

BANK GUARANTEES IN FOREIGN TRADE

PREFACE

The bank guarantee is a widely used and globally accepted instrument for securing and enforcing the claims of parties to foreign trade contracts in a way that optimally protects the interests of all participants.

This brochure provides useful background information to assist you in conducting contract negotiations with your foreign trade partner. It describes the practices of the guarantee business and the most common kinds of guarantees that are used. It also contains standard texts in German and English. Further standard texts and in additional languages you will find on our homepage www.hypovereinsbank.de/aussenhandel.

If you should have any further questions, please do not hesitate to contact our International Business Relationship Managers at any one of our numerous locations or the contact person for guarantees who is already known to you.

Munich, Summer 2008

UniCredit Bank AG

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GENERAL INFORMATION

Dealing with trade partners in other countries often entails greater risks than dealing with partners in one's own country. Due to the geographical distance and/or the applicability of different conditions in the foreign country, the trading partner and his environment are often difficult to assess and creditworthiness information is inadequate. Naturally, the same problems are encountered by foreign companies seeking to cooperate with German partners. In such cases, the bank guarantee has an important role to play.

DEFINITION OF A BANK GUARANTEE

A bank guarantee is an irrevocable payment obligation of a bank (guarantor) serving to secure certain contractually agreed performance and/or payment obligations of the parties to foreign trade contracts ("security function").

A bank guarantee is payable upon the first written demand of the party in whose favor the guarantee was issued (beneficiary). To claim under the guarantee, the beneficiary must also (except in the rare case of a "simple demand" guarantee) formally declare that a certain contractually agreed performance or payment obligation has not been fulfilled; the beneficiary may also have to present other documents as indicated in the guarantee ("liquidity function").

The bank guarantee is a contract between the bank and the beneficiary, concluded at the request of the bank's customer (principal). In most cases, the principal is the beneficiary's trade partner.

Important note: Bank guarantees serve the purpose of securing specific foreign trade transactions defined in the text of the guarantee and are therefore limited to the parties to the guarantee agreement, i.e., the bank customer, the guarantor and the beneficiary. Bank guarantees are not publicly tradable, and any representation that bank guarantees could be traded as securities offering above-average yields must be seen as improper or may be regarded as an attempt to commit a fraudulent act.

APPLICABLE LAWS AND LEGAL REQUIREMENTS IN THE FEDERAL REPUBLIC OF GERMANY

There is no uniform “international law” that applies to bank guarantees. Instead, bank guarantees are governed by the applicable national laws.

In response to practical needs, however, a fairly consistent legal framework has evolved to govern bank guarantees. In many cases, however, country-specific requirements may also have to be taken into account.

In the Federal Republic of Germany, the “freedom of contract” principle and the general tenets of the law of obligations set forth in the German Civil Code, as well as the precedents established by the German courts, are authoritative.

When issuing guarantees in favor of foreign beneficiaries, German banks are not obligated to obtain government approval or even report such transactions. In certain cases, however, special regulations applicable to the underlying transaction, including export bans or government approval requirements, for example, may have to be taken into account (Weapons Control Act, Dual Use Regulation (EG) relating to export controls for dual-use goods, including the trade embargos imposed by virtue of the Foreign Trade Regulation in conjunction with the Foreign Trade Act).

DIFFERENCE BETWEEN A GUARANTEE AND A SURETY

A distinction is made between the “accessory” surety obligation, which is used in Germany, and the “abstract” guarantee, which is customarily used in international trade. Under the German-style surety obligation, the bank’s payment obligation is always contingent on the existence and validity of the principal claim being guaranteed; under the abstract guarantee, the bank’s payment obligation does not depend on the existence and validity of the principal claim that is guaranteed.

When the beneficiary seeks to claim under a surety agreement, the bank is both entitled and obligated, before satisfying the beneficiary’s claim to payment, to consider the objections and defenses which the principal obligor can raise on the basis of the underlying transaction. Thus, if the obligor disputes the claim, the beneficiary must prove that the guaranteed principal claim is valid.

A bank guarantee, on the other hand, is a payment obligation that derives from the guarantee itself, which is to say, irrespective of the existence and validity of the guaranteed claim.

When the beneficiary makes a valid claim under the guarantee, the bank is obligated to make payment upon the first demand of the beneficiary, who must usually also declare that an event giving rise to the guarantee, as defined in the text of the guarantee (the “formal” guarantee event), has in fact occurred. The beneficiary is not obligated to furnish proof to the guarantor that the “material” guarantee event arising from the underlying transaction has occurred, i.e., that the preconditions for the claim under the guarantee have been fulfilled also in relation to the principal. Any objections or defenses to the beneficiary’s payment claim can be derived only from the guarantee itself, as when the claim does not meet the conditions of the guarantee.

After the bank has made such payment, the principal will be entitled, at its own risk and peril, to bring a counter-claim directly against the beneficiary due to non-occurrence of the “material” guarantee event.

More information about the claims under the guarantee can be found on pages 11 ff. If the beneficiary makes a valid claim under the guarantee, the bank must render payment within three banking days.

ESSENTIAL CONTENT OF A GUARANTEE

The principal elements of a guarantee are the following:

- A preamble describing the underlying transaction to which the guarantee refers (including, in particular, the names and addresses of the business partners of the underlying transaction, the type of underlying transaction, the contract number and/or date of signature, and the type of guarantee to be issued).
- The irrevocable and unconditional undertaking of the bank to pay a sum of money up to the amount of the guarantee, upon the first written demand of the beneficiary, accompanied by a declaration to the effect that the event giving rise to the guarantee claim, as defined in the terms of the guarantee, has occurred.
- A clause that clearly limits the duration of the guarantee to a certain date, by which any claim must have been received by the bank; or in exceptional cases, a clause to the effect that the duration of the guarantee is indefinite.

In addition to the above-mentioned principal elements, the text of the guarantee may also include other clauses, depending on the type of guarantee and the requirements of the underlying transaction. These may include clauses concerning the effective date of the guarantee and/or a clause that serves to reduce the amount of the guarantee.

