

# FORM OF GENERAL TERMS AND CONDITIONS FOR BANKING

09-2013

## GENERAL PROVISIONS

### I. Basic rules for business relations between customer and bank

#### A. Scope of application of and modifications of or amendments to these general terms and conditions

##### 1. Scope of application

###### Item 1.

(1) These General Terms and Conditions of Business (hereinafter "GTC") shall apply to the entire business relationship between the customer and all domestic and foreign branch offices of the Bank. The business relationship comprises all business relations between the customer and the Bank and thus all master agreements for payment services (e.g. giro account or credit card agreement). Applicable by priority shall be regulations in agreements reached with the customer or in special terms.

(2) The terms 'consumer' and 'businessman/businesswoman' shall be understood as defined by consumer protection law.

##### 2. Amendments to the GTC and the master agreements for payment services

###### Item 2.

(1) Amendments to these GTC shall be offered to the customer at the latest two months prior to the proposed date for their going into effect with reference made to the regulations affected. The customer's consent shall be deemed to have been given if no objection is received by the Bank prior to the proposed date of their going into effect. The Bank shall point this out for the customer in the amendment offer. In addition, the Bank shall publish a comparison of the regulations affected by the amendment to the GTC as well as a complete version of the new GTC on its website and provide the customer with the comparison upon request to do so. The Bank shall also point this out for the customer in the amendment offer. The customer, who is a consumer, must be informed of the amendment offer. In relation to a businessman/businesswoman, it shall suffice to make the amendment offer available for retrieval in any manner agreed with the businessman/businesswoman.

(2) In case of a planned amendment to the GTC, the customer, who is a consumer, is entitled, prior to the amendment going into effect, to cancel its master agreements for payment services (in particular the giro account agreement) with immediate effect and for no charge. The Bank shall point this out in the notification about the amendment.

(3) Paragraphs (1) and (2) shall also apply to amendments to the master agreements for payment services (in particular the giro account agreement) not relating to the Bank's services or fees. Changing of the Bank's services and fees agreed in such master agreements shall be regulated separately in items 44 through 46.

#### B. Statements

##### 1. Customer orders and instructions

###### Item 3.

(1) Orders shall be placed in writing. The customer may also place the order on a device for electronic signature registration provided by the Bank for this purpose.

(2) The bank shall, however, also be entitled to carry out instructions given via telecommunications (in particular over the phone, via cable, telex, telefax or data communication). Subject to the fulfilment of all other prerequisites, the bank shall only be obliged to carry out such orders if the customer has agreed this with the bank.

(3) The bank is authorised to grant orders to a businessman/businesswoman in every form within the framework of the General Terms and Conditions, at the costs of the aforementioned businessman/businesswoman. This is only applicable when the bank is satisfied that there is no liability for the bank and the bank is not accountable for any ineffective order.

##### 2. Obtaining of confirmations by the bank

###### Item 4.

For security reasons the bank shall be entitled, in particular in case of instructions given via telecommunications, to obtain a confirmation of the order via the same or a different means of communication, as the case may be

##### 3. Statements of the bank

###### Item 5.

(1) The Bank's notifications and declarations made by means of telecommunications, unless written agreements to another effect have been reached or unless the Bank has other customs, shall apply with reservation made for written confirmation. This shall not apply in relation to consumers.

(2) Declarations and information the Bank must convey or make available to the customer shall be provided to the customer in hardcopy (in particular by means of a statement of account).

#### C. Right of disposal upon the death of a customer

##### Item 6.

(1) As soon as it receives notice of the death of a customer the bank shall permit dispositions on the basis of a decision rendered by the probate court or the certificate of inheritance. In case of joint accounts/joint securities accounts dispositions made by an account holder holding individual authority to dispose of the account shall not be affected by this provision.

(2) No authority to sign on an account granted by an entrepreneur for a business account shall terminate upon the death of a customer. In case of any doubt the accounts of an entrepreneur shall be considered business accounts.

#### D. Obligations and liability of the bank

##### 1. Obligations to inform

###### Item 7.

(1) In the absence of any separate agreement to the contrary, the bank is not subject to any obligations to inform other than those mentioned in its terms and conditions of business and over and above the statutory obligations to inform. Consequently, the bank – in the absence of any statutory or contractual obligations – is not obliged to inform the customer of imminent price falls, of the value or lack of value of items entrusted or of circumstances that impair or could threaten the value of these items, or to provide the customer with any other advice or information.

(2) The obligations to inform envisaged in §§ 26 (1) to (4), 28 (1), 31 and 32 of the Law on Payment Services do not apply with respect to entrepreneurs.

##### 2. Execution of orders

###### Item 8.

(1) An order whose content typically necessitates the involvement of a third party will be fulfilled by the bank through appointment of a third party on its own behalf. If the bank selects the third party, it shall be liable for the thoroughness of its selection.

(2) Upon request by the customer, the bank is obliged to assign any claims against the third party to the customer.

##### Item 9

Beyond Item 8, the Bank shall be liable for payment services within the European Economic Area (EEA) in euro or any other currency of an EEA signatory state in relation to consumers (but not in relation to businessmen/businesswomen) for proper execution of the transfer up through receipt by the payment beneficiary's payment service provider (Item 40a of these GTC).

#### E. Obligations to co-operate and liability of the customer

##### 1. Introduction

###### Item 10.

In his/her dealings with the bank the customer shall, in particular, observe the obligations to co-operate stated below. Any violation thereof shall lead to an obligation to pay damages on the part of the customer or to a reduction in his/her claims for damages vis-à-vis the bank.

##### 2. Notification of important changes

###### a) Name or address

###### Item 11.

(1) The customer shall immediately notify the bank in writing of any changes in his/her name, company name, address or the service address advised by him/her.

(2) Should the customer fail to notify changes of address, written declarations by the Bank shall be deemed to have been received if they were sent to the address most recently given to the Bank by the customer.

