



# Trade Credit

## NZECO Top-Up Cover Policy

Her Majesty the Queen in Right of New Zealand acting by and through The Secretary to the Treasury (“NZECO”)

### Introduction

In consideration of the Insured having made a written proposal to NZECO containing particulars and statements which are to be considered as incorporated in this Top-Up Policy, and paying at specified times the premium (and other charges) stated in the schedule to this Top-Up Policy (**‘the Schedule’**), NZECO will indemnify the Insured in accordance with and subject to the limitations, terms, conditions and endorsements of this Top-Up Policy.

### Section 1: Top-up Insuring clause

NZECO agrees, subject to all limitations, terms and conditions and endorsements:

To indemnify the Insured for the top-up insured percentage of the loss arising from the non-payment of any Insured Debt due to the Insolvency of, or a Protracted Default by, or Contract Repudiation by an Insured Buyer in the Approved Countries.

### Section 2: Exclusions

This Top-Up Cover Policy will not indemnify the Insured against any loss in respect of:

- 2.1.1 GST (Goods & Services Tax), sales tax, retention money, interest charges, consequential damages, penalties, government charges, levies and taxes wheresoever incurred;
- 2.1.2 goods recovered or recoverable from an Insured Buyer (or any receiver, liquidator, court appointed manager, statutory manager, agent for a mortgagee in possession, or trustee or assignee in bankruptcy) upon or after the Insolvency of that Insured Buyer or the occurrence of a Protracted Default, unless NZECO agrees in writing that a loss has occurred and the loss can be quantified to the satisfaction of NZECO. Where goods are recovered or are recoverable from an Insured Buyer, their value will be deemed to be the value at which they were originally sold to the Insured Buyer;
- 2.1.3 any form of ‘pay when paid’ contracts;
- 2.1.4 goods supplied on consignment, whether or not those goods are subsequently sold to the Insured Buyer;

- 2.1.5 further goods sold or Despatched or services rendered, whichever occurs earlier, after the Insured's knowledge of a Financially Adverse Event, unless first authorised in writing by NZECO;
- 2.1.6 Insured Debts, if the non-payment of Insured Debts directly arises from the consequences of war or civil disturbance in any form including civil war, revolution, rebellion, insurrection, military or usurped power;
- 2.1.7 Insured Debts, if the non-payment of Insured Debts is directly or indirectly caused by risks from atomic energy being nuclear reaction or nuclear radiation or radioactive contamination;
- 2.1.8 delays in the payment of the Insured Debt that occur due to currency exchange restrictions;
- 2.1.9 the Insolvency of an agent of the Insured or the Insolvency of any bank or any act or default or omission by an agent of the Insured or any bank;
- 2.1.10 goods supplied under letters of credit;
- 2.1.11 any Insured Debt which remains unpaid due in any part to:
- (i) expropriation, confiscation, conspiracy, commandeering, requisition, embargo, exchange controls, nationalisation or destruction of the whole or any part of the assets of the Insured Buyer by acts of government; or
  - (ii) any laws or regulations in force in that country which have an effect on the goods that are subject to the Insured Debt; or
  - (iii) any other action by order of any government whether lawful or de facto or of any public authority.
- 2.1.12 any Insured Debt which remains unpaid due in any part to any deficiency in the Insured's business records or systems;
- 2.1.13 any Insured Debt in respect of which an administrator, receiver or liquidator will not accept liability, or a court will not award judgment to the Insured or which is not otherwise legally recognised as due and owing to the Insured;
- 2.1.14 all goods sold or services rendered that are of a kind which is outside the scope of the Business Trade specified in the Schedule;
- 2.1.15 any Insured Debt arising from goods sold to a buyer in an Approved Country but consigned to a buyer in a different country (whether it be an Approved Country or not) without the prior written approval of NZECO.
- 2.1.16 any loss in respect of Insured Debt unless a valid, binding and enforceable Primary Insurance Policy is in place and the Primary Insurer has accepted and fully satisfied its liability under the Primary Insurance Policy up to the Primary Insurance Limit (unless NZECO has waived this requirement).

## **Section 3: Definitions**

### *3.1 Approved Countries*

Approved Countries means the countries endorsed in each Top-up Permitted Limit endorsement to this Top-Up Cover Policy.

### *3.2 Business Trade*

Business Trade means the type of goods sold or services rendered to which cover applies under this Top-Up Cover Policy as specified in the Schedule.