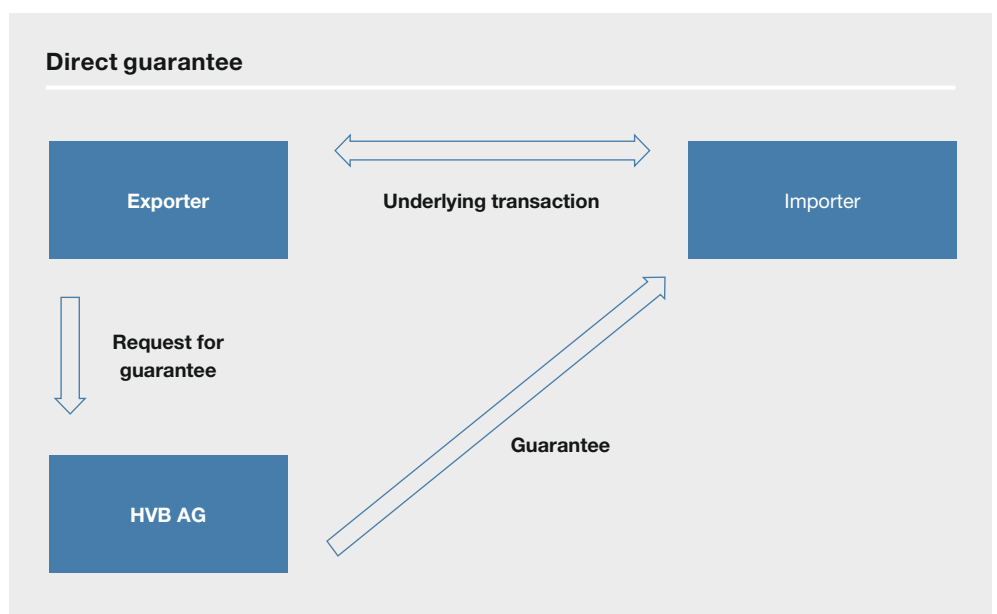
DIRECT/INDIRECT GUARANTEES

Guarantees can be issued as “direct” or “indirect” guarantees.

a Direct guarantee

A “direct” guarantee is issued by a bank to the foreign beneficiary, constituting a direct legal relationship between the issuing bank and the beneficiary. For you as the bank customer, the direct guarantee offers several advantages, including the lower cost of such a guarantee, because there are no fees or costs to be charged by a second bank in a foreign country. Most important, however, is the fact that such a direct guarantee is governed by German law, except in those rare cases when the text of the guarantee expressly stipulates the applicability of foreign law. Such a clause would be included at the request of the beneficiary but would also require the consent of the issuing bank.

In those cases when a direct guarantee governed by German law clearly expires on a given calendar date or upon presentation of documents that signify expiration in accordance with the text of the guarantee, the principal will be released from the liability, provided that the bank will not have received, prior to expiration, a statement of claim conforming to the terms of the guarantee. Such expiration will take effect even if the original guarantee document has not been returned to the issuing bank or the beneficiary has not officially released the bank from its liability.



Foreign business partners often wish to have a guarantee with unlimited validity. This means that the bank's guarantee obligation will expire only when the original guarantee document will have been returned to the issuing bank or the beneficiary will have officially released the bank from its liability.

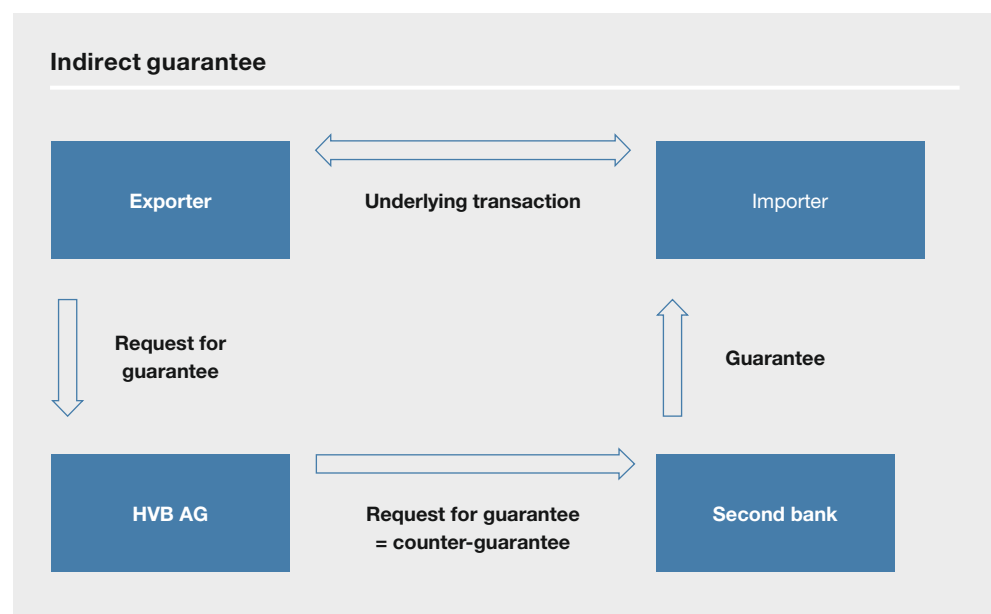
You should always try to have a limited validity for the guarantee because experience has shown that, in many cases, the original guarantee document is not returned until long after the transaction has been completed. If needed, the validity of the guarantee can always be extended. But if your business partner insists on a guarantee with unlimited validity, the text should at least mention a tentative date (reference date) for the expiration of the validity of the guarantee.

b Indirect guarantee

In some cases, due to the legal requirements or bank practices of certain countries, the beneficiary will not accept direct guarantees issued by a bank domiciled in a foreign country, especially when the beneficiary is a government-owned enterprise. Instead, they will demand guarantees issued by a bank domiciled in the country of the beneficiary. In such cases, we will issue an "indirect" guarantee.

Under this kind of guarantee, we (as the original bank) will instruct a bank in the country of the beneficiary (second bank) to issue the guarantee in favor of the beneficiary under our unrestricted counter-liability or counter-guarantee. Our counter-liability toward the second bank protects the latter in the event that the beneficiary will claim under the guarantee. In such a case, the second bank will be entitled to demand from us, upon first written request, payment of the amount claimed by the beneficiary, plus any expenses incurred by the second bank. Indirect guarantees are more time-intensive and more expensive for the principal, because in addition to the fee charged by the original bank, the customer may also have to pay the guarantee fee of the second bank and possibly also various other expenses as well (including taxes, stamp fees, SWIFT/telex expenses, etc.). For more information about the costs please contact your International Business Relationship Manager.

