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## General Terms and Conditions

Version July 2015

### General Provisions

#### I. Basic Rules for Business Relations between Customer and Bank

##### A. Scope of application of and changes 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. The business relation shall encompass all individual business transactions between the customer and the bank and therefore also all master agreements for payment services (e.g. current account agreement or credit card agreement). Provisions 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. Changes to the General Terms and Conditions and the master agreements for payment services

**Section 2.** (1) Changes to these General Terms and Conditions shall be offered to the customer by the bank not later than two months before they are proposed to take effect. The provisions affected by the proposed changes and the proposed changes shall be set out in a comparison of these provisions. The customer's consent will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this consequence in the offer of change. In addition, the bank shall publish a comparison of the provisions concerned by the change to the GTC as well as the complete version of the new GTC on its website and shall provide such comparison to the customer at the latter's request. The bank shall indicate this, too, in the offer of change. A customer who is a consumer must be informed of the offer of change. In business dealings with an entrepreneur it shall suffice to keep the offer of change available for retrieval in a manner agreed with the entrepreneur.

(2) In case of any intended change to the GTC, the customer who is a consumer shall be entitled to terminate his/her master agreements for payment services (in particular the current account agreement) without notice and free of charge prior to such modification or amendment taking effect. This will be indicated by the bank in its notice of change.

(3) Paragraph (1) shall also apply to such changes to the master agreements between the customer and the bank. Paragraph (2) shall furthermore also apply to changes to master agreements for payment services.

(4) Paragraphs (1) and (2) above shall not apply to changes to the performances to be rendered by the bank (including credit interest) and to the fees charged to the customer (including debit interest). Unless individually agreed with the customer, sections 43 to 47a shall apply to these changes.

##### B. Notices

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

**Section 3.** (1) Customer orders and instructions shall be given in writing. The customer may also give orders or instructions by using a device for electronic signature capturing which may possibly be kept available by the bank for this purpose.

(2) The bank shall also be entitled to carry out orders and instructions given via telecommunications (in particular over the phone or via telefax or data communication). All other prerequisites being fulfilled, 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 orders 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 orders originate from the customer and provided that the invalidity of an order cannot be attributed to the bank. This shall not apply to orders relating to payment services.

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

**Section 4.** For security reasons the bank shall be entitled, in particular in case of orders placed via telecommunications, to obtain 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 unless 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, provided, however, that the bank may also use statements of account to provide such notices or information.

### 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 special decision rendered by the probate court or the court's decision on the 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) An authority to sign for an account granted by an entrepreneur for a business account shall not terminate upon the death of a customer. In case of doubt, the accounts of an entrepreneur shall be considered business accounts.

### D. Obligations and liability of the bank

#### 1. Information requirements

**Section 7.** (1) Apart from the statutory obligations 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. Unless so required by legal provisions or the terms of any agreement, the bank is therefore not obliged 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 circumstances likely to affect or jeopardise the value of such objects nor otherwise to provide advice or information to the customer.

(2) The obligations to inform 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.

**Section 9.** Beyond what is provided for in Section 8, the bank, as regards payment services rendered within the European Economic Area (EEA) in euro or in any other currency of an EEA Member State, shall furthermore be liable vis-à-vis consumers (but not entrepreneurs) for the due execution of the transfer until receipt by the payee's payment service provider (Section 39a of these GTC).

### E. Customer's duty to co-operate and customer's liability

#### 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 by the customer.

##### b) Power of representation

**Section 12.** (1) The customer shall immediately notify the bank in writing of any cancellation of or changes to 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 of or a change to the same has been received, unless the bank had knowledge of such cancellation or change or was not aware thereof due to gross negligence. This shall, in particular, also apply if the cancellation of or change to the power of representation is recorded 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 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 apply especially where there is particular urgency for the order to be carried out or where the order is subject to certain periods and deadlines.

### 4. Due care and diligence in using means of telecommunication; payment instruments

**Section 15.** If the customer gives orders/instructions or other notices via telecommunication, he/she shall take reasonable precautions in order to avoid transmission errors and abuse. This provision shall not apply to orders and notices given by the customer in relation to payment services.

