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## GENERAL TERMS AND CONDITIONS OF KOMMUNALKREDIT AUSTRIA AG

(Translation for information purposes only)

(as amended in May 2021)

### GENERAL PROVISIONS

#### I. BASIC RULES GOVERNING BUSINESS RELATIONS BETWEEN THE CUSTOMER AND KOMMUNALKREDIT AUSTRIA AG

(hereinafter referred to as the “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 entire business relation between the customer and all branch offices of the Credit Institution in Austria and abroad. The business relation shall comprise each individual business transaction (irrespective of whether they are of the same or different nature) between the customer and the Credit Institution and thus (i) all contracts for repeated or continuing services with a definite or indefinite term, such as, in particular, framework contracts for payment services (e.g. current account contract or credit card contract) and securities services, custody agreements, loan agreements and debt purchase agreements (hereinafter referred to as “Permanent Agreements”), as well as (ii) agreements which the customer concludes occasionally with the Credit Institution on individual transactions, such as, in particular, foreign exchange transactions, individual payment or securities services, which have not been agreed in a Permanent Agreement (hereinafter referred to as “Individual Agreements”).

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

###### 2. Amendments to the General Terms and Conditions and the framework contracts for payment services

**Para. 2.** (1) Amendments to these GTCs or a Permanent Agreement to which these GTC apply shall be proposed to the customer by the Credit Institution no later than two months before the proposed date of their entry into force, with reference being made to the provisions affected by such amendments. Consent by the customer shall be deemed given if the Credit Institution receives no objection by the customer before the proposed date of entry into force. The Credit Institution shall remind the customer of this fact in the notification of the proposal that the customer’s silence shall be deemed consent upon expiry of the term. Moreover, in case of amendments of these GTC; the Credit Institution shall publish a comparison of the provisions concerned by the amendments to the GTCs on its website and, upon the customer’s request, make that comparison available to the customer. The Credit Institution shall include a note to that effect in its notification. In relation to an economic operator,

it shall be considered sufficient for the Credit Institution to make the proposed amendments accessible so that the economic operator can obtain them at any time in the manner or form agreed upon.

(2) In the event of such intended amendment to the GTCs or a framework contract for payment services, the customer, who is a consumer, shall have the right to terminate his/her framework contracts for payment services affected by the amendment (in particular the current account contract) prior to the entry into force of the amendment at no cost and without prior notice. The Credit Institution shall draw the customer’s attention to this fact in the amendment offer.

(3) Sub-para. (1) and (2) shall not apply to amendments in Permanent Agreements (including framework contracts for payment services) regarding agreed services of the Credit Institution (including interest on credit balances) and agreed consideration payable by the customer (including interest on debit balances). Separate provisions on changes relating to the services of the Credit Institution agreed upon in such framework contracts and the consideration payable by the customer are contained in para. 43 (relating to transactions with economic operators) and 45 (relating to transactions with consumers), to the extent such changes are not agreed upon individually with customers.

##### B. Statements

###### 1. Customer orders

**Para. 3.** (1) Orders have to be placed in writing. The customer may also place his/her order via a system for the electronic recording of signatures made available by the Credit Institution for this purpose.

(2) The Credit Institution shall also have the right to execute orders placed through means of telecommunication (in particular by telephone, cable, telex, telefax or 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 any fault of its own, it is of the opinion that the orders originate from the economic operator and if the ineffective order cannot be attributed to the Credit Institution.

## **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, depending on the individual case.

## **3. Statements by the Credit Institution**

**Para. 5.** (1) The 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. This provision shall not apply in relation 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. Right of disposal upon the death of the customer**

**Para. 6.** (1) As soon as it obtains knowledge of the death of a customer, the Credit Institution shall allow disposals to be made on the basis of a special decision by the probate court or a deed of devolution or a European Certificate of Succession. This provision shall be without prejudice to disposals regarding joint accounts/joint securities accounts by an account holder with individual right of disposal.

(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 case 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 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 and non-natural persons, the duties of information (payment services and transparency of contract provisions) provided for in Sections 32 to 54 of the (Austrian) "Zahlungsdienstegesetz" (Payment Services Act) do not apply.

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

**Para. 8.** (1) The Credit Institution shall execute an order which, due to its nature, requires the assistance of a third party, in its own name by calling in a third party. If the Credit Institution selects the third party, it shall be liable for diligent 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.

**Para. 9.** (1) Over and above its liability under para. 8, 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 GTCs).

(2) Contrary to what is set out in Section 80 para. 2 item 5 Payment Services Act, the Credit Institution, in its capacity as payment service provider of the payment recipient, will – where a payment transaction is carried out with a slight delay – credit the amount to an economic operator's payment account as per the correct date only if it is at fault for the delayed carrying out of the payment transaction.

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

### **1. Introduction**

**Para. 10.** In his/her business dealings with the Credit Institution, the customer shall, in particular, observe the obligation to cooperate stated 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 that the customer has named to it.

