

# General conditions of insurance global insurance 2006

(GCI PRISMA Global 2006)

## Object

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**Art. 1** What losses will be indemnified under this insurance policy?

## Global Insurance

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**Art. 2** What does „obligation to offer all business for cover“ mean?

**Art. 3** What are the preconditions for getting insurance cover?

**Art. 4** When does cover begin and when does it end?

**Art. 5** What defines the contents and the scope of cover?

**Art. 6** What part of the risk is borne by the Insured for his own account?

**Art. 7** What are the limits to indemnification?

**Art. 8** How is the premium calculated and when must it be paid?

**Art. 9** What is the purpose of the deposit premium?

**Art. 10** Why are credit rating fees payable to PRISMA Risikoservice GmbH & Co. KG?

## Details of cover

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**Art. 11** What receivables are insured?

**Art. 12** What receivables are not insured?

**Art. 13** When does a receivable accrue?

**Art. 14** How are payments allocated to an account? When is the receivable paid?

**Art. 15** What receivables are insured under the Credit Limit? What consequences do the reduction or cancellation of the Credit Limit have?

**Art. 16** What is the purpose of the Maximum Extension Period?

**Art. 17** What is the significance of „suspension of cover“?

**Art. 18** What other obligations must be observed?

**Art. 19** What rights does PRISMA have?

**Art. 20** When does an Insured Event occur?

**Art. 21** What losses are not covered?

**Art. 22** When must a loss be notified? What documentation does PRISMA need to calculate indemnification?

**Art. 23** How is indemnification calculated?

**Art. 24** When is a claim paid? What rights are subrogated to PRISMA?

## Additional Provisions

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**Art. 25** What exchange rate is to be used for foreign policy currencies?

**Art. 26** What are the consequences of failure to comply with the duties of the Insured?

**Art. 27** Can the right to indemnification be pledged or assigned?

**Art. 28** What happens if the Insured becomes insolvent?

**Art. 29** How can this Policy be altered? What law applies?

## Definitions

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**The Insured** is the natural person or legal entity who/which concludes the insurance policy with PRISMA.

**PRISMA** (PRISMA Kreditversicherungs-AG) is the Insurer.

**The Buyer** is the natural person or legal entity who/which concludes the contract for the delivery of goods and/or the performance of services with the Insured and is obliged to pay him.

## Object

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### Art. 1 What losses will be indemnified under this insurance policy?

PRISMA will indemnify the Insured for losses due to bad debts in respect of legally secure receivables for goods delivered and services performed during the policy period due to the insolvency of Insured Buyers.

## Global Insurance

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### Art. 2 What does „obligation to offer all business for cover“ mean?

(1) The Insured undertakes to offer all his receivables to PRISMA for cover and to apply for adequate credit limits in respect of them (obligation to offer all business for cover).

The obligation to offer all business for cover applies to all receivables due from current and future Buyers which fulfil the following criteria:

- The Buyer is domiciled in a country listed in the Schedule to the Policy, and
- the existing or expected total outstanding receivables due to the Insured from the Buyer reaches or exceeds the Declaration Limit. The Declaration Limit is specified in the Schedule to the Policy.

(2) If the total outstanding receivables due from a Buyer exceeds the Credit Limit set, the Insured shall promptly apply for a higher Limit.

If the total amount due from a Buyer consistently lies below the Declaration Limit, the Insured can request the Limit to be deleted (Art. 15). If PRISMA has not set the Limit at the level requested by the Insured, the In-

sured shall make a new request in the amount needed at the latest after one year.

(3) The Insured applies for a Credit Limit or an increased Limit by placing an order for the credit assessment of a Buyer with PRISMA Risikoservice GmbH & Co. KG via Prisma Net or using the pre-printed form provided for this (Art. 10).

### Art. 3 What are the preconditions for getting insurance cover?

The preconditions for the granting of insurance cover are:

- That PRISMA has set a Credit Limit on the Buyer and
- that there is room for the outstanding receivables within the Limit (Art. 15).

