

# GENERAL TERMS AND CONDITIONS

Version June 2019

## General Provisions

### I. Basic rules for business relations between Client and Bank

#### A. Scope of applicability and amendments to the general terms and conditions

##### 1. Scope of application

**Section 1.** (1) These general terms and conditions (hereinafter GTC) shall apply to the overall business relationship between the Client and all the Bank's branches, within Austria and abroad. The business relationship comprises all individual business transactions between the Client and the Bank and thus also all framework agreements for payment services (e.g. current account contracts and credit card contracts). Provisions contained in contracts with the Client and in any special conditions shall be applicable by priority.

(2) The terms "consumer" and "entrepreneur" are used in the following within the meaning of the Austrian Consumer Protection Act ("*Konsumentenschutzgesetz*").

##### 2. Amendments to the general terms and conditions and framework agreements for payment services

**Section 2.** (1) Any amendments to these GTC shall be proposed by the Bank to the Client by indicating the provisions concerned as governed below. In this proposal, the provisions of the GTC affected by the amendment quotation and the suggested amendments are presented in a juxtaposition (hereinafter referred to as "juxtaposition"). The Bank shall publish the juxtaposition as well as the full version of the new GTC on its website. This will be pointed out by the Bank in the amendment proposal. The Client's consent shall be deemed given if the Bank does not receive an objection from the Client prior to the proposed date of the offered amendments' entry into force. The Bank shall inform the Client thereof in the amendment quotation as well. The amendment quotation and the juxtaposition shall be sent to the Client, who is a consumer, by the means agreed with him/her (e-mail, post or to the electronic banking mailbox of the Client agreed with the Hypo-Bank Burgenland AG (hereinafter referred to as "**Electronic Banking Mailbox**"). As from service – also in the Electronic Banking-Mailbox – the amendment quotation and the juxtaposition can no longer be changed by the Bank. If sent by e-mail and to the Electronic Banking Mailbox, the Client can save the amendment quotation and the juxtaposition electronically and/or print them out. The information about the service to the Mailbox shall be provided by post or – if agreed with the Client – to an e-mail address notified by the Client. This information shall be provided by post or – if agreed with the Client – by e-mail (to an e-mail address notified by the Client for this purpose). The amendment quotation plus juxtaposition and, in case of service to the Electronic Banking Mailbox, the notification thereof shall be received by the Client no later than two months prior to the suggested effective date of the amendments.

In dealings with an entrepreneur, it shall be sufficient to serve the amendment quotation to the Electronic Banking Mailbox no later than two months prior to the suggested effective date of the amendments or to keep it available on demand in a manner agreed with the entrepreneur.

(2) In the event of an intended amendment to the GTC, a Client (being a consumer) shall have the right to cancel his framework agreements for payment services (in particular his current account contract) at no charge prior to the amendment's entry into force. The Bank shall indicate this in its Notice of Amendment.

(3) Paragraph (1) shall also apply to amendments to framework agreements. Furthermore, Paragraph (2) shall also apply to amendments to framework agreements for payment services.

(4) Sections 43 to 47a shall apply exclusively to amendments to the Bank's services (including credit interest) and fees of the Client (including debit interest), unless the amendments are agreed with the Client individually.

### B. Submission of declarations

#### 1. Client orders

**Section 3.** (1) Client orders must be placed in writing. The Client may also place an order using a device held ready by the Bank for this purpose for electronic signature registration.

(2) The Bank shall also be entitled to execute orders placed with it via telecommunication (especially by telephone, fax and remote data transmission). The Bank shall only be obligated to fill such orders if other requirements are met and if this has been negotiated by the Client with the Bank.

(3) The Bank shall be entitled to implement orders placed with the Bank in any form under a business relationship with an entrepreneur for the latter's account if, without fault, the Bank comes to the conclusion that such orders originate from said entrepreneur and if the ineffective order is not attributable to the Bank. This shall not apply to orders involving payment services.

## **2. Acquisition of confirmations by the Bank**

**Section 4.** For security reasons, the Bank shall be entitled to acquire an order confirmation, especially if such orders have been placed via telecommunication. Depending on the nature of the situation, such order confirmation shall be obtained either via the same or another communication medium, prior to executing the relevant order.

## **3. Declarations of the Bank**

**Section 5.** (1) Unless otherwise negotiated in writing or unless usual Bank practice differs, all notices and declarations made by the Bank via telecommunication shall apply subject to written confirmation. This does not apply to dealings with consumers.

(2) Declarations and information to be communicated or made accessible by the credit institution to the client shall be provided to the client on paper, with the credit institution also being entitled to make use of a bank statement to that end or, where a corresponding agreement exists, on any other durable medium (for example by electronic means as part of the electronic banking).

(3) In deviation from paragraph 2, the Bank shall keep available to the Client, who is a consumer, an overview of fees (fees, debit and credit interest) in the Electronic Banking or in the Bank on paper for payment accounts on a monthly basis and upon the termination of the framework agreement.

## **C. Power of disposition after a Client's death**

**Section 6.** (1) As soon as the Bank has learned of a Client's demise, it shall allow dispositions based on a special ruling by the probate court or a certificate of inheritance. This regulation shall not affect dispositions of a solely authorised account holder or securities account holder with respect to any joint account or joint securities account .

(2) Signing authorisations shall not cease upon a Client's demise if an entrepreneur has given them for a business account. In ambiguous cases, entrepreneur accounts are deemed to be business accounts.

## **D. Bank obligations and liabilities**

### **1. Information obligations**

**Section 7.** (1) In the absence of a separate agreement, the Bank is free from any information obligations beyond those mentioned in its terms and conditions and extending beyond those stipulated by the law. Therefore, unless there is a statutory or contractual obligation, the Bank is not obligated to inform the Client of imminent [stock or currency] price losses, the value or worthlessness of entrusted objects or circumstances which could entail detriment or risk to the value of such objects, nor is [the Bank] obligated to provide the Client with any advice or information.

(2) The information obligations pursuant to Art. 26 (1) through (4), 28 (1), 31 and 32 of the Austrian Payment Services Act [*Zahlungsdienstgesetz*] do not apply to dealings with entrepreneurs.

### **2. Execution of orders**

**Section 8.** (1) The Bank shall execute orders which, due to its contents, typically require the assistance of a third party by engaging such third party on its own behalf. The Bank shall be liable for careful selection of such a third party.

(2) The Bank shall be obligated to assign any claims against a third party to the Client at the latter's request.

**Section 9.** In addition to cl. 8, the credit institution shall be liable towards consumers (but not towards companies) for payment services within the European Economic Area (EEA) in euro or any other currency of a EEA contracting member state

- if the payment transaction is initiated directly by the payer to ensure proper execution of the payment transaction until receipt by the recipient's payment service provider,
- if the payment order is initiated by or via the payment recipient to ensure proper transfer of the payment order to the payer's payment service provider and

- for any and all charges and interest for which the payer is responsible and which are invoiced to the consumer as a result of the non-execution, erroneous or delayed execution of the payment transaction to ensure proper execution of the bank transfer until receipt by the recipient's payment service provider (cl. 39a of these terms).

