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## General Conditions of Insurance for Preferential Payment Insurance ACREDIA Veto<sup>A</sup> 2015

(GVI ACREDIA Veto 2015)

### Overview

- Art. 1** Subject of the preferential payment insurance
- Art. 2** Scope and restrictions of insurance cover
- Art. 3** Reimbursement of loss minimisation costs
- Art. 4** Sum insured
- Art. 5** Obligations
- Art. 6** Self-insured retention
- Art. 7** Insured event, entitlement to compensation payment, necessary documents
- Art. 8** Transfer of title, reductions following compensation payment
- Art. 9** Premium
- Art. 10** Contractual currency, conversion of foreign currencies
- Art. 11** Consequences of failing to comply with duties/obligations
- Art. 12** Termination after occurrence of an insured event
- Art. 13** Pledging or assignment of the entitlement to compensation payment
- Art. 14** Consequences of the insolvency of the Insured
- Art. 15** Formal requirements, language of the contract, applicable law, jurisdiction

### Annex

**A) Section 32 of the Insolvency Code [Insolvenzordnung – IO] as amended BGBl. [Federal Law Gazette] I no 29/2010**

### Definitions

**Insured** is the (natural or legal) person who has concluded the insurance contract with the Insurer.

**Co-Insured** are any further (natural or legal) persons listed in the insurance policy, who are insured under the insurance contract in addition to the Insured.

**Insured Persons** are the Insured and any possible Co-Insured.

**Insurer** is ACREDIA Versicherung AG.

## Splošni zavarovalni pogoji zavarovanja za izpodbijanje pravnih dejanj ACREDIA Veto<sup>A</sup> 2015

(splošni zavarovalni pogoji ACREDIA Veto 2015)

### Pregled

- 1. člen** Predmet zavarovanja za izpodbijanje pravnih dejanj
- 2. člen** Obseg in omejitve zavarovalnega kritja
- 3. člen** Nadomestilo reševalnih stroškov
- 4. člen** Zavarovalna vsota
- 5. člen** Obveznosti
- 6. člen** Lastni delež
- 7. člen** Zavarovalni primer, zahtevek za izplačilo zavarovalnine, potrebna dokumentacija
- 8. člen** Prenos pravic, znižanje terjatev po izplačilu zavarovalnine
- 9. člen** Premija
- 10. člen** Pogodbena valuta, preračunavanje iz tujih valut
- 11. člen** Posledice kršitev dolžnosti in obveznosti
- 12. člen** Prekinitev pogodbe po nastopu zavarovalnega primera
- 13. člen** Zastava ali odstop od zahtevka za izplačilo zavarovalnine
- 14. člen** Posledice v primeru plačilne nesposobnosti zavarovalca
- 15. člen** Obličnost, jezik pogodbe, veljavna zakonodaja, pristojno sodišče

### Priloga

**A) 32. člen Avstrijskega zakona o insolventnosti [Insolvenzordnung – IO] objavljen v BGBl. [Uradni List] I št. 29/2010**

### Razlaga pojmov

**Zavarovalec** je (fizična ali pravna) oseba, ki je sklenila zavarovalno pogodbo z zavarovateljem.

**Sozavarovanci** so morebitne dodatne (fizične ali pravne) osebe, navedene na zavarovalni polici, ki so poleg zavarovalca zavarovane v okviru zavarovalne pogodbe.

**Zavarovanci** so zavarovalec in morebitni sozavarovanci.

**Zavarovatelj** je ACREDIA Versicherung AG.

**Buyer** is the (natural or legal) person with whom the Insured Person has concluded the sales or service contract, to whom the Insured has contractually provided goods, work or services, and in relation to whose assets insolvency proceedings have then been opened.

#### **Art. 1 Subject of the preferential payment insurance**

On the basis of this insurance contract, the Insurer shall reimburse losses of accounts receivable which the Insured Person suffers as a result of the fact that after the Insured Person has contractually provided a delivery of goods, work or services (hereinafter "Delivery/Performance") to a Buyer, insolvency proceedings have been opened in relation to the Buyer's assets and the insolvency administrator appointed in these insolvency proceedings, or an official with comparable rights, (hereinafter "Insolvency Administrator") is challenging

- the settlement or securing of the receivable from the Delivery/Performance carried out before the opening of insolvency proceedings or
- the sales or service contract on which the Delivery/Performance is based, concluded between the Insured Person and the Buyer before the opening of insolvency proceedings

according to the statutory provisions on preferential payment claims.

The requirements, the scope and the restrictions of the insurance cover result from the other provisions of these General Conditions of Insurance and the other agreed conditions.