**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

- (i) if this is justified by objective reasons in connection with the security of the payment instrument, or
- (ii) if unauthorised or fraudulent use of the payment instrument is suspected, or
- (iii) if the customer has not met his/her payment obligations in connection with a credit line associated with the payment instrument (limit exceeded or overdraft), and
  - either fulfilment of these payment obligations is endangered due to a deterioration in or danger to the customer's assets or those of a jointly liable person, or
  - the customer is insolvent or insolvency is imminent.

Unless notice of the blocking or of the reasons for such blocking would violate an order issued by a court or an administrative authority and/or would compromise Austrian or Community legislation or objectively justified security reasons, 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.

(3) The provisions of this clause shall also apply to instruments which have been agreed to be usable for placing orders with the bank outside the payment services.

### 5. Raising of objections

**Section 16.** (1) The customer shall verify notices of the bank not relating to payment services (such as confirmations of orders placed in relation to financial instruments and communications about the carrying out of the same and confirmations of trades; account statements, closing statements and any other accounts relating to lending and foreign currency transactions; securities account statements and/or statements of securities) as to their completeness and correctness and shall raise objections, if any, without delay, but within two months at most. If the bank receives no written objections to an account statement that does not concern a payment account within a period of two months, this statement will be deemed approved. The customer can still demand rectification of the account statement after the period has expired, but must then prove that his/her account has been incorrectly debited or he/she has not been credited with a sum due.

The bank shall in each case advise the customer of the consequences of failing to make a timely objection at the beginning of the period.

(2) In case of debit entries having been made to the customer's current account as a result of unauthorised or incorrectly executed payment transactions, the customer can obtain rectification from the bank in any event provided that on becoming aware of any unauthorised or incorrectly executed payment transaction he/she has notified the bank without undue delay, but no later than 13 months after the debit date. The time limits shall not apply if the bank has failed to provide or make available to the customer the information regarding the relevant payment transaction that is provided for in Section 39 (9) of these terms and conditions. Other claims for rectification that the customer may have are not excluded by this provision.

### 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) 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. This shall not apply to communications or mail relating to payment services.

## 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.** When transacting business with entrepreneurs, 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 in the business relation with an entrepreneur

**Section 22.** 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 (also loan agreements and master agreements for payment services such as current account agreements in particular) at any time observing an adequate period of notice. Fees that have been paid in advance shall not be refunded.

### 2. Ordinary termination in the business relation with a consumer

**Section 22a.** (1) The customer shall be entitled to terminate a master agreement for payment services, in particular the current account agreement, free of charge 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 a master agreement for payment services, in particular the current account agreement, free of charge and without notice due to modifications of or amendments to the GTC or a master agreement for payment services, in particular the current account agreement (Section 2), that have been proposed by the bank shall remain unaffected.

(2) Customers may terminate loan agreements concluded for an indefinite period of time at any time free of charge subject to a notice period of one month. Notice of termination must be communicated on paper or on another durable medium agreed.

(3) All other contracts or agreements concluded with the bank for an indefinite period of time may be terminated by the customer at any time subject to an adequate notice period.

(4) The bank shall be entitled to terminate any master agreements for payment services (in particular current account agreements) and loan agreements which have been concluded for an indefinite period of time by giving two months' notice.

(5) All other contracts or agreements concluded for an indefinite period of time may be terminated by the bank at any time subject to an adequate notice period.

### 3. 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. 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,

(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 information about his/her financial situation or other facts and circumstances which is

incorrect in important aspects, or

- the customer has failed or is unable to fulfil an obligation to provide or increase collateral.

#### 4. 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) Furthermore, 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 any amounts that may have been credited subject to receipt of the funds. 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) Upon termination of the entire business relation or of individual business transactions, the bank shall refund to the customer who is a consumer proportionally such charges for payment services as have been paid for a certain period in advance.

(4) The GTC shall apply even after the termination of the business relation, until complete settlement.