(2) If the customer fails to notify changes in address or in the address of any other entity entitled to accept service on the customer's behalf, 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 power to dispose of and sign for an account (para. 31 and para. 32) and shall furnish evidence thereof by submitting appropriate documents.

(2) A power of representation notified to the Credit Institution shall continue to be valid 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 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 person, its dissolution shall also be notified to the Credit Institution without delay.

#### **d) Business relationship for own account or for account of another**

**Para. 13a.** When establishing a business relationship and when occasionally having transactions carried out, the customer shall indicate to the Credit Institution whether the customer intends to have the business relationship and/or carry out the transaction for the customer's own account or for the account of another. The customer shall notify the Credit Institution without delay of any changes occurring in this respect while the business relationship is ongoing.

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

**Para. 14.** (1) The customer shall ensure the clear and unambiguous wording of his/her orders to the Credit Institution. Modifications, confirmations or reminders 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 particularly urgent or subject to specific time periods or deadlines.

#### **4. Diligence in using means of 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. This provision does not apply to customer orders and statements regarding payment services.

**Para. 15a** (1) If the customer uses an instrument which has been agreed as appropriate for the placing of orders with the Credit Institution (in particular, payment instruments), the customer shall take all reasonable precautions to protect the personalised security features from unauthorised access and shall notify the loss, theft or abuse or any other non-authorised use of the instrument without delay to the Credit Institution or the body named by the latter, as soon as such event has come to his/her knowledge. Economic operators shall have unlimited liability vis-à-vis the Credit Institution for any loss arising for 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 to the customer, if

- this is justified by objective reasons relating to the security of the instrument; or
- an unauthorised or fraudulent use of the instrument is suspected; or
- there is a substantially increased risk of the customer not meeting his/her payment obligations in connection with a credit line related to the instrument.

The Credit Institution shall inform the customer – provided notification of blockage or the reasons of blockage is not in violation of a court order, an administrative order and/or Austrian or EU law or objective security considerations – of such blockage and the reasons thereof, if possible before, but at the latest immediately after the blockage by one of the means of communication agreed upon with the customer.

(3) The provisions hereunder shall apply also to instruments that can be used, by agreement, to place an order with the Credit Institution outside the scope of payment services.

#### **5. Objections**

**Para. 16.** (1) The customer shall review statements made by the Credit Institution not referring to payment services (such as confirmations of orders regarding financial instruments and notifications of their execution, confirmations of transactions closed; interim and closing statements as well as any other statements and balances of lending and foreign-exchange transactions; statements of securities accounts) for completeness and correctness and raise objections, if any, without delay, at the latest within two months. If the Credit Institution does not receive any written objections to such statements within a period of two months, the statements of the Credit Institution shall be deemed approved. The customer may also demand an account balance to be corrected after expiry of such deadline, but in such an event the customer will have to furnish proof that the account was wrongly debited or not credited as appropriate. The Credit Institution shall, as soon as such deadline starts, draw the customer's attention to the consequences of any failure to make an objection in due time.

(2) If the customer's current account is debited due to a non-authorised or faulty payment procedure, the customer may demand rectification by the Credit Institution, if he/ she has notified the Credit Institution immediately after the non-authorised or faulty payment procedure has come to his/her notice, but not later than 13 months after the day of the debit entry. If the customer is an economic operator, the customer may request such rectification by no later than three months after the date the account was debited. The above deadlines shall not apply, if the Credit Institution has failed to communicate or make accessible the information on the payment procedure concerned provided for in para. 39 (9) of these GTCs. This provision shall not be understood to exclude other claims to rectification that may be raised by the customer.

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

**Para. 17.** The customer has to inform the Credit Institution without delay if he/she does not receive regular communications from the Credit Institution (such as closing statements or statements of securities accounts) or other notifications or mailings from the Credit Institution, which the customer would have had to expect in his/her case and which do not relate to payment services, within the period of time to be considered normal 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 requires.

#### **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. Legal venue

**Para. 21.** (1) Legal actions by an economic operator against the Credit Institution can only be filed 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 filed 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 legal venue in Austria for legal actions filed by a consumer or against a consumer 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, relocates his/her domicile abroad and decisions by Austrian courts are enforceable in that country.

### G. Termination of the business relation

#### 1. Due notice in a business relation with economic operators

**Para. 22.** The Credit Institution and the customer may terminate open-ended continuing obligations (including credit agreements and framework contracts for payment services, in particular current account contracts) at any time, subject to a reasonable period of notice, provided that in the case of agreements with an economic operator a notice period of no more than one month shall be observed. Charges paid in advance shall not be reimbursed.