#### **Art. 2 Scope and restrictions of insurance cover**

(1) Scope of the insurance cover:

a) Geographical scope of application:

Insurance cover exists for Buyers with registered office in the European Union, in Liechtenstein, in Switzerland and in Norway.

b) Temporal scope of application:

A preferential payment claim is covered only by the insurance cover

- if the insolvency proceedings relating to the Buyer's assets have been applied for and opened during the term of the insurance contract,
- if the Insured Person has received the preferential payment claim declaration from the Insolvency Administrator during the term of the insurance contract and
- if the challenged legal act was carried out within ten years before the insolvency proceedings in relation to the Buyer's assets were opened.

c) Material scope of application:

Insurance cover only exists for Deliveries/Performance on the basis of sales or service contracts which are corporate transactions both for the Insured Person and the Buyer (mutual corporate transactions) and which the Insured Person has performed as part of its usual business, in its own name and at its own expense.

d) Insured Loss:

**Kupec** je (fizična ali pravna) oseba, s katero je zavarovanec sklenil pogodbo o prodaji ali delu, za katero je v skladu s pogodbo dostavil blago, opravil storitve ali izvršil dela, nato pa se je premoženje kupca znašlo v insolvenčnem postopku.

#### **1. člen Predmet zavarovanja za izpodbijanje pravnih dejanj**

Zavarovatelj na podlagi te zavarovalne pogodbe nadomesti izpadle terjatve zavarovanca, ki so nastale tako, da je zavarovanec kupcu v skladu s pogodbo dostavil blago, opravil storitve ali izvršil dela (v nadaljevanju »dobava/storitev«), nato pa se je premoženje kupca znašlo v insolvenčnem postopku, stečajni upravitelj ali pooblaščen oseba s primerljivimi pravicami (v nadaljevanju »stečajni upravitelj«) pa je v skladu z zakonskimi določili izpodbijal

- terjatev za dobavo/storitev, ki je bila poravnana ali zavarovana pred začetkom insolvenčnega postopka, ali
- pogodbo o prodaji ali delu, ki sta jo za dobavo/storitev pred začetkom insolvenčnega postopka sklenila zavarovanec in kupec.

Pogoje, obseg in omejitve zavarovalnega kritja določajo nadaljnja določila teh splošnih zavarovalnih pogojev (SZP) in drugih dogovorjenih pogojev.

#### **2. člen Obseg in omejitve zavarovalnega kritja**

(1) Obseg zavarovalnega kritja:

a) Krajevna veljavnost:

zavarovalno kritje velja za kupce s sedežem v Evropski uniji, Liechtensteinu, Švici in na Norveškem.

b) Časovna veljavnost:

Izpodbijanje pravnih dejanj v primeru stečaja je v zavarovalno kritje vključeno le,

- če je bil predlog za insolvenčni postopek nad premoženjem kupca vložen in začet v času veljavnosti zavarovane pogodbe,
- če je stečajni upravitelj zavarovancu v času veljavnosti zavarovane pogodbe napovedal izpodbijno tožbo in
- če je bilo izpodbijano pravno dejanje opravljeno v zadnjih desetih letih pred odprtjem insolvenčnega postopka nad premoženjem kupca.

c) Stvarna veljavnost:

Zavarovalno kritje velja le za dobavo/storitve, opravljene v skladu s pogodbo o prodaji ali delu, ki za zavarovanca in kupca predstavljajo poslovne storitve (obojestranske poslovne storitve) in jih je zavarovanec opravil v okviru rednega poslovanja, v lastnem imenu in na lasten račun.

d) Zavarovan izpad:

If a settlement, securing or a sales or service contract as per Art. 1 is challenged, there is insurance cover

- i) for the invoice value (exclusive of VAT and exclusive of the receivables listed under Par. 2(a)) of the relevant Delivery/Performance contractually provided by the Insured Person, provided that the Insured Person has not received settlement from the Buyer, the insolvency assets, a third party (such as a guarantor) or through a substitute sale of goods taken back as a result of the preferential payment claim, and
- ii) if the Insured Person has gained settlement of the receivable from the Delivery/Performance before the opening of insolvency proceedings and, as a result of the preferential payment claim, the corresponding amount has to be released to the insolvency assets: for any interest from the time of settlement until the release to the insolvency assets, which the Insured Person has to pay to the insolvency assets,

if not covered by another form of insurance.

For information on the limits to the insurance cover in the form of the sum insured, see Art. 4.

(2) There is no insurance cover (exclusions of risk):

a) For the following receivables of the Insured Person against the Buyer which may be included in the Insured Person's invoice:

- i) Compensation, default interest, contractual penalties, legal expenses.
- ii) Receivables due to subsequently cancelled discounts.

b) For the following contracts concluded with the Buyer:

- i) Rental, tenancy and leasing contracts,
- ii) sales or service contracts for which official approval for performance could not be obtained, concerning the delivery of goods, the import of which contravened a ban in force in the destination country, or the export of which contravened a ban in force in the country of the Insured Person, as well as
- iii) sales or service contracts that are in breach of mandatory international economic sanctions or embargoes, imposed by the Insured Person's country, the Buyer's country, the USA, the European Union, the United Nations (UN) or another international organisation recognised under international law.

