



Bank Guarantees
Exploiting know-how is crucial.
To keep the wheels of business turning.



UBS can strengthen your position as first-choice business partner.

In large-scale transactions, especially in international business, it goes almost without saying that bank instruments which secure performance and payment obligations or which finance goods and services should be part of the deal.

When choosing such instruments it will pay to look for a bank partner which has broad-based knowledge of trade & export finance, with a command of the fine detail as well as a broad overview of the area.

Among nationally and internationally active companies, UBS is a bank of preference for trade & export finance. There are two main reasons for this. Firstly, we can provide our clients with effective support anywhere and at any time, thanks to our capacity, infrastructure and global network of connections. Secondly, our in-house specialists can bring in-depth knowledge and wide-ranging experience to bear on all aspects of trade & export finance.

Our range of products and services includes all kinds of bank guarantees, including surety bonds and standby letters of credit, as well as payment instruments such as letters of credit, documentary collections and export finance, forfaiting and discounting services. Our experts will provide in-depth advice to guide you in your choice of the right instrument or combination of instruments to suit each individual case. The most suitable solution will be made available in good time, and you can rely on us to process it smoothly.

Safeguard your business relationships – the right way.

The specialists at UBS have comprehensive knowledge and long experience of the relevant Swiss legislation and international guidelines. With UBS as your guarantor bank, you can go about your business with comprehensive security – to the benefit of all involved. And if you can offer this security, then in many cases you will be your clients' first choice business partner.

Handling bank guarantees requires in-depth knowledge. Here are the main things you need to know.

Whenever a contract is concluded, the contracting party is expected to fulfil its obligations. If you are the supplier of goods or services, however, it can sometimes be difficult for you to assess the financial position of the buyer. And, if you are the buyer, you may well lack information about your supplier's ability to deliver. However, such uncertainties need not be an obstacle to successful business transactions. That is the purpose of the bank guarantees provided by UBS.

With a guarantee, the bank undertakes to pay a certain sum to the beneficiary should the contracting partner fail to make a payment or provide a service as agreed.

Bank guarantees – securing payments and services systematically.

Bank guarantees are a way of providing security for a wide variety of performance and payment obligations entered into when tendering offers or signing contracts in connection with advance payments or goods deliveries against open account. Guarantees can also serve as security for loans.

The standby letter of credit has its roots in American law and can be used in lieu of a guarantee. It is used mainly in import-export business with American States, but also frequently in trade with the Far East. Standby letters of credit are used instead of documentary credits and guarantees to secure both payment and performance. US banks do not use guarantees.

A legal form of bank guarantee frequently used in transactions with Swiss contracting partners is the surety bond, whereby the guarantor obligates himself toward the obligee (creditor) of the principal obligor (main debtor) to answer for the latter's obligation. Unlike a guarantee, which is abstract in character, a surety bond establishes an accessory obligation towards the creditor and, as such, defences may be used against claims in respect of the underlying transaction. One of the most common forms of surety is the building contractor's guarantee, which is used in dealings with craftsmen.

UBS can show you the options and benefits of using bank guarantees in your commercial dealings.

This brochure summarizes what you need to know about bank guarantees and the different types available. However, the brochure is not exhaustive and cannot possibly take all conceivable eventualities into account. So, here as elsewhere, the rule is: for your own business dealings, customized advice from our UBS specialists is always the most likely path to success.

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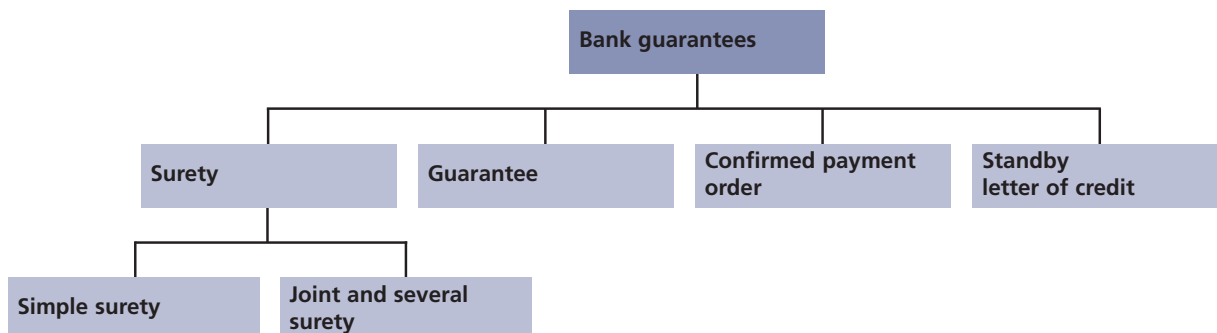
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Picture: birch forest

Each component needs careful consideration.
Because it helps determine the success of the whole.

1 Bank guarantees as a security instrument

Bank guarantee is the generic term for the legal forms described below:



These legal forms are predominantly used to secure performance. They provide the contracting parties with the assurance that the transaction they have entered into will be carried out. This element of security is of central importance in international trade, where agreements are entered into between parties from different legal and cultural backgrounds. For most customers purchasing goods or services, it is difficult to assess the potential expertise or financial prospects of a supplier. Purchasers therefore rightly require some guarantee that the seller will be able to perform as promised. To this end, the parties will often agree to provide a bank guarantee for the purpose of securing performance. In international trade, the use of bank guarantees as a means of securing payment is basically restricted to (default) payment guarantees. On the international scene, non-Swiss contracting parties hardly ever accept sureties and demand guarantees governed by Swiss law, as they are unwilling to deal with the specifics of the Swiss Code of Obligations (SCO).

Guarantees are not usually confirmed, countersigned or endorsed. If a countersignature is required, the international standard form of indirect guarantee should be used (see page 12). In the context of securing performance of the contract, letters of credit should also be mentioned as a means of securing payment. Further information on this topic may be found in our brochure "Documentary Credits and Collections".

The main difference between a letter of credit and a guarantee is that letters of credit are basically used as a payment instrument, whereas guarantees provide assurance that contractual obligations will be fulfilled.

2 Legal forms of bank guarantee

2.1 Surety (surety bond)

The legal basis of a surety is defined in Art. 492 ff. of the Swiss Code of Obligations: "In a contract of guarantee (i. e. surety), the guarantor obligates himself toward the obligee of the principal obligor to answer for the latter's obligation" (SCO Art. 492 para. 1).

The law as applied to sureties consists of numerous individual provisions with complex interrelationships. In banking practice, this has led to the use of standardized forms which contain references to the text of the law.

Unlike the abstract payment obligation or guarantee, sureties are of an accessory nature (see 2.2). They presuppose a valid principal obligation. The surety therefore shares the fate of the principal obligation as far as existence, scope and enforceability are concerned. If the principal obligation ceases to have effect, then the surety also ceases to have effect.

According to Art. 502 para. 1 of the Swiss Code of Obligations, "the guarantor has the right and the obligation to raise against the obligee the objections and defences belonging to the principal obligor which are not based upon the principal obligor's insolvency."

This method of securing performance is hardly ever accepted abroad, as non-Swiss partners are unwilling to deal with the specifics of the Swiss Code of Obligations. It is entirely in your interests to obtain an instrument which guarantees you swift enforcement of any claims.

