

## KA Finanz AG

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# GENERAL TERMS AND CONDITIONS OF KA FINANZ AG

(as amended in September 2015)

## GENERAL PROVISIONS

### I. BASIC RULES GOVERNING BUSINESS RELATIONS BETWEEN THE CUSTOMER AND KA FINANZ AG (hereinafter referred to as “credit institution”)

#### A. Scope of and Amendments to these General Terms and Conditions

##### 1. Scope

**Para. 1.** (1) These General Terms and Conditions (hereinafter referred to as GTC) shall apply to the overall business relation between the customer and all branch offices of the credit institution in Austria and abroad. Provisions set forth in agreements entered into with the customer or in special terms and conditions shall take priority.

(2) The terms “consumer” and “economic operator” shall hereinafter be understood as defined in the Consumer Protection Act [Konsumentenschutzgesetz].

##### 2. Amendments

**Para. 2.** (1) Amendments to these GTC or to the current account agreement shall enter into force with effect for all current and future business relations between the customer and the credit institution upon expiry of two months after service upon the customer of the notification of the amendments proposed, unless the credit institution has received a written objection from the customer by that time. The notification of the customer may take any form agreed with him/her within the scope of the business relation, including, without limitation, by way of notification on an account statement. The agreed form of service for the credit institution’s notification shall also apply to the notification of amendments to the GTC or the current account agreement. Should the customer have failed to notify his/her address to the credit institution and should no agreement have been entered into on arrangements for service, the amended GTC as displayed at the credit institution’s counters shall be relevant and applicable; the first sentence of this subsection shall apply accordingly.

(2) In its notification, the credit institution shall draw the customer’s attention to the amendment and point out to him/her that, upon expiry of two months after service of the notification, the customer’s silence will be taken as approval of the amendment. For customers who have not notified any address to the credit institution, a note to this effect shall be included in the amended GTC as displayed at the counters.

(3) In the event of such intended amendment to the GTC or the current account agreement, the customer shall have the right to terminate his/her current account agreement prior to the entry into force of the amendment at no cost and without prior notice.

## B. Statements

### 1. Customer orders

**Para. 3.** (1) Orders shall be placed in writing.

(2) The credit institution shall also have the right to execute orders placed through means of telecommunication (in particular by telephone, telegraph, telex, telefax or remote data transmission). Provided that all other requirements are met, the credit institution shall be obliged to execute such orders only if an agreement to that effect has been made between the customer and the credit institution.

(3) The credit institution shall have the right to execute orders placed with it in any form within the framework of a business relation with an economic operator for such economic operator’s account if, without fault or negligence on its part, it arrives at the conclusion that the orders originate from the economic operator, and shall not be held accountable for any invalid or ineffective orders.

### 2. Confirmation to be obtained by the credit institution

**Para. 4.** For security reasons, the credit institution shall have the right, in particular in the case of orders placed by means of telecommunication, to obtain an order confirmation prior to executing the order, via the same or different means of communication.

### 3. Statements by the credit institution

**Para. 5.** (1) Any notifications and statements made by the credit institution via means of telecommunication shall be effective subject to written confirmation, unless a written agreement to the contrary or other practices of credit institutions exist in this respect. The above shall not apply to consumers.

(2) Any statements and information the credit institution is required to disclose or make available to the customer shall be issued on paper (especially by means of statements of account) unless it was agreed with the customer to transfer or make such information available electronically.

## C. Authority to operate an account upon death of the customer

**Para. 6.** (1) As soon as it obtains knowledge of the death of a customer, the credit institution shall allow account operations to be made on the basis of a special decision by the probate court or a certificate of inheritance. This provision shall be without prejudice to operations regarding joint accounts/joint securities accounts made by an account holder with individual authority to operate such account.

(2) Signing authority shall not expire upon the death of the customer if it was granted by an economic operator for a business account. In cases of doubt, the accounts of an economic operator shall be deemed to be business accounts.

## **D. Obligations and liability of the credit institution**

### **1. Duties of information**

**Para. 7.** (1) In the absence of a separate agreement, the credit institution shall not be subject to any other duties of information in addition to those provided for by law, apart from those laid down in its General Terms and Conditions. Unless there is a statutory or contractual obligation to do so, the credit institution shall therefore neither be obliged to inform the customer about imminent stock price/exchange rate losses, about the value or the lack of value of objects entrusted to it or about any circumstances that might affect or jeopardise the value of such objects nor to provide the customer with any other advice or information.

(2) In relation to business enterprises, the duties of information provided for in sections 26(1) to (4), 31 and 32 of the Payment Services Act ["*Zahlungsdiensteengesetz*"] shall not apply.

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

**Para. 8.**(1) The credit institution shall execute an order which, by its nature, requires the assistance of a third party, by calling in such third party in its own name. If the credit institution selects the third party, it shall be liable for careful selection.

(2) Upon the customer's demand, the credit institution shall be obliged to assign any claims it may hold against the third party to the customer.

(3) Beyond that, as regards payment services within the European Economic Area ("EEA") denominated in euro or another currency of an EEA Member State, the credit institution shall be liable to consumers (but not to economic operators) for the correct execution of the payment transfer until receipt of payment by the payment service provider of the beneficiary (para. 39a of these GTC).