c) For the following Buyers:

- i) Buyers governed by public law,
- ii) companies in which the Insured Person has or had an indirect or a direct majority shareholding, or in which it is or was able to exert considerable influence on the management; the same applies in the event of corresponding shareholding or corresponding influence of the Buyer in relation to the Insured Person; and
- iii) buyers for whom the Insured Person is or was at the time when the challenged legal act was carried out a close associate as per section 32 of the Insolvency Code [Insolvenzordnung – IO].

d) If the Insured Person has sold without recourse the receivable

Če je bilo plačilo, zavarovanje plačila ali pogodba o prodaji ali delu izpodbijana v skladu s 1. členom, velja zavarovalno kritje

- i) za vrednost računa (brez davka na promet in brez terjatev, navedenih pod odstavkom 2a), ki ga je zavarovanec izstavil za dobavo/storitve, opravljene v skladu s pogodbo, če je bil zavarovancu račun poravnán od kupca, iz stečajne mase, od tretje osebe (npr. jamčevalca) ali z nadomestno unovčitvijo sredstev, ki jih je po izpodbijanju pravnih dejanj dolžnika pred insolvenčnim postopkom dobil povrnjene v obliki vrnjenega blaga in
- ii) če je zavarovanec dobil poplačane terjatve za opravljeno dobavo/storitve pred začetkom stečajnega postopka in mora zaradi izpodbijanja pravnih dejanj dolžnika pred insolvenčnim postopkom ustrezen znesek vrniti v stečajno maso: za vse obresti od dneva poravnave terjatev do vračila zneska v stečajno maso, ki jih mora v stečajno maso vplačati zavarovanec,

če zavarovalnega kritja ne zagotavlja drugo zavarovanje.

Za omejitve zavarovalnega kritja z zavarovalno vsoto glejte 4. člen.

(2) Zavarovalnega kritja ni (izključena tveganja):

a) Za naslednje terjatve zavarovanca do kupca, ki so lahko vključene na računu:

- i) odškodnina, zamudne obresti, pogodbene kazni, stroški izterjave,
- ii) terjatve zaradi naknadno odpravljenih popustov.

b) Za naslednje pogodbe, ki so bile sklenjene s kupcem

- i) najemne in zakupne pogodbe ter pogodbe o leasingu,
- ii) pogodbe o prodaji ali delu, za katero so manjkala potrebna uradna dovoljenja, pogodbe o dostavi blaga, katerih uvoz v namembno državo je kršil obstoječe prepovedi ali katerih izvoz je kršil obstoječe prepovedi v državi zavarovanca, kot tudi
- iii) pogodbe o prodaji ali delu, ki so kršile zakonsko zavezujoče mednarodne gospodarske sankcije ali embargo, ki ga je razglasila država zavarovanca, država kupca, ZDA ali Evropska unija, Združeni narodi (ZN) ali druge mednarodno priznane mednarodne organizacije.

c) Za naslednje kupce:

- i) osebe javnega prava,
- ii) podjetja, v katerih je bil ali je zavarovanec posredno ali neposredno udeležen ali v katerih je lahko ali še lahko na drugačen način vpliva na upravljanje; enako velja tudi v primeru ustrezne soudeležbe ali ustreznega vpliva kupca pri zavarovancu; in
- iii) za kupce, pri katerih je zavarovanec ob sprejetju izpodbijane pravnega dejanja v skladu z 32. členom avstrijskega zakona o insolventnosti (IO) veljal za bližjega svojca.

d) Če je zavarovanec terjatev za dobavo/storitev do kupca prodal

against the Buyer due to Delivery/Performance.

- e) If the insolvency proceedings in relation to the Buyer's assets were opened due to an application from the Insured Person which the Insured Person made in the first three months of the term of the insurance contract.
- f) If the insolvency administrator has not challenged the sales or service contract according to the statutory provisions on preferential payment claims, but instead according to other statutory provisions (e.g. due to violation of moral principles, fraud, error, laesio enormis, infringement of capital maintenance rules).
- g) If the challenged legal act alone or in association with other (legal) acts represented an intentionally committed criminal offence and the Insured Person was aware or should have been aware of this.
- h) If the Buyer carried out the challenged legal act with the intent of disadvantaging one or more creditors, and the Insured Person consciously and intentionally cooperated with the Buyer (collusion).
- i) If the Buyer's insolvency was contributed to by war, warlike events, internal unrest, strike, seizure, prevention of the movement of goods and/or payment transactions by authorities or state institutions, natural disasters or nuclear energy.
- j) For insured events, which occurred before the start or after the end of the term of the Insurance Contract.

### Art. 3 Reimbursement of loss minimisation costs

(1) The Insurer shall reimburse, within the scope of the sum insured, the costs for the measures required in the circumstances and agreed with the Insurer to examine and defend any entitlement to challenge payments alleged by an Insolvency Administrator, provided that these costs are not covered by another form of insurance, in particular legal expenses insurance. This applies even if the entitlement proves to be unjustified. Costs incurred within the Insured Person's company (staff and material expenses) are not covered.