In accordance with Art. 495 para. 1 of the Swiss Code of Obligations, the obligee can require the simple guarantor to pay only if the following conditions apply:

- the principal obligor has gone into liquidation after the surety has been entered into,
- the principal obligor has been granted an extension of time to compound with its creditors,
- the creditor (obligee) has exercised due diligence in taking proceedings to enforce payment pending issue of a final certificate of shortfall,
- the principal obligor has transferred its domicile abroad and legal action may no longer be brought in Switzerland, or
- as a consequence of such transfer of domicile abroad, there is a significant impediment to bringing legal action against the principal obligor.

If pledges or mortgages exist for the guaranteed claim, the guarantor can demand that the obligee satisfy the debt first from such pledges or mortgages unless the principal obligor has become insolvent or has been granted protection from creditors (SCO Art. 495 para. 2). In accordance with Art. 496 para. 1 of the Swiss Code of Obligations, the joint and several guarantor can be ordered to pay on behalf of the principal obligor and before realization of the real estate mortgages if the principal obligor is in arrears with his or her payment despite reminders or is clearly insolvent.

2.2 Guarantee

In legal and banking practice in Switzerland the following definition is used:

"A bank guarantee is a one-way contract between a bank as the guarantor and a beneficiary as the party to whom a guarantee is made. Under this contract the bank undertakes to make payment to the beneficiary within the limits of a stated sum of money, if a third party fails to effect performance or if some other event materializes or fails to materialize."

Since a contract of guarantee, unlike a surety, is not explicitly regulated by law, the following interpretations are held to apply in Switzerland:

- where an agreement is used to create a binding obligation on a third party (SCO Art. 111),
- where there is a confirmed instruction directing payment to a third party (SCO Art. 466 ff.).

In this context the "Uniform Rules for Demand Guarantees" (ICC Publication No. 458) of the International Chamber of Commerce, Paris, governing guarantees, should be mentioned, since guarantees may be made subject to these rules (see Chapter 9, page 21 ff.).

In each case a contract of guarantee has the following characteristics: The contract of guarantee contains an abstract promise to perform and is a separate obligation independent of the underlying transaction. This means that the guarantee secures specific performance, independently of whether or not such performance is owed.

For this reason the guarantor cannot raise any objections based on the underlying transaction and is obliged to pay in the event that the situation provided for in the guarantee arises. In general, the text of the guarantee will include the stipulation that the guarantor is obliged to pay upon first demand by the beneficiary.

Unlike sureties, guarantees may be valid in principle without the existence of a written contract. In practice, all guarantees are recorded in writing to serve as formal evidence. If the principal obligor defaults, the beneficiary can turn directly to the guarantor, who is obliged to pay. Since the guarantee is independent of the underlying contractual relationship, it is easy for the beneficiary to apply and has become a widely used security instrument, particularly in international trade.

The wording of the guarantee is based on the purpose for which it is to be used. Guarantee agreements may therefore differ substantially from each other, owing to the special requirements of the underlying transaction, local practices and the legal position in the countries in which they were issued.

2.3 Confirmed payment order (payment undertaking)

Confirmed payment orders are perhaps better known as "payment undertakings". Under SCO Art. 468, a payment undertaking, like a guarantee, comprises an irrevocable, non-accessory obligation to pay. This payment may be subject to certain conditions. This means that the obligation to pay is effectively subject to compliance with the conditions referred to in the confirmed instruction.

Under the Swiss Code of Obligations, the instruction amounts to a contract authorising the transfer of money, securities or other fungibles for the account of the authorising party to a third-party beneficiary entitled to receive the same in its own name (SCO Art. 466). More specifically, the client ("principal") authorises the bank ("agent") to pay a stipulated amount to a beneficiary ("payee") on its behalf. The instruction therefore constitutes an indirect form of payment. Instead of a sum of money, the instruction may direct the payment of securities or other fungibles, such as precious metals. The principal may instruct the bank to pay the beneficiary only under certain conditions, for example against a statement by the beneficiary, or on presentation of documents.

According to the Swiss Code of Obligations, the bank's contractual obligation to pay does not arise from the instruction to pay, but only from the bank's unconditional statement of acceptance in relation to the beneficiary (SCO Art. 468 para. 1). As far as the principal is concerned, the instruction to the bank is also only revocable if the bank has not confirmed its acceptance of the instruction to the beneficiary (SCO Art. 470 para. 2). Unlike sureties or guarantees, payment made following an instruction to pay does not constitute indemnification for the nonperformance of a third party.

2.4 Standby letter of credit

The standby letter of credit comes from the banking legislation of the United States, which forbids US credit institutions from assuming guarantee obligations vis-à-vis third parties. To circumvent this rule, the US banks created the standby letter of credit, which is based on the Uniform Customs and Practice for Documentary Credits. Like the guarantee, the standby letter of credit is of an abstract nature, i.e. legally separated from the underlying transaction. In the case of a standby letter of credit, the documents stipulated in the claim clause must be submitted within the specified period. These documents should state that the client (exporter) has not met or insufficiently fulfilled his or her performance obligations or the debtor has not met a payment on time. The standby letter of credit basically fulfils the same purpose as a guarantee: it is payable upon first demand and without objections or defences on the basis of the underlying transaction. It is up to the beneficiary to decide whether a standby letter of credit may be given.

On 1 January 1999, the International Chamber of Commerce introduced the "ISP 98" (International Standby Practices), new guidelines which were drawn up especially for standby letter of credit business (see chapter 10, page 25 ff.).

In practice, however, most standby letters of credit are still issued under the Uniform Customs and Practice for Documentary Credits.

Picture: bridge

It's not always what's on top that counts.
Only a firm anchorage can guarantee security.

3 Structure of a bank guarantee payable upon first demand

As contracts of guarantee are not regulated by law, the contracting parties have a certain amount of leeway in wording the contract according to the freedom of contract principle under the Swiss Code of Obligations. The following three features always have to be included in a bank guarantee:

- Introduction: preamble,
- Main section: guarantee clause,
- Duration of obligation: expiry clause.

3.1 Introduction: preamble

The contractual relationship between the obligor in the underlying transaction and the beneficiary is set out in the preamble.

3.2 Main section: guarantee clause

The guarantee clause is the core component of any guarantee. It obligates the guarantor (bank), on behalf of the principal obligor (bank client), to pay a sum of money to the beneficiary (generally a contracting partner of the principal obligor in the underlying transaction). Payment must be made upon first demand and is independent of the underlying transaction (abstractness). The guarantee clause contains the following elements:

- designation of the guarantor and the beneficiary,
- amount of the guarantee (total, currency),
- definition of the circumstances under which the bank can be required to pay.

Since the bank guarantee is independent of the underlying transaction, the guarantor does not need to verify whether a claim is justified. All the guarantor has to do is make sure that the demand for payment made by the beneficiary of the guarantee, as well as any other documents described in the guarantee, appear to correspond to the terms thereof.

3.3 Duration of the obligation: expiry clause

The expiry clause governs the duration of the obligation entered into. Any demand for payment must reach the branch of the guarantor named in the guarantee deed on or before the specified date. Otherwise the beneficiary will forfeit his or her rights under the guarantee.

3.4 Additional clauses

Besides the three main features mentioned above, guarantees may contain additional clauses, depending on the type of transaction to be covered:

3.4.1 Reduction clause

This clause sets out the conditions for reducing the guarantor's liability.

Example:

"With each payment under this guarantee our liability will be reduced."

3.4.2 Identification clause

This clause ensures that the claim is being made by the legitimate beneficiary.