## E. Client's duties to collaborate

### 1. Introduction

**Section 10** When transacting with the Bank, the Client must in particular comply with his duties to collaborate; breach thereof shall require the Client to compensate for damages or to decrease his claims for damages against the Bank.

### 2. Notification of important changes

#### (a) Name or address

**Section 11.** (1) The Client must notify the Bank without delay and in writing of changes to his name, registered company name, address or that of any other recipient (receiving office) named by him.

(2) Should he fail to do so, written declarations from the Bank shall be deemed delivered if they have been sent to the Client at the address he has given to the Bank most recently.

#### (b) Power of representation

**Section 12.** (1) The Client must notify the Bank without delay and in writing of any cancellation or alterations concerning relevant powers of representation (including disposition and signing authority – Section 31 and 32) of which he has become aware, and submit proof thereof based on appropriate documents.

(2) A power of representation announced to the Bank shall continue in its scope to date until notification of cancellation or alteration has been given, unless the Bank was aware of such cancellation or alteration or unaware thereof due to gross negligence. This shall also apply in particular if a cancellation or alteration of representational powers is entered in a public register or has been published accordingly.

(3) Upon establishment of any business relationship and upon utilisation of any occasional transaction, the client must communicate to the credit institution whether the client wants to pursue the business relationship and/or the transaction for own or for another's account or on another's behalf. Relevant changes during the existing business relationship must be notified by the client to the credit institution on the client's own initiative.

#### c) Capacity to contract: dissolution of the company

**Section 13.** Every loss or restriction of capacity to contract must be reported to the Bank without delay and in writing. If the Client is a company or legal entity, its dissolution must be announced to the Bank without delay.

### 3. Clarity of orders

**Section 14.** (1) The Client must ensure that its orders placed with the Bank are clearly and unambiguously formulated. Alterations, confirmations and repetitions must be expressly indicated as such.

(2) Should the Client wish to give the Bank special instructions on executing an order, he must inform the Bank separately and explicitly and, if orders are placed on forms, he must additionally inform the Bank thereof outside those forms. This shall especially apply if executing an order requires special urgency or is bound to specific deadlines or dates.

### 4. Care in using means of telecommunication / Payment instruments

**Section 15.** If a Client places orders or submits other declarations using means of telecommunication, he must take reasonable precautions against transmission errors and misuse. This provision does not apply to orders and declarations of the Client on payment services.

**Section 15a.** (1) When using an approved payment instrument which can be used to place orders with the Bank, the Client must take all reasonable precautions to prevent access to personalised security features by unauthorised third parties. He must also report without delay to the Bank (or an office named by the Bank) any loss, theft, misuse or other unauthorised exploitation of the payment instrument as soon as he gains knowledge thereof. An entrepreneur shall be liable for any damage incurred by the Bank due to breach of these diligence obligations through whatever fault of the entrepreneur. The amount of the entrepreneur's liability shall be unlimited.

- (2) The Bank shall be entitled to block payment instruments it has issued to the Client if
- this is justified based on objective grounds in connection with the security of the payment instrument, or
  - there is suspicion of non-authorised or fraudulent use of the payment instrument, or
  - the Client has failed to meet his payment obligations in connection with a credit line linked to the payment instrument (overrun or overdraft); and
    - o either the fulfilment of these payment obligations is jeopardised due to a deterioration or threat to the financial situation of the Client or a co-debtor,
    - o or the Client has become insolvent or his insolvency is imminent.

Unless any notification of the blocking or the reasons for the blocking would violate an order of a court or an administrative authority or would run counter to Austrian or EU legal norms or objective security considerations, the credit institution shall inform the client of any such blocking or its reasons in a form of communication agreed with the client no later than, but immediately after the blocking. The same approach shall apply if the credit institution in charge of the account refuses an account information service provider or payment initiation service provider of the client to access the account.

(3) The provisions set out in this paragraph shall also apply to instruments which, according to agreement, may be used for placing orders with the Bank outside any payment services.

## 5. Raising objections

**Section 16.** (1) The Client must verify declarations of the Bank that are not related to payment services (e.g. confirmations of orders placed on financial instruments and reports of their execution and closing statements; excerpts, financial statements and other accounting records in loan and foreign currency transactions; statements/lists of deposits) for completeness and correctness and raise any objections thereto immediately, but no later than within two months. Should the Bank not receive any written objections to the periodical closing of the account that does not concern a payment account within two months, this closing shall be deemed approved. Even if the named deadline has expired, the Client may demand a correction of the closing of the account; however, in such case, he has to prove that his account was wrongfully debited or that a credit note he was entitled to has not been granted. The Bank shall inform the Client about the consequences of the failure to raise timely objection at the beginning of each term.

(2) In the event that a Client's current account is debited due to an unauthorised or faulty execution of payment, the Client may obtain a correction from the Bank if he informs the Bank of such an unauthorised or faulty payment execution without delay and by no later than 13 months after the day of the debit.. The time limitations shall not apply if the Bank has not notified the Client or made accessible to him the information on the payment transaction concerned as set out in Section 40 (9) of these GTC. This provision shall not preclude the Client's other claims for correction.

## 6. Notification upon non-conveyance of information

**Section 17.** The Client must notify the Bank without delay if he has not received regular information from the Bank (e.g. financial statements and lists of deposits) or other Bank information or dispatches, which the Client must definitely expect to receive, within the time usually estimated for such negotiated conveyance. This shall not apply to notifications and dispatches in connection with payment services.

## 7. Translations

**Section 18.** The Bank must be provided upon request with documents of any kind in a foreign language, translated into German and certified by a court-approved translator.

## F. Place of fulfilment / Choice of law / Jurisdiction

### 1. Place of fulfilment

**Section 19** The place of fulfilment for both parties in transactions with entrepreneurs shall be the business premises of the Bank branch office in which the transaction has been concluded.

### 2. Choice of law

**Section 20.** Austrian law shall apply to the business relationship between the Client and the Bank.

### 3. Jurisdiction

**Section 21.** (1) An entrepreneur may file actions against the Bank only with the court having jurisdiction *ratione materiae* at the place of the Bank's head office. Such jurisdiction shall also apply to actions brought by the Bank against an entrepreneur, whereby the Bank shall be entitled to assert its rights at every other court having jurisdiction *ratione loci* and *ratione materiae*.

(2) The general jurisdiction in Austria applicable upon conclusion of a contract with the Bank to claims brought by or against a consumer shall continue to apply, even if the consumer transfers his residence to another country after concluding a contract and Austrian court decisions are enforceable in that country.

### G. Termination of the business relationship

#### 1. Ordinary termination in business dealings with entrepreneurs

**Section 22.** Unless an agreement for an indefinite time has been reached, the Bank and the Client may terminate the business relationship in whole or in part (including loan agreements and framework agreements for payment services, particularly current account contracts) at any time by giving notice reasonably in advance. Charges paid in advance will not be refunded.