(2) If the resolution of a preferential payment claim targeted by the Insurer via acknowledgement, satisfaction or settlement fails due to the resistance of the Insured Person and the Insurer gives the Insured written notice that the contractual compensation payment is available, then the Insurer shall not have to reimburse any additional expenses incurred from the receipt of the written notice.

### Art. 4 Sum insured

The sum insured stated in the insurance policy applies per insurance period. It is the maximum amount which the Insurer has to pay out in total as compensation payment (insured loss and loss minimisation costs) for insured events which have occurred in this insurance period for all Insured Persons (Art. 7(1)). With each compensation payment made by the Insurer on the basis of this preferential payment insurance contract, the sum insured still available for the relevant insurance period shall decrease. The insurance policy specifies the period which is deemed the insurance period.

The Insurer shall not claim that underinsurance as per section 56 of the Insurance Contract Act [Versicherungsvertragsgesetz] exists.

brez regresa.

- e) Če se je insolvenčni postopek nad premoženjem kupca začel na predlog zavarovanca in je zavarovanec predlog zanj vložil v prvih treh mesecih po sklenitvi zavarovalne pogodbe.
- f) Če stečajni upravitelj pogodbe o prodaji ali delu ni izpodbijal v skladu z zakonskimi določili o izpodbijanju pravnih dejanj v primeru stečaja, temveč v skladu z drugimi zakonskimi določili (npr. zaradi nemoralnosti, prevare, napake, oduševanja, kršenja prepisov o ohranjanju kapitala).
- g) Če izpodbijana pravna dejanja sama ali v povezavi z drugimi (pravnimi) dejanji predstavljajo naklepno storjena kazniva dejanja in je zavarovanec to vedel ali bi moral vedeti.
- h) Če je kupec izpodbijano pravno dejanje storil z namenom, da bi oškodoval enega ali več upnikov, in je zavarovanec pri tem zavestno in namerno sodeloval (tajno dogovarjanje).
- i) Če so plačilno nesposobnost kupca sopovzročili vojna, vojne operacije, notranji nemiri, stavke, zaplemba, oviranje blagovnega in/ali plačilnega prometa s strani uradov ali državnih institucij, naravne katastrofe ali jedrska energija.
- j) Za zavarovalne primere, ki so nastopili pred začetkom veljavnosti zavarovalne pogodbe ali po njenem poteku.

### 3. člen Nadomestilo reševalnih stroškov

(1) Zavarovatelj nadomesti – v okviru zavarovalne vsote – stroške, ki jih zahtevajo okoliščinam primerni in z zavarovateljem usklajeni ukrepi za preverjanje in zavrnitev zahtevka stečajnega upravitelja za izpodbijanje pravnih dejanj, če teh stroškov ne krije drugo zavarovanje – še posebej zavarovanje pravne zaščite. To velja tudi, če se zahtevek izkaže za neupravičenega. Zavarovanje ne krije stroškov, ki so nastali v podjetju zavarovanca (stroškov osebja in stvarnih stroškov).

(2) Če od zavarovatelja zastavljeno izpodbijanje pravnih dejanj zaradi pripoznave, poravnanja terjatev ali poravnave na željo zavarovanca ni uspešno in zavarovatelj zavarovancu predloži pisno izjavo, da mu zagotavlja izplačilo odškodnine, zavarovatelj ni dolžan poravnati dodatnih stroškov, ki nastanejo po dospelju omenjene izjave.

### 4. člen Zavarovalna vsota

Zavarovalna vsota, ki je navedena na zavarovalni polici, velja za eno zavarovalno leto. Predstavlja največjo vsoto, ki jo mora zavarovatelj izplačati kot zavarovalnino (zavarovan izpad in reševalni stroški) za vse zavarovalne primere, ki so v tem zavarovalnem letu nastali pri vseh zavarovancih (7. člen, 1 odst). Z vsakim izplačilom zavarovalnine, ki ga zavarovatelj opravi na osnovi te pogodbe o zavarovanju za izpodbijanje pravnih dejanj, se za tekoče leto zmanjša zavarovalna vsota, ki je še na voljo. Na zavarovalni polici je navedeno obdobje, ki predstavlja eno zavarovalno leto.

Zavarovatelj se ne bo skliceval na podzavarovanje po 56. členu avstrijskega zakona o zavarovalnih pogodbah.

## Art. 5 Obligations

(1) The Insured Person shall always enter into transactions with its Buyers with the care of a proper business, in particular when granting (commercial) loans.