Example:

"For the purpose of identification your request for payment must be presented through the intermediary of a first-rate bank, together with a confirmation that the signature is legally binding."

3.4.3 Effective clause

This additional clause sets out more precisely when and under what circumstances a guarantee enters into force, usually in combination with the expiry clause (see 3.3).

Example:

"This guarantee shall enter into force on ... and will remain valid until" or "This guarantee shall enter into force upon receipt of the amount ... for the account of company X at (bank) in XY and will remain valid until"

3.5 Applicable law and place of jurisdiction

3.5.1 General rule

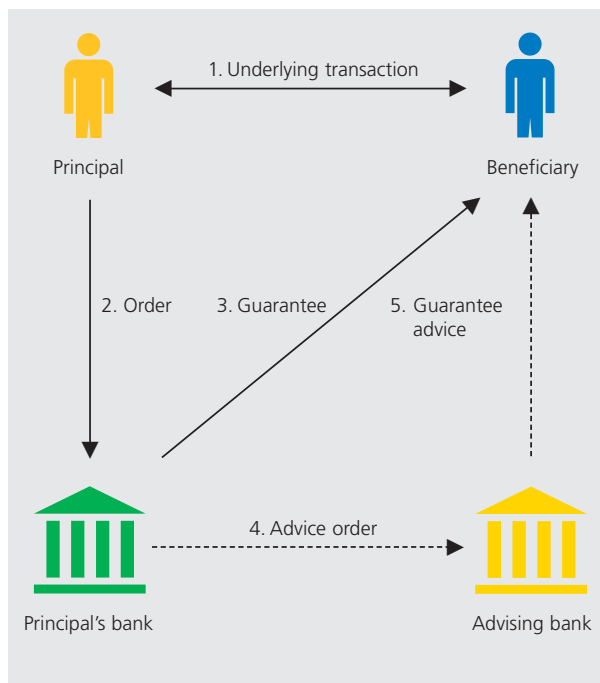
Unless otherwise agreed, bank guarantees are subject to local laws applying to the issuing bank.

3.5.2 Exception

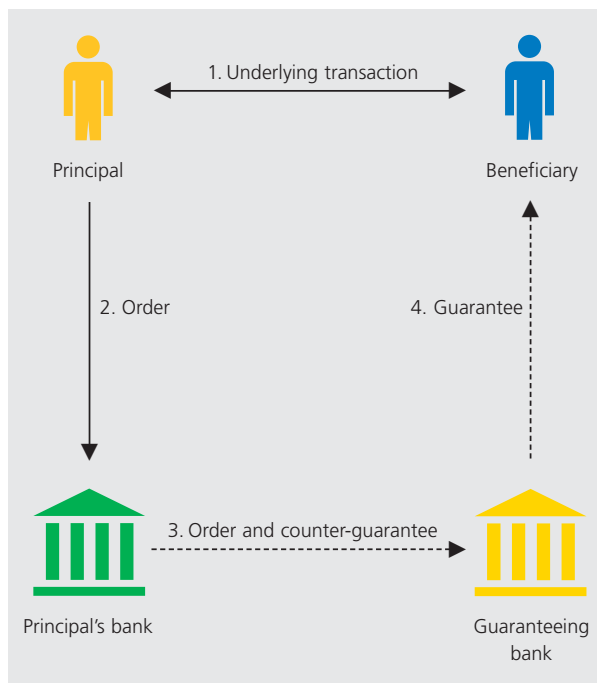
Indirect guarantees are an exception to this rule. Here the guarantee is not given directly to the beneficiary, but via a second bank authorised to do so – under the counter-liability and counter-guarantee of the first bank. Nowadays, foreign banks stipulate that this counter-guarantee from the Swiss bank should also be subject to the law of the country in which the foreign bank is located. In this case, the law of the relevant country will also apply in respect of claims made by the foreign bank under the counter-guarantee of the Swiss bank.

4 Direct and indirect guarantees

Direct guarantees



Indirect guarantees



4.1 Direct guarantees

A direct guarantee arises when the client authorizes the bank to issue a guarantee directly to the beneficiary.

4.2 Indirect guarantees

With an indirect guarantee, a second bank is involved. This bank (usually a foreign bank with head office in the beneficiary's country of domicile) is requested by the initiating (Swiss) bank to issue a guarantee in return for the latter's counter-liability and counter-guarantee. Thus the initiating (Swiss) bank protects the guaranteeing (foreign) bank from the risk of loss which could arise from enforcement of the guarantee issued. It formally pledges to pay the amounts claimed under the guarantee upon first demand by the guaranteeing bank.

4.3 Scope of application

Direct guarantees are used primarily in domestic business. However, an accessory security in the form of a surety is often enough. This is issued directly to the beneficiary in the same way as a direct guarantee. Guarantees, on the other hand, are always used where it is important that the bank's undertaking to provide security not be contingent on the existence, validity and enforceability of the principal obligation relationship. For this reason guarantees are frequently employed in cross-border business transactions, since their non-accessory legal status means that the beneficiary is able to enforce its rights rapidly. Furthermore, guarantees have the advantage of being more easily adapted to foreign legal systems and practices because they have no prescribed form.

Indirect guarantees are mainly issued in connection with export business – in particular when government agencies or public entities are the beneficiaries. In addition, many countries do not accept foreign banks as guarantors due to legal provisions or other form requirements (e.g. Middle-Eastern countries).

5 Types of guarantees and sureties

This chapter provides information on the most relevant types of guarantees and sureties along with useful tips regarding:

- scope,
- purpose of guarantee,
- indication of the amount guaranteed and the lifetime of the guarantee,
- special features.

The appendix contains the relevant sample texts.

5.1 Tender bond/bid bond

Scope of application

Primarily in export business, with project tenders.

Purpose

To secure any claims by the party calling for tenders on the bidder in the event of withdrawal of the bid before its expiry date or if the bid is modified unilaterally – or if the bidder, upon being awarded the contract, refuses to sign the contract or provide further guarantees on request.

Amount

Stipulated in the terms of the call for tenders, usually 2 % to 5 % of the value of the bid.

Duration

Usually short term.

Special features

The party calling for tenders often needs more time to evaluate the tenders than originally estimated. In general the bidders are then asked to extend the duration of their guarantees.

The risks inherent in such an extension, e. g.:

- changes in the market,
- changes in price structures,
- inflation,
- additional costs, etc., should not be underestimated!

Tender/bid bonds often entail additional obligations, e. g. advance payment guarantees and performance bonds.

5.2 Advance payment guarantee

Scope of application

In import-export business, but also in domestic commercial business, trade and industry.

Purpose

To secure any claims by the buyer on the seller for reimbursement of the buyer's advance payment on the contract price before delivery of the goods (or advance payment of the full contract price) – in the event that the seller has failed to meet his or her contractual delivery obligations either partly or in full.

Amount

The amount of the instalment or advance payment.

Duration

Up to delivery of the goods plus e. g. 15 days.

Special features

If a letter of credit was opened and notified by UBS in connection with the underlying transaction, there is the option to include the following clause in the guarantee, in cases where the shipping documents have been submitted to us: "Our guarantee shall be automatically reduced by ... % of the invoice value of each delivery by ... (supplier). Evidence of delivery is deemed to have been provided once ... (supplier) has submitted the conforming documents to the bank ... under documentary credit no. ...".

