



# **General Terms and Conditions**

Version: May 2018

# 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 relationship between the customer and of the bank and thus

- for contracts for repeated or ongoing services with a fixed or indefinite term, such as master agreements for payment services (e.g. current account or credit card agreements) and investment services, custody agreements, credit agreements, safe and savings book safe deposit box rental agreements (hereinafter referred to as “**standing agreements**”), but also
- for contracts which the customer occasionally concludes with the bank regarding individual transactions, such as, in particular, transactions in foreign currencies and precious metals, individual payment or securities services which have not been agreed in a standing agreement (hereinafter “**individual agreements**”).

Provisions of agreements concluded with the customer or of special terms and conditions shall prevail.

(2) In accordance with the Austrian Consumer Protection Act (Konsumentenschutzgesetz), a consumer within the meaning of the GTC is any customer for whom the business transacted with the bank does not belong to the operation of his company (in the sense of a long-term independent economic activity). All other customers are entrepreneurs in the sense of the GTC.

#### 2. Changes to the General Terms and Conditions and to standing agreements

**Section 2.** (1) Changes to these GTC or a standing agreement shall be offered to the customer by the bank as regulated below (hereinafter “**offer of change**”). The provisions of the GTC and the standing agreement affected by the offer of change and the proposed changes thereto are presented in a comparison (hereinafter “**comparison**”). If the offer of change concerns the GTC, the bank shall also publish the comparison and the complete version of the new GTC on its website. The bank shall indicate this in the offer of change.

(2) The offer of change and the comparison shall be sent to the customer who is a consumer. The delivery takes place

- to the mailbox of Electronic Banking (hereinafter referred to as “**Electronic Banking Mailbox**”) agreed between the customer and the bank. The customer will be informed of this delivery separately by post or – if agreed with him/her – by e-mail to an e-mail address provided by the customer; or
- by e-mail, if the customer has agreed with the bank on the route of the e-mail for communication; or
- by post.

Once delivered (this includes delivery to the electronic banking mailbox) the offer of change and the comparison can no longer be modified by the bank. If delivery is made by e-mail or to the electronic banking mailbox, the customer can save the offer of change and the comparison electronically and print them out as needed.

The offer of change and the comparison, as well as the notification thereof if delivery is carried out electronically to the electronic banking mailbox of the customer who is a consumer shall be delivered to the customer not later than two months before the changes are proposed to take effect.

(3) In business dealings with an entrepreneur it shall suffice to deliver the offer of change without a comparison to the electronic banking mailbox not later than two months before the changes are proposed to take effect or to keep the offer available for retrieval in a manner agreed with the entrepreneur.

(4) The customer’s consent to the offer of change will be deemed to be given unless the bank has received an objection from the customer prior to the proposed entry into effect of the changes. The bank shall inform the customer of this circumstance in the offer of change.

(5) In case of any intended change to the GTC or a master agreement for payment services, the customer who is a consumer shall be entitled to terminate the relevant 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. The bank shall indicate this in the offer of change.

(6) An offer of change within the meaning of this Section 2 to services of the bank (including credit interest) and charges of the customer (including debit interest) agreed in standing agreements is only permissible and effective if the conditions provided for in subparagraphs 43 (2), 44 and 46 to 47a are fulfilled.

## ■ 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) Unless otherwise provided for in Sections 2, 7 (2), 38, 39 (10) and 40 (2), information and declarations of the bank with regard to the business relationship with the customer may be held available for retrieval by the bank in the manner agreed in the master agreement for account statements (e.g. electronic banking or self-service equipment of the bank).

## ■ 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.

## ■ D. Obligations and liability of the bank

### 1. Information requirements

**Section 7.** (1) The bank is 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 bank shall provide to the customer who is a consumer a statement of fees (specifying fees, debit and credit interest) in the electronic banking service or on paper at the bank's premises. Such statement of fees shall be provided monthly for payment accounts and upon termination of the relevant master agreement and if requested shall be sent to him/her once a year by one of the channels specified in Section 2 (2).

