



## CHAPTER 7

### MEDIUM- AND LONG-TERM FINANCE FOR EXPORTS

#### ❖ *Objectives*

After studying this chapter you should be able to understand:

- 7.1 Supplier credit and buyer credit
- 7.2 ECGD medium-term supplier credit guarantee
- 7.3 Forfeiting
- 7.4 Leasing
  - 7.4.1 *History of leasing*
  - 7.4.2 *Leasing: definitions, types*
  - 7.4.3 *Leasing in Romania: the legal framework*
  - 7.4.4 *The importance of leasing*

## **7.1 Supplier credit and buyer credit**

**Supplier credit** involves the exporter's bank in the lending of money to the exporter, to provide post-shipment finance. The onus is on the exporter to repay the bank, and so supplier credit is usually provided "with recourse to the exporter".

**Buyer credit** facilities involve a loan from a bank to enable the buyer to pay the full cash price of the export on shipment. The loan can be made directly to the overseas buyer, or via an intermediary organization in the importer's country. There is no recourse to the exporter if the buyer defaults, since it is the buyer who has borrowed the money, not the exporter. Buyer credit facilities turn the export sale into cash on shipment sale from the exporter's point of view.

## **7.2 ECGD medium-term supplier credit guarantee**

Being able to export its goods and services successfully is vital to any country's economic health but in most overseas markets there is intense competition either from the domestic producers or other exporters. To remain competitive UK exporters have to be prepared to offer credit to prospective importers and, this involves taking a risk because the exporter is releasing the goods before being paid. The longer the period of credit the greater the chance of something going wrong and the normal way against the risk of loss or damage to the goods in transit and can also take some precautions, such as a letter of credit, to try to ensure that the importer pays. The exporter also faces a variety of political and country risks, such as a change of government in the importer's country followed by a suspension of settlements of overseas debt which prevent the exporter being paid.

To persuade exporters to grant periods of credit and to take on these additional risks which can not be covered by normal commercial insurance policies, the government set up in the United Kingdom a credit insurance scheme under the auspices of ECGD in 1919. In addition, to providing insurance cover, ECGD also provides a range of guarantees to banks and other financial institutions to encourage them to provide finance to support exports. These guarantees extend to overseas buyers who are looking for credit to purchase UK exports.

**A. ECGD medium-term supplier credit guarantee**

The main steps of the facility operation are<sup>1</sup>:

*a) Arrangement made prior to shipment:*

- the exporter must have basic ECGD insurance of the overseas debt;
- the exporter applies via his bank for an ECGD medium-term supplier credit guarantee;
- if the ECGD are satisfied with the transaction, they issue a guarantee in favour of the exporter's bank covering the full amount of the money the bank is authorized to lend under the scheme, plus interest;
- the exporter must sign a recourse agreement with the ECGD and must pay a premium for both the guarantee and for the ECGD insurance;
- the amount which the bank can lend and be covered by the ECGD guarantee will normally be between 80% and 85% of the contract price and the credit period will be between two and five years. The importer will normally pay the balance of the contract price from his own resources at the outset.

*b) Procedure on shipment:*

- The exporter will ship his goods and submit a series of bills of exchange covering repayment of the money owing in the agreed installments;
- The bank in effect negotiates these documents. Thus the exporter receives the full face value, and will pay interest between the date of the advance and the date of the repayment. The bank presents the bills of exchange or promissory notes, for payment in the same way as it would an ordinary collection.
- The rate of interest is subsidised by the ECGD and the rate, known as the consensus rate, remains uncharged throughout the period of the loan.

*c) Position if the bills of exchange/promissory notes are dishonoured:*

- The ECGD guarantee covers the full amount, plus interest, of any bill of exchange/promissory note for which payment has not been received three months after the due date of payment. If the Bill of Exchange has not been accepted, the bank must claim from the exporter. However, the ECGD guarantee still protects the bank if the exporter can not repay. If the Bill of Exchange has been accepted, the bank claims directly from the ECGD.

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<sup>1</sup> Watson A – Finance of international trade, 4<sup>th</sup> edition, The Chartered Institute of Bankers, London 1992

- The bank can, therefore, claim from the ECGD under the terms of the guarantee, and will be paid in full whatever the reason for the non-payment.
- The ECGD will claim from the exporter the amount paid to the bank under its guarantee.
- The exporter will be able to offset the amount to which he is entitled under his ECGD insurance policy. Hence, if the buyer causes default's insolvency, and if the exporter has fulfilled the terms of his ECGD insurance, then 90 % of the amount will be claimable and can be offset. In this situation, the exporter will pay only the net 10% to ECGD. However, if the exporter has no claim under his insurance policy, then he could end up having to reimburse the ECGD with the full amount, which it has paid out to the bank under the guarantee.
- The exporter has to show a contingent liability in his balance sheet because there is potential recourse against him by the ECGD.

## **B. ECGD single contract buyer credit guarantee**

The main steps of the operation of the facility are<sup>2</sup>:

### *a) Operation and availability*

ECGD single contract buyer credit guarantees are available where the contract value is for £ 1 million or more. The exporter and his bank should contact the ECGD before commercial negotiations begin, to see if the facility will be available. The exporter should be aware of the ECGD's attitude and likely conditions before he submits any tender or quotation to the overseas buyer.

### *b) Position if the buyer defaults*

The loan from the UK bank to the buyer is guaranteed in full by the ECGD. There is no right of recourse by the ECGD if the buyer defaults on the loan, unless the exporter defaults on the commercial contract. Hence, two particular advantages of buyer credit facilities for the exporter is:

- No contingent liabilities need to appear in his balance sheet because there is no right of recourse.
- There is no need to take out any form of ECGD insurance as, from the exporter's point of view, the sale is on cash terms.

### *c) Other advantages to the exporter from buyer credit guarantee:*

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<sup>2</sup> Watson A – Finance of international trade, 4<sup>th</sup> edition, The Chartered Institute of Bankers, London 1992

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- The exporter does not have to pay interest on the loan, since the loan is made to the buyer.

- The interest rate, payable by the buyer, is fixed and is subsidised.

d) *The disadvantages of buyer credit guarantees:*

- There is a minimum contract value of £ 1 million.

- Complex documentation, which takes a long time to finalise.

- The buyer may object to having a loan from an UK bank and paying interest and charges to an UK bank.

e) *Procedure*

- The exporter, importer, UK bank and ECGD agree in principle that buyer credit guarantees are suitable.

- Four agreements are made simultaneously:

- (i) Supply contract – the commercial contract of sale.

- (ii) Loan agreement – UK bank to overseas buyer.

- (iii) Guarantee ECGD – the UK bank.

- (iv) Premium agreement – exporter-ECGD.