5.3 Performance bond

Scope of application

In import-export business, but also in domestic commercial business, trade and industry.

Purpose

To secure any claims by the buyer on the seller arising from default in delivery or performance of the terms of the contract (e. g. construction, assembly, execution).

Amount

Stipulated in the contract. Frequently 5 % to 20 % of the value of the contract.

Duration

Until the contract has been fulfilled.

Special features

In international business, "pay or extend" claims are relatively frequently made with the object of extending the validity of the guarantees.

5.4 Guarantee for warranty obligations

Scope of application

In import-export business, but also in domestic commercial business, trade and industry, where it is more often a surety.

Purpose

To secure any claims by the buyer on the seller due to possible defects appearing after delivery.

Amount

Stipulated in the contract. Frequently 5 % to 20 % of the value of the contract.

Duration

Depends on business sector. Often 1 year after delivery or commissioning.

Special features

Known as a builder's guarantee in the construction industry, in the form of simple or joint and several guarantees. May also be used in export as a "retention money bond" (indemnity for retention of payment often 5 % to 10 % of the value of the contract).

5.5 Payment guarantee

Scope of application

This type of guarantee is often used instead of letters of credit in export-import business. Used for supply of goods on an open-account basis.

Purpose

To secure any claims by the seller on the buyer for payment of the contract price by the agreed date.

Amount

Contract price or part thereof.

Duration

Payment date plus e.g. 15 days.

Special features

In import-export business, mainly abstract guarantees payable upon first demand.

5.6 Loan guarantee

Scope of application

Worldwide.

Purpose

To secure any claims by the lender on the borrower due to a credit (loan, etc.) not being repaid in accordance with the terms of the contract.

Amount

Amount of the credit. Usually includes a margin to cover accrued interest and incidental expenses.

Duration

Expiry of loan plus e.g. 15 days.

Special features

Mainly abstract guarantees in favour of the foreign or domestic lending bank.

5.7 Letter of indemnity for missing bills of lading

Scope of application

Specifically for importers when the bill of lading is missing.

Purpose

To secure any claims by the shipping line/shipping company on

- the buyer as a result of release of goods arriving from overseas without the original bills of lading being presented (e.g. due to delays in transit or even loss),
- the suppliers due to issue of a replacement bill of lading (original misplaced or lost).

Amount

Value of the goods plus cost margin (at the discretion of the shipping line). Usually 150 % to 200 % of the value of the goods.

Duration

1 – 2 years, but in practice frequently unlimited or until the original bill of lading or beneficiary's written statement of release has been presented.

Special features

In practice, the wording of the guarantee is frequently stipulated by the shipowner and must be sent directly by the debtor, with a counter-guarantee from the bank, to the shipping line. The bank gives its counter-guarantee by adding the following clause: "We, UBS AG, ... hereby irrevocably guarantee all payment commitments made in the above letter of indemnity up to the aggregate amount of ... under our reference no. ...".

5.8 Standby letter of credit

Scope of application

In import-export business, primarily with the Americas and frequently in the Far East as well, or wherever the contracting parties decide to use this legal form as a security instrument.

Purpose

To secure any claims by the obligee on the obligor due to non-contractual delivery or performance or payment by the agreed date or credit repayment on the due date.

Amount

5% to 20% of the value of the contract, the amount of the contract price or part thereof, or the amount of the loan.

Duration

Contingent upon the purpose of the guarantee (see types of guarantee described above).

Special features

Standby letters of credit are governed by the "Uniform Customs and Practice for Letters of Credit", Publication No. 500 (UCP 500) issued by the International Chamber of Commerce, Paris, or the ICC Guidelines specifically created for this instrument, "International Standby Practices", Publication No. 590 (ISP 98) (see page 9). Unlike guarantees, standby letters of credit can be confirmed (i. e. shifting country and borrower risk), always under the proviso that the terms of the standby letter of credit provide for this.

5.9 Builder's guarantee

Scope/purpose

Simple or joint and several builder's guarantees are used to secure claims of the principal of a building contract (beneficiary of the guarantee) against building contractors for any potential defects following supply and/or installation of goods or painting or plastering work, etc.

Amount

The amount of a builder's guarantee is determined by the contract for services. This is frequently 5% to 10% of the value of the contract.

Duration

Usually 2 to 5 years after completion of the work and/or supply of the goods.

5.10 Other types of guarantees

- Property gains tax guarantee
- Builder's lien
- Legal costs guarantee
- Rental guarantee
- Credit card guarantee, etc.

The above types of guarantee may generally also be issued in the form of sureties or standby letters of credit, but the beneficiary must agree to this. For guarantees relating to Swiss Federal and cantonal government and also the Swiss Federal Railways, the Swiss Post Office, Swiss Federal Customs Administration and other public agencies, their relevant standard wordings must be used.

Picture: microscope

The careful eye sees every cell.
And the intricate way they interact.

6 Expiry of guarantees

6.1 Reasons for expiry of direct guarantees

A direct guarantee arises when the client authorizes the bank to issue a guarantee directly to the beneficiary. A direct guarantee expires in the following cases:

6.1.1 Ordinary expiry on the expiry date

If the expiry date referred to in the expiry clause of the guarantee deed has elapsed and if the beneficiary has not enforced the guarantee by that date, then the guarantee will expire. This applies irrespective of whether the guarantee document was returned to the bank or not.

6.1.2 Payment of the guarantee amount

In the event of the definitive and final settlement of the guarantee amount due to a claim by the beneficiary, the guarantee will expire.

6.1.3 Early return of the guarantee deed

In the event of formal discharge by the beneficiary.

6.2 Reasons for expiry of indirect guarantees

6.2.1 Background

In the case of indirect guarantees, a Swiss bank requests a foreign bank in the beneficiary's country of domicile to issue the guarantee, while guaranteeing to indemnify this bank for any potential loss arising from enforcement of the guarantee.

6.2.2 Expiry date

As a result of the situation described above, indirect guarantees have two different expiry dates:

- expiry of the bank guarantee issued by the guaranteeing (foreign) bank in favour of the beneficiary,
- expiry of the counter-liability and counter-guarantee issued by the initiating (Swiss) bank in favour of the guaranteeing foreign bank (usually 15 to 30 days after the above-mentioned expiry date).

6.2.3 Expiry of the counter-liability and counter-guarantee

In general, the guarantee issued by the foreign bank is subject to foreign law. Some countries prohibit guaranteeing banks from setting time limits on counter-guarantees. In such instances, the initiating (Swiss) bank's liability is only deemed to be extinguished if the guaranteeing (foreign) bank releases it from such liability absolutely and in full.

6.2.4 Payment of the guarantee amount

If the guarantee is enforced by the guaranteeing bank and/or the ultimate beneficiary, it will expire when the guarantee amount is finally paid by the principal's bank.

7 Enforcing a bank guarantee

“Enforcing a guarantee” means that the beneficiary exercises its right to demand payment (or part payment) of the guarantee amount. The bank checks whether the claim has been made in accordance with the conditions of the guarantee.

7.1 Formal verification

7.1.1 Verification of signatures

In general, guarantees contain a clause (identification clause) whereby the beneficiary's bank has to confirm his or her signature in the event of a claim. This procedure ensures that the claim is only signed by a person or persons authorized to do so.

7.1.2 Enforcement claim form

This should usually be submitted in writing. The conditions of the guarantee often permit claims to be made via tested telex or SWIFT communications.