###### (b) Power of representation

###### Item 12.

(1) The customer shall immediately notify the bank in writing of any cancellation or of changes of any power of representation advised to it, including an authority to operate and sign on an account (items 32 and 33), and shall provide appropriate documentary evidence in this regard.

(2) Any power of representation advised to the bank shall continue to be effective until written notification of cancellation of the same or of a change in its current scope, unless the bank had knowledge of such cancellation or change or was not aware thereof due to gross negligence. The same shall, in particular, also apply if the cancellation or change in the power of representation is registered in a public register and was duly published.

###### (c) Capacity to enter into legal transactions; dissolution of the company

###### Item 13.

The bank shall immediately be notified in writing of any loss of or reduction in the customer's capacity to enter into legal transactions. If the customer is a company or legal entity, a dissolution of the same shall be immediately notified to the bank.

##### 3. Clarity of orders

###### Item 14.

(1) The customer shall ensure that his/her orders/instruction to the bank are clear and unambiguous. Modifications, confirmations or reminders shall expressly be marked as such.

(2) If the customer wishes to give special instructions to the bank regarding the carrying out of orders s/he shall inform the bank thereof separately and explicitly, and in case of orders given by means of forms, the instructions shall be given separately, i.e. not on the form. This shall, above all, apply if the carrying out of the order is extremely urgent or subject to certain periods and deadlines.

##### 4. Due care when using telecommunication means; payment instruments

###### Item 15.

(1) The customer shall, when using a payment instrument that per agreement may be used to place an order with the Bank, take all reasonable precautions in order to protect the personalised security features against unauthorised access as well as immediately report any loss, theft, improper use or otherwise unauthorised use of the payment instrument to the Bank or to an authority designated by the latter. Businessmen/businesswomen are liable to the Bank for damages incurred by a breach of these diligence obligations, and for any type of fault by the businessman/businesswoman for an unlimited amount.

(2) The Bank shall be entitled to block payment instruments it has issued to the customer, if

- objective grounds in connection with the security of the payment instrument justify this, or
- there is any suspicion of unauthorised or fraudulent use of the payment instrument, or
- there is a considerably increased risk that the customer will not meet its payment obligations in connection with any line of credit linked to the payment instrument.

The Bank will inform the customer, provided notification of blocking or of the reasons for blocking does not violate a court or regulatory authority order or run counter to Austrian or Community legal norms or objective security considerations, and shall do so in a form of communication agreed with the customer, if at all possible prior to but at the latest immediately after the blocking.

##### 5. Raising of objections

###### Item 16.

(1) The customer must check declarations by the Bank which do not refer to payment services (such as confirmations of orders placed for financial instruments and notifications of their execution and transaction confirmations; account statements, account closings and other settlements in credit and foreign exchange transactions; securities account statements or listings) for completeness and accuracy and to raise any eventual objections within an appropriate period of time. Minor negligent action shall not damage the customer. If the Bank receives no objections to these declarations within two months then the Bank's declarations are deemed to be approved; the Bank shall in each instance at the beginning of the period of time point out to the customer the importance of its actions.

(2) In case of any giro account debit occurring due to an unauthorised or incorrectly executed payment transaction the customer may in any case then obtain adjustment by the Bank if it has notified the Bank, immediately after discovering it, of any unauthorised or incorrectly executed payment transaction, however at the latest by 13 months after the date of debit. The deadlines shall not apply if the Bank has not notified the customer of the information provided in Item 40 (9) of these GTC on the payment transaction in question, or not made it available. This regulation shall not bar other claims to adjustment by the customer.

#### Notification in case of non-receipt of communications

##### Item 17.

###### Lapses

##### 7. Translations

###### Item 18.

Any foreign-language instruments shall be presented to the bank also in a German translation of a court-appointed and certified interpreter if the bank so requires.

## **F. Place of performance; choice of law; legal venue**

### **1. Place of performance**

#### **Item 19.**

Venue of fulfillment for both parties in business with businessmen/businesswomen shall be the business premises of that office of the Bank with which the business was transacted.

### **2. Choice of law**

#### **Item 20.**

All legal relations between the customer and the bank shall be subject to Austrian law.

### **3. Legal venue**

#### **Item 21.**

(1) Legal actions of an entrepreneur against the bank may only be taken in the court having subject-matter jurisdiction at the place of the bank's registered office. This shall also be the legal venue in case of legal actions of the bank against an entrepreneur, with the bank being entitled to assert its rights in every court having local jurisdiction and jurisdiction over the subject-matter.

(2) The general legal venue in Austria provided for by law in case of legal actions of a consumer or against a consumer regarding agreements with a bank shall remain the same even if the consumer, after conclusion of the agreement, transfers his/her domicile abroad and Austrian court decisions are enforceable in that country.

## **G. Termination of the business relation**

### **1. Ordinary termination in the business relationship with businessmen/businesswomen**

#### **Item 22.**

Unless there is an agreement for a fixed term, the Bank and the customer may at any time terminate the entire business relationship or specific portions thereof (including loan agreements and master agreements for payment services such as, in particular, giro account agreements) at any time when complying with an appropriate advance notice period. Fees paid in advance will not be refunded.

### **2. Ordinary termination in the business relationship with consumers**

#### **Item 23.**

(1) The customer may terminate at no charge a master agreement for payment services, in particular the giro account agreement, at any time when complying with an advance notice period of one month. The right to free and immediate termination of a master agreement for payment services, in particular a giro account agreement, occasioned by an amendment to the GTC proposed by the Bank or a master agreement for payment services, in particular a giro account agreement (Item 2), shall not be impaired.

(2) The customer may at any time, and by complying with an advance notice period of one month, terminate loan agreements concluded for an indefinite period of time at no charge.

(3) The customer may terminate all other agreements with the Bank concluded for an indefinite period of time at any time while complying with an appropriate advance notice period.

(4) The Bank may terminate master agreements for payment services (in particular giro account agreements) concluded for an indefinite period of time while complying with an advance notice period of two months.

