

Trade Credit

INSURANCE POLICY

Specific Account Malaysia

(Fixed Basis)

POLICY



Policy Wording

This Policy becomes effective when your Proposal has been accepted by QBE Insurance (Malaysia) Berhad (161086-D) by issuing a Policy Schedule.

TRADE CREDIT INSURANCE POLICY - SPECIFIC ACCOUNT (FIXED BASIS)

Issued by QBE Insurance (Malaysia) Berhad (161086-D) (“QBE Trade Credit”) to the Insured named in section 1 of the Schedule to the Policy.

COVER

The Insured has applied to QBE Trade Credit for Trade Credit Insurance by a Proposal in writing and QBE Trade Credit has agreed on the basis of the Proposal to issue this Policy.

In consideration of the payment of all premiums and other charges when due and subject to the terms and conditions of this Policy, QBE Trade Credit agrees to indemnify the Insured up to the Insured Percentage of the Insured Loss in the event of an Insured Buyer failing by reason of its Insolvency to pay the Insured an Insured Debt.

Conditions Precedent to Liability

Due observance of each of the terms and conditions of this Policy (including payment of all premiums and other charges) by the Insured are conditions precedent to any liability of QBE Trade Credit under this Policy.

Declarations and Acknowledgments

In completing the Proposal and accepting this Policy the Insured:

- (a) declares that to the best of its knowledge and belief the statements made in the Proposal were true at the date of the Proposal and at the date when QBE Trade Credit agreed to issue this Policy;
- (b) declares that it is aware of its duties to disclose to QBE Trade Credit every matter that it knows, or could reasonably be expected to know, is relevant to QBE Trade Credit’s decision whether to accept the risk of this insurance and, if so, on what terms and to act with the utmost good faith at all times; and

- (c) acknowledges that the Proposal which the Insured has completed, together with all other statements made in writing by the Insured or anyone acting on the Insured’s behalf for the purposes of this Policy, shall be the basis for the issue of this Policy. In all cases information provided to QBE Trade Credit in support of the Insured’s application for this Policy is held to be provided on the Insured’s behalf.

A. DEFINITIONS AND INTERPRETATION

Definitions

In this Policy (which includes all clauses, schedules, annexures and Official Limit Endorsements):

“**Approved Claim Currencies**” are the currencies (which includes the Policy Currency) specified under section 3 of the Schedule to the Policy and which are referred to under Condition 11 of the Policy; and are the currencies in which the Insured is entitled to lodge a claim.

“**Approved Countries**” are referred to in the definition of “Insured Buyer” and Condition 7(a) and are the countries specified in section 1 of the Schedule to the Policy.

“**Conversion Exchange Rate**” is referred to under Condition 11 of the Policy and in respect of an invoice is the rate of exchange between the currency in which that invoice is issued (which includes the Approved Claim Currencies) and the Policy Currency, as determined:

- (a) by reference to the rates of exchange applicable at the Insured’s bank as at the close of business on the day the relevant goods were Delivered; or
- (b) by the forward exchange rate contract, if one has been entered into with the Insured’s bank in relation to determining in advance the amount the Insured is to receive in terms of the Policy Currency, if payment is made in the Approved Claim Currency as contracted by the Insured Buyer; or
- (c) by reference to the Insured’s internal treasury rate as agreed in writing by QBE Trade Credit at the inception of the Policy.

“Deductible” is referred to in Condition 5(a) and is the amount specified in section 3 of the Schedule to the Policy.

“Delivered” and **“Delivery”** in respect of goods means the time at which such goods physically pass from the Insured into the exclusive physical control of the Insured Buyer or the Insured Buyer’s agent (which transaction must be completed within the Policy Period).

“Deposit Period” is referred to in Condition 2(b) and is the period specified in section 3 of the Schedule to the Policy.

“Deposit Premium” is referred to in Condition 2 and is the amount specified in section 3 of the Schedule to the Policy.

