

GUARANTEE NUMBER B 110-0 UA

Counter-Guarantee Agreement

(Pre-Export Guarantee Facility Project)

between

UKRAINE

and

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Dated February 9, 1998

GUARANTEE NUMBER B110-0 UA

COUNTER-GUARANTEE AGREEMENT

AGREEMENT, dated February 9, 1998, between UKRAINE and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) Ukraine, having been satisfied as to the feasibility and priority of the Project described in Section 2.01 of this Agreement has: (i) established the Guarantee Administration Unit (the GAU) to carry out the Project; (ii) authorized the GAU to retain Dresdner Bank Aktiengesellschaft as the Agent Bank (the Agent Bank) for the purposes of the Project; and (iii) has requested the Bank to assist in lending financial credibility to the Guarantee Contracts sold by the GAU and supported by the IUPs issued by the Agent Bank by issuing a Guarantee to the Agent Bank; and

(B) by the Guarantee Agreement dated as of February 9, 1998, between the Bank and the Agent Bank, the Bank has agreed to guarantee (the "Guarantee") certain payment obligations of Ukraine to the Agent Bank, up to an amount equal to one hundred and twenty million Dollars (\$120,000,000), on the terms and conditions set forth in the Guarantee Agreement, but only on condition that: (i) Ukraine agrees to undertake such obligations toward the Bank as are set forth in this Counter-Guarantee Agreement; and (ii) the GAU agrees to undertake such obligations toward the Bank as are set forth in the Project Agreement, dated as of February 9, 1998, between the Bank and the GAU;

WHEREAS, Ukraine, in consideration of the Bank's entering into the Guarantee

Agreement with the Agent Bank, has agreed to undertake the obligations set forth in this Agreement;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. (a) The following provisions of the General Conditions Applicable to Loan and Guarantee Agreements of the Bank, dated January 1, 1985, with the modifications set forth in paragraph (b) of this Section (the General Conditions) constitute an integral part of this Agreement:

- (i) Article I;
- (ii) Sections 2.01 (1), (2) (3), (4), (6), (8), (9), (11), (14), (15), (16), (17) and (19), 2.02 and 2.03;
- (iii) Sections 6.01, 6.02 (a), (c), (d), (e), (f), (g), (i), (j) and (k), 6.03, 6.04 and 6.06;
- (iv) Sections 9.01 (a) and (c), 9.02, 9.03, and 9.07;
- (v) Sections 10.01, 10.03 and 10.04;
- (vi) Section 7.01(a), (c), (e), (f) and (h);
- (vii) Article IX; and
- (viii) Article XII.

(b) The General Conditions shall be modified as follows:

- (i) the term "Borrower", wherever used in the General Conditions, means Ukraine;
- (ii) the term "Loan Agreement", wherever used in the General Conditions, means this Agreement;
- (iii) the term "Loan", wherever used in the General Conditions, means the Guarantee extended by the Bank to the Agent Bank under the Guarantee Agreement;
- (iv) the term "Project" means the project for which the Guarantee is granted, as described in Section 2.01 of this Counter-Guarantee Agreement and as the description thereof may be amended from time to time by agreement between the Bank, Ukraine, the GAU and the Agent Bank;
- (v) Section 6.01 shall be modified to read:
"Ukraine may, by notice to the Bank, the GAU and the Agent Bank, cancel any amount of the Guarantee which shall not have been withdrawn, except that Ukraine may not so cancel any amount of the Guarantee in respect of which the Agent Bank shall have issued an IUP to support a Guarantee Contract sold by the GAU".
- (vi) The first paragraph of Section 6.02 shall be modified to read:
"If any of the following events shall have occurred and be continuing, the Bank may, by notice to Ukraine, the Agent Bank and the GAU, limit in whole or in part the right of the Agent Bank to receive funds under the Guarantee for the making of the Payment under any Guarantee Contract supported by an IUP issued by the GAU and Agent Bank, respectively, after the date of such notice (Limitation Notice)."
- (vii) The last paragraph of Section 6.02 shall be modified to read:

"The right of the Agent Bank to receive funds under the Guarantee for the making of the Payment under any new IUP-supported Guarantee Contract issued after the date of the Limitation Notice referred to in paragraph 1 of this Section 6.02, shall continue to be limited, in whole or in part, as the case may be, until the event or events giving rise to limitation of coverage shall have ceased to exist, and/or the Bank shall have notified Ukraine, the Agent Bank and the GAU that the Limitation Notice has been revoked, in whole or in part (by Revocation Notice), and the right of the Agent Bank to receive funds under the Guarantee for Payments has been restored, in whole or in part, as the case may be."

(viii) Section 6.03 shall be modified to read:

"If (a) the right of the Agent Bank to receive funds under the Guarantee for the making of any Payment under any new IUP-supported Guarantee Contract issued after the date of the notice referred to in paragraph 1 of Section 6.02 shall have been limited for a continuous period of thirty (30) days, or (b) at any time, the Bank determines, after consultation with Ukraine, that an amount of the Guarantee will not be required to support the Project, the Bank may, by notice to the Agent Bank, Ukraine and the GAU irrevocably terminate the right of the Agent Bank to make withdrawals with respect to such amount (Irrevocable Limitation Notice). Upon the giving of such Irrevocable Limitation Notice, such amount of the Guarantee shall be canceled."

(x) Section 6.04 shall be modified to read:

"No limitation of coverage by the Bank shall apply to amounts of the Guarantee in respect of which the Agent Bank shall have issued an IUP to support a Guarantee Contract sold by the GAU prior to the date of Limitation Notice referred to in Section 6.02, above."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions, Preamble to this Counter-Guarantee Agreement, the Project Agreement and the Guarantee Agreement, have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Fee Escrow Account" means the account opened by the Ministry of Finance of Ukraine, on behalf of Ukraine, with the Agent Bank for the payment of the Guarantee Fee due to the Bank from Ukraine pursuant to Sections 3.01 (a) and (b) of this Counter-Guarantee Agreement and Article IV of the Guarantee Agreement, and referred to in Section 4.02 of the Project Agreement.