7.1.3 Timely claim for enforcement

The claim must be received in the specified form, at the latest on the expiry date, by the branch of the bank stipulated in the guarantee. The beneficiary is responsible for the mailing risk and any other delays (force majeure). Subsequent procedure depends on whether a surety or guarantee is involved.

7.2 Surety

When making a demand for payment, the beneficiary must comply with the provisions of the Swiss Code of Obligations in addition to the terms of the surety. As a result, it should be noted that since the surety is dependent upon the underlying transaction, the guarantor is obliged to ascertain whether there are any objections in respect of the underlying transaction and, if so, to raise them with the beneficiary.

7.3 Guarantee

Due to the non-accessory nature of a guarantee and the fact that it is payable on first demand, the guaranteeing bank is bound to pay, provided that the payment terms stated in the guarantee are met.

7.4 Assignment

Beneficiaries under the guarantee can normally assign their contingent rights to the proceeds of the guarantee to a third party (assignee). An assignee will not thereby automatically acquire the right to draw on the guarantee. Only the beneficiary specified by name in the guarantee document can claim under the guarantee. Any change of beneficiary under the guarantee requires the consent of all parties involved, i.e. the previous beneficiary, our client and also the guaranteeing bank. In contrast to the law concerning sureties, the assignment of the guaranteed claim arising from the underlying transaction does not result in the simultaneous transfer of the right to claim under the guarantee.

8 Guarantee request and the contractual relationship between client and bank

The client's instructions to the bank are the basis on which a bank guarantee is issued. Our instruction form can be found on our homepage at <http://www.ubs.com/tef> and also in the appendix. This form also contains the conditions and information regarding the issuing of bank guarantees. Please bear in mind that correct completion of the form ensures smooth expedition of the arrangement. As a general principle, the UBS General Terms and Conditions of Business will apply. If required, additional terms may be agreed.

8.1 Client's (letter of) indemnity

The client's indemnity comprises an undertaking to indemnify the bank for all costs and expenses incurred in connection with issuing the bank guarantee.

8.2 Commissions and fees

In return for the bank issuing a guarantee or surety, the client pays the bank a commission plus a one-off issuing fee. With indirect guarantees, the full commission, fees and expenses of the guaranteeing bank are charged on to the client. Guarantee commissions are charged when the bank guarantee is issued and for a certain period in advance. Commission is payable for the period commencing on the date of issue until final cancellation of the guarantee, even if the wording of the bank guarantee includes a suspensive condition (effective clause).

Example:

"The present guarantee will enter into force only after receipt of the above-mentioned advance payment by ... (seller)".

Picture: butterflies

The realisation of individual potential.
The best guarantor of success.

9 Guarantees according to the guidelines of the International Chamber of Commerce

9.1 Purpose and intent

The International Chamber of Commerce (ICC) issued new guidelines, effective 1 January 1992, governing guarantees payable upon demand. The new rules are intended to encourage uniformity of practice. They are also a means of curbing misuse and ensuring that due consideration is given to the interests of all parties concerned. The guidelines only apply if they are expressly referred to in the guarantee. Under the Uniform Rules for Demand Guarantees (Publication No. 458), the beneficiary can only invoke the guarantee if he or she gives a qualified explanation for the claim. The beneficiary must confirm the breach of contract and present evidence of how the contractual obligations were not fulfilled. There are sample forms of wording in the appendix for the most common types of guarantee, which satisfy the requirements of these uniform rules:

- tender/bid bonds,
- advance payment guarantees,
- performance bonds,
- guarantees for warranty obligations.

The complete rules (Publication No. 458) of the International Chamber of Commerce, can be found in the following pages. The “Uniform Rules for Contract Guarantees” (Publication No. 325), issued by the ICC in 1978, are rarely observed in international business and as such, are hardly ever applied.

9.2 Uniform Rules for Demand Guarantees, Publication No. 458 of the ICC, Paris

For reasons of copyright, the guidelines of the International Chamber of Commerce are reproduced only in the print version: pages 21 to 24.

10 International Standby Practices ISP 98

For reasons of copyright, the guidelines of the International Chamber of Commerce are reproduced only in the print version: pages 25 to 38.

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Bid bond

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

Bid bond no. _____

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that _____ submitted on _____
their offer no. _____ for _____ under your bid invitation no. _____ dated
_____ according to the tender conditions a bid bond has to be supplied.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects
of the above-mentioned bid and waiving all rights of objection and defense arising therefrom, hereby irrevocably
undertake to pay to you, on your first demand, any amount up to the above-mentioned maximum
amount, upon receipt of your duly signed request for payment stating that _____

- have withdrawn their offer before its expiry date without your consent, or
- have failed to sign the contract awarded to them in the terms of their offer, or
- have failed to provide the performance bond foreseen in the tender upon signing the contract.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation
of one of our correspondent banks stating that the latter has verified your signature(s) appearing on
the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our
correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier
service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your written request for payment or telex/SWIFT not be in our
possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG



Advance payment guarantee no. _____

Advance payment guarantee

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that you concluded on _____ a contract _____ with _____ for _____ at a total price of _____. According to this contract, you are required to make an advance payment to _____ of _____, being _____ % of the total price. Your claim for refund of this amount, should _____ fail to comply with the contractual delivery obligations, is to be secured by a bank guarantee.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any amount up to the above-mentioned maximum amount, upon receipt of

your duly signed request for payment stating that _____ have failed to fulfil their contractual delivery obligations.

The present guarantee enters into force only after receipt of the above-mentioned advance payment by _____ into their account held with us.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your written request for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

The amount of this guarantee will automatically be reduced in proportion to the value of each shipment upon receipt by us of copies of the commercial invoice and the corresponding shipping document which we shall be entitled to accept as conclusive evidence that such shipment has been effected.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG



Performance bond no. _____

Performance bond

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that you concluded on _____ a contract _____ with _____ for _____ at a total price of _____. According to this contract, _____ are required to provide you with a Performance Bond.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any amount up to the above-mentioned maximum amount, upon receipt of

your duly signed request for payment stating that _____ have failed to fulfil their contractual obligations.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your written request for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG



Guarantee for warranty obligations no. _____

Guarantee for warranty obligations

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that you concluded on _____ a contract no. _____ with _____ for _____ at a total price of _____. According to this contract, _____ are required to provide you with a guarantee for warranty obligations.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any amount up to the above-mentioned maximum amount, upon receipt of

your duly signed request for payment stating that _____ have not fulfilled their contractual warranty obligations.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your written request for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG



Payment guarantee no. _____

Payment guarantee

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

26 May 2003

Amount _____
(in words) _____)

We have been informed that you concluded on _____ a contract no. _____ with _____ for _____ at a total price of _____. According to this contract, payment of the goods supplied, up to _____ (_____ % of the total price) has to be secured by a bank guarantee.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any amount up to the above-mentioned maximum amount, upon receipt of your duly signed request for payment stating that

- you have supplied the company _____ with the goods ordered, in conformity with the terms of the contract and
- you have not received payment from _____ at the due date, in the amount claimed under this guarantee.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your written request for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG



Guarantee no. _____

Guarantee

Bank Example AG
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

As security for a credit line which you will grant to _____

we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned credit relationship and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any amount up to the above-mentioned maximum amount (including principal, interest and all other charges) upon receipt of

your duly signed request for payment or by duly encoded telex/SWIFT stating that _____ has not repaid the amount claimed under this guarantee on the due date.