(3) The third main part of the Payment Services Act 2018 does 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.** The bank shall be liable for payment services within the European Economic Area (EEA) vis-à-vis consumers who are natural persons in excess of Section 8

- if the payment transaction is initiated directly by the payer, for the proper execution of the payment transaction, until it is received by the payee's payment service provider,
- if the payment order is triggered by or via the payee, for the proper transmission of the payment order to the payer's payment service provider.

In both cases, the liability of the bank shall include all charges and interest for which the bank is responsible and which are charged to the consumer as a result of the non-execution or incorrect execution of the payment transaction.

If the amount of the payment transaction is not denominated in euros or any other currency of an EEA member state, the bank shall only be liable in respect of components made outside the EEA for its own fault, but not for the fault of the intermediaries of the bank. With regard to these intermediaries, the liability of the bank shall be limited to the careful selection and instruction of the first intermediary.

## **■ 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, address or other contact details**

**Section 11.** (1) The customer shall immediately notify the bank 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 of his/her address or of the address of a receiving point designated by him, 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.

### **d) Business relationship for own or third party account**

**Section 13a.** When establishing any business relationship and when making use of an occasional transaction, the customer must inform the bank whether he intends to conduct the business relationship and/or the transaction for his own account or for the account of a third party or on behalf of a third party. The customer shall notify the bank immediately of any changes in this regard during the upright business relationship.

## **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 and other instruments for placing orders; blocking third party service providers' account access**

**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. The passing on of security features to payment initiation service providers or account information service providers is permitted. The customer 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 fulfilled his/her payment obligations in connection with a credit line linked to the payment instrument (i.e. arranged overdraft or overdraft), and

– either the fulfilment of such payment obligations is jeopardised because the financial situation of the customer or of a co-debtor deteriorates or is put at risk,

– the customer has become, or is imminently in danger of becoming, unable to pay.

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.

**Section 15b.** The bank shall inform the customer – unless a disclosure of the blocking of access or the reasons for the blocking of access would be contrary to Austrian or EU legal norms or objective security considerations – of the blocking of access by an account information service provider or payment initiation service provider to a payment account of the customer and of the reasons for the blocking of access in the communication form agreed with the customer as soon as possible before, but at the latest immediately after the blocking.

## **5. Raising of objections and correcting payment transactions**

**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 and within a period of not more than two months.

If the bank receives no objections to a closing statement for an account, other than an account used for payments, within a period of two months, this closing statement will be deemed approved. The customer can obtain rectification of the closing statement for the account also after expiry of the time limit, but in that case, the customer has to prove that the bank was wrong in debiting the customer's account or failing to make a credit entry owed to the customer.

The bank shall in each case inform the customer at the beginning of the period about the consequences of his/her failure to file an objection in due time.

(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. If the customer is an entrepreneur, the period ends one month after the day of the debit. 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 (10) of these terms and conditions. Other claims for rectification that the customer may have are not excluded by this provision.

(3) The bank shall reimburse the customer the amount of an unauthorised payment transaction immediately, but in any case no later than the end of the following business day, after it has become aware of or has been notified of the payment transaction. Reimbursement shall be made by restoring the debited account to the status on which it would have been without the unauthorised payment transaction, with the amount to be credited to the payer's payment account no later than the date of debiting the account. If the bank has notified the Financial Market Authority in writing of justified reasons for suspecting that the customer has acted fraudulently, the bank shall immediately examine and fulfil its reimbursement obligation if the suspicion of fraud is not confirmed. If the transfer was initiated via a payment initiation service provider, the reimbursement obligation shall be borne by the bank.

## **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 nor-

mally 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.** If no standing agreement has been concluded for a definite period of time the bank and the customer shall be entitled to terminate the standing agreements (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**

##### **a) Termination by the customer**

**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 changes to the GTC or a master agreement for payment services, in particular the current account agreement (Section 2 (5)), 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.

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

##### **b) Termination by the bank**

**Section 22b.** The bank shall be entitled to terminate any standing agreements, including 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. Notice of termination must be communicated on paper or on another durable medium agreed.