PRISMA will set the Credit Limit in a written Credit Limit Notification.

### Art. 4 When does cover begin and when does it end?

Cover on a Buyer begins on the date specified in the Credit Limit Notification (Art. 3), but not prior to the commencement of the validity of the insurance policy. It ends on the expiry of the policy. Any Insured Event must occur within this period.

### Art. 5 What defines the contents and the scope of cover?

The contents and the scope of cover are defined by the insurance policy, unless otherwise set out in the Credit Limit Notification (Art. 3).

### Art. 6 What part of the risk is borne by the Insured for his own account?

The Insured shall bear a percentage of each covered loss (Art. 23) for his own account. He is not permitted to insure or otherwise secure this self-retention elsewhere. The self-retention is specified in the Schedule to the Policy. PRISMA may however set a higher self-retention in the Credit Limit Notification (Art. 3).

### Art. 7 What are the limits to indemnification?

(1) PRISMA will indemnify the Insured for each Buyer only up to the maximum of the Credit Limit set on that Buyer less the Insured's self-retention.

(2) The total amount of all indemnifications in any one insurance year is limited to the Maximum Liability. The Maximum Liability is specified in the Schedule to the Policy.

(3) The Maximum Liability applies independent of the amounts set as Credit Limits by PRISMA.

#### **Art. 8 How is the premium calculated and when must it be paid?**

(1) The premium is calculated according to the method specified in the Schedule to the Policy and the Additional Conditions. The Insured shall however pay in every insurance year at least the agreed Minimum Annual Premium (see the Schedule to the Policy). If the policy is terminated before the normal expiry date (Art. 28), the Minimum Annual Premium will be payable pro rata.

(2) The Insured undertakes to provide the necessary information for the calculation of the premium by the date agreed for this (see the Schedule to the Policy).

(3) If the Insured, despite being sent a written reminder, is more than one month in arrears with the declaration of such information, PRISMA is entitled to estimate the missing amounts. The premium based on such estimation can be charged to the Insured (provisional premium).

This rule does not absolve the Insured from the obligation to make a declaration. If he sends the missing declaration within 6 months after the provisional premium was estimated, PRISMA is obliged to correct the premium invoice accordingly. If the declaration is submitted later than this, PRISMA is entitled, but not obliged, to correct the premium invoice.

(4) Premium is payable on receipt of the invoice.

#### **Art. 9 What is the purpose of the deposit premium?**

PRISMA has the right to set off the deposit premium paid by the Insured at the commencement of the Policy against overdue premiums or to retain the deposit until the expiry of the Policy.

#### **Art. 10 Why are credit rating fees payable to PRISMA Risikoservice GmbH & Co. KG?**

(1) PRISMA Risikoservice GmbH & Co. KG carries out credit assessment on behalf of the Insured (Art. 2) and monitors on an ongoing basis the creditworthiness of all Buyers on which a Credit Limit has been set. PRISMA sets the Credit Limits based on the results of this assessment and monitoring.

(2) PRISMA is entitled to pass on any information received from the Insured in connection with this Insurance Policy to PRISMA Risikoservice GmbH & Co. KG. The Insured hereby authorizes the Insurer irrevocably to do this.

(3) The Insured pays a credit rating fee as contribution towards the costs of such credit assessment and monitoring. The fee is specified in the Schedule to the Policy. It applies per Credit Limit and year and is invoiced by PRISMA Risikoservice GmbH & Co. KG. The credit rating fee is payable on receipt of the invoice.

#### **Details of cover**

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#### **Art. 11 What receivables are insured?**

(1) Cover is provided only for undisputed and invoiced receivables due to the Insured which fulfil the following criteria:

- a) They are in respect of goods delivered and services performed in the normal course of the Insured's business in his own name and on his own account,
- b) the Buyer is domiciled in a country listed in the Schedule to the Policy, and
- c) the payment term agreed with the Buyer does not exceed the Maximum Extension Period (Art. 16).