- The money covered by the ECGD single contract buyer credit guarantee, is paid directly to the exporter by the lending bank, against presentation of documents specified in the loan agreement and in the supply contract. Legally, this transaction amounts to a transfer of loaned funds on the buyer's instructions, and the buyer becomes liable to repay.

### **C. ECGD lines of credit**

The main steps of the operation of the facility are:

a) Common principles which apply to all types of lines of credit.

From the UK exporter's point of view, lines of credit operate in a similar way to the single contract buyer credit guarantee. The lines of credit cover loans to buyers to enable them to pay on cash terms for UK exports of capital, semi-capital goods and associated services.

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Common factors which apply to both single contract buyer credits and to lines of credit are:

- Consensus rates of interest apply in exactly the same way as for the other two facilities.
- The buyer must pay a percentage of the contract value from his own resources.
- Being a buyer credit facility, there are no contingent liability problems.
- As there is no recourse to the exporter, he does not require any ECGD insurance of the debt, but must contribute towards the overall cost of the ECGD cover given to the lending bank.
- Details of all lines of credit are available from the specialist export finance department of the banks, or from the ECGD.

### b) Project lines of credit.

This facility is useful for major projects where a number of UK suppliers are nominated by the overseas buyer to provide goods and services in connection with a single project.

The ECGD will guarantee a loan from the UK bank to the overseas buyer or procurement agent. The buyer can split up the loan using it to pay various UK suppliers on individual contracts, which may be as low as £ 25,000 each. The total amount lent to the overseas buyer will normally exceed £ 3 million, but, this sum can be divided to cover individual contracts of £ 25,000 minimum, with credits periods of two to five years.

Principal risks for which ECGD will provide cover:

1. Insolvency of the buyer;
2. Buyer's failure to pay within six months of due date for goods which have been accepted;
3. Buyer's failure to take up goods dispatched;
4. Moratorium on external debt, i.e. Government restrictions on settlement of overseas debt;
5. Government action preventing performance of contract in whole or in part;

6. Political events, economic difficulties, legislation or administrative measures outside UK preventing payment.
7. Legal discharge of a debt in a foreign currency resulting in a shortfall at date of transfer;
8. War and certain other events outside cover of commercial insurance;
9. Cancellation or non-renewal of exports license.

### **7.3 Forfeiting**

The forfeiting service was born in Europe to provide supplier and buyer credit facilities for the continental banks' customers who did not have the benefit of the ECGD service.

As an alternative to ECGD cover for exporters in the United Kingdom, forfeiting is primarily a method of providing fixed rate finance in support of the sale of capital and semi-capital goods over credit periods of between 90 days and seven years. Repayment is made in installments.

The service is based on first-class commitments only, which means that the drawee must be of undoubted standing, and a bank guarantee is required. The forfeiter purchases trade receivables, i.e. invoices, bills of exchange, promissory notes, at a discount and without recourse to the exporter. Thus, the forfeiting represents the discounting of the trade receivables without recourse to the exporter<sup>3</sup>.

The forfeiter bears all political and currency risks. Thus, the exporter will not need to enter into forward foreign exchange contracts, nor will they need to worry about the problems of bookkeeping and debt collection.

On the other hand, apart from the relatively high cost, the exporter may receive only 80-90 % of the value of the debt. The forfeiter may require the difference to be paid immediately in cash.

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<sup>3</sup> Watson A – Finance of international trade, 4<sup>th</sup> edition, The Chartered Institute of Bankers, London 1992.

**A. How forfeiting operates<sup>4</sup>:**

1. The importer finds a bank or other first class institution, which is willing to guarantee his liabilities. The institution is not resident in the exporter's country. However when the buyer is resident in a third world country, the guarantor institution may well be a European bank.
2. The method of guarantee can take the following forms:
3. The form of the guarantee is unimportant, provided the guarantee is legally binding. What matters is the status of the guarantor institution.
4. Provided the guarantor is undoubted, the exporter's bank, known as the forfeitist, will discount the bills or promissory notes, i.e. will pay the exporter the face value less the discount charge. If the importer is undoubted, then the forfeit facility could be provided without the need of a guarantee from another institution.

**B. Benefits of forfeiting to the exporter are:**

1. The facility is flexible. The documentation can be set up in a matter of hours, whereas ECGD buyer credit guarantee can take up to three months to arrange.
2. The rate of discount applied by the forfeitist is fixed, and subsequent changes in the general level of interest rates do not affect the discount.
3. The finance is without recourse, so there is no need for any contingent liability on the exporter's balance sheet. Forfeiting does not affect any other facilities, e.g. overdrafts.
4. All exchange risks, buyer risks, and country risks are removed.
5. The exporter receives cash in full at the outset.
6. Cash flow is improved.
7. The finance costs can be passed on to the buyer if the exporter is in a strong bargaining position.
8. Administration and collection problems are eliminated.

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<sup>4</sup> Davies A & Kearns M – Banking operations UK lending and international business, Pitman, London 1992.

**C. Benefits of forfeiting to the importer are:**

1. The importers can match repayments to projected revenues, allowing for grace periods.
2. The importer can obtain 100% financing and avoid paying out cash in advance.
3. The importer can pay interest on a fixed rate basis for the 4<sup>th</sup> life of the credit that will make budgeting simpler and safer.
4. The importer can access medium to long term financing that may be prohibitively expensive or completely unavailable locally.
5. The importer may be able to take advantage of export subsidies schemes that are often available from the exporter's government.

**D. Disadvantages of forfeiting are:**

- a) Costs can be high, and there is no interest rate subsidy such as the consensus rates.
- b) It may be difficult to find an institution, which will be prepared to guarantee the importer's liabilities. Sometimes the guarantor institution may charge a high commitment fee if the buyer is not considered undoubted.

Forfeiting offers exporters flexibility within a simple structure and increases their ability to win business in competitive international markets.

Forfeiting can be applied as a stand-alone finance package or it can be used in conjunction with officially supported credits backed by Export Credit Agencies (ECA's) such as ECGS in the United Kingdom, Hermes in Germany, SACE in Italy, COFACE in France, and Ex-Im Bank in the United States of America.

## **7.4 Leasing**

### ***7.4.1 History of leasing***

Leasing as a modern financial technique appeared in the United States of America after the 1929 crash in order to overcome the financial difficulties. First leasing company was established in 1952 in the same country. During the 60's leasing also started to be applied in Europe and Japan.

In modern days, the leasing phenomenon in Europe appeared first in the United Kingdom in the 19<sup>th</sup> century (contract signed by the British railway Wagons)<sup>5</sup> – and developed in the present form over the last 30 years.

