



General Terms and Conditions

Deutsche Bank AG, Vienna Branch

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## Terms and Conditions of Business

General Terms and Conditions

### I. Basic Rules Governing Business Relations between Customers and the Credit Institution

#### A. Scope of and Amendments to Terms and Conditions of Business

##### 1. Scope

**No. 1. (1)** These Terms and Conditions of Business (hereinafter T&C) apply to all aspects of the business relationship between the customer and a branch of the credit institution in Austria or abroad. A business relationship includes all individual business relations between the customer and the credit institution and thus all master contracts for payment services (e.g. giro account agreement or credit card agreement). The terms and conditions of agreements executed with the customer or special terms and conditions of business shall take precedence.

**(2)** The terms “consumer” and “business owner” are used hereinafter within the meaning of the Austrian Consumer Protection Act.

##### 2. Amendments

**No. 2. (1)** Amendments to the T&C and the giro account agreement shall apply to all current and future business relations between the customer and the credit institution two months after receipt by the customer of notification of the proposed amendments, unless the credit institution receives written objection from the customer by that date. Notification may be given to the customer in any form agreed with the customer for the purposes of his business relationship. An agreement with the customer on the form of service of notifications by the credit institution shall also apply to notification of amendments to the T&C/giro account agreement. If the customer has not provided the credit institution with an address and no other form of service has been agreed, publication on the Deutsche Bank AG Vienna Branch website ([www.db.com/austria](http://www.db.com/austria)) shall be tantamount to notification from the date of publication thereof. The first sentence of this paragraph (2-month period) shall apply accordingly.

**(2)** The notification by the credit institution shall inform the customer of the amendment to the T&C/giro account agreement and the fact that failure to respond within two months of notice shall be construed as consent to the amendment. For customers who have not provided the credit institution with an address, a note to the same effect shall be included in the amended T&C published on the website.

**(3)** Customers who are consumers and who receive notice of an impending amendment to the T&C or their giro account agreement may cancel their giro account agreement with immediate effect free of charge. The credit institution shall also include a note to that effect in the notification of the proposed amendment.

#### B. Orders, confirmation and notifications

##### 1. Customer orders

**No. 3. (1)** Orders must be given in writing.

**(2)** However, the credit institution shall also be entitled to execute orders received via means of telecommunication (in particular by telephone, telegram, telex, telefax or data transmission). The credit institution shall only be obliged to execute such orders if so agreed between the customer and the credit institution and provided that all other requirements are satisfied.

**(3)** The credit institution shall be entitled to execute orders received in any format from an entrepreneur within the scope of his business relationship with the bank on his account, if it is of the opinion, without fault, that the order originated from the entrepreneur and an invalid order cannot be attributed to the credit institution.

##### 2. Customer confirmation

**No. 4.** For security reasons, the credit institution may request confirmation of an order prior to its execution, especially for orders issued by means of telecommunication. Depending on the circumstances, confirmation may be requested by the same or a different means of communication.

### 3. Notifications by the credit institution

**No. 5. (1)** Notices and notifications issued by the credit institution via means of telecommunication shall be subject to written confirmation, unless agreed otherwise in writing or unless this differs from the credit institution's normal practice. This shall not apply to consumers.

**(2)** Notifications and information which the credit institution is required to provide or make accessible to the customer shall be sent to the customer in paper form (in particular on their statement of account), unless it has been agreed that they may be transmitted electronically or made accessible on a permanently accessible data carrier.

### C. Right of disposal after customer's death

**No. 6. (1)** On being informed that a customer has died, the credit institution shall allow disposal arrangements based on a decision by the probate court or a certificate of inheritance. This shall not affect disposals from a joint account/deposit by an account/deposit holder with sole powers of disposal.

**(2)** Powers of signature granted by an entrepreneur for a business account shall not lapse on the death of the customer. In the event of doubt, an entrepreneur's account shall be treated as a business account.

### D. Credit institution's obligations and liability

#### 1. Information requirements

**No. 7. (1)** Aside from statutory information, the credit institution shall not be required to provide any information not specified in its Terms and Conditions of Business unless stipulated otherwise by separate agreement. Therefore, unless so required by law or contract, the credit institution shall not be obliged to advise the client of impending exchange losses, of the value or worthlessness of objects entrusted to it or of circumstances that might impair or jeopardize the value of such objects or to provide the customer with any other advice or information.

**(2)** The requirements of Part 3 of the Payment Services Act 2018 and the requirements of Part 4 of the Payment Services Act 2018 which are not mandatory pursuant to Section 55(1) of that Act shall be waived in their entirety in respect of entrepreneurs.

#### 2. Execution of orders

**No. 8. (1)** The credit institution shall execute orders which, by their very nature, tend to require the involvement of a third party by appointing a third party in its own name. If the credit institution selects the third party, it shall be liable for careful selection.

**(2)** The credit institution must assign any outstanding claims against the third party to the customer on request.

**No. 9.** For payment services provided in euro or the currency of another EEA Member State, the credit institution shall be liable towards consumers (but not towards entrepreneurs)

- if the payment process is triggered directly by the payer: for proper execution of the payment process pending receipt by the payee's payment service provider;
- if the payment order is triggered by or via the payee: for proper transmission of the payment order to the payer's payment service provider; and
- if the payment process is unsuccessful or is completed incorrectly: for all fees and interest billed to the consumer for which it is responsible.

### E. Customer assistance and liability

#### 1. Introduction

**No. 10.** The customer must provide the following assistance in particular in transactions with the credit institution and shall be liable for damages or subject to a reduction in his claim for damages against the credit institution in the event of failure to do so.

#### 2. Notification of important changes

##### a) Name or address

**No. 11. (1)** The customer must notify the credit institution immediately in writing of any change of name, registered name, address or the address of an agent for service named by him.

(2) If the customer fails to notify a change of address, written notifications sent by the credit institution to the customer's last known address shall be deemed to have been received.

#### **b) Powers of representation**

**No. 12. (1)** The customer must notify the credit institution immediately in writing and produce appropriate documentary evidence if powers of representation notified to it, including powers of disposal or signature (No. 31 and No. 32), lapse or change.