(2) If the existing or expected total receivables due to Deliveries/Performance against one Buyer reaches or exceeds EUR 100,000.– (exclusive of VAT), then the Insured Person shall immediately (and subsequently at least once per year) obtain a credit report about the Buyer from an agreed credit agency, and this report must state all legal enforcements, insolvency applications and extrajudicial settlement offers known to the credit agency. The agreed credit agencies are stated in the insurance policy. It is not necessary to obtain a report if the Insured Person has trade credit insurance and the trade credit insurance provides insurance protection for the Buyer.

(3) The Insured Person shall not provide Deliveries/Performance on credit to the Buyer, if it is aware that

- a) in the last two years the Buyer has offered an extrajudicial settlement or has asked individual creditors for a (partial) debt waiver, or
- b) in the last two years an application made for the opening of insolvency proceedings in relation to the Buyer's assets was rejected due to lack of assets, or
- c) in the last two years legal enforcement in relation to the Buyer's assets has not resulted in complete satisfaction of the enforcing creditor or that several creditors have used legal enforcement in relation to the Buyer's assets, or
- d) in the last two years preliminary insolvency proceedings (possible in some countries) have been opened in relation to the Buyer's assets.

(4) The Insured Person shall notify the Insurer immediately when he receives the preferential payment claim declaration from the Insolvency Administrator, agree the further course of action with the Insurer, follow the Insurer's instructions and provide the Insurer with information about pending preferential payment cases at any time.

(5) The Insured Person shall neither recognise nor agree to a settlement of the preferential payment claim without the Insurer's prior agreement.

(6) In agreement with the Insurer, the Insured Person shall take all suitable measures to inspect and defend the preferential payment claim that has been made. These shall usually include appointing a lawyer based in the same country as the Insolvency Administrator making the challenge.

(7) The Insured Person shall sell goods which it has taken back from the insolvency assets due to a preferential payment claim in the best way possible in agreement with the Insurer.

## 5. člen Obveznosti

(1) Zavarovanec pri poslovanju s kupci – še posebej pri odobritvi (blagovnih) kreditov – vedno ravna s skrbnostjo dobrega podjetnika.

(2) Če obstoječe ali pričakovane skupne terjatve za dobavo/storitve do enega kupca dosegajo ali presegajo 100.000,– EUR (brez davka na promet), zavarovanec nemudoma – in pozneje najmanj enkrat letno – pri dogovorjeni bonitetni agenciji preveri, ali je po njihovih podatkih kupec v prisilni poravnavi, ali je vložil predlog za stečaj in ali je v postopku izvensodne poravnave. Dogovorjene bonitetne agencije so navedene na zavarovalni polici. Pridobitev teh informacij ni potrebna, če ima zavarovanec sklenjeno kreditno zavarovanje in je v okviru tega zavarovanja zagotovljeno zavarovalno kritje za kupca.

(3) Zavarovanec za kupca ne opravlja dobave/storitev na kredit, če ve,

- a) da je kupec v zadnjih dveh letih predlagal izvensodno poravnavo ali posamezne upnike prosil za (delni) odpis terjatev, ali
- b) da je bil v zadnjih dveh letih zavrjen predlog za začetek insolvenčnega postopka nad premoženjem kupca zaradi pomanjkanja stečajne mase, ali
- c) da v zadnjih dveh letih izvršba na premoženje kupca ni v celoti pokrila terjatve upnika ali da je več upnikov vložilo izvršbo na premoženje kupca ali
- d) da se je v zadnjih dveh letih začel (v nekaterih državah možen) začasni insolvenčni postopek nad premoženjem kupca.

(4) Zavarovanec zavarovatelja takoj obvesti, da je od stečajnega upravitelja prejel napoved izpodbojne tožbe v stečajnem postopku, se o nadaljnjem ravnanju dogovori z zavarovateljem, upošteva navodila zavarovatelja in ga ves čas obvešča o tekočih izpodbojnih primerih.

(5) Zavarovanec v primeru izpodbojne tožbe v stečajnem postopku brez predhodnega soglasja zavarovatelja ne poda priznanja in ne pristane na poravnavo.

(6) Zavarovanec v dogovoru z zavarovateljem sprejme vse primerne ukrepe za preverjanje in zavrnitev zahtevka stečajnega upravitelja za izpodbijanje pravnih dejanj. K temu spada tudi pooblastitev odvetnika s sedežem v isti državi, v kateri je tudi stečajni upravitelj, ki izpodbija pravna dejanja.

(7) Blago, ki je bilo zavarovancu zaradi izpodbijanja pravnih dejanj vrnjeno iz stečajne mase, zavarovanec v dogovoru z zavarovateljem oceni na najboljši možni način.

(8) If it is legally possible, the Insured Person shall register receivables which have been revived again due to a preferential payment claim in the insolvency proceedings at its own expense.

(9) Other than this, the statutory obligations shall apply.

#### **Art. 6 Self-insured retention**

The Insured shall bear the self-insured retention listed in the insurance policy for each insured loss. The self-insured retention also applies for the reimbursement of loss minimisation costs.