(2) Freight costs and insurance premiums, discounts and charges for bills of exchange are included in cover to the extent that they were incurred in connection with insured receivables (Par. 1).

(3) In the case of Buyers domiciled in Austria, cover includes Austrian VAT. In any other case, any VAT or comparable tax charged by the Insured in his invoice is not insured.

(4) For receivables which are invoiced within 5 weeks of their accrual (Art. 13), cover exists prior to invoicing.

## **Art. 12 What receivables are not insured?**

The following are excluded from cover:

- a) receivables which accrued prior to the commencement of the Insurance Policy,
- b) receivables which were already older than the Maximum Extension Period (Art. 16) at the commencement of cover (Art. 4),
- c) receivables which accrued during a period of suspension of cover (Art. 17),
- d) receivables which accrued subsequent to the occurrence of an Insured Event or to the termination of the Insurance Policy,
- e) receivables or parts of receivables for which there was not sufficient room within the Credit Limit (Art. 15).
- f) receivables in respect of liability for damages, late interest, contractual penalties, costs arising from the disputed acceptance of goods or services by the Buyer or exchange rate losses,
- g) receivables or parts of receivables arising out of discounts originally granted and subsequently cancelled,
- h) receivables due from private persons (consumers as defined by the Austrian Consumer Protection Act),
- i) receivables due from public Buyers,
- j) receivables due from any company in which the Insured directly or indirectly holds a majority interest or can be shown to exert a controlling influence on management decisions, or vice versa,
- k) receivables in respect of the letting and leasing of real estate,
- l) receivables due in respect of the delivery of goods and/or the performance of services for which there has been a failure by the Insured to obtain any documents or authorizations required,
- m) receivables in respect of the delivery of goods whose import into the country of destination contravenes a prohibition in force.

## **Art. 13 When does a receivable accrue?**

In the case of the delivery of goods, the receivable accrues on the date on which the goods were despatched.

In the case of services, the receivable accrues continually as and when the service is performed. One day's performance is considered to be given from the moment the day starts.

## **Art. 14 How are payments allocated to an account? When is the receivable paid?**

- (1) Each and every payment made prior to the occurrence of an Insured Event is allocated to the outstanding account it is intended for. Payments received without any indication of their purpose are allocated to the oldest outstanding account in the chronological order of due dates, whether this is overdue or has not yet fallen due.
- (2) If the Insured has uninsured outstandings as well as insured outstandings, he is not permitted to agree any form of amortization of payments with his Buyer which would put PRISMA at a disadvantage. If the Insured fails to comply with this obligation, PRISMA is entitled to allocate all payments received to the oldest account outstanding at the time of payment.
- (3) Payments received subsequent to the occurrence of an Insured Event shall also be allocated as intended. If it is not possible to determine whether a payment was intended to pay an insured or an uninsured account, it will be allocated pro rata.
- (4) Cheques and bills of exchange are only deemed to have been paid when they are honoured.
- (5) If the Buyer is domiciled in a country which has no free currency market and if the equivalent value of the outstanding amount is paid onto an account in that country for the benefit of the Insured, this credit transaction is deemed to constitute payment.

## **Art. 15 What receivables are insured under the Credit Limit? What consequences do the reduction or cancellation of the Credit Limit have?**

- (1) The Credit Limit always covers the oldest outstanding accounts at any given time. Any receivables in excess of the Credit Limit can come under cover if and to the extent that a corresponding amount of cover for them becomes free within the Limit due to the payment of insured accounts.
- (2) In the case of deterioration of the risk or for other material reasons which PRISMA deems to justify such action, PRISMA is entitled to reduce or cancel cover on the Buyer concerned at any time. The reduction or can-

cellation becomes effective on receipt by the Insured of the Credit Limit Notification.

(3) If a Credit Limit is reduced, uninsured accounts can only come under cover after all outstanding insured accounts have been paid, if and to the extent that there is a free amount of cover for them in the reduced Credit Limit.