**Para 9.** Omitted.

## **E. Customer's duties to cooperate and customer liability**

### **1. Introduction**

**Para. 10.** In his/her dealings with the credit institution, the customer shall, in particular, meet his/her duties to cooperate as set out below; any violation thereof shall result in liability for damages on the part of the customer or in a reduction of the customer's claims for damages against the credit institution.

### **2. Notification of material changes**

#### **a) Name or address**

**Para. 11.** (1) The customer shall, without delay, notify the credit institution in writing of any changes in his/her name, company name, address or the address of any other entity entitled to accept service as named by the customer.

(2) If the customer fails to notify changes in address, written communications by the credit institution shall be deemed received, provided they were sent to the address most recently notified by the customer to the credit institution.

#### **b) Power of representation**

**Para. 12.** 1) The customer shall inform the credit institution in writing and without delay of any expiry or change of any power of representation notified to it, including the authority to operate and sign for an account (paras 31 and 32), and shall furnish evidence thereof by submitting appropriate documents.

(2) Any power of representation notified to the credit institution shall continue to be effective in its original scope until its expiry or change is notified in writing

unless the credit institution had knowledge of the expiry or change or was not aware thereof due to gross negligence. This shall, in particular, apply if the expiry or change of the power of representation has been registered in a public register and duly published.

### **c) Capacity to enter into legal transactions; dissolution of the company**

**Para. 13.** Any loss and any limitation of the customer's capacity to enter into legal transactions shall be notified to the credit institution in writing without delay. If the customer is a company or a legal entity, its dissolution shall also be notified to the credit institution without delay.

### **3. Clear wording of orders**

**Para. 14.** (1) The customer shall ensure that his/her orders are clearly and unambiguously worded. Modifications, confirmations or reminders (repetitions) must be expressly marked as such.

(2) If the customer wishes to give special instructions to the credit institution regarding the execution of his/her orders, he/she shall inform the credit institution thereof separately and expressly; in the case of orders placed by means of standard forms, such instructions have to be given separately by means other than the form. This shall apply in particular if the execution of the order is especially urgent or is subject to specific periods or deadlines.

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

**Para. 15.** If the customer places orders or makes other statements using means of telecommunication, he/she shall take reasonable precautions to prevent transmission errors and abuse.

**Para. 15a.**(1) If the customer uses an instrument which has been agreed as appropriate for the placing of orders with the credit institution (hereinafter, payment instruments), the customer shall take all reasonable precautions to protect the personalised security features against unauthorised access and shall report any loss, theft, abuse or any other unauthorised use of the payment instrument without delay to the credit institution or to a body specified by the credit institution as soon as he/she has become aware of any of the above. Obligations arising from any special terms and conditions as may have been agreed upon shall remain unaffected thereby. Economic operators shall have unlimited liability vis-à-vis the credit institution for any loss arising to the credit institution from the violation of such duties of diligence in the event of any fault on the part of the economic operator.

(2) The credit institution shall have the right to block instruments issued by it to the customer if this is justified by objective reasons relating to the security of the instrument, or unauthorised or fraudulent use of the instrument is suspected, or if there is a substantially increased risk of the customer failing to meet his/her payment obligations in connection with a credit line related to the instrument. To the extent permissible, the credit institution shall inform the customer of such blockage and the reasons thereof, if possible prior to, but no later than immediately after the blockage.

### **5. Objections**

**Para. 16.** (1) The customer shall review statements made by the credit institution such as confirmations of orders placed by the customer, notifications of their execution, account statements, securities account statements,

closing balances of accounts and any other kind of statements and balances of any kind as well as mailings sent and payments made by the credit institution for completeness and correctness and shall raise objections, if any, without delay.

(2) If the credit institution does not receive any written objection to such statements within a period of two months, the statements given and services provided by the credit institutions shall be deemed approved; the credit institution shall in each case inform the customer of this consequence at the beginning of such period.

(3) If the customer's current account is debited due to a non-authorized or faulty payment procedure, the customer may demand correction by the credit institution, if he/she notifies the credit institution immediately after having discovered such non-authorized or faulty payment procedure, but no later than 13 months after the date of the debit entry, except if the credit institution failed to communicate or make accessible to the customer the information on the payment procedure concerned provided for in para. 39 (8) of these GTC. The above period shall be reduced from 13 months to 3 months for business enterprises.

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

**Para. 17.** The customer shall inform the credit institution without delay if he/she does not receive regular communications from the credit institution (such as account closing balances, statements of securities accounts) or other notifications or mailings from the credit institution that the customer would have had to expect in the circumstances within the period of time to be considered reasonable for the agreed form of transmission.

## **7. Translations**

**Para. 18.** Foreign-language documents of all types shall be submitted together with a translation into German, certified by a sworn translator, if the credit institution so requests.

## **F. Place of performance; choice of law; venue**

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

**Para. 19.** The place of performance for both parties shall be the business premises of the branch office of the credit institution with which the transaction was entered into.

### **2. Choice of law**

**Para. 20.** All legal relations between the customer and the credit institution shall be governed by Austrian law.

### **3. Venue**

**Para. 21.** (1) Legal actions by an economic operator against the credit institution can only be initiated with the court having subject-matter jurisdiction at the principal place of business of the credit institution. This shall also be the venue for legal actions brought by the credit institution against an economic operator, it being understood that the credit institution shall be entitled to assert its rights with any other court having local and subject-matter jurisdiction.