### *3.3 Contract Repudiation*

Contract Repudiation shall exist when an Insured Buyer fails to accept goods that are sold pursuant to an enforceable contract after they are shipped or consigned by the Insured provided that this repudiation is not caused or excused by any breach of a condition, warranty or enforceable contract by the Insured, or any other cause which may have been within the control of the Insured.

### *3.4 Despatch or Despatched*

Despatch or Despatched means when goods have irretrievably passed out of the possession and control of the Insured by delivery to the first carrier who is to commence the delivery process to the Insured Buyer.

### *3.5 Financially Adverse Event*

Financially Adverse Event means any of the following whenever occurring:

- 3.5.1 where the Insured has knowledge that or other reason to believe that the Insured Buyer cannot pay its debts to any person or entity when they fall due for payment;
- 3.5.2 where the Insured has knowledge that or other reason to believe that the Insured Buyer cannot or will not honour its contractual obligations to any person or entity;
- 3.5.3 where any bill of exchange or promissory note in respect of any indebtedness of an Insured Buyer to the Insured has been dishonoured by any bank to which such bill or note has been presented for payment, or the Insured Buyer has requested the Insured to extend such bill or note to another due date, where such an extension exceeds the Top-Up Maximum Extension Period;
- 3.5.4 where a cheque from an Insured Buyer has been dishonoured or requested to be presented again by a bank (irrespective of subsequent payment);
- 3.5.5 where the Insured Buyer goes into a state of Insolvency;
- 3.5.6 where any part of the Insured Debt owing to the Insured is outstanding in excess of the Top-Up Maximum Extension Period.

### *3.6 Insolvency*

Insolvency means that any of the following events or an equivalent event under New Zealand law has occurred in relation to an Insured Buyer:

- 3.6.1 a receiver, court appointed manager, statutory manager, or an agent for a mortgagee in possession has been appointed over all of the assets and undertakings of the Insured Buyer;
- 3.6.2 an effective resolution has been passed for the voluntary winding-up or liquidation of the Insured Buyer;
- 3.6.3 the Insured Buyer becomes voluntarily bankrupt;
- 3.6.4 a legally binding compromise, deed of assignment, composition or other scheme of arrangement has been entered into by the Insured Buyer with, or for the benefit of, a majority of or all of its creditors;
- 3.6.5 a sequestration order has been made by a court against the estate of the Insured Buyer;
- 3.6.6 a court orders the winding-up or liquidation or bankruptcy of the Insured Buyer.

### *3.7 Insured*

Insured is the person or entity specified as such in the Schedule to this Top-Up Cover Policy.

### *3.8 Insured Buyer*

Insured Buyer is any person or entity carrying on business with the Insured under a Top-up Permitted Limit, but excluding:

- (i) any person or entity where the Top-up Permitted Limit is nil;
- (ii) any related, associated and/or subsidiary companies of the Insured, as defined in the Companies Act 1993 or the equivalent legislation in the jurisdiction of the buyer;
- (iii) government departments, public authorities and/or state owned enterprises.

### *3.9 Insured Debt*

Insured Debt is an amount of debt arising from a contract for the sale of goods or services covered by the Top-up Limit endorsement during the Top-Up Cover Policy Period owing to the Insured by an Insured Buyer under terms of payment which are within the Top-Up Maximum Terms of Payment or, where an extension has been given, within the Top-Up Maximum Extension Period. The Insured Debt is the excess layer of cover above the Primary Insurance Permitted Limit, and in all cases cannot be greater than the Top-up Permitted Limit approved by NZECO.

### *3.10 Joint Insured*

Joint Insured is a person or entity specified as such in the Schedule, having the same rights and obligations as the Insured under this Top-Up Cover Policy.

### *3.11 Overdue Buyer List*

Overdue Buyer List means the list required under Condition 4.4.4 of this Top-Up Cover Policy.

### *3.12 Policy Currency*

Policy Currency means the currency of this Top-up Cover Policy as specified in the Top-up Policy Schedule.

### *3.13 Primary Insurance Permitted Limit*

Primary Insurance Permitted Limit means the Permitted Limit as defined in the Primary Insurance Policy which will be deducted from any loss on an each and every basis.

### *3.14 Primary Insurance Policy*

Primary Insurance Policy means the primary insurance policy to which this Top-Up Cover Policy provides additional cover, as specified in the Schedule.

### *3.15 Primary Insurer*

Primary Insurer means the insurer under the Primary Insurance Policy, being Allianz New Zealand Limited or another primary insurer approved in writing by NZECO.