(b) "Framework Guarantee Contract" or "FGC" means a model guarantee contract which contains the terms and conditions to be included, in substance, in the Guarantee Contracts to be issued by the GAU, and which is set out in the Schedule to this Counter-Guarantee Agreement.

(c) "Project Document(s)" means singly or collectively, as the context may require, the Counter-Guarantee Agreement, the Project Agreement, the Guarantee Agreement, the Agency Agreement, each Guarantee Contract and each IUP.

ARTICLE II

Objectives and Description of the Project

Section 2.01. (a) The objectives of the Project are to assist Ukraine in attracting foreign private finance for commercial input supply transactions with agricultural or agroprocessing enterprises in the territories of Ukraine by giving financial credibility to Ukraine's commitment not to interfere with such transactions, as evidenced in Guarantee Contracts against non-commercial risks, sold by the GAU to qualifying foreign suppliers of credit.

(b) The Project consists of the operation by the GAU of a pre-export guarantee facility to sell guarantees against Eligible Risks covered under the terms of the Guarantee Contracts, which Guarantee Contracts shall be substantially in the form of the Framework Guarantee Agreement, included as the Schedule to this Agreement and forming an integral part hereof.

ARTICLE III

Counter-Guarantee of Ukraine to the Bank

Section 3.01. In consideration of the Bank providing the Guarantee under the Guarantee Agreement, Ukraine hereby irrevocably and unconditionally agrees:

(a) to pay to the Bank in advance, in semi-annual installments, the Guarantee Fee at the rate of one quarter of one percent (1/4 of 1%) per annum, in accordance with provisions of Article IV of the Guarantee Agreement, as follows:

(i) payment in full of the initial installment of the Guarantee Fee shall be condition precedent to the effectiveness of the Counter-Guarantee Agreements;

(ii) subsequent installments shall be due semi-annually, commencing six (6) months after the Effective Date of the Guarantee and Counter-Guarantee Agreements, with final payment due on the date falling thirty (30) days after the Final Demand Date.

(b) to open and maintain with the Agent Bank the Fee Escrow Account on terms and conditions that shall include the following:

(i) protection against seizure, set-off or attachment; and

(ii) authorization to the Agent Bank to automatically withdraw from the said Fee Escrow Account and transfer to the Bank semi-annual installments of the Guarantee Fee due from time to time in accordance with paragraph (a) of this Section 3.01 of this Counter-Guarantee Agreement and Article IV of the Guarantee Agreement;

(c) to pay to the Bank the Guarantee Fees directly until, and to the extent that, the funds in the Fee Escrow Account are insufficient to cover the full amount of any semi-annual installment of the Guarantee Fee due under Article IV of the Guarantee Agreement;

(d) to reimburse the Bank immediately upon written demand or as the Bank may otherwise direct in writing for any amount paid by the Bank under the Guarantee, in the currency so paid, or if payment shall have been made in any currency which the Bank shall have purchased with another currency for the purposes of such payment, in such other currency, together with interest thereon at the rate per annum specified by the Bank in respect of such currency, which rate shall be based on the Bank's prevailing borrowing cost in such currency plus the applicable margin over such cost, from the date such payment is made by the Bank until such amount is paid;

(e) to indemnify the Bank on demand in respect of all actions, proceedings, liabilities, claims, losses, damages, costs and expenses brought against, suffered or incurred by the Bank directly or indirectly in relation to or arising out of the Guarantee (except as otherwise provided in Section 10.04 (i) of the General Conditions);

(f) that the Bank has authority to comply with any Demand Notice served on the Bank by the Agent Bank pursuant to the Guarantee Agreement and to make any payments which may be due or claimed from the Bank under the Guarantee (the Bank shall promptly notify Ukraine and the GAU of such Demand Notice, but failure to give such notice shall in no way affect the Bank's obligation to make payment under the Guarantee to the Agent Bank or Ukraine's obligation to reimburse or indemnify the Bank pursuant to this Counter-Guarantee Agreement) and further agrees that it shall not be incumbent on the Bank to inquire whether or not any statements in a Demand Notice are in fact correct;

(g) that any Demand Notice shall, as between Ukraine and the Bank, be conclusive evidence for all purposes that the demand is properly made and payment as demanded is properly due to the Agent Bank;

(h) that any amount due to the Bank under this Counter-Guarantee Agreement shall be deemed, for the purposes of Sections 6.02 and 7.01 of the General Conditions, to be an amount due in consequence of a guarantee extended by the Bank to a third party, with the agreement of Ukraine.

Section 3.02. Ukraine may investigate any statement made in a Demand Notice but such investigation shall be without prejudice to the Bank's obligations under the Guarantee to make payment in full in respect of such Demand Notice and Ukraine's obligations hereunder shall apply notwithstanding that Ukraine disputes the validity of any such Demand Notice or the accuracy or correctness of any documentation, fact or figures referred to or stated therein.

Section 3.03. (a) The obligations of Ukraine under this Counter-Guarantee Agreement shall not be discharged except by due performance and then only to the extent of such performance. Save as expressly provided in the respective Guarantee Contract and the Agency Agreement, such obligations shall not be subject to any prior notice to, demand upon or action against Ukraine or the GAU or notice to, or demand upon Ukraine with regard to any failure by Ukraine to pay any amount in respect of which a Demand Notice is served on the Bank pursuant to the Guarantee Agreement. Ukraine's obligations shall not be impaired or modified by any of the following: (i) any extension of time, forbearance, concession or other indulgence given to the Bank, Ukraine, the GAU, the Agent Bank or any other person; (ii) any variation of any Project Document or any related agreement (except a variation to which Ukraine and the Bank shall have expressly agreed); (iii) any assertion of, or failure to assert, or delay in asserting, any right, power or remedy against Ukraine or the GAU; or (iv) any other circumstances which would or might (but for this provision) constitute a release, discharge or defense of or waiver for Ukraine.