#### 2. Ordinary termination in business dealings with a consumer

**Section 22a.** (1) The Client may terminate a framework agreement (in particular a current account contract) at any time and at no charge as at the last day of the current month; terminations announced on the last business day of a month shall take effect as at the first business day of the following month. The right to gratuitous and summary termination of a framework agreement for payment services (current account contracts especially) due to an amendment to the GTC proposed by the Bank or to a framework agreement for payment services (a current account contract in particular - Section 2) shall remain unaffected thereby.

(2) The Client may terminate loan agreements carrying an indefinite term at any time and without charge by giving one month's prior notice. Notice of termination must be given in hardcopy form or using any other negotiated permanent data medium.

(3) All other contracts with the Bank concluded for an indefinite period of time may be terminated by the Client at any time by giving notice reasonably in advance.

(4) The Bank may terminate framework agreements for payment services concluded for an indefinite period of time (current account contracts in particular) and loan agreements by giving two months' prior notice.

(5) The Bank may terminate at any time all other contracts concluded for an indefinite period of time by giving notice reasonably in advance.

### 3. Termination for cause

**Section 23.** (1) The Bank and the Client may terminate the entire business relationship or parts thereof at any time for cause and with immediate effect.

(2) Cause which entitles the Bank to give notice of termination includes in particular

- deterioration of or endangerment of the Client's financial standing or that of jointly obligated parties, thus jeopardizing the repayment of liabilities to the Bank;
- the Client providing incorrect data on his asset situation or other important circumstances, or
- the Client has not fulfilled or cannot fulfil his obligation to provide or increase collateral.

### 4. Legal consequences

**Section 24.** (1) Payable amounts shall be due immediately if the entire business relationship or parts thereof are cancelled. In addition, the Client shall be obligated to release the Bank from all the obligations it has assumed on his behalf.

(2) Furthermore, the Bank shall be entitled to terminate all obligations assumed for the Client, to settle them with effect for the Client and to immediately re-debit credit balances granted on a pro-forma basis. The Bank may assert claims arising out of securities (bills of exchange and cheques in particular) up to the amount to cover any debit balances.

(3) In the event of termination of the business relationship in whole or in part, the Bank shall refund the Client (being a consumer) pro rata the fees for payment services paid in advance for a specific time period.

(4) These GTC shall continue to apply after termination of the business relationship until it is fully wound up.

## H. Right to refuse payment

**Section 25.** (1) The Bank may refuse to pay out a loan amount for factually justified reasons.

(2) Factually justified reasons in the sense of Paragraph (1) shall include cases in which, after concluding a contract

- circumstances arise which prove that the Client's asset situation has deteriorated or that stipulated collateral has devalued to such an extent that repayment of the loan or the remittance of interest itself is at risk, should such collateral be liquidated, or
- the Bank has reasonable suspicion to believe that the borrower is using the loan amount in breach of contract or the law.

(3) The Bank must inform any consumer without delay of this its intention, either on paper or other permanent data medium, stating the reasons therefor. No reasons need be stated if public security or order would otherwise be jeopardised.

## II. Bank information

**Section 26.** Unless there is an obligation to the contrary, general Banking business information on the commercial situation of an enterprise shall be given non-bindingly and, with respect to entrepreneurs, in writing only.

**Section 27.** deleted

## III. Opening and maintaining accounts and securities accounts

### A. Scope of applicability

**Section 28.** Unless stipulated otherwise, the regulations given below for accounts shall also apply to securities accounts.

### B. Opening accounts

**Section 29.** Future account holders must prove their identity when opening an account. Accounts are maintained in the account holder's name or official company name under a specific number.

### C. Specimen signatures

**Section 30.** Persons who are entitled to dispose of or sign for an account/securities account must submit their signatures to the Bank. Based on the submitted signatures, the Bank will then allow written dispositions to be made within the framework of the account relationship with the Client.

### D. Power of disposition and signing authority

#### 1. Power of disposition

**Section 31.** No person other than the account holder shall be entitled to make dispositions in respect of his account. Only those persons shall be authorised to represent him who are entitled to do so under the law or who have been assigned express and written power of disposition regarding the account; such persons must submit proof of their identity and disposition authority. In the case of durable representation mandates, the effectiveness of which has been registered in the Austrian Central Representation Directory [*Österreichisches Zentrales Vertretungsverzeichnis*], only a power of attorney is necessary which generally comprises a power of disposition regarding the appointer's accounts.

#### 2. Signing authority

**Section 32.** (1) An account holder may assign express and written signing authority to other persons. The party entitled to sign must prove his/her identity to the Bank. The party entitled to sign shall be exclusively authorised to make and revoke dispositions regarding amounts receivable on the account.

(2) The signing authorisation regarding a deposit also includes the authority to purchase and sell securities within the framework of the available coverage. The authorised signatory shall only be provided with investment consulting by the Bank if the authorised signatory has the sole power of representation with regard to all other securities accounts (including clearing accounts) of the deposit holder and exclusively on the basis of the recognised investment targets, financial relations and risk tolerance of the deposit holder. With joint deposits, the highest partial classification of all deposit holders is taken into account regarding the financial circumstances; for the investment targets and the risk tolerance, the lowest partial classification is taken into account. In the assessment of the experience and knowledge, only the authorised signatory is taken into account.

If a security is not purchased and/or sold on the basis of investment consulting by the Bank, the Bank shall only check whether the authorised signatory has experience and knowledge about the selected product (suitability check). If the authorised signatory does not have the relevant experience and knowledge (and/or if he/she does not provide the relevant information), the authorised signatory shall only be warned by the Bank in standardised form about the lack of suitability (and/or lack of verifiability by the Bank); however, the order may still be issued by the authorised signatory.

## E. Special types of accounts

### 1. Sub-account

**Section 33.** Sub-accounts may be maintained to an account. Even if they are given a sub-designation, the account holder shall be exclusively entitled and obligated toward the Bank.

### 2. Escrow account

**Section 34** In the case of escrow accounts, the escrow agent and the account holder shall exclusively be entitled and obligated toward the Bank.

### 3. Joint account

**Section 35.** (1) An account may also be opened for several holders (joint account). Dispositions on such an account (especially closure thereof and delegation of signing authority) may only be made by all holders jointly. In individual cases, every account holder may have himself represented by a party specifically empowered to do so.

(2) All account holders shall be jointly and severally liable for obligations connected with the account.

(3) Save where agreed otherwise, every joint account holder shall be solely entitled to make dispositions regarding amounts receivable on the account. This authorisation also includes the authority to purchase and sell securities within the framework of the available coverage. However, the authorisation of the joint account holder shall be ended by the express objection of another joint account holder; in this case, only all joint account holders shall be authorised jointly. The joint account holder may be provided with investment consulting by the Bank only on the basis of the recognised investment targets, financial relations and risk tolerance. For the investment targets and the risk tolerance, the lowest partial classification of all joint deposit holders is taken into account; for the financial relations, the highest partial classification of all joint deposit holders is taken into account. In the assessment of the experience and knowledge, only the disposing joint deposit holder shall be taken into account.