(5) The Bank may at any time terminate all other agreements concluded for an indefinite period of time while complying with an appropriate advance notice period.

### **3. Termination for good cause**

#### **Item 24.**

(1) Where there is good cause, the Bank and the customer may at any time terminate with immediate effect the entire business relationship or specific portions thereof.

(2) There is, in particular, good cause entitling the Bank to terminate, if

- there occurs a deterioration or jeopardy of the customer's financial conditions or those of a jointly obliged party and in that way fulfilment of liabilities in relation to the Bank is in jeopardy.
- the customer gives inaccurate information about its financial conditions or other essential circumstances or if the customer does not fulfil or cannot fulfil an obligation to post or reinforce collateral.

## **4. Legal consequences**

#### **Item 25.**

Where, in connection with a call-in, a termination of the entire business relationship or of specific giro or payroll accounts ensues, the Bank shall be entitled, upon expiry of the termination deadline, to switch from the agreed conditions to the particular applicable standard conditions in accordance with the survey of conditions open for inspection in the banking hall or with the notice posted at the teller's window. In addition, overdraft interest will be charged at the agreed rate.

#### **Item 26.**

(1) Upon termination of the entire business relationship or of specific portions thereof the amounts owed on that basis shall be due immediately. The customer shall furthermore be obliged to release the Bank from all obligations assumed on its behalf.

(2) The Bank shall moreover be entitled to terminate all obligations assumed on the customer's behalf and to compensate them with legal effect and, with reservation made for receipt, to re-charge credits given. Claims for securities, in particular drafts and checks, may be asserted by the Bank to cover any eventually obtaining debit balance.

(3) In case of termination of the entire business relationship or of specific business relations, the Bank shall give the customer, who is a consumer, a pro rata refund for fees paid for payment services for a certain period of time in advance.

(4) The GTC shall also apply after termination of the business relationship up through complete windup

## **H. Right to refuse disbursement**

#### **Item 27.**

(1) The Bank may refuse disbursement of the loan amount on objectively justified grounds.

(2) Objectively justified grounds within the meaning of paragraph 1 obtain if after conclusion of the agreement

- circumstances emerge indicating a deterioration of the borrower's financial situation or devaluation of committed collateral to such an extent that repayment of the loan or payment of interest is jeopardised even upon liquidation of the collateral, or
- an objectively justified suspicion arises for the Bank that the loan amount is being used by the borrower contrary to the agreement or contrary to law.

(3) The Bank must immediately notify consumers of this intention in hardcopy or in another permanent medium, indicating the reasons. The indication of reasons must be dispensed with if public safety or the public order would thereby be jeopardised.

## **II. Bank REFERENCE**

### **A. Bank reference**

#### **Item 28.**

Generally phrased conventional bank references on the financial situation of a business enterprise, where no obligation to provide them obtains, shall only be provided without obligation and only in writing to businessmen/businesswomen.

## **III. Opening and Keeping of Accounts and SECURITIES ACCOUNTS**

### **A. Scope of application**

#### **Item 29.**

Unless otherwise provided the following regulations regarding accounts shall also apply to securities accounts.

### **B. Opening of accounts**

#### **Item 30.**

When opening an account the future account holder shall prove his/her identity. Accounts shall be kept under the name of the account holder or the company name together with an account number.

### **C. Specimen signature**

#### **Item 31.**

Persons who are to be authorised to operate or sign the account shall deposit their signature with the bank. Based on the signatures deposited the bank shall permit written disposition within the scope of the account.

### **D. Authority to operate and sign**

#### **1. Authority to operate**

##### **Item 32.**

Only the account holder shall be entitled make dispositions regarding the account. Only persons whose power of representation is provided for by law or persons who hold an express written power of attorney to operate the account shall be entitled to represent the account holder. They shall be obliged to prove their identity and

power of representation.

### **2. Authority to sign**

#### **Item 33.**

(1) The accountholder may explicitly and in writing grant other parties authority to sign. The party authorised to sign must prove its identity to the Bank. The party authorised to sign is solely entitled to undertake and revoke transactions regarding the account balance.

(2) The authorisation to sign on a securities portfolio shall also encompass the authority to buy and sell securities in connection with the existing cover as well as with the joint investment objective set up in accordance with the Statute on the Supervision of the Securities Market and the securities accountholder's willingness to assume risk.

## **E. Special types of accounts**

### **1. Sub-account**

#### **Item 34.**

An account may also include sub-accounts. Even if they are given sub-account names the account holder shall be exclusively entitled and obligated vis-à-vis the bank in connection with the same.

### **2. Escrow account**

#### **Item 35.**

In case of escrow accounts the escrow agent shall be exclusively entitled and obligated vis-à-vis the bank as account holder.

### **3. Joint account**

#### **Item 36.**

(1) An account may also be opened for several account holders (joint account). Dispositions regarding the claim underlying the account, in particular the closing thereof and the granting of authority to sign, may only be made by all account holders jointly. Every account holder may be represented by an authorised representative in the individual case.

(2) The account holders shall be liable jointly and severally for obligations arising out of the account.

(3) Unless otherwise explicitly agreed, each co-accountholder shall be by itself entitled to control the account balance. This entitlement shall also encompass the authority to buy and sell securities in connection with the existing cover and the joint investment objective set up in accordance with the Statute on the Supervision of the Securities Market and with the joint willingness to assume risk of all of the securities accountholders. It shall however be terminated by the express objection of another accountholder. In that case, only all co-accountholders jointly shall be entitled to sign.

(4) Authorisations to sign may be revoked by each individual joint account holder.

#### **Item 37**

Lapses

### **4. Foreign currency account**

#### **Item 38.**

The holders of balances in foreign currency shall bear, pro rata up to the extent of their balance, all financial and legal disadvantages and damages affecting the Bank's total holdings in the currency in question kept in Austria or abroad by actions or occurrences for which the Bank is not liable.