“Insolvency” is referred to in Condition 3, 8 and 12 and occurs in respect of an Insured Buyer when any of the following steps (or some step which, under the law of a foreign country or territory having jurisdiction, is equivalent to any of the following steps under Malaysian law), has been taken;

- (a) a receiver or receiver and manager or judicial manager or an agent for a mortgagee in possession has been appointed over all the assets and undertakings of the Insured Buyer;
- (b) the liquidation either compulsory or voluntary (save for the purpose of reconstruction or amalgamation) of the Insured Buyer;
- (c) an order has been made by a Court of competent jurisdiction for the Insured Buyer to be wound up;
- (d) an assignment is made by the Insured Buyer for the benefit of or composition with its creditors generally;
- (e) a debtors’ petition presented by the Insured Buyer has been accepted by the Registrar in Bankruptcy;
- (f) a legally binding sequestration order has been made against the estate of the Insured Buyer.

“Insured” is the person or entity specified in section 1 of the Schedule to the Policy, and includes any Joint Insureds.

“Insured Buyer” is any person or entity carrying on business with the Insured in any of the Approved Countries and who is included in this Policy but always excludes:

- (a) a company which is a holding company or subsidiary of or related company of the Insured; and
- (b) a government, government department, public or statutory authority, or nationalised undertaking; and
- (c) any entity in which a director, secretary or partner of the Insured, or a person who has a controlling interest in the Insured has a controlling interest; and
- (d) any person who is a spouse, parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of a director or secretary or partner or proprietor of the Insured; and
- (e) any entity where any of the persons referred to in sub paragraph (d) above has a controlling interest; and
- (f) any person or entity where the Permitted Limit is “nil”.

In this definition, the following terms have the following meanings:

“related company” means a company that has a director, secretary or shareholder with a controlling interest who is also a director, secretary or shareholder with a controlling interest in the Insured.

“controlling interest” means an interest in an entity where the relevant individual or entity owns twenty percent (20%) or more of the first mentioned entity.

“Insured Debt” is referred to in Condition 8 and means so much of any indebtedness arising out of the trade specified in section 1 of the Schedule to the Policy:

- (a) owing by an Insured Buyer to the Insured; and
- (b) as does not exceed the Permitted Limit; and

(c) is in respect of the invoice value of goods (or the face value of the original bill of exchange where a bill of exchange is accepted by the Insured Buyer in respect of the invoice value of goods) sold by the Insured to the Insured Buyer and Delivered to the Insured Buyer within the Policy Period pursuant to a contract of sale providing for repayment of the debt within the terms of payment specified in section 5 of the Schedule to the Policy.

“Insured Loss” is referred to in Condition 8(c) and is the amount of an Insured Debt that is admitted to rank against the insolvent estate of the Insured Buyer, after taking into account the whole of any Salvage relating thereto.

“Insured Percentage” is referred to in Condition 8(c) and is the percentage specified in section 3 of the Schedule to the Policy.

“Limit Administration Charge” is referred to in Condition 2(a) and is the amount specified in section 3 of the Schedule to the Policy.

“Maximum Extension Period” is referred to in Condition 3 and is the period specified in section 5 of the Schedule to the Policy.

“Minimum Premium” is referred to in Condition 2 and is the amount specified in section 3 of the Schedule to the Policy.

“Non-Approved Claim Currency” is a currency that is not any one of the Approved Claim Currencies.

“Non Reportable Overdue Limit” is referred to in Condition 3 and is the amount specified in section 4 of the Schedule to the Policy.

“Notifiable Event” is any one or more of the events specified in Condition 3(c).

“Official Limit Endorsement” is referred to in the Definition of Permitted Limit and is a written document titled “Official Limit Endorsement” provided from time to time under the Policy and which specifies the approved Permitted Limit in respect of a person or entity or specifies that the Permitted Limit is “Nil”. It may contain Special Conditions adding to or amending the existing terms and conditions of this Policy in relation to the Insured Buyer.

“Permitted Limit” is referred to in Condition 5(a) and, in respect of any indebtedness of an Insured Buyer is the limit specified by QBE Trade Credit on its Official Limit Endorsement form.