(2) Powers of representation notified to the credit institution shall continue to apply to their previous extent pending written notice of lapse thereof or change thereto, unless the credit institution was aware of the lapse or change or was not aware of it due to gross negligence. This applies especially where the lapse of or change to the powers of representation is entered in a public register and that fact was duly published.

#### **c) Legal capacity; dissolution of company**

**No. 13.** The credit institution must be notified immediately in writing of any loss of or restriction to the customer's legal capacity. If the customer is a company or legal entity, the credit institution must also be notified immediately of its dissolution.

### **3. Clearly formulated orders**

**No. 14. (1)** The customer must ensure that his orders to the credit institution are formulated clearly and unambiguously. Changes, confirmations or reminders must be expressly marked as such.

(2) The credit institution must be notified expressly and separately (and in the case of orders given using a form, not on the form) of any specific instructions which the customer wishes to give the credit institution for the execution of an order. This applies above all where the order is urgent or subject to specific time constraints and deadlines.

### **4. Due care in the use of means of telecommunication**

**No. 15.** Customers using means of telecommunication for orders or other notifications must take appropriate precautions to prevent transmission errors and abuse.

**No. 15a. (1)** Customers using an agreed payment instrument to issue an order to the credit institution must take all reasonable precautions to protect personalized security features against unauthorized access and must report any loss, theft, misuse or other unauthorized use of the payment instrument to the credit institution or office named by it as and when it comes to their attention. This is without prejudice to any requirements under any special terms and conditions. Entrepreneurs shall be liable for losses incurred by the credit institution due to infringement of this duty of care; that liability shall be of unlimited amount in the event of any form of fault on the part of the entrepreneur.

(2) The credit institution may block a payment instrument issued to the customer if:

- there are objective reasons for doing so in connection with the security of the payment instrument; or
- unauthorized or fraudulent use of the payment instrument is suspected; or
- the customer has failed to make the required payments against a line of credit linked to the payment instrument (credit limit exceeded or account overdrawn); and
  - there is a risk that payment will not be made due to deterioration in or risk to the financial position of the customer or a jointly liable person; or
  - the customer is insolvent or at immediate risk of becoming insolvent.

Unless notification of the block or the reasons for the block would infringe an order granted by a court, prosecution service or administrative authority or conflict with Austrian or European Community laws or objective security considerations, the credit institution shall notify the customer of any such block and the reasons for it where possible before the payment instrument is blocked or, at the very latest, immediately thereafter. The same shall apply where access to a payment account held by the customer is blocked by an account information service provider or a payment initiation service provider.

### **5. Objections**

**No. 16. (1)** The customer must verify notifications from the credit institution, such as confirmations of his orders, order execution notices, statements of account, statements of securities accounts, closing-off statements and any similar statements, as well as transmissions and payments by the credit institution, to ensure they are complete and accurate and must notify any objections immediately. If the credit institution receives no written objection to such notifications within eight weeks, the notification by the credit institution shall be deemed approved. The preceding sentence shall apply to customers who are consumers only in respect of notifications that do not relate to payment transactions. The credit institution shall inform customers who are consumers of the implications of

their behaviour at the beginning of the period. Customers may ask for the closing-off statement to be corrected after that period, but must prove that their account was wrongly debited or not properly credited.

(2) In order to obtain correction by the credit institution of an account debited based on an unauthorized or incorrectly executed payment transaction, the customer must inform the credit institution as and when the unauthorized or incorrectly executed payment transaction comes to his attention or within a maximum of 13 months from the date of the debit entry, unless the credit institution failed to provide the customer with the information on the payment transaction in question in accordance with No. 39 (10) of these terms and conditions of business. The above 13-month period is reduced to 3 months for entrepreneurs.

#### **6. Advice of missing notifications**

**No. 17.** The customer shall advise the credit institution immediately if a regular notification from the credit institution (such as a closing-off statement or a statement of securities) or other notification or transmission from the credit institution which the customer would expect to receive under the circumstances is not received within the time which the agreed form of transmission would normally be expected to take.

#### **7. Translations**

**No. 18.** Instruments in a foreign language shall be presented to the credit institution together with a German translation certified by a sworn translator if so requested.

### **F. Place of performance, applicable law, jurisdiction**

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

**No. 19.** The place of performance for both parties shall be the office of the branch of the credit institution with which the transaction was concluded.

#### **2. Applicable law**

**No. 20.** All privity in law between the customer and the credit institution shall be governed by Austrian law.

#### **3. Jurisdiction**

**No. 21. (1)** An entrepreneur may only file a complaint against the credit institution with the court with subject-matter jurisdiction in the place of the bank's head office. The same courts shall have jurisdiction for complaints filed by the credit institution against an entrepreneur, although the credit institution shall also be entitled to enforce its rights before any other court with territorial and subject-matter jurisdiction.

(2) The general jurisdiction vested in the Austrian courts for complaints by or against a consumer on execution of an agreement with the credit institution shall continue to apply after the agreement has been executed even if the consumer transfers his domicile abroad and Austrian court judgments are enforceable in that country.

### **G. Termination of business relationship**

#### **1. Ordinary termination of business relationship with entrepreneurs**

**No. 22.** Unless the agreement is of limited term, the credit institution and the customer may terminate all or some parts of their business relationship (including credit agreements and master contracts for payment services, such as giro account agreements) at any time, subject to reasonable notice. Fees paid in advance shall not be refunded.

#### **2. Ordinary termination of business relationship with consumers**

**No. 22a. (1)** Customers may terminate a master contract for payment services, especially a giro account agreement, free of charge at any time, subject to one month's notice (or any shorter period of notice agreed separately). This shall be without prejudice to the right to terminate a master contract for payment services (especially a giro account agreement) free of charge with immediate effect on receipt of notification from the credit institution of proposed amendments to the T&C (No. 2 (3)).

(2) Customers may terminate credit agreements of unlimited term free of charge at any time subject to one month's notice.

(3) Customers may terminate all other agreements executed with the credit institution for an unlimited term at any time subject to the agreed period of notice or to reasonable notice of a maximum of eight weeks.

(4) The credit institution may terminate master contracts for payment services (especially giro account agreements) and credit agreements subject to two months' notice.

(5) The credit institution may terminate all other contracts concluded for an unlimited term subject to reasonable notice of a minimum of four weeks.