#### **7.4.2 Leasing: definitions, types**

If, for some reason, a person does not wish to *purchase* an asset by means of instalment credit, that person can decide to *lease* the asset instead. By paying a rental charge over an agreed period of time a person can have the exclusive use of, say, a car as a lessee but the car belongs always to the lessor, the leasing company. Even though the vehicle is of a person's own choice, that person has no option to purchase under a *financial lease* arrangement. At the end of the initial leasing period a person may have the option to renew at a much-reduced nominal rent. There is a second type of lease arrangement, called an *operating lease*. In this latter case, the lease is granted for an agreed term and, on expiry, the car is sold in the second – hand market to a third party. Part of the sale proceeds will be returned to you as a refund of rentals. This type of lease can be terminated voluntarily at any time if you pay agreed termination rentals.

This type of facility can improve your cash flow. Rental payments are tax deductible if you are using the car for business purposes. The lessor is responsible for maintenance of the asset, but the lessee must ensure against fire, theft and other normal business risks.

Basically, **leasing** is defined as an agreement whereby the lessor conveys to the lessee, in return for a payment or series of payments, the right to use an asset for an agreed period of time.

Leasing is a financial technique that enables the utilisation of a given fixed asset without possessing its ownership.

Major parties and some brief definitions in leasing are as follows:

**Lessee:** The party that purchases the usage rights of the equipment in leasing transactions against the rentals determined in advance by the contract.

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<sup>5</sup> British Leasing Company

**Lessor:** The party that possesses the legal ownership of the equipment subject to leasing and that transfers the usage rights of the equipment to the Lessee against the rentals determined in advance by the contract.

**Contract** (see the Annex No.1 - A rental agreement and the Annex No. 2 – A lease agreement): The written agreement between the Lessor and the Lessee, covering all the terms and conditions in relation to the transfer of usage of the leased equipment and repayment of lease rentals to the Lessor.

**Supplier:** Manufacturer or marketing company providing the equipment subject to the leasing contract.

**Rental:** Periodical payments, effected by the Lessor to the Lessee for the utilisation of the equipment and which are determined in advance with the contract.

Leasing of goods, which are exported, operates in much the same way as the leasing of goods traded within the domestic market. The leasing company (the lessor) buys the goods outright from the supplier and then leases them to the ultimate buyer, who has the use of the goods for an agreed period, subject to payment of the agreed rent to the lessor.

The system can work in one of two ways:

- By arranging for a lessor in the exporter's country to buy the goods and to lease them to the overseas buyer. This is known as **cross border leasing**; or
- By arranging for a lessor in the buyer's country to act.

In order to summarise, it should be mentioned the two types of lease:

- a) *Operating lease* – the lease term covers only part of the estimated life of the asset, which is then sold and the proceeds split.
- b) *Financial lease* – covers the capital cost of the asset plus the cost of financing the lease over an agreed term. The period of rental depends on the estimated life of the asset.

Lease finance provides a significant source of funds for companies to acquire or use assets. It was estimated that leasing represented about one-eighth of the world's annual equipment financing requirement.

The purpose of the lessee could be to purchase the capital good or to solely, utilise it, for a certain period. Besides the value of the equipment, leasing provides finance for other initial costs such as: bank transfers, custom clearance, delivery, etc. incurred before the receipt of the equipment by the Lessee.

*What kind of commodities can be leased?*

All kinds of movable and immovable commodities and equipment can be leased. Intellectual property rights such as patent rights cannot be included in lease. The following are some examples of major equipment that can be hired through lease:

- Road vehicles;
- Construction machinery, cranes and working machines;
- Printing presses;
- Computers and high-capacity data processing units;
- Medical equipment;
- Telephone exchanges and communication equipment;
- All kinds of work benches and production machinery;
- Looms;
- Complete factories;
- Complete hospital, hotel and office equipment;
- Air-transport vehicles;
- Dry-cargo vessels, tankers and other marine vessels;
- Energy facilities, etc.

#### ***7.4.3 Leasing in Romania: the legal framework***

In the Romanian legislation<sup>6</sup>, the leasing operations are defined as being those operations through which “one party, called the lessor, is committed, due to the order of another party, called the lessee, to buy or take from a

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<sup>6</sup> The Government Ordinance No. 51/1997, amended by the Law No.90/1998, and republished in 1999.

third party called the supplier a real estate or equipment and to transmit to the lessee the ownership or use of this good for a certain amount called payment due.”

The legal framework for leasing in Romania is consisting of the provisions of the Government Ordinance No. 51/1997<sup>7</sup> regarding leasing operations and leasing companies.

Leasing is quite new in Romania but the leasing Romanian market has developed rapidly in the last period. The number of leasing companies increased in the period 1994-2000 from 2 to more than 25.

At present, being in line with the development models on the international markets, the Romanian leasing market is structured as follows:

- A. Bank affiliated leasing companies;
- B. Producers or suppliers affiliated leasing companies;
- C. Independent leasing companies;

The Ministry of Finance closely controls the Romanian leasing and financial leasing and cross-border transactions are submitted to a special department from the National Bank of Romania.

In Romania, all kinds of movable and immovable goods can be leased with the exception of intangible rights as copy rights and patents with maturity over one year. The law requires that the goods to be leased must be sold to the lessee and then acquired by the lessor. During the life of the lease, the lessor keeps the ownership of the leased assets, thus enjoying all the benefits associated with ownership while the lessee has the right to use the assets without the interference from the lessor and the third parties.

Under the Romanian legislation, *operating lease* is the operation settled in the leasing contract between the lessee and the lessor which stipulates that the payment of installments for the right to use the goods for a determined period of time must cover minimum 40% from the normal life period of the goods according to the depreciation law, but not more than 80%.

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<sup>7</sup> Republished in Monitorul Oficial al României, Part I, No. 236/ May, 1999.

**The financial leasing** represents the leasing operation stipulated in the contract between the financing company or leasing financing company and the user which settles the right to own the goods by the user negotiated starting with the beginning of the contract, and the total amount of the installments paid.

The leasing operations may have as object the following: the use of the industrial equipment, the use of real estate assets with commercial or industrial destination, acquired or built by a leasing company, called real estate company for commerce and industry – SICOMI; the use of the trade fund or of one of its immaterial elements, the use of long term utilization goods of the real estate meant for dwelling, for physical persons, with the observance of the legal stipulations regarding the protection of the client.

Under the provisions of the Romanian Ordinance, the parties to a lease operation have some duties, such as:

The lessor/financier binds himself to:

- a) observe the user's right to choose the supplier according to his need;
- b) conclude a sale-purchase contract with the supplier appointed by the user under the conditions and terms expressly provided by him.
- c) conclude the leasing contract with the user and, based on it, to transfer all the rights resulting from the sale-purchase contract, except the disposal right, to the user;
- d) obey the user's optional rights consisting of the possibility to choose the extension of the contract or to acquire or deliver back the good;
- e) guarantee to the user the use of the good provided that the user has complied with all the contractual clauses;
- f) Insure the goods offered for leasing through an insurance company.