If the purchase/sale is not made based on investment consulting by the Bank, the Bank shall only check whether the joint deposit holder disposing in the specific case has experience and knowledge about the selected product (suitability check). If the currently disposing deposit holder does not have the relevant experience and knowledge (and/or if he/she does not provide the relevant information), the currently disposing joint deposit holder shall only be warned in standardised form by the Bank about the lack of suitability (and/or lack of verifiability of the suitability by the Bank); the order may still be issued by the joint deposit holder.

(4) Every joint account holder shall be entitled to revoke signing authority.

**Section 36.** deleted

### 4. Foreign currency account

**Section 37.** The Bank's obligation to execute a disposal order to the debit of a foreign currency credit balance or to satisfy a foreign currency liability is suspended to the extent and for so long as the Bank cannot make any disposals or can only make disposals to a limited extent in the currency in which the deposit or liability is denominated as the result of political measures or events in the country of that currency.

To the extent that and for as long as such measures and events persist, neither shall the Bank be obliged to effect performance at another place outside the country of the respective currency in another currency (including the Euro) or by way of procurement of cash.

However, the Bank's obligation to execute a disposal to the debit of a foreign currency credit balance is not suspended if it can be fully executed by the Bank in-house.

The right of the Client and the Bank to offset mutual receivables in the same currency shall remain unaffected by above regulations.

## F. Balancing of accounts and lists of securities

**Section 38.** (1) In the absence of other arrangement, the Bank shall balance accounts quarterly. The interest and fees accrued during the quarter shall be part of the closing balance which will also bear further interest (compound interest). Lists of securities shall be distributed once annually.

(2) The Bank shall keep available for the Client the account statement, together with the balancing statement/lists of securities at the office handling the account/securities deposit.

## IV. Current account transactions

### A. Transfer orders

**Section 39.** (1) For bank transfer orders in favour of a recipient, whose account is kept with a payment service provider in Austria or other countries of the European Economic Area (EEA), the client must designate the recipient with the latter's International Bank Account Number (IBAN).

(2) For bank transfer orders in favour of a recipient, whose account is kept with a payment service provider outside the EEA, the client must designate the recipient

- by the account number of the recipient and either his payment service provider's name, routing code or BIC or
- by the recipient's IBAN and the BIC of the recipient's payment service provider.

(3) The IBAN and BIC and/or the account number and name/routing code/BIC of the recipient's payment service provider, which the Client must give pursuant to Paragraphs (1) and (2) shall constitute the recipient's client identifier, using which a transfer order is executed. All other additional information concerning the recipient (such as the recipient's name in particular, which is to be given when placing an order for documentation reasons) is not part of this client identifier and shall be ignored when performing a transfer.

(4) The designated use given on a transfer order shall in no case be of any significance to the Bank.

(5) The Bank's acceptance of a transfer order alone shall create no third-party rights vis-à-vis the Bank whatsoever.

(6) The Bank shall only be obligated to fulfil a transfer order if the Client's stated account contains sufficient funds to cover it (credit balance, allowed credit line/overdraft facility).

(7) Bank transfer orders received by the credit institution or by the payment initiation service provider engaged by the client (cl. 39a) may not be revoked unilaterally by the client. If any later implementation date has been agreed for a bank transfer order, irrevocability shall come into effect only upon expiry of the business day preceding the implementation date.

(8) If the Bank declines to implement a transfer order, it shall inform the Client thereof in the form negotiated with the Client as swiftly as possible, but at all events within the times indicated in Figures 39a (3) and (4). Furthermore, the Bank shall notify the Client as to how the transfer order can be adjusted so that it can be executed in future. In the case of transfer orders which the Bank declines for good reason, the execution deadlines negotiated in Section 39a of these GTC shall not apply.



(9) If the client is a consumer and unless this has already been shown in the bank statement on the occasion of the relevant transaction, information on executed bank transfer orders (reference, amount, currency, charges, interest, exchange rate, debit value date) and other payments debiting the client's account, especially as part of the SEPA direct debit procedure, shall be made accessible by the credit institution to the client once a month upon request in the manner agreed with the client in the account agreement in such a way that the client can keep and reproduce it unchanged.

## B. Execution deadlines

**Section 39a.** (1) Payment orders which the Bank receives after the time scheduled for the type of payment concerned (receipt times) or on a day which is not a business day will be handled as if they had been received on the following business day. The Bank shall inform the Client (who is a consumer) in due time prior to and upon concluding the current account contract (and, thereafter, whenever there is a change of receipt times) of the established receipt times in hardcopy form or – if such has been negotiated with the Client – in another permanent data medium. "Business day" means every day on which the Bank is open and maintaining business operations necessary for executing payment procedures.

(2) If a Client is placing a payment order and has arranged with the Bank that the execution of a payment order should begin on a specific day, at the end of a specific time period, or on the day on which the Client provides the Bank with the monetary amount, the date arranged shall be deemed to be the time of receipt. Should such an arranged date not fall on a business day, the payment order shall be handled as if it had been received on the subsequent business day.

(3) The Bank shall ensure that, following the time of receipt, the amount comprised by the relevant payment order is received by the payment recipient's payment service provider by no later than the end of the following business day (or, for payment procedures instigated in paper form, by the end of the second business day thereafter). This paragraph shall only apply to payment procedures in euros within the European Economic Area (EEA).

(4) For payment procedures within the European Economic Area which are not denominated in euros but in another currency of an EEA member state, the execution period addressed in Par. 3 shall amount to 4 business days.

## C. Credit entries and right to cancel

**Section 40.** (1) For current account contracts in good standing, the Bank shall be obligated and irrevocably authorised to receive monetary sums on the Client's behalf and to credit them to his account. If and as far as there are receivables of the Bank from the Client based on the account, the Bank shall also be entitled to receive monetary sums on the Client's behalf and set its receivables off against the Client's claim for disbursement of the accepted amount. Any order to make a monetary sum available to the Client shall be executed by the Bank (by crediting such amount to the Client's account) unless the order contains other instructions. If the Client's account as given in the order is not in the currency of the order, the credit transfer shall be made after converting the account at the rate applicable on the day the amount named in the order is available to the Bank and on which the Bank can turn it to account.

(2) If the client is a consumer and unless this has already been shown in the bank statement on the occasion of the relevant transaction, information on bank transfers credited to the client's account (reference, amount, currency, charges, interest, exchange rate, credit value date) shall be made accessible by the credit institution to the client once a month upon request in the manner agreed with the client in the account agreement in such a way that the client can keep and reproduce it unchanged.

(3) The Bank shall be entitled to deduct its own transfer fees from the credited amount. The Bank shall evidence the transfer sum and deducted fees separately.

(4) The Bank may reverse credit transfers at any time which it has made due to an error. In other cases, the Bank shall only reverse credit transfers if the invalidity of the transfer order has been unmistakably demonstrated to the Bank. The right of reversal shall not be invalidated by an interim closing of accounts. If the right of reversal exists, the Bank may refuse to make the credited amounts available.