### **3. Termination for important reason**

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

(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 has provided incorrect information about his financial circumstances or other circumstances in material respects and the bank would not have concluded the contract if the true financial circumstances or other circumstances had been known; or
- the customer has failed or is unable to fulfil an obligation to provide or increase collateral, thereby jeopardising the fulfilment of liabilities to the bank.

#### **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 a master agreement for payment service, 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 or individual standing agreements, until complete settlement.

#### **■ H. Right to refuse payout**

**Section 25.** (1) The bank shall be entitled to refuse payout of a 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 (IBAN).

#### **■ 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 (ÖZV) 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.

The bank only provides investment advice to a person with authority to sign for a securities account if that person has individual power of disposal for all other securities accounts (including settlement accounts) of the securities account holder, and such advice is provided solely on the basis of the investment objectives, financial circumstances and risk tolerance of the securities account holder. If the account in question is a joint securities account, the highest partial classification value of all joint account holders is taken into account for assessing the financial circumstances, and the lowest partial classification value of all joint account holders for assessing investment objectives and risk tolerance. The assessment of the experience and knowledge focuses exclusively on the knowledge and experience of the authorised signatory.

If the purchase or sale of a security is not based on the bank's investment advice, the bank merely conducts an assessment of the authorised signatory's knowledge and experience in relation to the selected product (appropriateness test). If the person authorised to sign for the securities account does not possess the relevant experience and knowledge (or does not provide the requisite information in that regard), the bank will merely issue a warning about insufficient appropriateness (or inability to conduct an appropriateness assessment due to non-disclosure of information) to the authorised signatory in a standardised manner. However, the person with authority to sign for the securities account can nevertheless place the order.

## ■ 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. Authorisations to sign may be revoked by each individual joint account holder. Every account holder may be represented by a specifically authorised representative from case to case when disposing of the account.

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

The bank provides investment advice to a joint account holder based on the assessment of the investment objectives, financial circumstances and risk tolerance as follows: The lowest partial classification value of all joint account holders is taken into account for assessing the investment objectives and risk tolerance, and the highest partial classification value of all joint account holders for assessing the financial circumstances. The assessment of the experience and knowledge focuses exclusively on the knowledge and experience of the disposing joint account holder.

If the purchase/sale is not based on the bank's investment advice, the bank merely conducts an assessment of the disposing joint account holder's knowledge and experience in relation to the selected product for that particular transaction (appropriateness test). If the currently disposing joint account holder does not possess the relevant experience and knowledge (or does not provide the requisite information in that regard), the bank will merely issue a warning about insufficient appropriateness (or inability to conduct an appropriateness assessment due to non-disclosure of information) to the currently disposing joint account holder in a standardised manner. However, the currently disposing joint account holder can nevertheless place the order.

**Section 36.** Deleted

### 4. Foreign currency account

**Section 37.** The bank's obligation to execute a disposition debiting a foreign currency balance or to pay a foreign currency debt shall be suspended as far and as long as the bank's ability to dispose of funds in the currency in which the foreign currency balance or foreign currency debt is denominated is prevented or restricted on account of measures or events caused by the political situation in the country of that currency. Nor shall the bank be obligated, as far and as long as these measures or events continue, to render performance at any other place outside the country of the currency, in any other currency (this shall also mean the euro) or by the acquisition of cash. However, the bank's obligation to execute a disposition debiting a foreign currency balance shall not be suspended if the bank is able to execute it in full within the bank itself. The foregoing provisions shall not affect the right of the customer and the bank to offset mutual claims in the same currency that have fallen due.

## ■ 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 since the last closing statement shall be part of the closing balance which shall again be subject to interest („compound interest“). The customer receives the closing statement with a bank statement.

(2) Statements of securities shall be transmitted quarterly. The statement of securities can be sent to the electronic banking mailbox. The customer will be notified separately of delivery to the electronic banking mailbox. This notification will be sent by regular mail to the customer's mailing address or, if agreed with the customer, to an e-mail address provided by the customer.