#### H. Right to refuse payout

**Section 25.** (1) The bank shall be entitled to refuse payout of the loan amount for objectively justified reasons.

(2) Objectively justified reasons within the meaning of paragraph 1 will be deemed present if, after conclusion of the contract,

- circumstances arise which show the financial situation of the customer to have deteriorated, or stipulated collateral to have suffered a loss in value, to such a degree that repayment of the loan or payment of interest is jeopardised even if collateral were to be realised, or
- the bank comes to harbour the objectively justified suspicion that the loan amount is or will be used by the borrower in a manner contrary to contractual agreement or the law.

(3) The bank shall communicate any such intention, and the reasons therefor, to the consumer on paper or on another durable medium without delay. No reasons shall be provided where public security or order would be jeopardised thereby.

### II. Bank Information

**Section 26.** General information about the financial situation of an enterprise which is customary in banking practice will only be provided in a non-binding manner unless an obligation to provide such information exists, and vis-à-vis entrepreneurs only in writing.

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, or company name, of the account holder together with an account number.

#### C. Specimen signatures

**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 dispose of the 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 the effectiveness of which has been recorded in the Austrian Central Register of Durable Powers of Attorney (*ÖZVR*) 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 authorised signatory shall be obliged to prove his/her identity to the bank. The person so authorised to sign for the account shall only be 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 as well as in accordance with the investment objective and risk orientation of the holder of the securities account as assessed pursuant to the Austrian 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 the 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 and joint risk orientation of all holders of the securities account as assessed pursuant to the Austrian Securities Services Supervision Act (WAG). 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 each individual joint account holder.

##### 4. Foreign currency account

**Section 37.** The bank's obligation to execute an order against a foreign currency credit balance or to fulfil a foreign currency liability is suspended to the extent and for as long as the bank is unable to draw, or can only draw to a limited extent, the currency in which the foreign currency balance or liability is denominated due to politically dictated measures or events in the country of this currency. Insofar and as long as these measures or events persist, the bank shall not be obliged to execute or fulfil the order in another place outside the country of the currency, in a different currency (including euros) or through procurement of cash. The bank's obligation to execute an order against a foreign currency balance is not suspended, on the other hand, if the bank is able to execute it fully in house. The customer's right and that of the bank to offset reciprocal claims due in the same currency against each other shall not be affected by the above arrangement.

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

**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 shall be provided once a year.

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

## IV. Giro Transactions

### A. Transfer orders

**Section 39.** (1) When transfers are to be made to a payee whose account is kept by a payment service provider within Austria, other countries of the European Economic Area (EEA) or Switzerland, the customer shall identify the payee by his/her International Bank Account Number (IBAN). If the registered office of the payee's payment service provider is situated in an EEA member country other than Austria or in Switzerland, the Bank Identifier Code (BIC) of the payee's payment service provider must be specified in addition to the IBAN until 31 January 2016.

Until 31 January 2014, customers shall be entitled to continue identifying the payee by providing the payee's name and account number instead of the IBAN and using either the sort code or the BIC of the payee's payment service provider.

(2) When transfers are to be made to a payee whose account is kept by a payment service provider outside the EEA or Switzerland, the customer shall identify the payee as follows:

- by providing the payee's name and account number and using either the name, the sort code or the BIC of the payee's payment service provider, or
- by providing the payee's IBAN and the BIC of the payee's payment service provider.

(3) The information on IBAN and BIC, or account number and name/bank sort code/BIC of the payee's payment service provider, to be provided by the customer under paragraphs (1) and (2) shall constitute the payee's unique identifier on the basis of which the transfer order is carried out. Additional information relating to the payee such as, in particular, the name of the payee, which must be specified for the purpose of documentation when giving the transfer order, shall not form part of the unique identifier and shall be disregarded when carrying out the transfer.

(4) The designated purpose stated in the transfer order shall be irrelevant to the bank in any case.

(5) Acceptance of a transfer order by the bank shall not, in and of itself, give rise to any rights of a third party vis-à-vis the bank.

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

(7) Transfer orders which have been received by the bank (Section 39a) may not be unilaterally revoked by the customer. If a later date of execution has been agreed for a transfer order, it shall become irrevocable only upon the expiration of the business day preceding the execution date.