(4) If a Credit Limit is cancelled, cover is automatically suspended (Art. 17).

#### **Art. 16 What is the purpose of the Maximum Extension Period?**

(1) The Maximum Extension period is specified in the Schedule to the Policy. PRISMA may however set a different Maximum Extension Period in the Credit Limit Notification (Art. 3). It starts to run from the invoice date of the account.

(2) If a Buyer has failed to pay either an insured or an uninsured account on the expiry of the Maximum Extension Period, or if it becomes clear to the Insured that the Maximum Extension Period will be exceeded (e.g., because he has accepted a bill of exchange or agreed to deferred payment terms),

- the Insured must inform PRISMA without delay and – independently of this –
- cover is automatically suspended (Art. 17).

(3) The Insured must place an order with an attorney or a collection agency for the collection of the account at the latest one month after the Maximum Extension Period is exceeded. Any other action is only permitted after obtaining the prior consent of PRISMA.

(4) In the case of invoices with an amount of no more than EUR 3,000 still outstanding at the point at which the Maximum Extension Period was exceeded, or if the non-notification of the exceeding of the Maximum Extension Period is older than 2 years (calculated from the date of the oldest outstanding invoice), PRISMA will not assert its right to terminate cover pursuant to Pars. 2 and 3.

#### **Art. 17 What is the significance of „suspension of cover“?**

As soon as cover is suspended and for the entire suspension period,

- no already existing uninsured receivables can come under cover within the Credit Limit and
- receivables which accrue subsequently are excluded from cover.

Receivables which were already insured shall remain insured. The suspension of cover will cease to be effective when and to the extent that PRISMA gives written notification of the fact.

#### **Art. 18 What other obligations must be observed?**

(1) The Insured shall provide all information known to him which may have material relevance for granting cover in the Credit Limit Request (Art. 2). This applies in particular to any circumstances affecting the creditworthiness of the Buyer. He undertakes to provide details of his outstanding accounts with insured Buyers to PRISMA at any time the latter so requests.

(2) In the case of goods delivered to Austrian and German Buyers the Insured shall agree legally valid simple retention of title with his Buyer. In the case of German Buyers he shall also agree the extended forms of retention of title (processing/mixing, all monies/outstanding balances and advance assignment). If these security instruments have not been agreed or have only been agreed in a limited form (e.g., because the Buyer's Conditions of Purchase contain contrary provisions), he is obliged to inform PRISMA.

(3) The Insured undertakes to notify PRISMA without delay of any circumstances which could lead to a deterioration of the risk, in particular

- a) if there is any serious deterioration in the Buyer's payment behaviour, or the Insured becomes aware of any negative information concerning the Buyer's financial situation,
- b) if cheques or bills of exchange are not honoured for lack of funds or direct debits are returned or bills of exchange are prolonged beyond the original due date,
- c) if the Insured suspends deliveries or performance of services for reasons of creditworthiness or is only will-

ing to continue deliveries against prepayment or cash payment,  
d) if he orders an attorney or a collection agency to collect the debt or takes court action to secure payment of the debt,  
e) if insolvency as defined by Art. 20 has occurred or its occurrence is imminent.

(4) The Insured undertakes to obtain the consent of PRISMA before concluding any composition agreement, agreement for the Buyer to pay in instalments or similar agreement.

(5) The Insured agrees, at his own expense, to use all due and reasonable care to ensure that losses are prevented or minimized and will thereby take all appropriate action and make full use of his legal rights and will implement instructions given by PRISMA.

#### **Art. 19 What rights does PRISMA have?**

(1) The Insured hereby authorizes PRISMA to enter into agreements on behalf of the Insured with any of his Buyers to protect the insured receivables and to reduce the risk.

(2) PRISMA is entitled to examine or to have examined by others authorized by it any documents material to the policy and to make or require to be made copies thereof.