## **F. Balancing of accounts and lists of securities**

#### **Item 39.**

(1) In the absence of any agreement the bank shall settle accounts on a quarterly basis. The interest and fees incurred in each quarter shall be included in the final balance that shall subsequently bear interest („compound interest“). Statements of deposited securities shall be issued once a year.

(2) The bank shall provide the customer with an account statement with the closing balance/statement of deposited securities at the branch office where the account or deposit is kept.

## **IV. Giro transactions**

### **A. Transfer instructions**

#### **Item 40.**

(1) With transfer instructions to the benefit of a payment beneficiary whose account kept with a payment service provider within Austria, other states of the European Economic Area (EEA) or Switzerland, the customer must designate the payment beneficiary with its International Bank Account Number (IBAN). Should the payment beneficiary's payment service provider have its registered office in a member state of the EEA other than Austria or in Switzerland then up through 31 January 2016 besides the IBAN the Bank Identifier Code (BIC) of the payment beneficiary's payment service provider must also be given. Up through 31 January 2014 the customer may, to identify the payment beneficiary and in lieu of the IBAN, continue to use the name and account number of the the payment beneficiary and either the sorting code or the BIC of the payment beneficiary's payment service provider.

(2) In case of transfer instructions to the benefit of a payment beneficiary whose account is kept with a payment service provider outside of the EEA and Switzerland, the customer must designate the payment beneficiary:

- with the name and account number of the payment beneficiary and either the name, sorting code or BIC of the payment beneficiary's payment service provider, or
- with the payment beneficiary's IBAN and the BIC of the payment beneficiary's payment service provider.

(3) The information on IBAN and BIC to be given by the customer in the framework of paragraphs (1) and (2) constitute the payment beneficiary's customer identifier on the basis of which the transfer instructions are carried out. Information about the payment beneficiary going beyond that, in particular the name of the payment beneficiary are not a part of this customer identifier and are not considered when carrying out the transfer.

(4) The reason for the transaction given in the transfer instructions is in any case of no relevance for the Bank.

(5) The acceptance of transfer instructions by the Bank shall not in itself give rise to any third-party rights in relation to the Bank.

(6) The Bank shall only be obliged to carry out transfer instructions if complete cover (account balance, overdraft granted) is present in the customer's account indicated.

(7) Transfer instructions received by the Bank (Item 40a) may not be unilaterally revoked by the customer. If a later date for execution has been agreed, the irrevocable nature only applies as of the end of the business day preceding the execution date.

(8) Where the Bank rejects carrying out transfer instructions it will inform the customer as soon as possible in the manner agreed with the customer, in any case within the deadlines cited in Item 40a (3) of such rejection and on how the transfer instructions may be adjusted in order to make their execution possible in the future. Transfer instructions justifiably rejected by the Bank do not trigger the execution deadlines agreed in Item 40a of these GTC.

(9) Information on transfer instructions carried out (reference, amount, currency, fees, interest, exchange rate, value date of debit) and other payments carried out to the debit of the account, in particular in connection with the debit transfer and direct debit authorisation procedure, shall be made available by the Bank to the customer, who is a consumer, once a month at the latter's request, unless it has already done so in the account statement on the occasion of the transaction in question.

### **B. Execution deadlines**

#### **Item 40a**

(1) Transfer instructions reaching the Bank after the hours stipulated for the payment mode in question (times of receipt) near the close of business hours or on a day that is not a business day of the Bank, will be treated as if they had been received on the following business day. The Bank shall in good time notify the customer, prior to and when concluding the giro account agreement and thereafter upon every change to the set times of receipt, of the new times of receipt and shall do so in hardcopy or, where there is a corresponding agreement with the customer, in another permanent medium. Considered to be a business day is every day on which the Bank is open and maintains the business operations required for the execution of payment transactions.

(2) If it is agreed between the customer issuing transfer instructions and the Bank that execution of payment instructions is to commence on a specific day or at the end of a specific period of time or on the day when the customer makes a sum of money available to the Bank, then the time of receipt thereof is considered the agreed date. If the agreed date does not fall on one of the Bank's business days then the payment instructions are treated as if they were received on the following business day.

(3) The Bank shall ensure that after the time of receipt the amount that is the subject of the payment

transaction is received by the payment beneficiary's payment service provider at the latest at the end of the following business day (for payment transactions initiated in hardcopy at the end of the second day following receipt). This paragraph shall only apply to payment transactions within the European Economic Area ("EEA") in euro.

(4) For payment transactions within the European Economic Area that are not denominated in euro but in another currency of an EEA signatory, the execution deadline referred to in paragraph 3 shall be the fourth business day.

#### **C. Crediting and right of cancellation**

##### **Item 41.**

(1) With valid giro account contracts, the bank is obliged and irrevocably authorised to receive money for the customer and to credit this to his account. Even following termination of the giro account agreement, the bank is entitled to receive money for the customer if the customer has liabilities from the account. The order to make an amount of money available to the customer will be executed by the bank by crediting the amount to the account of the payment beneficiary, provided nothing to the contrary is stipulated by the order.

(2) Information on transfers credited to the account (reference, amount, currency, charges, interest, exchange rate, value date of the credit note) will be provided to customers who are consumers on a monthly basis in the bank upon request – unless shown against the respective transaction in the statement of account.

(3) The bank is entitled to deduct own charges for the transfer from the amount to be credited. The bank will show the amount transferred and charges deducted separately.

(4) The bank can cancel credit notes issued as a result of an error at any time. In other cases, the bank will only cancel a credit note if it receives clear evidence of the invalidity of the transfer order. The right of cancellation shall not be removed by any interim balancing of account. If the right of cancellation applies, the bank can refuse disposal of the amounts credited.

#### **D. Receipt of credit note reserved**

##### **Item 42.**

(1) If the bank credits amounts to the customer's account that it is required to collect on behalf of the customer (in particular within the scope of the collection of cheques, bills of exchange and other securities, direct debits etc.), or amounts which are to be transferred to the customer's account, before the amount to be collected or transferred has reached the bank, this will be done solely subject to the reserve of the bank actually receiving the amount credited. This shall also apply if the amount to be collected is payable to the bank.

