

APPENDIX - 21

FORM FOR BANK GUARANTEE

To,

The President of India
Acting through the Director
General of Foreign Trade

In consideration of the President of India, acting through the Director General of Foreign Trade (which expression shall be deemed to include the Joint Director General of Foreign Trade/Deputy Director General of Foreign Trade), or any other licensing authority for the time being authorised to perform the duties of Joint Director General of Foreign Trade/Deputy Director General of Foreign Trade), Ministry of Commerce, Government of India, New Delhi (hereinafter referred to as the Government) having agreed to grant to _____ (full expanded name of the Importer/Exporter with complete address) (hereinafter referred to as Importer/Exporter) a licence being licence No. _____ dt. _____ (hereinafter referred to as Licence for the import of the goods mentioned therein) for a value of Rs. _____ (Rupees _____ only) under the _____ Scheme (fill up the actual Scheme) notified by the Government under the Export/Import Policy and Procedure (2002-07) as may be amended from time to time (hereinafter referred to as scheme) on the terms and conditions specified in the said licence which term inter alia stipulates production of a Bank guarantee for Rs. _____ (Rupees _____ only). We _____ (indicate the name and full address and other particulars of the Bank) (hereinafter referred to as Bank) at the request of the Importer/Exporter do hereby unconditionally and irrevocably undertake to pay the Government an amount not exceeding Rs. _____ against any loss or damage caused to or suffered by the Government by reason of any failure on the part of the said Importer/Exporter of any of the terms or conditions contained in the said licence including the export obligation mentioned therein.

2. We _____ (indicate the name of Bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur or protest, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused or suffered by the Government by reason of breach by the Importer/Exporter of any of the terms or conditions of the said licence. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under these presents.

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Importer/Exporter in any suit or proceeding pending before any court or Tribunal relating thereto and our liability under these presents being absolute and unequivocal.

4. We, _____ (indicate the name of Bank) further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said licence and that it shall continue to be enforceable till all the obligations of the Importer/Exporter under or by virtue of the said Licence have been fully discharged to the satisfaction of the Government or till Jt.DGFT/Dy.DGFT, or any Licensing authority for the time being authorised to perform the duties of Jt.DGFT/Dy.DGFT, Ministry of Commerce, New Delhi certifies that the terms and conditions of the said Licence have been fully and properly carried out by the Importer/Exporter and accordingly discharges this guarantee. Provided, however, unless a demand or claim under this guarantee is made on us in writing on or before the _____. We shall be discharged from all liability under this guarantee thereafter.

5. We _____ (indicate the name of bank), further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder (i) to vary any of the terms and conditions of the said Licence and modify the said scheme from time to time or (ii) to extend time of performance by the said Importer/Exporter from time to time or to postpone for any time or (iii) from time to time any of the powers exercisable by the Government against the said Importer/Exporter and to forbear or enforce any of the terms and conditions relating to the said Licence and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Importer/Exporter for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Licensee or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

That this shall be a continuing Bank Guarantee and shall not be discharged by any change in the constitution of the importer/exporter or of the Bank.

That the guarantor will not revoke the guarantee without prior written consent of the Government.

"Dated the _____ day of _____ year _____
for _____ indicate the name of the Bank)"

APPENDIX - 21A

FORM OF LEGAL AGREEMENT/UNDERTAKING

To

The President of India acting through the Director
General of Foreign Trade (which expression shall be deemed to
include the Joint Director General of Foreign Trade/Deputy
Director General of Foreign Trade) Ministry of Commerce, Udyog
Bhavan, New Delhi - 110 011.

This DEED of Agreement made on _____ day of
_____ month _____ year

BETWEEN

_____ (full expanded name of the Importer/Exporter
with complete address) hereinafter referred to as the party which
expression shall be deemed to include his/her heirs, successors,
administrators and assignee, if the firm is Sole Propreitory
firm/jointly and severely all the Partners through their legal
heirs, successors, administrators, and assignee as well as the
portions where body corporate or not having the control of the
affairs of the said firm, if it is Partnership firm/successors in
business and assignee if firm is limited company.

