECGD routinely refers allegations of bribery and corruption and money laundering to the appropriate authorities.*

TO ECGD

APPLICANT'S NAME:

ADDRESS:

Company Registration Number:

Name of contact:

Telephone No:

Fax No:

E-mail address:

*(The following items need only be completed if this is the first Buyer Credit Application you have submitted to ECGD, or if the information supplied in previous Applications has changed.)*

Nature of business: .....

Date Company was established: .....

Total annual turnover: .....

Number of employees: .....

Number of years exporting: .....

1 We request you to inform us whether, and if so on what terms, you would be prepared to make a Buyer Credit guarantee available to our Bankers for the transaction described in the attached schedule (“the Schedule”).

2 Our Bankers, .....  
of.....  
.....  
.....

have agreed in principle, and subject to the provision of your guarantee, to provide, or to arrange for, a loan to be made to finance this transaction, and the Borrower has \*approved / \*has yet to approve our Bankers for this purpose. (\*Delete as appropriate)

3 We undertake to notify you of any information we may receive about any proposed additional lending from any source in relation to this transaction.

We agree that for the purposes of this Application:

4

4.1 “Agent” means any agent, intermediary or representative appointed by ourselves, or by a Controlled Company or Associate, in connection with the award or performance of the Supply Contract or any Related Agreement.

4.2 “Associate” means:

- a) any company (other than ourselves or a Controlled Company), which is a member of the same group of companies as our company, or
- b) any company (other than ourselves or a Controlled Company), –person or other legal entity which is a party to any joint venture, consortium or other similar arrangement (1) which is, or will be, involved in the performance or financing of all or any part of the Supply Contract or Related Agreement and (2) to which we are also a party;

4.3 “Best of our Knowledge and Belief” means that the person signing the declaration has:

- a) made reasonable enquiries so as to satisfy himself that the matters being declared are correct; and
- b) is not in possession of any facts or information which should have put him on notice that the matters being declared are incorrect; and
- c) honestly believes that the matters being declared are correct.

4.4 “Borrower” means the party so described in the Schedule;

4.5 “Buyer” means the party so described in the Schedule;

4.6 “control” and “controlled” means, in relation to a company, control of that company by virtue of (1) contractual arrangements (including, without limitation, provisions in that, or any other, company’s memorandum and articles of association or the equivalent documents in the case of a company incorporated in a jurisdiction other than that of England and Wales) and/or (2) ownership (whether directly or by nominees or trustees) of the majority of the voting share capital of that company;

4.7 “Controlled Company” means any company (in any jurisdiction) which is controlled by us;

4.8 “Corrupt Activity” means any activity (including without limitation, the offering of any payment, reward or other advantage to any public official or other person) which:

4.8.1 is subsequently found by a court in a competent jurisdiction (after all available rights of appeal have been exhausted) to have rendered a contract illegal, void, voidable or unenforceable under its governing law, or

4.8.2 we have, or any Controlled Company, or any Associate, or any Agent, or anyone (including any employee) acting ~~(with due authority)~~ on our, or any Controlled Company's, or any Associate's, or any Agent's behalf or with our, or its, subsequent acquiescence has, other than under duress, admitted engaging in, or

4.8.3 is subsequently found by a court in any competent jurisdiction outside the United Kingdom (after all available rights of appeal have been exhausted) to constitute an offence under any applicable law, or

4.8.4 is subsequently found by a court in the United Kingdom (after all available rights of appeal have been exhausted) to constitute an offence under the Relevant Acts ~~(except by virtue of an amendment to the Relevant Acts having retrospective effect)~~

and which activity, in respect of paragraphs 4.76.1, 4.76.2, and 4.76.3 above corresponds to an offence under the Relevant Acts ~~(except by virtue of an amendment to the Relevant Acts having retrospective effect)~~;

4.9 "Guarantor" means any party so described in the Schedule;

4.10 "Related Agreement" means any agreement, undertaking, consent, authorisation or arrangement of any kind which is related to or connected with the Supply Contract;

4.11 "Relevant Acts" means the Prevention of Corruption Acts 1889 to 1916 and the Anti-Terrorism, Crime and Security Act 2001 (as from time to time amended or re-enacted);

4.12 "Senior Executive" means a director of the board, or a person with senior management responsibility over the whole or any part of the Supply Contract or Related Agreement;

4.13 "Supply Contract" means the entirety of the contract between ourselves and the Buyer which is referred to in the Schedule;

4.14 "Surety" means any party so described in the Schedule; and

4.15 the Applicant is referred to, in the body of this Application, as "we" and "us" and, in the Schedule, as "you"; and, where states of mind belonging to the Applicant are referred to such states of mind are, where the Applicant is an incorporated company, those of one or more board directors of the Applicant or the signatory to this form and, where the Applicant is a partnership, those of one or more of the partners.

