



# General Terms and Conditions

## Version 2009

### 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

Section 1. (1) These General Terms and Conditions (hereinafter referred to as GTC) shall apply to the overall business relation between the customer and all branch offices of the bank in Austria and abroad. Terms and conditions of agreements concluded with the customer or of special terms and conditions shall prevail.

(2) In these GTC, the terms "consumer" and "entrepreneur" shall have the meaning assigned to them in the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*).

###### 2. Modifications or amendments

Section 2. (1) Modifications of or amendments to these GTC or the current account agreement shall enter into force upon the expiration of two months following the notification of the customer with effect on all present and future business relations between the customer and the bank unless the bank has received a written objection from the customer by that time. Such notification may be effected in any form agreed with the customer within the scope of the business relation, particularly by way of notification on a statement of account. The agreed form of service of notices of the bank shall also apply to the notice of modifications of or amendments to the GTC or the current account agreement. If the customer has not advised his/her address to the bank and if no agreement on the form of service has been concluded, the display of the modified GTC in the front office of the bank shall be relevant; the first sentence of this paragraph shall apply accordingly.

(2) By means of the notification the bank shall inform the customer about the fact that the GTC or the current account agreement has been amended and shall point out that upon the expiration of two months after the notification his/her acquiescence will be deemed a consent to the modification or amendment. As regards customers who have not advised their address to the bank a respective note shall be included in the changed GTC displayed.

(3) In case of such intended modification or amendment of the GTC or current account agreement, customers who are consumers shall be entitled to terminate their current account agreement without notice and free of charge prior to such change taking effect.

##### B. Notices

###### 1. Customer orders and instructions

Section 3. (1) Customer orders and instructions shall be given in writing.

(2) Irrespective thereof, the bank shall 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 reached a corresponding agreement with the bank.

(3) The bank shall have the right to carry out, for the entrepreneur's account, any instructions received in whatever form within the scope of the business relation with an entrepreneur if the bank is, without fault, of the opinion that the instructions originate from the customer and provided that the invalidity of an instruction cannot be attributed to the bank.

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

Section 4. For security reasons the bank shall be entitled, in particular in case of instructions given via telecommunications, to obtain an advance confirmation of the order via the same or a different means of communication, as the case may be.

###### 3. Notices of the bank

Section 5. (1) The notifications and notices of the bank made via telecommunications shall be effective subject to written confirmation unless otherwise agreed in writing or other banking practices exist in this respect. This shall not apply *vis-à-vis* consumers.

(2) The customer shall receive notices and information which the bank is required to provide or make available to the customer on paper (particularly, by means of his/her statements of account), unless electronic availability or transmission has been agreed with the customer.

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

Section 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 for 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. Information duties

Section 7. (1) Apart from the statutory duties to provide information, the bank shall have no other duties to provide information in addition to those stated in its terms and conditions, unless separately agreed. In particular, the bank shall not be obliged, unless required by legal provisions or the terms of any agreement, to inform the customer on any imminent losses in prices or exchange rates, on the value or loss of value of any objects entrusted to the bank, or on any facts or



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circumstances likely to affect or jeopardise the value of such objects nor otherwise to provide advice or information to the customer.

(2) The information duty provided for in sections 26 (1) to (4), 28 (1), 31 and 32 of the Austrian Payment Services Act (*Zahlungsdienste-Gesetz*) shall not apply if the customer is an entrepreneur.

### 2. Carrying out of orders

Section 8. (1) The bank shall carry out an order which, due to its nature, requires the assistance of a third party, by calling in a third party in its own name. If the bank selects the third party it shall be liable for diligent selection.

(2) The bank shall be obliged to assign claims vis-à-vis the third party, if any, to the customer upon his/her request.

(3) As regards payment services rendered within the European Economic Area (EEA) in euro or in any other currency of an EEA Member State, the bank shall furthermore be liable vis-à-vis consumers (but not entrepreneurs) for the due execution of the transfer instruction until receipt by the payee's payment service provider (Section 39a of these GTC).

Section 9. deleted.

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

#### 1. Introduction

Section 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

Section 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) If the customer fails to notify changes in the address, written communications of the bank will be deemed received if they were sent to the address most recently advised to the bank.