“Policy Currency” is the currency specified in section 3 of the Schedule to the Policy and is referred to under Condition 11 of the Policy and means the currency the Insured has requested the Policy to be issued in and which QBE Trade Credit has agreed to, at its sole discretion.

“Policy Period” is referred to in Conditions 1 and 2 and is the period specified in section 2 of the Schedule to the Policy.

“Salvage” is referred to in Conditions 9 and 11(e) and is the value of all goods recovered (whether under retention of title or otherwise), all monies (including dividends paid or payable out of an insolvent estate), securities, indemnities, guarantees, rights of action, counter claims, set-offs or other advantages held, received by or due to the Insured or otherwise available for the purpose of reducing the amount of any indebtedness of an Insured Buyer to the Insured (whether in respect of the payment for goods or otherwise) which has not been paid at the time that a Notifiable Event first occurs.

“Schedule to the Policy” means that part of the Policy entitled “Schedule Referred to in, and forming part of the Policy” which is signed on behalf of QBE Trade Credit and which provides the Insured’s individual particulars and the conditions specifically applying in addition to or in amendment of the standard terms and conditions of the Policy.

Interpretation

- (a) Reference to clauses, schedules, annexures and Official Limit Endorsements includes any replacement of them.
- (b) The singular includes the plural and vice versa.
- (c) Headings are inserted for convenience and do not affect the interpretation of this Policy.
- (d) A reference to any legislation or regulation shall include a reference to any amendment of, replacement of or substitution for that legislation or regulation.

B. CONDITIONS

1. Policy Period and Declarations

This Policy shall be issued for the Policy Period, subject to the specific rights of QBE Trade Credit under this Policy or at law to cancel this Policy or its obligations hereunder.

2. Premiums and Limit Administration Charge

- (a) On or before the first day of the Policy Period, the Insured shall pay to QBE Trade Credit the Limit Administration Charge.
- (b) On or before the first day of each Deposit Period the Insured shall pay to QBE Trade Credit a Minimum and Deposit Premium.
- (c) The Insured shall pay or reimburse QBE Trade Credit on demand for all stamp duty, Goods and Services Tax (“GST”) and other statutory charges imposed by government on this Policy and all payments made hereunder.
- (d) In the event the Insured seeks to cancel or terminate this Policy prior to the expiration of the Policy Period the Insured is still required to pay to QBE Trade Credit the Minimum and Deposit Premium.

3. Credit Management and Consultation

- (a) The Insured shall at all times:
 - (i) exercise reasonable care and prudence in granting credit to and withholding credit from an Insured Buyer as if it were uninsured; and
 - (ii) take all necessary steps and use its best endeavours, in consultation with QBE Trade Credit, to avoid or minimise any Insured Loss; and
 - (iii) subject to Condition 3(b), not agree in advance, either in a contract of sale or otherwise, to a postponement of the original due date for payment of an Insured Debt.
- (b) If circumstances arise at or shortly before the original due date for payment of an Insured Debt requiring a postponement of the original due date (for reasons other than the occurrence of a Notifiable Event referred to in (c) (i) to (iv) below), the Insured may grant a postponement within the Maximum Extension Period except when a Notifiable Event exists.

- (c) In the event that:
 - (i) at any time to the knowledge of the Insured any circumstances arise which could, in the reasonable opinion of a prudent Insured, give grounds for the belief that an Insured Buyer may not (or may be unable to) perform or comply with its obligations under a contract of sale with the Insured; or
 - (ii) an Insured Buyer is at any time to the knowledge of the Insured unable to pay its debts as they fall due for payment; or
 - (iii) a cheque or bill of exchange in respect of any indebtedness of an Insured Buyer to the Insured is at any time dishonoured by the entity on which it is drawn whether or not subsequently represented and met; or
 - (iv) an event of Insolvency occurs in respect of an Insured Buyer or an administrator is appointed to the Insured Buyer; or
 - (v) any part of an Insured Debt is not paid in cash or by cheque or bill of exchange available for immediate presentation by the last day of the Maximum Extension Period,

then a “Notifiable Event” shall have occurred.