(2) The general venue in Austria for legal actions brought by a consumer or against a consumer that is applicable at the time an agreement is entered into with the credit institution shall remain the same even if the consumer, after having entered into such agreement, takes up residence abroad and decisions by Austrian courts are enforceable in such country.

## **G. Termination of the business relation**

### **1. Due notice**

### **2. Termination for good cause**

### **3. Legal consequences**

#### **1. Due notice**

**Para. 22.** (1) A customer who qualifies as a consumer may terminate a current account agreement at any time with effect from the last day of the current month. However, if notice is given on the last banking day of a month, it shall not take effect until as of the last banking day of the following month. This shall be without prejudice to the right of termination on the occasion of an amendment to the GTC or the current account agreement.

(2) The credit institution may terminate a current account agreement with a consumer, provided that such agreement was entered into for an indefinite period of time, and subject to a period of notice of 2 months.

Notice must be given in written form on paper or on any other durable data medium as agreed upon.

(3) Unless an agreement was concluded for a specific term, both the credit institution and the customer may terminate the business relation in whole or in part at any time subject to a reasonable period of notice. This shall include, without limitation, the termination of current account agreements with economic operators. Current accounts held by economic operators shall not be subject to section 30 para 4 of the Payment Services Act, which governs, among other things, the proportional refunding of any charges paid in advance.

#### **2. Termination for good cause**

**Para. 23.** (1) Notwithstanding other agreements, the credit institution and the customer may at any time terminate the business relation in whole or in part for good cause with immediate effect.

(2) Good cause entitling the credit institution to terminate the agreement shall be deemed to exist, in particular, if

- the financial situation of the customer or of a co-obligor has deteriorated or been impaired and, as a result, fulfilment of the customer's obligations vis-à-vis the credit institution is at risk,
- the customer has made incorrect representations about his/her financial position or other material circumstances, or
- the customer fails to or is unable to meet his/her obligation to provide collateral or to increase the level of collateral provided.

#### **3. Legal consequences**

**Para. 24.** (1) Upon termination of the business relation in whole or in part, any amounts owed under this business relation shall immediately become due and payable. In addition, the customer shall be obliged to release the credit institution from all obligations undertaken on his/her behalf.

(2) Moreover, the credit institution shall be entitled to terminate all obligations undertaken for the customer and to settle these on behalf of the customer and, subject to the receipt of credit entries, to immediately re-debit such credited amounts. Claims arising from securities, including, without limitation, bills of exchange and cheques, may be asserted by the credit institution until any existing debit balance is covered.

(3) The GTC shall survive the termination of the business relation until complete and full settlement of all claims.

## II. BANKING INFORMATION

**Para. 25.** Unless there is an obligation to provide such information, general information about the economic situation of an economic operator of the type customary in banking shall only be provided in a non-binding manner and, if provided to economic operators, only in writing.

**Para. 26.** Omitted.

**Para. 27.** Omitted.

## III. OPENING AND KEEPING OF ACCOUNTS AND SECURITIES ACCOUNTS

### A. Scope of application

**Para. 28.** Unless otherwise specified, the following provisions regarding accounts shall also apply to securities accounts.

### B. Opening of accounts

**Para. 29.** When opening an account, the future account holder must provide proof of his/her identity. Accounts shall be kept under the name or company name of the account holder and an account number.

### C. Specimen signatures

**Para. 30.** Persons who are to be authorised to operate and sign for an account shall deposit specimens of their signature with the credit institution. On the basis of the specimen signatures deposited, the credit institution shall permit written instructions for operations regarding the customer's account to be given.

### D. Authority to operate and authority to sign

#### 1. Authority to operate

**Para. 31.** Only the account holder shall have authority to operate the account. Only persons whose power of representation is provided for by law or who hold an express written power of attorney giving them the authority to operate the account in question shall be authorised to represent the account holder. Such persons must provide proof of their identity and power of representation. In the case of a durable power of attorney, a general power of attorney providing the authority to operate the accounts held by the grantor shall suffice.

#### 2. Authority to sign

**Para. 32.** (1) The account holder may expressly and in writing grant signing authority to third parties. The authorised signatory shall only be authorised

to undertake and revoke operations regarding the credit balance.

(2) The authority to sign for a securities account shall also include the authority to buy and sell securities within the scope of available coverage and in accordance with the investment objective of the securities account holder, as ascertained in accordance with the Securities Supervision Act [*Wertpapieraufsichtsgesetz*].

### E. Special types of accounts

#### 1. Sub-accounts

**Para. 33.** An account may have sub-accounts. Even if these are given separate sub-account names, all rights and obligations vis-à-vis the credit institution shall be vested exclusively with the account holder.

## 2. Escrow accounts

**Para. 34.** In the case of escrow accounts, all rights and obligations vis-à-vis the credit institution shall be vested exclusively with the account holder in his/her capacity as escrow agent or trustee.

## 3. Joint accounts

**Para. 35.** (1) An account may also be opened for several holders (joint account). Instructions regarding the operation of the account, in particular its closure and the granting of authority to sign, must be made by all account holders acting jointly. Each account holder may be represented by a representative specifically authorised for the purpose in question.