#### 2. Due notice in a business relation with consumers

**Para. 23.** (1) The customer may terminate a framework contract for payment services, in particular a current account contract, at any time and free of charge as of the last day of the current month. However, if notice is given on the last banking day of a month, it shall only be effective as of the last banking day of the following month. This shall be without prejudice to the right of termination, free of charge and without prior notice, of a framework contract for payment services, in particular of the current account contract, on the occasion of an amendment to the GTCs or a framework contract for payment services, in particular of the current account contract (para. 2), proposed by the Credit Institution.

(2) Credit agreements concluded for an indefinite period of time may be terminated by the customer at any time and free of charge, subject to a period of notice of one month.

(3) All other contracts concluded with the Credit Institution for an indefinite period of time may be terminated by the customer at any time, subject to a reasonable period of notice.

(4) The Credit Institution may terminate framework contracts for payment services (in particular, current account contracts) concluded for an indefinite period of time and credit agreements, subject to a period of notice of two months.

(5) All other contracts concluded for an indefinite period of time may be terminated by the Credit Institution at any time, subject to a reasonable period of notice.

#### 3. Termination for good cause

**Para. 24.** (1) Notwithstanding an agreement made for a specified period of time, the Credit Institution and the customer shall have the right to terminate the entire business

relation or individual parts thereof for good cause at any time with immediate effect.

(2) An important cause that entitles the Credit Institution to terminate a business relation shall be deemed to exist, in particular, if

- the economic 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 in material respects about essential parts of his/her financial position (assets and liabilities) or other material circumstances, and the Credit Institution would not have entered into the agreement had it been aware of the true financial position or circumstances;
- the customer fails to or is unable to meet his/her obligation to provide collateral or to increase the level of collateral provided and this fact significantly increases the risk that the payer will not be able to meet his/her payment obligations. Such significantly increased risk is deemed to exist, in particular, where inability to pay debts when due is imminent or has already become applicable; or
- the customer grossly violates his/her payment obligations vis-à-vis the Credit Institution (therefore, in particular, if there is a repeated default in successive billing periods, a default despite several reminders or a default of longer duration). In the case of consumer credit, payment arrears constitute good cause for termination only if the Credit Institution has provided its service, the consumer has been in arrears with at least one payment for at least six weeks, and the reminder sent out by the Credit Institution, with a warning of immediate call and allowing a period of grace of two weeks, has been without success.

#### 4. Legal consequences

**Para. 25.** (1) Upon termination of the entire business relation or individual parts thereof, any amounts owed under this relation shall become due and payable immediately. In addition, the customer is obliged to release the Credit Institution from all obligations it has assumed for the customer.

(2) In addition, the Credit Institution shall be entitled to terminate all obligations assumed for the customer and to settle them for the customer and to immediately re-debit any amounts credited subject to their receipt. Claims arising from securities, including, in particular, bills of exchange and cheques, may be asserted by the Credit Institution up to the amount required to cover any existing debit balance.

(3) In the event of termination of the entire business relation or individual parts thereof, the Credit Institution will reimburse any charges for payment services paid in advance for a specified period of time to the customer, who is a consumer, on a pro-rata basis.

(4) These GTCs shall survive the termination of the business relation until full settlement.

#### H. Right to refuse disbursement

**Para. 26.** (1) The Credit Institution shall be entitled to refuse to disburse the loan amount for objectively justified reasons.

(2) Objectively justified reasons within the meaning of sub-para. (1) shall be deemed to exist if, following the conclusion of the agreement;

- circumstances arise which result in a deterioration of the financial position of the borrower or a loss in value of the collateral provided to such an extent that repayment of the loan or payment of interest is at risk, even if the collateral provided is realised; or
- the Credit Institution has an objectively justified reason to believe that the loan amount is being used by the borrower in a way that violates the agreement or the law.

(3) If the customer is a consumer, the Credit Institution shall immediately inform such customer of its decision in writing on paper or any other durable data carrier, stating its reasons. No reasons shall be stated if this would jeopardise public safety or public order.

## II. BANK INFORMATION

**Para. 27.** 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.

## 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 shall prove 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 to be authorised to draw or sign on an account shall deposit specimens of their signatures with the Credit Institution. On the basis of the specimen signatures deposited, the Credit Institution shall permit written disposition within the framework of the account relation.

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

#### 1. Authority to operate

**Para. 31.** The power of disposal of the account shall be exclusive to the account holder. 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 advance directives, the effectiveness of which has been registered in the Austrian Central Directory of Powers of Attorney, a power of attorney generally covering disposal over the accounts of the account holder shall be sufficient.

#### 2. Authority to sign

**Para. 32.** (1) The account holder may expressly and in writing grant signing authority to third parties. The authorised signatory has to prove his/her identity to the Credit Institution. The authorised signatory shall only be authorised to make and revoke dispositions regarding the account.

(2) Signing authority regarding a securities account shall also include the power to buy and sell securities within the scope of the available coverage and the investment goal of the securities account holder, established pursuant to the (Austrian) "Wertpapieraufsichtsgesetz" (Securities Services Supervision Act).