(8) If the bank refuses execution of a transfer order, the refusal and ways to amend the transfer order to allow future execution shall be notified to the customer by the bank at the earliest opportunity, and in any case within the period specified in Section 39a (3) and (4), in the manner agreed with the customer. A reason for the refusal will only be provided where doing so does not violate Austrian or Community legislation and/or an order issued by a court or an administrative authority. Transfer orders refused by the bank for justified reasons shall not trigger the execution times stipulated in Section 39a of these GTC.

(9) Information about executed transfer orders (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 already given on the statement of account when the transaction concerned was effected.

## B. Execution times

**Section 39a.** (1) Payment orders which are received by the bank after the cut-off times (points in time of receipt) specified for the respective type of payment near the end of business hours, or on a day which is not a business day, will be deemed received on the following business day. The bank shall inform the customer who is a consumer in good time before or upon the conclusion of the current account agreement, and thereafter whenever the cut-off times should change, of the cut-off times that have been established, and shall provide that information either on paper or - if so agreed with the customer - on another durable medium. 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 certain period or on the day on which the customer provides the bank with the relevant amount of money, then the agreed day will be deemed the point in time of receipt. If the agreed day 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) The bank shall ensure that after the point in 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 (in case of paper-initiated payment transactions by the end of the second business day that follows). This paragraph shall apply only to payment transactions made in euro within the European Economic Area ("EEA").

(4) The execution time referred to 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 validly 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. If and insofar as the bank has claims against the customer arising from the account, even after termination of the current account agreement the bank shall still be entitled to accept amounts of money on behalf of the customer and offset its claims against the customer's claim to disbursement of the amount of money accepted. The order 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 customer unless otherwise indicated

in the order. If the customer's account stated in the order is not kept in the currency indicated in the order, the credit entry shall be made after conversion to the currency of the account at the conversion rate of the day on which the amount stated in the order is at the bank's disposal and may be used by it.

(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 already given on the statement of account when the transaction concerned was effected.

(3) The bank shall be entitled to deduct from the amount to be credited 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 order 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, direct debits, 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 by way of a contingent entry subject to actual receipt of the credited amount by the bank. This shall also apply if the amount to be collected should be payable at 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 case of transfer orders, debit entries shall only be considered confirmation that the order has been carried out if the debit entry was not reversed within two business days (Section 39a (1)).

(2) Cheques and other payment instructions as well as SEPA B2B direct debits are deemed collected/cashed/honoured if the debit entry on the debited account of the customer was not reversed within two business days, unless the bank informed the presenter or paid him/her the amount in cash already prior thereto. SEPA direct debits (section 42a (3)) are deemed to have been collected/cashed/honoured after five business days.

#### **F. SEPA direct debit and SEPA B2B direct debit orders**

**Section 42a.** (1) The customer consents to the debiting of his/her account with amounts that are collected from the 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. In the same way, the consent to collections being made by an authorised third party can be limited to a certain amount or periodicity or both as from 1 February 2014 by instructing the bank accordingly.

(2) The bank shall execute collection authorisations and SEPA direct debits to be debited to the customer's account on the basis of the International Bank Account Number (IBAN) transmitted by the collecting bank. The IBAN details serve as the customer identifier on which basis the collection or SEPA direct debit is executed. If the collecting bank provides additional customer information, such as the account name to be debited, this is merely used for documentary purposes and is disregarded when executing the collection authorisation or SEPA direct debit.

(3) If at the time of a debit the bank had not received a direct debit order from the customer ("SEPA direct debit order"), 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. If at the time the account was debited the bank was in possession of an order from a customer who is also an entrepreneur to pay a third party specified in the order sums debited from the customer's account ("SEPA B2B direct debit"), the customer is not entitled to demand reversal of the account debit.