##### b) Power of representation

Section 12. (1) The customer shall immediately notify the bank in writing of any cancellation or of changes in any power of representation advised to it, including an authority to dispose of and sign for an account (Sections 31 and 32), and shall provide appropriate documentary evidence in this regard.

(2) Any power of representation advised to the bank shall continue to be effective in its current scope until written notification of cancellation or of a change in the same, 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

Section 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, the dissolution of the same shall also be advised to the bank immediately.

#### 3. Clarity of orders

Section 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, he/she 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 and diligence in using means of telecommunication, payment instruments

Section 15. If the customer gives instructions or other notices via telecommunication, he/she shall take appropriate precautions in order to avoid transmission errors and abuse.

Section 15a (1) When using payment instruments which have been agreed to be usable for placing orders with the bank, the customer shall take all reasonable precautions to protect the personalised security features against unauthorised access, and shall notify the bank, or the body specified by the bank, without undue delay on becoming aware of any loss, theft, misappropriation, or any other unauthorised use of the payment instrument. In case of any form of fault on their part, customers who are entrepreneurs shall be liable, without limitation as to amount, for any losses sustained by the bank due to violations of these duties of care and diligence.

(2) The bank shall be authorised to block payment instruments issued to the customer

- if this is justified by objective reasons in connection with the security of the payment instrument, or
- if unauthorised or fraudulent use of the payment instrument is suspected, or
- in case of a significantly increased risk of the customer being unable to meet his/her payment obligations in connection with a credit line associated with the payment instrument.

To the extent permitted, the bank shall notify the customer of such blocking and of the reasons for it in a manner of communication agreed with the customer, where possible, before the payment instrument is blocked, but in any event immediately thereafter.



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### 5. Raising of objections

Section 16. (1) The customer shall immediately verify notices of the bank, such as confirmations of his/her orders, communications about the carrying out of the same, statements of account, statements of securities accounts, closing statements and any other accounts as well as mail and payments of the bank immediately as to their completeness and correctness and shall raise objections, if any, without delay.

(2) If the bank receives no written objections within a period of two months, the stated notices and services of the bank will be deemed approved. The bank shall in each case inform the customer about the significance of his/her objection or non-objection at the beginning of the period. It shall be sufficient if such information is provided on the statement of account.

(3) In case of any debit entries having been made as a result of unauthorised or incorrectly executed payment transactions, the customer can obtain rectification from the bank only if he/she has notified the bank without undue delay on becoming aware of any unauthorised or incorrectly executed payment transaction, but in any event no later than 13 months after the debit date, unless the bank has failed to provide or make available to the customer, in the manner agreed with the customer, the information provided for in Section 39 (8) of these GTC regarding the relevant payment transaction. The above period shall be reduced from 13 months to 3 months if the customer is an entrepreneur.

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

Section 17. The customer shall notify the bank immediately if he/she does not receive regular communications from the bank (such as closing statements or statements of securities accounts) or other communications or mail from the bank which the customer would have had to expect in his/her circumstances within the period of time normally to be expected with respect to the agreed form of transmission.

### 7. Translations

Section 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

Section 19. The place of performance for both parties shall be the offices of that branch of the bank with which the transaction was concluded.

#### 2. Choice of law

Section 20. All legal relations between the customer and the bank shall be subject to Austrian law.

#### 3. Legal venue

Section 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

Section 22. (1) Unless the agreement has been concluded for a definite period of time the bank and the customer shall be entitled to terminate the entire business relation or individual parts thereof at any time observing a reasonable period of notice.

This shall apply in particular also to the termination of current account agreements with entrepreneurs. Sec. 30 (4) of the Payment Services Act, which, in particular, provides for the prorated repayment of charges paid in advance, shall not apply to current account agreements with entrepreneurs.

(2) A customer who is a consumer shall be entitled to terminate a current account agreement at any time as of the last day of the current month, it being understood that any notice of termination issued on the last business day of a month shall only take effect as of the first business day of the following month. The right to terminate the current account agreement due to modifications of or amendments to the GTC or the current account agreement that have been proposed by the bank shall remain unaffected.