(b) The Bank may at any time, without thereby discharging, impairing or otherwise affecting any rights, powers and remedies created or conferred upon it by this Counter-Guarantee Agreement, any Project Document or by-law: (i) offer or agree to or enter into any agreement for the extension or variation of any Project Document including but not limited to agreeing to extend the Final Demand Date under the Guarantee Agreement in accordance with the provisions of Section 9.03 of the Guarantee Agreement, in which event, for the avoidance of doubt, Ukraine's obligations hereunder (and Ukraine hereby agrees) shall also extend for an identical period (and shall extend pending the Bank's consideration of such request); or (ii) offer or give or agree to give any time or other indulgence to any other person or entity from whom it may seek reimbursement or indemnification in respect of sums paid out or liabilities incurred by the Bank under the Guarantee Agreement.

(c) Any rights conferred on the Bank by this Counter-Guarantee Agreement shall be in addition to, and not in substitution for or derogation of, any other right which the Bank may at any time have to seek, from Ukraine, the GAU or other person, reimbursement of or indemnification against payments made or liabilities arising from or in connection with the Guarantee.

(d) The Bank shall not be obliged before taking steps to enforce any rights conferred on it by this Counter-Guarantee Agreement or exercising any of the rights, powers and remedies conferred upon the Bank hereunder, or by any Project Document or by-law: (i) to take action or obtain judgment or award in any court or tribunal of competent jurisdiction against any other person (including persons from whom it may seek reimbursement in respect of sums paid out or liabilities incurred under the Guarantee Agreement); or (ii) to enforce or seek to enforce any other rights it may have against Ukraine or the GAU or its rights against any other person related to the Project.

Section 3.04. Any payment required to be made by Ukraine pursuant to the terms of this Counter-Guarantee Agreement shall be:

(a) paid at such places as the Bank shall reasonably request;

(b) made in such manner, and in currencies acquired in such manner, as shall be permitted under the laws applicable to the making of such payment and effecting the deposit of such currencies to the account of the Bank with a depository designated by the Bank for this purpose;

(c) paid without restrictions of any kind imposed by, or in the territory of, Ukraine; and

(d) applied first, to pay all interest and other charges due to the Bank and second, after such interest and other charges are paid, to pay all other amounts then due under this Counter-Guarantee Agreement.

Section 3.05. If and to the extent Ukraine makes any payment under this Counter-Guarantee Agreement in respect of amounts paid by the Bank under the Guarantee Agreement, Ukraine shall be entitled to the Bank's rights of subrogation set forth in Section 7.01 of the Guarantee Agreement and Section 4.03 of the Project Agreement in respect of such amount.

Section 3.06. To the extent that the Bank may at any time acquire any rights to or interests in the Project (including interests, if any, under a respective Guarantee Contract) by virtue of subrogation under the Guarantee Agreement, the Project Agreement, this Counter-Guarantee Agreement or by operation of law, the Bank shall not assume any liability or incur any obligation to Ukraine as a result of the acquisition (whether temporary or otherwise) of such rights or interests.

Section 3.07. In the event that the Bank issues a Limitation Notice pursuant to Section 3.02 of the Guarantee Agreement but does not issue a Revocation Notice or an Irreversible Limitation Notice pursuant to Section 3.03 of the Guarantee Agreement within one year of the Limitation Notice, the Bank shall calculate guarantee fees on the reduced Maximum Guaranteed Amount and issue a rebate, if any, due as a result of the reduction to the Maximum Guaranteed Amount to Ukraine. The Bank's calculation of the amount of such rebate shall be, in the absence of manifest error, conclusive for all purposes.

ARTICLE IV

Execution of the Project

Section 4.01. (a) Ukraine declares its commitment to the objectives of the Project as set forth in Section 2.01 of this Counter-Guarantee Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under this Counter-Guarantee Agreement, shall authorize and cause the GAU to perform in accordance with the provisions of the Project Agreement all the obligations of the GAU therein set forth, shall take or cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable the GAU to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance by the GAU and with the fulfillment of the objectives of the Project.

(b) Ukraine shall take all measures necessary on its part to ensure that the GAU shall exercise its rights and comply with its obligations under the Agency Agreement and the Guarantee Contracts in effect from time to time in such manner as to protect the interests of Ukraine, the Bank and the GAU and to accomplish the purposes of the Project.

Section 4.02. Without limitation or restriction upon any of its other obligations under this Counter-Guarantee Agreement and the Guarantee Contracts in effect from time to time, Ukraine hereby unconditionally undertakes to the Bank punctually to perform, through the GAU, all of its obligations under the Guarantee Contracts in effect from time to time and not to take any action which would prevent, restrict or interfere with the performance of the GAU of its obligations under the Project Agreement and of the said Guarantee Contracts.

Section 4.03. Ukraine shall notify the Bank prior to agreeing to any amendment, waiver or other change, and shall obtain the written consent of the Bank prior to agreeing to any amendment, waiver or other change, to the Framework Guarantee Contract or any Guarantee Contract in effect, which would or could materially affect the rights or obligations of the Bank under the Project Documents and related agreements.

Section 4.04. Ukraine shall take all possible actions and measures in its power to prevent potential breaches and to remedy and cure any breach of any Guarantee

Contract in effect in order to prevent the occurrence of a Loss thereunder.

ARTICLE V

Remedies of the Bank

Section 5.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional events are specified:

(a) the GAU shall have failed to perform any of its obligations under the Project Agreement;

(b) as a result of events which have occurred after the date of this Counter-Guarantee Agreement, an extraordinary situation shall have arisen which shall make it improbable that the GAU will be able to perform its obligations under the Project Agreement;

(c) any provision of the Agency Agreement, the Framework Guarantee Contract or any Guarantee Contract in effect or the Operating Manual shall have been assigned, amended, suspended, abrogated, terminated, canceled or waived without the prior written consent of the Bank;

(d) the GAU Charter shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of the GAU to perform any of its obligations under the Project Agreement, the Agency Agreement or the Guarantee Contracts in effect;

(e) the Inter-Agency Board for Project Execution has been dissolved, in whole or in part, or otherwise altered in composition or responsibilities so as to affect materially and adversely its ability to perform its functions;

(f) Ukraine or any other authority having jurisdiction shall have taken any action for the dissolution or disestablishment of the GAU or for the suspension of its operations;

(g) the GAU shall have not complied with any of its obligations under the Agency Agreement;

(h) the Agent Bank shall have not complied with any of its obligations under the Agency Agreement;

(i) the Agent Bank shall have made a Payment to a Guarantee Holder with the funds released by the Bank to the Agent Bank under the Guarantee for that purpose; and

(j) Ukraine shall have introduced a material reversal of its policies on trade liberalization and/or foreign exchange regime, which are set out in the letter from Ukraine, dated May 29, 1996, furnished to the Bank in connection with the Enterprise Development Adjustment Loan (Loan No. 4057 UA) and the letter of Ukraine, dated August 30, 1996, furnished to the Bank in connection with the Agriculture Sector Adjustment Loan (Loan No. 4103 UA).