The lessee/user binds himself to:

- a) receive the good at the term stipulated in the leasing contract;
- b) use the good in accordance with to contract's provisions, receive the instructions given by the supplier and provide for the training of the personnel appointed to use it;

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- c) not to pledge any charges on the good which is the object of the leasing, contract without having the financier's previous approvals;
- d) make the payments under the title of leasing rates in the agreed upon value amount at the terms provided in the leasing contract;
- e) incur the maintenance expenses and some further costs resulting from the leasing contract;
- f) assume himself for the whole period of the contract, should there be no contrary stipulation, all the responsibilities resulting from the direct use of the good or from the use thereof by his officials in charge, the risk of losing, damaging or destroying the used good due accidental cases included, and to undertake to go on with the payments under the title of leasing rates till the total payment value of the leasing contract;
- g) allow the financier to periodically examine the operational state and manner of the good which is the object of the leasing contract;
- h) inform the financier, in due time, about any disturbance of the property right raised by any third party;
- i) not to make any changes to the good without having got the financier's previous prevent;
- j) deliver back the good in accordance with the previous stipulations of the leasing contract at the end of the leasing period.

In the case when the user does not fulfil his duty to pay the leasing rate for consecutive months, the financier shall have the right to cancel the leasing contract and in such case the user is obliged to deliver back the good, to pay the outstanding rates with the pertaining interest damages, the contract should not provide otherwise.

If the financier does not observe the user's option right, then the former shall pay interest – damages in an amount equal to the residual value of the thereof calculated on the expiry date of the leasing contract.

If during the leasing contract development the financier sells the good which is the object of the contract to another financier, the new financier is held liable for the same contractual responsibilities as those of the seller's and the seller remains as responsible for the fulfilment of his duties against the user.

Beginning with the conclusion date of the leasing contract and till the expiry date thereof as well as till the moment the good comes back into the financier's possession, the financier shall be exempt from any liability against the third parties for the damages caused by the user's use.

The leasing companies, being Romanian legal entities, are set up and operate in accordance with the provision of the Act No. 31/1990 on the business as it has been re-issued<sup>8</sup>.

The leasing companies are business companies having as their activity object the carrying on of the leasing operations and having a minimum authorised capital of ROL 500 million, totally underwritten and paid on the setting up date.

- *For the financial leasing*, leasing rate shall be calculated taking into account the entry value and pertaining leasing interest spread – out during the period of the contract development; the purchases of the fixed assets are dealt with as investments and they are subject to amortisation in accordance with the standard regulations in force;
- *For the operating leasing*, the leasing rate shall be calculated taking into account the entry value of the good, the benefit agreed upon between the parties and the amortisation of a share from the entry value thereof; the amortisation conditions will be mutually agreed upon by the parties in accordance with the provisions of the Act No. 15/1994 on the amortisation of the locked<sup>9</sup> – up capital in corporeal assets, as subsequently amended.

The main types of goods leased in Romania are: vehicles and trucks - from 50% to 85%, industrial, medical and office equipment from 10% to 20%, agriculture equipment. The duration of the contract is from 10 to 60 months, financial and operational leasing.

Even if in the developed countries almost 30% of the investments are realized through leasing, in Romania this figure is not significant because the legal frame work came to regulate the operations with the last provisions in 1999. Leasing offers longer-term financial opportunities while eliminating loan problems. All the advantages make leasing a financial tool, which shall be preferred in time.

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<sup>8</sup> Republished in Monitorul Oficial al României, Part I, No. 33/1998.

<sup>9</sup> Published in Monitorul Oficial al României, Part I, No. 80/1994.

#### **7.4.4 The importance of leasing**

The leasing proved to be the most efficient way of financing the production investments, offering a bigger safety to the owner of the capital. All the states encouraged the financing through leasing of several investments of a general interest.

Using leasing means the appearance of advantages and disadvantages to the lessor, as well as to the lessee.

#### **Leasing regarded from the lessor's point of view**

##### **The main advantages to the lessor are:**

1. The financing of all the expenses determined by the acquisition of the equipment leased is borne by the lessee. This fact determines a low initial expense for acquiring new modern equipment.
2. The leasing is a perfect alternative for the acquisition of high quality equipment considering the fact that its technological development is extremely fast.
3. The leasing process approval is relatively short and the policy of the leasing companies concerning the guarantees is very flexible.
4. The equipment rented or the liabilities resulted from the payment of the lease fee do not change the balance sheet of the company; the fee is considered an expense and, not an investment.
5. The fixed fee facilitates a stricter expense schedule.
6. Important savings are realized in a short period.
7. The lessor allows the use of the equipment for larger fees after the contractual period expires.

##### **The main disadvantages to the lessor are:**

1. It is efficient only if the equipment is used during the entire period of the lease.
2. In the case when the lessee can attain profitable preferential credit, leasing may be more expensive. Therefore the option in favor of leasing can only be justified if the available amounts are used for more profitable investments.

3. The lessee has only the rights of use during the leasing contract period; as a result he can not alienate or sell the equipment.

### **Leasing regarded from the lessee's point of view**

#### **The main advantages to the lessee are:**

1. It promotes the development of exports; the supplier has the possibility to realize besides the normal export, the leasing one. The leasing export contributes to the development of the demand for high-valued goods.
2. New beneficiaries are attracted to invest. In addition, leasing has a promotional effect in the case when the equipment is rented first, the beneficiary is convinced of its yield and in the case of positive result he will acquire it.

#### **The main disadvantages to the lessee are:**

1. It transfers only the use of the equipment, not the property. Thus, as a result, the beneficiary may deteriorate the equipment and the lessor is not able to put the penalties into operation even they are foreseen by the contract.
2. After the first lease period, the lessor may not find other lessee.



### **Progress test**

1. Which ECGD facility provides with recourse finance to exporters for credit periods in excess of two years?
2. Which ECGD facilities provide without recourse finance to exporters?
3. An exporter already holds ECGD insurance in connection with a particular transaction. He wishes to make use of that insurance policy to help raise finance. Which of the ECGD financial guarantees would make use of the exporter's insurance?