## **IV. Giro Transactions**

### ■ A. Transfer orders

**Section 39.** (1) When transfers are to be made in euros to a payee whose account is kept by a payment service provider within Austria or another country of the European Economic Area (EEA), the customer shall identify the payee by his/her International Bank Account Number (IBAN). When transfers are to be made in other currencies to a payee whose account is kept by a payment service provider within the European Economic Area (EEA), the customer shall identify the payee by his/her International Bank Account Number (IBAN) and the Bank Identifier Code (BIC) of the payment service provider of the recipient.

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

- by providing the payee's 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, as the case may be, on the account number and name/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 when giving the transfer order, shall not form part of the unique identifier, is only used for documentation purposes 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, arranged overdraft).

(7) The customer is also entitled to use a payment initiation service for issuing the transfer order to the bank, unless the customer's payment account is not accessible to him online.

(8) Transfer orders which have been received by the bank or by a payment initiation service provider commissioned by the customer (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.

(9) 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.

(10) 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, shall be provided to a customer who is a consumer by the bank once a month – unless already given on the statement of account when the transaction concerned was effected – free of charge by the bank in the manner agreed with the customer in the master agreement (e.g. electronic banking or self-service equipment of the bank) in such a way that the customer can retain or reproduce the information unchanged. The bank shall also provide the customer with the information once a month upon request on paper with reimbursement of costs or via the customer's electronic banking mailbox.

## ■ 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 transaction ordered.

(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). These deadlines apply only to the following payment transactions within the European Economic Area ("EEA"):

- (i) payment transactions in euros; and
- (ii) payment transactions involving the transfer of amounts in euros to an EEA Member State outside the euro area and conversion into the national currency.

(4) For payment transactions not referred to in paragraph (3) made within the European Economic Area the execution time referred to in paragraph (3) shall be 4 business days.

## ■ 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 claims of the bank against the customer exist in connection with the account, the bank shall be entitled to accept amounts of money on behalf of the customer and to offset its claims against the customer's claim to disbursement of the accepted amount even after termination of the current account agreement. The customer may dispose of the remaining credit balance after offsetting.

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 – unless already given on the statement of account when the transaction concerned was effected – in the manner agreed with the customer in the master agreement (e.g. electronic banking or self-service terminals of the bank) in such a way that he can store or reproduce them unchanged. The bank shall also provide the customer with the information once a month upon request on paper with reimbursement of costs or via the customer's electronic banking mailbox.

(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. If a payment transaction to be credited to the customer is initiated by or via the customer as the payee, the bank shall credit the customer's account with the full amount of the credit entry.

(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.

(5) If a payment transaction in favour of a customer who is an entrepreneur has been executed with a slight delay, the bank shall only credit the amount of this payment transaction with the value date corresponding to the punctual execution of the payment transaction if the bank is at fault for the delayed execution of the payment transaction.

#### ■ **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 redebited 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 Direct Debits B2B (Section 42a (1)) are deemed collected/cashed/honoured if the debit entry on the debited account of the customer was not reversed within three business days, unless the bank informed the presenter or paid him/her the amount in cash already prior thereto. Direct Debits Core (Section 42a (1)) are deemed collected/cashed/honoured upon expiry of five business days.

## ■ F. Direct Debits Core and Direct Debit Orders B2B

**Section 42a.** (1) A Direct Debit Core shall be deemed to exist if the payer authorises the recipient to collect amounts directly from the payer's account by means of a direct debit mandate and without the payer's bank being involved.

A Direct Debit B2B shall be deemed to exist if

- the payer authorises the payee to collect amounts from the payer's account by means of a Direct Debit B2B mandate,
- both payer and payee are entrepreneurs, and
- the Direct Debit B2B mandate is also available to the payer's bank before the account is debited.

The customer consents to the debiting of his/her account with amounts that are collected by Direct Debit Core or Direct Debit B2B 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 Direct Debits Core (not, however, Direct Debits B2B) being made by an authorised third party can be limited to a certain amount or periodicity or both by instructing the bank accordingly.