Another consequence of indirect guarantees is the lower degree of influence that can be exerted upon the guarantee text drawn up by the foreign bank. Furthermore, the guarantee issued by the second bank will in most cases be subject to foreign law, which can, in turn, entail certain consequences for the counter-liability of the original bank toward the second bank and the liability of the principal toward the original bank.



Additional risks could also arise from certain conditions stipulated in accordance with the practices of foreign banks or the relevant laws and regulations of the country in which these banks are domiciled. In particular, such risks may arise from the limited validity of the second bank's guarantee, our counter-liability toward the second bank and the counter-liability of the customer toward our bank. In some foreign jurisdictions, any time limitation on the validity of guarantees is not recognized at all, even when such a limitation is stipulated in the guarantee. In such cases, the limitation defined in the guarantee may sometimes only be construed as a "tentative expiration date" (or "reference date"). This means that the beneficiary may be entitled to demand payment of the guarantee from the second bank even after the expiration date indicated in the text of the guarantee has passed. Under the terms of an indirect guarantee, our counter-liability toward the second bank, which consists of an obligation to pay the amount claimed by the beneficiary, will remain in effect until the we receive a duly drafted, unconditional release of liability from the second bank. Until such time, the principal for which the guarantee was issued will also remain liable toward our bank, as the original bank contracted by the principal.

In some countries, our counter-guarantee is expressly governed by the foreign laws applicable to the second bank. Such clauses pose an additional risk, especially because it usually also means that the courts in the country of the beneficiary will have jurisdiction over any legal disputes that may arise.

The validity of the original bank's counter-guarantee must extend beyond the expiration date of the guarantee issued by the second bank; or it may be necessary for the counter-guarantee to have an unlimited validity. This arrangement makes it possible for the second bank to claim under the original bank's counter-guarantee in the event that a claim is presented to the second bank on the last valid day of its guarantee. This so-called mailing period for claim under the counter-guarantee by the second bank is generally 15 days in Europe, 15 to 30 days in other countries of the world.

In deciding whether you need a direct or indirect guarantee, you should keep in mind that direct guarantees are nearly always possible, with only a few exceptions in specific countries, if the principal and the beneficiary so agree.

In your own interest, we recommend that you arrange for direct guarantees of limited validity in your contracts. In this regard, the standard guarantee texts included in the appendix to this brochure may be of valuable help to you.

If the issuance of a guarantee by a bank in the country of the beneficiary is unavoidable, it may be possible in some cases to engage a branch office of the Unicredit Group instead of a second bank. For more information about the international offices of the Unicredit Group, please contact your International Business Relationship Manager.

CONFIRMED GUARANTEE

The "confirmed" guarantee incorporates elements of the direct guarantee and the indirect guarantee. A confirmed guarantee is issued directly by the original bank in favor of the beneficiary, subject to the condition that a second bank in the country of the beneficiary confirms this guarantee, by order of the original bank, which it does by affixing its written confirmation to the original guarantee document of the original bank. By means of this confirmation, the second bank assumes a direct payment obligation toward the beneficiary, subject to the same terms and conditions as the original bank. Thus, the original bank and the confirming bank are jointly and severally liable toward the beneficiary.

If the guarantee is presented for payment, the claim will generally be made against the confirming bank. The confirmed guarantee is used primarily in Egypt. Experience shows that foreign banks charge the same fee rates for this type of guarantee as for indirect guarantees. If you would like us to confirm a guarantee issued in your favor by a foreign bank, please contact your International Business Relationship Manager.

ADVISED GUARANTEE

An advised guarantee refers to the act of forwarding the guarantee obligation of another bank (issuing bank) to a beneficiary. The advising bank does not assume any obligation itself, but confirms to the beneficiary that the guarantee has been forwarded by duly encoded SWIFT/telex. Instead of a guarantee fee, the advising bank charges a one-time advising fee, which is determined with reference to the guarantee amount. Unless otherwise agreed, this fee is paid by the party for which the guarantee was issued.

GUARANTEE TEXTS AND ASSOCIATED RISKS

Whenever your foreign business partner asks that you furnish a bank guarantee, you should try, in your negotiations, to have our standard guarantee texts used for this purpose. These standard texts are featured in the appendix to this brochure and on our homepage www.hypovereinsbank.de/aussenhandel.

These texts do not contain any unusual provisions and will in most cases be acceptable to all parties involved.

As our customer, you stand to benefit from the extensive expertise that we have acquired over many years of experience in the international guarantee business. By consulting with us, and so giving us an opportunity to exert some influence on the text of the guarantee, you can better manage or even minimize the risks that could arise from the text of a guarantee and any additional clauses (including clauses relating to interest, currency, applicable law, etc.).

Caution! Once specific texts have been recognized as integral parts of contracts or documentary credits, it will be practically impossible to make any changes to them.

In some cases, however, due in particular to the specific legal requirements of the beneficiary's country of domicile, it may not be possible to exert any influence on the wording of the guarantee text (especially in the case of indirect guarantees). Furthermore, our counter-guarantee may be subject to foreign law and/or foreign courts may have jurisdiction over any disputes and/or an automatic extension of the guarantee period may be unavoidable. And in the case of guarantees denominated in foreign currency, exchange rate risks will also have to be taken into account.

In a special advisory meeting, we will bring your attention to any special terms and conditions of foreign banks or specific countries, as well as the associated risks, to the extent they are known to us.

CLAIMS UNDER A GUARANTEE

Due to the abstract nature of the bank guarantee and in accordance with international practices, the issuing bank will be obligated, upon presentation of a valid claim, which is to say, a claim that conforms to the terms and conditions of the guarantee, to make payment within three banking days following receipt of the first written demand of the beneficiary or second bank. If the beneficiary or second bank presents a valid demand under a guarantee issued by us in your favor, the following considerations will be taken into account:

The demand for payment under a guarantee or counter-guarantee of limited validity must have been received by us or the second bank no later than the expiration date stipulated in the guarantee or counter-guarantee.

If the demand for payment is received at a later date, the guarantee will have expired and the beneficiary will not be entitled to collect on the guarantee.