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

(3) Unless expressly agreed otherwise, every joint account holder shall have individual authority to operate the account. Such authority shall also include the authority to buy and sell securities within the scope of available coverage and in accordance with the joint investment objective of all securities account holders, as ascertained in accordance with the Securities Supervision Act. This authority, however, shall terminate whenever another account holder files an express objection. In this case, authority shall be given only if all joint account holders act jointly.

(4) The authority to sign may be revoked by each individual joint account holder.

**Para. 36.** Omitted.

## 4. Foreign currency accounts

**Para. 37.** (1) If the credit institution keeps a foreign currency account for the customer, the payment transfers in the respective foreign currency shall, in the absence of any other payment transfer order, be credited to such account. If the customer does not have a foreign currency account, the credit institution shall be entitled to credit foreign currency amounts in the domestic currency unless the customer has given express instructions to the contrary. Such amount shall be converted at the exchange rate applicable on the date on which the foreign currency amount is at the credit institution's disposal and can be realised by it.

(2) Holders of balances in foreign currency shall, on a pro-rata basis up to the amount of their respective credit balances, bear all financial and legal disadvantages and losses caused by measures or events beyond the control of the credit institution which affect the total credit balance in the respective currency held by the credit institution in Austria and abroad.

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

**Para. 38.** (1) Unless otherwise agreed upon, the credit institution shall balance accounts on a quarterly/semiannual/annual basis as selected. Any interest accruing and fees payable on a quarterly/semiannual/annual basis shall form part of the closing balance, which will subsequently continue to carry interest (compound interest). Statements of account shall be made available once a year.

(2) The credit institution shall hold the statement of account giving the account balance or listing the securities available for collection by the customer at the account-keeping branch.

## IV. CURRENT ACCOUNT TRANSACTIONS

### A. Transfer orders

**Para. 39.** (1) Transfer orders must include the beneficiary's payment service provider (bank sort code or Bank Identifier Code (BIC)) and the account number or the International Bank Account Number (IBAN). Together, these items of information constitute the so-called customer identifier.

(2) The designated purpose stated in the transfer order shall be of no relevance to the credit institution.

(3) Acceptance of a transfer order by the credit institution alone shall not give rise to any rights of a third party vis-à-vis the credit institution.

(4) The credit institution shall be obliged to execute a transfer order only if sufficient funds to cover the total amount are available on the customer's account indicated in the transfer order (credit balance, overdraft facility).

(5) If the customer elects to provide further information beyond the scope of subsection 1, the transfer order shall still be executed only on the basis of the customer identifier (subsection 1) indicated by the customer.

(6) Transfer orders received by the credit institution cannot be cancelled unilaterally by the customer. If a later date of execution has been agreed for a transfer order, the order shall be revocable until expiration of the banking day immediately preceding the date of execution.

(7) If the credit institution refuses to execute a transfer order, the credit institution shall inform the customer about such refusal in the form agreed upon with the customer, stating the reasons for such refusal, where possible, and about ways to amend the transfer order to permit the transfer to be executed in the future. Transfer orders refused by the credit institution for justified reasons shall not trigger the execution deadlines specified in para. 39a of these GTC.

(8) The credit institution shall make information on transfer orders executed (reference, amount, currency, fees, interest, exchange rate, value date of the debit entry) and other payments debited to the customer's account, in particular within the framework of direct debit and preauthorised payment procedures, available to customers who qualify as consumers once a month, unless already shown for the relevant transaction in the statement of account.

#### **Deadlines for execution**

**Para. 39a** (1) Payment orders which the credit institution receives after the deadlines specified by the credit institution for the respective type of payment or on a day which is not a banking day shall be treated as if received on the following banking day. A banking day shall be understood to be any day on which the credit institution is open for business as required for the execution of payment transactions.

(2) If the customer placing a payment order agrees with the credit institution that execution of a payment order should commence on a specific date or at the end of a specific period or on the day on which the customer makes the relevant amount available to the credit institution, the agreed date shall be deemed to be the date of receipt. If the agreed date is not a banking day, the payment order shall be treated as if received on the following business day.

(3) Starting from 1 January 2012, the credit institution shall ensure that, counting from the time of receipt, the amount subject to the payment transaction is received by the payee's payment service provider no later than by the end of the following banking day; before 1 January 2012, the applicable period was no later than 3 banking days. In the case of payment transactions initiated on paper, the above deadlines shall be extended by another banking day. This subsection shall apply only to payment transactions denominated in euro within the European Economic Area (EEA).

(4) For payment transactions within the European Economic Area denominated not in euro but in another currency of an EEA Member State, the deadline for execution specified in subsection (3) shall not exceed 4 banking days.

#### **B. Credit entries and right to cancellation**

**Para. 40.** (1) In the case of a valid current account agreement, the credit institution shall be obligated and irrevocably authorised to accept amounts of money on behalf of the customer and credit the same to his/her account. Even after termination of the current account agreement, the credit institution shall still be entitled to accept amounts of money on behalf of the customer to the extent to which there are liabilities of the customer to be met from the account. Unless otherwise indicated in the order, the credit institution shall carry out orders to make available an amount of money to the customer by crediting the respective amount to the account of the payee.

(2) Upon request, the credit institution shall provide customers qualifying as consumers with information on transfers credited to their accounts (reference, amount, currency, fees, interest, exchange rate, value date of the credit entry) once a month, unless already shown for the relevant transaction in the statement of account.

(3) The credit institution shall be entitled to deduct its own fees for the transfer from the amount to be credited. The amount transferred and the fees deducted shall be shown separately by the credit institution.