## E. Special types of accounts

### 1. Sub-account

**Para. 33.** An account may include sub-accounts. Even if sub-accounts are kept under separate sub-account names, all rights and obligations vis-à-vis the Credit Institution shall be exclusive to the account holder.

### 2. Escrow account

**Para. 34.** In the case of escrow accounts, all rights and obligations vis-à-vis the Credit Institution shall be exclusive to the account holder in his capacity as trustee.

### 3. Joint account

**Para. 35.** (1) An account may be opened for several account holders (joint account). Dispositions regarding the account, in particular closing the account and granting the authority to sign, must be made by all account holders 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, each joint account holder shall have individual authority to draw on the account. Such authority shall also include the power to buy and sell securities within the scope of coverage available and in accordance with the joint investment goal of all security account holders established pursuant to the (Austrian) "Wertpapieraufsichtsgesetz" (Securities Services Supervision Act). Such authority shall, however, be terminated in the event of an express objection raised by another account holder; in such case, the joint account holders shall only be authorised to act jointly.

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

**Para. 36.** Intentionally omitted

### 4. Foreign-currency account

**Para. 37.** (1) If the Credit Institution keeps a foreign currency account for the customer, transfers in the respective foreign currency shall be credited to such account, unless a different transfer order has been given. If no foreign currency account is kept, the Credit Institution shall be entitled to credit foreign currency amounts in the national currency, unless the customer has expressly given instructions to the contrary. The amount shall be converted at the conversion rate of the day on which the amount in foreign currency is at the Credit Institution's disposal and may be realised by the latter.

(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.

(3) The Credit Institution's obligation to execute an order debiting a credit balance held in foreign currency or to meet a liability in foreign currency shall be suspended to the extent and for as long as the Credit Institution is, due to political measures or events in the country of the currency in question, not able or able only in a limited extent to dispose over the currency in which the credit balance or the liability is denominated. In the extent and as long as such measures or events continue, the Credit Institution shall not be under any obligation to fulfil such orders at another location outside the country of the currency, in another currency (not even in euros) or by acquiring cash. However, the obligation of the Credit Institution to execute an order debiting a credit balance held in foreign currency shall not be suspended if the Credit Institution is able to carry out such order entirely in-house. The rights of the customer and of the Credit Institution to offset mutual receivables in the same currency shall remain unaffected by the rules set out above.

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

**Para. 38.** (1) Unless otherwise agreed, the Credit Institution shall balance the accounts on a quarterly basis. Interest accrued in and charges due for the respective quarter shall be included in the closing balance, which shall subsequently continue to carry interest ("compound interest"). Statements of securities accounts shall be prepared once a year.

(2) The Credit Institution shall keep the statement of account, including the closing balance/statement of securities, available for the customer at the account-keeping branch office.

### **IV. GIRO TRANSACTIONS**

#### **A. Transfer orders**

**Para. 39.** (1) In the case of transfer orders intended for a beneficiary whose account is kept by a payment service provider in Austria, in another country of the EEA or in Switzerland, the customer has to identify the beneficiary by means of his/her International Bank Account Number (IBAN).

(2) In the case of transfer orders intended for a beneficiary whose account is kept by a payment service provider outside the EEA or in Switzerland, the customer has to identify the beneficiary by:

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

(3) The IBAN and the BIC, to be indicated by the customer in accordance with sub-para. (1) and (2), constitute the customer identifier of the beneficiary on the basis of which the transfer order is executed. Additional information relating to the beneficiary, such as, in particular, the name of the beneficiary, are not part of the customer identifier and shall be of no relevance to the execution of the transfer order.

(4) The designated purpose stated in the transfer order shall be of no relevance to the Credit Institution.

(5) Acceptance of a transfer order by the Credit Institution alone shall not constitute any rights of a third party vis-à-vis the Credit Institution.

(6) 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, credit line granted).

(7) Transfer orders received by the Credit Institution (para. 39a) 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.

(8) If the Credit Institution refuses to execute a transfer order, it shall, as quickly as possible and within the deadlines specified in para. 39a (3), inform the customer of its refusal in the form agreed upon with the customer, and indicate the rectifications required in order to enable the transfer to be made in the future. The reason for refusal shall be indicated, unless such indication constitutes a violation of Austrian or EU law and/or is contrary to a court order or an order by an administrative authority. Transfer orders refused by the Credit Institution for justified reasons do not trigger the deadlines for execution specified in para. 39a.

(9) Information on transfer orders executed (reference number, 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, shall be made available to the customer, who is a consumer, by the Credit Institution once a month upon request, unless already shown on the account statement on the occasion of the transaction concerned.