(3) The bank shall be entitled to terminate a current account agreement with a consumer upon two months' notice if the agreement had been concluded for an indefinite period. Notice of termination must be communicated on paper or on another durable medium.

#### 2. Termination for important reason

Section 23. (1) The bank and the customer shall be entitled to terminate the entire business relation or individual parts thereof at any time with immediate effect for important reason notwithstanding any agreements to the contrary.

(2) Important reasons for termination by the bank are given in particular, if

- the financial situation of the customer or of a co-debtor deteriorates or is put at risk and the fulfilment of obligations vis-à-vis the bank is jeopardised as a result thereof,
- the customer furnishes incorrect information about his/her financial situation or other essential facts and



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circumstances, or

- the customer fails or is unable to fulfil the obligation to provide or increase collateral.

### 3. Legal consequences

Section 24. (1) Upon termination of the entire business relation or individual parts thereof the amounts owed thereunder will immediately become due and payable. In addition, the customer shall be obliged to release the bank from all liabilities assumed for him/her.

(2) In addition, the bank shall be entitled to terminate all liabilities assumed for the customer and to settle the same on behalf of the customer as well as to immediately redebit credited amounts, subject to collection. Claims arising from securities, in particular bills of exchange or cheques, may be asserted by the bank until potential debit balances, if any, are covered.

(3) These General Terms and Conditions shall continue to apply even after termination of the business relation until complete settlement.

## II. Bank Information

Section 25. General information about the financial situation of an enterprise which is customary in banking practice will only be provided in a non-binding manner and, vis-à-vis entrepreneurs, only in writing unless an obligation to provide such information exists.

Section 26. deleted.

Section 27. deleted.

## III. Opening and Keeping of Accounts and Securities Accounts

### A. Scope of application

Section 28. Unless otherwise provided the following regulations regarding accounts shall also apply to securities accounts.

### B. Opening of accounts

Section 29. 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

Section 30. Persons who are to be authorised to dispose of or sign for an account shall deposit their signatures with the bank. Based on the signatures deposited the bank shall permit written disposition within the scope of the account.

### D. Right of disposal and signing authority

#### 1. Right of disposal

Section 31. Only the account holder shall be entitled to <sup>dispose of the</sup> account. Only persons whose power of representation is based on statutory provisions or persons who hold written power of attorney explicitly authorising them to dispose of the account shall be entitled to represent the account holder. They shall be obliged to prove their identity and power of representation. A durable power of attorney merely has to provide for general authority to dispose of the account(s) of the grantor.

#### 2. Signing authority

Section 32. (1) The account holder may expressly and in writing grant third parties authority to sign for the account. The person so authorised to sign for the account shall be exclusively entitled to make and revoke dispositions on the amount in the account.

(2) The authority to sign for a securities account also includes the power to buy and sell securities within the scope of the coverage available and in accordance with the investment objective of the holder of the securities account pursuant to the Securities Services Supervision Act (WAG).

### E. Special types of accounts

#### 1. Sub-account

Section 33. 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

Section 34. 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

Section 35. (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 a specifically authorised representative from case to case.

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

(3) Unless expressly agreed otherwise, every joint account holder shall have individual power to dispose of the amount in the account. Such authority also includes the power to buy and sell securities within the scope of the coverage available and in accordance with the joint investment objective of all security account holders pursuant to the Securities



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Services Supervision Act . The authority will, however, be terminated by the express objection of another account holder. In such case the joint account holders shall only be authorised to act jointly.

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

Section 36. deleted.

#### 4. Foreign currency account

Section 37. (1) If the bank keeps a foreign currency account for the customer, transfers in the respective foreign currency shall be credited to such account unless a different transfer instruction has been given. If no foreign currency account exists the bank shall be entitled to credit foreign currency amounts in national currency unless expressly instructed to the contrary by the customer. The amount shall be converted at the conversion rate of the day on which the amount in foreign currency is at the bank's disposal and may be used by it.

(2) Holders of credit balances in foreign currency shall bear any and all financial and legal consequences and damages affecting the total credit balance in the respective currency held by the bank in Austria and abroad which were caused by measures or events for which the bank is not responsible pro rata up to their respective credit balances.