### 3. Termination with good cause

**No. 23. (1)** The credit institution and the customer may terminate all or some parts of the business relationship at any time with immediate effect with good cause, notwithstanding any agreement to the contrary.

(2) Good cause entitling the credit institution to terminate a business relationship shall apply in particular where:

- there is a risk that payment will not be made due to deterioration in or risk to the financial position of the customer or a jointly liable person;
- the customer provided inaccurate information on material aspects of his financial position or other material circumstances and the credit institution would not have concluded the contract had it known of the true financial position or circumstances;
- the customer has failed or is unable to provide (additional) collateral and, as a result, there is a risk that obligations towards the credit institution will not be honoured;
- the customer is or was not acting on his own account, despite his assurances to the contrary;
- the customer has grossly defaulted on payments to the credit institution.

### 4. Legal consequences

**No. 24. (1)** Any balances outstanding on termination of all or some parts of the business relationship shall be payable immediately. The customer must also release the credit institution of all undertakings made on his behalf.

(2) The credit institution shall further be entitled to terminate all undertakings entered into for the customer and to settle them with effect for the customer and to immediately reverse credits subject to receipt. Claims stemming from securities, especially bills of exchange and cheques, may be enforced by the credit institution up to the amount of any outstanding debit balance.

(3) If all or part of the business relationship is terminated, the credit institution shall refund fees paid in advance for a specific period on a pro rata basis to customers who are consumers.

(4) The T&C shall continue to apply once the business relationship has been terminated pending full and final settlement.

## H. Right to deny payment

**No. 24a. (1)** The credit institution may refuse to effect the payment of the loan amount on objectively justified grounds.

(2) Objectively justified grounds within the meaning of paragraph (1) shall apply where, following execution of the contract:

- circumstances arise that suggest a deterioration in the borrower's financial position or a loss in value of collateral provided to the extent that, even if the collateral is realized, there is a risk that the loan will not be repaid or that the interest will not be paid; or
- the credit institution has good cause to suspect that the borrower is using the loan in breach of the agreement or the law.

(3) The credit institution may notify consumers immediately of its intention and the reasons for it in paper form or on some other durable medium. There shall be no need to notify the reasons if doing so would jeopardize public security or order.

## II. Banking information

### Banking information

**No. 25.** Where no obligation to provide information exists, information on the financial position of an entrepreneur which it is customary for a bank to keep on file shall be provided on a non-binding basis only and to entrepreneurs only in writing.

**No. 26.** Not applicable.

**No. 27.** Not applicable.

## III. Opening and holding of accounts and securities accounts

### A. Scope

**No. 28.** Unless stipulated otherwise, the terms and conditions hereinafter for accounts shall also apply to securities accounts.

### B. Opening of accounts

**No. 29.** When opening an account, the future account holder shall prove his identity. Accounts shall be held under the name or registered name of the account holder and an account number.

### C. Specimen signatures

**No. 30.** Persons who are to have powers of disposal or powers of signature for an account must provide the credit institution with a specimen signature. The credit institution shall permit written disposal arrangements within the scope of the customer's account based on the specimen signatures provided.

### D. Powers of disposal and powers of signature

#### 1. Powers of disposal

**No. 31.** The account holder shall have sole powers of disposal of the account. Only persons with powers of representation under the law or who are in possession of an express written power of attorney to dispose of the account shall have powers to represent him and must prove their identity and power of representation. In the case of a lasting power of attorney registered in the Austrian Central Substitution Register, a general power of attorney which includes powers of disposal of the principal's account shall suffice.

#### 2. Powers of signature

**No. 32. (1)** The account holder may expressly grant other persons power of signature in writing. The person with powers of signature shall only have powers to instruct and cancel account disposal arrangements.

**(2)** Power of signature for a securities account shall include the power to buy and sell securities up to the cover provided and in accordance with the investment objectives, financial position and risk appetite of the securities account holder recorded in accordance with the Securities Market Supervision Act 2018.

In the case of joint securities accounts, the financial position shall be based on the highest individual rating of all holders of the securities account, and investment objectives and risk appetite shall be based on the lowest individual rating of all holders of the securities account. Assessments of experience and knowledge shall be based solely on the person with power of signature.

### E. Special accounts

#### 1. Sub-accounts

**No. 33.** An account may include sub-accounts. Even where sub-accounts are given names, the credit institution shall only have rights against and obligations towards the account holder.

## 2. Trust accounts

**No. 34.** In the case of trust accounts, the credit institution shall only have rights against and obligations towards the trustee as account holder.

## 3. Joint accounts

**No. 35. (1)** An account may also be opened for several account holders (joint account). The account may only be disposed of and closed and powers of signature may only be granted by all holders jointly. Each account holder may only be represented for a particular transaction by a specifically authorized proxy.

**(2)** All account holders shall be jointly and severally liable for obligations arising from the account.

**(3)** Unless specifically agreed otherwise, each account holder shall have individual powers of disposal of the account. Those powers shall include the power to buy and sell securities up to the cover provided and in accordance with the investment objectives, financial position and risk appetite of all account holders recorded in accordance with the Securities Market Supervision Act 2018. However, the powers of the account holder shall be terminated on the express objection of another account holder, in which case powers may only be exercised by all account holders jointly.

**(4)** Powers of signature may be withdrawn by each individual account holder.

**No. 36.** Not applicable.

## 4. Foreign currency accounts

**No. 37. (1)** If the credit institution holds a foreign currency account for the customer, remittances in that foreign currency shall be credited to that account unless a different remittance instruction has been given. If no foreign currency account exists, the credit institution may credit sums in a foreign currency in euros, unless the customer has instructed otherwise. The sum shall be converted at the rate on the day on which the sum in foreign currency is cleared at and available to the credit institution, using appropriate rates and taking due account of the customer's interests.

**(2)** Holders of credit balances in a foreign currency shall be liable pro rata up to their credit balance at the time for economic and legal drawbacks and impairments to the credit institution's total credit balances held in that currency in Austria and abroad caused by measures or events for which the credit institution is not to blame. Measures or events for which the credit institution is not to blame primarily include sovereign measures in the state of the currency which are beyond the credit institution's control, such as restrictions on movements of capital or currency restrictions, payment moratoria, confiscation or expropriation.

