

Export Credit

INSURANCE POLICY

Commercial Risks Malaysia

POLICY



Policy Wording

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

EXPORT CREDIT INSURANCE POLICY COMMERCIAL RISKS

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

In accepting the Policy the Insured declares that:

- (a) to the best of their 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 the Policy, and
- (b) they are aware of their duty to disclose to QBE Trade Credit all material circumstances and to act with the utmost good faith at all times.

COVER

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

In consideration of payment of the premium and other charges and subject to the terms of the Policy, QBE Trade Credit agrees to indemnify the Insured up to the Insured Percentage, (specified in section 3 of the Schedule to the Policy) of the Insured Loss in the event of an Insured Buyer failing, by reason of their Insolvency or Protracted Default or Contract Repudiation, to remit from the country of the Insured Buyer to the Insured an Insured Debt.

Due payment of the premium and other charges specified in section 3 of the Schedule to the Policy and observance of all the other terms of the Policy are conditions precedent to any liability of QBE Trade Credit.

The “Company” and/or “QBE Trade Credit” means “QBE Insurance (Malaysia) Berhad” (161086-D Formerly known as QBE-MBF Insurans Berhad) in this Policy, the clauses attached and any Official Limit Endorsement unless otherwise specified.

DEFINITIONS

1. Insured Buyer

An “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) any corporation which is a holding company, associate or subsidiary of the Insured; and
- (b) a government, government departments, public or statutory authorities, or nationalised undertakings; 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.

2. Permitted Limit

The “Permitted Limit” of any indebtedness of the Insured Buyer is either:

- (a) the limit specified in writing by QBE Trade Credit for that buyer on QBE Trade Credit’s Official Limit Endorsement form; or

(b) where no such Official Limit Endorsement form has been issued, an amount not exceeding the Discretionary Limit (specified in section 4 of the Schedule to the Policy) justified:

(i) by the sum of any information in writing about the buyer obtained within a period of 12 months prior to the granting of the credit, including information obtained by the Insured from a Bank or other reputable organization (other than the Insured's agent) whose business includes the providing of such information; or

(ii) by the Insured's experience of the buyer's account during that period, or

(iii) where both information and experience exist, by such information and experience.

3. Insured Debt

An "Insured Debt" means so much of any indebtedness arising out of the trade specified in section 1 of the Schedule to the Policy and owing by an Insured Buyer as does not exceed the Permitted Limit for that buyer and is in respect of the invoice value of goods (or the face value of the original bill 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 Despatched to them within the Policy Period (specified in section 2 of the Schedule to the Policy) pursuant to a contract of sale providing for repayment of the debt upon the terms specified in section 5 of the Schedule to the Policy.

4. Insured Loss

The "Insured Loss" means:

(a) in the case of Insolvency of the Insured Buyer, so much of an Insured Debt as shall be admitted to rank against the insolvent estate of the Insured Buyer taking into account the whole of any Salvage relating thereto: or

(b) in the case of the Protracted Default of the Insured Buyer so much of an Insured Debt as is confirmed to QBE Trade Credit by evidence of debt and is not in dispute between the Insured and the Insured Buyer, taking into account the whole of any Salvage relating thereto: or

(c) in the case of Contract Repudiation by an Insured Buyer, so much of an Insured Debt as is confirmed to QBE Trade Credit by evidence of debt less the proceeds (after deducting reasonable resale expenses agreed by QBE Trade Credit prior to incurring such expenses) of the resale of the goods and any other Salvage relating thereto.

5. Salvage

"Salvage" means 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 date of Insolvency of the Insured Buyer or the date for notification under Condition 3, whichever is the earlier.

6. Insolvency

There is "Insolvency" 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 the Court 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 debtor's 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.

7. Protracted Default

- (a) There is a “Protracted Default” of an Insured Buyer when:
- (i) the Insured Buyer fails to pay an Insured Debt within a period of four (4) months after the Protracted Default Starting Date (the “Protracted Default Period”); and
 - (ii) the Insured has, within the Protracted Default Period, fully complied with all of their obligations in accordance with this Policy including, but not limited to, Condition 3 of the Policy.
- (b) The “Protracted Default Starting Date” means the original due date for payment under the relevant contract for the sale or supply of goods or services or, if that original due date is postponed, the postponed due date.
- (c) The Protracted Default Period shall not commence or Continue to run whilst:
- (i) the Insured Buyer is entitled or obliged to refuse payment of an Insured Debt under any law or regulations having the force of law in the country of the Insured Buyer, or is obliged to refuse payment by a person exercising powers of government in the country of the Insured Buyer; or
 - (ii) the Insured Buyer claims that they are entitled to withhold payment of any part of an insured Debt and QBE Trade Credit is satisfied that a dispute exists between the Insured and the Insured Buyer which has not been resolved by the parties to the relevant contract or by arbitration, or by legal proceedings; or
 - (iii) an Insolvency of the Insured Buyer exists.