Our guarantee is valid until _____

and expires in full and automatically, should your written request for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG

Sample
Guarantee for missing bill of lading direct to the shipping company



Guarantee no. _____

Guarantee

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

26 May 2003

Amount _____
(in words _____ **)**

Re: Shipping of _____ on M/S _____ from _____
to _____, B/L no. _____.
Receiver: _____, value: _____.

In consideration of your delivering the above goods to _____, without presentation of the original bill(s) of lading, we, UBS AG, _____, by order of _____, hereby irrevocably undertake to pay to you upon your first demand, waiving all rights of objection and defense arising from the relationship to the consignee, any amount up to the above-mentioned maximum amount, upon receipt of

your duly signed request for payment stating that the amount claimed hereunder represents damages and/or expenses you have sustained by reason of having delivered the above goods without presentation of the original bill(s) of lading.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee shall automatically become null and void upon presentation to you of _____ original bill(s) of lading, latest however, on _____ should your written request for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is governed by Swiss law, place of jurisdiction and performance is _____.

UBS AG



Order and counter guarantee no. _____

Order and counter guarantee

Bank Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We, UBS AG, _____, hereby instruct and request you to issue under our full responsibility a _____ (type of guarantee) _____ as per your standard wording including the particulars below:

Beneficiary: _____
Amount: _____
For account of: _____
Covering/purpose: _____
Contract/tender: no. _____ dated _____
Validity: _____

Commitment:
Your guarantee must be made payable on beneficiary's first demand, without any objection whatsoever, against your receiving from beneficiary a written statement that _____ (default declaration)
_____.

Counter guarantee no. _____.
In consideration of your issuing the required guarantee, we hereby undertake to pay to you any amount you may be called upon to pay up to the above-mentioned maximum amount, on first demand, upon receipt of your request for payment in writing or by duly encoded telex/SWIFT, confirming that you are in possession of beneficiary's claim in conformity with above terms and that you are obliged to pay.

Your claim will be considered as having been made once we are in possession of your written request for payment or the telex/SWIFT to this effect at our above address.

Our liability towards your bank under this present counter-guarantee is valid until _____ and expires in full and automatically if your claim has not been made on or before that date, regardless of such date being a banking day or not.

Please transmit the original of your guarantee to the beneficiary at your earliest convenience and let us have two copies for our files.

UBS AG



Standby letter of credit no. _____

Standby letter of credit

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

26 May 2003

Amount _____
(in words) _____)

We hereby issue our irrevocable standby letter of credit as per following specifications:

Form of credit: Irrevocable
Credit number: _____
Date of issue of credit: _____
Date and place of expiry: _____ / _____
Issuing Bank: UBS AG

Applicant: _____
Beneficiary: _____
Amount: The above-mentioned maximum amount
Available with: UBS AG

By: Payment. We shall effect payment with a deferred value date of 3 (three) banking days after receipt of documents strictly complying with the terms and conditions of this standby letter of credit.

Partial drawings: _____
Covering/relating to: _____
Documents: Beneficiary's signed written statement that applicant
(e.g. has failed to fulfil his contractual obligations _____).

Additional conditions: _____ if any _____
Commission and charges: All commission and charges outside Switzerland are for applicants/beneficiary's account.

Period for presentation of documents: Within credit validity

We hereby undertake that payment will be effected if documents tendered comply with the credit terms and if all other conditions of this credit are fulfilled.

This credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1993 revision, ICC Publication No. 500.

Documents to be sent to us by registered airmail/by courier service in one lot to the following address:
UBS AG, _____.

UBS AG



Commitment no. _____

Confirmed payment order

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____

(in words _____)

We, UBS AG, _____, have been instructed to pay to the above-mentioned maximum amount and we hereby declare that said instructions are irrevocably accepted by us in the sense of Art. 468 of the Swiss Federal Code of Obligations, under the condition that we are in possession of your duly signed statement by _____ at the latest, certifying that _____.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our commitment is valid until _____

and expires in full and automatically, should your written statement or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

UBS AG



Tender guarantee no. _____

Tender guarantee

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that _____ (hereinafter called "the Principal"), responding to your invitation to tender no. _____ dated _____ for the supply of _____ has submitted to you his offer no. _____ dated _____.

Furthermore, we understand that, according to your conditions, offers must be supported by a tender guarantee.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned tender and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you on your first demand any sum or sums not exceeding in total the above-mentioned maximum amount, upon receipt by us of

your duly signed demand for payment in writing stating that the Principal is in breach of this obligation(s) under the tender conditions and the respect in which the Principal is in breach.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your demand for payment as set forth above not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

UBS AG



Advance payment guarantee no. _____

Advance payment guarantee

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____ **)**

We have been informed that _____ (hereinafter called "the Principal"), has entered into contract no. _____ dated _____ with you, for the supply of _____.

Furthermore, we understand that, according to the conditions of the contract, an advance payment is to be made against an advance payment guarantee.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any sum or sums not exceeding in total the above-mentioned maximum amount, upon receipt by us of

your duly signed demand for payment in writing stating that the Principal is in breach of his obligation(s) under the underlying contract and the respect in which the Principal is in breach.

It is a condition for any claim and payment to be made under this guarantee that the advance payment referred to above must have been received by the Principal on his account held with us.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

The amount of this guarantee will automatically be reduced in proportion to the value of each shipment upon presentation by the Principal to us of copies of the commercial invoice and the corresponding shipping document.

This guarantee shall expire once it has been reduced to nil or on _____ at the latest.

This guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

UBS AG



Performance guarantee no. _____

Performance guarantee

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that _____ (hereinafter called "the Principal") has entered into contract no. _____ dated _____ with you, for the supply of _____.

Furthermore, we understand that, according to the conditions of the contract a performance guarantee is required.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any sum or sums not exceeding in total the above-mentioned maximum amount, upon receipt by us of

your duly signed demand for payment in writing stating that the Principal is in breach of his obligation(s) under the underlying contract and the respect in which the Principal is in breach.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your demand for payment as set forth above not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

UBS AG



Guarantee for warranty obligations no. _____

Guarantee for warranty obligations

Example AG
Mr. John Example
P.O. Box
CH-8000 Zurich

UBS AG
Trade Finance
Guarantees
P.O. Box
CH-8098 Zurich
Tel. +41-1-234 11 11

26 May 2003

Amount _____
(in words _____)

We have been informed that _____ (hereinafter called "the Principal"), has entered into contract no. _____ dated _____ with you for the supply of _____.

This being stated, we, UBS AG, _____, irrespective of the validity and the legal effects of the above-mentioned contract and waiving all rights of objection and defense arising therefrom, hereby irrevocably undertake to pay to you, upon your first demand, any sum or sums not exceeding the above-mentioned maximum amount, upon receipt by us of

your duly signed demand for payment in writing stating that the Principal is in breach of his obligation(s) under the underlying contract and the respect in which the Principal is in breach.

For the purpose of identification your request for payment must bear or be accompanied by a signed confirmation of one of our correspondent banks stating that the latter has verified your signature(s) appearing on the said request for payment.

Your claim is also acceptable if transmitted to us in full by duly encoded telex/SWIFT through one of our correspondent banks confirming that your original claim has been forwarded to us by registered mail or courier service and that the said bank has verified your signature(s) appearing thereon.