In certain exceptional cases, however, the foregoing will not apply, namely when (i) the guarantee is a direct guarantee that is expressly subject to foreign law or when (ii) the guarantee is an indirect guarantee and the applicable foreign law does not recognize limited-validity clauses.

The manner in which the claim is to be presented will depend on the relevant provisions stipulated in the guarantee or counter-guarantee.

To ensure proper documentation, the standard texts of our bank stipulate that direct limited-validity guarantees can be claimed within the allowed period by letter or telecommunications media (fax, encoded SWIFT/telex, but not telephone or e-mail). Whenever the above-mentioned telecommunications media are used primarily to ensure compliance with the stipulated deadline, our standard texts also stipulate that a written statement of claim must also be sent in the form of an original letter as a precondition for payment under our guarantee.

The wording of the claim must correspond exactly to the terms of the guarantee or counter-guarantee. In the case of direct guarantees, a declaration to the effect that the customer has not fulfilled its obligations with regard to the underlying transaction (as defined in the text of the guarantee) is usually required. In the case of indirect guarantees, the second bank will usually inform us that it has been called upon under its guarantee without giving further reasons and asks us to pay the amount demanded by the beneficiary.

If the terms of the guarantee stipulate the presentation of other documents (copies of invoices, shipping documents, etc.) in addition to the statement of claim, such documents must also be received by us before expiration of the allowed period.

We will notify the principal immediately that a claim has been presented. This notification gives our customer the chance to express its position on the matter to our bank.

For example, the principal may indicate that there are no objections to the claim or that the principal has already contacted or will contact with the beneficiary in order to avert the claim, for instance by extending the guarantee and rectifying any defects in the delivered goods. Any extension of the guarantee, however, would require our consent.

Provided that the claim is presented in accordance with the terms of the guarantee, however, the bank will be obligated to make payment within the examination period of no more than three banking days.

We will examine the documents submitted to us to verify that they conform to the formal requirements defined in the terms of the guarantee and are free from internal inconsistencies. If a claim does not fulfill the criteria described above, we will immediately notify the beneficiary or second bank, giving this latter an opportunity to rectify the defects before expiration of the guarantee or counter-guarantee.

Often, the claim is accompanied by the alternative option of extending the guarantee. Such an “extend or pay” request by the beneficiary is usually submitted shortly before expiration of the guarantee. Occasionally, the “extend or pay” alternative is used as a means of exerting pressure on the principal to make payment of claims that are not covered by the security function of the guarantee. However, such “extend or pay” requests should not automatically be seen as an indication that the beneficiary is abusing its legal rights. It is conceivable, for instance, that the offered extension would give the bank’s customer another chance to complete the guaranteed delivery or service. A guarantee extension requested by the principal would require the consent of our bank.

When the customer and/or the bank refuses an extension, payment must be made in response to an “extend or pay” demand only if the guarantee is a “simple demand” guarantee. Under such a clause, the mere request for payment constitutes a valid claim. However, if the guarantee stipulates (as is usually does) that the beneficiary must also declare that a formal guarantee event has occurred (and perhaps also submit additional documents), and if the beneficiary does not make such a declaration or submit such documents, the claim will not be valid and the bank will be required to refuse it for being incorrect.

We can refuse payment of a guarantee only if the demand for payment is not valid. As a rule, any objections or defenses relating to the underlying transaction cannot be used as a reason to refuse payment because that would contradict the abstract nature of the guarantee.

If the claim is valid, the only way that the beneficiary will not be entitled to claim payment or the bank not obligated to make such payment is if the beneficiary will have abused its right to claim payment under the guarantee (or in the case of an indirect guarantee, the right of the second bank to claim on the counter-guarantee). But such cases are extremely rare in practice. The right to present a claim is said to have been abused only if, notwithstanding the occurrence of the “formal” guarantee event, the “material” guarantee event arising from the underlying transaction has not occurred and such non-occurrence is “apparent,” meaning that it is “obvious to anyone without further substantiation,” or “liquid,” meaning that no further examination is needed to conclude that the beneficiary cannot under any conceivable circumstances be entitled to present a claim under the guarantee with respect to the underlying transaction. The principal for which the guarantee has been issued bears the burden of proving such a fact.

In order to prevent payment of a claim on the basis of “liquid” evidence, the principal must raise the objection of abusive exercise of the right of claim within the period allowed to the bank for examination of the claim. Such an objection can not be raised in the absence of “liquid” or “obvious” evidence. Such disputes must be resolved by the parties to the underlying transaction after payment of the claim by the issuing bank. In this case, the principal would have to bring suit against the beneficiary.

Advised guarantees issued in your favor are handled in the manner described below. If you as the beneficiary wish to claim on a direct guarantee, which we have merely forwarded to you without assuming any responsibility of our

own, it is basically up to you to make sure that your claim is submitted to the issuing bank in a formally valid manner within the allowed time period. Depending on the terms and conditions set forth in the text of the guarantee, the claim can be directed either to the issuing bank or through us as your advising bank. In this latter case, we will not be obligated to verify whether your claim is valid. However, we will be glad to advise you, to the extent possible, of any failure to fulfill the formal requirements of a claim or submit the required documents.

COUNTRY INFORMATION

Furthermore, the Unicredit Group International Business Relationship Manager, whether in Germany or abroad, or the guarantee business contact person already known to you will be glad to meet with you personally to provide in-depth advice, based on the rules and regulations currently in effect, and to inform you about the possible risks and consequences.

TYPES OF GUARANTEES

TENDER GUARANTEE/ BID BOND

A bid bond is needed when a foreign importer/buyer invites project tenders in the framework of an international bidding procedure. To ensure that the bidder that will ultimately be awarded the contract will in fact sign the contract, the importer/buyer demands that the bidders furnish a bid bond, the amount of which is equivalent to approximately 1% – 5% of the value of the contract to be awarded.

If a bidder is awarded the contract but withdraws its bid, for whatever reason, the foreign importer/buyer will be able to claim on the bid bond as compensation for the losses it will have incurred as a result of such withdrawal. The proceeds of the bond can be used to conduct a new bidding procedure or evaluate a new bid.