#### **Art. 20 When does an Insured Event occur?**

(1) An Insured Event is deemed to have occurred on the date when the Buyer became insolvent. The Buyer is deemed to be insolvent within the meaning of the present policy when:

- a) court insolvency proceedings have been opened or proceedings have been rejected by the court for lack of sufficient assets or
- b) court composition proceedings have been opened or
- c) court insolvency proceedings not covered under a) or b) have been opened which grant the Buyer protection from his creditors, or
- d) all the Buyer's creditors generally have agreed to an out-of-court settlement – with the exception of a mere deferral of payments - or

e) the execution of a judgement title obtained by the Insured has failed to satisfy the debt in whole or in part or

f) the economic situation of the Buyer has been demonstrated to be so unfavourable that payment seems unlikely since the execution of a judgement title, a winding-up petition or other measures taken by the Insured against the Buyer have no prospect of success.

Insolvency is deemed to have occurred on the date when

in cases a), b) and c) above, the court order was passed, in case d), all the Buyer's creditors generally agreed to the settlement,

in case e), the day of the execution to satisfy the debt, in case f), the day on which the Insured received written proof that the planned measures against the debtor had no prospect of success.

(2) An Insured Event is also deemed to have occurred if and when

- following the delivery of goods or the performance of services, insolvency of the Buyer appears imminent due to deterioration of his creditworthiness,
- the goods delivered, to the extent that they are still under the control of the Insured or have been reclaimed by him and, with the consent of PRISMA, have been sold at the best price realizable elsewhere and
- the proceeds of the sale are still lower than the receivables due from the original Buyer.

The Insured Event here is deemed to have occurred on the date on which the loss due to the sale of the goods at a lower price is ascertained.

Cover is automatically suspended on the occurrence of an Insured Event (Art. 17).

#### **Art. 21 What losses are not covered?**

The following losses are excluded from cover:

- a) where the loss is in whole or in part attributable to war, hostilities, civil commotion, riots, revolution, strike, confiscation, obstruction of the traffic of goods and the transfer of payments by public authorities or state institutions, natural disasters or the direct or indirect effects of nuclear energy.

b) Losses which occurred prior to commencement of cover or subsequent to the expiry of cover (Art. 4).

### **Art. 22 When must a loss be notified? What documentation does PRISMA need to calculate indemnification?**

(1) The Insured must make a claim for indemnification to PRISMA within 12 months of the occurrence of an Insured Event. The claim to indemnification lapses if it is not received by PRISMA within this period. (Period of preclusion).

(2) The Insured undertakes to provide all information and all documentation which PRISMA deems necessary in order to verify the occurrence of the Insured Event and the undisputed legal status of the receivables as well as for the calculation of the insured loss.

### **Art. 23 How is indemnification calculated?**

(1) In ascertaining the insured loss, the amount due from the Buyer at the time of the Insured Event will be reduced by the following in the order of their appearance here:

- a) uninsured accounts or uninsured parts of accounts due,
- b) accounts which accrued subsequent to the occurrence of the Insured Event (Art. 14 Par. 3),
- c) proceeds arising out of any rights and security instruments which were a precondition for cover
- d) the following:
  - aa) rights of set-off,
  - bb) reclaimed goods and proceeds under retention of title rights,
  - cc) proceeds from the sale of goods as defined by Art. 20 Par. 2,
  - dd) proceeds from any other rights and security instruments
  - ee) any dividends in liquidation or composition received.

If it is not possible to establish whether the reductions mentioned above are in respect of insured or uninsured accounts, they will be set off against the loss in the proportion of insured to uninsured receivables.

(2) Any payments recovered or the proceeds from relevant sales of goods received between the date of reduction or cancellation of cover and the occurrence of

the Insured Event are to be similarly regulated by the same provisions.

(3) The Austrian VAT refunded by the financial authorities in respect of bad debts will not be deducted in the case of Buyers domiciled in Austria.

(4) PRISMA will indemnify the insured loss after deducting the Insured's self-retention, subject to the Maximum Liability (Art. 7) not being exceeded.