**(3)** If the credit institution is prohibited or restricted from transacting in the currency in which the foreign currency credit or debit is denominated due to political measures or events in the country in question, it shall not be required to execute an instruction against a credit balance in the foreign currency or to discharge a debt in the foreign currency to that extent for the duration of the measures or events. This shall not apply anywhere outside the country of the foreign currency, in another currency (including euro) or to the acquisition of cash. The credit institution shall inform the customer if circumstances arise as described in this paragraph.

## F. Closing-off statements and statements of securities accounts

**No. 38. (1)** Unless agreed otherwise, the credit institution shall close off accounts once a month. Any interest and fees which accrued during the month shall form part of the final balance and shall attract interest thereafter ("compound interest"). Statements of securities accounts shall be issued once a year.

**(2)** The customer may collect the statement of account with the closing-off statement/statement of securities account from the branch at which the account is held.

## IV. Giro transactions

### A. Remittance orders

**No. 39. (1)** Remittance orders for the benefit of a payee whose account is held by a payment services provider in Austria, another EEA (European Economic Area) Member State or Switzerland must quote the payee's international bank account number (IBAN).



**(2)** Customers must identify a payee whose account is held by a payment service provider outside the EEA and Switzerland on remittance orders by their name and by:

- the payee's account number and either the name, bank sort code or bank identifier code (BIC) of the payment service provider; or
- the payee's IBAN and the BIC of the payee's payment service provider.

**(3)** The IBAN and BIC or the account number and name/sort code/BIC of the payee's payment service provider provided by the customer in accordance with paragraphs (1) and (2) is the payee's customer identifier and is used to execute the remittance order. Information on the payee provided by the customer in addition to the IBAN and BIC, such as the payee's name, does not form part of a customer identifier, is used for documentation purposes only and is disregarded by the credit institution when executing the remittance.

**(4)** The purpose of the remittance stated on the order is also irrelevant to the credit institution.

**(5)** The fact that the credit institution accepted the remittance order does not of itself vest any rights in a third party against the credit institution.

**(6)** The credit institution shall be obliged to execute a remittance order only if the customer's specific account has sufficient funds (credit balance, overdraft).

**(7)** If the customer provides information in addition to that specified in paragraph (1) or (2), as the case may be, the remittance order shall be executed solely on the basis of the customer identifier provided by the customer (paragraph (3)).

**(8)** Remittance orders received by the credit institution or by the payment initiation service provider instructed by the customer cannot be cancelled unilaterally. If a later execution date is agreed on the remittance order, the order shall be irrevocable at midnight on the previous business day.

**(9)** If the credit institution refuses to execute a remittance order, it shall notify the customer of its refusal and, where possible, of the reasons for the refusal in the form agreed with the customer and shall explain how the remittance order should be corrected so that it can be executed in future. Remittance orders justifiably refused by the credit institution shall not trigger the execution periods agreed in No. 39a of the terms and conditions of business.

**(10)** Information on remittance orders executed (reference, amount, currency, fee, interest, exchange rate, value date of debit) and other payments made against his account, especially under a direct debit or authorized collection procedure, shall be reported with the transaction on the statement of account. Statements of account shall be provided to customers who are consumers on request free of charge once a month at the credit institution. In addition, customers who are consumers may demand that the information referred to in paragraph 10 be sent to them once a month for a reasonable administration charge.

**(11)** Remittance orders may also be submitted in the form of a SEPA Instant Payment transfer, provided that the payment service provider of the payee participates in the SEPA Instant Payment scheme. SEPA Instant Payment transfers can (only) be made in Euro to countries participating in SEPA and up to the maximum amount per transaction set out by the European Payments Council for payments in accordance with the SEPA Instant Payment Standard, as amended from time to time. For SEPA Instant Payment transfers, the execution periods pursuant to No 39a do not apply. SEPA Instant Payment transfers can be submitted electronically at any time (including Saturday/Sunday/public holidays, and 24 hours a day) and are executed without delay within the time period set out by the SEPA Instant Payment Standard (i.e. a few seconds), provided that the payment service provider of the payee is available for this form of transfer and no rejection is made on the basis of automatically generated security checks. A customer having submitted a SEPA Instant Payment transfer order will be promptly informed via electronic means of any refusal of the payment order.

#### **Execution date**

**No. 39a. (1)** Payment orders received by the credit institution after the cut-off time for that type of payment or on a non-working day shall be deemed to have been received on the following business day. "Business day" means any day on which the credit institution is open for business with customers and able to carry out payment transactions.

**(2)** If the customer giving the payment order and the credit institution agree that execution of the payment order is to begin on a specified date or at the end of a specified period or on the day on which the customer provides the credit institution with the funds in question, the agreed date shall be construed as the date of receipt of the payment

order. If the agreed date falls on a day on which the credit institution is not open for business, the payment order shall be deemed to have been received on the following business day.

**(3)** The credit institution shall ensure after the time of receipt that the amount payable under the payment transaction is received by the payee's payment services provider by the end of the following business day. The above deadline shall be extended by one more business day for payment transactions initiated in paper form. This paragraph shall only apply to payment transactions in euro and to payment transactions for which only one currency conversion takes place between the euro and the currency of a non-Member State of the euro area, provided that the currency conversion required is carried out in the non-Member State of the euro area and, in the case of cross-border payment transactions, the cross-border transfer is made in euro.

**(4)** For payment transactions not referred to in paragraph 3 within the European Economic Area (EEA), the execution period referred to in paragraph 3 shall not exceed four business days.

## **B. Credit entries and right of reversal**

**No. 40. (1)** The credit institution is obliged and irrevocably authorized under a valid giro account agreement to take receipt of monies for the customer and to credit them to his account. Even once the giro account agreement has been terminated, the credit institution shall be entitled to take receipt of monies for the customer if the credit institution has claims against the customer stemming from the account or the giro account agreement, in which case the credit institution shall be entitled to offset its claims against the customer's claim to disbursement of the incoming sum. The credit institution shall execute orders to make a sum of money available to a customer by crediting the sum to the payee's account, unless the order stipulates otherwise. If the amount to be credited to the customer's account is in a different currency to the account, the amount shall be credited in local currency, unless the customer has expressly instructed otherwise. It shall be converted at the rate on the day on which the amount in foreign currency is available in cleared funds for use by the credit institution.