The validity of a bid bond is usually three to six months from the submission deadline, this being the time that the party inviting the tenders will require for evaluating the submitted bids. If the bidding process takes longer than originally assumed, the party inviting the tenders will often try to extend the duration of the bid bond by making an “extend-or-pay” demand prior to expiration of the bid bond’s validity. In the interest of our customers, the standard texts that HypoVereinsbank uses for bid bonds contain a clause to the effect that a statement must be made, as a precondition for payment of the bond, that the seller did not sign the contract in question, although it was awarded the contract. Foreign ministries or other public agencies, however, will often require that their own, different texts be used. In such cases, we will be happy to evaluate such texts and bring your attention to any risks which they pose.

Frequently, the text of the bid bond will demand that follow-up guarantees, such as performance bonds, for instance, be furnished in the event that the contract is awarded.

ADVANCE PAYMENT GUARANTEE

When exporting industrial equipment and other capital goods, and in the case of service agreements, it is customary to demand an advance payment from the buyer. The advance payment guarantee in favor of the buyer serves as security for the repayment of the advance payment in the event that the seller would fail to fulfill its contractual delivery or service obligations in accordance with the underlying contract.

The guarantee amount is usually equal to the advance payment, which is itself generally about 15%–30%, but in some cases 100% of the contract value (payment-in-full guarantee).

For your own interest, the text of an advance payment guarantee should include a clause to the effect that it will enter into effect only after receipt of the advance payment; such a clause is included in our standard text.

The validity of the guarantee is based on the period of time that will tentatively be needed for the delivery or service. If no exact date can be determined, and if the guarantee in question is a direct guarantee that is not expressly subject to foreign law, we recommend the inclusion of a clause to the effect that the guarantee will automatically expire upon the occurrence of certain conditions, such as the presentation of copies of shipping documents and invoices, or the certificate of acceptance issued by the buyer, to the guaranteeing bank.

If several partial deliveries have been agreed, it makes sense to include a reduction clause in the text of the guarantee, according to which the preconditions for the reduction of the guarantee amount are stipulated in the most precise manner possible (e.g., presentation of copies of shipping documents and invoices, or calendar dates corresponding to milestones). In many cases, the advance payment guarantee will also cover, by virtue of its wording, the advance payment plus interest for the period of time from when the advance payment was credited to when it is repaid in the event of a claim under the guarantee. If possible, the applicable interest rate should also be stated in the guarantee text.

DELIVERY GUARANTEE

Delivery guarantees serve as security for the buyer that the seller will fulfill its contractual delivery obligations completely and on time. They are needed primarily for long-term delivery transactions. If the delivery is late or incomplete, the buyer can claim payment under the guarantee and apply the proceeds as compensation for the losses it will have incurred.

The guarantee amount is usually 10% of the contract value. The validity of the guarantee is based on the period of time that the delivery is expected to take.

If several partial deliveries have been agreed, it makes sense to include a reduction clause in the text of the guarantee, according to which the preconditions for the reduction of the guarantee amount are stipulated in the most precise manner possible (e.g., presentation of copies of shipping documents and invoices, or calendar dates corresponding to milestones).

In some countries, delivery guarantees are not used. Instead, performance bonds are used.

GUARANTEES FOR WARRANTY OBLIGATIONS/ PERFORMANCE GUARANTEE

There are two types of performance guarantees:

The first type secures warranty obligations, meaning conditions referring to the quality of the goods and/or the proper functioning of machinery systems. These guarantees allow the importer to demand payment if the exporter fails to fulfill his contractual warranty obligations.

The second type, which sometimes is called “performance guarantee securing the fulfillment of the contract”, is intended to ensure that all contractual obligations, usually both in terms of delivery and services as well as warranty obligations, are met.

Performance guarantees are usually issued in an amount equivalent to 5% – 10% of the contract value.

They usually have a longer validity than advance payment guarantees and delivery guarantees, because they cover obligations such as technical warranties that extend beyond the delivery date.

PAYMENT GUARANTEE

The payment guarantee secures the claim of the seller (exporter) to payment of the sale price by the buyer. The amount of the guarantee is usually equivalent to the value of the goods or services rendered. The validity of the guarantee includes an appropriate period of time after the due date of the sale price or sale price installments, in order to allow the beneficiary enough time for payment demands under the guarantee within the period of time allowed for this purpose.

STANDBY LETTER OF CREDIT

In terms of its construction, the “standby letter of credit” is similar to a documentary credit, but its primary function is that of a guarantee. It is used primarily in America and Asia, because not all banks in these regions are allowed by law (or accustomed in practice) to issue bank guarantees.

Under a standby letter of credit, payment is made on first demand against presentation of a written statement of the beneficiary to the effect that a certain obligation (repayment of a loan, payment of a sale price, etc.) has not been fulfilled, and against presentation of a bill of exchange drawn by the beneficiary on the issuing bank, which traditionally serves as the “demand for payment”, which is to say, it is not used as a payment instrument. The terms of the standby letter of credit may also require the presentation of other documents as preconditions for payment. By agreement, standby letters of credit are generally subject to the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce (currently: UCP 600, 2007 revision).

APPENDIX

STANDARD TEXTS FOR DIRECT GUARANTEES

In the following, you will find standard wordings for tender guarantees, advance payment guarantees, performance guarantees and payment guarantees in English and German.

On our homepage

www.hypovereinsbank.de/aussenhandel

you will also find the standard texts in three additional languages (French, Spanish and Italian).

GUARANTEE REQUEST POINT-AND-CLICK

For your guarantee request you can use our application under <https://globaltrade.hypovereinsbank.de/TFHVB> for a quicker and safer handling of your requests. Your International Business Relationship Manager is prepared to give you further information.

SPECIMEN TENDER GUARANTEE – ENGLISH

Tender Guarantee no. ... for ...

Dear Sir or Madam,

We are informed that Messrs. ... (hereinafter "Bidder") are participating in the invitation to bid no. ..., for the project/supply of ... under the offer number ... under the terms of the tender, the Bidder is required to furnish a tender guarantee in your favour in the amount of

At the Bidder's request, we, UniCredit Bank AG, hereby issue this guarantee and irrevocably undertake to pay to you any amount up to a maximum of

...