#### **B. Deadlines for execution**

**Para. 39a.** (1) Payment orders received by the Credit Institution after the time of day (deadlines specified for incoming orders) near the end of office hours agreed upon for the type of payment concerned, or on a day which is not a banking day, shall be treated as if received on the following banking day. The Credit Institution shall inform the customer in due time before conclusion of the current account contract and, subsequently, whenever a change occurs in the deadlines for incoming orders, of the deadlines set for incoming orders either in paper form or – if agreed upon with the customer – by means of another durable data carrier. A banking day shall be understood to be any day on which the Credit Institution is open to customers and keeping up the business operations required for the execution of payment procedures.

(2) If the customer placing a payment order agrees with the Credit Institution that execution of a payment order is to begin on a certain day or at the end of a certain period or on the day the customer makes the 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 of the Credit Institution, the payment order shall be treated as if received on the following banking day.

(3) The Credit Institution shall ensure that, counting from the time of receipt, the amount subject to the payment procedure is received by the payment service provider of the beneficiary of the payment by the end of the following banking day, at the latest (by the end of the second banking day in the case of payment procedures initiated in paper form). This sub-paragraph shall only apply to euro-denominated payment procedures within the EEA.

(4) For payment procedures within the European Economic Area denominated not in euro but in another currency of an EEA Member State, the deadline for execution referred to in sub-para. 3 shall be four banking days.

### **C. 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) Information on transfers credited to his/her account (reference number, amount, currency, fees, interest, exchange rate, value date of the credit entry) shall be made available to the customer, who is a consumer, on the occasion of the transaction concerned in the account statement.

(3) The Credit Institution shall be entitled to deduct 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. 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 cancel shall not be terminated if the account has been balanced in the meantime. If a right to cancellation exists, the Credit Institution may deny discretion to use the credited amounts.

### **D. 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 is 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) Due to this reservation, the Credit Institution shall be entitled to reverse the credit entry by means of a simple entry, if collection or transfer has failed or if, due to the economic situation of a debtor, interventions by public authorities or for other reasons, the Credit Institution expects that it will not obtain the unrestricted right of disposal over the amount to be collected or transferred.

(3) The reservation can also be exercised if the amount credited was 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 reservation is in force, the Credit Institution shall also be entitled to deny the customer the right of disposal over the amounts credited. The proviso shall not be lifted through the balancing of accounts.

### **E. 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 (see para. 39a sub-para. (1) of these GTCs).

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

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

**Para. 42a.** (1) The customer shall agree to the debiting of his/her account with amounts collected from his/her account with the Credit Institution by third parties authorised by the customer. The customer shall have the right to withdraw this authorisation in writing at any time. Such withdrawal shall be effective as of the day after 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 order to pay amounts collected by a third party specified in the order from the account of the customer ("direct debit order"), the Credit Institution must comply with the demand of the customer, who is a consumer, to cancel the debiting of his/her account with the amount collected as of the same value date. 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 beneficiary in an agreed form at least four weeks before the due date. The customer's demand for cancellation of the debit entry must be brought to the knowledge of the Credit Institution within eight weeks after the day on which the account was debited. Economic operators shall not be entitled to make such a demand.

(3) If the Credit Institution, at the time of debiting the account, was not acting on the basis of a direct debit order of the customer ("preauthorised payment procedure"), the Credit Institution has to comply, without further steps taken, with the customer's demand (also if the customer is an economic operator), received within eight weeks counting from the time of the debiting of his/her account, to cancel the debiting of the account.

(4) Any justified demand by the customer for cancellation shall be complied with within ten banking days.

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

### **A. Changes in consideration payable by and services provided to economic operators**

**Para. 43.** (1) In its business relations with economic operators, the Credit Institution may modify the consideration for services to be provided by the Credit Institution or by the customer in Permanent Agreements and Individual Agreements (including interest on credit and debit balances on current accounts and other accounts, account keeping fees, etc.), with due consideration given to all relevant circumstances (in particular, changes in the legal framework, changes in funding costs, changes in personnel and other administrative expenses, changes of the consumer price index, etc.) at its own reasonable discretion. The same applies to amendments of other services provided by the Credit Institution which are due to a change in legal requirements, the security of banking operations, technological progress or a substantial reduction in the use of a service negatively impacting cost effectiveness of such service.

(2) Changes in the services of the Credit Institution or the consideration payable by the customer going beyond the scope of sub-para. 1, the introduction of new services requiring payment of additional consideration, as well as new charges for services already agreed, shall be proposed to the customer by the Credit Institution no later than two months before the proposed date of entry into force of such changes. The customer's consent to these changes will be deemed to have been given unless the Credit Institution has received an objection from the customer prior to the proposed entry into effect. 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 deadline. The notification of the proposed change may be made available by the Credit Institution for the economic operator to access at any time in a manner and form agreed upon with the latter.