**(2)** Information on remittances credited to his account (reference, amount, currency, fees, interest, exchange rate, value date of credit) shall be reported with the transaction on the statement of account. Statements of account shall be provided to customers on request free of charge once a month. In addition, customers who are consumers may demand that the information referred to in paragraph 2 be sent to them once a month for a reasonable administration charge.

**(3)** The credit institution shall be entitled to deduct its fees for the remittance from the amount to be credited. The credit institution shall report the amount remitted and the fees deducted separately.

**(4)** If cash is paid into a consumer's giro account at the credit institution in the currency in which that account is denominated, the credit institution shall ensure that the amount is cleared and value dated immediately on receipt. If the account holder is an entrepreneur, the sum of money shall be cleared and value dated in the payee's account by no later than the next business day.

**(5)** The credit institution may reverse credits made as a result of error on its part at any time; otherwise, the credit institution may only reverse the credit against unequivocal proof that the remittance order was invalid. The right of reversal shall not be negated even if the account has since been closed off. Where a right of reversal exists, the credit institution may refuse to clear the sums credited.

**(6)** No. 37 shall apply to sums of money in foreign currency, especially conversion thereof.

## **C. Credit entries subject to receipt**

**No. 41. (1)** If the credit institution credits sums which the customer has ordered it to collect (especially by cashing cheques, bills of exchange and other securities, collecting direct debts etc.) or which are to be remitted to the customer's account before the sum to be collected or remitted is received by the credit institution, that credit entry shall be subject in all cases to actual receipt of the amount credited by the credit institution. The same shall apply to amounts for collection which should be payable at the credit institution.

**(2)** Based on that reservation, the credit institution shall be entitled to reverse the credit entry by means of a simple entry if collection or remittance fails or it appears likely, due to the payer's financial situation, official intervention or other reasons, that the credit institution shall not acquire unrestricted powers of disposal over the sum to be collected or remitted.

(3) This reservation may also be exercised if the sum credited was collected or remitted from abroad and the credit institution is re-debited pursuant to the foreign law or an agreement executed with a foreign credit institution.

(4) While the reservation is in force, the credit institution shall also be entitled to refuse to clear the sums credited to the customer's account. This reservation shall not be negated even if the account is closed off.

## D. Debit entries

**No. 42. (1)** For remittance orders, debit entries should only be understood as notification of execution if the debit entry is not reversed within two business days (see No. 39a (1) of these terms and conditions of business).

(2) Cheques and other payment instructions and SEPA business-to-business direct debits (No. 42a. (3)) shall be honoured if the debit entry on the customer's drawee account is not reversed within two business days, unless the credit institution has already notified the presenting party that it has been honoured or has effected a cash payment to the latter. SEPA direct debits (No. 42a. (3)) shall be honoured after expiry of five business days.

## E. SEPA direct debits and SEPA business-to-business direct debit instructions

**No. 42a. (1)** The customer consents to his account being debited with amounts collected by third parties authorized by him from his account with the credit institution. The customer may revoke that consent at any time in writing. Any such revocation shall take effect the business day after receipt thereof by the credit institution. Similarly, the customer may instruct the credit institution to limit consent authorizing a third party to collect sums from an account to a specific amount or specific intervals or both.

(2) The credit institution shall execute collections and SEPA direct debits to be debited to the customer's account based on the international bank account number (IBAN) transmitted by the collecting credit institution. The IBAN is the customer identifier used to execute the collection or SEPA direct debit. Additional information on the customer provided by the collecting bank, such as the name of the holder of the account from which the collection is to be made, is used for documentation purposes only and is disregarded by the credit institution when executing the collection or SEPA direct debit.

(3) If the credit institution was not in possession of a direct debit instruction ("SEPA direct debit instruction") when the account was debited, the credit institution must comply immediately with a demand to reverse the debit entry received from the customer (including an entrepreneur) within eight weeks of the date of the direct debit. If the credit institution was in possession of an instruction from a customer who is an entrepreneur to pay sums requested by a third party named in the instruction ("SEPA business-to-business direct debit") and to debit them from his account when the account was debited, the customer shall not be entitled to demand reversal of the debit entry.

(4) A justified demand that a debit entry be reversed shall be complied with within 10 business days.

## V. Fees for services and reimbursement of expenses

### A. Fees

#### 1. Principle of paid services

**No. 43. (1)** The credit institution shall be entitled to charge customers a fee for its services, especially interest, charges and commission. The credit institution shall be entitled to charge fees agreed with the customer for services provided by the credit institution.

(2) This shall also apply to advisable services provided in an emergency or for the customer's benefit without an instruction or in connection with settlement of the customer's estate by the credit institution.

(3) Paragraph (1) shall not apply to one-off information provided to consumers by the credit institution, in a form agreed with the customer for the purpose of their business relationship on the use of payment services, fees, interest and exchange rates, communications, preventive and remedial action, amendments to and termination of giro account agreements and legal remedies.

(4) Paragraph (1) shall also not apply to services provided by the credit institution to consumers in connection with termination of a giro account agreement by the customer.

## 2. Fee levels

**No. 44.** The credit institution shall charge fees commensurate with its services. The credit institution shall issue a list of prices and fees for specific typical services (which shall be without prejudice to separate agreements). The price list shall form part of the agreement. Fees for services provided under a consumer credit agreement or master agreement for consumer payment services (especially a giro account agreement) shall only be charged once they have been agreed with the customer.

## 3. Changes to fees and services for entrepreneurs

**No. 45. (1)** The credit institution may, at its discretion and taking equal account of the interests of the credit institution and of the customer, make changes to fees charged to entrepreneurs for repeat services provided by the credit institution or repeat charges payable by the customer (including credit and debit interest on giro or other accounts, account fees etc.), taking account of all relevant circumstances (especially changes to the legislative framework, changes on the money or capital market, changes to refinancing costs, changes to staff and business costs, changes to the consumer price index etc.).

**(2)** Changes to services provided by the credit institution and changes to fees which go beyond paragraph (1) and the introduction of new fees for previously agreed services shall be subject to the customer's agreement. Minor changes to services provided by the credit institution compared to the previous services provided and changes to fees of no more than 10% per annum not expressly agreed to in advance by the customer shall take effect two months after notification to the customer of the change proposed by the credit institution, unless the credit institution receives written objection from the customer by then. The credit institution shall inform the customer in the notification of the proposed change that failure to respond by the deadline shall be construed as consent. The credit institution may make notification of proposed changes available for download by entrepreneurs by an agreed method.