ARTICLE VI

Effective Date

Section 6.01. The following events are specified as additional conditions to effectiveness of this Counter-Guarantee Agreement within the meaning of Section 12.01 (c) of the General Conditions:

(a) all conditions precedent to the effectiveness of the Agency Agreement, except the condition relating to the effectiveness of this Agreement, have been fulfilled; and

(b) all conditions precedent to the effectiveness of the Guarantee Agreement, except the condition relating to the effectiveness of this Agreement, have been fulfilled.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (c) of the General Conditions, to be included in the opinion or opinions to be furnished to the Bank:

(a) that the Project Agreement has been duly authorized or approved by the GAU, and is legally binding upon the GAU in accordance with its terms; and

(b) that the Agency Agreement has been duly authorized or approved by the GAU and is legally binding upon the GAU in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

ARTICLE VII

Representative of Ukraine; Addresses

Section 7.01. The Minister of Finance of Ukraine is designated as representative of Ukraine for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For Ukraine:

Ministry of Finance
12/2 Hrushervsky Street
Kiev
Ukraine

Telex:

131450

For the Bank:

International Bank for
Reconstruction and Development
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable Address:

INBAFRAD
Washington, D.C.

Telex:

248423 (MC)
64145 (MCI)

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Counter-Guarantee Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

UKRAINE

By

Authorized Representative

INTERNATIONAL BANK FOR
RECONSTRUCTION AND DEVELOPMENT

By

Regional Vice President
Europe and Central Asia Region

SCHEDULE

UKRAINE GUARANTEE ADMINISTRATION UNIT

Framework Guarantee Contract

SPECIAL STATE NON-COMMERCIAL RISK GUARANTEE

Guarantee Contract No: _____

This Guarantee Contract, the Guarantee Contract Approval Notice and Offer, attached as Schedule I, and the Schedule of Maximum Guarantee Contract Amount, attached as Schedule II, is issued on _____, 199 [200] by Ukraine, through the Guarantee Administration Unit (GAU), established pursuant to the Cabinet of Ministers of Ukraine Resolution #1278 as of October 21, 1996, in favour of _____ (the Guarantee Holder), located at _____, based on and in reliance upon the representations made in, the Guarantee Holder's application dated _____ 199 [200] (the Guarantee Contract Application) in respect of this Guarantee Contract, attached hereto as Schedule III and forming an integral part hereof. This Guarantee Contract is backed by an Irrevocable Undertaking to Pay from the Agent Bank, issued to the Guarantee Holder on _____ and attached hereto as Schedule IV and forming an integral part hereof, which IUP is supported by a World Bank Guarantee set out in the Guarantee Agreement between the World Bank and the Agent Bank, dated _____.

I. COVERAGE

On and subject to the terms and conditions of this Guarantee Contract, and in consideration of the Guarantee Contract premium payable hereunder, Ukraine agrees to compensate the Guarantee Holder for 100% of any Loss related to the Transaction Contract which:

(i) shall have been sustained by the Guarantee Holder during the Guarantee Contract Period as a direct result of the occurrence of any of the risks described in Article II hereof, and

(ii) has occurred after the Effective Date of the Guarantee Contract ,

PROVIDED THAT Ukraine shall never be obliged to pay more than the Maximum Guarantee Contract Amount.

II. RISKS COVERED

2.1. Inconvertibility and Inability to Transfer

1. The operation of a law or any other current normative and legal act of Ukraine or any action or inaction on the part of Ukraine which partially or totally restricts or prevents the conversion of any amount of the payment obligation owed to the Guarantee Holder pursuant to the Transaction Contract from Local Currency into Guarantee Contract Currency or restricts or prevents the transfer outside Ukraine of the Guarantee Contract Currency, once converted, provided that the Buyer and/or the Guarantee Holder have complied with all existing requirements in Ukraine for the above conversion or transfer.

2. The failure of Ukraine to permit (or prevention by Ukraine of entities authorized in accordance with the current law or any other normative and legal act of Ukraine to operate in the foreign exchange market from performing) conversion of Local Currency into Guarantee Contract Currency at the most favorable rate of exchange available if multiple rates of exchange have been introduced after the Effective Date of the Guarantee Contract.

3. The operation of a law or any other current normative or legal act of Ukraine which blocks and/or delays the conversion of the local currency deposit, during which delay the local currency deposit depreciates against the Guarantee Contract Currency.

2.2. Cancellation of Licenses

1. The cancellation or non-renewal by Ukraine of any import license for the import into Ukraine of the Input Goods, or of any export license for the export from Ukraine of the Output Goods; or

2. The imposition in Ukraine of restrictions on the import into Ukraine of Input Goods or the export from Ukraine of Output Goods, which Input Goods or Output Goods were not previously subject to restriction.

2.3. Expropriation

The operation of a law or any other normative and legal act of Ukraine or any action or inaction on the part of Ukraine which has or have the effect of:

(a) depriving the Guarantee Holder of:

(i) its right to a scheduled payment of the Transaction Contract Amount or any part thereof,

(ii) the use and control of the funds deposited (either in Local Currency, Transaction Contract currency, or Guarantee Contract Currency) by the Guarantee Holder or by the Buyer for the account of the Guarantee Holder with a financial institution in Ukraine, and such funds constituted a scheduled payment of the Transaction Contract Amount or any part thereof,

(iii) its right to the Output Goods or any part thereof; and/or

(b) depriving the Buyer of its ability to control or dispose of its property or assets, or to carry on its business, which has the result of causing or making the Buyer to default on a scheduled payment of Transaction Contract Amount or any part thereof.