The self-insured retention may not be insured in another form or safeguarded separately. If the Insured has insured the agreed self-insured retention in another form, then the Insurer shall be entitled to reduce the compensation in the amount of the Insured's claim against the other insurer.

#### **Art. 7 Insured event, entitlement to compensation payment, necessary documents**

(1) The time of the occurrence of the insured event is deemed to be the day on which the Insured Person receives the preferential payment claim declaration from the Insolvency Administrator. If the Insolvency Administrator of a Buyer challenges several legal acts in succession, then the insured event shall be deemed to have occurred on receipt of the first preferential payment claim declaration, and the subsequent preferential payment claims shall be added to this insured event. The insured event must occur within the term of the insurance contract.

(2) Only the Insured, and not any Co-Insured Person(s), shall be entitled to dispose of and enforce the entitlement to compensation payment.

(3) The Insured Person shall provide all information and present all documents which the Insurer deems necessary to prove the occurrence of the insured event and to determine the insured loss.

#### **Art. 8 Transfer of title, reductions following compensation payment**

(1) All claims of the Insured Person against the Buyer and/or against the insolvency assets and all secondary rights shall transfer to the Insurer in the amount of the compensation paid. At the request of the Insurer, the Insured Person shall carry out all actions necessary to transfer the rights.

(2) Reductions to the claim which the Insured Person receives following payment of the compensation must be reported to the Insurer immediately and, if they relate to the insured loss compensated by the Insurer and the reimbursed loss minimisation costs, transferred to the Insurer within 14 days.

(8) Če je pravno mogoče, zavarovanec terjatve, ki so znova aktualne zaradi izpodbijanja pravnih dejanj, na lastne stroške prijavi v insolvenčnem postopku.

(9) Sicer veljajo zakonske obveznosti.

#### **6. člen Lastni delež**

Pri vsakem zavarovanem izpadu je zavarovalec soudeležen z lastnim deležem, ki je naveden na zavarovalni polici. Lastni delež velja tudi za nadomestilo reševalnih stroškov.

Lastni delež ne sme biti zavarovan drugje ali posebej zavarovan. Če je zavarovalec lastni delež zavaroval drugje, ima zavarovatelj pravico zmanjšati zavarovalnino v višini zavarovalčevega zahtevka do drugega zavarovatelja.

#### **7. člen Zavarovalni primer, zahtevki za izplačilo zavarovalnine, potrebna dokumentacija**

(1) Kot čas nastopa zavarovalnega primera velja dan, ko je zavarovanec od stečajnega upravitelja prejel napoved izpodbijne tožbe v stečajnem postopku. Če je stečajni upravitelj enega kupca zaporedoma izpodbijal več pravnih dejanj, se zavarovalni primer začne že s prvo napovedjo izpodbijanja pravnih dejanj v primeru stečaja, kasneje vložene napovedi izpodbijanja pravnih dejanj pa se vključijo v ta zavarovalni primer. Zavarovalni primer mora nastopiti v času veljavnosti zavarovalne pogodbe.

(2) Do zavarovalnine je upravičen izključno zavarovalec brez sozavarovancev.

(3) Zavarovanec nudi vse informacije in predloži vse dokumente, ki jih zavarovatelj potrebuje kot dokazilo za nastop zavarovalnega primera in za višino zavarovanega izpada.

#### **8. člen Prenos pravic, znižanje terjatev po izplačilu zavarovalnine**

(1) Terjatve do kupca oziroma do stečajne mase v višini izplačane zavarovalnine in nekatere dodatne pravice se prenesejo na zavarovatelja. Zavarovanec na zahtevo zavarovatelja sprejme potrebne ukrepe za prenos pravic.

(2) Znižanja terjatev, katera nastanejo po izplačilu zavarovalnine zavarovancu, je treba takoj javiti zavarovatelju in jih, če se nanašajo na zavarovani izpad in izplačane reševalne stroške, v roku 14 dni nakazati zavarovatelju.

## Art. 9 Premium

(1) The premium stated in the insurance policy applies per insurance period. It shall be invoiced at the start of the insurance period plus any possible insurance tax, and shall be due on receipt of the invoice.

(2) For the purpose of maintaining equivalence between risk and premium and for the purpose of calculating the insurance tax, the Insured is obliged to notify the Insurer, within 14 days on request, of sales in the last completed financial year with Buyers which are covered by the preferential payment insurance (Art. 2), detailed separately by country and any possible Co-Insured Persons.

If the Insured does not provide this information promptly or correctly, this shall be deemed to be a failure to comply with duties, which may release the Insurer from the obligation to perform. If, due to this information not being provided promptly or correctly, it is not possible to calculate the insurance tax correctly, the Insured shall be obliged to indemnify the Insurer from any possible sanctions/penalties from the responsible financial authorities.