8. Contract Repudiation

There is “Contract Repudiation” by an Insured Buyer when the Insured Buyer fails to accept goods already Despatched by the Insured provided that this failure is not caused or excused by any breach of condition or warranty by the Insured or does not result from any other cause within the Insured’s control and provided also that QBE Trade Credit is satisfied that no good purpose would be served by the institution of legal proceedings against the Insured Buyer in respect of that failure.

9. Turnover of Transactions

The “Turnover of Transactions” means the aggregate invoice value of goods (or, where appropriate, the face value of original bills of exchange accepted by buyers in respect of the invoice value of goods) sold by the Insured and Despatched to Insured Buyers at any time during the Policy Period (specified in section 2 of the Schedule to the Policy), but excluding the invoice value of goods for which payment is received on or before Despatch of goods.

10. Despatch

- (a) “Despatch” or “Despatched” where used in this Policy shall mean, subject to sub paragraph (b), that the goods have been passed to the first carrier in the process of being carried to the place where the Insured Buyer is required to accept them.
- (b) Notwithstanding sub paragraph (a), goods will not have been Despatched in circumstances where an Insured retains the legal right to stop carriage of the goods before they leave the country from which the Insured is exporting the goods.

11. Approved Claim Currencies

“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 12 of the Policy; and are the currencies in which the Insured is entitled to lodge a claim.

12. Non-Approved Claim Currency

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

13. Conversion Exchange Rate

“Conversion Exchange Rate” is referred to under Condition 12 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 Despatched; 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.

14. Policy Currency

“Policy Currency” is the currency specified in section 3 of the Schedule to the Policy and is referred to under Condition 12 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.

15. Official Limit Endorsement

“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 states 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.

16. Schedule to the Policy

“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.

17. 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.

CONDITIONS

1. Declarations

The Insured shall declare in writing to QBE Trade Credit, on the form provided by QBE Trade Credit, their Turnover of Transactions within fourteen (14) days after the end of each Declaration Period (as specified in section 3 of the Schedule to the Policy) which shall begin from the date of commencement of the Policy. A separate declaration shall be made for each of the Approved Countries named in the Schedule to the Policy.

2. Premiums and Limit Administration Charge

- (a) At commencement of the Policy and at the beginning of each subsequent Deposit Period, the Insured shall pay to QBE Trade Credit the Advance Deposit Premium.

The premium earned under the Policy shall be calculated by reference to the Turnover of Transactions at the Rate for Calculation of Premium subject to QBE Trade Credit retaining for the Policy Period a Minimum Premium in any event.

At the end of each Policy Period QBE Trade Credit shall calculate the amount due to or from the Insured after taking into account the Advance Deposit Premiums paid and the Minimum Premium, payment in either case being due on demand.

- (b) At the commencement of the Policy and thereafter on or before the commencement of each subsequent Policy Period, the Insured shall pay to QBE Trade Credit on demand a Limit Administration Charge.

The Deposit Period, Advance Deposit Premium, Minimum Premium, Rate for Calculation of Premium and Limit Administration Charge referred to above are specified in section 3 of the Schedule to the Policy. The Policy Period is specified in section 2 of the Schedule to the Policy.

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.

- (c) In the event that 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 amount calculated in accordance with Condition 2 (a) and is not entitled to receive any refund in relation to the premium paid or due to be paid.

3. Credit Management and Consultation

- (a) It shall be the duty of the Insured to exercise reasonable care and prudence in granting credit to and withholding credit from an Insured Buyer as if it were uninsured. The Insured shall take all necessary steps and use their best endeavours, in consultation with QBE Trade Credit, to minimise any loss.
- (b) The Insured shall not agree in advance, either in the Contract of Sale or otherwise, to a postponement of the due date for payment of an Insured Debt provided that, in the event of the need for such postponement arising at or shortly before the due date, the Insured may grant a postponement within the Maximum Extension Period specified in section 5 of the Schedule to the Policy.
- (c) In the event of an Insured Debt or any part of an Insured Debt not being paid on the due date (meaning the postponed due date where applicable) or in the event of the Insured having reason to believe that an Insured Buyer is in financial difficulties or in the event of Contract Repudiation by an Insured Buyer, the Insured shall:
 - (i) notify QBE Trade Credit in writing with the least possible delay; 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 the account is no longer reportable; and

- (iii) take all prudent and reasonable steps required by QBE Trade Credit in connection with any loss which the Insured may have incurred or may be likely to incur including, if so required by QBE Trade Credit, the execution of such documents and the taking of such action as may be necessary to enable QBE Trade Credit to intervene directly in the proceedings relating to the Insured Debt.

4. Exclusions

- (a) Goods Despatched to an Insured Buyer at a time when an event requiring notification under Condition 3(c) including when a debt or any part of a debt owing by that Insured Buyer (but excluding a debt relating to documented disputes or documented queries) is outstanding beyond the due date (meaning the postponed due date where applicable) are excluded from the scope of the Policy and no liability shall attach to QBE Trade Credit in respect of such goods.
- (b) Cover shall not be available and QBE Trade Credit shall not be liable in respect of any indebtedness:
 - (i) which relates to or arises from interest calculated in respect of any period of credit which occurs later than the original due date for payment;
 - (ii) which relates to sales tax, any goods and services tax, value added tax, retention monies, penalties, or government charges and taxes and any consequential damages or costs;
 - (iii) 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;
 - (iv) 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);

- (v) which is subject to any form of dispute;
- (vi) relating to any transactions that are in the nature of personal or consumer transactions as opposed to business or commercial transactions.