2.4. Seizure of Goods and Prevention of Sale

The occurrence of the seizure of Input Goods, or Output Goods or prevention of their sale, lease or export by Ukraine, where seizure of goods means the taking and holding of, Input Goods or Output Goods by Ukraine from the Buyer or Guarantee Holder without just, prompt and adequate compensation.

2.5. War and Civil Disturbance

Any military actions or civil disturbances in Ukraine's territories, notably, revolution, rebellion, insurrection, coup d'etat and similar political actions which cannot be controlled by the legal authorities of Ukraine.

2.6. Imposition or Increase of Import or Export Taxes

The imposition by Ukraine of any new or increased tax, levy or duty which are exclusively related to the import into Ukraine of Input Goods or the export from Ukraine of Output Goods relating to the Transaction Contract.

2.7. Diversion of Voyage

The interruption or diversion of voyage leading to an increase of transport or insurance charges paid by the Guarantee Holder after export of Input Goods, provided the interruption or diversion occurred outside the country of the Guarantee Holder and was caused by one of the events specified in Articles 2.2., 2.3., 2.5., 2.6., 2.8.

2.8. Interference With Logistical Services

Any action by law or any other current normative and legal act of Ukraine, leading to, but not limited to, seizure, confiscation, embargo or sanction, on the part of

Ukraine, which prevents or delays the receiving, handling, storing, loading, transporting, and shipping of the Input Goods or Output Goods within Ukraine.

2.9. Interference with the Repossession of Leased Goods

Interference by Ukraine in valid lease agreements entered into between the Guarantee Holder and a Ukrainian lessee whereby Ukraine prevents or restricts from repossessing and, if necessary, removing from Ukraine goods located in Ukraine and leased to a Ukrainian enterprise where either (i) the lease has expired and under its terms and conditions the leased goods are to be returned to the Guarantee Holder or (ii) the Ukrainian lessee failed to meet its obligations called for in the lease agreement between the Guarantee Holder and the Ukrainian lessee.

III. REQUIREMENTS OF THE GUARANTEE CONTRACT

3.1. Ukraine shall have no liability under the terms of this Guarantee Contract until the Guarantee Holder has paid the required premium for the Guarantee Contract to the GAU.

3.2. Ukraine shall have no liability under the Guarantee Contract unless:

a. The sale, lease or financing of Input Goods is evidenced by an invoice with a description of the goods and a Transaction Contract Amount or any part thereof, a written payment obligation of Buyer, payable to the Guarantee Holder, and if the payment obligation of the Buyer, and/or Transaction Contract are denominated in a currency other than the Guarantee Contract Currency, a declaration of value, denominated in Guarantee Contract Currency;

b. The shipment of Input Goods is evidenced by a copy of the original bill of lading and, in the case of overland transport, a certificate of entry of the products into Ukraine signed by an official, duly authorized in accordance with current legislation of Ukraine, or other evidence of delivery in accordance with the terms of the Transaction Contract.

3.3. The Guarantee Holder shall use all reasonable and usual care, skill and forethought and take all reasonable and customary measures to prevent or minimize Loss.

3.4. With respect to the Transaction Contract, the Guarantee Holder shall comply with all international agreements on environment and environmental laws, including rules and regulations in force in Ukraine, as well as with any special conditions relating to the environment which the GAU attaches to this Guarantee Contract.

3.5. The Guarantee Holder shall obtain prior approval in writing from the GAU, which the GAU shall not reasonably withhold, to assign any right, title or interest in the Guarantee Contract.

3.6. In the event of non-payment of guaranteed extensions of credit due to risks covered under the Guarantee Contract or the occurrence of any event likely to cause a Loss, the Guarantee Holder shall submit to the GAU a notice of potential Loss (i) at least 45 days before submission of a Claim and (ii) not later than 30 days after the occurrence of a Covered Risk or 7 days after the Expiry Date of the Guarantee Contract, whichever is sooner.

3.7. The Guarantee Holder shall report to the GAU the existence of any material dispute between the Guarantee Holder and the Buyer or Supplier (or dispute between Supplier and Buyer where the Supplier is not the Guarantee Holder), and keep the GAU informed concerning its resolution by settlement, compromise, or litigation.

IV. EXCLUSIONS

Ukraine shall not be liable for the payment of a Claim for any Loss if:

4.1. The Guarantee Holder has at any time failed to disclose any information, and/or made a misrepresentation to the GAU that is material to the rights, liabilities or obligations of the GAU under the Guarantee Contract.

4.2. An unresolved dispute exists between the Guarantee Holder and the Buyer or Supplier (or the Buyer and Supplier, where the Supplier is not the Guarantee Holder) with regard to any matter material to any of the cCovered risks.

4.3. The Guarantee Holder (or Supplier, if he is not the Guarantee Holder) has entered into an agreement with the Buyer or Supplier, changing the terms or conditions of payment of the Transaction Contract, unless the GAU has given its prior approval in writing to such agreement, which the GAU shall not reasonably withhold, or unless such agreement constitutes a composition arrangement that is legally binding on all creditors of the Buyer or Supplier.

4.4. The Loss is due to a cause within the control of or avoidable by the Guarantee Holder or is caused by the insolvency of the Guarantee Holder.

4.5. With regard to Imposition or Increase of Import or Export Taxes risk only, the imposition or increase in taxes, levies or duties is that of a general nature, including, without limitation, value added tax, sales or consumption tax, stamp duty, or corporate or personal taxes on income.

4.6. The licenses, approvals, authorizations and other documents required at the date of shipment of Input Goods for the due performance of the Transaction Contract have not been obtained.