(3) If the Insurer withdraws from the contract due to default on the first premium by the Insured (section 38 Insurance Contract Act), then it shall be entitled to a transaction fee amounting to 25 % of the agreed annual premium.

## Art. 10 Contractual currency, conversion of foreign currencies

(1) The contractual currency is the euro (EUR). It applies, in particular, for the sum insured, the premium, and the compensation payments.

(2) Invoice amounts in other currencies shall be converted at the following rate:

- If the settlement has been challenged and the Insured Person has had to release the corresponding amount to the insolvency assets due to the challenge, the rate at which the release to the insolvency assets was made applies.
- In all other cases the reference rate of the Central European Bank shall apply on the date on which the original receivable from the Delivery/Performance was due, but no higher than on the date of invoicing.

## Art. 11 Consequences of failing to comply with duties/obligations

(1) If the Insured Person has not met a statutory or contractual obligation or has breached a duty, then the Insurer is released from the obligation to provide performance. This applies irrespective of termination of the insurance contract.

(2) The Insurer shall not invoke the agreed release from obligations if the infringement of the contractual obligations was through no fault of the Insured Person's own or had no influence on the occurrence of the insured event or if the infringement has no influence on the scope of the performance to be provided by the Insurer.

(3) The consequences of one Insured Person failing to comply with duties or obligations may also affect other Insured Persons.

## 9. člen Premija

(1) Premija, ki je navedena na zavarovalni polici, velja za eno zavarovalno leto. Račun zanjo z obračunanim davkom od prometa zavarovalnih poslov se izda v začetku zavarovalnega leta in zapade ob prejetju računa.

(2) Za ohranjanje enakovrednosti med rizikom in premijo ter za izračunavanje davka od prometa zavarovalnih poslov, se zavarovalec zavezuje, da bo zavarovatelju na zahtevo v roku 14 dni sporočil promet zadnjega zaključenega poslovnega leta s po državah razvrščenimi kupci, ki so vključene v zavarovanje za izpodbijanje pravnih dejanj v primeru stečaja (2. člen), in sozavarovanci.

Če zavarovalec teh podatkov ne bo pravočasno ali pravilno posredoval, velja to za kršitev obveznosti, ki lahko povzroči razrešitev dolžnosti zavarovatelja. Če zaradi nepravočasne ali nepravilne izročitve podatkov davek od prometa zavarovalnih poslov ne more biti pravilno izračunan, mora zavarovanec namesto zavarovatelja prevzeti in plačati morebitne sankcije/kazni, ki jih izrečejo pristojni finančni organi.

(3) Če zavarovalec zamuja s plačilom prve premije in če zavarovatelj zaradi tega od pogodbe odstopi (38. člen avstrijskega zakona o zavarovalnih pogodbah), ima pravico zahtevati plačilo v višini 25 % dogovorjene letne premije.

## 10. člen Pogodbena valuta, preračunavanje iz tujih valut

(1) Pogodbena valuta je evro (EUR). To še posebej velja za zavarovalno vsoto, premijo in izplačilo zavarovalnine.

(2) Računi, na kateri so zneski v drugih valutah, se obračunajo po naslednjem tečaju:

- Če je bila poravnava terjatev izpodbijana in je moral zavarovanec zaradi izpodbijanja vrniti določen znesek v stečajno maso, velja tečaj, ki je veljal ob vračilu v stečajno maso.
- V vseh drugih primerih velja referenčni tečaj Evropske centralne banke na dan zapadlosti terjatve za opravljeno dobavo/storitve, ki pa ne sme biti višji od tečaja na dan izstavitve računa.

## 11. člen Posledice kršitev dolžnosti in obveznosti

(1) Če zavarovanec ni izpolnil zakonske ali pogodbene obveznosti ali je kršil obveznosti, zavarovatelj ni obvezan izplačati zavarovalnine. To velja neodvisno od prekinitve zavarovalne pogodbe.

(2) Zavarovatelj se ne bo skliceval na dogovorjeno razrešitev dolžnosti, če je bila kršitev postopkovnih obveznosti brez lastne krivde, ni vplivala na nastop zavarovalnega primera ali kršitev za enkrat ni imela vpliva na obseg dolžnosti zavarovatelja.

(3) Posledice kršenja dolžnosti in obveznosti s strani enega zavarovanca lahko doletijo tudi druge zavarovance.

## Art. 12 Termination after occurrence of an insured event

If, after the occurrence of the insured event, the Insurer has recognised its obligation to provide compensation to the Insured or has refused to provide the due compensation, then the Insured and the Insurer are entitled to terminate the insurance contract in writing within one month. The termination shall become effective one month after receipt.

## Art. 13 Pledging or assignment of the entitlement to compensation payment

It is not permissible to pledge the entitlement to compensation payment. In the event of assignment, all legal remedies available to the Insurer, as well as the right of set-off, shall also be valid against the assignees. This applies irrespective of the time of notification of the assignment or the time at which the assigned entitlements arose. The loss will only be ascertained in consultation with the Insured.