(2) As a result of the reserve, the bank is entitled to cancel the credit note by means of simple posting if the collection or transfer fails or if, as a result of the economic position of a party obliged to pay, official intervention or other reasons, it is foreseeable that the bank will not obtain the right of unrestricted disposal of the amount to be collected or transferred.

(3) The reserve can also be exercised if the amount credited has been collected abroad or transferred from abroad and is debited back to the bank by a third party under foreign law or on the basis of an agreement made with a foreign bank.

(4) In the event of a valid reserve, the bank is also entitled to refuse the customer disposal of the amounts credited. The reserve is not removed by balancing of account.

#### **E. Debit postings**

##### **Item 43.**

(1) With transfer orders, debit postings are not to be understood as notification of execution until two business days have passed without cancellation of the debit posting (see Point 40a (1) of these terms and conditions).

(2) Cheques and other payment instructions as well as debit notes are considered honoured if the debit posting to the customer account drawn on is not cancelled within two business days, unless the bank has already informed the presenter of the honouring or made payment to him in cash.

#### **F. Direct debit authorisation and direct debit orders**

##### **Item 43a.**

(1) The customer consents to the debiting of his account with amounts which third parties authorised by him collect through debiting his account with the bank. This consent can be revoked by the customer at any time in writing. Any such revocation shall be effective as from the business day following its receipt by the bank.

(2) If, at the time of the debiting of the account, the bank was in possession of an order from the customer to pay amounts, collected by a third party acting by order, with debiting of the customer's account ("direct debit order"), the bank must comply with a request of the customer who is a consumer to reverse the debit to his account with the amount collected. This does not apply if the bank can demonstrate that the information concerning the imminent collection has been provided to or made accessible to the customer by the bank or the payment beneficiary in an agreed form at least four weeks prior to the due date. The bank must receive the customer's request for cancellation of the debit within 8 weeks of the date of the debiting of the account. Entrepreneurs are not entitled to submit any such request.

(3) If no direct debit order from the customer ("direct debit authorisation") was available to the bank at the time of the debiting of the account, the bank must comply with the customer's request to cancel the account debit without any questions within 8 weeks from the date of the debiting of the account (even if the customer is an entrepreneur).

(4) A justified request by the customer for cancellation of a debit posting will be complied with within 10 business days.

#### **V. Consideration OF Services and Reimbursement of expenses**

##### **A. Changes in fees and services in relation to businessmen/businesswomen**

###### **Item 44.**

(1) The Bank may, in its business with businessmen/businesswomen and at its equitable discretion, change its fees for long-term services, which the Bank or the customer must pay (including credit and debit interest on giro or other accounts, account maintenance fees, etc.), taking into account all relevant circumstances (in particular changes in the legislative and regulatory framework conditions, changes on capital markets and money markets, changes to refinancing costs, changes in personnel or materials expenses, changes in the consumer price index, etc.). The same applies to changes in other services offered by the Bank occurring due to changes in legal requirements, bank operations security, technical developments or considerably reduced use of a service significantly impairing its cost cover.

(2) Changes to services provided by the Bank or customer fees going beyond paragraph 1, introduction of new services subject to a fee or new fees for already agreed services will be offered to the customer by the Bank at the latest two months prior to the proposed date of their going into effect. The customer's consent to such changes will be deemed to be granted if no written objection is received by the Bank by the proposed date for their going into effect. The Bank shall point this out to the customer in its proposal for changes. The Bank may make the proposal for changes retrievable in a manner agreed with the customer.

##### **B. Changes in the fees agreed with consumers for payment services (except for interest charged)**

###### **Item 45.**

(1) Changes in the fees agreed in connection with the master agreement for payment services (in particular for the giro account) for long-term services shall be offered to the customer at the latest two months prior to the proposed time of their going into effect, which is in any case 1 April of a given year. The customer's consent to such changes will be deemed to be granted if no written objection is received by the Bank by the proposed date for their going into effect. The Bank shall point this out for the customer in its proposal for changes in which the extent of the change must be presented. The customer has the right to terminate the master agreement, at no charge and with immediate effect, up through when the change goes into effect. The Bank must also point this out in its proposal for changes. The customer must be notified by the Bank of the proposed changes.

(2) An adjustment of the fees to the fluctuation of the national 2000 consumer price index published by the Austrian Statistics Office ("consumer price index") may be agreed with the customer in the manner provided for in paragraph 1. The adjustment is made by comparing the November index values of the past year with November of the preceding year. The fee emerging from the adjustment is rounded to the nearest whole cent according to commercial custom.

If the customer was not offered a fee adjustment resulting from fluctuations in the consumer price index in one year then such an adjustment may still be offered to the customer later on with effect for the future.

(3) The Bank may only agree to a fee adjustment deviating from the fluctuation of the consumer price index with the customer in the manner provided for in paragraph 1 under the following conditions:

- The cost fluctuation occurring in the period of time determinative for the fee adjustment according to paragraph 2 incurred by the Bank in connection with the long-term service in question,

deviates, when all objectively relevant circumstances (particularly changes in the legislative and regulatory framework conditions, changes in personnel or materials expenses) are considered, from the fluctuation of the consumer price index and the fee adjustment offered corresponds to that deviating cost fluctuation.

- A fee increase corresponds at most to three times the fee increase that would result from fluctuation of the consumer price index.
- It has been pointed out in the proposal for change that the fee adjustment being offered is higher than the one that would result from the consumer price index fluctuation.

