

CONDITIONS GOVERNING ISSUANCE OF GUARANTEES

Important information about issuance of guarantees on first demand

effective from 13.12.2023

The issuing of guarantees, counter-guarantees, bonds, standby letters of credit and sureties »on first demand« (hereinafter all designated as »guarantee(s)«, unless individually specified) entails special risks for the Principal. The Bank is obliged to effect payment without delay on receipt of a demand for payment complying with the terms of the guarantee. After payment has been effected by the Bank, the Principal can put forward any defences or objections arising from the contract underlying the guarantee (for example due to faulty or incorrect delivery, warranty claims) only directly against the Beneficiary. The Principal therefore bears the risk of having to assert its restitution claims against the Beneficiary in recovery proceedings (risk of litigation) and having to realize them (enforcement/insolvency risk).

On receipt of a demand for payment, the Bank can only take into consideration the defence of abuse of rights, if the Principal has put forward such defence without delay in writing documented by conclusive evidence (»liquide Beweismittel«), or if it is obviously manifest that the preconditions of such defence have occurred.

According to case law, the obligation to provide a guarantee »on first demand« included in the contract underlying the guarantee may be invalid, if it was agreed in General Business Conditions and not in a separate individual agreement between the contracting parties. The validity of such a contractual obligation to provide a guarantee »on first demand« cannot be determined by the Bank; instead, it is up to the Principal to examine this aspect and to obtain professional legal advice, if necessary.

1. Scope of application and instructions

Upon request of the customer (»Principal«) UniCredit Bank Gesellschaft mit beschränkter Haftung (»Bank«) issues in favour of a third party (»Beneficiary«) guarantees, bonds, standby letters of credit, and in particular for Beneficiaries in Germany sureties »on first demand« as well as other sureties (hereinafter all designated as »guarantee(s)«, unless individually specified).

In compliance with the Principal's instructions, the Bank issues the guarantee itself (»direct guarantee«) or instructs another bank (»Second Bank«) under its counterliability (»counter-guarantee«) to issue or confirm the guarantee (»indirect guarantee«). If the Bank does not receive instructions from the Principal, it may issue an indirect guarantee, provided this is deemed necessary under the circumstances in the interest of the Principal.

2. Guarantee account entries and guarantee commission/special service fee

The Bank offers certain types of guarantees, on the basis of its standard texts in several languages and governed by German law.

Clients who are not consumers shall provide each Guarantee Request electronically via a platform offered by the Bank. The same shall apply to requests for amendments of guarantees.

Upon delivery, respectively dispatch of the guarantee or the request to issue or confirm the guarantee, the Bank is entitled to debit the Principal's guarantee account with the amount of the guarantee and, for the duration of the Bank's undertaking, to charge for recurring settlement periods a periodic guarantee commission to it. The guarantee commission shall be payable in advance. If it turns out beyond doubt that, during a settlement period, the debit entry of the guarantee amount had to be reversed the commission will be reimbursed pro rata temporis.

Any minimum commission agreed will not be refunded.

The issuance of a guarantee with a text deviating from the Bank's standard texts constitutes a special contractual service. The amendment of an existing guarantee constitutes a special contractual service if the amendment request goes beyond a change of the amount, the term or the parties involved in the guarantee (incl. change of address). In the case of a Principal not being a consumer, the issuance of a guarantee or the amendment of an existing guarantee shall also constitute a special contractual service if the order is placed by means other than the platform offered to the Principal by the Bank for this purpose (e.g. by letter, fax, e-mail with pdf attachment, non-Bank portal/platform).

For special contractual services, the Bank shall charge a special service fee, the amount of which shall be agreed separately with the Principal.

3. Examination of documents

The Bank will examine with reasonable care, whether any demands for payment, statements and other documents to be presented under a guarantee appear on their face to be conform with the terms of the guarantee and consistent with each other. If documents are sent by means of authenticated teletransmission (e.g. tested telex or swift), the Bank may treat them as originals.

4. Reimbursement

The Principal will reimburse the Bank for all disbursements and expenditures (which for indirect guarantees also include all commission, expenses and costs charged to the Bank by the Second Bank) resulting from the execution and performance of the guarantee request, including those resulting from judicial and extrajudicial prosecution in Germany or abroad and which it was allowed to consider necessary in the circumstances. This obligation to reimburse also covers disbursements and expenditures incurred after the debit entry of the guarantee amount in the Principal's guarantee account has been reversed, in particular to the extent that the obligation to pay under the guarantee is still in effect, or a judicial decision for payment exists, which is enforceable in the country where it was passed.