- (d) When a Notifiable Event occurs the Insured shall:
 - (i) with the least possible delay notify QBE Trade Credit in writing; and
 - (ii) continue to notify QBE Trade Credit in the format required by QBE Trade Credit on a regular monthly basis until Insolvency has occurred or until a Notifiable Event no longer exists in respect of that Insured Buyer; and
 - (iii) take all prudent and reasonable steps required by QBE Trade Credit in respect of any loss which the Insured has incurred or may be likely to incur including the execution of such documents and the doing of such things as may be necessary to enable QBE Trade Credit to intervene directly in the proceedings or negotiations relating to the Insured Debt.

- (e) The Insured shall not be obliged to notify QBE Trade Credit of an Insured Debt of which any part has not been paid by the last day of the Maximum Extension Period if that part of the Insured Debt is less than the Non Reportable Overdue Limit, provided:
- (i) none of the sub-clauses (c)(i) to (iv) (both inclusive) above apply; and
 - (ii) the Insured shall supply to QBE Trade Credit, upon request, a schedule of all Insured Buyers whose accounts remain unpaid by the last day of the Maximum Extension Period, giving details of each Insured Buyer's total indebtedness.

4. Exclusions

This Policy does not cover and QBE Trade Credit shall not be liable in respect of any indebtedness:

- (a) resulting from any avoidance by an Insured Buyer of a contract concerning goods because such contract is void, illegal or unenforceable or because of a repudiation of such contract by the Insured Buyer,
- (b) which relates to sales tax, GST, retention monies, interest charges, penalties, government charges and taxes and any consequential damages or costs;
- (c) relating to or arising from any transaction involving the transfer to or from goods to be held or held on a consignment stock basis by the Insured Buyer or the Insured Buyer's Agent; unless QBE Trade Credit has before hand agreed in writing, subject to specified conditions, to cover goods drawn out of consignment and the Insured has complied with such specified conditions;
- (d) relating to or arising from any "pay when paid" contracts or any other agreements to sell to a person or entity who is not unconditionally and irrevocably bound to pay a purchase price as agreed before hand (eg goods delivered on a "sale or return basis" or goods delivered on a "commission basis" to a commission agent);

- (e) relating to goods Delivered to an Insured Buyer at a time when a Notifiable Event (other than a Notifiable Event arising solely as a result of the Insured Buyer withholding payment on the basis of a bona fide documented dispute) exists in respect of such Insured Buyer;
- (f) which is subject to any form of dispute;
- (g) relating to any transactions that are in the nature of personal or consumer transactions as opposed to business or commercial transactions;
- (h) directly or indirectly caused by political risks such as war, invasion of, or acts by foreign enemies, hostilities, rebellion, revolution, confiscation, nationalisation, insurrection or military or usurped power, or due to the order of any government, public or local authority or by any restrictions on trade transfers; or
- (i) directly or indirectly caused by risks from atomic energy risks, employing the process of nuclear fission or fusion or handling radioactive material including, but not limited to the use of nuclear reactors; the use or handling or transportation of radioactive materials; or the use, handling or transportation of any weapon of war or explosive device employing nuclear fission or fusion.

5. Co-Insurance

- (a) The Insured shall retain for their own account:
 - (i) so much of the Insured Loss as exceeds the Insured Percentage; and
 - (ii) so much of any indebtedness owing to the Insured by an Insured Buyer as exceeds the Permitted Limit; and
 - (iii) any Deductible.

("the Insured's Own Account")

- (b) The Insured must not, without the written consent of QBE Trade Credit:
 - (i) enter into any trade credit insurance policy that indemnifies the Insured in relation to the Insured's Own Account; or
 - (ii) obtain a charge, mortgage, security, indemnity or guarantee of any type that secures the Insured's Own Account but does not secure the Insured Percentage of the Insured Loss.