(2) The bank shall carry out Direct Debits Core and Direct Debits B2B to be debited from the customer's account, using the International Bank Account Number (IBAN) communicated by the collecting bank. The information on IBAN shall constitute the unique identifier on the basis of which the Direct Debit Core or Direct Debits B2B is carried out. In the event that the collecting bank provides additional information on the customer, such as the name of the account holder of the account from which the collection is to be made, this information shall therefore only serve documentation purposes and shall be disregarded when carrying out the Direct Debit Core or the Direct Debit B2B. The bank shall only be obliged to carry out a Direct Debit Core order if sufficient funds to cover the total amount are available in the customer's account stated therein (credit balance, arranged overdraft).

(3) The customer may request the bank to reimburse the amount debited from his account on the basis of a direct debit mandate issued by him within eight weeks from the date of debiting his account. The bank shall comply with the customer's request within ten business days and reverse the debiting of his account with the amount collected with value date as of the date of the debiting of the account. In the case of Direct Debit B2B mandates issued by the customer, the customer has no right to demand the cancellation of the account debit.

(4) If the Direct Debit Core or Direct Debit B2B to the customer's account was not authorised by the customer, the customer can demand reimbursement of the debited amount pursuant to Section 16 (2) and (3).

## **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 agreed upon in standing agreements and payable for services or performance to be rendered by the bank or by the customer (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 agreed in standing agreements or 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, as provided for in Section 2. 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.

■ **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) 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 bank must deliver the offer of change to the customer in the manner set out in Section 2 (2) hereof.

(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.

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

**Section 45.** The charges agreed in a standing agreement with consumers that does not concern 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.

■ **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 two 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 this 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 must deliver the offer of change to the customer in the manner set out in section 2 (2) hereof.

(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:

- The interest rate adjustment offered corresponds to the development of the costs incurred by the bank resulting from the changes on the money or capital market 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 per annum and is permissible for the first time no earlier than two years after conclusion of the underlying agreement.
- 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.

#### ■ **E. Changes to the bank's services agreed with consumers in standing agreements (except for credit interest)**

**Section 47.** (1) Changes to the services agreed in standing agreements 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 must deliver the offer of change to the customer in the manner set out in section 2 (2) hereof.

(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 will be deemed to exist only in those cases where the offered change to performance will result in an extension of the scope of the bank's services or in a reduction of the scope of the bank's services reasonably acceptable to the customer and will not result in excessive changes 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 this 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 must deliver the offer of change to the customer in the manner set out in section 2 (2) hereof.

(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:

- The interest rate adjustment offered corresponds to the development of the costs and reinvestment possibilities of the bank resulting from the changes on the money or capital market in connection with the relevant credit balance 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 per annum and is permissible for the first time no earlier than two years after conclusion of the underlying agreement.
- 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.

## **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 in line with the wishes of the customer in connection with any banking business transacted with the bank.

(2) Unless otherwise agreed in Section 51, the lien shall, in particular, also exist on all 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, whereby a seizure of the credit balance shall not be deemed to be disposition by the customer. If payments on the current account are received on the customer's monetary claims that cannot be seized or can only be seized to a limited extent, the bank's lien on the credit balance on this current account only covers the seizable part of these receipts.

(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

### 1. General

**Section 52a.** The following sections 53. to 56. regulate the way in which the bank may proceed when realising collateral. In any case (with the exception of the case regulated in section 56 where a claim furnished as collateral falls due prior to the due date of the secured claim), realisation is subject to the condition that the secured claim has fallen due and the right to realise the collateral has arisen in accordance with the applicable contractual and statutory provisions. The latter requires the customer to have been warned of the realisation of the collateral, also stating the amount of the secured claim, and at least one month to have passed since such warning. If the customer is an entrepreneur, such period amounts to one week. The warning may be omitted if it is impractical, for instance if the customer's whereabouts are unknown. In that case, the mentioned period shall start to run from the due date of the secured claim. Realisation before expiry of the period shall be permitted if waiting any longer involves the risk of a substantial and durable loss in value.