### *3.16 Protracted Default*

Protracted Default means the non-payment of an Insured Debt for a period noted as the Waiting Period and specified for each Top-up Permitted Limit on the Top-up Permitted Limit endorsement(s) commencing on the later of the original due date for payment, or the postponed due date for payment as agreed by NZECO, under the applicable contract for the sale of goods or services.

The Protracted Default period shall not commence while a bona fide dispute of any nature exists between the Insured and Insured Buyer over the Insured Debt, or if for any reason the Insured Buyer under any law or regulations applying in the country of the Insured Buyer is entitled or obliged to refuse payment of an Insured Debt, or where an Insured Buyer has proposed a payment plan which NZECO, after consultation with the Insured, considers to be reasonable.

### *3.17 Salvage*

Salvage is any money (including dividends paid or payable out of the insolvent estate of the Insured Buyer), securities, indemnities, rights of action, counter claim/set off, or any other asset or advantage held, received by, or due to the Insured or otherwise available for the purpose of reducing the Insured Debt of the Insured Buyer or any goods recovered or recoverable whether pursuant to a retention of title clause or otherwise following payment of any claim. Payments received from a Buyer after the occurrence of a Financially Adverse Event shall be deemed to be Salvage unless NZECO agrees in writing that such payments may be treated as payment for goods supplied after the occurrence of a Financially Adverse Event.

### *3.18 Top-Up Commercial Insured Percentage*

Top-Up Commercial Insured Percentage means the indemnity percentage or losses arising under this Top-up Cover Policy

### *3.19 Top-Up Cover Policy Period*

Top-Up Cover Policy Period is the contracted period of insurance specified in the Schedule.

### *3.20 Top-Up Maximum Extension Period*

Top-Up Maximum Extension Period is an additional period of time beyond the original due date for payment during which an Insured may continue to supply goods or provide services to an Insured Buyer while still continuing to be indemnified by NZECO. The Top-Up Maximum Extension Period is as specified for each Top-up Permitted Limit in each Top-up Permitted Limit endorsement to this Top-Up Cover Policy, unless varied by any other endorsement.

### *3.21 Top-Up Maximum Terms of Payment*

Top-Up Maximum Terms of Payment are the payment terms endorsed for each Top-up Permitted Limit in each Top-up Permitted Limit endorsement to this Top-Up Cover Policy, unless varied by any other endorsement.

### *3.22 Top-up Permitted Limit*

Top-up Permitted Limit means the maximum limit of Insured Debt approved in writing by NZECO in the form of a Top-up Permitted Limit endorsement for the Insured in relation to each Insured Buyer. These amounts exclude GST and are prior to the deduction of the Top-Up Commercial Insured Percentage specified for each Top-up Permitted Limit in each Top-up Permitted Limit endorsement.

### *3.23 Top-Up Premium*

Top-Up Premium is the premium amount specified for each Top-up Permitted Limit on the Top-up Quotation(s) provided to the Insured prior to issuing each Top-up Permitted Limit endorsement.

## **Section 4: Conditions**

### **4.1 Precedent to liability**

A condition precedent to the liability of NZECO to indemnify the Insured is the compliance with all of the limitations, terms and conditions of this Top-Up Cover Policy and the Primary Insurance Policy by the Insured.

### **4.2 Payment of Top-up Premium**

The Top-up Premium shall be paid prior to the issuance of each Top-up Permitted Limit.

### **4.3 Credit control**

4.3.1 The Insured shall not materially vary its standard credit control procedures (including collection of debts and assessment of buyers) during the Top-Up Cover Policy Period in respect of any Insured Buyer without the written consent of NZECO.

4.3.2 The Insured shall keep accurate records that clearly establish the existence and details of all Insured Debts.

4.3.3 If the Insured becomes aware of any material change in the beneficial share ownership of any Insured Buyer, the Insured must notify NZECO in writing within 14 days of becoming aware of the change.

4.3.4 The Insured must submit to NZECO an Overdue Buyer List of all overdue Insured Buyers as at the last day of each month, if a portion of the Insured Debt of any Insured Buyer is outstanding after the expiration of the Top-Up Maximum Extension Period or if the Insured has knowledge of a Financially Adverse Event in respect of any Insured Buyer. The Overdue Buyer List shall be submitted within 14 days of the last day of each month. Where reportable or overdue Insured Buyers exist, the form provided by NZECO must be used. In the event of no reportable or overdue Insured Buyers the Insured shall notify NZECO of this in writing.

4.3.5 The Insured shall inform NZECO immediately upon becoming aware of any fact or information relating to a Financially Adverse Event or the solvency of any Insured Buyer or in the event of a Contract Repudiation. The Insured must continue to notify NZECO and take instructions from NZECO in relation to credit management decisions, including any payment plans proposed by the Insured Buyer, until the Insured Debt is paid in full or until a claim is submitted to NZECO.