(4) Where cash is paid into a consumer-held current account with the credit institution in the currency of said current account, the credit institution shall procure that the amount be made available and value-dated immediately following receipt of such cash amount. If the account holder is an economic operator, the amount shall be made available and value-dated on the payee's account no later than on the banking day following receipt of such cash amount.

(5) The credit institution may at any time cancel any credit entries it has made due to an error on its part. In other cases, the credit institution will cancel a credit entry only once it has received unambiguous evidence of the invalidity of the transfer order. The right to cancellation shall not be eliminated by the account having been balanced in the meantime. If a right to cancellation exists, the credit institution may deny discretion to use the credited amounts.

#### **C. Credit entry subject to collection**

**Para. 41.** (1) If the credit institution credits amounts to the customer's account which it has to collect on behalf of the customer (in particular, by collecting cheques, bills of exchange and other securities, debit notes, etc.) or which are to be transferred to the customer's account, before the amount to be collected or transferred has been received by the credit institution, the credit entry shall be made subject to actual receipt of the credited amount by the credit institution. This shall also apply if the amount to be collected should be payable to the credit institution.

(2) By virtue of this proviso, the credit institution shall be entitled to reverse the credit entry by means of a simple book entry if the collection or transfer has failed or if, due to the financial situation of a debtor, intervention by a public authority or other reasons, it is to be expected that the credit institution will not obtain the unrestricted right to dispose over the amount to be collected or transferred.

(3) This proviso shall also be applicable if the amount credited has been collected abroad and is re-debited to the credit institution by a third party pursuant to the laws of the foreign country or on the basis of an agreement entered into with foreign credit institutions.

(4) As long as the proviso is in force, the credit institution shall also be entitled to deny the customer authority to dispose over the credited amounts. The proviso shall not be lifted through the balancing of accounts.

#### **D. Debit entries**

**Para. 42.** (1) In the case of transfer orders, debit entries shall be taken as confirmation of order execution only if the debit entry is not reversed within two banking days (cf. para. 39a (1) in these GTC).

(2) Cheques and other payment orders as well as debit entries shall be deemed cashed/honoured/collected if the debit entry on the customer's debited account has not been cancelled within two banking days, unless the credit institution has already notified the presenter of the payment made or paid out the amount in cash to the presenter.

#### **E. Direct debit orders and pre- authorisation of payments**

**Para. 42a.** The customer agrees to have the account he/she holds with the credit institution debited with amounts collected by third parties authorised by him/her. The customer shall have the right to withdraw this authorisation in writing at any time. Such withdrawal shall be effective as of the banking day following its receipt by the credit institution.

(2) If the credit institution, at the time of debiting the account, was acting on the basis of a customer instruction to pay amounts collected by a third party specified in the instruction from the account of the customer ("pre-authorisation of payment"), the credit institution must, provided the customer is a consumer, comply with the customer's request to cancel the debiting of his/her account with the amount collected. This provision shall not apply if the credit institution is able to prove that information about the pending collection was communicated or made available to the customer by the credit institution or the payee in an agreed form at least four weeks before the due date. The customer's request for cancellation of the debit entry must be notified to the credit institution within 8 weeks from the date of such debit entry. Economic operators shall not have the right to make such a request.

(3) If, at the time of debiting the account, the credit institution was not acting on the basis of a customer instruction to pay amounts collected by a third party ("direct debit procedure"), the credit institution must, without any further steps being required, comply with the customer's request, received within eight weeks counting from the time of the debiting of his/her account, to cancel the debiting of the account (also if the customer is an economic operator).

(4) A justified request by a customer to cancel a debit entry shall be complied with within 10 banking days.

### **V. CONSIDERATION FOR SERVICES AND REIMBURSEMENT OF EXPENSES**

#### **A. Consideration; changes in scope of service**

##### **1. Principle of monetary consideration**

**Para. 43.** (1) The credit institution may demand consideration, including, without limitation, interest, fees and commissions, from its customers for the services it provides.

(2) This shall also include any pertinent services as performed by the credit institution without instruction from the customer in an emergency or for the benefit of the customer or in connection with handling the customer's estate.

(3) Subsection 1 shall not apply to information about the credit institution, the use of the payment service, fees, interest and exchange rates, communications, safeguards and remedies, amendments to and termination of the current account agreement and legal remedies that is made available to consumers on a non-recurrent basis, provided that such making available of information takes the form agreed upon with the customer within the scope of the existing business relation.

(4) Subsection 1 shall furthermore not apply to services the credit institution provides to consumers in the context of the customer terminating the current account agreement.

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

**Para. 44.** The credit institution shall be entitled to reasonable consideration for its services, the amount of which the credit institution shall determine and display in the form of a price list for specific typical services. Consideration for services provided under a consumer loan agreement or a consumer current account agreement shall be applicable only if agreed upon with the customer.

##### **3. Changes in consideration payable for recurrent services and changes in the scope of service**

**Para. 45.** (1) In its business relations with economic operators, the credit institution may, at its reasonable discretion, change the consideration for recurrent services it provides (interest, account keeping fees, etc.) with due consideration being given to all the relevant circumstances (including, without limitation, changes in the legal framework, changes in the money market or capital market, changes in funding costs, changes in personnel and other administrative expenses and operating expenses, changes in the consumer price index, etc.).