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

### **V. Changes to fees and performance**

#### **A. Changes to fees and performance for entrepreneurs**



**Section 43.** (1) In business dealings with entrepreneurs, the bank shall be entitled at its reasonable discretion to change the fees payable for services or performance to be rendered by the bank or by the customer on an ongoing basis (including credit interest or debit interest on current accounts or other types of accounts, account keeping fees, etc.) by taking into account all relevant circumstances (in particular, changes in the legal and regulatory framework conditions, changes in the money market or capital market, changes in the refinancing cost, changes in the staff expenses or operating expenditure, changes in the Consumer Price Index, etc.). This shall also apply to changes to any other services or performance to be rendered by the bank which are made due to changes in statutory requirements, the security of banking operations, technical development or the rate of utilization of the service or performance having materially decreased in a manner substantially affecting cost recovery.

(2) Any changes over and above paragraph 1 concerning the bank's services or performance or the fees payable by the customer, the implementation of new services subject to a fee as well as the charging of new fees for services already agreed shall be offered to the customer by the bank not later than two months before they are proposed to take effect. The customer's consent to these changes will be deemed to be given unless the bank has received a written objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this circumstance in the offer of change. The offer of change may be kept available by the bank for retrieval in a manner agreed with the customer.

#### **B. Changes to the charges agreed with consumers in respect of payment services (except for debit interest)**

**Section 44.** (1) Changes to the charges agreed in a master agreement for payment services (in particular the current account agreement) in respect of ongoing services or performance shall be offered to the customer by the bank not later than two months before the day they are proposed to take effect, which is in any case 1 April of any year. The customer's consent to these changes will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this consequence in the offer of change, which shall also show the extent of the change. The customer shall be entitled to terminate the master agreement without notice and free of charge prior to such change taking effect. The bank shall indicate this, too, in the offer of change. The offer of change must be communicated to the customer by the bank.

(2) Using the method agreed in paragraph 1, an adjustment of the charges to the development of the Austrian Consumer Price Index 2000 published by Statistics Austria ("**Consumer Price Index**") may be agreed with the customer. The adjustment shall be performed by comparing the index figure of the month of November preceding the adjustment to the figure of the month of November of two years before such adjustment. The charge derived from the adjustment shall be rounded to the nearest whole unit in cents.

If, in a given year, the adjustment to charges derived from the development of the Consumer Price Index was not offered to the customer, he/she can still be offered the adjustment at a later date, with effect for the future.

(3) An adjustment to charges that deviates from the development of the Consumer Price Index may only be agreed with the customer by the bank using the method provided for in paragraph 1, if the following conditions are met:

- Taking into account all objectively justified circumstances eligible in this context (in particular, changes in the legal and regulatory framework conditions, changes in the staff expenses or operating expenditure), the development that the costs incurred by the bank in connection with the relevant ongoing services or performance have taken during the period provided in paragraph 2 as being relevant for the adjustment of charges deviates from the development of the Consumer Price Index and the adjustment to charges that is being offered corresponds to this deviating cost development.
- Any increase proposed to a charge shall, at maximum, amount to three times the increase in such charge that would derive from the development of the Consumer Price Index.
- It shall be pointed out in the offer of change that the change proposed to the charge is higher than the one that would derive from the development of the CPI.

#### **C. Changes to the charges agreed with consumers outside payment services (except for debit interest)**

**Section 45.** (1) The charges agreed with consumers to be payable for any services or performance rendered by the bank on an ongoing basis outside the payment services (such as rent for a safe, account keeping fees for accounts not used for implementing payment services) will be adjusted (raised or reduced) on an annual basis in accordance with the development of the Austrian Consumer Price Index 2000 published by Statistics Austria, 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. The adjustment shall be performed by comparing the index figure of the month of November preceding the adjustment to the figure of the month of November of two years before such adjustment. If the bank, for whatever reason, does not raise the charges in case of an increase of the index, this shall not cause the bank to forfeit the right to implement this raise with effect for the future. Adjustments to charges shall not be made earlier than two months after the date of the agreement.

(2) Any adjustment to the charges payable for the bank's ongoing services or performance rendered outside the payment services that deviates from the development of the Consumer Price Index shall be offered to the customer by the bank not later than two months before the day they are proposed to take effect, which is in any case 1 April of any year. The customer's consent to these changes will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this consequence in the offer of change, which shall also show the extent of the change. The offer of change may be kept available by the bank for

retrieval in a manner agreed with the customer.