(c) Insolvency of an Insured Buyer arising from the following is specifically excluded from the scope of this Policy:

- (i) Political risks, such as war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority, or restrictions on trade transfers, unless cover in respect of such risks is included under the Policy by way of special endorsement attaching to and forming a part of the Policy.
- (ii) Atomic energy risks being those operations employing the process of nuclear fission or fusion or handling radioactive material which operations include but are not limited to the use of nuclear reactors such as atomic piles, particle accelerators or generators or similar devices, or the use or handling or transportation of radioactive materials, or the use or 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

The Insured shall not assign any rights under the Policy unless QBE Trade Credit's prior written approval has been obtained and the form of assignment has been approved in writing by QBE Trade Credit.

7. Variation, Reduction or Cancellation of Cover

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 the cover granted by the Policy in respect of any Insured Buyer or country, such reduction, cancellation or variation shall apply in respect of goods Despatched after the date of receipt of the notice or after any date which may be specified in the notice, whichever is the later. The notice shall be deemed to have been received by the Insured within a maximum period of three (3) working days from the date of issue of the notice.

8. Claims

In the event of Insolvency, Protracted Default or Contract Repudiation of an Insured Buyer the Insured shall notify QBE Trade Credit in writing with the least possible delay and shall within six (6) months of the date of Insolvency, Protracted Default or Contract Repudiation submit a claim under the Policy in respect of an Insured Debt. Subject to Condition 9 and 11 of the Policy and after taking into account any interim payments and recoveries and any applicable first loss to be borne by the Insured, QBE Trade Credit shall pay to the Insured the Insured Percentage of the Insured Loss:

- (a) In the case of Insolvency within thirty (30) days after QBE Trade Credit has received confirmation that the Insured Debt has been admitted to rank for distribution against the insolvent estate in favour of the Insured;
- (b) in the case of Protracted Default within thirty (30) days after QBE Trade Credit is satisfied that the Insured has taken all reasonable steps (including the pursuit of legal action) to recover the Insured Debt without success and also that satisfactory evidence of the Insured Debt exists;
- (c) in the case of Contract Repudiation within thirty (30) days after the goods have been resold or otherwise disposed of by the Insured, provided always that QBE Trade Credit has given its prior written approval to the resale or disposal of those goods.

Where documents submitted in support of a claim are in a language other than English, the Insured shall at their expense provide certified translations into English if so required by QBE Trade Credit.

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 the Policy.

9. Salvage

Upon collection by the Insured or QBE Trade Credit of any Salvage in respect of the indebtedness of any Insured Buyer the amount collected shall be divided between the Insured and QBE Trade Credit, QBE Trade Credit being entitled to such proportion thereof as the Insured Percentage of the Insured Debt bears to the total indebtedness of the Insured Buyer at the date of their Insolvency or the date for notification under Condition 3, whichever is the earlier.

10. Expropriation and Confiscation

QBE Trade Credit shall not be liable in respect of any Insured Debt which remains unpaid in whole or in part by reason of the expropriation, confiscation or destruction of the whole or any part of the Insured Buyer's assets (or the goods which are subject to any Insured Debt) under any law or regulation having the force of law in any country or any part of the country by any person or persons exercising powers of government in such country or any part of the country.

11. Disclosure

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 any transactions between the Insured and any Insured Buyer. The Insured shall, at the request of QBE Trade Credit, supply QBE Trade Credit with any information in their 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 any Insured Buyer.

12. Currency – Declarations, 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) If the Insured invoices an Insured Buyer in any currency (including any Approved Claim Currency) other than the Policy Currency, the value of each invoice must be converted into the Policy Currency for declaration of Turnover of Transactions purposes at the relevant Conversion Exchange Rate (all such Conversion Exchange Rates must be recorded in writing by the Insured at or about the time of Despatch of the goods relating to every invoice, and such records must be provided to QBE Trade Credit in the event of a claim).
- (d) 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.

- (e) 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.

13. Local Currency Deposit

If delays or difficulties are experienced in obtaining payment from an Insured Buyer because of currency exchange transfer restrictions, the Insured shall call on the Insured Buyer concerned to pay to the Insured's account (or to deposit irrevocably with a Bank in the country of the Insured Buyer for the account of the Insured) at due date for payment of such Insured Debt the then local currency equivalent of contract value of the goods. Notwithstanding the cover provided under the other terms of this Policy, when such payment or deposit has been made the liability of QBE Trade Credit in respect thereof shall thereupon cease.

14. 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.

QBE Insurance (Malaysia) Berhad (161086-D Formerly known as QBE-MBF Insurans Berhad)

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