(2) For interest rates and other fees agreed with consumers for recurrent services provided by the credit institution, changes may be made pursuant to an adjustment clause which has to be agreed on separately with the customer. This shall be without prejudice to the statutory duty to draw attention to such adjustment clause in any agreements with consumers. In business relations with consumers, adjustments of considerations for services in accordance with subsection (2) above must not be made earlier than two months from the date of conclusion of the agreement.

(3) Any changes in consideration payable and services to be provided beyond the scope of subsections (1) and (2) above shall require the customer's prior approval. Such changes shall become effective 2 months after the customer has been notified of the change proposed by the credit institution, provided the customer does not object in writing and such objection is received by the credit institution within such period of notice. In its notification, the credit institution shall draw the customer's attention to the change proposed and to the fact that his/her silence will be taken as approval as of the expiry of the period of notice. The customer shall be entitled to terminate the current account agreement free of charge without notice prior to such changes taking effect.

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

**Para. 46.** (1) The customer shall bear all necessary and expedient expenses, charges and costs, including, without limitation, stamp duties and legal transaction charges, taxes, postage, costs of insurance, legal counsel, collection and recovery services, business management consultancy and telecommunication, as well as the provision, administration and realisation or release of collateral, arising in connection with the business relation between him/her and the credit institution.

If the credit institution is unable to execute a payment instruction by the customer for lack of funds covering such amount or if the credit institution has to take steps against the customer based on enforcement measures effected by third parties, the credit institution may collect a reasonable lump-sum amount in compensation as set out in the displayed price list.

(2) The credit institution may charge such expenses as a lump sum without itemising the individual amounts, unless the customer expressly demands itemisation.

## **VI. COLLATERAL**

### **A. Providing and increasing collateral**

#### **1. Entitlement to collateral**

**Para. 47.** The credit institution shall be entitled to require the customer to provide adequate collateral within a reasonable period for any and all claims arising out of the business relation, even if such claims are conditional, limited in time or not yet due.

#### **2. Changes in risk**

**Para. 48.** (1) If, subsequent to the entering into an agreement, circumstances occur or become known to the credit institution that would justify an increased risk rating of the claims against the customer, then the credit institution shall be entitled to require the provision of or an increase in collateral within a reasonable period of time. This shall apply, in particular, if the customer's financial situation has deteriorated or appears likely to deteriorate, or if the value of the available collateral has decreased or appears likely to decrease.

(2) This shall also apply if no provision of collateral was requested at the time the claims arose.

### **B. Lien of the credit institution**

#### **1. Scope and creation of the lien**

**Para. 49.** (1) The customer shall grant the credit institution a lien on any assets and titles which come into the credit institution's possession.

(2) In particular, the lien shall also apply to all the customer's distrainable claims against the credit institution, e.g. as arising from credit balances. If securities are subject to a lien by the credit institution, the lien shall also extend to the interest and dividend coupons attached to these securities.

**Para. 50.** (1) The lien shall secure the claims of the credit institution against the customer which arise out of the business relation, including joint accounts, even if the claims are conditional, limited in time or not yet due.

(2) If the credit institution has claims pursuant to subsection (1), the lien shall be deemed created upon the credit institution taking possession of the respective asset, and otherwise at any future point in time when such claims arise.

#### **2. Exemptions from the lien**

**Para. 51.** (1) The lien shall not include assets and titles designated by the customer, prior to the creation of the lien, to be used for the execution of a specific order, for example amounts for cashing a cheque or honouring a bill of exchange, and for the execution of a specified transfer. This, however, shall apply only as long as such designation remains effective.

(2) Notwithstanding the existing lien, the credit institution shall carry out the customer's instructions with regard to credit balances on current accounts for the benefit of third parties for as long as the customer has not received notification of the enforcement of the lien from the credit institution. Imposition of distraint on the credit balance shall not be deemed to be an instruction given by the customer.

(3) The lien shall furthermore not include assets which the customer has disclosed in writing to the credit institution as assets held in trust prior to creation of the lien or which have come into the possession of the credit institution without the customer's intention.

### **C. Release of collateral**

**Para. 52.** Upon the customer's request, the credit institution shall release collateral, provided that it has no justified interest in keeping such collateral as security.

### **D. Realisation of collateral**

#### **1. Sale**

**Para. 53.** The credit institution shall realise collateral which has a market or stock market price at such price on the open market in accordance with the relevant statutory provisions.

**Para. 54.** The credit institution shall arrange for an expert to value collateral that has no market or stock market price. The credit institution shall notify the customer of the result of such assessment and, at the same time, ask the customer to name, within a reasonable period of time, a party interested in purchasing the collateral and willing to pay a purchase price in the amount of at least the assessed value to the credit institution within such period. If the customer fails to name an interested party within such period or if the party named fails to pay the purchase price, the credit institution shall be irrevocably entitled to sell the collateral on behalf of the customer for not less than the assessed value. The proceeds from the sale shall be used for redeeming the collateralised claims, the surplus, if any, being due to the customer.

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

**Para. 55.** The credit institution may also effect forced realisation of the collateral or, if such collateral has no market or stock market price, arrange for its sale by out-of-court auction.