#### F. Balancing of accounts and statements of securities accounts

Section 38. (1) Unless agreed otherwise, the bank shall balance the account on a quarterly basis. The interest and charges incurred in the calendar quarter shall be part of the closing balance which shall again be subject to interest ("compound interest"). Statements of securities accounts shall be prepared once a year.

(2) The statement of account including the closing balance /the statement of the securities account will be kept available for the customer at the account-keeping branch office of the bank.



### IV. Giro Transactions

#### A. Transfer instructions

Section 39. (1) Transfer instructions must state the payee's payment service provider (bank routing number or Bank Identifier Code = BIC) and the account number and/or International Bank Account Number (= IBAN). This information constitutes the "unique identifier".

(2) The designated purpose stated in the transfer instruction shall be irrelevant to the bank.

(3) Acceptance of a transfer instruction by the bank alone shall not lead to any rights of a third party vis-à-vis the bank.

(4) The bank shall only be obliged to carry out a transfer instruction if sufficient funds to cover the total amount are available in the customer's account stated therein (credit balance, credit line granted).

(5) If the customer provides information in addition to data set out in paragraph (1), the transfer instruction shall be executed solely on the basis of the unique identifier provided by the customer (paragraph (1)).

(6) Any transfer instructions received by the bank may not be unilaterally revoked by the customer. If a later date of execution has been agreed for a transfer instruction, it shall become irrevocable only upon the expiration of the business day preceding the execution date.

(7) If the bank refuses execution of a transfer instruction, the bank shall inform the customer, in the manner agreed with the latter, of the refusal, and if possible about the reasons for such refusal and about ways to amend the transfer instruction to allow future execution. Transfer instructions refused by the bank for justified reasons shall not trigger the execution deadlines stipulated in Section 39a of these GTC.

(8) Information about executed transfer instructions (reference, amount, currency, charges, interest, exchange rate, value date of the debit entry) as well as about any other payments made from the customer's account, particularly within the scope of a direct debit order or direct debit authorisation scheme, shall be provided to a customer who is a consumer by the bank once a month upon request - unless it has already been given on the statement of account when the transaction concerned was effected.

#### B. Execution deadlines

Section 39a (1) Payment orders which are received by the bank after the deadlines specified for the respective type of payment or on a day which is not a business day will be deemed received on the following business day. A business day is any day on which the bank is open for business as required for the execution of payment transactions.

(2) If the customer making a payment order and the bank agree that execution of a payment order should commence on a specific day or at the end of a specific period or on the day on which the customer provides the bank with the relevant amount of money, then the agreed date will be deemed the time of receipt. If the agreed date is not a business day of the bank, the payment order shall be treated as if it had been received on the following business day.

(3) Starting from 1 January 2012, the bank shall ensure that after the time of receipt the amount of the payment transaction will be received by the payee's payment service provider no later than by the end of the following business day. Until 1 January 2012, the relevant period shall be up to 3 business days. The aforesaid periods shall be extended by one business day each in case of paper-initiated payment transactions. This paragraph shall apply only to payment transactions made in euro within the European Economic Area ("EEA").

(4) The execution period addressed in paragraph (3) shall be 4 business days in case of payment transactions made within the European Economic Area that are denominated not in euro but in another currency of an EEA Member State.

#### C. Credit entries and right to cancel

Section 40. (1) In case of a valid existing current account agreement, the bank shall be obliged and irrevocably entitled to accept amounts of money on behalf of the customer and credit the same to his/her account. Even after termination of the current account agreement the bank shall be entitled to accept amounts of money on behalf of the customer to the extent obligations of the customer exist in connection with the account. The instruction to provide a customer with an amount of money shall be carried out by the bank by crediting the amount to the account of the payee unless otherwise indicated in the instruction.

(2) Information about transfers credited to his/her account (reference, amount, currency, charges, interest, exchange rate, value date of the credit entry) shall be provided to the customer who is a consumer by the bank once a month upon request - unless it has already been given on the statement of account when the transaction concerned was effected.

(3) The bank shall be entitled to deduct from the credited amount its charges for the relevant transfer. The bank shall show the transfer amount and the deducted charges separately.