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4. List the advantages of forfeiting for exporters.
5. How forfeiting does operate?
6. An exporter requires a source of without recourse finance, which can be arranged very quickly. Which facility would you suggest?
  - a) ECGD buyer credit guarantee;
  - b) Forfeiting.
7. From the exporter's point of view, what is the main difference between an ECGD line of credit and an ECGD buyer credit guarantee?
8. An operating lease means that the asset will be:
  - a) Chosen by the lessor;
  - b) Written-off during the agreed term;
  - c) Sold part-way through its estimated life;
  - d) Re-leased at a nominal rent.
9. Define the leasing under the Romanian legislation.
10. List the two types of leasing and define them.
11. List four obligations for the lessor as a party to the leasing operation.
12. List four obligations for the lessee as a party to the leasing operation.
13. List the main advantages and disadvantages of leasing from the lessor's point of view.
14. List the main advantages and disadvantages of leasing from the lessee's point of view.

## **RENTAL AGREEMENT**

Concluded between TAI CHONG LTD., lodged In 8<sup>th</sup> Floor, Princes' Building, Hong Kong, Phone 2522-6022, Fax 2845-2588, GPO BOX 50, represented by Mrs. ...., as General Manager, (hereafter called the "LOCATOR" and/or the "Initial LOCATOR") and EUROCONF INDUSTRIAL s.a., Str.... 51, Romania (hereafter called "the RENTER") represented by Mr. .. as General Manager, Collectively regarded as the "Parties",

### **PREMISES**

An offer has been set up which allows the RENTER to get right to use Equipment for a given period in consideration of the payment of rentals. As a consequence, the Parties have executed that present RENTAL Agreement whereby it is agreed that the LOCATOR will let and the RENTER will rent the Equipment as mentioned in Annex A.

### **Article 1 Definitions**

RENTAL: means period during which the LOCATOR rents the Equipment to the RENTER for its own needs. PRODUCER: means manufacturer, producer or reseller who has provided the Equipment as required by the RENTER. Equipment: means systems or subsystems as described in the PRODUCER'S documentation, and listed in Annex A.

### **Article 2 Contractual Documents**

The present RENTAL Agreement, including Annex A, contains all the rights and obligations of the Parties.

### **Article 3 Subject of the RENTAL Agreement**

Under the conditions of this RENTAL Agreement the LOCATOR rents to the RENTER the Equipment, as described in Annex A.

### **Article 4 Custom procedures and rendance of the equipment**

Being the present Rental Agreement valid for a 24-month period, the RENTER must import all the equipment is mentioned in the Annex "A"

within temporary importation custom procedures. The equipment should be rented to the LOCATOR within the validity period of the Agreement.

**Article 5 Choice of the Equipment, Delivery, Installation.**

The RENTER has chosen and defined under its responsibility the relevant Equipment. The RENTER and the PRODUCER have defined together the conditions, the lead-time and the place of delivery of the Equipment. Before delivery the RENTER, at his own expenses, shall prepare and provide all proper accommodation and facilities (including proper environmental condition) for the Equipment and its maintenance according to the PRODUCER'S specifications. After delivery, the RENTER or the PRODUCER will install either the Equipment. For Equipment already on site, the RENTER hereby warrants that the installation of the Equipment has been achieved. The transport, installation and operationalization of the Equipment at the address stated in Annex A shall be initiated by and on the costs thereof shall be paid by the RENTER if the cost price of the said transport, installation and operationalization are not the PRODUCER'S expenses.

**Article 6 Warranty**

The LOCATOR is no way liable for the quality of the description of the Equipment or for the suitability of the Equipment for the purpose for which the RENTER intends to use it. After giving the Equipment in use, the LOCATOR has no obligations towards the RENTER in the reference to the quality, according to the producer's warranty obligations.

All the warranty obligations, expressed or implied, legal or contractual, shall remain on the responsibility of the PRODUCER in relation to the Equipment chosen by the RENTER. The LOCATOR commits to extend to the RENTER for the duration of the RENTAL Agreement the benefit of any warranty which may have been given by the PRODUCER or which is implied by law, in relation to the Equipment.

Prior to the making of any claim under the warranty, the RENTER shall inform LOCATOR of its intention to make the claim.

Should the LOCATOR receive a payment surplus by the PRODUCER, it shall retrace it to the RENTER.

**Article 7 Use, Maintenance and Care of the Equipment**

The RENTER shall faithfully comply with all instruction given by the PRODUCER with respect to the use of the Equipment and ensure that all

reasonable care is taken to maintain the Equipment in good working condition. Only replacement parts supplied by the manufacturer may be used for any necessary replacement and repairs. Solely the RENTER shall if no restriction, pay for maintenance and repairs. The RENTER shall have all necessary replacements and repairs carried out immediately. If the RENTER fails to initiate immediate replacement or repair, the LOCATOR shall be entitled to initiate such and to take responsibility for the Equipment if necessary, such at the expense of the RENTER and irrespective of any of the RENTER'S other obligations based on the RENTAL Agreement or the law.

Under no circumstances may any alterations or additions to the Equipment reduce the value of the Equipment and/or obstruct or hinder the intended use of the Equipment. The LOCATOR shall irrevocably own anything and everything mounted on or in the Equipment by or on behalf of the RENTER.

The RENTER shall further permit to the LOCATOR, if requested, access to the site during the normal working hours in order that the LOCATOR can verify the Equipment is present arid under which conditions it is used.

### **Article 8 Value of the Agreement and Rentals**

**8.1** The total value of the present Rental Agreement is Lit 890.640.000. The RENTER in 24 monthly rentals will pay this value. The value of any rental will be of Lit. 37.110.000

### **8.2 Amount of rentals**

The RENTER will pay the LOCATOR the rentals in full, together with any all taxes included. Rentals are firm and not subject to revisions during the execution of the RENTAL Agreement.

### **8.3 Revisions of the rentals prior to the commencement of the RENTAL**

The rentals are subject to revision without notice. In the event that between the date of commencement of the RENTAL and the date of the signature of the RENTAL. agreement, the PRODUCER'S purchase price has changed, the new rental prices shall be adjusted proportionally to the change of the purchase price.

#### **8.4 Commencement of the RENTAL**

The first RENTAL commences 30 days after the trucks will be unloaded at the address of the RENTER in Focsani Romania. At the same day of any of the next 23 successively month.

In the event that the installation is delayed due to the fault of the RENTER, the RENTER shall pay the equivalent of the rental fee for the period of the delay.

#### **8.5 Rental payment**

The payment will be made by banking transfer order against presentation of regular commercial invoices issued by the LOCATOR.