### **Art. 24 When is a claim paid? What rights are subrogated to PRISMA?**

(1) PRISMA will indemnify a claim when the final insured loss has been established.

(2) If the amount of the loss has not been definitely established 3 months after the Insured Event has occurred and the required documentation has been submitted, PRISMA will make a provisional loss settlement. In this connection PRISMA will estimate the amounts which are deductible under Art. 23 in so far as these amounts have not yet been definitely established. If it is not possible to make any approximate estimate, a provisional indemnification will first of all be made in the amount of 50 % of the probable insured loss less the Insured's self-retention. The final loss settlement will be made as soon as the necessary documentation is received.

(3) PRISMA will be subrogated to all legal rights and remedies the Insured has against his Buyer or third parties as well as all secondary rights up to the amount indemnified. The Insured is obliged to undertake all necessary actions for the transfer of such rights at the request of PRISMA. If the insured receivables have been transferred by way of security (Sicherungs-zession), PRISMA is entitled to withhold indemnification until the assignee has agreed to reassign the receivables to PRISMA.

(4) Any payments or other transactions which reduce the outstanding debt which were not included in the loss calculation pursuant to Art. 23 must be notified by the Insured to PRISMA. PRISMA will then make a revised loss settlement where appropriate.

## Additional Provisions

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### **Art. 25 What exchange rate is to be used for foreign policy currencies?**

(1) The policy currency is the Euro (EUR). It shall be used for all insured accounts, premium payments, credit rating fees and indemnifications.

(2) For the purpose of ascertaining the amount of receivables, invoices denominated in currencies other than the policy currency will be converted into the policy currency at the reference rate of the European Central Bank on the invoice date. Currencies for which no reference rate is available will be converted at the officially published rate of the Austrian National Bank. If no such rate is officially published on the day concerned, the course applying on the last day previous to that on which such a rate was published shall apply.

(3) For the calculation of indemnification, the rate will be that applying on the day on which the Insured Event occurred, subject however to this not being higher than that on the invoice date.

(4) Amounts paid or deposited in the debtor's country in a currency other than the agreed currency of the contract between him and the Insured, but not yet transferred or converted into the agreed contract currency shall be converted at the last official foreign exchange rate in the debtor's country on the day prior to the payment or depositing of the amount concerned.

### **Art. 26 What are the consequences of failure to comply with the duties of the Insured?**

(1) PRISMA is released from its liability to indemnify a claim if the Insured fails to comply with any of his legal or contractual obligations or with a cardinal obligation under the Policy. This is independent of any cancellation of the Policy.

(2) PRISMA will not plead exemption from liability to indemnify if the Insured can show that

- he is not to be held responsible for the non-fulfilment of his legal or contractual obligations or
- that this has had no influence on the occurrence of the Insured Event or on the amount of indemnification to be paid by PRISMA.

### **Art. 27 Can the right to indemnification be pledged or assigned?**

It is not permissible to pledge the right to indemnification in any form.

In any assignment of the right to indemnification, all legal remedies available to PRISMA, as well as the right of set-off, shall also be valid against the assignees. The amount of the indemnification will however only be ascertained in consultation with the Insured.

### **Art. 28 What happens if the Insured becomes insolvent?**

If the Insured becomes insolvent as defined by the Austrian Insolvency Act, PRISMA is entitled to cancel the Policy with immediate effect.

Independently of such cancellation, cover expires at the latest when winding-up proceedings in respect of the Insured's assets are opened or the winding-up petition is rejected for insufficient assets.

### **Art. 29 How can this Policy be altered? What law applies?**

(1) Alterations or modifications of the policy are only valid if set out in a written supplement to the Schedule or otherwise confirmed in writing by the Insurer. Verbal supplementary agreements are invalid. The Policy language is German.

(2) This policy is to be governed and construed in all other respects according to the provisions of the Austrian Insurance Contract Law, the Austrian Commercial Code and the Austrian General Civil Code in addition to the contractual provisions. Place of performance and of jurisdiction shall be Vienna.