6. Assignment

- (a) The Insured shall not assign any rights or benefits under this Policy unless QBE Trade Credit's prior written consent to the assignee and the form of assignment has been obtained.
- (b) Any assignment made or purported to be made by the Insured without such consent shall entitle QBE Trade Credit to avoid liability under this Policy.

7. Reduction or Cancellation of Cover

- (a) QBE Trade Credit may at any time and at its sole discretion give notice in writing to the Insured reducing any Permitted Limit or cancelling or varying the cover granted by this Policy in respect of any particular Insured Buyer or Approved Country.
- (b) Subject to paragraph (c) below, any reduction or cancellation issued by QBE Trade Credit shall apply to all Deliveries of goods occurring at all times after the notice is given to the Insured.
- (c) Any reduction or cancellation issued by QBE Trade Credit will not apply to Deliveries of goods that are made under contracts which are entered into by the Insured prior to receipt of such notice and which the Insured is not entitled to cancel or legally terminate, providing the Deliveries of goods take place during the Policy Period and within a period of six (6) months from the time that the notice was given to the Insured.
- (d) Nothing contained in paragraphs (b) and (c) above should be construed to in any way limit the effect of Condition 4(e) of this Policy.

8. Claims

- (a) The Insured shall submit a claim under this Policy by completing a claim form supplied by QBE Trade Credit in respect of an Insured Debt relating to an Insured Buyer within six (6) months after Insolvency occurs in respect of such Insured Buyer.
- (b) If the Insured makes any claim knowing it to be false or fraudulent in any way, QBE Trade Credit shall refuse payment of the claim and may cancel this Policy.
- (c) Subject always to paragraph (d) and to conditions 9, 10 and 11 of this Policy, and after taking into account any interim payments and recoveries and any applicable Deductible, QBE Trade Credit shall pay to the Insured the Insured Percentage of the Insured Loss within the thirty (30) days after QBE Trade Credit has received appropriate confirmation that the Insured Debt has been admitted to rank for distribution against the insolvent estate in favour of the Insured.
- (d) As a condition precedent to the payment of any claim by QBE Trade Credit under this Policy, the Insured shall co-operate fully with QBE Trade Credit and shall sign all relevant documents considered necessary by QBE Trade Credit to protect its interests in any Salvage.

9. Salvage

- (a) Any Salvage received by the Insured or QBE Trade Credit shall be held on trust for the Insured and QBE Trade Credit for their respective interests as specified in paragraph (b) below.
- (b) Subject to paragraph (g) below, Salvage shall be divided between the Insured and QBE Trade Credit as follows:
 - (i) QBE Trade Credit shall be entitled to:
 - (A) such proportion thereof as the Insured Percentage of the Insured Debt bears to the total indebtedness of the Insured Buyer to the Insured at the date that a Notifiable Event first occurs; plus
 - (B) any other monies owing to QBE Trade Credit for arrears of premiums or monies due under this Policy; and
 - (ii) the Insured shall be entitled to the balance.

- (c) The Insured shall notify QBE Trade Credit in writing immediately it receives any Salvage.
- (d) Subject to 9(e) QBE Trade Credit's proportion of any Salvage received by the Insured and due to QBE Trade Credit (as calculated in accordance with (b) above), shall be remitted to QBE Trade Credit within ten (10) days of receipt.
- (e) If the Insured receives Salvage prior to the submission or determination of a claim by QBE Trade Credit the Insured is not required to pay to QBE Trade Credit its proportion of Salvage. After the submission or determination of a claim, the Insured must notify QBE Trade Credit in writing of its receipt of Salvage and in the event of an admitted claim QBE Trade Credit's proportion of the Salvage is to be deducted by it from its calculation of liability under the Policy.
- (f) QBE Trade Credit shall at any time be entitled to make any claim or take any legal action in the name of the Insured against; (i) an Insured Buyer; or (ii) any third party that the Insured is entitled to take action against, in respect of any Salvage.
- (g) In the event QBE Trade Credit elects to take legal action against an Insured Buyer or any third party that the Insured is entitled to take action against, QBE Trade Credit shall be entitled to deduct from any Salvage recovered all of the costs, disbursements and expenses incurred by it, prior to dividing the Salvage as otherwise set out in paragraph (b) above.

