

**Requirements for bank guarantees**  
**as security for obligations under procurement contracts /**  
**advance payment refund under procurement contracts**  
**provided in favour of Naftogaz Group legal entities**

**1. Bank guarantee as security for obligations** under a procurement contract shall be provided via the electronic procurement system and become effective on the date of entering into the procurement contract at the latest.

The date of receipt of the guarantee by the Customer is:

for guarantees in the form of an electronic document with qualified electronic signature(s) and qualified electronic seal (if any) of the guarantor - the date of its upload to the electronic procurement system;

for guarantees in the form of a swift message - the date of notification from the beneficiary's (Customer's) bank on receipt of such guarantee.

**Advance payment guarantee** under the Contract shall be received by the Customer and become effective before the date of the advance payment made by the Customer.

**2. A bank guarantee shall be provided by:**

a Ukrainian resident bank, which share capital is over 75% directly or indirectly owned by the state, or

a Ukrainian resident bank having a long-term credit rating of not lower than "uaAA" according to the national scale (in the absence of a rating according to the national scale for banks of foreign banking groups, the rating of parent foreign banking groups of one of the rating companies Fitch, Moody's, S&P needs to be no lower than upper investment grade (A- or higher)), or

a foreign bank having credit rating of one of the rating companies Fitch, Moody's, S&P no lower than upper investment grade (A- or higher),

and no sanctions of states or intergovernmental organisations are applied to a bank that completely or partially restrict and/or prohibit and/or may adversely affect the bank's obligations to secure procurement procedure and/or enforcement of the contract, including respective sanctions of the National Security and Defence Council of Ukraine (pursuant to the Law of Ukraine "On Sanctions"), US Office of Foreign Assets Control (OFAC) and the European Commission of the European Union.

**3. Form of providing a bank guarantee:**

by resident banks of Ukraine:

in the form of an electronic document with qualified electronic signature(s) and qualified electronic seal (if any) of the guarantor, which are equivalent to the handwritten signature(s) of the authorised person(s) of the guarantor and its seal, respectively, in compliance with the Laws of Ukraine "On Soft Copy Documents And Electronic Document Flow" and "On Electronic Identification And Electronic Trust Services". The text (or the headers or footers) of the bank guarantee shall contain a reference to the means of electronic signature and seal (if any) used to generate and/or authenticate the electronic signature or seal. At that, the text of the bank guarantee shall contain the signatory matching the signatory who applied his or her electronic signature;

by foreign banks:

in the form of authenticated swift message to the beneficiary's (Customer's) bank swift address \_(bank details)\_, in such case, a scanned copy of the authentic swift message with the text of the bank guarantee shall be uploaded to the electronic procurement system.

#### **4. A bank guarantee shall be executed by:**

resident banks of Ukraine – in compliance with Regulations on the Procedure for Banks and Financial Companies to Perform Guarantee-Related Operations in National and Foreign Currencies approved by Resolution of the Executive Board of the National Bank of Ukraine No.639 dated 15 December 2004;

foreign banks – in compliance with 2010 ICC Uniform Rules for Demand Guarantees, Publication No. 758.

#### **5. A bank guarantee shall include:**

- full name of the winning bidder in the procurement procedure (guarantee's principal);
- name of the guarantee's beneficiary (Customer);
- reference to procurement procedure announcement (UA-\_\_\_\_), scope of procurement;
- amount and currency of the guarantee (in numbers and in words) (*for the advance payment guarantees the amount of the guarantee shall not be less than the advance payment*);
- provision that the bank guarantee is given as a security for the principal's obligations under the procurement contract / refund of the advance payment under the procurement contract to be awarded following the procurement procedure;
- commitment of the guarantor to pay within five (5) bank days of the date of receipt of the first written demand of the Customer (beneficiary) the full amount indicated in the demand, within the guarantee amount, provided the text of the demand includes a reference to the Principal's infringement of any obligations under the procurement contract, without the need for any additional rationale and provision of additional documents.
- provision stating that any payments under the guarantee shall be made by the guarantor in favour of the beneficiary regardless of any objections from the principal or any third party;
- allocation of all guarantee-related expenses to the principal;
- provision stating that the guarantee is efficient once it is issued by the guarantor;
- expiry date:
  - for a guarantee as security for obligations under a procurement contract, it shall be at least the same as the procurement contract validity period and at least one additional month;
  - for an advance payment guarantee, it shall be at least the same as the procurement contract validity period and one additional month.
- the bank guarantee being governed by the applicable laws of Ukraine (for resident banks of Ukraine) and 2010 ICC Uniform Rules for Demand Guarantees, Publication No. 758.

#### **6. The wording of the bank guarantee may not include:**

reference to guarantee contract terms (transaction executed between the guarantor and the principal);

provisions on restriction of responsibility of the bank in any case (other than delaying demand, as well as reduction of obligations under the guarantee by all amounts paid by the bank under the guarantee);

provisions requiring complications of the procedure for cash payment under the guarantee (additional authentication of powers of the signatory in the demand, receipt of any confirmations as to the legitimacy of the demand, etc.);

restriction of the guarantor's responsibility to the amount of guarantee provided, in case of the guarantor's infringement of its duties under the guarantee;

terms and conditions for the guarantee revocation by the guarantor.