#### **3. Collection**

**Para. 56.** (1) The credit institution may terminate and collect all kinds of claims provided to it as collateral (including those whose ownership is evidenced in securities) upon the secured claim becoming due. Prior thereto, the collection of the claim serving as collateral shall be permitted upon such claim becoming due. In the event of an imminent loss in value of the claim serving as collateral, the credit institution may also terminate it before it becomes due. To the extent possible, the customer shall be informed of this in advance. Amounts collected prior to the due date of the collateralised claim shall be used as security to replace the collected claim.

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

#### **4. Admissibility of realisation**

**Para. 57.** Even if the purchaser fails to immediately pay the purchase price in cash, the credit institution shall nevertheless be entitled to realise the collateral, provided that no offer or no equivalent offer with immediate cash payment has been made and payment at a later point in time has been secured.

## **E. Right to withhold services**

**Para. 58.** The credit institution shall be entitled to withdraw the services it is obliged to provide to the customer in the event of claims arising out of the business relation even if they are not based on the same legal relation. Paras 50 and 51 shall apply accordingly.

## **VII. OFFSETTING AND CREDITING**

### **A. Offsetting**

#### **1. By the credit institution**

**Para. 59.** (1) The credit institution shall be entitled to offset all the customer's claims, to the extent that they are distrainable, against all the customer's liabilities towards the credit institution.

(2) Notwithstanding such right to offset, the credit institution shall carry out the customer's instructions for the benefit of third parties with regard to credit balances on current accounts for as long as the customer has not received an offsetting statement. Imposition of distraint on the credit balance shall not be deemed to be an instruction given by the customer.

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

**Para. 60.** The customer shall only be entitled to offset his/her liabilities if the credit institution is insolvent or if the customer's claim is related to his/her liability or has been ascertained by a court or recognised by the credit institution.

### **B. Crediting**

**Para. 61.** Notwithstanding the provisions of section 1416 of the Austrian Civil Code [ABGB], the credit institution may credit payments as payment of receivables only where no collateral has been provided for such receivables or where the value of the collateral provided does not cover the receivables. In this respect, the date when the individual receivables became due shall be irrelevant. This shall also apply to current account arrangements.

## **SPECIAL TYPES OF TRANSACTIONS**

### **I. TRADE IN SECURITIES AND OTHER ASSETS**

#### **A. Scope of application**

**Para. 62.** The provisions of paras 63 through 67 shall apply to securities and other assets even if they are not evidenced by certificates (securitised).

#### **B. Execution**

**Para. 63.** (1) As a rule, the credit institution executes customer orders to sell and purchase securities as a commission agent.

(2) If, however, the credit institution agrees on a fixed price with the customer, it shall conclude a contract of sale.

(3) The customer herewith gives his/her consent to the credit institution's execution policy, on the basis of which the credit institution - in the absence of instructions to the contrary - shall execute the customer's orders.

The credit institution shall inform the customer of any material changes in its order execution policy.

(4) The credit institution may also execute orders placed with it for the purchase and sale of securities in part if market conditions do not allow execution in full.

### **C. Practices at the place of order execution**

**Para. 64.** The execution of orders shall be governed by the statutory provisions and practices applicable at the place of order execution.

### **D. Timing of execution**

**Para. 65.** If an order for same day execution has not been received in time for execution on that day in the course of the ordinary business workflow, its execution shall be scheduled for the next trading day.

### **E. Insufficient coverage**

**Para. 66.** (1) The credit institution may refrain from executing securities transactions in whole or in part if insufficient coverage is available.

(2) The credit institution shall, however, be entitled to execute such securities transactions if it is unaware of the fact that the customer wants the order to be executed only on condition that coverage is available.

(3) If the customer fails to provide coverage despite a request to do so, the credit institution shall be entitled to conclude a close-out transaction for the customer's account at the best possible price.

### **F. Transactions abroad**

**Para. 67.** If the customer is credited a claim to the delivery of securities (credit for securities held abroad), the customer's claim against the credit institution shall correspond to the share held by the credit institution, for the account of the customer, in the overall portfolio of securities of the same type held abroad by the credit institution in compliance with the relevant statutory provisions and market practices.

### **G. Stock transactions**

**Para. 68.** In the case of transactions in stocks the shares of which are not being traded yet, the credit institution shall neither be liable for the issuance of the shares by the respective company nor for the possibility of exercising shareholder rights prior to the issuance of the shares.

## **II. SAFEKEEPING OF SECURITIES AND OTHER VALUABLES**

### **A. Securities held in account**

**Para. 69.** (1) The credit institution shall be entitled to add securities deposited with it to the beneficiary's securities account.

(2) The credit institution shall be expressly authorised to keep securities issued in Austria also abroad and to keep securities issued abroad also in Austria. Likewise, it shall be authorised to have registered securities issued abroad registered in the name of the domestic depository or in the name of the nominee of the foreign depository.

(3) Vis-à-vis an economic operator, the credit institution shall be liable only for the careful selection of the third-party depository.



## **B. Redemption of securities, coupon renewal, drawing, calling**

**Para. 70.** (1) The credit institution shall ensure the detachment of interest, profit participation and dividend coupons having become due and shall collect their money equivalent. The credit institution shall procure new interest, profit and dividend coupons without specific instruction.

(2) Drawings, callings, and other comparable measures in respect of the securities held in safekeeping shall, to the extent that they are published in the official gazette "*Amtsblatt der Wiener Zeitung*" or in the "*Mercur Authentischer Verlosungsanzeiger*", be monitored by the credit institution. The credit institution shall redeem drawn and called securities as well as interest, profit participation and dividend coupons.