## Art. 14 Consequences of the insolvency of the Insured

If insolvency proceedings are opened in relation to the Insured's assets, the Insurer is entitled to cancel the insurance contract with a notice period of one month (section 14 Insurance Contract Act).

## Art. 15 Formal requirements, language of the contract, applicable law, jurisdiction

(1) Declarations concerning the existence or content of the insurance relationship, in particular termination, withdrawal, or assignment of the entitlement to compensation payment, must be made in writing.

(2) The language of the contract is German.

(3) Austrian law applies to the exclusion of the conflict of laws and the UN Convention on Contracts for the International Sale of Goods. In addition, the regulations of the Insurance Contract Act, the Austrian Commercial Code [Unternehmensgesetzbuch] and the Austrian General Civil Code [Allgemeines Bürgerliches Gesetzbuch] apply.

(4) The place of performance and sole place of jurisdiction is Vienna.

## Annex

### A) Section 32 of the Insolvency Code [Insolvenzordnung – IO] as amended BGBl. [Federal Law Gazette] I no 29/2010

(1) The spouse and persons who are directly related or related down to the fourth degree to the debtor or their spouse, by blood or by marriage, and also adopted or foster children as well as non-married partners of the debtor must be deemed to be close associates. Non-married relationships must be seen as equivalent to marriage.

## 12. člen Prekinitev pogodbe po nastopu zavarovalnega primera

Če je po nastopu zavarovalnega primera zavarovatelj svojo dolžnost do izplačila zavarovalnine zavarovalcu priznal ali izplačilo zavarovalnine zavrnil, imata zavarovalec in zavarovatelj pravico, da zavarovalno pogodbo v enem mesecu pisno odpovesta. Prekinitev stopi v veljavo en mesec po prejemu pisne izjave.

## 13. člen Zastava ali odstop od zahtevka za izplačilo zavarovalnine

Zastava zahtevka za izplačilo zavarovalnine ni dovoljena. V primeru zastave zavarovatelj ohrani pravico do ugovora in do pobota do cesionarjev. To velja ne glede na čas dogovora o zastavi ali časa nastanka zastavljenih zahtevkov. Škoda se obračuna samo z zavarovalcem.

## 14. člen Posledice v primeru plačilne nesposobnosti zavarovalca

Če se je nad premoženjem zavarovalca začel insolvenčni postopek, lahko zavarovatelj zavarovalno pogodbo odpove z enomesečnim odpovednim rokom (14. člen avstrijskega zakona o zavarovalnih pogodbah).

## 15. člen Obličnost, jezik pogodbe, veljavna zakonodaja, pristojno sodišče

(1) Izjave, ki se nanašajo na trajanje ali vsebino zavarovalnega razmerja – še posebej odpoved pogodbe, odstop od pogodbe, odstop od zahtevka za izplačilo zavarovalnine – morajo biti podane v pisni obliki.

(2) Jezik pogodbe je nemščina.

(3) Velja uporaba avstrijskega prava ob izključitvi kolizije zakonov in prodajnega prava ZN. Poleg tega veljajo določila avstrijskega zakona o zavarovalnih pogodbah, avstrijskega trgovskega zakonika in avstrijskega civilnega zakonika.

(4) Kraj izpolnitve in izključno pristojno sodišče je Dunaj.

## Priloga

### A) 32. člen avstrijskega zakona o insolventnosti [Insolvenzordnung – IO] objavljen v BGBl. [Uradni List] I št. 29/2010

(1) Bližnji svojci so zakonci in osebe, ki so z dolžnikom ali njegovim zakonskim partnerjem v krvnem sorodstvu ali poročeni v neposredni liniji ali do četrtega kolena stranske sorodstvene linije, posvojenci in rejenci ter osebe, ki živijo z dolžnikom v zunajzakonskem razmerju. Zunajzakonsko sorodstvo je enakopravno zakonskemu.



(2) If the debtor is a legal person, a partnership or another entity with legal capacity to act, then

1. members of the management or supervisory body,
2. partners with unlimited liability and
3. shareholders as per section 5 Act on Substitute Equity [EKEG]

shall be deemed to be close associates of the debtor. The same applies for those persons to whom this related in the last year before the opening of the insolvency proceedings, and the close associates of all of these persons listed as per Par. 1. ■

(2) Če je dolžnik pravna oseba, osebna družba ali subjekt, ki je lahko stranka v sodnem postopku, veljajo

1. člani vodilnih ali nadzornih organov,
2. družbeniki z neomejeno odgovornostjo in
3. družbeniki v skladu s 5. členom avstrijskega

zakona o nadomestilu lastnega kapitala (EKEG) za bližnje svojce dolžnika. Enako velja za osebe, za katere je to veljalo v zadnjem letu pred začetkom insolvenčnega postopka, kot tudi za bližnje svojce teh oseb, naštetih v 1. odstavku. ■