5 We declare that, ~~to~~<sup>1</sup> ~~the best of our knowledge and belief:~~

5.1 we or any Controlled Company or any ~~Senior Executive~~board director of ours or of any Controlled Company:

5.1.1 neither appears on any list of contractors or individuals debarred from tendering for or participating in any project funded by the World Bank or any other multilateral or bilateral aid agency, nor\*\*

5.1.2 has at any time during the last five years, other than under duress, admitted having engaged, or been found by a court in any competent jurisdiction to have engaged, in any Corrupt Activity that has not previously been notified to ECGD; and\*\*

<sup>1</sup> See the attached Appendix for ECGD's understanding of the expression "the best of our knowledge and belief".

5.2 to the Best of our Knowledge and Belief any Associate or Agent, or any Senior Executive of any Associate or Agent:

5.1.1 neither appears on any list of contractors or individuals debarred from tendering for or participating in any project funded by the World Bank or any other multilateral or bilateral aid agency, nor\*\*

5.1.2 has at any time during the last five years, other than under duress, admitted having engaged, or been found by a court in any competent jurisdiction to have engaged, in any Corrupt Activity that has not previously been notified to ECGD; and\*\*

5.32 the Supply Contract, or any arrangement connected with its financing or procurement, has not been, nor will be, used for the purposes of money laundering (as defined in Part 7 of the Proceeds of Crime Act 2002)

( \*\* If you are unable to make a particular declaration you should delete it and provide full details of the event that occasioned the listing or the admission or the court finding on your headed notepaper and attach it to this form.)

6 We declare that we do not have any common parent company, or common directors or management agreements or financial interests, direct or indirect, that connect us with the Buyer and/or the Borrower (if different from the Buyer) and/or any Guarantor or Surety.\*\*\*

(\*\*\* If you are unable to make this declaration you should delete it and provide full details as to why you cannot on your headed note paper and attach it to this form.)

7 We declare that none of the goods and/or services to be supplied under the terms of the Supply Contract will require an export licence to be issued by the UK Government or the Government of any other country.\*\*\*\*

(\*\*\*\*If you are unable to make this declaration you should delete it and provide details of the required licence, including the name and address of the issuing authority, on your headed notepaper and attach it to this form. If the licence has already been issued a certified true copy of it should also be attached.)

8 We declare that where this Application and the Schedule has been transmitted by electronic means, we have not amended any of the declarations contained in the Application for an ECGD Buyer Credit Guarantee (Form BC Ap.6) or questions posed in the ECGD Buyer Credit Guarantee Application Schedule (Form BC Sched3) provided to us by ECGD.

9 We understand that

9.1 in our own interest, our Supply Contract should provide for our right to receive direct payment from the Buyer of all amounts, at the relevant times, which we would otherwise draw from the proposed loan if, for any reason, the loan should cease to be available to the Borrower;

9.2 it is, or will be, a contractual term between us and ECGD in relation to any support given by ECGD for the transaction described in the Schedule:

9.2.1 that neither we nor, ~~to the best of our knowledge and belief,~~ any Controlled Company or anyone (including any employees) acting on our, or that Controlled Company's, behalf ~~with due authority, or with our, or that Controlled Company's, prior consent or subsequent acquiescence,~~ shall have engaged, or shall engage, in any Corrupt Activity in connection with the Supply Contract or any Related Agreement;

9.2.2 that to the Best of our Knowledge and Belief, no Associate or Agent, or anyone (including any employees) acting on that Associate's or Agent's behalf, shall have engaged, or shall engage, in any Corrupt Activity in connection with the Supply Contract or any Related Agreement;

9.2.32 that, if we become aware that ~~any Associate, or anyone (including any of its employees) acting on its behalf (with due authority) or with its subsequent acquiescence,~~ has engaged in any Corrupt Activity in connection with the Supply Contract or any ~~Related Agreement, undertaking, consent, authorisation or arrangement of any kind,~~ we shall promptly notify ECGD accordingly and supply ECGD with full details of the Corrupt Activity in question ~~save where such notification would, or might reasonably be argued to, constitute the offence of "tipping off" under section 333 of the Proceeds of Crime Act 2002;~~

9.2.43 that (1) we shall have required, or shall require, all Controlled Companies, Associates and Agents, and anyone (including ~~any~~ of our employees) acting on our behalf ~~with due authority~~ and directly or indirectly involved in obtaining or performing the Supply Contract or any Related Agreement not to engage in any Corrupt Activity ~~(or any activity which, subject to the occurrence of the subsequent events referred to in paragraphs 4.6.1, 4.6.3 or 4.6.4, would amount to Corrupt Activity)~~ in connection with the Supply Contract or any Related Agreement (2) we will monitor compliance with that requirement, and (3) we will take appropriate action against anyone found to have engaged in any Corrupt Activity; and