4.7. The Guarantee Holder (or Supplier, if he is not the Guarantee Holder), in respect of the Transaction Contract has failed to comply with existing laws and regulations having the force of law in UkraineEXISTING laws or any other current normative and legal acts of Ukraine.

4.8. The Covered Risks were insured or insurable under marine risk insurance coverage available on the Effective Date of the Guarantee Contract.

4.9. The Covered Risks are or were covered by any policy of insurance held by the Guarantee Holder.

4.10. The Loss arises from the exchange rate fluctuation or devaluation of Local Currency.

4.11. The Loss arises from non-discriminatory official measures of general application in Ukraine of a kind that countries normally take in the public interest for the specific purpose of ensuring public health, safety, and welfare or protecting the environment.

4.12. The Loss arises from any of the risks specified in Article II that took place prior to the Effective Date of the Guarantee Contract.

V. LOSSES AND CLAIMS

5.1. Ukraine will make payment to the Guarantee Holder for a Loss covered by this Guarantee Contract, provided that:

5.1.1. The Guarantee Holder has submitted a Claim which includes a complete, accurate and satisfactory proof of loss form to the GAU no earlier than (45) days and no later than (90) days after the notice of potential Loss referred to in Article 3.6. has been registered by the GAU or within (45) days from the date of a request by the GAU for its submission;

5.1.2. The Guarantee Holder has submitted a notice of potential loss to the GAU not later than 7 days after the Expiry Date of the Guarantee Contract or 30 days after the occurrence of a Covered Risk, whichever is sooner.

5.1.3. In cases involving Inconvertibility or Inability to Transfer, the Guarantee Holder has executed the release, subrogation and assignment attached to the proof of loss form, and, if requested by the GAU, has transferred to the GAU the payment obligation of the Buyer under the Transaction Contract or the letter of credit or draft thereunder, the Transaction Contract and any security or deposit; and

5.1.4. The Guarantee Holder has taken all reasonable and customary measures to

prevent or minimize Loss.

5.2. The GAU will review all Claims to ascertain compliance with the terms and conditions of the Guarantee Contract.

5.3. Claims which are approved by the GAU Ukraine will be paid by the Agent Bank in accordance with the terms and conditions of the Agent Bank's Irrevocable Undertaking to Pay which is issued as Schedule IV to this Guarantee Contract.

5.4. Claims will be paid within (60) days of receipt of the documents listed in Article 5.1.1. - 5.1.4.

5.5. The GAU will inform the Guarantee Holder of any Claim which is denied, citing the reasons for denial, within (30) days of receipt of the documents listed in Article 5.1.1. - 5.1.4.

5.6. All Claim payments shall be made in the Guarantee Contract Currency. If the payment obligation of the Buyer under the Transaction Contract is denominated in a currency other than the Guarantee Contract Currency, the applicable exchange rate for translating the Loss into Guarantee Contract Currency shall be the lesser of the exchange rate stated on the Application for Guarantee Contract Application or the exchange rate in effect on the date of the notice of potential Loss.

VI. SUBROGATION

6.1. Upon payment of a Claim, the GAU shall be subrogated immediately to the extent of such payment, to any rights, claims, interests and security held, recovered or receivable by the Guarantee Holder under the Transaction Contract. The Guarantee Holder shall do all required on its part under the laws applicable to the Transaction Contract to perfect the GAU's rights of subrogation.

6.2. After payment of a Claim, all amounts that are subsequently received, recovered or realized from any source on account of amounts payable to the Guarantee Holder in respect of the Input Goods or Output Goods relating to the Transaction Contract shall be for the account of the GAU.

6.3. All amounts due to the GAU which have been received, recovered or realized by the Guarantee Holder shall be forthwith remitted to the GAU unless otherwise directed by the GAU, and until so remitted, such funds shall be held for the account of the GAU.

6.4. After payment of a Claim, the Guarantee Holder shall not enter into any agreement with Ukraine with respect to compensation relating to the Claim without the GAU's prior written consent.

6.5. Upon payment of a Claim by Ukraine, the Guarantee Holder shall provide a release to the Buyer (or to the Supplier where the Guarantee Holder is not the Supplier) of its obligation to pay such part of the Transaction Contract Amount that is equal to the amount of the Claim payment, in favor of the GAU. The GAU and the Guarantee Holder agree that no receipt by the Buyer (or by the Supplier, where the Guarantee Holder is not the Supplier) from a third party of any compensation related to the occurrence of any Covered Risk shall entail a release in favor of the Buyer (or the Supplier, where the Guarantee Holder is not the Supplier) of its obligation to pay a corresponding amount of the Transaction Contract Amount.

VII. GENERAL PROVISIONS

7.1. The Guarantee Contract Period shall be the period defined in Section Article 8.151 of this Guarantee Contract and shall commence upon payment of the Guarantee Contract premium and issuance by the Agent Bank of the IUP.

7.2 Validity of Guarantee

The Guarantee Contract shall be valid in accordance with its terms and conditions throughout the Guarantee Contract Period, unless terminated in accordance with the provisions of Article 7.6. of this Guarantee Contract.

7.3. Guarantee Holder's Records

7.3.1. The Guarantee Holder agrees to maintain books of account and other records pertaining to the Transaction Contract in accordance with principles of accounting generally accepted in the country of the Guarantee Holder.

7.3.2. The GAU may at any time after the notice of potential loss has been filed examine and take copies of all letters, communications, accounts or other documents in the possession, power, or control of the Guarantee Holder relating to any matter under the Guarantee Contract and Transaction Contract and in respect thereof the Guarantee Holder shall, at the request of the GAU:

Provide the GAU with all information in the possession of the Guarantee Holder; and

Take all reasonable steps to obtain any information or to obtain copies of or the right to inspect any document in the possession of a third party.

7.4. Entire Agreement

This Guarantee Contract, the Guarantee Contract Approval Notice and Offer, the Schedule of Maximum Guarantee Contract Amount, the Guarantee Contract Application on which this Guarantee Contract is based, and the Guarantee Contract Approval Notice and Offer, the IUP and the Schedule of Maximum Guarantee Contract Amount constitute the entire agreement between the GAU and the Guarantee Holder. Any modification to its terms and conditions shall only be valid if made in writing and signed by both parties. Except as provided for herein, any representations, undertakings or other agreements between the GAU and the Guarantee Holder shall not form part, nor be deemed to be part, of this Guarantee Contract.