The rental will be due, in any circumstances, even in the case of Equipment deficiencies. If the Equipment subject to the RENTAL Agreement do not give satisfaction for any reason, the RENTER will send a claim to the PRODUCER. The RENTER commits to pay all charges thereunder specified, including but not limited to the rentals, which are absolute and unconditional. RENTER'S obligations shall not be subject to any abatement, reduction or whatsoever. It is the expressed intention of the LOCATOR and the RENTER that all rentals payable by the RENTER in all events (even when the Equipment ceases to run for whatever the reason) throughout the term and any extensions thereof of the present RENTAL Agreement. In the event the RENTER shall fail to pay without justification at the contractual date and non-payment continues for twenty successive days, the LOCATOR shall invite the RENTER by registered mail to make payment within the successive thirty days. Should the RENTER fail to pay, the LOCATOR shall be entitled to declare that all the rentals which have not matured as yet for payment become immediately due and payable. The preceding provision shall apply in the event that the unpaid rentals do exceed the number of four.

#### **Article 9 Taxes**

In addition to the rentals, the RENTER shall pay any taxes, registration fees and any other fees and obligations charged by the Authorities in reference to the RENTAL, possession and/or use of the Equipment.

#### **Article 10 Equipment Property**

The Equipment subject to the RENTAL remains the exclusive property of the LOCATOR.

In case of seizure, requisition or theft, the RENTER will have to inform the LOCATOR immediately, lodging any complaint and to take any necessary safety measure.

In case of violation by the RENTER of the provisions of this Agreement, the LOCATOR shall be entitled to damages under the law in addition to the other remedies contemplated by this Agreement, unless this contract specifically contemplates no such cumulating of remedies.

## **Article 11 Insurance-Responsibility**

### **11.1 Risks**

The RENTER shall carry any risk or loss or damage to the Equipment, and any loss or damage of the Equipment shall in no way influence RENTER'S obligations under the RENTAL nor its duration, specifically but not exclusively with regard to its obligation to pay the rentals.

In the event a third party or an unlawful act of third party thereof damages the Equipment or any part, the RENTER will immediately notify the LOCATOR of such event.

The RENTER shall not accept any settlement for damages caused by a third party, unless authorised in writing by the LOCATOR. The LOCATOR shall be held, if the LOCATOR so requests, to institute in its own name legal actions against third parties, which may be reasonably justified under the circumstances.

### **11.2 Civil Liability**

Unless caused by the LOCATOR, the LOCATOR will not be responsible for any damages whatsoever the RENTER might suffer because of use of the Equipment. The RENTER agrees to hold LOCATOR'S harmless, during the full term of the RENTAL, for any and all claims demands and liabilities, of any third party arising from the use of the Equipment or any damages caused by its use.

### **11.3 Insurance**

The RENTER undertakes to insure the Equipment against loss or damage with a primary Insurance company acceptable to the LOCATOR for entire duration of the contract. Said insurance policy shall indicate the LOCATOR

as the beneficiary to the extent of the financial exposure of the LOCATOR in connection with the Equipment in question.

#### **11.4 Responsibility**

The LOCATOR is not liable for any indirect, special or consequential damages of lost profits to anyone arising out of the RENTAL Agreement or the use of the Equipment. It is also not liable for damages due to the non-fulfilment of the RENTER'S obligations not for indirect damages and financial or commercial damages.

The LOCATOR is not liable for any failure or delay in performance due to any cause beyond its control and has no obligation arising out of the abnormal use of the item, site conditions not conforming to the PRODUCER' s specifications, or any causes external, enforceable and irresistible, including but not limited to accident, acts of God, fire or water damages, criminal conduct, neglect, acts or war, riots, strikes, lightning, electrical disturbances or other similar causes.

#### **Article 12. Addition or exchange of Equipment**

Should the RENTER at any time add any Equipment to those describes in Annex A, this Annex A shall be amended In order to include the financial conditions and the duration of the RENTAL related to this new equipment.

#### **Article 13. Termination of the RENTAL Agreement**

##### **13.1 Termination of the commencement of the RENTAL**

- a) In case of failure by the Renter to pay one or more rental instalments or to comply with the obligations contemplated in this Agreement, the LOCATOR shall notify the RENTER by registered mail of the breach and Invite the RENTER to take remedial action within the successive thirty day. Should the RENTER fail to do so, the LOCATOR shall be entitled either to enforce the Agreement through Judicial action or to terminate it by written notice of termination to the RENTER.
- b) The LOCATOR shall be entitled to terminate the RENTAL in the event of Bankruptcy of the RENTER or of entire stoppage of activities by the RENTER or in the. event that the financial situation of the RENTER has objectively deteriorated to a degree that the credit of the LOCATOR is materially at risk. In the event of termination, the LOCATOR shall be entitled to the payment of all rentals due plus an indemnity equal to the

lesser value of the Equipment at the time of termination, except for the normal wear and tear.

### **13.2 Financial and commercial information.**

The performance of the LOCATOR'S obligations under the present RENTAL Agreement are subject to the true and real, financial and commercial situation of the RENTER which are regarded by the LOCATOR as fundamental issue. Consequently if the RENTER'S legal, financial and commercial situation should materially deteriorate between the date of the signature of the RENTAL Agreement and the commencement of the RENTAL or during the performance of the RENTAL Agreement, the LOCATOR Agreement, the LOCATOR shall terminate the RENTAL Agreement.

The RENTER shall submit to the LOCATOR each year a copy of its annual report (balance sheet, statement of profit and loss, cash flow and relevant explanations) as soon as these documents have been compiled. If the RENTER has intermediate balance sheet or statement of profit and loss compiled, the RENTER shall also immediately submit to the LOCATOR a copy of these documents. Moreover, the RENTER shall submit without delay all information concerning its financial and commercial state deemed necessary by the LOCATOR.

### **Article 14 Duration**

The RENTAL covered by this RENTAL Agreement shall remain in effect 45 days from the date of expiration of the RENTAL.

### **Article 15 Surrender of the Equipment**

As contemplated in this RENTAL Agreement, the RENTER shall be held to deliver the Equipment, at "its costs, to the location designated by the LOCATOR within twenty days from the date of expiration of the RENTAL.

Should the RENTER fail to do so, or should the Equipment be defective or damaged, except for ordinary wear and tear, the LOCATOR shall be entitled, at its choice, to demand:

- a) the payment of an amount equal to the market value of the Equipment not returned at the net of the ordinary wear and tear;
- b) or the replacement of the Equipment with equivalent equipment in good working conditions, save for wear and tear, provided that the

corresponding equipment may be reasonably found in the market and may be purchased at reasonable conditions;

- c) or, if the Equipment is damaged or defective, the reimbursement of reasonable damages hereof.

**Article 16 Notices**

Any demand, notice or other communication required or permitted to be given under this RENTAL Agreement shall be in writing and sent by first class prepaid letter post or delivered by hand to the addressee at its address set forth above or to such other address as that party notifies the other for the purposes of this clause.