## (4) Changes to fees and services for consumers other than payment services

**No. 45a. (1)** Unless agreed otherwise, fees agreed with consumers for repeat services provided by the credit institution (excluding interest) other than payment services (e.g. safe deposit box rental etc.) shall be revised (increased or reduced) annually with effect from 1 April each year in line with changes in the consumer price index published by Statistics Austria compared to 2015 (index for the month of December preceding the review compared to the reference index in December 2015), rounded to the nearest cent. The credit institution shall notify customers of changes to fees. If, for any reason, fees are not increased in line with an increase in the index, that shall be without prejudice to the right to increase them in subsequent years. Revised fees shall take effect at least two months after the date of execution of the agreement. Fees shall be changed in accordance with this paragraph as described in Section 2 of these terms and conditions of business.

**(2)** Changes to charges payable by the customer and changes to services provided by the credit institution which go beyond paragraph (1) shall be subject to the customer's agreement. Minor, objectively justified changes to services provided by the credit institution compared to the previous services provided and objectively justified changes to charges payable by customers of no more than 10% per annum not expressly agreed to in advance by the customer shall take effect two months after notification to the customer of the change proposed by the credit institution, unless the credit institution receives written objection from the customer by then. The credit institution shall inform the customer in the notification of the proposed change and the reasons for it and that failure to respond by the deadline shall be construed as consent. Services provided to customers shall be changed no more than once a calendar year.

**(3)** Interest rates in consumer business and other fees agreed with consumers for repeat services provided by the credit institution may (also) be changed based on a separate review clause agreed with the customer. This shall be without prejudice to the statutory obligation to include that review clause in a consumer credit agreement. Fee reviews based on such a review clause shall take effect at least two months after the date of execution of the agreement.

## B. Reimbursement of expenses

**No. 46. (1)** Customers who are entrepreneurs shall bear all necessary and useful expenditure, disbursements, expenses and costs, especially stamp duty and legal charges, taxes, postage and costs for insurance, legal counsel, enforcement, collection, business consultancy services, telecommunications and the provision, management and realization or release of collateral incurred in connection with their business relationship. If the credit institution is unable to execute a payment instruction from a customer who is an entrepreneur due to a lack

of funds or if it must take action against the customer as a result of (enforcement) measures by a third party, it shall be entitled to claim reimbursement of reasonable flat-rate expenses based on a price list.

(2) The credit institution may bill such expenditure to entrepreneurs as an overall sum without itemization, unless the customer expressly requests itemization.

(3) If the credit institution has to take action against a customer who is a consumer as a result of (enforcement) measures by a third party (e.g. official orders such as attachment of account or other measures such as garnishment etc.), it shall be entitled to claim reimbursement of reasonable flat-rate expenses based on the price list referred to in No. 4.

## VI. Collateral

### A. Provision of (additional) collateral

#### 1. Right to demand collateral

**No. 47.** The credit institution may require a customer who is an entrepreneur to provide appropriate collateral by a reasonable deadline for all claims pursuant to the current business relationship with him, even for claims that are contingent, limited in time or not yet due.

#### 2. Change in risk

**No. 48. (1)** If circumstances in connection with a business relationship with an entrepreneur arise or come to light after an agreement has been executed which put discharge of the customer's obligations pursuant to that agreement at risk ("enhanced risk"), the credit institution shall be entitled to demand in writing that collateral or additional collateral be provided by a reasonable deadline for those obligations. An enhanced risk may be caused by significant deterioration in the assets or income of the customer or a person with joint liability or depreciation in the value of collateral. The collateral provided must be commensurate with the enhanced risk.

(2) The same shall apply if collateral was not demanded on accrual of the claims.

(3) No. 75 shall apply, in addition to paragraph (1) and paragraph (2), to enhanced credit risks caused by significant depreciation in the parity of the foreign currency in which the loan was granted.

### B. Credit institution's right of lien

#### 1. Scope and accrual

**No. 49. (1)** The customer shall grant the credit institution a right of lien to all manner of items and rights which come into the credit institution's possession at the customer's instigation in connection with a transaction executed with the credit institution.

(2) The right of lien shall exist in particular in respect of all the customer's attachable claims against the credit institution, e.g. from credit balances. If securities are subject to the credit institution's right of lien, the right of lien shall also extend to interest and dividend coupons on the securities.

**No. 50. (1)** The right of lien shall secure the credit institution's claims against the customer from the business relationship, including joint accounts and claims that are contingent, limited in time or not yet due.

(2) The right of lien shall accrue when the credit institution obtains possession of the item subject to the lien, provided that the credit institution has claims in accordance with paragraph (1); otherwise it shall accrue at a later date, when such claims accrue.

#### 2. Exemptions from the right of lien

**No. 51. (1)** The right of lien shall not extend to items and rights allocated for a particular order before the right of lien accrued, e.g. sums for the purpose of honouring a specific cheque or bill of exchange, or to the execution of a specific order. However, this shall only apply while such allocation is in place.

(2) The credit institution shall execute the customer's disposal arrangements for the benefit of third parties from credit balances on giro accounts notwithstanding any right of lien, until such time as the customer receives notification by the credit institution that the right of lien has been exercised. Attachment of the credit balance shall not be construed as a disposal arrangement by the customer.

**(3)** The right of lien shall also not extend to assets disclosed by the customer to the credit institution in writing as property held in trust or which came into the possession of the credit institution other than at the customer's instigation before the right of lien accrued.

## **C. Release of collateral**

**No. 52.** The credit institution shall release collateral at the customer's request, provided that it has no legitimate interest in keeping it as collateral.

## **D. Realization of collateral**

### **1. Sale**

**No. 53.** The credit institution shall realize collateral with a market or listed price by private sale at that price in accordance with the relevant provisions of law.