(3) In the case of securities held in safekeeping by a third party, the obligations set out in subsections (1) and (2) shall devolve upon such third party depository. In the case of securities held in safekeeping abroad, the credit institution shall not be obliged to notify the customer of the numbers of the securities credited, including, without limitation, securities redeemable by the drawing of lots. The credit institution shall in such cases determine, by drawing lots, to which customers the drawn securities shall be allotted. If, however, the numbers of securities redeemable by the drawing of lots are notified, they shall be relevant only for the drawing of lots and for redemption, and only for as long as this is the practice abroad. If, according to the practice abroad, the collection amounts of the drawn securities were to be distributed on a pro-rata basis and if it were not possible to represent the parts remaining for the individual customers in single units, then the customers whose shares are to be redeemed shall be determined by drawing lots.

## **C. Credit institution's duty to carry out checks**

**Para. 71.** On the basis of the supporting documents available to it in Austria, the credit institution shall, upon delivery of the securities to the credit institution, perform a one-time check to establish whether Austrian securities are subject to public notification procedures, payment stops and the like. Public notification procedures resulting in the invalidation of securities shall likewise be checked for upon delivery.

## **D. Notification of conversion and other measures**

**Para. 72.** In the event of conversion, capital increase, capital reduction, merger, exercise or realisation of subscription rights, requests for payment, pooling, redenomination, conversion offers, coupon increase and other material measures affecting the securities, the credit institution shall, provided that the respective notification has been published in the official gazette "*Amtsblatt zur Wiener Zeitung*" or communicated to the credit institution by the issuing house or the foreign depository in a timely manner, attempt to notify the customer accordingly. If the customer fails to give instructions in good time, then the credit institution shall act to the best of its knowledge, with due consideration of the customer's interests, and, in particular, assert, at the last possible opportunity, any rights that would otherwise expire.

## **III. TRADE IN FOREIGN EXCHANGE AND FOREIGN CURRENCIES**

### **A. Execution**

**Para. 73.** In respect of foreign exchange and foreign currencies, the credit institution shall conclude purchase contracts with the customer. If it is agreed that the credit institution is to act as commission agent for the customer, then the provisions on commission transactions as set forth in the section on trade in securities shall apply accordingly. If the credit institution decides to contract in its own name, no express disclosure pursuant to section 405 of the Austrian Business Code [UGB] shall be required.

## **B. Forward contracts**

**Para. 74.** (1) In the case of forward contracts, the credit institution may require the customer to provide proof, a reasonable time in advance of the due date, that the payment owed by the customer will actually be credited to the agreed account in good time. If such proof is not provided, or if it becomes clear due to other circumstances that the customer will not meet his/her obligations, then the credit institution shall be entitled to conclude a close-out transaction at the best possible price even before the agreed due date.

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

(3) If the credit institution concludes a close-out transaction pursuant to subsections (1) or (2), any resulting price difference shall be debited or credited to the customer. The customer shall bear any and all expenses incurred in this regard.

## **IV. FOREIGN CURRENCY LOANS**

**Para. 75.** Foreign currency loans shall be repayable in the currency in which the credit institution granted them. Payments made in other currencies shall be deemed to be provided as collateral, unless the credit institution informs the customer that such payments will be used for the redemption of the loan. The credit institution shall also be entitled, subject to notification of the customer, to convert an outstanding debit balance in a foreign currency into domestic currency in the following cases:

- the credit risk increases due to the development of the exchange rate for the foreign currency, and the credit institution does not receive sufficient collateral within a reasonable period of time, or
- due to legal or other circumstances beyond the control of the credit institution, funding in the foreign currency is no longer possible, or
- the entire loan is due for repayment and is not repaid in spite of a reminder to that effect.

## **V. COLLECTION, DISCOUNTING, BILLS OF EXCHANGE AND CHEQUES**

### **A. Scope of application**

**Para. 76.** These terms and conditions shall apply to bills of exchange, cheques and other collection documents (such as payment orders issued by a merchant and promissory notes).

### **B. Collection or purchase**

**Para. 77.** Generally, such instruments shall be accepted by the credit institution for collection, unless their purchase (discounting) has been agreed.

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

**Para. 78.** Orders for collection must be received in due time so that they can be carried out in the ordinary course of business without any special means of express handling being required.

#### **D. Rights and obligations of the credit institution**

**Para. 79.** In the event of discounting, the credit institution shall be entitled, in the cases referred to in 41 (2) and (3), to debit the full nominal amount plus all expenses incurred by the credit institution to the seller; in the case of documents denominated in foreign currencies, the customer shall also bear the exchange risk.

**Para. 80.** In such cases as well as in the case of re-debits of credits subject to collection (para. 41), the claims under securities law for payment of the full amount plus ancillary expenses against the customer and any party obligated under the document shall remain with the credit institution until the debt balance resulting from such re-debiting has been covered.

**Para. 81.** The credit institution may require the customer to transfer to it the claim underlying the instrument or the acquisition of the same by the customer as well as all current and future rights arising from the underlying transactions, including the collateral pertaining thereto.

The credit institution shall only be obliged to cash in instruments presented to it for payment if it has received an order from the customer in time and sufficient coverage is available.