9.3 (unless the parties agree otherwise) this Application, its attachments and all discussions and correspondence relating to it are confidential and shall not be disclosed to any third party except:

9.3.1 by us in confidence to our banker or broker or other professional advisers, in each case for the purpose for which each of them has been employed by us; and

9.3.2 by ECGD,

9.3.2.1 in accordance with its obligations at law or under the Code of Practice on Access to Government Information or its obligations to Parliament as a Government Department or, subject to paragraph 9.5 below, to its external legal advisers and other Government Departments;

9.3.2.2 prior to signature of the loan and related support documentation if this is a project identified by ECGD as having a high potential environmental and/or social impact, in publishing on its website details limited to the project name, a short description, the project's location and the source of any environmental or social impact assessment reports; and\*\*\*\*\*

9.3.2.3 after signature of the loan and related support documentation, in publishing in its Annual Report, on its website or elsewhere details of our name, the name of the Buyer and the country, a short description of the items supplied or the project, the amount of ECGD support provided, and the potential environmental and/or social impact category that ECGD has applied to the project. \*\*\*\*\*

*(\*\*\*\*\* If you object to ECGD publishing such information you should delete this paragraph and provide details of your objection (e.g. that publication may harm your competitive position) on your headed notepaper and attach it to this form.)*

9.4 it is, or will be, a contractual term between us and ECGD in relation to any support given by ECGD for the transaction described in the Schedule that, where our consent or agreement is required for the disclosure by ECGD of the information referred to at the opening of paragraph 9.3, we will not unreasonably delay or withhold our agreement or consent to any such disclosure (for example, to reinsurers and outsource service providers in connection with ECGD's portfolio management activities, to other export credit agencies or other persons in connection with the assessment of this Application);

9.5 where ECGD discloses, pursuant to paragraph 9.3.2.1 above, to its external legal advisers or any other Government Department any information contained in this Application or its attachments, or provided in any discussions and correspondence relating to this Application, which has not entered the public domain (other than by a breach by ECGD of its obligations under paragraph 9.3 above) ECGD shall:

9.5.1 notify those legal advisers or, as the case may be, that other Government Department of the terms (as set out in paragraph 9.3 above) on which that information has been provided to ECGD; and

9.5.2 in the case of any disclosure to another Government Department, notify us of that disclosure (except where to do so would be unlawful or might prejudice an investigation by the Serious Fraud Office, the police or any other investigative authority).

10 We certify that the representations made and facts stated by us are true and that we have neither misrepresented nor omitted any material fact which might have a bearing on the Buyer Credit guarantee which we ask that you make available to our Bankers. We undertake to advise you promptly of any changes that may occur in the details shown in this Application or in the Schedule.

**Signed** .....

**On behalf of** [*Name of Applicant*] .....

**Address** .....

.....

.....

**Capacity of Signatory** .....

**Date** .....

1 *In the case of an incorporated company, this Application must be signed by a director or a person authorised by the company's board of directors or an officer of the company in accordance with the company's articles of association or equivalent constitutional document to sign this Application, or documents of the same nature as this Application, on behalf of the company.*

2 *In the case of a partnership, this Application must be signed by a partner.*

**(Form BC Ap.6)**

## APPENDIX

### ~~“THE BEST OF OUR KNOWLEDGE AND BELIEF”~~

~~The following is ECGD’s understanding of the expression “to the best of our knowledge and belief” and the way in which ECGD will interpret a company’s obligation to it when signing any form or undertaking containing the expression.~~

~~It is our view that the words “to the best of our knowledge and belief” must be read disjunctively, as if it consisted of two phrases, viz “to the best of our knowledge” and “to the best of our belief”, each having a separate and independent meaning. “Knowledge” is unqualified, and therefore means the actual knowledge of the person concerned as at the time of making the statement in question. “The best of” requires the maker of the statement to review his or her then state of knowledge and report all that that review tells him or her. It does not require the person to make any enquiries or in any other way to seek to improve or augment his or her state of knowledge before making the statement.~~

~~“Belief” requires a factual basis, entitling the person whose belief is being expressed to hold it. Nevertheless, it does not stop with matters of fact. A person’s factual knowledge may lead him or her to infer and hence believe in other facts of which he or she has no knowledge as such. “The best of” belief means that the person is uttering what he or she genuinely believes to be true, as opposed to matters as to which he or she entertains doubts. Again, since “belief” is unqualified, there is no requirement to seek to verify or bolster a belief by enquiry, other than by a diligent search of the person’s own conscience.~~