(in words: ...)

upon your first written demand (by original letter) stating that the above bid was wholly or partially accepted, but that the Bidder did not sign the contract within the time period allotted therefor (and/or failed to ensure that a performance bond was issued in time).

***) Following paragraph is applicable only for guarantee with limited validity:**

This guarantee expires when this guarantee document has been returned to us, at the latest, however, on ..., unless your demand hereunder has been received by UniCredit Bank AG, ..., not later than on this date either in writing (by original letter) or by telecommunication (fax, tested telex/SWIFT, but not e-mail or telephone) to be followed promptly by your original letter.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Any demand under this guarantee must be received by UniCredit Bank AG, ..., in writing (by original letter).

This guarantee expires when this guarantee document has been returned to us together with your written confirmation (by original letter) that we are released from all liabilities under this guarantee and that you will refrain from making any demand hereunder against us.

The original of this guarantee document has to be returned to us after expiry or settlement of all claims under this guarantee.

The rights arising from this guarantee may not be assigned without our written consent.

This guarantee is subject to German law. Place of jurisdiction is Munich.

The fees and expenses charged by our bank are for the Bidder's account. All other costs are to be borne by you.

Yours sincerely,

UniCredit Bank AG

SPECIMEN TENDER GUARANTEE – GERMAN

Bietungsgarantie Nr. ... über ...

Sehr geehrte Damen und Herren,

die Firma ... (nachstehend: „Bieter“ genannt) nimmt an einer Ausschreibung Nr. ... für das Projekt/die Lieferung von ... unter der Angebotsnummer ... teil. Entsprechend den Ausschreibungsbedingungen ist eine Bietungsgarantie zu Ihren Gunsten in Höhe von ... zu stellen.

Im Auftrag des Bieters übernehmen wir, UniCredit Bank AG, hiermit diese Garantie, indem wir uns unwideruflich verpflichten, an Sie Zahlung bis zu einem Höchstbetrag von

...

(in Worten: ...)

zu leisten auf Ihre erste schriftliche Anforderung (per Originalbrief), in der Sie erklären, dass das oben genannte Angebot ganz oder teilweise angenommen wurde, der Bieter den Vertrag jedoch nicht fristgemäß unterzeichnet hat (und/oder versäumt hat, für die fristgemäße Erstellung der Liefer-/Gewährleistungsgarantie Sorge zu tragen).

***) Following paragraph is applicable only for guarantee with limited validity:**

Diese Garantie erlischt mit Rückgabe dieser Garantiekunde an uns, spätestens jedoch am ..., es sei denn, dass Sie uns spätestens an diesem Tag, eingehend bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) oder per Telekommunikation (per Telefax, geschlüsseltem Telex/SWIFT, mit Ausnahme von E-Mail und Telefon) mit unverzüglich nachfolgendem Originalbrief in Anspruch genommen haben.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Inanspruchnahmen aus dieser Garantie müssen bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) eingehen.

Diese Garantie erlischt mit Rückgabe dieser Garantiekunde an uns, zusammen mit Ihrer schriftlichen Bestätigung (per Originalbrief), dass wir aus allen Verpflichtungen aus dieser Garantie entlastet sind und dass Sie keine Ansprüche daraus gegen uns geltend machen werden.

Das Original dieser Garantieerklärung ist uns nach Verfall oder Befriedigung sämtlicher Ansprüche aus der Garantie zurückzugeben.

Die Rechte aus dieser Garantie sind nur mit unserer schriftlichen Zustimmung abtretbar.

Diese Garantie unterliegt deutschem Recht. Gerichtsstand ist München.

Die Gebühren/Spesen unserer Bank gehen zu Lasten des Bieters, alle sonstigen Kosten gehen zu Ihren Lasten.

Mit freundlichen Grüßen

UniCredit Bank AG

SPECIMEN ADVANCE PAYMENT GUARANTEE – ENGLISH

Advance Payment Guarantee no. ... for ...

Dear Sir or Madam,

We are informed that on ... you signed the contract no. ... with Messrs. ... (hereinafter "Seller") for the supply of ... with a total contract value of ...

Under the terms of this contract, the Seller will receive an advance payment in the amount of ... equal to ... % of the total contract value upon presentation of a bank guarantee in your favour securing the eventual obligation of the Seller to refund the advance payment.

At the Seller's request, we, UniCredit Bank AG, hereby issue this guarantee and irrevocably undertake to pay to you any amount up to a maximum of

...
(in words: ...)

upon your first written demand (by original letter) stating that the Seller has not fulfilled its delivery obligations under the above contract.

This guarantee shall become effective when the above advance payment amount has been remitted in full and without reserve to the Seller's account ... with our bank (IBAN: ..., BIC-Code: ...) under reference to this guarantee quoting our guarantee number...

***) Following paragraph is applicable only if the guarantee will be reduced automatically:**

This guarantee shall be automatically reduced by ... % of the amount of each partial shipment. The presentation of photostatic copies of the relevant commercial invoices and shipping documents to UniCredit Bank AG, ..., indicating the number of the above contract shall serve as evidence towards us that such partial shipment has been made.

***) Following paragraph is applicable only if the guarantee will be reduced after authorization:**

This guarantee shall be reduced by ... % of the value of each partial shipment made under the said contract, as soon as we have informed you about the respective partial shipment and you have authorized us to reduce our guarantee accordingly.

***) Following paragraph is applicable only for guarantee with limited validity:**

This guarantee expires when this guarantee document has been returned to us, at the latest, however, on ..., unless your demand hereunder has been received by UniCredit Bank AG, ..., not later than on this date either in writing (by original letter) or by telecommunication (fax, tested telex/SWIFT, but not e-mail or telephone) to be followed promptly by your original letter.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Any demand under this guarantee must be received by UniCredit Bank AG, ..., in writing (by original letter).

This guarantee expires when this guarantee document has been returned to us together with your written confirmation (by original letter) that we are released from all liabilities under this guarantee and that you will refrain from making any demand hereunder against us.

The original of this guarantee document has to be returned to us after expiry or settlement of all claims under this guarantee.

The rights arising from this guarantee may not be assigned without our written consent.

This guarantee is subject to German law. Place of jurisdiction is Munich.

The fees and expenses charged by our bank are for the Seller's account. All other costs are to be borne by you.