**Article 17 Applicable Law and Authorised Court**

The RENTAL Agreement is subject to Romanian law. All conflicts or claims resulting from or pertaining to this RENTAL Agreement shall be submitted to the authorised court in Romania to the exclusion of all other legal institutions.

This document is issued in two (2) original copies.

Place and date of the RENTAL Agreement = Focșani- România

**LEASE AGREEMENT**

Lease contract No. 100926 / 01850 - 01850  
between LESSOR  
"X" BANK AG  
Austria  
on one hand  
and  
LESSEE  
ANYEL PRODIMPEX SRL  
on the other hand

**LEASED OBJECT(S):**

Units / Vehicle brand

DEALER LEASED OBJECT

PORSCHE ROMANIA SRL 1 unit(s) VWPASSAT1.9

The leased objects are specified in the attached list No 1 and constituted an inseparable part of this lease agreement. The enclosed leasing instalments are based on the offer of Lessor dated 10.02.00 to the following general business terms.

**THE BANK**

**GENERAL BUSINESS TERMS**

**1. Proprietary rights**

"X" Bank AG is the owner of the leased object; in the event of direct delivery to the customer, the acquisition of title shall be in favour of the "X" Bank AG by means of customer's taking possession on behalf of the Bank AG.

**1.2**

Unless otherwise agreed, the "X" Bank AG shall permit the customer to register the vehicle in his name and for his own account, except the two parties agreed on a deviated solution. In any case the customer shall bear the risk as the registered user of the motor vehicle. He shall indemnify and hold the "X" Bank AG harmless against any disadvantages for which he is

responsible, particularly as the user. The customer shall renew the registration on the dates prescribed by law.

### **1.3**

The “X” Bank AG shall solely be entitled to assert any claims particularly recovery or indemnification claims that arise from its title to the leased object. Lessee shall not be entitled to pledge, sell or otherwise encumber the vehicle with any third party rights whatsoever.

## **Availability and delivery**

### **2.1**

The leased object shall be made available and delivered by Dealer. All relevant items of the purchase agreement shall be agreed with Dealer. The “X” Bank AG shall not assume any liability whatsoever for performance of any obligations by Dealer arising under the contract of sale.

### **2.2**

Dealer shall deliver the leased object to Lessee on the date agreed in the sales contract for the new car. Dealer shall notify Lessee to take possession of the vehicle (i.e. notification of availability). Lessee shall take possession of the car within a period of one week after being notified of its availability by Dealer. Dealer shall prepare a „take over protocol" at the time of taking possession which shall be signed by Lessee (i.e. taking possession). If there is a delay in Lessee's taking possession of the vehicle, the date of taking possession shall be deemed the last day of the deadline on which Lessee was obligated to take possession of the vehicle. The deadline shall begin on the date of mailing the respective notification. Lessee shall provide proof of having paid the first leasing instalment upon taking possession of the vehicle.

## **3. Terms of payment**

### **3.1**

The parties agree that all payments to be made under this Agreement shall be made in DEM or, upon compulsory introduction of the EURO, in the equivalent converted amount. Leasing instalments shall be calculated either for full months or on a quarterly basis. If a vehicle is delivered during the month, the instalment shall become due for the full month in which the vehicle was delivered; the same shall apply if the vehicle is delivered during a calendar quarter. The first leasing instalment shall become due for the

month or quarter in which the vehicle was delivered. The total number of leasing instalments shall be regulated by the term of the Agreement.

### **3.2**

If the price of the vehicles is changed between signing the lease contract and take-over of the cars, the computation of the lease instalments shall be adjusted accordingly to the actual prices.

### **3.3**

The leasing instalments shall be due and payable on the first of each calendar month or on the first day of the first month of the calendar quarter for quarterly payments, granting five days of grace; leasing instalments must be on the account specified by the “X” Bank AG and at its disposal on such date.

### **3.4**

Any first payment agreed between the parties shall be paid directly into an account of the “X” Bank AG. Such first payment shall reduce the leasing instalments to the amount specified in the Agreement. Lessee understands and agrees that the cars will be ordered only after the first payment has been received in the specified account.

### **3.5**

Lessee shall pay any costs for registration in Romania or costs to maintain the vehicle such as insurance, taxes, etc. as well as any costs, custom duties, taxes and other duties associated with its import such as the statutory withholding and value-added tax directly to the respective authority, unless already included in the leasing instalment. Lessee shall be obligated to pay any amounts requested by the Romanian authorities exceeding or not included in the amount contained in the leasing instalment. Lessee shall bear the risk of any amendment of the law with respect to the expenses specified in this article. Lessee shall indemnify and hold the “X” Bank AG harmless against payment of all amounts to be directly remitted by Lessee. Expenses not included in the leasing payment:

- Customs duties and customs commissions
- Value-added tax
- Road and transport tax
- Luxury tax

- Withholding tax
- Vehicle registration
- Liability insurance
- Expenses, fees and other duties

### **3.6**

The lessee shall pay to the “X” Bank AG the premiums from Generala Asigurari S.A. passed on by the “X” Bank AG, plus expenses and any commission fees for the comprehensive insurance and insurance for irretrievable credits (i.e. the insurance package s. item 6.2) on the first day of each calendar month, granting 5 days of grace.

### **3.7**

In the case of default in payment. Lessee shall pay default interest in the amount of 3 % over the interest rate charged by the “X” Bank AG; Lessee shall also compensate the “X” Bank AG for any dunning and collection fees, particularly attorney's fees, in the prescribed amount.

## **4. Term and termination of lease**

### **4.1**

Upon becoming legally effective (see Article 11) this Lease Agreement shall commence on the date of delivery, in the event of delayed delivery on the date the “X” Bank AG and/or the delivering dealer make the vehicle available to the customer.

### **4.2**

Premature termination of the Agreement shall be subject to the consent of both parties; such termination shall only be possible if Lessee purchases the vehicle from the “X” Bank AG and all accounts under the Lease Agreement are settled.

### **4.3**

The “X” Bank AG is entitled to terminate this Lease Agreement without notice regardless of the agreed term of the agreement in the event that:

**4.3.1** bankruptcy or composition proceedings are instituted over Lessee's assets or if such proceedings are not instituted due to the lack of assets;

**4.3.2** Lessee is in default of part or all of the leasing payment for two weeks; the Lessee is overdue in payment of the insurance premium for the insurance package taken out (item 7.2) in whole or in part for a period of 2 weeks;

**4.3.3** Lessee uses the leased object in a considerably detrimental manner or jeopardises the “X” Bank’s proprietary rights;

**4.3.4** the leased object becomes a total technical or economic loss; to be deemed a total economic loss, the residual value of the leased object plus the necessary repair costs must be higher than the cost of replacing the leased object;

**4.3.5** the leased object is destroyed or otherwise lost (theft, etc.). Lessee shall immediately notify the “X” Bank AG of the destruction or loss of the leased object and shall forward a copy of the report of loss or theft (to be filed immediately at any police department).