#### **C. Changes in the fees agreed with consumers outside of payment services (except for interest charged)**

##### **Item 46.**

(1) The fees agreed with consumers for the long-term services rendered besides payment services (such as SafeRent, account maintenance fees for accounts via which no payment services are transacted) are adjusted (raised or lowered) annually with effect as from 1 April of each year to the fluctuation of the national 2000 consumer price index published by the Austrian Statistics Office with the amount being rounded to the nearest whole cent according to commercial custom. The adjustment is made by comparing the November index values of the past year with November of the preceding year. If no increase in the fee occurs despite an increase in the index then the right to such an increase with effect for the future does not lapse. Fee adjustments occur at the earliest at the end of two months, reckoned from the date of concluding the agreement.

(2) Any adjustment of fees deviating from the fluctuation of the consumer price index for long-term services besides payment services rendered by the Bank shall be offered to the customer by the Bank at the latest two months prior to the proposed date of its going into effect, which is in any case 1 April of a given year. The customer's consent to such changes will be deemed to be granted if no written objection is received by the Bank by the proposed date for their going into effect. The Bank shall point this out to the customer in its proposal for change, in which the extent of the change must be presented. The Bank may make the proposal for changes retrievable in a manner agreed with the customer.

The Bank may only agree to a fee adjustment with the customer in the manner provided for in this paragraph 2 under the following conditions:

- The cost fluctuation occurring in the period of time determinative for the fee adjustment according to paragraph 1 incurred by the Bank in connection with the long-term service in question, deviates, when all objectively relevant circumstances (particularly changes in the legislative and regulatory framework conditions, changes in personnel or materials expenses) are considered, from the fluctuation of the consumer price index and the fee adjustment offered corresponds to that deviating cost fluctuation.
- A fee increase corresponds at most to three times the fee increase that would result from fluctuation of the consumer price index.
- It has been pointed out in the proposal for change that the fee adjustment being offered is higher than the one that would result from the consumer price index fluctuation.

#### **D. Changes in the long-term services agreed with consumers (except for credit interest)**

##### **Item 46a.**

(1) Changes in the long-term services rendered for the customer shall be offered to the customer by the Bank at the latest two months prior to the proposed date for their going into effect. The customer's consent to such changes will be deemed to be granted if no objection by the customer is received by the Bank by the proposed date for their going into effect. The Bank shall point this out to the customer in its proposal for changes.

The Bank may make the proposal for changes available in any manner agreed with the customer. Should the proposal for changes, however, relate to payment services then the customer must be notified thereof and the customer shall be entitled to terminate the relevant master agreement, at no charge and with immediate effect, up through the time when the changes go into effect. The Bank must point this right of termination out as well in its proposal for changes.

(2) The Bank may, however, only agree a change in services with the customer in the manner provided for in paragraph 1 if this, taking account of all circumstances (change in the customer's prevalent needs, legislative and regulatory requirements, bank operations security, technical developments or considerably reduced use of a service significantly impairing its cost cover), is objectively justified.

#### **E. Reimbursement of expenses by the businessman/businesswoman**

##### **Item 47.**

The customer who is a businessman/businesswoman shall bear all necessary and useful expenses, advances, ancillary expenses and costs, in particular stamp and legal fees, taxes, postage, costs for insurance, legal representation, collection and recovery, business consulting, telecommunications as well as posting, management and liquidation or release of collateral, incurred due to the business relationship. The Bank may invoice such expenses in a total non-itemised amount unless the customer specifically demands an itemised listing.

#### **F. Adjustment of interest rates on the basis of reference interest rates**

##### **Item 48.**

Should an adjustment clause peg the interest rate to a reference interest rate (such as EURIBOR) then changes shall be effective directly without prior notification of the customer. The consumer shall be informed of changes in the interest rate that have gone into effect at the latest in the following calendar quarter.

#### **VI. Collateral**

##### **A. Posting and reinforcement of collateral**

###### **1. Change in risk**

###### **Item 49.**

(1) If in business relations with business enterprises circumstances subsequently occur or become known, justifying an increased risk assessment of claims on the customer, the Bank shall be entitled to demand the posting or reinforcement of collateral within an appropriate period of time. This shall particularly be the case if the customer's financial conditions have changed adversely or threaten to change or if existing collateral has deteriorated in value or threatens to deteriorate.

(2) This shall also apply if the posting of collateral was not demanded when claims were incurred.

##### **B. Bank's lien**

###### **1. Scope and coming into existence**

###### **Item 50.**

(1) The customer shall grant the bank a lien on any items and rights which come into the possession of the bank.

(2) The lien shall, in particular, also exist on all distrainable claims of the customer vis-à-vis the bank, such as under credit balances. If securities are subject to the lien, the lien shall also extend to the interest and dividend coupons pertaining to such securities.

###### **Item 51.**

(1) The lien shall secure the Bank's claims on the customer under the business relationship, including joint accounts, even if the claims are contingent, fixed-term or not yet due. If the customer is a businessman/businesswoman, the lien shall also secure the Bank's legal claims as well as claims on third parties for fulfillment of which the customer is personally liable.

(2) The lien shall come into existence upon the bank's taking possession of the item to the extent claims pursuant to para 1 exist; otherwise at any future point in time when such claims arise.

###### **2. Exemptions from the lien**

###### **Item 52.**

(1) The lien shall not include items and rights which have been assigned by the customer to a certain instruction prior to coming into existence of the lien, such as amounts designated for the cashing of a certain cheque or honouring of a certain bill of exchange as well as for the carrying out of a certain transfer. This shall, however, apply only as long as the assignment is effective.

(2) Notwithstanding the existing lien the bank will carry out dispositions of the customer regarding credit balances on current accounts in favour of third parties as long as the customer has not received a notification by the bank of the assertion of the lien. Distraint of the credit balance shall not be considered a disposition by the customer.

(3) The lien shall not include assets which the customer has disclosed in writing to the bank as escrow assets prior to the coming into existence of the lien or which have come into the possession of the bank without the

customer's will.

### C. Release of collateral

#### Item 53.

Upon the customer's request the bank will release collateral to the extent it has no justified interest in keeping it as security.