10. Disclosure

- (a) The Insured shall disclose in writing to QBE Trade Credit all material facts and information concerning or relating to this Policy, the Insured Buyers and its dealings with the Insured Buyers and any likely claim under this Policy.
- (b) QBE Trade Credit may request that the Insured provide and QBE Trade Credit may at any time examine or take copies of any letters, accounts or other documents in the possession or control of the Insured relating to or connected with this Policy or the obligations of the Insured or any transactions between the Insured and any Insured Buyer.

- (c) The Insured shall, at the request of QBE Trade Credit, supply QBE Trade Credit with any information in its possession or take any reasonable steps to obtain for QBE Trade Credit any information or the sight of any documents in the possession of any third party relating to or connected with this Policy or any transaction between the Insured and the Insured Buyer.

11. Currency - Claims and Salvage

- (a) This Policy is issued in the Policy Currency.
- (b) The Permitted Limits under the Policy, any other limits or Deductibles, premiums, Limit Administration Charges and any other charges are expressed in the Policy Currency, and such amounts shall not vary according to changes in the exchange rate between the Policy Currency and any other currency, unless specifically agreed by QBE Trade Credit in writing.
- (c) Subject to Condition 8 of the Policy, for the purpose of calculating QBE Trade Credit's liability in the event of a claim arising:
 - (i) any part of an Insured Buyer's indebtedness invoiced in a Non-Approved Claim Currency will be converted into the Policy Currency in accordance with the Conversion Exchange Rate and the resultant liability shall be paid in the Policy Currency;
 - (ii) any part of an Insured Buyer's indebtedness invoiced in an Approved Claim Currency will be converted into the Policy Currency in accordance with the Conversion Exchange Rate and the resultant liability as determined in the Policy Currency will be reconverted into and paid in the Approved Claim Currency, such reconversion being made in accordance with the Conversion Exchange Rate.

- (d) For the purpose of calculating Salvage in the event Salvage is received in a currency other than the Policy Currency:
- (i) Salvage accruing in a Non-Approved Claim Currency shall be converted into the Policy Currency at the Telegraphic Transfer Buying Rate of Exchange (between such currency and the Policy Currency) of the Insured's bank at close of business on the day of receipt, whether or not such currency is actually converted into the Policy Currency on receipt. QBE Trade Credit's share of any such Salvage accruing after payment of a claim shall be paid to QBE Trade Credit in the Policy Currency.
 - (ii) Salvage accruing in the Approved Claim Currency shall be converted into the Policy Currency at the Conversion Exchange Rate of the relevant invoice or invoices to which such Salvage payments relate. QBE Trade Credit's share of any such Salvage accruing after payment of a claim shall be paid to QBE Trade Credit in the relevant Approved Claim Currency.

12. Insolvency of the Insured

- (a) In the event of the Insolvency of the Insured the relevant administrator must adopt this Policy and all obligations of the Insured under this Policy within thirty (30) days for there to be any liability of QBE Trade Credit under this Policy.
- (b) QBE Trade Credit shall be entitled to retain all premiums and other monies paid and to receive and retain all premiums and other monies due and payable to QBE Trade Credit up to and including the effective date of such Insolvency.
- (c) For the purpose of this Condition the definition of "Insolvency" shall be the same as that applying to an Insured Buyer under this Policy.

13. Law

- (a) This Policy shall be governed by the laws of Malaysia in every particular including formation and interpretation and shall be deemed to have been made in Malaysia.
- (b) Any proceedings arising out of or in connection with this Policy may be brought in any court of competent jurisdiction in Malaysia.
- (c) The submission by the parties to such jurisdiction shall not limit the right of QBE Trade Credit to commence any proceedings arising out of this Policy in any other jurisdiction it may consider appropriate.

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