## D. Credit transfers subject to collection

**Section 41.** (1) Should the Bank credit amounts which it is to collect by order of the Client (particularly within the scope of cashing in cheques, letters of exchange and other securities or debits, etc.) or which are to be transferred into the Client's account, before the Bank has received the collectible or transferrable amount, the Bank shall only do so provided it actually receives the credited amount. This shall also apply if the amount to be collected is payable at the Bank.

(2) Subject to this proviso, the Bank shall be entitled to reverse the credit transfer by a simple chargeback, if the direct debit or transfer transaction has failed or if it is foreseeable (due to the financial standing of the party obligated to pay, or as a result of an intervention by official authorities or for any other reasons) that the Bank will not acquire unrestricted dispositional control of the amount to be collected or transferred.

(3) This proviso may also be invoked if the credited amount is collected abroad or has been transferred from abroad and, according to foreign law or, due to an agreement reached with foreign Banks, third parties re-debit the Bank.

(4) As long as this proviso is applicable, the Bank shall also be entitled to refuse the Client disposition of the credited amounts. Closing of accounts shall not invalidate this proviso.

## E. Debit entries

**Section 42.** (1) With payment orders, debit entries shall only be considered notifications of order execution on condition that the relevant debit entry has not been reversed within two business days (cf. Section 39a (1) of these GTC).

(2) Cheques and other payment instructions as well as SEPA business-to-business direct debits shall be honoured if the debit entry on the Client's account has not been reversed within two business days, save insofar as the Bank has already effected cash payment to the presenter or notified him of the encashment. SEPA direct debits (Section 42a (3)) shall be honoured upon the expiry of five business days.

## F. SEPA direct debit and SEPA business-to-business direct debit orders

**Section 42a.** (1) The Client shall agree to debit his account with amounts which he has authorised third parties to withdraw from his account with the Bank. The Client may revoke his consent thereto at any time in writing. Such revocation shall take effect on the business day following its receipt by the Bank. Likewise, the consent to collections by an authorised third party may be limited to a specific amount or a specific periodicity or both towards the Bank.

(2) The Bank carries out collections and SEPA direct debits with which the Client's account shall be debited on the basis of the International Bank Account Number (IBAN) submitted by the collecting Bank. The IBAN details shall constitute the client identifier by means of which the collection and/or the SEPA direct debit is executed. If the collecting Bank provides any further information on the Client, such as especially the name of the account to be collected from, it thus serves documentation purposes only and is disregarded when performing the collection and/or the SEPA direct debit.

(3) If, at the time of debiting the account, the Bank had no debit order from the Client ("SEPA direct debit order"), the Bank must automatically comply with the Client's request to reverse the account debit within 8 weeks of receiving the request from the Client (reckoned from the time of debiting the account, whether the Client is a consumer or an entrepreneur). If the order of a Client who is an entrepreneur for payment of amounts collected from a third party stated in the order to the debit of the Client's account ("SEPA business-to-business direct debit"), was available to the Bank at the time of debiting the account, the Client shall not be entitled to demand reversal of the debit.

(4) Justified Client demands for reversal of a debit entry shall be met within 10 business days.

## V. Changes to Fees and Services

### A. Changes in fees and services regarding business dealings with entrepreneurs

**Section 43.** (1) In business dealings with entrepreneurs, the Bank shall be entitled at its own reasonable discretion to change its fees for permanent services to be rendered by the Bank or the Client (including credit and debit interest on current accounts or others, account management fees, etc.), observing all circumstances coming into consideration (particularly changes of the framework conditions imposed by the law or any supervisory authorities, changes on the money or capital markets, changes in refinancing costs, staff and material costs, the consumer price index, etc.). The same shall apply to changes in other Bank services due to alterations of statutory requirements, security of banking operation, technical development or significantly lower cost coverage of a specific service caused by a marked decrease in its utilisation ratio.

(2) Changes to the Bank's services or customer charges extending beyond those set out in Par. 1, as well as the introduction of services for which a fee is payable and/or any new charges for services already negotiated shall be proposed to the Client at least two months prior to the suggested time of their entry into force. Client agreement to these changes shall be deemed given if the Bank does not receive written objection from the Client before the suggested effective date. The Bank may send the amendment quotation to the Electronic Banking Mailbox agreed with the Client or keep it available on demand in a manner agreed with the Client.

### B. Changes to the fees negotiated with consumers for payment services (excepting debit interest)

**Section 44.** (1) The Bank shall propose to the Client any change of fees relating to permanent services as negotiated in the framework agreement for payment services (particularly with respect to the current account contract) by no later than two months prior to the suggested time of their entry into force, i.e. without exception the first day of April of each year. Client agreement to these changes shall be deemed given if the Bank has not received written objection from the Client by the time of their suggested entry into force. The Bank shall inform the Client thereof in the amendment quotation. The Client shall be entitled to summary cancellation of the framework agreement at no charge until the changes enter into force. The Bank shall likewise inform the Client thereof in the amendment quotation. The amendment quotation shall be sent to the Client by the Bank as agreed in section 2 (1). (2) The Bank may agree with the Client that, in the manner agreed in Paragraph 1, the level of its fees may be coupled to the development of the 2000 national Consumer Price Index as announced by Statistics Austria. The corresponding fee adjustment shall be performed by comparing the index values for November of the previous year with those for November of the year before that. The charge resulting from such index-linking shall be rounded to full eurocents in accordance with standard commercial practice.

If the Client has not received a proposal to a fee adjustment linked to the development of the Consumer Price Index in one year, the alignment may also be proposed to him at a later time, effective for the future.

(3) Any fee adjustment deviating from the development of the Consumer Price Index may only be agreed between the Bank and the Client in the manner contemplated in Par. 1 if the following requirements have been met:

- the development of costs incurred by the Bank in connection with a permanent service during the time determinant for the fee adjustment according to Par. 2 deviates from the development of the Consumer Price Index (under observance of all objectively justified circumstances coming into consideration, particularly any changes to the framework conditions imposed by the law or any supervisory authorities, as well as any changes in staff and material costs) and the proposed fee adjustment corresponds to such deviating cost development.
- a fee increase shall correspond at most to triple the fee increase which would have resulted from the development of the Consumer Price Index.
- it shall be pointed out in the amendment quotation that the fee change proposed is higher than that resulting from a Consumer Price Index development.

### C. Changes to the fees negotiated with consumers for other than payment services (excepting debit interest)

**Section 45.** (1) The fees negotiated with consumers for the permanent services provided by the Bank other than payment services (e.g. safe rental, account management fees for accounts not used for payment services) shall be adjusted (increased or decreased) annually, effective 1 April, to the development of the 2000 Consumer Price Index published by Statistics Austria, the amounts rounded to full eurocents in accordance with standard commercial practice. The corresponding fee adjustment shall be performed by comparing the index values for November of the previous year with those for November of the year before that. Should an increase of the Index

not entail an increase in the fees for whatever reason, the right to increase them, effective for the future, shall not be waived thereby. Fees shall be adjusted after the expiration of two months at the earliest, reckoned from the time of contract conclusion.