(4) The bank shall be entitled to cancel any credit entries made due to an error on its part at any time. In other cases the bank will only cancel the credit entry if the ineffectiveness of the transfer instruction is clearly proven to it. The right to cancel shall not be eliminated by a balancing of the account which took place in the meantime. If the right to cancel exists the bank may deny disposal of the amounts credited.

#### D. Credit entry - subject to collection

Section 41. (1) If the bank credits amounts which it has to collect on behalf of the customer (in particular, within the scope of collecting cheques, bills of exchange and other securities, debit notes, etc.), or which are to be transferred to the customer's account, to the customer's account before the amount to be collected or transferred is received by the



bank, the credit entry is only made subject to actual receipt of the credited amount by the bank. This shall also apply if the amount to be collected should be payable to the bank.

(2) Due to this reservation the bank shall be entitled to reverse the credit entry by means of a simple entry if the collection or transfer has failed or if due to the economic situation of a debtor, intervention by a public authority or for other reasons it is to be expected that the bank will not obtain the unrestricted right of disposition of the amount to be collected or transferred.

(3) The reservation may also be exercised if the amount credited was collected abroad or transferred from abroad and the bank is debited the amount by a third party pursuant to foreign law or on the basis of an agreement entered into with a foreign bank.

(4) If the reservation is in force the bank shall also be entitled to deny the customer the right to dispose of the credited amounts. The reservation will not be eliminated by the balancing of accounts.

### **E. Debit entries**

Section 42. (1) In the event of transfer instructions, debit entries shall only be considered a confirmation that the instruction has been carried out if the debit entry was not reversed within two business days (cf. Section 39a (1) of these GTC).

(2) Cheques and other payment instructions as well as debit entries are deemed collected/cashed/honoured if the debit entry has not been cancelled on the debited account of the customer within two business days unless the bank has informed the presenter or paid him/her the amount in cash already prior thereto.

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

Section 42a. (1) The customer consents to the debiting of his/her current account with amounts that are collected from the current account he/she holds with the bank by third parties authorised by him/her. Such consent may be revoked by the customer in writing at any time. Such revocation shall take effect from the business day following receipt of such revocation notice by the bank.

(2) If at the time of a debit the bank had received a relevant mandate from the customer to pay from the customer's account amounts collected by a third party specified in such instruction ("direct debit order"), the bank must meet the request of a customer who is a consumer to reverse the debiting of the amount collected from his/her account. This shall not apply if the bank is able to prove that the bank or the payee had in an agreed manner provided or made available information about the impending debit to the customer no later than four weeks prior to the due date. The bank must have received the customer's request for reversal of the debit within 8 weeks from the date of such debit. Entrepreneurs shall not be entitled to make such a request.

(3) If at the time of a debit the bank had not received a direct debit order from the customer ("direct debit authorisation scheme"), the bank automatically has to meet the request of the customer (customers including entrepreneurs), received by the bank within 8 weeks from the date of the debit, to reverse the debiting from his/her account.

(4) A justified request by a customer to reverse a debit entry shall be met within 10 business days.

## **V. Consideration of Services and Reimbursement of Expenses**

### **A. Consideration**

#### **1. Principle that services are rendered subject to payment of consideration**

Section 43. (1) The bank shall be entitled to demand consideration from the customer for its services, in particular, interest, fees and commissions.

(2) This shall also apply to expedient services rendered by the bank without instruction but in the case of emergency or to the benefit of the customer or in connection with the settlement of the estate of the deceased customer.

(3) Paragraph (1) shall not apply to the non-recurring provision of information to consumers on the bank, on the use of the payment service, on consideration, interest, and exchange rates, on communication, on safeguards and corrective measures, on modifications of, amendments to or the termination of the current account agreement and on legal remedies if such information is provided in a form agreed with the customer within the scope of the business relation.

(4) Paragraph (1) shall furthermore not apply to services rendered by the bank to consumers in connection with the termination of the current account agreement by the customer.

#### **2. Amount of consideration**

Section 44. The bank shall be entitled to adequate consideration for its services, the amount of which will be determined by the bank and displayed in the form of a cost list containing the cost for certain typical services. Consideration for services rendered under a consumer loan agreement or a consumer current account agreement shall be payable only if such consideration has been agreed with the customer.