### 2. Sale

**Section 53.** Collateral having a market price or stock exchange price shall be realised by the bank by selling them at such price in the open market.

**Section 54.** The bank shall have movable physical property which has been given to the bank as security and which has no market price or stock exchange price assessed by an expert licensed to perform such assessments. 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 time 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.

### 3. 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 at an out-of-court public auction organised by an entrepreneur licensed to perform such auctions. The time and place of the auction shall be published, also providing a general description of the collateral. The party furnishing the collateral and any third parties having rights in the collateral shall be notified of this.

### 4. Collection

**Section 56.** (1) The bank shall be entitled to terminate and collect the claims provided to it as collateral (including securities) if the secured claim is not paid when it becomes due. Prior thereto it shall be entitled to collect the claim serving as collateral when it becomes due. If a substantial and durable loss in value of the claim serving as collateral is imminent, 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.

**Section 57.** Deleted

## ■ 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. Distraint of the credit balance shall not be considered a disposition by the customer.

#### **2. By the customer**

**Section 60.** The customer who is a consumer 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. The customer who is an entrepreneur unconditionally and irrevocably waives his/her right to offset his/her liabilities in these cases.

### **B. Crediting**

**Section 61.** (1) Notwithstanding the provisions of sec. 1416 of the Austrian General Civil Code (ABGB) the bank may, in transactions with entrepreneurs, 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 initially credit payments committed to the redemption of a specific claim to the unsecured parts of that claim even if this means a deviation from the commitment made by the customer. The bank may only make use of this right if the recoverability of its claims would otherwise be jeopardised.

## **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 execute a customer's orders for the purchase of securities in the context of a public offer as the customer's commission agent. However, it shall also be entitled to execute such orders as an authorised representative on behalf of the client after the client has been informed accordingly in advance. "Public offer" means a communication from a third party to the public in any form and in any manner containing sufficient information about the terms of an offer (or an invitation to subscribe) of securities or investments and about the securities or investments to be offered to enable investors to decide to purchase or subscribe for such securities or investments.

(2) The bank shall usually carry out other customer orders for the purchase and sale of securities as commission agent. However, if the bank agrees on a fixed price with the customer, it enters into a purchase agreement.

(3) The bank shall execute securities transactions in accordance with its respective execution policy. The bank shall be entitled to change the execution policy in accordance with the regulatory requirements. The bank shall inform the customer of any and each 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. Legal regulations and trade customs at the place of execution**

**Section 64.** When executing the order, the bank must observe the legal provisions and trading customs applicable at the place of execution vis-à-vis third parties.

#### ■ **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.

#### ■ **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 collect interest, profit and income payments. If necessary, the bank shall procure new interest coupons, profit participation certifications and dividend coupons without a specific order.

(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“. The bank shall redeem drawn and terminated securities as well as interest coupons, profit participation certificates and dividend payments.

(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, dividend or coupon payment for which the customer could exercise an option, stock split, conversion of convertible bonds, posting or exercising the option for warrants and 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 to such an extent or if the assets situation of the customer has deteriorated to such an extent that the fulfilment of his obligations under the forward transaction is at risk. 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 within two weeks of receipt of payment that they will be used immediately 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 a loan granted to an entrepreneur 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**

### **■ 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.** The collection of the above-mentioned collection documents shall be performed on the basis of a collection order, it being understood that the bank is not obligated to accept such collection order. Any negotiation (discounting) of the collection documents by the bank needs to be agreed upon 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 of the bank in the event of non-payment**

**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 securities denominated in foreign currency, the exchange rate difference between the date of discounting and the reversal shall be debited or credited to the customer.

**Section 80.** In all cases in which debt collection securities which have been discounted or accepted for collection and credited to the bank's account subject to collection are subject to the bank's securities claims 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. Until then, the bank may also require the customer to 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.

### **■ E. Redemption by the bank**

**Section 81.** 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.