(2) Any change deviating from the development of the consumer price index in the charges for the ongoing services provided by the credit institution outside the payment services shall be offered to the client by the credit institution no later than two months prior to the proposed date of its entry into effect, which shall be 1 April of each year in any case. The client's consent to such changes shall be deemed given unless the credit institution receives any objection by the client prior to the suggested date of entry into effect. The credit institution shall make the client aware thereof in the offer of changed conditions in which the extent of the change must be illustrated. The credit institution may serve the offer of changed conditions in the electronic banking mailbox agreed with the client or hold it ready for call-off in a manner agreed with the client.

Any fee adjustment deviating from the development of the Consumer Price Index may only be agreed between the Bank and the Client in the manner contemplated in Par. 2 if the following requirements have been met:

- the development of costs incurred by the Bank in connection with a permanent service during the time determinant for the fee adjustment according to Par. 1 deviates from the development of the Consumer Price Index (under observance of all objectively justified circumstances coming into consideration, particularly any changes to the framework conditions imposed by the law or any supervisory authority, as well as any changes in staff and material costs) and the proposed fee adjustment corresponds to such deviating cost development.
- a fee increase shall correspond at most to triple the fee increase which would have resulted from the development of the Consumer Price Index.
- it shall be pointed out in the amendment quotation that the fee change proposed is higher than that resulting from a Consumer Price Index development.

#### **D. Change of debit interest rates negotiated with consumers**

**Section 46.** (1) If an adjustment clause binds a borrowing rate to a reference interest rate (such as the EURIBOR), changes shall become effective immediately without prior notification to the Client. The consumer shall be informed about the effective changes to the interest rate in the following calendar quarter at the latest. Interest rate adjustments shall be made vis-à-vis consumers not earlier than after the expiry of two months from the time the contract is concluded.

(2) If no adjustment clause has been agreed or if the Bank intends to change the borrowing rate beyond the agreed adjustment, the Bank offers this change to the interest rate to the Client two months prior to its suggested effective date at the latest. Client agreement to this change shall be deemed given if the Bank does not receive written objection from the Client before that suggested time. This shall be pointed out by the Bank to the Client in the amendment quotation, which shall include the extent of the amendment.

The Bank may send the amendment quotation to the Electronic Banking Mailbox agreed with the Client or keep it available for demand in a manner agreed with the Client. However, if the amendment quotation concerns an account via which payment services are settled, it shall be served to the Client in all cases as agreed in section 2 (1), and the Client shall have the right to terminate without notice the related framework agreement at no charge until the time the change enters into force.

The Bank shall also point out this right of termination in the amendment quotation.

(3) However, the Bank may only agree with the Client on an interest rate adjustment in the manner provided in paragraph 2 if the following requirements are met:

- The offered interest rate adjustment corresponds to the development of the Bank's costs in connection with relevant credit since the conclusion of the agreement the current interest rate is based on. All objectively justified circumstances (change of the statutory and regulatory framework conditions, changes in the money or capital market, changes of the refinancing costs, changes of the personnel and material expenses) shall be taken into account.
- An interest rate increase according to paragraph 2 must not exceed 0.5% points.
- It is pointed out in the amendment quotation that the offered interest rate change is higher than the one that would result from the agreed adjustment clause. If no adjustment clause has been agreed, it shall be pointed out that the agreement the interest rate is based on does not provide for any unilateral interest rate adjustment.
- Any change of the interest rate in line with paragraph 2 shall be possible no earlier than two years after the conclusion of the agreement the current interest rate is based on.

## E Change of permanent services negotiated with consumers (except credit interest)

**Section 47.** (1) The Bank shall propose changes to the permanent services it provides to the Client by no later than two months prior to the suggested time of their entry into force. Client agreement to these changes shall be deemed given if the Bank does not receive written objection from the Client before that suggested time. The Bank shall inform the Client thereof in the amendment quotation.

The Bank may send the amendment quotation to the Electronic Banking Mailbox agreed with the Client or keep it available for demand in a manner agreed with the Client. However, if the amendment quotation concerns payment services, it must be served to the Client as agreed in section 2 (1), and the Client shall have the right to terminate the related framework agreement without notice at no charge until the time the change enters into force. The Bank shall also point out this right of termination in the amendment quotation.

(2) However, the Bank may only negotiate a service change with the Client in the manner described in paragraph 1 if it is objectively justified in consideration of all circumstances (changes concerning predominant Client needs, requirements imposed by law or any supervisory authority, security of the banking operation, technical development or significantly lower cost coverage of a specific service caused by a marked decrease in its utilisation ratio). Such factual justification only applies if an extension of the Bank's services or a limitation of the Bank's services that is reasonable for the Client result from the offered service change, and no unreasonable changes of essential rights and obligations result in favour of the Bank.

## F. Change of credit interest rates negotiated with consumers

**Section 47a.** (1) If an adjustment clause binds a credit interest rate to a reference interest rate (such as the EURIBOR), changes shall become effective immediately without prior notification to the Client. The consumer shall be informed about the effective changes to the interest rate in the following calendar quarter at the latest.

(2) If no adjustment clause has been agreed or if the Bank intends to change the credit interest rate beyond the agreed adjustment, the Bank offers this change to the interest rate to the Client two months prior to its suggested effective date at the latest. Client agreement to this change shall be deemed given if the Bank does not receive written objection from the Client before that suggested time. This shall be pointed out by the Bank to the Client in the amendment quotation, which shall include the extent of the amendment.

The Bank may send the amendment quotation to the Electronic Banking Mailbox agreed with the Client or keep it available for demand in a manner agreed with the Client. However, if the amendment quotation concerns an account via which payment services are settled, it shall be served to the Client in all cases as agreed in section 2 (1), and the Client shall have the right to terminate without notice the related framework agreement at no charge until the time the change enters into force. The Bank shall also point out this right of termination in the amendment quotation.

(3) However, the Bank may only agree with the Client on an interest rate adjustment in the manner provided in paragraph 2 if the following requirements are met:

- The offered interest rate adjustment corresponds to the development of the Bank's costs in connection with relevant credit since the conclusion of the agreement the current interest rate is based on. All objectively justified circumstances (change of the statutory and regulatory framework conditions, changes in the money or capital market, changes of the personnel and material expenses) shall be taken into account.
- An interest rate decrease according to paragraph 2 must not exceed 0.5% points.
- It is pointed out in the amendment quotation that the offered interest rate change is higher than the one that would result from the agreed adjustment clause. If no adjustment clause has been agreed, it shall be pointed out that the agreement the interest rate is based on does not provide for any unilateral interest rate adjustment.
- Any change of the interest rate in line with paragraph 2 shall be possible no earlier than two years after the conclusion of the agreement the current interest rate is based on.

## VI. Collateral

### A. Increase of collateral

**Section 48.** (1) Should circumstances subsequently arise or become known in business dealings with entrepreneurs which justify higher risk assessment of claims against a Client, the Bank shall be entitled to demand that collaterals be provided or increased within a reasonable period of time. This shall particularly apply if the Client's financial standing has markedly deteriorated or is imminently jeopardised, or if the available collaterals have deteriorated in terms of value or may be imminently jeopardised.