7.5. Notices

Every notice to be given pursuant to this agreement shall be in English or Ukrainian in writing, which includes letters, telexes, cables, telegrams or telefaxes and such notices shall be delivered by hand, mailed or transmitted electronically to the GAU or to the Guarantee Holder, as the case may be, at their respective addresses.

7.6. Termination

7.6.1. Without prejudice to the right of the GAU to retain the whole of the Guarantee Contract premium, the Guarantee Holder may terminate the Guarantee Contract at any time during the Guarantee Contract Period by written notice to the GAU.

7.6.2. The GAU may terminate the Guarantee Contract effective immediately if:

a. The Guarantee Holder or Supplier fails to comply with any special conditions relating to the environment attached to this Guarantee Contract.

b. The Guarantee Holder has made a deliberate misrepresentation of material fact in the Guarantee Contract Application or Claim.

c. In case the Buyer is not a producer of Output Goods, the producers of Output Goods are not identified and information regarding their legal addresses and bank requisites are not received by the GAU within 90 days of the Effective Date of the Guarantee Contract.

7.7. Governing Law and Dispute Resolution

7.7.1. With respect to issues of dispute resolution, this Guarantee Contract shall be governed by and construed in accordance with the laws of Switzerland. Any dispute or controversy between parties arising from or in connection with this Guarantee Contract shall be dealt with in accordance with the procedures set out in the following articles.

7.7.2. Should there be any dispute or controversy between the parties arising from or in connection with this Guarantee Contract, the parties may attempt to resolve the matter amicably through discussions between the Executive Director (or his duly authorized delegate), representing the GAU, and an authorized representative of the

Guarantee Holder. The parties' representatives shall meet for discussion within five (5) days of either party notifying in writing the other of the existence of an unresolved dispute or controversy and requesting a meeting. The parties' representatives shall reach an agreed conclusion within two (2) days of the end of their meeting stating that either the dispute or controversy has been resolved or that no amicable solution has been reached.

7.7.3. In the event that any such dispute or controversy cannot be resolved amicably in accordance with article 7.7.2. above, it shall be referred to and finally determined by arbitration under the Arbitration Rules of the United Nations Committee on International Trade Law ("The Rules") currently in force. A party may give written notice to arbitrate (i) if either party declines to meet, or (ii) the parties' representatives have failed to meet or to reach a conclusion resolving the dispute or controversy with the time limits set out in the Article 7.7.2. above.

7.7.4. A sole arbitrator shall preside over the arbitration proceedings. He/she shall be appointed by agreement of the parties, or failing their agreement, by the Secretary General of the Permanent Court of Arbitration at The Hague. The arbitration shall take place in Zurich, Switzerland, and all proceedings and communications shall be in English.

7.7.5. The parties may agree that the arbitration be conducted on a documents-only basis. In this case, the parties waive their entitlement to a hearing before the arbitrator and any witness testimony shall be submitted in written form.

7.7.6. Legal costs:

7.7.6.1. The arbitrator may direct either party to provide security for legal or other costs by way of deposit, bank guarantee or other means as the arbitrator sees fit.

7.7.6.2. The arbitrator shall have complete discretion to determine and direct how and in what proportions the parties shall be responsible for the costs of the award and the reference. Unless the award determines otherwise, the losing party shall pay the successful party its reasonable legal costs and other expenses (as defined in Article 38 of the Rules) incurred in presenting its case in the arbitration.

7.7.7. The arbitrator shall express any determination of damages under the award in U.S. dollars. Damages under the award shall not exceed the Maximum Guarantee Contract Amount, together with any interest awarded.

[7.7.8. Ukraine warrants that it will not, either directly or through the GAU, (i) contest the validity or enforcement of this Guarantee Contract with respect to the choice of the governing law and method and form of arbitration set forth in Section 7.7 of this Article VII, or (ii) contest the validity of an arbitration award issued in accordance with the procedures set out in Section 7.7 of this Article VII., or (iii) raise any sovereign immunity arguments in the event of a dispute under this Guarantee Contract.]

VIII. DEFINITIONS

8.1. Agent Bank means Dresdner Bank which acts as the agent for the GAU pursuant to terms of the Agency Agreement, dated as of February 9, 1998, between the GAU and the Agent Bank, including any amendments thereto.

8.2. Buyer means the natural or juridical person domiciled or registered in Ukraine, so designated in the Guarantee Contract Application, who buys or leases the Input Goods from the Supplier under the Transaction Contract.

8.3. Claim means an application of a designated format by the Guarantee Holder to the GAU for payment under the Guarantee Contract.

8.4. Covered Risks is the collective reference to the risks specified in Article II of the Guarantee Contract and Covered Risk means any individual such risk.

8.5. Effective Date of the Guarantee Contract means the date on which the Guarantee Contract is issued by the GAU following payment of the Guarantee Contract premium.

8.6. Expiry Date of the Guarantee Contract means the date specified in the Guarantee Contract Approval Notice and Offer.

8.7. Guarantee Contract means the Special Non-Commercial Risk State Guarantee issued by the GAU to the Guarantee Holder and includes all Schedules and Attachments thereto.

8.8. Guarantee Contract Application means application for a Guarantee Contract attached to the Guarantee Contract as Schedule III including all attachments, submitted by the prospective Guarantee Holder to the GAU and forming an integral part of the Guarantee Contract.

8.9. Guarantee Contract Approval Notice and Offer means the letter attached to the Guarantee Contract as Schedule I, notifying the Guarantee Holder of approval of the Guarantee Contract Application, the amount of premium for the Guarantee Contract,, the Expiry Date of the Guarantee Contract, and any special conditions attached to the Guarantee Contract.