### D. Realisation of collateral

#### 1. Sale

#### Item 54.

Collateral having a market price or stock exchange price shall be realised by the bank in compliance with the relevant statutory provisions by selling them at such price in the open market.

#### Item 55.

The bank shall have assessed by an expert collateral having no market price or stock exchange price. The bank shall notify the customer of the result of the assessment and at the same time ask the customer to nominate a party interested in purchasing the same within a reasonable period of time who will pay the assessed value as purchase price to the bank within such period. If the customer fails to nominate an interested party within such period or if the purchase price is not paid by the interested party nominated, the bank shall irrevocably be entitled to sell the collateral in the name of the customer for not less than the assessed value. The proceeds from the sale shall be used for redemption of the secured claims, with the customer being entitled to the surplus, if any.

#### 2. Realisation and out-of-court auction

#### Item 56.

The bank shall also be entitled to realise the collateral by enforcement or - to the extent it has no market price or stock exchange price - to sell it at an out-of-court auction.

#### 3. Collection

#### Item 57.

(1) The bank shall be entitled to terminate and collect the claims provided to it as security (including securities) at the time the secured claim becomes due. Prior thereto it shall be entitled to collect the claim serving as collateral when it becomes due. In case of an imminent loss in value of the claim serving as collateral the bank shall be entitled to terminate the same already prior to the same becoming due. To the extent possible the customer shall be informed thereof in advance. Amounts collected prior to the due date of the secured claim shall serve as pledge instead of the claim collected.

(2) The provisions under para 1 shall not apply to wage and salary claims of consumers which have been provided as security for claims not yet due.

#### 4. Admissibility of realisation

#### Item 58.

Even if the purchaser does not immediately pay the purchase price in cash, the bank shall be entitled to realise the collateral nevertheless to the extent no or no equivalent offer for immediate payment in cash has been made and payment at a later point in time is secured.

### E. Right of retention

#### Item 59.

The bank shall be entitled to retain services to be rendered by it to the customer due to claims arising out of the business relationship even if they are not based on the same legal relationship. Items 51 and 52 shall apply accordingly.

Bulletin of the "Wiener Zeitung" or is received by the bank in good time on behalf of the issuing body or from the foreign safekeeper. If the customer does not issue instructions in good time, the bank shall act as it thinks best and taking account of the customer's interests; in particular, it shall exploit rights, otherwise to be forfeited, at the last possible opportunity.

### VII. Offsetting and Crediting

#### A. Offsetting

##### 1. By the bank

#### Item 60.

(1) The bank shall be entitled to offset all of the customer's claims to the extent they are distrainable against all liabilities of the customer vis-à-vis the bank.

(2) Notwithstanding the existing right to offset the bank shall carry out dispositions of the customer in favour of third parties regarding credit balances on current accounts as long as the customer has not received an offsetting statement. Distraint of the credit balance shall not be considered a disposition by the customer.

##### 2. By the customer

#### Item 61.

The customer shall only be entitled to offset his/her liabilities if the bank is insolvent or if the claim of the customer is related to his/her liability or has been ascertained by court decision or recognised by the bank.

#### B. Credit

#### Item 62.

Notwithstanding the provisions of Section 1416 ABGB [Austrian General Civil Code] the bank may initially credit payments to accounts payable to the bank to the extent no collateral has been provided for the same or if the value of the collateral provided does not cover the claims. In this respect it is irrelevant at what time the individual claims have become due. This shall also apply to a current account relationship.

### Special Types of Business Transactions

#### I. Trade in securities and other assets

##### A. Scope of application

Item 63. The terms and conditions under items 64 to 68 shall apply to securities and other assets even if they are not certificated.

##### B. Implementation

#### Item 64.

(1) As a rule, the bank executes orders from its customer to sell and purchase securities as a commission agent.

(2) If, on the other hand, the bank agrees a fixed price with the customer, it concludes a contract of purchase.

(3) Through this, the customer declares his consent to the bank's implementation policy, on the basis of which the bank - in the absence of instructions to the contrary - will execute the customer's orders. The bank will inform the customer of any fundamental alterations to the implementation policy.

(4) The bank can also execute orders, received by it for the purchase and sale of securities, in part if the bank does not receive sufficient security within a reasonable period of time or

· pursuant to statutory or other circumstances for which the bank is not responsible  
refinancing in the foreign currency is not possible anymore or

· the entire loan is due for repayment and is not repaid despite reminder.

##### C. Customs at the place of performance

#### Item 65.

The legal regulations and customs applicable at the place of performance are applicable for the performance.

##### D. Date of carrying out instructions

#### Item 66.

If an instruction which is to be carried out on the same day has not been received early enough to be carried out that day within the scope of ordinary workflow, it shall be scheduled to be carried out on the next trading day.

##### E. Insufficient coverage

#### Item 67.

(1) The bank shall be entitled to refrain from carrying out transactions in securities in whole or in part if no sufficient coverage is available.

(2) However, the bank shall be entitled to execute such securities transactions if it is unable to note that the customer wants the order to be carried out only on the condition that coverage is available.

(3) If the customer does not provide coverage despite demand the bank shall be entitled to enter into a closing transaction for account of the customer at the best possible price.

##### F. International transactions

#### Item 68.

If the customer is given a credit for a claim to the delivery of securities (securities invoice), the customer's claim against the bank shall correspond to the share, held by the bank for the account of the customer, of the total inventory of securities of the same kind, held by the bank abroad for its customers in accordance with the

respective legal regulations and customs.

### G. Transactions in stocks

#### Item 69.

In case of transactions in stocks the physical securities of which are not being traded yet the bank shall neither be liable for the issuance of the securities on the part of the joint-stock company nor for the possibility of exercising the shareholders rights prior to the issuance of the securities.

### II. Safekeeping of securities and other valuables

#### A. Safekeeping of securities

#### Item 70.

(1) The bank shall be entitled to place securities deposited with it in the safekeeping deposit of the beneficiary.