Yours sincerely,

UniCredit Bank AG

SPECIMEN ADVANCE PAYMENT GUARANTEE – GERMAN

Anzahlungsgarantie Nr. ... über ...

Sehr geehrte Damen und Herren,

wir haben davon Kenntnis, dass Sie mit der Firma ..., (nachstehend „Verkäufer“ genannt) am ... den Vertrag Nr. ... über die Lieferung von ... zum Gesamtpreis von ... geschlossen haben.

Nach diesem Vertrag erhält der Verkäufer eine Anzahlung in Höhe von ..., das entspricht ... Prozent des Gesamtpreises, gegen Vorlage einer Bankgarantie zu Ihren Gunsten, welche die Verpflichtung des Verkäufers zur eventuellen Rückzahlung der Anzahlung besichert.

Im Auftrag des Verkäufers übernehmen wir, UniCredit Bank AG, hiermit diese Garantie, indem wir uns unwiderruflich verpflichten, an Sie Zahlung bis zu einem Höchstbetrag von

...
(in Worten: ...)

zu leisten auf Ihre erste schriftliche Anforderung (per Originalbrief), in der Sie erklären, dass der Verkäufer seine Lieferverpflichtungen aus obigem Vertrag nicht erfüllt hat.

Diese Garantie tritt erst in Kraft, wenn die oben genannte Anzahlung in voller Höhe und unter Nennung der Garantie Nr. ... auf dem Konto ... des Verkäufers bei unserer Bank (IBAN: ..., BIC-Code: ...) vorbehaltlos eingegangen ist.

***) Following paragraph is applicable only if the guarantee will be reduced automatically:**

Diese Garantie ermäßigt sich automatisch um ... Prozent des Wertes jeder Teillieferung.

Als Nachweis uns gegenüber für die erfolgte Teillieferung gilt die Vorlage von Kopien der entsprechenden Handelsrechnungen und Versanddokumente, die die Nummer des obigen Vertrages ausweisen müssen, bei UniCredit Bank AG, ...

***) Following paragraph is applicable only if the guarantee will be reduced after authorization:**

Diese Garantie ermäßigt sich um ... Prozent des Wertes jeder Teillieferung unter dem oben genannten Vertrag, nachdem wir Sie von dieser Teillieferung in Kenntnis gesetzt und Sie uns zur Reduzierung der Garantie ermächtigt haben.

***) Following paragraph is applicable only for guarantee with limited validity:**

Diese Garantie erlischt mit Rückgabe dieser Garantieurkunde an uns, spätestens jedoch am ..., es sei denn, dass Sie uns spätestens an diesem Tag, eingehend bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) oder per Telekommunikation (per Telefax, geschlüsseltem Telex/SWIFT, mit Ausnahme von E-Mail und Telefon) mit unverzüglich nachfolgendem Originalbrief in Anspruch genommen haben.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Inanspruchnahmen aus dieser Garantie müssen bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) eingehen.

Diese Garantie erlischt mit Rückgabe dieser Garantiekunde an uns, zusammen mit Ihrer schriftlichen Bestätigung (per Originalbrief), dass wir aus allen Verpflichtungen aus dieser Garantie entlastet sind und dass Sie keine Ansprüche daraus gegen uns geltend machen werden.

Das Original dieser Garantieerklärung ist uns nach Verfall oder Befriedigung sämtlicher Ansprüche aus der Garantie zurückzugeben.

Die Rechte aus dieser Garantie sind nur mit unserer schriftlichen Zustimmung abtretbar.

Diese Garantie unterliegt deutschem Recht. Gerichtsstand ist München.

Die Gebühren/Spesen unserer Bank gehen zu Lasten des Verkäufers, alle sonstigen Kosten gehen zu Ihren Lasten.

Mit freundlichen Grüßen

UniCredit Bank AG

SPECIMEN PERFORMANCE GUARANTEE – ENGLISH

Performance Guarantee no. ... for ...

Dear Sir or Madam,

We are informed that on ... you signed the contract no. ... with Messrs. ... (hereinafter "Seller") for the supply of ... with a total contract value of ...

Under the terms of this contract, the Seller is required to furnish a performance guarantee in your favour in the amount of ... equal to ...% of the total contract value.

At the Seller's request, we, UniCredit Bank AG, hereby issue this guarantee and irrevocably undertake to pay to you any amount up to a maximum of

...
(in words: ...)

upon your first written demand (by original letter) stating that the Seller has not fulfilled its warranty obligations under the above contract.

***) Coming into force, if applicable:**

This guarantee shall become effective when an amount of ... has been remitted in full and without reserve to the Seller's account ... with our bank (IBAN: ..., BIC-Code: ...) under reference to this guarantee quoting our guarantee no. ...

***) Following paragraph is applicable only for guarantee with limited validity:**

This guarantee expires when this guarantee document has been returned to us, at the latest, however, on ..., unless your demand hereunder has been received by UniCredit Bank AG, ..., not later than on this date either in writing (by original letter) or by telecommunication (fax, tested telex/SWIFT, but not e-mail or telephone) to be followed promptly by your original letter.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Any demand under this guarantee must be received by UniCredit Bank AG, ..., in writing (by original letter).

This guarantee expires when this guarantee document has been returned to us together with your written confirmation (by original letter) that we are released from all liabilities under this guarantee and that you will refrain from making any demand hereunder against us.

The original of this guarantee document has to be returned to us after expiry or settlement of all claims under this guarantee.

The rights arising from this guarantee may not be assigned without our written consent.

This guarantee is subject to German law. Place of jurisdiction is Munich.

The fees and expenses charged by our bank are for the Seller's account. All other costs are to be borne by you.

Yours sincerely,

UniCredit Bank AG

SPECIMEN PERFORMANCE GUARANTEE – GERMAN

Gewährleistungsgarantie Nr. ... über ...

Sehr geehrte Damen und Herren,

wir haben davon Kenntnis, dass Sie mit der Firma ..., (nachstehend „Verkäufer“ genannt) am ... den Vertrag Nr. ... über die Lieferung von ... zum Gesamtpreis von ... geschlossen haben.

Nach diesem Vertrag ist vom Verkäufer eine Gewährleistungsgarantie zu Ihren Gunsten in Höhe von ..., das entspricht ... Prozent des Gesamtpreises, zu stellen.