(2) This shall also apply if provision of collateral is not demanded upon the occurrence of such claims.

### B. Banker's lien

#### 1. Scope and creation of lien

**Section 49.** (1) The Client grants a lien to the Bank on chattel and rights of any kind that come into the possession of the Bank with the Client's will in connection with some banking transaction made with the Bank.

(2) This right shall apply in particular to any and all Client claims pledgeable by the Bank (e.g. in connection with credit balances). If securities are subject to a banker's lien, the lien of the Bank shall also extend to cover the interest and dividend coupons pertaining to such securities.

**Section 50.** (1) A banker's lien shall secure the Bank's claims against the Client within the scope of the business relationship, including joint accounts, even if the claims are conditional, time-limited or not yet due. If the Client is an entrepreneur, a banker's lien shall also secure the Bank's statutory entitlements and claims against third parties for which the Client is personally liable.

(2) A lien is created upon the Bank coming into possession of a pledged item, provided that a claim already exists on part of the Bank pursuant to Par. 1; otherwise, a lien shall be created upon any later occurrence of such claim.

**Section 50a** The following Sections 51 to 56 govern the methods the Bank may use when liquidating collaterals. This requires (except for the case of maturity of a receivable provided as collateral prior to the maturity of the collateralised receivable governed in Section 56) in all cases that the collateralised receivable is due and the authorisation to liquidate applies according to the applicable contractual and statutory provisions. This requires that the Client was threatened with the liquidation of the collateral by notifying the amount of the collateralised receivable and that at least one month has passed since this threat. If the Client is an entrepreneur, this period shall be one week. The warning may be waived if it, for example due to unknown residence of the Client, is inappropriate. In this case, said period shall start as from the due date of the non-collateralised receivable. Liquidation prior to the expiry of the deadline is permitted if a substantial and lasting loss in value may be expected with a longer wait.

#### 2. Items not subject to a banker's lien

**Section 51.** (1) A lien shall not include items and rights which, prior to the creation of any such lien, have been applied by the Client to implement specific orders (e.g. amounts for redeeming a specific cheque or letter of exchange) or to carry out a specific transfer. However, this shall only obtain as long as such application instruction is in good standing.

(2) Notwithstanding any existing lien, the Bank shall implement Client dispositions in favour of third parties on current account credit balances, as long as the Client has not received a notice on the assertion of any such lien from the Bank. Any pledging of a credit balance shall not be deemed to be a disposition by the Client.

(3) Furthermore, a lien shall not extend to assets which the Client has disclosed in writing as trust property prior to the creation of such lien or which, without the Client's intention, have passed into the Bank's possession.

### C. Release of collateral

**Section 52.** On the requisition of the Client, the Bank shall release collateral security to the extent that it has no legitimate security interest therein.

## D. Liquidation of collateral

### 1. Sale

**Section 53.** Collateral having a market or stock-exchange price shall be turned to account by the Bank by selling it on the open market at such price.

**Section 54.** The Bank shall have an authorised independent expert assess any collateral having no market or stock-exchange price. The Bank shall notify the Client of the result of the assessment and at the same time ask the Client to nominate a party interested in purchasing the same within a reasonable period of time of no less than two weeks who will pay at least the assessed value as purchase price to the Bank within such period. If the Client 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 Client for not less than the assessed value. The proceeds from the sale shall be used for redemption of the secured claims, with the Client being entitled to the surplus, if any.

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

**Section 55.** The Bank shall also be entitled to realise the collateral by enforcement or – to the extent it has no market price or stock exchange price – to sell it out-of-court in a public auction by an authorised entrepreneur. Time and place and a general description of the collateral shall be disclosed to the public. The collateral provider and third parties who are entitled to rights in the collateral shall be informed.

### 3. Collection

**Section 56.** (1) The Bank shall be entitled to terminate and collect any claims provided to it as collateral (including those in the form of certificated securities) at the time the secured claim becomes due. Prior thereto, the Bank shall be entitled to collect the claim serving as collateral when it becomes due. In case of an imminent significant and lasting loss in value of the claim serving as collateral, the Bank shall be entitled to terminate the same already prior to the same becoming due. To the extent possible the Client 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 Par. 1 shall not apply to wage and salary claims of consumers which have been provided as security for claims not yet due.

**Section 57.** cancelled

## E. Right of retention

**Section 58.** The Bank shall be entitled to retain services to be rendered by it to the Client due to claims arising out of the business relationship even if they are not based on the same legal relationship. Sections 50 and 51 shall apply *mutatis mutandis*.

## VII. Offsetting and crediting

### A. Offsetting

#### 1. by the Bank

**Section 59.** (1) The Bank shall be entitled to offset all of the Client's claims to the extent they are pledgeable against all liabilities of the Client vis-à-vis the bank.

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

#### 2. by the Client

**Section 60.** If the client is a consumer, the client shall be entitled to cancel own liabilities by set-off only if the credit institution is unable to pay or the client's receivable is legally connected with the client's liability or was established in court or recognised by the credit institution.

If the client is an entrepreneur, the client shall herewith also unconditionally and irrevocably refrain from cancelling own liabilities by set-off in such cases.

## B. Crediting

**Section 61** (1) In business dealings with entrepreneurs, in deviation from the provisions laid down in Art. 1416 of the Austrian Civil Code, the Bank may initially credit payments towards Client claims to the extent that no collateral has been provided therefore or if the value of the collateral provided does not cover the claim, whereby the due date of a claim shall be of no significance. This shall also apply within the framework of a current account relationship.

(2) In dealings with consumers, the Bank may initially credit payments dedicated for the redemption of a specific claim towards the non-collateralised elements of this claim, even if this is in deviation from the Client's dedication.

## SPECIAL TYPES OF TRANSACTIONS

### I. Trade in securities and other asset values

#### A. Scope of applicability

**Section 62** The terms and conditions set out in Sections 63 through 67 shall apply to securities and other asset values, even if they are not certificated.

#### B. Execution policy

**Section 63.** (1) As a rule, the Bank shall execute orders from its Client for purchasing and selling securities as a commission agent.

(2) If, however, the Bank negotiates a fixed price with the Client, the Bank shall conclude a purchase agreement.

(3) The Client hereby agrees to the Bank's execution policy, on the basis of which (in the absence of other instruction) the Bank shall execute the Client's order. The Bank shall inform the Client of important changes to its execution policy.

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

#### C. Market practice at the place of order execution

**Section 64.** The statutory provisions and market practice applicable at the place of execution shall apply to the execution of an order.

#### D. Date of order execution

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

#### E. Lack of coverage

**Section 66.** (1) The Bank may refrain from executing securities transactions in whole or in part if no sufficient coverage is available.

(2) However, the Bank shall be entitled to execute such securities transactions to the extent that it does not perceive that the Client only wishes the order to be executed if sufficient coverage is available.

(3) Should the Client fail to provide coverage despite request, the Bank shall be entitled to enter into a closing transaction for account of the Client at the best possible price.