5. Notification of principal

The Bank will immediately notify the Principal upon receiving a demand for payment under the guarantee complying with the terms of the guarantee.

The Bank will provide the Principal at its request with the originals of the documents received by the Bank and complying with the terms of the guarantee, which are relevant for the Principal, provided the Bank no longer needs them to safeguard its rights or to perform its obligations.

6. Payment under the guarantee

The Bank will effect payment in accordance with the terms of the guarantee/counter-guarantee when it has received from the Beneficiary/the Second Bank a demand for payment complying with the terms of the guarantee/counter-guarantee prior to the expiry of the guarantee/counter-guarantee. With respect to such a demand for payment under guarantees, counter-guarantees, bonds, standby letters of credit and sureties »on first demand« the Bank can only take into consideration the defence of abuse of rights, if the Principal has put forward such defence without delay in writing documented by conclusive evidence, or if it is obviously manifest that the preconditions of such defence have occurred.

In the case of other sureties, the Bank will consider all permissible objections or defences, which have been made credible to the Bank in writing within a reasonable period so that they may be forwarded to the Beneficiary.

If the Bank pays the Beneficiary/Second Bank, it will debit the Principal's account for the amount paid on the guarantee/counter-guarantee.

The Bank will also debit the Principal's account if, in the Principal's opinion, the Beneficiary's/Second Bank's request for payment was unjustified, but an abuse of rights in making the claim could not be proven and was also not evident.

The Principal may send written statements to the Bank by fax, provided the original letter is sent immediately thereafter.

7. Cancellation of bookkeeping entries

Upon expiry of direct guarantees, which are not explicitly subject to foreign law, the Bank will reverse the debit entries for these guarantees in the Principal's guarantee account and cease to charge guarantee commission, provided these guarantees expire, according to their terms, beyond doubt on a certain calendar date, or upon presentation of documents specified in the guarantee for the purpose of determining the expiry, and provided further that no demand for payment has been received by the Bank before the expiry of such guarantees.

With respect to all other direct guarantees, respectively, indirect guarantees the Bank will reverse the debit entries in the Principal's guarantee account and cease to charge guarantee commission, when the Beneficiary has either returned the original guarantee document to the Bank for cancellation, or released the Bank without reserve from its liability, respectively, when the Second Bank has released the Bank without reserve from its liability.

In case of a surety provided for as security in legal proceedings, unless the Beneficiary has returned the original guarantee document to the Bank for cancellation, evidence must be submitted to the Bank either regarding the Beneficiary's consent to the Bank's discharge from its liability, or of a final court order according to Section 109 subsection 2 of the German Code of Civil Procedure.

It is incumbent on the Principal to provide for the relevant requirements for the reversal of the debit entry of the guarantee amount in the Principal's guarantee account.

8. Reduction

In case of reductions of a direct guarantee, the Bank will reverse the corresponding partial amount of the debit entry in the Principal's guarantee account and will take this into account when calculating the guarantee commission, provided either that the terms of the reduction clause in the guarantee have been complied with beyond doubt, or that the Bank has been partially released without reserve from its liability by the Beneficiary. With respect to indirect guarantees, this provision applies accordingly to the extent the Bank has been partially released without reserve from its liability by the Second Bank. In the event of a demand for partial payment, the guarantee amount will be reduced by the amount paid by the Bank.

9. Uniform rules for demand guarantees

If a guarantee/counter-guarantee is, in accordance with the Principal's instructions, subject to the »Uniform Rules for Demand Guarantees« of the International Chamber of Commerce, Paris, these rules will apply additionally insofar as they are not inconsistent with these Conditions Governing Issuance of Guarantees.

Provided the guarantee/counter-guarantee does not stipulate otherwise, the Bank may upon receipt of a complying demand for extension or payment (»extend or pay«) either effect immediate payment under the guarantee/counter-guarantee or suspend payment for a period of up to 30 calendar days and notify the Principal about the payment suspension. After the suspension period has elapsed, the Bank may effect payment, unless the Bank has received previous instructions from the Principal for extension of the guarantee validity and the Bank has accepted such instructions.

10. Standby letters of credit

Unless otherwise agreed, the Bank issues standby letters of credit subject to the »Uniform Customs and Practice for Documentary Credits« of the International Chamber of Commerce, Paris, which apply additionally insofar as they are not inconsistent with these Conditions Governing Issuance of Guarantees.