#### **4.4**

In the event of premature termination of the Agreement, Lessee shall immediately return the vehicle to the “X” Bank AG and compensate the “X” Bank AG for any disadvantages arising from the premature termination. In the event of premature termination, the “X” Bank AG shall be entitled to a settlement equivalent to the outstanding leasing payments calculated, discounted at FIBOR or EURJBOR interest, and the discounted stipulated residual value. It shall expressly reserve the right to claim any additional damage, particularly incidental expenses such as sales expenses, default interest, collection fees or any duties accruing. In this case the lease agreement represents executor title.

### **5. Conclusion of contract**

#### **5.1**

Lessee shall return the leased object in a faultless, running and roadworthy condition, otherwise he shall be liable to pay for the estimated damage. The parties hereto shall authorise the authorised Dealer (to be named by the “X” Bank) taking back the vehicle to prepare a test report, establishing any defects and estimating the cost to remedy such defects. The test report shall be the basis for remarking the leased object. Both parties shall be entitled to raise objections within 7 days after receiving the test report, otherwise the results of the test report shall be considered accepted; Lessee shall pay for

any kilometres exceeding the agreed kilometre at a rate of DEM 0.50 per kilometre.

## **5.2**

After conclusion of Contract the actual market value shall be established by soliciting a specific purchase offer from an authorised dealer. Lessee shall undertake to pay any difference between the market value and the stipulated residual value within a period of 14 days.

## **5.3**

Lessee shall remove his accessories and belongings from the leased object upon returning the vehicle, otherwise the title to such objects shall pass to the "X" Bank AG without compensation. In such case the "X" Bank AG shall be entitled to have accessories removed or to restore the vehicle to its original state if this is expedient to remarking the leased object.

## **6. Insurance and bearing the risk**

### **6.1**

The lessee shall take out vehicle liability insurance for the leased object to cover the accident risk during the term of the Lease Agreement. The vehicle liability insurance shall be registered in favour of the "X" Bank AG; the lessee agrees that any compensation paid by the insurance company shall be paid out to the "X" Bank AG.

### **6.2**

Furthermore, the lessee shall expressly agree to have the "X" Bank AG take out comprehensive insurance including insurance for irretrievable credits ("the insurance package") with Generala Asigurari S.A. The insurance package shall cover the comprehensive insurance risks such as damage through accident, theft, etc. according to the standard terms and conditions as well as the risk of partial or total non-payment of the leasing payments.

The "X" Bank AG shall be entitled to pass on and invoice the leasing payment together with the insurance premium (see item 3.6.)

### **6.3**

Lessee shall immediately notify the "X" Bank AG in writing of any accident. All repairs, regardless of the type or purpose, must be carried out by an authorised workshop. Lessee shall not have the right to take care of repairs himself or to make any statements concerning settlement for damage

to the leased object; the right to make such statements shall be reserved to the “X” Bank AG alone. As the vehicle owner, the “X” Bank AG shall order repairs to be carried out; Lessee shall indemnify the “X” Bank for all disadvantages incurred from such damage; this shall also apply to any depreciation or customs tax accruing. From the workshop invoice value lessee shall cover 10% deductible, but not less than 1,5% from the CIP price of the leased object.

#### **6.4**

In case of theft or total damage the lessee is entitled to receive a compensation as follows: During the first year of contract the compensation equals the purchase price minus 10% deductible.

After the first year the compensation equals the current value of motorcars according to Schwacke (international recognised catalogue for used cars market prices) minus 10% deductible.

The compensation will be used to settle the contract in accordance to pt. 4.4. Should the compensation exceed the settlement costs (4.4) the difference amount will be paid to the lessee.

#### **6.5**

Downtime during repairs or for other reasons shall not constitute a restriction of possible use and shall not entitle Lessee to reduced payments.

#### **6.6**

For travelling abroad with the leased object lessee needs the approval from the lessor, as well as an extra insurance.

### **7. Warranty**

Lessee shall waive his right to assert warranty claims against the “X” Bank AG; as a countenove, the “X” Bank AG shall assign the warranty and/or guarantee claims against the delivering Dealer to which it is entitled as the owner to Lessee, who accepts such assignment.

### **8. Arbitration clause**

Any disputes arising out of this Agreement or in connection with its infringement, termination or nullity shall be settled by one or more arbitrators pursuant to the Rules of Arbitration and Conciliation of the International Court of Arbitration of the Vienna Chamber of Commerce

(Vienna rules). The court shall be composed of three arbitrators and shall be governed by Austrian law. Salzburg shall have jurisdiction.

### **9. Severability**

If any provision of this Agreement is or becomes invalid or unenforceable for legal or factual reasons, it shall not affect the other provisions of the Agreement. If individual provisions should be or become invalid or unenforceable under the law of a part of the contract territory, it shall not affect the validity of the contract provisions in the remaining part of the contract territory. If a provision is found to be invalid or unenforceable, the parties shall substitute an alternative arrangement, which achieves the economic, legal and commercial objectives to the greatest extent possible. The same shall apply if the entire Agreement is or becomes invalid or unenforceable.

### **10. Data processing**

Lessee shall give his express consent to permit Lessor to process any data acquired through conclusion of this Agreement, particularly Lessee's personal data, and to transmit such data to third parties such as the general importer or affiliated companies. Such data shall not be made available to list brokers and/or direct advertising companies. Lessor is registered in the Data Processing Register. Lessee shall be entitled to revoke his consent to the transmission of data at any time, such revocation shall not, however, affect the principal transaction.

### **11. Condition precedent**

This Agreement shall be subject to a condition precedent, i.e. subject to Lessee's submission of the following documents:

#### **11.1**

Confirmation of the legally effective establishment of the company, if Lessee is a legal entity (e.g. extract from the Commercial Register, by-laws);

#### **11.2**

Confirmation of the signatory's power to represent; if Lessee is a legal entity, such confirmation shall be provided by submitting an extract from the Commercial Register. Private persons shall submit a written power of attorney.

**12. Vehicle identity card (VIC)**

Within 30 days after take over of the leased object(s) lessee has to forward the vehicle identity card to dealer.

Lessee shall arrange the registration of the “X” Bank as owner of the leased vehicle(s) on page 4, Remarks.

**13. Written form**

Any modifications or supplements to this Agreement shall be made in writing to be legally effective; any waiver of this written requirement must also be made in writing.

Freilassing .....2000

On behalf of .....,.....\_.....,

Name of the undersigned.....