**No. 54.** The credit institution shall have collateral with no market or listed price valued by an independent valuer authorized for the purpose. The credit institution shall notify the customer of the outcome of the valuation with its request that the customer name by a reasonable deadline an interested purchaser who is willing to pay the credit institution a purchase price of at least the estimated value by that deadline. If the customer does not name an interested buyer or the named interested buyer does not pay the purchase price by that deadline, the credit institution shall be irrevocably entitled to sell the collateral for at least the estimated value on the customer's behalf. The proceeds from the sale shall be used to redeem the secured claim and the customer shall be entitled to any surplus.

### **2. Forced sale and out-of-court auction**

**No. 55.** The credit institution shall also be entitled to realize the collateral by forced sale or, if it has no market or listed price, to have it auctioned out of court by public auction held by an entrepreneur authorized to do so. The time and venue of the auction and a general description of the collateral must be published. The person who provided the collateral and third parties with rights to the collateral shall be advised accordingly.

### **3. Collection**

**No. 56. (1)** The credit institution may call in and collect all manner of claims provided as collateral (including securitized claims) when the secured claim matures, prior to which the claim provided as collateral may be collected when it matures. In the event of imminent risk of considerable and permanent loss in value of claims provided as collateral, they may be collected before they mature. Where possible, the customer shall be notified beforehand. Sums collected before the secured claim matures shall be attached in lieu of the collected claim.

**(2)** The provisions of paragraph (1) shall not apply to consumers' wage and salary claims provided as collateral for claims not yet due.

### **4. Admissible realization**

**No. 57.** Even if the purchaser of the collateral being realized does not pay the purchase price immediately in cash, realization of the collateral by the credit institution shall be admissible nonetheless, provided that no or no equivalent offer of immediate cash payment has been made and subsequent payment is secured. If the item is delivered to the purchaser prior to payment of the price, the purchase price shall also be construed as having been paid to the credit institution; this shall be without prejudice to the customer in the event that it subsequently proves to be irrecoverable.

## **E. Right to refuse performance**

**No. 58.** The credit institution may refuse to provide the customer with services required of it on the grounds of claims pursuant to the business relationship, even if they are not based on the same privity in law. Nos. 50 and 51 shall apply accordingly.

## **VII. Offset and crediting**

### **A. Offset**

**1. By the credit institution**

**No. 59. (1)** The credit institution shall be entitled to offset all the customer's attachable claims against all the customer's liabilities towards it.

**(2)** The credit institution shall execute the customer's disposal arrangements for the benefit of third parties from credit balances on giro accounts notwithstanding any right of setoff, until such time as the customer receives notification by the credit institution that the right of setoff has been exercised. Attachment of the credit balance shall not be construed as a disposal arrangement by the customer.

**2. By the customer**

**No. 60.** Customers who are consumers shall only be entitled to offset their liabilities if the credit institution is insolvent or if there is a legal connection between the customer's claim and his liability or the customer's claim has been confirmed by court judgment or acknowledged by the credit institution. Customers who are entrepreneurs hereby unconditionally and irrevocably waive the right to offset their liabilities even in such circumstances.

**B. Crediting**

**No. 61. (1)** Section 1416 of the Civil Code notwithstanding, the credit institution may, in the case of business with entrepreneurs, initially credit payments against the credit institution's claims inasmuch as no collateral was provided or the value of the collateral provided does not cover the claim. When the individual claims matured is irrelevant. This shall also apply to current accounts.

**(2)** In business with consumers, the credit institution may initially credit payments to repay a specific claim against the unsecured part of that claim, even if the client specified otherwise.

**Special transactions****I. Trading in securities and other instruments****A. Scope**

**No. 62.** Nos. 63 to 67 shall apply to securities and other instruments, even non-securitized instruments.

**B. Execution**

**No. 63. (1)** As a rule, the credit institution shall execute the customer's orders to buy and sell securities in the capacity of commission agent.

**(2)** However, if the credit institution agrees a fixed price with the customer, it shall execute a purchase contract.

**(3)** The customer hereby states that it agrees with the credit institution's execution policy, based on which the credit institution shall execute the customer's orders in the absence of any other instruction. The credit institution shall notify the customer of important changes to its execution policy.

**(4)** The credit institution may also execute incoming buy and sell orders in part, if the market situation is such that complete execution is not possible.

**C. Market practices in the place of execution**

**No. 64.** Orders shall be executed in keeping with the laws and market practices in the place of execution.

**D. Date of execution**

**No. 65.** If an order for execution on the same day is not received in time for execution during the ordinary course of business, it shall be scheduled for the next trading day.

**E. Insufficient funds**



**No. 66. (1)** The credit institution may refrain from executing an order in full or in part if insufficient funds are available.

**(2)** However, the credit institution shall be entitled to execute trades if there is nothing to suggest that the customer only wanted the order to be executed if sufficient funds were available.

**(3)** If the customer fails to provide the funds requested, the credit institution shall be entitled to execute a closing trade on the client's account at the best possible price.

## **F. Foreign transactions**

**No. 67.** If the customer is credited with a claim to delivery of securities (foreign securities depository), the customer's claim against the credit institution shall correspond to the share held on the customer's behalf of the entire portfolio of similar securities held by the credit institution abroad on its customers' behalf in accordance with the relevant provisions of law and local practices.

## **G. Trades in equities**

**No. 68.** Where trades are executed in equities whose certificates are not yet in circulation, the credit institution cannot be held liable either if the public limited company fails to issue the certificates or if shareholder rights cannot be exercised before the equities are issued.

## **H. Records of electronic communications and telephone calls**

**No. 68a.** The customer acknowledges without objection that telephone calls or electronic communications between the credit institution and the customer (including persons acting for the customer, such as other staff or bodies) which result or may result in transactions shall be recorded and stored in accordance with the Securities Supervision Act 2018. The customer shall inform persons acting for him (especially staff) of that fact and, where necessary, obtain their consent.

# **II. Safekeeping of securities and other valuables**

## **A. Securities depository**

**No. 69. (1)** The credit institution shall be entitled to place securities handed over to it in the beneficiary's securities account.

**(2)** The credit institution is expressly authorized to hold securities issued in Austria abroad and securities issued abroad in Austria. It is likewise authorized to have securities issued abroad registered under the depository's name or under the name of a foreign nominee.

**(3)** The credit institution may only be held liable by entrepreneurs for careful selection of the third-party depository.