Our guarantee is valid until _____

and expires in full and automatically, should your written demand for payment or telex/SWIFT not be in our possession at our above address on or before that date, regardless of such date being a banking day or not.

Our guarantee will be reduced by each payment made by us as a result of a claim.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

UBS AG

Sample
Order for the issue of a bank guarantee



UBS AG
Trade Finance

Master no./Account no. _____

Applicant

Company/
Name/Surname _____
ZIP/City _____
Contact person _____
Phone no. _____
Our reference _____

**If principal obligor is not the same as the principal,
please mention under "Remarks".**

Order to issue a bank guarantee

I/We hereby request you to issue on my/our behalf and for my/our account a guarantee as per the following conditions:

Bank guarantee currency/amount/expiry

_____ (= _____ Total price) Expiry date _____

Purpose of guarantee/Language

- | | | | | |
|---|---|---|--------------------------------------|--|
| <input type="checkbox"/> Offer | <input type="checkbox"/> Advance payment | <input type="checkbox"/> Performance | <input type="checkbox"/> Warranty | <input type="checkbox"/> Guarantee for construction works (CH) |
| <input type="checkbox"/> Payment | <input type="checkbox"/> Credit security | <input type="checkbox"/> Rental (apartment) | <input type="checkbox"/> Credit Card | <input type="checkbox"/> Confirmed payment order (SCO 468) |
| <input type="checkbox"/> Wording as per enclosure | Language: <input type="checkbox"/> German | <input type="checkbox"/> English | <input type="checkbox"/> French | <input type="checkbox"/> Italian |

Legal form

- | | | | |
|--|--|---|---|
| <input type="checkbox"/> Guarantee | <input type="checkbox"/> Simple guarantee | <input type="checkbox"/> Standby Letter of Credit/ICC 500 | <input type="checkbox"/> Guarantee as per ICC 458 |
| <input type="checkbox"/> Joint & several guarantee | <input type="checkbox"/> Standby Letter of Credit/ISP 98 | | |

Underlying transaction (details of tender/bid; contract no./date, contents, description/origin of goods or service, contract value)

Beneficiary

Company/Name/Surname _____ Country _____
Street _____ ZIP/City _____

Involvement of a third bank

- Yes No if yes: Issuing (Counter-guarantee/indirect guarantee)
 Transmission without commitment

Handing over of original guarantee to

- me/us beneficiary _____
 by mail by courier

Remarks

Guarantee commission

Commission and charges (if any) to be debited on account no./BC _____
Your "General business conditions" which are already known to me/us apply to this order. Besides I/we have taken note of the "conditions and remarks in connection with the issuance of bank guarantees".

_____ Place/Date Stamp, signature of applicant

For internal bank use only

Signature(s) and credit rating checked
Pricing: _____ unsecured/secured:
OU-Ref.: _____



Master no./Account no.

Conditions and remarks in connection with the issuance of bank guarantees

1. Important features of the different types of guarantees

If the beneficiary of an abstract guarantee (that is a guarantee payable on first demand whereby the right of objection and defence arising from the underlying transaction is expressly waived) lodges a claim in conformity with the guarantee terms, then payment must be effected promptly, without it being necessary for UBS AG (hereinafter "UBS") to check whether the statement made by the beneficiary in his demand is accurate or not (e.g. that the contractual obligation has become due or that the contractual delivery obligations have not been fulfilled). In this context, the term "abstract guarantee" also includes standby letters of credit and payment undertakings. Unless it is clearly established to the satisfaction of the bank that the beneficiary's demand is fraudulent, the bank cannot refuse to honour a conforming demand lodged under an abstract guarantee on the basis of objections arising from the underlying transaction (e.g. that the obligation or amount has not become due or that the guaranteed obligation has been fulfilled in conformity with the contract or other objections out of the underlying transaction). This applies also in case the guaranteed obligation cannot be fulfilled due to reasons beyond the control of the obliged party (e.g. "force majeure", strike, war, natural disaster, etc.). The situation is fundamentally different under the legal form of a so-called joint and several guarantee ("Solidarbürgschaft") or a so-called simple guarantee ("Einfache Bürgschaft") according to the Swiss Federal Code of Obligations (see art. 492 and following of the Swiss Federal Code of Obligations, especially art. 502). The comments stated above with respect to abstract guarantees also apply in cases where UBS instructs a third bank to issue a guarantee under the liability and counter guarantee of UBS (so-called "indirect guarantees"). Unless otherwise provided in the said indirect guarantees, their governing law shall be that of the place of business of the instructed third bank. UBS will not be in a position to verify the legitimacy of a demand lodged under a guarantee issued under foreign law. If a direct or an indirect guarantee is governed by an other law than Swiss law, UBS is authorized but not obliged to interpret the guarantee in such manner as if it was governed by Swiss law and to act accordingly. The applicant has to reimburse UBS all costs and expenditure (including but not limited to fees of legal counsel) UBS may incur as a result of issuing a guarantee under foreign law.

2. Bank charges

For issuing guarantees, UBS is entitled to a commission as well as to reimbursement of charges, expenses and handling fee. The rate of commission will be subject to UBS's assessment of the relevant risks involved and, unless otherwise agreed upon, may be altered at any time at a 3 months' notice depending on new circumstances. Details of commission, charges, expenses and handling fee will be communicated to the applicant in the confirmation of execution.

3. Checking of documents

UBS examines all statements and documents presented under a guarantee whether or not they appear, on their face, to be in compliance with the terms and conditions of the guarantee. UBS will neither verify signatures as to their authenticity nor examine any statements as to their accuracy and truthfulness. UBS may accept statements and documents which are not presented in original but by authenticated or tested teletransmission as originals.

4. Reimbursement of costs

The applicant has to reimburse UBS all costs, expenses and damages arising in connection with the execution of an order to issue a guarantee (reimbursement of expenses, incl. payment under the guarantee, commissions and charges a.s.o. as well as commissions, fees, charges a.s.o. UBS has to pay to instructed third banks). Included are also all costs of legal proceedings, if any, in the home country and abroad, which are - at the request of UBS - to be advanced by the applicant. If the applicant does not make such advances, UBS is authorised to discontinue legal proceedings to be initiated or initiated by the applicant or to accept legal proceedings against UBS for applicant's account.

5. Authorization to debit the applicant's account

UBS is authorized to debit the applicant's account for all claims arising of the order to issue a guarantee (e.g. commissions, handling fees, reimbursement of costs) or their equivalent in Swiss francs or, in case of insufficient credit balance, to charge the applicant.

6. Guarantee wordings

Whenever possible, UBS uses its standard wordings, which in principle are subject to Swiss law, unless the nature of the underlying transaction to be guaranteed or special instructions by applicant (which must be acceptable to UBS) require a deviation thereof.

Sample
Order to change a bank guarantee



UBS AG
Trade Finance

Master no./Account no. _____

Applicant

Company/
Name/Surname _____
ZIP/City _____
Contact person _____
Phone no. _____
Our reference _____

Order for amendment of a bank guarantee

Bank guarantee Number _____ (old ref., if any _____)
Currency/Amount _____
Beneficiary Name _____
Place _____

I/We hereby request you to amend the above-mentioned guarantee on my/our behalf and for my/our account as follows:

Change in amount

Enhancement from (old currency/amount) _____ to (new currency/amount) _____
 Reduction from (old currency/amount) _____ to (new currency/amount) _____

(Remark: reductions may only be effected subject to receipt of beneficiary's agreement)

Extension

Old expiry date _____ New expiry date _____

(Remark: If the amendment relates to an indirect guarantee, the validity of the counter-guarantee will be extended accordingly)

Other amendment

old _____ new _____

Handing over/transmission of the amendment

as specified in the issuing document
 to _____
 by mail by courier

Remarks

Signatures

Your "General business conditions" which I/we already know apply to this order. In addition I/we have also taken due note of "The conditions and information regarding the issuing of bank guarantees".