#### **B. Changes in consideration payable by and provided to consumers, excluding payment services**

**Para. 44.** (1) In the absence of other agreements, consideration payable for permanent agreements provided by the Credit Institution (excluding interest) agreed upon with the consumer shall be adjusted (increased or reduced) annually to the development of the National Consumer Price Index 2000 published by Statistics Austria (index value of the month of December prior to the adjustment of consideration, compared with the base value of December 2002), effective as of 1 April of every year, the amount being rounded to the nearest cent. If, in the event of an index rise, consideration payable is increased for whatever reason, this shall be without prejudice to the right to increase consideration payable in subsequent years. Adjustments in consideration shall be made not earlier than after the expiry of two months, counted from the time of conclusion of the contract.

(2) Changes in consideration payable by the customer and changes in services to be provided by the Credit Institutions going beyond the scope of sub-para. (1) are only possible with the customer's approval; unless explicit advance approval has been given by the customer; such changes shall be effective two months after the customer has been notified of the change proposed by the Credit Institution, provided the Credit Institution has not received the customer's written objection by that date. 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 deadline.

(3) The provisions of this para. 44 shall not apply to changes in consideration and services agreed in contracts on payment services, which are covered separately in para. 45.

#### **C. Changes in services provided by the Credit Institution and consideration by the customer agreed upon in a framework contract for payment services with consumers**

**Para. 45.** (1) Changes in consideration agreed upon in a framework contract (in particular, a current account contract) for payment services (including interest on debit and credit balances, unless the change is due the linkage of the interest rate to a reference rate) and the introduction of consideration shall only be possible with the approval of the customer. Unless explicit advance approval has been given by the customer, such changes shall be effective two months after the customer has been notified of the change proposed by the Credit Institution, provided the Credit Institution has not received the customer's written objection by that date. 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

deadline. The customer shall have the right to terminate the framework contract free of charge and without notice up to the time of entry into force of the change.

(2) The same shall apply to the agreement of changes in the services of the Credit Institution in a framework contract for payment services and for the agreement of new services to be rendered against additional consideration.

#### **D. Adjustment of interest rates on the basis of reference rates**

**Para. 46.** If an interest rate is linked to a reference rate (e.g. EURIBOR) through an adjustment clause, changes shall take immediate effect without prior notification of the customer. The consumer shall be informed about the effective changes in the interest rate in the following quarter, at the latest.

#### **E. Reimbursement of expenses by economic operators**

**Para. 47.** The customer, who is an economic operator, shall bear all necessary and expedient expenses, charges and costs, including, in particular, 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, that are incurred in connection with the business relation between him/her and the Credit Institution. The Credit Institution shall be allowed to 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**

**Para. 48.** If circumstances subsequently occur or become known in the business relationship with economic operators which justify an increased risk assessment of the claims against the customer, the Credit Institution shall have the right to demand the provision or increase of collateral within a reasonable period of time. This shall apply, in particular, if the economic situation of the customer has taken or is at risk of taking an unfavourable development or if the value of the collateral provided has been impaired or is at risk of being impaired. This shall also apply if no collateral was demanded at the time the claims originated. If the increase in risk regarding the customer's ability to repay the loan is due to a significantly unfavourable development of the rate of exchange of the currency in which the loan was originated, para. 75 shall apply.

#### **B. Lien of the Credit Institution**

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

**Para. 49.** (1) Subject to para. 51, the customer shall grant the Credit Institution a lien on objects and rights of any kind which come into the possession or power of disposal of the Credit Institution in connection with any banking transaction carried out with the Credit Institution.

(2) The lien shall, in particular, also exist on all distrainable claims of the customer against the Credit Institution, e.g. arising from credit balances. If securities are subject to the lien, the lien shall also extend to the interest and dividend coupons pertaining to such securities.



**Para. 50.** (1) The lien shall secure the claims of the Credit Institution against the customer arising from the business relation, including joint accounts, even if the claims are conditional, limited in time or not yet due.

(2) If claims of the Credit Institution pursuant to sub-para. 1 exist, the lien shall come into existence upon the Credit Institution taking possession of the pledged asset or power of disposal, other-wise at any future point in time when such claims arise.

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

**Para. 51.** (1) The lien shall not include objects and rights which have been earmarked by the customer for the execution of a certain order prior to the creation of the lien, such as amounts designated for the cashing of a specified cheque or honouring of a specified bill of exchange as well as for the execution of a specified transfer. This shall, however, apply only as long as the earmarking is effective.

(2) Notwithstanding the existing lien, the Credit Institution shall carry out dispositions of the customer regarding credit balances on current accounts in favour of third parties as long as the customer has not received notification of the enforcement of the lien from the Credit Institution. Imposition of distraint on the credit balance shall not be considered a disposition by the customer.

(3) The lien shall furthermore not include assets which the customer has disclosed in writing to the Credit Institution as escrow assets prior to the creation of the lien or which have come into the possession or power of disposal of the Credit Institution without the customer's intention.

## **C. Release of collateral**

**Para. 52.** Upon request of the customer the Credit Institution shall release collateral of its choice, provided it has no justified interest in keeping such collateral as security. In making such selection, the Credit Institution shall take into account the justified interests of the party providing the collateral.