4.3.6 The Insured shall exercise reasonable care and prudence at all times in the granting of credit to and withholding credit from an Insured Buyer as if it were uninsured. This obligation shall continue regardless of notification to NZECO under Conditions 4.3.3 and 4.3.4 or irrespective of any current Top-up Permitted Limit in force. Where NZECO receives notification under 4.3.3 or 4.3.4 it may or may not at NZECO's sole discretion give instructions to the Insured relating to recovery or any other action.

4.3.7 The Insured may agree to an extension of the due date for payment of an Insured Debt without the consent of NZECO up to the Top-Up Maximum Extension Period, but no further extension shall be allowed without the consent in writing of NZECO. Any extension under this clause must not be made prior to the date of Despatch without prior written consent from NZECO.

4.3.8 Where the Insured receives a claim from the Liquidator of an Insured Buyer for the repayment of monies allegedly paid preferentially by the Insured Buyer to the Insured, the Insured shall consult with NZECO as to the response to the claim and shall not admit liability for repayment without approval from NZECO. NZECO may at its sole discretion elect to admit the repayment being claimed as part of the claim by the Insured to NZECO.

#### 4.4 Assignment

The Insured cannot assign any benefits under this Top-Up Cover Policy without the prior written consent of NZECO.

#### 4.5 Uninsured Percentage

Except to the extent of the Primary Insurance Policy, the Insured shall not insure any uninsured percentage of the direct loss or deductible with any other insurer.

#### 4.6 Variation

NZECO is entitled, at any time and for any reason, to reduce or withdraw the indemnity for Insured Debts in respect of any Insured Buyer or to vary any provision of this Top-Up Cover Policy by giving notice in writing to the Insured or to the agent of the Insured. This variation will be effective on the giving of notice.

If the Primary Insurance Policy is withdrawn or cancelled, then this Top-Up Policy will automatically be withdrawn and cancelled. If the Permitted Limit under the Primary Insurance Policy is reduced, then the Top-up Permitted Limit shall be automatically reduced by the same percentage.

NZECO shall not be obliged to refund any premium as a result of any withdrawal or cancellation of this Top-Up Cover Policy, or any reduction in the Top-up Permitted Limit.

#### 4.7 Claims

4.7.1 The Insured shall promptly submit a claim form to NZECO, and in any event within 6 months, after the date of the Insolvency, Protracted Default or Contract Repudiation of or by an Insured Buyer.

4.7.2 Provided all policy terms and conditions have been met, and (unless NZECO waives this requirement) the Primary Insurer has accepted and fully satisfied its liability under the Primary Insurance Policy up to the Primary Insurance Limit NZECO shall calculate the amount payable in relation to the claim taking into account the Top-up Permitted Limit, less Salvage received prior to payment of the claim multiplied by the Top-Up Commercial Insured Percentage specified for the Insured Buyer on the Top-up Permitted Limit endorsement.

NZECO's consideration of any claim by the Insured shall be independent of, and not affected by, any decision of the Primary Insurer under the Primary Insurance Policy. The insured shall provide any additional information requested by NZECO in order to support consideration of any claim under the Top-up Cover Policy. Without limitation, NZECO shall not be bound to accept a claim under this Top-Up Policy solely because a claim has been accepted under the Primary Insurance Policy.

4.7.3 On receipt of the appropriate confirmation that the Insured Debt has been admitted to rank against the insolvent estate of the Insured Buyer, and that the relevant goods have not been recovered (and are not recoverable) by the Insured, NZECO shall pay the claim within 30 days of confirmation by NZECO of indemnity under this Top-Up Cover Policy.

4.7.4 In the case of Protracted Default as soon as the Protracted Default period has expired, and provided that NZECO agrees that legal action against the Insured Buyer is not warranted and the relevant goods have not been recovered (and are not recoverable) by the Insured, NZECO shall pay the claim within 30 days of confirmation by NZECO of indemnity under this Top-Up Cover Policy.

4.7.5 In the case of Contract Repudiation NZECO shall pay the claim 30 days after the Insured has resold or disposed of the goods subject to NZECO approving the resale or disposal of the goods in writing and provided also that NZECO agrees that legal action against the original buyer is not warranted.