AND

The President of India (hereinafter referred to as the
Government which expression shall include his successors in
office and assigns)

WHEREAS the party has made an application bearing
Reference No. _____ dated _____ for a licence for a
value of Rs. _____ for import under the
Scheme (fill up the actual
Scheme) (hereinafter referred to as 'Scheme') notified by the
Government under the Export and Import Policy, 2002-07 as
amended from time to time with an Export Obligation of
Rs. _____.

AND WHEREAS the Government may grant a licence to the
party for the full value applied for or for a lesser value as it
may be deemed fit and as per the terms and conditions of the
Scheme.

AND WHEREAS one of the terms of the Licence, which may be
issued as above, is that the party is to enter into an
agreement/undertaking with the Government on the terms and
conditions appearing hereinafter.

AND WHEREAS the party has furnished a Legal Agreement in
anticipation of the Government issuing import licence as above
for an amount of the export obligation imposable as per the
Scheme.

AND WHEREAS the party has agreed to perform the export obligation for the quantity and or to the extent of FOB value shown in the aforesaid application or as may be fixed by the Government in the Licence/ Sanction/ Approval within the stipulated period by exporting the goods as required under the licence which may be issued.

AND WHEREAS the party has agreed :

- a) to perform the export obligations for the quantity and or FOB value within the period specified in the aforesaid Scheme/Licence/Sanction/Approval;
- b) to fulfill all the conditions of _____ Scheme under which the Licence/Sanction/Approval may be issued;
- c) to fulfill all the terms and conditions of the licence/ sanction which may be issued;
- d) to fulfil the conditions subject to which the goods may be cleared by the Customs authorities including conditions imposed under the relevant Customs notification pertaining to the Scheme;
- e) to send a 'Statement of Exports' to the Licensing Authority in original, on a monthly/quarterly/half-yearly basis, within 15 days from the end of the period;
- f) to furnish from a Nationalised / Scheduled bank, in original, a Bank certificate of exports evidencing the exports/ deemed exports of goods made in fulfilment of the export obligation(s) and such other documents as may be demanded by the licensing authorities as evidence for the exports/ deemed exports made;
- g) that in the event of his default in meeting the aforesaid obligations / conditions, he shall pay an amount equal to 15% interest per annum on the amount of duty saved from the date of import of the first consignment till the date of payment.
- h) that the Government may modify the Scheme from time to time.

NOW, THEREFORE THE CONDITIONS OF THE AGREEMENT ARE AS FOLLOWS :

In anticipation of granting the said Licence by the Government as aforesaid, the party hereby declare(s) and agree(s):

- (i) That the party shall comply with all the obligations under the aforesaid Scheme specified by the Government and the conditions specified in the Licence/Sanction/Approval to be issued for import/ export and other conditions specified herein above.

- (ii) That if the party fails to fulfil the whole or part of the obligations under the Scheme, including the terms and conditions stipulated in the Licence / Sanction/ Approval/ Scheme or fails to furnish any information required under the Foreign Trade (Development & Regulation) Act, 1992, or the Orders made thereunder or the Rules framed thereunder, on the written demand made by the Government of the amount, in whole or part, the party shall forthwith without any demur or protest, pay to the Government the sum demanded.
- (iii) That notwithstanding any right Government may have directly against the party in any form and notwithstanding any dispute raised by the party in any form, the Government's written demand to the party shall be final and binding.
- (iv) That this Agreement shall continue and shall not be discharged by any change in the constitution of the party.
- (v) That in the event of the non-fulfillment of export obligations mentioned in the licence as aforesaid, the party shall on the instructions of the Government hand over the unutilised imported goods to any agency as the Government may nominate, for disposal in any manner. The amount so recovered by sale shall be deposited with the Government towards the fulfillment of export obligations/ conditions, after deducting the normal commissions and other expenses incurred by the said agency. The decision of the agency as to the said amount shall be final and binding on the party. The Bank Guarantee/ Bond executed with the Customs authorities, in such an event, shall also be forfeited.
- (vi) The party undertakes to pay simultaneously a sum equivalent to the value of the import Licence / Sanction/ Approval or to the extent of the value of the imported goods against the said Licence / Sanction/ Approval, whichever is higher, by way of liquidated damages to the Government. The decision of the Government shall be final and binding on the party.
- (vii) That this Agreement is executed by the party in public interest.
- (viii) That the payment of the amount demanded by the government under this Agreement shall not affect the liability of the party to any other action, including the initiation of legal proceedings for confiscation of the imported material and refusal of further licences, and all other liabilities, penalties and consequences under the provisions of the Foreign Trade (Development and Regulation) Act, 1992, and the Orders and Rules made

thereunder, that may be decided by the Government.