## **D. Realisation of collateral**

### **1. General**

**Para. 52a.** The following para. 53 to 56 regulate how the Credit Institution may proceed in the event of realisation of collateral provided by the customer or a collateral provider for the customer. The prerequisite for this (with the exception of the case governed by Clause 56 where a claim pledged as collateral falls due before the secured claim falls due) is in any case that the secured claim has fallen due and the right to realise the collateral has arisen in accordance with the applicable contractual and statutory provisions. This presupposes that the customer has been threatened with the liquidation of the collateral (including liquidation by termination and collection), stating the amount of the secured claim, and that at least one month has passed since this threat was made. If the customer is an economic operator, this period shall be one week. The threat may be omitted if it is not possible, e.g. because the customer's place of residence is unknown. In this case, the aforementioned period shall run from the due date of the secured claim. Realisation before expiry of the time limit is permissible if waiting would result in a risk of a significant and permanent loss of value.

## **2. Sale**

**Para. 53.** Collateral having a market price or a stock exchange price shall be realised by the Credit Institution in accordance with the relevant statutory provisions by selling them at such price in the open market.

**Para. 54.** The Credit Institution shall have collateral in movable physical property – having no market price or stock exchange price – assessed by an independent and authorised expert. The Credit Institution shall notify the customer of the result of the assessment and, at the same time, ask the customer to name, within a reasonable period of time, however within one month at the latest, a party interested in purchasing the collateral and willing to pay at least the assessed value as the purchase price 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 Credit Institution shall set off the proceeds of the sale against the secured receivables, the surplus, if any, being due to the customer.

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

**Para. 55.** The Credit Institution shall also be entitled to realise the collateral by means of forced sale or – if an open market sale is not mandatory by law – to have it auctioned off out of court by way of a public auction by an authorized entrepreneur. The time and place and a general description of the collateral shall be publicly announced. The collateral provider and third parties entitled to rights to the collateral shall be notified thereof.

## **4. Collection**

**Para. 56.** (1) The Credit Institution shall be entitled to terminate and collect claims of any kind provided to it as collateral (including securitised claims) upon the secured claim becoming due. Prior to that point in time, the collection of the claim serving as collateral shall be permitted upon such claim becoming due. In case of an imminent significant and permanent loss in value of the claim serving as collateral, the Credit Institution shall also be entitled to terminate such claim before it becomes due. The customer shall be informed thereof in advance, unless such information is not possible or in case of imminent danger. Amounts collected prior to the due date of the secured claim shall replace the collected claim as a cash deposit which is to be invested accordingly by the Credit Institution.

(2) The provisions of sub-para. 1 shall not apply to wage and salary claims of consumers, which have been provided as collateral for claims not yet due.

**Para. 57.** Intentionally omitted

## **E. Right of retention**

**Para. 58.** The Credit Institution shall be entitled to retain services to be rendered by it to the customer due to claims arising out of the business relation, even if they are not based on the same legal relation. Para. 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 claims of the customer, to the extent that they are distrainable, against all liabilities of the customer vis-à-vis the Credit Institution.

(2) Notwithstanding the existing right to offset, the Credit Institution shall carry out dispositions of the customer in favour of third parties regarding credit balances on current accounts as long as the customer has not received an offsetting statement. Imposition of distraint on the credit balance shall not be considered a disposition by the customer.

#### 2. By the customer

**Para. 60.** Customers who are consumers shall only be entitled to offset their liabilities if the Credit Institution is insolvent or if the claim of the customer is related to his/her liability or has been ascertained by court decision or recognised by the Credit Institution. Customers who are economic operators unconditionally (including cases where the Credit Institution is insolvent or the customer's claim is related to his/her liability or has been ascertained by court decision or recognised by the Credit Institution) and irrevocably waives any right to set off its liabilities against the Credit Institution's claims in connection with the loan against claims to which the customer may be entitled against the Credit Institution under any title whatsoever.

### B. Crediting

**Para. 61.** In transactions with economic operators, notwithstanding the provisions of Section 1416 of the (Austrian) "ABGB" (General Code of Civil Law), the Credit Institution shall be entitled to credit payments to claims of the Credit Institution, if no collateral has been provided for the same or if the value of the collateral provided does not cover the claims. It is irrelevant in this respect at what time the individual claims have become due. This shall also apply to a current account relation. In transactions with consumers, the Credit Institution may first credit payments dedicated to the repayment of a specific claim against the unsecured parts of this claim, even if the dedication by the customer is deviated from in this respect. The Credit Institution may only make use of this right if the collectability of its claims would otherwise be at risk.

## SPECIAL TYPES OF TRANSACTIONS

### I. TRADE IN SECURITIES AND OTHER ASSETS

#### A. Scope

**Para. 62.** The provisions laid down in para. 63 to 67 shall apply to securities and other assets, even if they are not securitised.