#### **3. Change in consideration for ongoing services and change in the scope of services or the interest rate**

Section 45. (1) The bank shall be entitled at its reasonable discretion to change the consideration charged to entrepreneurs for ongoing services (interest, account keeping fee, etc.) by taking into account all relevant circumstances (in particular, changes in the legal framework conditions, changes in the money market or capital market, changes in the refinancing cost, changes in the staff expenses and operating expenditure, changes in the Consumer Price Index, etc.).

(2) Unless agreed otherwise, the consideration (except for interest) charged to consumers for ongoing services



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rendered by the bank will be adjusted (raised or reduced) on an annual basis in accordance with the development of the Austrian Consumer Price Index 2000 published by the Austrian Office for Statistics (index figure of the month of December preceding the adjustment, as compared to the reference figure of December 2002), such adjustment to take effect as from 1 April of any year and the amount determined being rounded to the nearest whole unit in cents. If the bank in case of an increase of the index does not raise the consideration, for whatever reason, it has thus not forfeited the right to raise the consideration in any subsequent year.

The interest payable by consumers may be changed in accordance with an adjustment clause to be specifically agreed with the customer. The statutory obligation to include the said adjustment clause in a consumer credit agreement shall remain unaffected.

If an adjustment clause links the interest rate to a reference interest rate (e.g., EURIBOR), any changes shall take effect immediately, without prior notification of the customer. The customer shall be informed in the next calendar quarter at the latest of any changes that have taken effect.

In business with consumers, adjustments of consideration under the adjustment clauses mentioned in this paragraph (2) shall not be made earlier than 2 months after the date of the agreement.

(3) Apart from the adjustments referred to in paragraphs (1) or (2), any changes in the consideration and in the scope of services or interest rates shall require the customer's consent. Any such change shall enter into force 2 months after notification of the customer of the change desired by the bank, unless the bank has received a written objection from the customer by that time. In its notification the bank will advise the customer of the change desired from time to time and will point out that after expiration of the stipulated period his/her acquiescence will be deemed a consent to the change. Customers who are consumers shall be entitled to terminate their current account agreement without notice and free of charge prior to such change taking effect.

### **B. Reimbursement of expenses**

Section 46. (1) The customer shall bear all expenses, disbursements and costs, in particular stamp duties and legal transaction charges, taxes, postage, cost of insurance, legal counsel, collection, consultancy services in business administration matters, telecommunications as well as provision, administration and utilisation or release of collateral incurred in connection with the business relation between him/her and the bank. If the bank is unable to carry out a payment order by the customer due to lack of coverage or if it has to take action vis-à-vis the customer due to enforcement measures of third parties, it shall be entitled to collect an appropriate lump-sum expense allowance pursuant to the displayed cost list.

(2) The bank shall be entitled to charge such expenses as a lump-sum amount without specifying the individual amounts unless the customer expressly demands itemisation of the individual amounts.

## **VI. Collateral**

### **A. Provision and increasing of collateral**

#### **1. Right to collateral**

Section 47. The bank shall be entitled to demand from the customer the provision of appropriate collateral for all claims under the business relationship with him/her within an appropriate period of time, i.e. even then if the claims are conditional, limited as to time or not yet due.

#### **2. Change in the risk**

Section 48. (1) If circumstances occur or become known subsequently which justify an increased risk assessment of the claims vis-à-vis the customer, the bank shall be entitled to demand the provision or increase of collateral within a reasonable period of time. This shall, in particular, be the case if the economic situation of the customer has deteriorated or threatens to deteriorate or if the collateral available has deteriorated in value or threatens to deteriorate.

(2) This shall also apply if no collateral was required at the time the claims came into existence.

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

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

Section 49. (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.

Section 50. (1) The lien shall secure the bank's claims vis-à-vis the customer under the business relation, including joint accounts, even if the claims are conditional or limited as to time or not yet due.

(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**

Section 51. (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**

Section 52. 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**

Section 53. 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.

Section 54. 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**

Section 55. The bank shall also be entitled to realise the collateral by enforcement or - to the extent the collateral has no market price or stock exchange price - to sell it at an out-of-court auction.