Using the method provided for in this paragraph 2, adjustments to charges may only be agreed with the customer by the bank if the following conditions are met:

- Taking into account all objectively justified circumstances eligible in this context (in particular, changes in the legal and regulatory framework conditions, changes in the staff expenses or operating expenditure), the development that the costs incurred by the bank in connection with the relevant ongoing services or performance have taken during the period provided in paragraph 1 as being relevant for the adjustment of charges deviates from the development of the Consumer Price Index and the adjustment of charges that is being offered corresponds to this deviating cost development.
- Any increase proposed to a charge shall, at maximum, amount to three times the increase in such charge that would derive from the development of the Consumer Price Index.
- It shall be pointed out in the offer of change that the change proposed to the charge is higher than the one that would derive from the development of the CPI.

#### **D. Changes to the debit interest rates agreed with consumers**

**Section 46.** (1) If an adjustment clause links a debit interest rate to a reference interest rate (e.g., EURIBOR), any changes shall take effect immediately, without prior notification of the customer. The consumer shall be informed in the next calendar quarter at the latest of any interest rate changes that have taken effect. Adjustments of interest rates vis-à-vis consumers shall not be made earlier than 2 months after the date of the agreement.

(2) Where no adjustment clause has been agreed or where the bank intends to change the debit interest rate beyond the adjustment that has been agreed, the bank shall offer the customer such interest rate change not later than two months before it is proposed to take effect. The customer's consent to the change will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this consequence in the offer of change, which shall also show the extent of the change. The bank shall be entitled to keep the offer of change available for retrieval in a manner agreed with the customer. However, if the offer of change concerns an account used for implementing payment services, the offer of change must be communicated to the customer and the customer shall be entitled to terminate the related master agreement without notice and free of charge prior to such change taking effect. The bank shall also specify this termination right in the offer of change.

(3) Using the method provided for in paragraph 2, interest rate adjustments may, however, only be agreed with the customer by the bank if the following conditions are met:

- Taking into account all objectively justified circumstances (in particular, changes in the legal and regulatory framework conditions, changes in the money market or capital market, changes in the refinancing cost, changes in the staff expenses or operating expenditure), the interest rate adjustment offered corresponds to the development that the costs incurred by the bank in connection with the relevant loan have taken since the date of the agreement underlying the interest rate currently applied.
- A raise in interest rate under paragraph 2 may not exceed 0.5 percentage points.
- It shall be pointed out in the offer of change that the proposed change to the interest rate is higher than the one that would derive from the agreed adjustment clause. Where no adjustment clause has been agreed, it must be pointed out that the agreement underlying the interest rate concerned does not provide for unilateral interest rate adjustment.
- Interest rates changes under paragraph 2 are not permitted earlier than 2 years after the date of the agreement underlying the interest rate currently applied.

#### **E. Changes to the ongoing services or performance agreed with consumers (except for credit interest)**

**Section 47.** (1) Changes to the ongoing services or performance to be rendered to the customer by the bank shall be offered to the customer by the bank not later than two months before they are proposed to take effect. The customer's consent to these changes will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this consequence in the offer of change.

The bank shall be entitled to keep the offer of change available for retrieval in a manner agreed with the customer. However, if the offer of change concerns payment services, the offer of change must be communicated to the customer and the customer shall be entitled to terminate the related master agreement without notice and free of charge prior to such change taking effect. The bank shall also specify this termination right in the offer of change.

(2) Using the method provided for in paragraph 1, changes to performance may only be agreed with the customer by the bank if this is objectively justified, considering all circumstances (change in prevailing customer needs, legal and regulatory requirements, the security of banking operations, technical development or the rate of utilization of the service or performance having materially decreased in a manner substantially affecting cost recovery). Such objective justification is only present if the proposed changes to performance result in an expansion of the bank's services or a limitation of the bank's services that is reasonable to the customer and there is no disproportionate change to material rights and

obligations in favour of the bank.