#### B. Execution of orders

**Para. 63.** (1) As a rule, the Credit Institution shall carry out orders of its customer for the purchase and sale of securities as a commission agent.

(2) If, however, the Credit Institution agrees on a fixed price with the customer, it shall enter into a purchase contract.

(3) The customer herewith gives his/her consent to the Credit Institution's policy on executing orders on the basis of which the Credit Institution shall execute the orders of the customer in the absence of any other instructions. 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 their full execution.

### 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. Date of order execution

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

### E. Insufficient coverage

**Para. 66. (1)** The Credit Institution shall be entitled to refrain from carrying out securities transactions in whole or in part, if no sufficient coverage is available.

(2) The Credit Institution shall, however, be entitled to execute such securities transactions, if it is not aware 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 make a closing transaction for the customer's account at the best possible price.

### F. Transactions abroad

**Para. 67.** If a customer is credited a claim for 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 for its customers 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 public limited company nor for the possibility of exercising shareholder rights prior to the issuance of the shares.

### II. SAFEKEEPING OF SECURITIES AND OTHER ASSETS

#### A. Securities held in account

**Para. 69. (1)** The Credit Institution shall be entitled to place securities deposited with it in the securities account of the beneficiary.

(2) The Credit Institution shall be expressly authorised to keep securities issued in Austria abroad and securities issued abroad 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) The Credit Institution shall be liable vis-à-vis an economic operator only for the diligent selection of the third-party depository.

#### **B. Redemption of securities, renewal of coupons, drawing, calling for redemption**

**Para. 70.** (1) The Credit Institution shall ensure the detachment of the due interest coupons, profit participation coupons and dividend coupons and collect their redemption amount. The Credit Institution shall procure new interest coupons, profit participation coupons 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 sub-para. (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, numbers of securities redeemable by drawings are advised, they shall only be relevant to the drawing and redemption and only for as long as this is the practice abroad. If, according to the practice abroad, the collection amounts of the drawn securities 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 securities, the customers whose securities are to be redeemed shall be determined by means of a drawing.

#### **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 scrutiny to check whether Austrian securities are subject to public notification procedures, payment stops and the like. Scrutiny for the existence of public notification procedures resulting in the invalidation of securities shall also be performed 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, request for payment, pooling, reorganisation, conversion offer, coupon increase and other important measures regarding 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, try to notify the customer accordingly. If the customer fails to provide instructions in a timely manner, the Credit Institution shall act to the best of its knowledge and, taking into account the customer's interests, realise rights which would otherwise be forfeited at the latest point in time possible.

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

#### **A. Execution**

**Para. 73.** The Credit Institution and the customer shall enter into a purchase contract on foreign currencies and banknotes. If it is agreed that the Credit Institution shall act as a commission agent for the customer, the provisions on commission transactions contained in the section on trade in securities shall apply accordingly. In the event of the Credit Institution contracting in its own name, no express notification pursuant to Section 405 of the (Austrian) "UGB" (Companies Act) shall be required.

#### **B. Forward transactions**

**Para. 74.** (1) In the case of forward transactions, the Credit Institution may demand from the customer, at a reasonable date prior to the due date, evidence that the amount owed by the customer will be received on the agreed account in due 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 make a closing transaction at the best possible price.

(3) If the Credit Institution makes a closing transaction pursuant to sub-para. (1) or (2), any resulting price difference shall be debited or credited to the customer. The customer shall bear any and all expenses incurred.

### **IV. FOREIGN CURRENCY LOANS**

**Para. 75.** (1) Foreign currency loans shall be paid back in the currency in which they were originated by the Credit Institution. Payments made in other currencies shall be deemed to be provided as collateral, unless the Credit Institution informs the customer within four weeks after the receipt of the payment that such payments will be used for the redemption of the loan.

(2) 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 if

- due to legal or other circumstances beyond the control of the Credit Institution, refinancing of the loan granted to an economic operator in the foreign currency is no longer possible; or
- the entire loan is due for repayment and is not redeemed, although a reminder has been sent out; or
- in business relationships with economic operators, the credit risk increases due to the development of the exchange rate of the foreign currency and the Credit Institution has not obtained sufficient collateral within a reasonable period of time.

## V. COLLECTION AND DISCOUNT BUSINESS, BILLS OF EXCHANGE AND CHEQUES

### A. Scope

**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.** In principle, such documents shall be accepted by the Credit Institution for collection, unless their purchase (discounting) has been agreed upon.

### 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 para. 41 sub-para.(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 coverage of the debit balance resulting from such redebit.

**Para. 81.** The Credit Institution may demand from the customer that he/she transfers to it the claim on which the document or the acquisition of the same by the customer is based as well as all present and future rights arising from the underlying transactions, including the collateral pertaining thereto. The Credit Institution shall only be obliged to cash documents due for payment, if it has received an order from the customer in time and sufficient coverage is available.

