



komercijalna banka
ad skopje

GENERAL CONDITIONS FOR ISSUANCE OF FX LETTERS OF GUARANTEE

ESSENTIAL CHARACTERISTICS OF OPERATIONS WITH FX LETTERS OF GUARANTEES

Komercijalna Banka AD Skopje (hereinafter: the Bank) issues FX letters of guarantee (hereinafter: guarantees) pursuant to the instructions (submitted application and accompanying documentation) received from the Applicant.

Establishing the legal relations of the bank guarantee is preceded by certain agreement relation (tender announcement, conclusion of agreements for purchase of goods, equipment, performance of construction works etc.), containing financial clause for the Applicant's obligation to provide a bank guarantee in favour of the creditor from the basic agreement, i.e. the beneficiary of the guarantee. The financial clause in the basic agreement defines all the issues regarding the guarantee: the bank guarantor, amount of the guarantee, validity term, type of guarantee, conditions of the guarantee etc.

The legal relations arising from the guarantee are separate and independent. The relation between the Bank and the Applicant occurs upon conclusion of an agreement for issuance of the guarantee, while the legal relation between the Bank and Beneficiary is set upon issuance of the guarantee.

The Applicant is obliged to compensate the Bank any amount paid by the Bank under the guarantee.

If the Beneficiary demands payment in accordance with the terms of the guarantee (activate the guarantee) and the bank finds that the demand is formally proper and corresponds to the terms of the guarantee, the Bank must effect the payment immediately under the activated guarantee, regardless of any notes and disputes arising from the basic agreement or from the basic debt and without obligation to check the authenticity of the statement given by the Beneficiary in its demand for payment.

The Applicant shall not have the right, on any way, including submission of requests for court bans or charges, to prevent the Bank from exercising the payment under the activated guarantee. The Applicant may express notes, objections and charges under the basic agreement only directly towards the Beneficiary, at its own risk. This shall also be applied in cases when the guaranteed obligation can not be fulfilled due to the reason which are beyond the control of the Applicant.

Having the foregoing in mind, prior to giving instructions and submitting the application for issuance of guarantee, the Applicant must define the finance clause of the basic agreement with the Beneficiary carefully.

The Applicant is obliged prior to issuance of the guarantee to check the draft-text of the requested guarantee with the beneficiary and upon full adjustment of the text with all the elements of the requested guarantee, to submit to the Bank signed draft-text expressing its consent for issuance of the requested guarantee with the text given.

FEES AND COMMISSIONS

As from the moment of issuance of the guarantee (bookkeeping records), until its liquidation (bookkeeping closure), the Bank shall charge fees and commissions for the guarantee issued.

The Bank shall charge fees and commissions for amendments to the guarantee or any other services the Bank performs in regards with the guarantee. The Bank is obliged to perform the services stated upon payment of the fees and commissions therefor.

The Applicant shall also bear all other costs of the Bank in regards with the guarantee, including the costs charged by other banks, as well as legal charges that may arise in regards with the guarantee.

The Bank is authorize to collect all the fees, commissions and costs occurred in regards with the guarantee from the accounts of the Applicant opened with the Bank, either in foreign currency or in denars. If there are not sufficient funds on the Applicant's account, the Bank shall charge the Applicant accordingly.

By signing the agreement for issuance of the guarantee the Applicant authorizes the Bank, without its additional consent, to make payment orders and use the funds from all its accounts opened with the Bank for payment of any obligations occurred in the country or abroad under the guarantee.

REVIEW OF DOCUMENTS

All the demands for payment, statements and documents presented under the issued guarantee shall be reviewed by the Bank with reasonable attention and care, in order to find out if they are in accordance with the terms and conditions of the guarantee.

The Bank is not obliged to check the correction and authenticity of the presented accompanying documentation (invoices, bills of loading, consignment note, protocols, certificates, confirmations, customs and forwarding documents, packing lists etc.) , as well as the signatures of the accompanying documentation submitted with the demand for payment under the guarantee, neither to determine the truthfulness of the statements given by the Beneficiary.

COMMUNICATIONS

If the Bank requests written instructions from the Applicant and does not receive without delay its written response or written confirmation, or if the Bank can not without delay realize contact with the Applicant, the Bank shall have the right to act at its own opinion and discretion, having in mind the interests of the Applicant and the respective circumstances.

The Bank shall notify the Applicant, for each debit, reduction or liquidation of the guaranteed amount as well as for receipt of demand for payment or any other documents from the Beneficiary of importance for the Applicant.

LIQUIDATION OF GUARANTEES

Upon expiry of validity, the Bank shall liquidate the guarantees in its bookkeeping records.

In any other case, the Bank shall liquidate or reduce the guaranteeing amount of the issued guarantees in its bookkeeping records, only upon fulfillment of the following conditions:

- receipt of tested SWIFT message from the beneficiary's bank or from the bank beneficiary of the counter guarantee, for release of all or a part of the liabilities under the guarantee,
- return of the original guarantee in the Bank;
- upon fulfillment of certain conditions specified in the wording of the guarantee,
- upon executed payment at demand for payment from the beneficiary (activated guarantee), or upon regular payment of the guaranteed liabilities for one-off payment guarantees exercised by the Applicant referring to the number of the guarantee.

Therefore, the Applicant is obliged at any payment under activation of the guarantee or at payment of the guaranteed liabilities for the one-off payment guarantees (Form 1450) to indicate the number of the guarantee.

The Applicant is obliged to undertake all the necessary activities and to do everything to liquidate the issued guarantee.