## F. Changes to the credit interest rates agreed with consumers

**Section 47a.** (1) If an adjustment clause links a credit interest rate to a reference interest rate (e.g., EURIBOR), any changes shall take effect immediately, without prior notification of the customer. The consumer shall be informed in the next calendar quarter at the latest of any interest rate changes that have taken effect.

(2) Where no adjustment clause has been agreed or where the bank intends to change the credit interest rate beyond the adjustment that has been agreed, the bank shall offer the customer such interest rate change not later than two months before it is proposed to take effect. The customer's consent to the change will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect. The bank shall inform the customer of this consequence in the offer of change, which shall also show the extent of the change.

The bank shall be entitled to keep the offer of change available for retrieval in a manner agreed with the customer. However, if the offer of change concerns an account used for implementing payment services, the offer of change must be communicated to the customer and the customer shall be entitled to terminate the related master agreement without notice and free of charge prior to such change taking effect. The bank shall also specify this termination right in the offer of change.

(3) Using the method provided for in paragraph 2, interest rate adjustments may, however, only be agreed with the customer by the bank if the following conditions are met:

- Taking into account all objectively justified circumstances (in particular, changes in the legal and regulatory framework conditions, changes in the money market or capital market, changes in the staff expenses or operating expenditure), the interest rate adjustment offered corresponds to the development that the costs incurred by, and the possibilities for reinvestment available to, the bank in connection with the relevant credit balance have taken since the date of the agreement underlying the interest rate currently applied.
- A reduction in interest rate under paragraph 2 may not exceed 0.5 percentage points.
- It shall be pointed out in the offer of change that the proposed change to the interest rate is higher than the one that would derive from the agreed adjustment clause. Where no adjustment clause has been agreed, it must be pointed out that the agreement underlying the interest rate concerned does not provide for unilateral interest rate adjustment.
- Interest rates changes under paragraph 2 are not permitted earlier than 2 years after the relevant interest rate agreement commenced.

## VI. Collateral

### A. Increasing of collateral

**Section 48.** (1) If, in the business relation with an entrepreneur, 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 an adequate period of time. This shall be the case in particular 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 grants the bank a lien on any items and rights which come into the possession of the bank with the customer's intent in connection with any banking transaction conducted with the bank.

(2) The lien shall, in particular, also exist on all distrainable claims the customer may have vis-à-vis the bank, such as claims based on credit balances. If securities are subject to the bank's 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. If the customer is an entrepreneur, the lien shall also secure statutory claims of the bank as well as claims vis-à-vis third parties for the satisfaction of which the customer is personally liable.

(2) The lien shall come into existence upon the bank's taking possession of the item, provided that claims of the bank pursuant to paragraph 1 exist; otherwise at such future time as such claims arise.

#### 2. Exemptions from the lien

**Section 51.** (1) The lien shall not include items and rights which have been earmarked by the customer for the execution of a certain order prior to the coming into existence of the lien, such as amounts designated for the cashing of a certain cheque or the honouring of a certain bill of exchange or for the carrying out of a certain transfer. This shall, however, apply only as long as the earmarking 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) Furthermore, 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**

**Section 52a.** The following sections 53 to 57 govern how the bank may proceed when realising collateral. Apart from the case of a loan provided as collateral maturing before the secured claim governed by section 56, a prerequisite in each case is that the secured claim should be due and the realisation entitlement has occurred according to the applicable contractual and statutory provisions. This requires the customer to have been threatened with realisation of the collateral, notifying the value of the secured claim and at least one month to have expired since this notification. If the customer is an entrepreneur, this period shall be one week. The warning may be omitted if it is infeasible due to the customer's whereabouts being unknown, for example. In this case the stated period shall run from maturity of the secured claim. Realisation before the period has expired is permitted if a considerable, permanent loss is anticipated.