8.10. Guarantee Contract Currency means the currency in which the Guarantee Contract is denominated and is U.S. dollars.

8.11. Guarantee Contract Period means the period extending from the Effective Date of the Guarantee Contract until the Expiry Date of the Guarantee Contract.

8.12. Guarantee Holder means the natural or juridical person, designated as such in the Guarantee Contract, domiciled or registered outside Ukraine, who or which finances the purchase or lease of the Input Goods and assumes the rights and obligations set forth in this Guarantee Contract, and includes any person, firm or corporation duly authorized in writing to act on behalf of the Guarantee Holder.

8.13. Input Goods means goods purchased or leased by the Buyer from the Supplier under the Transaction Contract with financing provided directly or indirectly by the Guarantee Holder.

8.14. Irrevocable Undertaking to Pay (IUP) means the irrevocable legal instrument issued by the Agent Bank to each Guarantee Holder upon issuance of, and in support of, the Guarantee Contract, which contains the Agent Bank's irrevocable undertaking to make payment to the Guarantee Holder in the event of a Loss as and when payment has been received by the Agent Bank from Ukraine or the World Bank (International Bank for Reconstruction and Development).

8.15. Local Currency means the currency of Ukraine.

8.16. Loss are defined as follows:

8.16.1. Where the Claim is made in respect of the risk specified in Article 2.7., Diversion of Voyage; the actual cost of transport and insurance charges incurred as a result of the occurrence of the risk, less any savings made by reason of such occurrence;

8.16.2. Where the Claim is made in respect of the risk specified in Article 2.6., Imposition or Increase of Import or Export Taxes,

a. the Transaction Contract Amount of the Input Goods, less the following:

any amount received in payment of such Transaction Contract Amount or any part thereof;

any amount which prior to the time the Claim payment is made, the Guarantee Holder has received from the realization of any security related to the Transaction Contract;

any expenses saved by the Guarantee Holder under the Transaction Contract;

any amount the Guarantee Holder is entitled to apply in or toward payment under the Transaction Contract, or which diminishes Loss under the Transaction Contract including, but not limited to, proceeds from the resale of Input Goods exported/supplied to the Buyer; and

any amount which the Buyer is entitled to counterclaim or set off against the amount payable under the Transaction Contract, or,

b. the amount of the Import or Export Tax, mentioned in Article 2.6, or the amount by which the Import or Export Tax was increased, whichever of a. or b. is the lesser amount.

8.16.3. Where the Claim is made in respect of the risk specified in Article 2.9., Interference of Ukraine with the Repossession of Leased Goods, the fair market value of the leased goods, if the following events have occurred:

a. the lease term has ended or there is a default; and

b. at the time the lease term ends or there is a default, the leased goods are in Ukraine; and

c. the Guarantee Holder has made written demand for repossession or re-export of the leased goods and has exercised all remedies available to it under the lease; and

d. the repossession or re-export of the leased goods has been prevented by one of the following actions:

(i) the requisition, confiscation, seizure, nationalization or restraint of the leased goods on the part of Ukraine; or

(ii) under circumstances not due to the fault of the Guarantee Holder or the lessee or any of the agents of either, the cancellation, non-renewal or failure on the part of Ukraine to issue or approve licenses or authorization for the repossession or re-export of the leased goods; or

(iii) the imposition of any law or other current normative and legal act by Ukraine which prevents the repossession or re-export of the leased goods.

The fair market value of the leased goods shall be determined by a valuer agreed between the parties and in the event of failure to agree, by a valuer nominated by the Secretary General of the Permanent Court of Arbitration at the Hague. The cost of any valuation shall be borne equally between the parties.

8.16.4. Where a Claim is made in respect of the risk specified in Article 2.1., Inconvertibility or Inability to Transfer, and payment under the Transaction Contract is to be made by means of an irrevocable letter of credit, the amount of Loss is limited to the amount the issuing bank applies to Ukraine to convert to the currency payable pursuant to the Buyer obligation under the Transaction Contract, and transfer to the Guarantee Holder.

8.16.5. Where the Claim is made in respect of any other risk specified in Article II, the amount specified in Article 8.16.2 a.

8.17. Maximum Guarantee Contract Amount means the amount so designated in the Schedule of Maximum Guarantee Amount attached to the Guarantee Contract as Schedule II, which (i) represents the maximum liability of the GAU in respect of the Guarantee Contract, (ii) shall be the sum of \$_____ at the Effective Date of the Guarantee Contract (the Initial Maximum Guarantee Amount) and (iii) shall decrease in accordance with the Schedule of Maximum Guarantee Contract Amount.

8.18. Output Goods means any goods produced in Ukraine using the Input Goods.

8.19. Supplier means the natural or juridical person, including any person acting on its behalf, which is selling or leasing the Input Goods to the Buyer relating to the Transaction Contract.

8.20. Transaction Contract means the contract between the Buyer and Supplier, relating to Input Goods which are the subject of the extension of credit covered by the Guarantee Contract, provided that where the Guarantee Holder is not the Supplier, Transaction Contract shall also mean the contract concluded between the Guarantee Holder and the Supplier.

8.21. Transaction Contract Amount means the amount payable pursuant to the Transaction Contract for the Input Goods at the date of sale or lease of those goods, including any insurance, freight or other charges relating to such goods and also including any interest which accrues on such amounts after the date of sale or lease of such goods, but excluding any penalty, interest or fees to recover amounts payable, provided that where the Guarantee Holder is not the Supplier, Transaction Contract Amount shall also mean the amount payable by the Supplier to the Guarantee Holder pursuant to the terms of the Transaction cContract between the Supplier and the Guarantee Holder.

8.22. Ukraine means the present or any succeeding governing authority of the country of Ukraine including any dependent territory (without regard to the method of its succession or as to whether it is internationally recognized) which is performed by legislative or executive powers within the authority according to the Constitution of Ukraine and laws of Ukraine, and includes any other public authority of Ukraine on which regulatory or legislative powers are conferred by the laws of Ukraine.

IN WITNESS WHEREOF, the Guarantee Administration Unit, Ukraine, has caused this Guarantee Contract to be executed.

Guarantee Holder

Guarantee Administration Unit