#### **3. Collection**

Section 56. (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**

Section 57. 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**

Section 58. 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. Sections 50 and 51 shall apply accordingly.

## **VII. Offsetting and Crediting**

### **A. Offsetting**

#### **1. by the bank**

Section 59. (1) The bank shall be entitled to offset all of the customer's claims, to the extent they are liable to attachment, 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 notice. An attachment of the credit balance shall not be considered a disposition by the customer.

#### **2. by the customer**

Section 60. 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**

Section 61. Notwithstanding the provisions of sec. 1416 of the Austrian General Civil Code (*ABGB*) 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.



### A. Scope of application

Section 62. The terms and conditions under Sections 63 to 67 shall apply to securities and other assets even if they are not certificated.

### B. Carrying out of instructions

Section 63. (1) As a general rule, the bank shall carry out customer instructions for the purchase and sale of securities as commission agent.

(2) If the bank agrees on a fixed price with the customer, it enters into a purchase agreement.

(3) The customer hereby approves the policy adopted by the bank in respect of the manner in which the bank will execute the customer's orders in the absence of explicit instructions. The bank shall inform the customer of any substantial changes in the execution policy.

(4) The bank may also carry out orders for the purchase and sale of securities in part if the market situation does not allow that the same be carried out in full.

### C. Practices at the place of execution

Section 64. The statutory provisions and practices applicable at the place of execution shall be relevant for carrying out instructions.

### D. Date of carrying out instructions

Section 65. If an instruction which is to be carried out on the same day has not been received early enough to be carried out on that day within the scope of the ordinary workflow, it shall be scheduled to be carried out on the next trading day.

### E. Insufficient coverage

Section 66. (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. Transactions abroad

Section 67. If a customer receives a credit from the bank for securities held by a third-party custodian (securities credit) the customer shall have a claim towards the bank pro-rata to the share held by the bank on behalf of the customer in the overall portfolio of equivalent securities held abroad by the bank on behalf of all its customers pursuant to the relevant statutory provisions and market practices.

### G. Transactions in stocks

Section 68. 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

Section 69. (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 liability of the bank to an entrepreneur shall be limited to the careful selection of the third-party depository.

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

Section 70. (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 certifications 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 der 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



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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

Section 71. 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 conversion or other measures

Section 72. In case of any conversion, capital increase, capital reduction, merger, exercise or realisation of subscription rights, request for payment, grouping, change, exchange/conversion offer, coupon increase or other material measures regarding securities the bank shall, to the extent a respective notification has been published in the official gazette "*Amtsblatt der Wiener Zeitung*" or communicated in time by the issuer or the foreign depository, endeavour to notify the customer thereof. If the customer fails to provide instructions in time the bank shall act to the best of its knowledge by taking into account the customer's interests and, in particular, realise rights which would otherwise forfeit at the latest point in time possible.

## III. Trade in Foreign Exchange and Foreign Currency

### A. Procedure

Section 73. 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. If in this case the bank contracts with the customer for its own account no express notification pursuant to sec. 405 of the Austrian Commercial Code (*UGB*) shall be required.

### B. Forward transactions

Section 74. (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 agreed otherwise, 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 paragraphs 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

Section 75. Foreign currency loans shall be paid back in the currency in which they were granted by the bank. Payments made in other currencies shall be considered security payments unless the bank informs the customer that they will be used for redemption of the loan. The bank shall also be entitled to convert an outstanding debit balance in a foreign currency into Austrian currency upon notification of the customer if

- the credit risk increases due to the price development of the foreign currency and 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.

## V. Collection, Discount Business, Bill of Exchange and Cheque Operations

### A. Scope of application

Section 76. 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

Section 77. In principle, the bank shall accept such documents for collection unless negotiation (discounting) of the



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same has been agreed upon.

### **C. Timeliness of orders**

Section 78. 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**

Section 79. In case of discounting as defined under Sections 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.

Section 80. In the events stated above as well as in case of recredits of "subject to collection" credits (Section 41) 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 recredit.

Section 81. 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 made payable upon presentation at its counters if it has received an order from the customer in time and if sufficient coverage is available.