(2) The bank is hereby expressly authorised to keep securities issued in Austria abroad and securities issued abroad in Austria. Likewise it shall be authorised to cause registered securities issued abroad to be registered in the name of the domestic depository or in that of the nominee of the foreign depository („nominee“).

(3) The bank shall be exclusively liable, against a businessman/businesswoman, for careful selection of the third-party depository.

#### B. Redemption of shares, renewal of coupons, drawing, termination

#### Item 71.

(1) The bank shall ensure detachment of due interest coupons, profit participation certificates and dividend coupons and collect their countervalue. The bank shall procure new interest coupons, profit participation certificates and dividend coupons without specific instruction.

(2) Drawings, terminations and other comparable measures in respect of the securities held in safekeeping shall be monitored by the bank insofar as they are published in the official gazette „Amtsblatt zur Wiener Zeitung“ or in „Mercur, Authentischer Verlosungsanzeiger“. The bank shall redeem drawn and terminated securities as well as interest coupons, profit participation certificates and dividend coupons.

(3) In case of securities deposited with a third-party depository the same shall assume the obligations described in paras 1 and 2 above. In case of securities held abroad the bank shall not be obliged to inform the customer about the numbers of the securities credited and in particular of securities redeemable by drawings. The bank shall then determine by drawing what customers are to be allotted the securities drawn. If, however, numbers of securities redeemable by drawings are advised, they shall only be relevant to the drawing and redemption and only for as long as this is the practice abroad. If, according to the practice abroad, the collection amounts of the drawn securities would have to be distributed pro-rata and if in doing so it would not be possible to represent the remaining parts for individual customers in securities, the customers whose securities are to be redeemed shall be determined by means of a drawing.

#### C. The bank's obligation to examine

#### Item 72.

The bank shall examine whether Austrian securities are affected by public notification procedures, payment stops and the like on the basis of the Austrian documents available to it once, namely on the occasion of delivery of the securities to the bank. Also the examination regarding invalidation procedures for securities lost or stolen shall be carried out upon delivery.

#### D. Notification of exchange and of other measures

#### Item 73.

In the event of conversion, increase in capital, reduction in capital, merger, exercise or exploitation of subscription rights, requests to make contributions, grouping, changeover, exchange offers, raising of the interest rate subject to the provision of further capital and other important measures concerning the securities, the bank shall attempt to inform the customer if a corresponding announcement has appeared in the "Official

### III. Trade in Foreign exchange and foreign currency

#### A. Procedure

#### Item 74.

The bank shall conclude a purchase agreement with the customer on foreign exchange and foreign currency. If it is agreed that the bank acts as commission agent for the customer, the provisions on commission transactions contained in the section on trade in securities shall apply accordingly. In case the bank contracts in its own name no express notification pursuant to Section 405 HGB [Austrian Commercial Code] shall be required.

#### B. Forward transactions

#### Item 75.

(1) In case of forward transactions the bank shall be entitled to demand from the customer at a reasonable date before the due date evidence on the fact that the amount owed by the customer will be received in the agreed account in time. If such evidence is not provided or if due to other circumstances it is obvious that the customer will not fulfil his obligations, the bank shall be entitled to conclude a closing transaction at the best possible price already prior to the agreed due date.

(2) Even without prior agreement the bank shall be entitled to demand coverage for the risk of loss if according to the opinion of an expert such risk has increased or if the assets situation of the customer has deteriorated. Unless otherwise agreed coverage shall be provided in cash. The bank shall hold a lien on the assets deposited as coverage. If the customer fails to provide coverage the bank shall be entitled to conclude a closing transaction at the best possible price.

(3) If the bank concludes a closing transaction pursuant to paras 1 or 2, any resulting price difference shall be debited or credited to the customer, respectively. Any and all expenses incurred in connection therewith shall be borne by the customer.

### IV. Foreign currency Loans

#### Item 76.

Foreign currency loans must be repaid effectively, that is, in the currency in which the Bank provided them.

Payments in other currencies shall be deemed to be collateral unless the Bank notifies the customer that they will be used to amortise the loan liabilities. The Bank shall also be entitled to convert an outstanding debit balance in a foreign currency in the domestic currency, while notifying the customer thereof,

- if, due to legal circumstances or other circumstances for which the Bank is not liable, refinancing is no longer possible in the foreign currency, or
- if the loan is due for repayment in its entirety and is not repaid despite being declared delinquent, or

if the credit risk increases in business relations with business enterprises due to exchange rate fluctuations for the foreign currency and the Bank does not obtain adequate collateralisation within an appropriate period of time.

### V. Collection, Discount Business, Bill of exchange and cheque operations

#### A. Scope of application

#### Item 77.

These terms and conditions shall apply to bills of exchange, cheques and other collection documents (such as commercial instructions and certificates of obligation).

#### B. Collection or negotiation of documents

#### Item 78.

In principle, such documents shall be accepted by the bank for collection unless negotiation (discounting) of the same has been agreed upon.

#### C. Timeliness of orders

#### Item 79.

Orders for collection shall be received so much in advance that they may be carried out in the ordinary course of business without making use of special means of express handling.

#### D. Rights and obligations of the bank

#### Item 80.

In case of discounting as defined under items 41 (2) and (3) the bank shall be entitled to debit the seller with the full nominal amount plus all expenses incurred by the bank; in case of documents denominated in foreign currency the customer shall also bear the exchange risk.

#### Item 81.

In the events stated above as well as in case of redebits of „due payment provided“ credits (item 42) the claims under security law for payment of the full amount plus ancillary expenses vis-à-vis the customer and any party obligated under the document shall remain with the bank until coverage of the debit balance which

results from such redebit.

**Item 82.**

The bank may demand from the customer that the claim on which the document or acquisition of the same by the customer is based as well as all present and future rights arising from the underlying transactions including the collateral pertaining thereto be transferred. The bank shall only be obliged to cash documents which are due for payment with it if it has received an order from the customer in time and if sufficient coverage is ensured.