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.** Where the collateral has no market price or stock exchange price, the bank shall have it assessed by an independent expert authorised to do so. The bank shall notify the customer of the result of the assessment and at the same time ask the customer to nominate, within an adequate period of not less than two weeks, a party interested in purchasing the collateral who, still within that period, will pay the bank at least the assessed value as purchase price. 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 by enforcement 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 by means of a public auction by an authorised entrepreneur. The time and place of a general re-registration of the collateral is to be publicly announced. The warrantor and third parties who are due rights to the collateral must be notified of this.

3. Collection

**Section 56.** (1) The bank shall be entitled to terminate and collect the claims provided to it as collateral (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, considerable and permanent loss in value of the claim serving as collateral the bank shall be entitled to terminate the same already before it becomes 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 paragraph 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, provided that 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 withhold any performance to be rendered by it to the customer due to claims

arising out of the business relation 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. Dstraint 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. Crediting

**Section 61.** Notwithstanding the provisions of sec. 1416 of the Austrian General Civil Code (*ABGB*), in transactions with entrepreneurs 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 context it is irrelevant at what time the individual claims have become due. This shall also apply to a current account relationship.

(2) In transactions with consumers the bank may first offset against the unsecured parts of this claim payments destined to redeem a specific claim, even if this deviates from the customer's intention.

## Special Types of Business Transactions

### I. Trade in Securities and Other Assets

#### 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. Execution

**Section 63.** (1) The bank shall usually carry out customer orders for the purchase and sale of securities as commission agent.

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

(3) The customer hereby approves the bank's execution policy based on 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 they 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 execution.

#### D. Time of execution

**Section 65.** If an order for same-day execution has not been received early enough to be executed on that day within the scope of the ordinary workflow, it shall be scheduled for execution 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 sufficient coverage is not available.

(2) However, the bank shall be entitled to execute such securities transactions if it is not apparent to the bank that the customer wants the order to be carried out only on the condition that coverage is available.

(3) If the customer fails to provide coverage upon request, the bank shall be entitled to enter into a closing transaction for

the customer's account 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 (safekeeping of securities abroad), the customer's claim towards the bank shall correspond to the share held by the bank for the account of the customer in the overall portfolio of equivalent securities held abroad by the bank on behalf of all its customers according to the relevant statutory provisions and market practices.

#### **G. Transactions in stocks**

**Section 68.** In case of transactions in stocks the physical units of which are not being traded as 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 Assets**

#### **A. Safekeeping of securities**

**Section 69.** (1) The bank shall be entitled to place securities deposited with it in the beneficiary's portfolio.

(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) To an entrepreneur, the bank shall only be liable for 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 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 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 the case of securities deposited with a third-party depository, the latter is required to fulfil the obligations described in paragraphs 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 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 at the latest possible point in time any rights which would otherwise be forfeited.

### **III. Trade in Foreign Exchange and Foreign Currency**

#### **A. Procedure**

**Section 73.** (1) The bank shall conclude a purchase agreement with the customer on foreign exchange and foreign currency.

(2) If it is agreed that the bank is to act 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, to provide evidence of 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/her 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 in 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 paragraphs 1 or 2, any resulting price difference shall be debited or credited to the customer, whichever applies. Any and all expenses incurred in connection therewith shall be borne by the customer.

## **IV. Foreign Currency Loans**

**Section 75.** (1) 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.

(2) 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

- in the business relation with an entrepreneur the credit risk increases due to the price development of the foreign currency and if the bank does not receive sufficient security within an adequate period of time, or
- pursuant to statutory or other circumstances for which the bank is not responsible, refinancing in the foreign currency is no longer possible, or
- the entire loan is due for repayment and is not repaid despite a 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 order**

**Section 77.** Collection of the above items takes place on the basis of a collection order, whereby the bank is not obliged to accept this collection order. Negotiation (discounting) of items by the bank must be agreed separately.

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

**Section 78.** Orders for collection shall be received sufficiently in advance to allow them to be executed in the ordinary course of business without resorting to 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 redebits of "subject to collection" (i.e. contingent) credits (Section 41), the claims under securities 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.

**Section 81.** The bank may demand that the customer transfer 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. The bank shall not be obliged to cash documents made payable at its counters unless it has received an order from the customer in time and sufficient coverage is available.