_____ Place/Date Stamp, signature of applicant

For internal bank use only

Signature(s) and credit rating checked
Pricing: _____ unsecured/secured:
OU-Ref.: _____

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13 Glossary

Accessory relationship

Dependence on the underlying transaction which is being guaranteed.

Apostille

A document providing “double” proof of the genuineness of an official (notary's) signature authentication. It is based on the Hague Convention.

Attachment

Official (judicial) seizure of assets.

Bank guarantees

Umbrella term for security instruments (sureties, guarantees, standby letters of credit, confirmed payment orders).

Bill of exchange guarantee

Joint and several guarantee of the obligations of the actual bill debtor, entered into by signing the face of the bill of exchange (known in Switzerland as an “aval”). These guarantees are governed by the law pertaining to bills of exchange (Art. 1020 ff. SCO). The law concerning sureties (Art. 492 ff. SCO) does not apply.

It is worth noting that UBS does not issue bill of exchange guarantees in this form, but only as separate, abstract payment undertakings in the form of guarantees.

Bill of lading (B/L)

Freight shipment document equivalent in nature to a security.

Call to tender

By means of a call to tender, a company with an order to place simultaneously invites several suppliers to tender a bid for the provision of the goods or services in question. The call to tender contains the contracting company's requirements with regard to the bids and/or the work to be carried out as well as the tender closing date (deadline for submission of bids).

In tendering a bid the supplier declares that it accepts the terms and conditions set out in the call to tender (unless the corresponding reservations are set out in its bid document).

Contingent liability

An obligation which takes effect only when certain circumstances arise.

Customs guarantee

Surety given to the customs authorities. The wording is generally prescribed.

Defences

A defence is a measure to prevent assertion of another's claim on oneself, and also the right to take such measures.

Demand guarantee

A contract authorizing the transfer of money, securities or other fungibles for the account of the authorizing party to a third-party beneficiary. At the same time it authorizes the third-party beneficiary to receive the payment/transfer in its own name.

Documentary credit

A documentary credit is an undertaking by a bank to pay out a certain amount on presentation of certain documents, providing the conditions of the documentary credit have been satisfied in full.

► UBS brochure “Documentary Credits and Collections”.

ERG

Acronym for "export risk guarantee", a guarantee issued by the state covering exporters against certain risks associated with goods deliveries to foreign destinations. A fee is payable for ERG cover. In Switzerland the rules governing ERG are set out in the Federal Export Risk Guarantee Act of 26 September 1958 and the Implementing Ordinance of 15 January 1969.

Expiry date

The obligee (creditor) may demand fulfilment of obligations, the obligor must perform them. On the expiry date the claim for enforcement arises.

Joint venture

A company or enterprise in which two or more partners participate.

Jurisdiction

Place whose courts are responsible for settling any legal disputes that arise.

Liability

Obligation. Exports and imports may be confirmed "with liability" or "without liability": i. e. no guarantee is given, no responsibility assumed.

Objections

Presentation of new facts in order to dispute the claim of an opponent at law.

Obligee

The party entitled to claim payment under the surety.

p. a.

Per annum.

p. q.

Per quarter.

Regress

Legal recourse (e. g. of the guarantor bank to the principal).

SCO

Swiss Code of Obligations.

Syndicate business

Collective transactions involving several partners who have joined together in an ad hoc or lasting partnership for that purpose.

Third-party obligation contract

If a first party promises a second party performance by a third party and that performance fails to materialize, the first party is liable for any resultant damages (Art. 111 SCO).

UCP

(Uniform Customs and Practice for Documentary Credits)

► UBS brochure "Documentary Credits and Collections".

Un-codified contracts

The Swiss Code of Obligations is based on the model of the individual contract. It makes certain types of contract (e. g. purchase agreement) available for use by specially regulating their content. In practice, because of the right of contractual freedom, many typical agreements and contracts have come into being in addition to those provided for in the Code, and these are known as "un-codified" (or often "hybrid") contracts.

URDG

Uniform Rules for Demand Guarantees,
ICC Publication No. 458.

UBS can give you a secure, customized solution for every transaction.

With our impressive material and human resources and our widely recognized skills, we can help you to find the guarantee instrument to suit your specific requirements. This ensures that you gain a competitive advantage which might be decisive for your business activities.

Contact us soon – it will be worth your while.

Before a deal is signed, measures to secure the performance and payment obligations and payment transaction processing should all be in place. The sooner you talk to us, the sooner we can offer you comprehensive and effective support, with expert, personalized advice and, of course, prompt and meticulous processing. Contact your personal UBS advisor.

In addition to bank guarantees we can provide you with all the other trade & export finance instruments you need. You and your specialists can find detailed information on the benefits, possibilities and uses of our services in the corresponding UBS brochures:

- "Documentary Credits and Collections",
- "Export Finance".

Your personal UBS advisor or any UBS branch will be happy to provide you with any of these brochures you wish.

For a comprehensive overview of trade & export finance, please see our homepage www.ubs.com/tef, where you will find in-depth information and animated step-by-step explanations of trade & export finance transactions, legal aspects, helpful checklists and detailed factsheets.

UBS is more than a leading bank: it is a global provider of integrated financial services. Our global presence and experienced staff mean that you can be successful wherever you choose to do business. We look forward to hearing from you.

Further Trade & Export Finance instruments

Documentary Credits

Flexible payment and short-term credit instruments

- Sight letter of credit
- Deferred payment letter of credit
- Acceptance credit
- Negotiable letter of credit
- Transferable letter of credit
- Back-to-back letter of credit
- Assignment of documentary credit proceeds

Documentary Collections

Supplementary payment instruments

- Documents against payment
- Documents against acceptance
- Documents against letter of undertaking

Export Finance

Financing solutions

With ERG:

- Buyer's credit
- Supplier's credit
- Frame credit agreement
- Mixed financing
- Multi-source financing

Without ERG:

- Forfaiting
- Export finance loan

Contacts

Documentary Credits and Documentary Collections

Bank Guarantees

Geneva Region	Western Switzerland Region
Tel. +41-22-375 76 01	Tel. +41-22-375 80 38
Fax +41-22-375 85 21	Fax +41-22-375 85 21

Ticino Region	Central Plateau Region
Tel. +41-91-801 81 33	Tel. +41-31-336 24 61
Fax +41-91-801 79 59	Fax +41-31-336 24 51

Northern Switzerland Region	Central Switzerland Region
Tel. +41-61-289 37 68	Tel. +41-41-727 32 47
Fax +41-61-288 21 85	Fax +41-41-727 36 29

Zurich Region	Eastern Switzerland Region
Tel. +41-44-239 37 76	Tel. +41-71-225 35 06
Fax +41-44-239 31 29	or +41-71-221 83 44
	Fax +41-71-221 82 53

Export Finance

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Northern Switzerland and Central Switzerland Regions	Foreign Exporters
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