Re-sold goods shall be deemed to be Salvage for claim calculating purposes. Refer 4.7.2 and 4.8 for the method of calculation. Indemnity for losses arising from costs incurred in transporting, storing or re-selling goods will be at the sole discretion of NZECO and is subject to approval from NZECO prior to those costs being incurred. The aggregate liability of NZECO for losses and costs shall not exceed the Top-Up Permitted Limit.

4.7.6 Notwithstanding the payment of any sum by NZECO under this Top-Up Cover Policy, the Insured shall initiate and continue legal action for recovery of the Insured Debt, including the initiation of legal proceedings for all causes of loss, unless NZECO agrees in writing that legal action is not warranted.

4.7.7 If the Insured so elects at the commencement of each Top-Up Cover Policy Period, and the invoiced amount forming the basis of the claim is in the same currency, claims will be paid in one of:

(i) New Zealand dollars; or

(ii) Australian dollars; or

(iii) Euro; or

(iv) United States dollars.

If the Insured does not select this alternative at the commencement of the Top-Up Cover Policy Period, claims will be paid in the Policy Currency specified on the Top-up Policy Schedule at the buying rate of exchange applicable at the date of Despatch.

#### 4.8 Salvage

NZECO's portion of all Salvage received by the Insured must be remitted directly to NZECO within 14 days of receipt. Any Salvage or other recoveries obtained by the Insured, the Primary Insurer, or NZECO in respect of the indebtedness of the Insured Buyer, shall be divided between NZECO, the Primary Insurer and the Insured following a recalculation of the claim under condition 4.7.2 of this Top-Up Cover Policy, taking into account the additional Salvage received and the entitlement of the Insured, NZECO and the Primary Insurer to recovery in the same proportion that each carried the loss at the date of Insolvency, or at the date it is deemed that the Insured Buyer has defaulted under condition 4.3.4 or repudiated the contract under condition 4.3.5 of this Top-Up Cover Policy, whichever may be the earlier.

#### 4.9 Subrogation and assignment of rights

4.9.1 If requested to do so by NZECO, the Insured must hand over the conduct of any recovery proceedings to NZECO before or after payment of any claim. For this purpose the Insured shall offer NZECO the right to become its Attorney and to exercise in its place and on its behalf all rights held by the Insured in respect of the Insured Debt whether wholly or partly insured.

4.9.2 The Insured shall not do anything which prejudices NZECO's right to any Salvage or other recoveries.

4.9.3 After NZECO has agreed to the payment of any indemnity to the Insured, NZECO is entitled to require the Insured to assign its rights to NZECO.

#### 4.10 Minimising Loss

The Insured shall take all reasonable steps to minimise each direct loss arising from the non-payment of any Insured Debt, including but not limited to steps to recover any goods which are the subject of an Insured Debt which is unpaid due to the Insolvency of, or Protracted Default, or Contract Repudiation of or by, an Insured Buyer, and the commencement and continuation of legal proceedings.

#### 4.11 Disclosure

The Insured shall at all times make available to NZECO and allow NZECO to examine and take copies of any documentation in the possession or control of the Insured relating to this insurance. The Insured shall

upon request by NZECO take all reasonable steps to obtain for NZECO any information in the possession of any third party relating or connected with this insurance policy or any loss.

#### 4.12 Policy Currency

All figures provided for this Top-up Cover Policy shall be denominated in the Policy Currency unless specifically noted otherwise. . In the event that the Insured enters into a transaction in a currency other than the Policy Currency, then the transaction shall be calculated in the Policy Currency at the Bank buying rate of exchange quoted by the Insured's Bank on the date of the transaction.

#### 4.13 Law

This Top-Up Cover Policy shall be construed in accordance with and governed in all respects by New Zealand law. NZECO and the Insured submit irrevocably to the jurisdiction of the courts of New Zealand. Any terms and conditions of this Top-Up Cover Policy which do not conform to any statutes which have effect in the jurisdiction where this Top-Up Cover Policy was issued are to be treated as having been amended or deleted to the extent necessary to comply with those statutes.

#### 4.15 NZECO Grant of Authority

NZECO appoints Euler Hermes Trade Credit Limited, on NZECO's behalf, to:

- (i) arrange, issue and administer this Top-up Cover Policy and Top-up Permitted Limits; and
- (ii) administer and process claims arising under this Top-up Cover Policy.

#### 4.16 Notification

All correspondence relating to this Top-Up Cover Policy must be sent to:

Euler Hermes Trade Credit Limited, Level 1, 152 Fanshawe Street, Auckland 1010.

Written notices sent by NZECO or the Primary Insurer to the Insured may be sent by facsimile or mail.

Notices sent by facsimile will be effective on confirmation of successful transmission being obtained by the sender.