## **B. Redemption of securities, renewal of coupons, drawing, cancellation**

**No. 70. (1)** The credit institution shall ensure that interest, dividend and profit-sharing coupons due are detached and encashed. The credit institution shall obtain new interest, dividend and profit-sharing coupons without specific instruction.

**(2)** The credit institution shall monitor drawings, cancellation and other such measures in respect of securities in its depository and shall publish notification thereof in the *Amtsblatt der Wiener Zeitung* or in the *"Mercur" Authentischer Verlosungsanzeiger*. The credit institution shall redeem drawn and cancelled securities and interest, dividend and profit-sharing coupons.

**(3)** Where securities are held by a third-party depository, the obligations described in paragraphs (1) and (2) shall be assumed by the third-party depository. Where securities are held abroad, the credit institution shall be under no obligation to notify the customer of the numbers credited to the securities account, especially of securities redeemable by drawing. The credit institution shall then determine, also by drawing, the customers to be allotted



the drawn securities. Where, however, the numbers of securities redeemable by drawing are notified, they shall only be relevant for drawing and redemption and only while that is the practice abroad. Where, according to the practice abroad, the sums collected on redeemed securities would have to be distributed *pro rata* and the portion retained by individual customers cannot be represented in shares, the customers whose portions are redeemed shall be determined by drawing.

### C. Checks by credit institution

**No. 71.** The credit institution shall check if Austrian securities are affected by public notification proceedings, payment stops or suchlike once, when they are delivered to the credit institution, on the basis of the Austrian documents available to it. The check for public notification proceedings for the purpose of cancelling securities shall also be carried out on delivery.

### D. Notification of conversion and other measures

**No. 72.** The bank shall endeavour to notify the customer of any conversion, capital increase, capital reduction, merger, exercise or realization of subscription rights, request for payment, amalgamation, restructuring, exchange offer, coupon increase and other important measures affecting securities, provided that notice thereof is inserted in the *Amtsblatt der Wiener Zeitung* or received in time by the credit institution in the name of the issuer or from the foreign depository. If the customer fails to provide instructions in time, the credit institution shall act at its best discretion, taking account of the customer's interests and, in particular, shall realize rights that would otherwise lapse at the last possible moment.

## III. Trades in foreign exchange and foreign currency

### A. Procedure

**No. 73.** The credit institution shall execute a purchase contract with the customer for foreign exchange and foreign currency. If it is agreed that the credit institution shall act as the customer's commission agent, the terms and conditions governing commission business in the section on trades in securities shall apply accordingly. If the credit institution trades in its own name, express notification in accordance with Section 405 of the Business Code shall not be required.

### B. Forward trades

**No. 74. (1)** In the case of forward trades, the credit institution may ask the customer at a reasonable time before the due date for proof that the payment required of the customer shall be received in the agreed account in time. If no such proof is provided or if it is clear from other circumstances that the customer will not discharge his obligations, the credit institution shall be entitled to execute a closing trade at the best possible price even before the agreed due date.

**(2)** The credit institution shall be entitled, even where not agreed beforehand, to demand cover against the risk of loss if, based on an expert opinion, that risk has increased or there has been a significant deterioration in the customer's financial position. Cover shall be provided in cash, unless agreed otherwise. The credit institution shall have a right of lien over assets deposited as cover. If cover is not provided, the credit institution shall be entitled to execute a closing trade at the best possible price.

**(3)** If the credit institution executes a closing trade in accordance with paragraph (1) or (2), any resultant price difference shall be credited or debited to the customer, who shall also bear all expenses incurred.

## IV. Foreign currency loans

**No. 75. (1)** Foreign currency loans shall be effective, i.e. shall be repaid, in the currency in which they were granted by the credit institution. Payments in a different currency shall be construed as security, unless the credit institution notifies the customer that they have been credited as repayments against the loan.

**(2)** The credit institution shall also be entitled to convert outstanding balances in foreign currency to Austrian currency and to notify the customer accordingly if:

- the current exchange rate between the foreign currency and the euro is over 20% higher than the rate when the loan was granted, as a result of which, taking account of the remaining term of the loan, the amount still outstanding, the current value of collateral already provided for the foreign currency loan and the customer's credit rating, there is a risk that the customer will not discharge his obligations ("enhanced risk"). Prior to such conversion, the credit institution must write to the customer offering him the option of providing collateral or making an unscheduled repayment by a reasonable deadline of a minimum of three weeks. The value of the new collateral or the amount of the unscheduled repayment must be equivalent to the enhanced risk. The request must indicate that said conversion shall be effected upon unsuccessful expiry of the deadline. If the customer provides sufficient collateral in time or if he effects a sufficient unscheduled repayment, the conversion must not take place.  
No. 52 shall apply to any subsequent release of collateral.
- refinancing in the foreign currency is no longer possible due to a change in the law or other circumstances for which the credit institution is not to blame;
- the entire loan is due for repayment and has not been paid, despite a reminder.

## **V. Collection and discount business, cheque and bill transactions**

### **A. Scope**

**No. 76.** These terms and conditions of business shall apply to cheque and bill transactions and other collection documents (such as commercial instructions and commitment notes).

### **B. Collection or negotiation**

**No. 77.** As a rule, such paper shall be accepted by the credit institution for collection, unless their negotiation (discounting) has been agreed.

### **C. Timely orders**

**No. 78.** Orders for collection must be received in sufficient time to allow them to be executed during the normal course of business without fast-tracking.

### **D. Credit institution's rights and obligations**

**No. 79.** In the event of discounting, the credit institution shall be entitled in the cases referred to in Nos. 41 (2) and (3) to charge the seller the full nominal amount plus all expenses incurred by the credit institution. In the case of papers denominated in foreign currency, the customer shall also bear the exchange risk.

**No. 80.** In such cases and where credits "subject to receipt" (No. 41) are re-debited, the credit institution shall retain claims under securities law to payment of the full amount and ancillary claims against the customer and any party obligated under the paper until such time as the debit balance resulting from any such re-debiting has been covered.

**No. 81.** The credit institution may demand that the customer transfer the claim underlying the paper or its acquisition by the customer and all present and future rights stemming from the underlying transactions, including any associated collateral. The credit institution need only encash payable papers already provided to it if an order from the customer was received in time and sufficient funds are available.