Im Auftrag des Verkäufers übernehmen wir, UniCredit Bank AG, hiermit diese Garantie, indem wir uns unwiderruflich verpflichten, an Sie Zahlung bis zu einem Höchstbetrag von

...

(in Worten: ...)

zu leisten auf Ihre erste schriftliche Anforderung (per Originalbrief), in der Sie erklären, dass der Verkäufer seine Gewährleistungsverpflichtungen aus obigem Vertrag nicht erfüllt hat.

***) Coming into force, if applicable:**

Diese Garantie tritt erst in Kraft, wenn ein Betrag von ... in voller Höhe und unter Nennung der Garantie Nr. ... auf dem Konto ... des Verkäufers bei unserer Bank (IBAN: ..., BIC-Code: ...) vorbehaltslos eingegangen ist.

***) Following paragraph is applicable only for guarantee with limited validity:**

Diese Garantie erlischt mit Rückgabe dieser Garantieurkunde an uns, spätestens jedoch am ..., es sei denn, dass Sie uns spätestens an diesem Tag, eingehend bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) oder per Telekommunikation (per Telefax, geschlüsseltem Telex/SWIFT, mit Ausnahme von E-Mail und Telefon) mit unverzüglich nachfolgendem Originalbrief in Anspruch genommen haben.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Inanspruchnahmen aus dieser Garantie müssen bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) eingehen.

Diese Garantie erlischt mit Rückgabe dieser Garantieurkunde an uns, zusammen mit Ihrer schriftlichen Bestätigung (per Originalbrief), dass wir aus allen Verpflichtungen aus dieser Garantie entlastet sind und dass Sie keine Ansprüche daraus gegen uns geltend machen werden.

Das Original dieser Garantieerklärung ist uns nach Verfall oder Befriedigung sämtlicher Ansprüche aus der Garantie zurückzugeben.

Die Rechte aus dieser Garantie sind nur mit unserer schriftlichen Zustimmung abtretbar.

Diese Garantie unterliegt deutschem Recht. Gerichtsstand ist München.

Die Gebühren/Spesen unserer Bank gehen zu Lasten des Verkäufers, alle sonstigen Kosten gehen zu Ihren Lasten.

Mit freundlichen Grüßen

UniCredit Bank AG

SPECIMEN PAYMENT GUARANTEE – ENGLISH

Payment Guarantee no. ... for ...

Dear Sir or Madam,

We are informed that on ... you signed the contract no. ... with Messrs. ...(hereinafter "Buyer") for the supply of ... with a total contract value of ...

Under the terms of this contract, the Buyer is required to furnish a bank guarantee in your favour in the amount of ... securing the fulfilment of its payment obligations.

At the Buyer's request, we, UniCredit Bank AG, hereby issue this guarantee and irrevocably undertake to pay to you any amount up to a maximum of

...

(in words: ...)

upon your first written demand (by original letter) stating that the Buyer has not fulfilled its payment obligations under the above contract when due.

***) Following paragraph is applicable only for guarantee with limited validity:**

This guarantee expires when this guarantee document has been returned to us, at the latest, however, on ..., unless your demand hereunder has been received by UniCredit Bank AG, ..., not later than on this date either in writing (by original letter) or by telecommunication (fax, tested telex/SWIFT, but not E-mail or telephone) to be followed promptly by your original letter.

***) Following two paragraphs are applicable only for guarantee with unlimited validity:**

Any demand under this guarantee must be received by UniCredit Bank AG, ..., in writing (by original letter).

This guarantee expires when this guarantee document has been returned to us together with your written confirmation (by original letter) that we are released from all liabilities under this guarantee and that you will refrain from making any demand hereunder against us.

The original of this guarantee document has to be returned to us after expiry or settlement of all claims under this guarantee.

The rights arising from this guarantee may not be assigned without our written consent.

This guarantee is subject to German law. Place of jurisdiction is Munich.

The fees and expenses charged by our bank are for the Buyer's account. All other costs are to be borne by you.

Yours sincerely,

UniCredit Bank AG

SPECIMEN PAYMENT GUARANTEE – GERMAN

Zahlungsgarantie Nr. ... über ...

Sehr geehrte Damen und Herren,

wir haben davon Kenntnis, dass Sie mit der Firma ..., (nachstehend „Käufer“ genannt) am ... den Vertrag Nr. ... über die Lieferung von ... zum Gesamtpreis von ... geschlossen haben.

Nach diesem Vertrag ist vom Käufer eine Zahlungsgarantie zu Ihren Gunsten in Höhe von ... zu stellen.

Im Auftrag des Käufers übernehmen wir, UniCredit Bank AG, hiermit diese Garantie, indem wir uns unwiderruflich verpflichten, an Sie Zahlung bis zu einem Höchstbetrag von

...

(in Worten: ...)

zu leisten auf Ihre erste schriftliche Anforderung (per Originalbrief), in der Sie erklären, dass der Käufer seinen Zahlungsverpflichtungen aus dem Vertrag trotz Fälligkeit nicht nachgekommen ist.

***) Following paragraph is applicable only for guarantee with limited validity:**

Diese Garantie erlischt mit Rückgabe dieser Garantieurkunde an uns, spätestens jedoch am ..., es sei denn, dass Sie uns spätestens an diesem Tag, eingehend bei UniCredit Bank AG, ..., schriftlich (per Originalbrief) oder per Telekommunikation (per Telefax, geschlüsseltem Telex/SWIFT, mit Ausnahme von E-Mail und Telefon) mit unverzüglich nachfolgendem Originalbrief in Anspruch genommen haben.

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Diese Garantie erlischt mit Rückgabe dieser Garantieurkunde an uns, zusammen mit Ihrer schriftlichen Bestätigung (per Originalbrief), dass wir aus allen Verpflichtungen aus dieser Garantie entlastet sind und dass Sie keine Ansprüche daraus gegen uns geltend machen werden.

Das Original dieser Garantieerklärung ist uns nach Verfall oder Befriedigung sämtlicher Ansprüche aus der Garantie zurückzugeben.

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Die Gebühren/Spesen unserer Bank gehen zu Lasten des Käufers, alle sonstigen Kosten gehen zu Ihren Lasten.

Mit freundlichen Grüßen

UniCredit Bank AG

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