- (ix) That this Agreement shall remain in full force until all the obligations of the party are fulfilled to the full and final satisfaction of the Government as specified above and till such satisfaction is communicated to the party.
- (x) That the party irrevocably undertakes that in the event of his default in meeting the aforesaid export obligations / conditions, they shall pay the applicable Customs Duties, 15% interest per annum on the amount of customs duties saved from the date of import of the first consignment till the date of payment and surrender where ever applicable valid Special Import Licences to meet the shortfall in the export obligations as may be imposed on the licence/ sanction/ scheme. In addition to the aforesaid the party shall also abide by the conditions imposed by the relevant Customs notification for the Scheme.
- (xi) That the party irrevocably undertakes that in the event of his default in meeting the aforesaid export obligation / conditions, they shall execute a Bank Guarantee for an amount as required by the Government.
- (xii) Nothing in this Agreement shall debar the Government from modifying the said Scheme from time to time and/or from implementing any such modified Scheme as if it is in force at the date of this Agreement.

IN WITNESS WHEREOF the party hereto has duly executed this Agreement on this _____ day of _____ year _____ signed, sealed and delivered by the party in the presence of :

(Signature) _____

(full and expanded description of the party with residential address)

Witness: _____
(Signature)

1. Name _____
Residential _____
Address _____

2. Name _____
Residential _____
Address _____

(To be authenticated/affirmed by 1st
Class Magistrate/Notary Public)

Accepted by me on behalf of the President of India.

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**NOTE FOR GUIDANCE IN THE MATTER OF EXECUTING
BANK GUARANTEE(B.G.) / LEGAL AGREEMENT(LUT)**

1. The Bank Guarantee /Legal Agreement is to be executed and signed by the importer/exporter (party) and the surety Bank (Guarantor) on a non-judicial stamp paper of the minimum value of Rs. 15/-, or any amount as may be prescribed by the concerned State Government under the Indian Stamp Act, 1899 or State Act, as the case may be.
2. Any stamp duty payable on the B.G./LUT or any document executed thereunder shall be borne by the party.
3. If the party is a sole proprietary firm, the Bond/Legal Agreement shall be executed by the Sole Proprietor of the firm, along with his permanent and complete residential address.

"In such a case the expression "Importer/Exporter" or "Party" used in the opening paragraph of the Legal Agreement should include his/her heirs, successors, administrators and assignee".

4. If the party is a partnership firm, the B.G./LUT shall be executed in the name of the partnership firm, through the partners to be specified, or the Managing partner, if so specified in the Partnership Deed, along with the address of the partner/Managing Partner, and the place where the Registered Office of the partnership firm is situated.

"In that case, the expression "Importer/Exporter" or "Party" used in the opening paragraph of the Legal Agreement should include jointly and severally all the partners, through respective legal heirs, successors, administrators and assignee as well as the portions where body corporate or not having the control of the affairs of the said Firm".

5. If the party is a Limited Company, the B.G./ LUT shall be executed by the Managing Director or two Directors of the Company, along with the seal of the Company and also specifying the address of the Registered Office of the Company.

Alternatively the B.G./ LUT shall be executed by a senior executive of the Company of the rank of General Manager and one of the Directors of the Company who have been authorised by the board of Directors for this purpose, along with the seal of the Company and also specifying the address of the Company. In such cases B.G./ LUT shall be countersigned by the Company Secretary.

"In that case, the expression "Importer/Exporter" or "Party" used in opening paragraph of the Legal Agreement should include its successors in business and assignee".

6. Each page of the Bond/Legal Agreement is to be signed.
7. The importer/ exporter shall also give a separate declaration alongwith BG/LUT to the effect that in the event of any change in the Customs Duty based on which the BG/LUT is executed for clearance of the imported goods, he shall execute supplementary BG/LUT for the remaining value at the time of clearance of last consignment, failing which he shall be liable to such action as is considered proper by the licensing/ customs authority.