## F. Foreign transactions

**Section 67.** If the Client is credited a claim for the delivery of securities (securities credit), the Client's claim against the Bank shall correspond to the share which the Bank holds for the Client's account in the entire stock of securities of the same kind as maintained by the Bank abroad for its Clients in accordance with the respective statutory regulations and market practice.

## G. Transactions in stocks

**Section 68.** Regarding transactions in stocks, the physical securities of which are not being traded yet, the Bank shall neither be liable for the issuance of the stocks on part of the joint-stock corporation, nor for the option of exercising stockholder rights prior to the issuance of the stocks.

## II. Safekeeping of securities and other asset values

### A. Safekeeping of securities

**Section 69.** (1) The Bank shall be entitled to place securities deposited with it in the safekeeping deposit of the beneficiary.

(2) The Bank is hereby expressly authorised to keep securities issued in Austria abroad and securities issued abroad in Austria. Likewise, the Bank shall be empowered to register securities made out to "bearer" and issued abroad under the name of the domestic depository or that of the nominee of the foreign depository ("nominee").

(3) The Bank shall only be liable toward an entrepreneur for careful selection of a third-party depository.

### B. Redemption of securities, coupon renewal, raffles, cancellation

**Section 70** (1) The Bank shall ensure that interest coupons, profit participation certificates and dividend coupons due for payment are detached and that the counter-value therefor is collected. The Bank shall procure new interest coupons, profit participation certificates and dividend coupons without special instruction.

(2) The Bank shall monitor raffles, cancellations and other activities regarding the securities held in safekeeping to the extent that announcements thereon are published in the official gazette of the *Wiener Zeitung* daily newspaper or the *Mercur Authentischer Verlosungsanzeiger*. The Bank shall redeem raffled and cancelled securities, as well as interest coupons, profit participation certificates and dividend coupons.

(3) In the case of securities held in safekeeping with a third-party depository the same shall assume the obligations described in Paras. 1 and 2 above. In the case of securities held abroad, the Bank shall not be obligated to notify the Client about the numbers of the securities credited and in particular of securities redeemable by drawings; the Bank shall then determine those clients to whom the redeemed securities are to be allotted by raffle. If, however, numbers are notified, they shall only be of importance for raffling and redemption as long as this is the case according to 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 clients in securities, the clients whose securities are to be redeemed shall be determined by means of a drawing.

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

**Section 71.** The bank shall carry out a non-recurring examination as to whether Austrian securities are affected by public notification procedures, payment stops and the like on the basis of the Austrian documents available to it, namely on the occasion of delivery of the securities to the Bank. Likewise, the examination regarding invalidation procedures for securities lost or stolen shall also be carried out upon delivery.

## D. Notification of conversion and other measures

### Section 72.

In cases of conversion, capital increase, capital reduction, merger, exercise or realisation of subscription rights, request for payment, grouping, change, exchange/conversion offer, coupon increase or other important measures regarding securities, the Bank shall, to the extent a respective notification has been published in the official gazette „Amtsblatt zur Wiener Zeitung“ or communicated in time by the issuing house or the foreign depository, endeavour to notify the Client thereof. If the Client fails to provide instructions in time, the Bank shall act at its discretion in the Client's best interest; in particular, it shall turn to account otherwise forfeited rights at the latest possible time.

## III. Trade in foreign exchange and foreign currency

### A. Procedure

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

(2) If agreement has been reached that the Bank shall act as a commission agent for the Client, the arrangements regarding commission transactions set out in the section on trading in securities shall apply *mutatis mutandis*. In case the bank contracts in its own name no express notification pursuant to Section 405 of the Austrian Companies Code [UGB] shall be required.

### B. Forward transactions

**Section 74.** (1) For forward transactions, the Bank may require the Client to provide proof at a reasonable time prior to the due date that the payment the Client owes will be placed in the negotiated account by the deadline agreed upon. In the absence of such evidence or if it is obvious due to other circumstances that the Client will not fulfil his obligations, the Bank shall be entitled to conclude a closing transaction at the best possible price even before the due date agreed upon.

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

(3) Should the Bank perform a closing transaction pursuant to Par. 1 or 2, any resulting price difference shall be debited or credited to the Client, respectively. The Client shall bear all charges incurred.

## IV. Foreign currency loans

**Section 75.** (1) Foreign currency loans shall be effective, i.e. they shall be repayable in the currency in which the Bank has granted them. Payments in another currency shall be deemed security bonds unless the Bank notifies the Client that they will be applied to redeem the loan liabilities.

(2) The Bank shall also be entitled to convert an outstanding debit balance in a foreign currency into Austrian currency upon notification of the Client, if

- the credit risk increases in the business relation with an entrepreneur due to the price development of the foreign currency and if the Bank does not receive sufficient security within a reasonable period of time, or
- refinancing in the foreign currency is no longer possible due to statutory circumstances or such not attributable to the Bank, or
- the loan is repayable in its entirety but has not been repaid despite reminder.

## V. Collection and discount transactions, bills of exchange and cheques

### A. Scope of applicability

**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 aforementioned collection documents shall be made on the basis of a collection order; the Bank shall not be obliged to accept such collection order. A purchase (discounting) of the collection documents by the Bank shall be agreed separately.

### C. Timeliness of orders

**Section 78.** Collection orders must be received early enough so that they may be carried out in the ordinary course of business without making use of special means of express handling.

### D. Bank rights and obligations

**Section 79.** In case of discounting as defined in Section 41 (2) and (3), the Bank may debit the seller with the full nominal amount plus all expenses incurred by the Bank. The Client shall also bear the exchange risk with respect to documents denominated in foreign currencies.

**Section 80.** In the events stated above as well as in the case of redebiting of "subject to receipt" credits (Section 41), the Bank shall retain the claims under securities law for payment of the entire amount plus accessory claims against the Client and any party obligated under such document up to full coverage of the debit balance which results from such redebit.

**Section 81.** The Bank may demand from the Client that the latter assign the claim on which the document or the Client's acquisition thereof is based, as well as all present and future rights in connection with the transactions arising from the underlying transactions, including the associated collaterals. The Bank shall only be obliged to cash documents payable to it if a Client order is received in sufficient time and if sufficient coverage is available.

## VI. Registration of Security Hypothecation / Prohibition of Offsetting

**Section 82.** The Bank shall be entitled, based on the provisions of the Mortgage Bank Act ("Hypothekenbankgesetz"), to include any hypothecated receivables into the collateral assets pool with respect to claims arising from any debenture bonds issued by the Bank. If the Bank should make use of this option, it shall also file an application for the registration of such security hypothecation(s) with the Land Registry ("Anmerkung des Kautionsbandes im Grundbuch"), of which the pledgor must be duly informed. If the Client is a consumer, he/she shall only be entitled to settle his/her obligations by offsetting if the Bank is insolvent or if the Client's claim has a legal association with his/her liability or if the Client's claim has been established as final and absolute by a court or acknowledged by the Bank. If the Client is an entrepreneur, such entrepreneur shall waive unconditionally and irrevocably the settlement of the entrepreneur's liabilities by offsetting in such cases as well.