



**M. M. WARBURG & CO LUXEMBOURG**

**General Conditions of Business**

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## M. M. WARBURG & CO LUXEMBOURG

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# General Conditions of Business

## Basic rules for the relationship between customer and Bank

### 1. Scope and amendments of these Conditions of Business and of Special Conditions for individual business relations

#### (1) Scope

The General Conditions of Business apply to the whole business relationship between the customer and the Bank. In addition, special conditions shall apply for individual business relations which contain deviations from or additions to these General Conditions of Business; they shall be agreed with the customer upon the opening of an account or upon the giving of an order.

Even after the business relationship has ended, the General Conditions of Business shall continue to apply to the winding up of the relationship.

#### (2) Amendments

Amendments to these General Conditions of Business and to the Special Terms and Conditions shall be submitted to the customer in writing not less than two months before the date on which it is proposed that they should take effect. They shall be deemed to have been approved if the customer has not raised any objection thereto by the date on which it is proposed that they should take effect. When submitting the proposed amendments, the Bank shall specifically draw the customer's attention to the fact that silence on the latter's part will have the effect of constituting tacit approval.

### 2. Banking secrecy and banking information

#### (1) Banking secrecy

Within the framework of the statutory provisions of the Grand Duchy of Luxembourg, the Bank is obliged to keep confidential all customer-related facts and assessments of which it becomes aware (banking secrecy).

#### (2) Banking information

Banking information consists of generally held determinations and observations about the financial circumstances of the customer, his creditworthiness and his solvency; details as to amounts held in accounts or on deposit or as to other assets entrusted to the Bank and details as to his level of borrowing shall not be given.

### (3) Requirements for providing banking information

The Bank shall provide banking information only if the customer has expressly agreed thereto generally or in an individual case. Banking information shall be provided only where the person requesting it has plausibly shown that it has a justified interest in the information sought and there is no ground for supposing that the provision of the banking information is precluded by interests of the customer that are worthy of protection.

### (4) Recipients of banking information

The Bank shall provide Banking information only to its customers and to other credit institutions for their purposes or those of their customers.

### (5) Personal data

The customer authorises the Bank to store and process certain customer-related personal data such as, for example, his name, address, nationality, profession, etc in so far as this is appropriate and necessary for the business relationship and the collection of such data is in accordance with the statutory provisions in force.

The customer data serve the Bank in order that it may provide the customer with the services required and fulfil its statutory and banking-supervisory obligations.

In so far as it is not expressly empowered by the customer or obliged by law to do so, the Bank shall not disclose those data to third parties. The customer shall be entitled to inspect the personal data relating to him that are stored and, where appropriate, to require them to be rectified. The data shall be stored in accordance with the statutory provisions.

In order to permit the orderly processing of banking business, customer data need to be updated. The customer undertakes to communicate any changes in his data to the Bank without delay and to provide the Bank on request with all such information as the Bank shall need for the purposes of dealing with the business relationship in an orderly way or in conformity with the law.

All declarations made by the customer or answers to questions are provided voluntarily. Failure to answer questions directed to the customer may entail that banking services may not be provided or not provided to their full extent.

### **(6) Disclosure of customer data**

Within the framework of payment transactions and lending business, customer data are processed both by the Bank and by units of the banking group and specialised external service providers which the Bank uses in executing payment orders (e.g. SWIFT, Target, SEPA).

Accordingly, such customer data may also be disclosed to authorities in the country of the external service provider pursuant to the legislation in force there.

In this regard, the customer gives his agreement with regard to the disclosure of data to the external service providers established in third countries.

## **3. Liability of the Bank: Contributory negligence of the customer**

### **(1) Principles of liability**

The Bank shall be liable in fulfilling its obligations for fault of its employees and persons used by it in order fulfil its obligations within the framework of the statutory provisions. In so far as the special conditions for individual transactions or other agreements provide otherwise, they shall take precedence. In the event that the customer contributed to the occurrence of damage through his own wrongful conduct (for example, by infringing the duties of collaboration listed in point 11 of these Conditions of Business), to what extent the Bank and the customer have to bear the loss shall be determined in accordance with the principles of contributory negligence.

### **(2) Forwarded orders**

Where, by virtue of its content, an order is executed typically in such a form that the Bank entrusts its further execution to a third party, the Bank fulfils the order by forwarding it in its own name to the third party (forwarded order). This covers for example obtaining banking information from other credit institutions or the custody and management of securities abroad. In such cases, the Bank's liability shall be limited to the careful selection and instruction of the third party.

### **(3) Disturbance to the business**

The Bank shall not be liable for damage arising out of force majeure, riot, war and natural events or other events for which it cannot be held responsible (for example strikes, lock outs, transport disturbances, sovereign dispositions domestically or abroad). The same shall apply to damage arising out of tortuous acts against the Bank and disruptions of telecommunications or similar types of events.

### **(4) Telephone, telegraphic, wireless, fax and electronic orders**

Damage arising out of transmission errors, abuse, misunderstandings and mistakes in telephone, telegraphic, wireless, fax or electronic communications with the customer or third parties and in the use of other corresponding technical means of communication shall be borne by the customer in so far as the damage is not caused by proven fault on the part of the Bank. The Bank reserves the right on grounds of security to obtain in the case of such orders and unsigned orders a

corresponding or original confirmation at the customer's expense before executing them.

The communication of electronic messages by e-mail is not a secure means of transmission. For that reason, the Bank reserves the right to give no legal effect to e-mails and to ignore such orders.

If the Bank receives orders by other insecure media (e.g. by telephone or fax), the Bank shall be entitled but not obliged to execute such orders, since the authenticity of orders given using insecure media can be checked by the Bank only to a limited extent where there is no written original order available. There shall be no entitlement on the part of the Bank to execute orders given using insecure media where the customer has expressly given instructions to the contrary in writing.

## **4. Unity of account; authority to offset**

### **(1) Unity of account**

All accounts and deposits of a given customer (including those in different currencies or with different terms and conditions) constitute de facto and de jure only parts of a single current account whose balance is determined only after converting all balances into the basic currency agreed with the customer at the daily rate on the day of the balancing of the account. As far as interest rates, charges and costs are concerned, the conditions of the relevant individual account/deposit shall apply.

### **(2) The Bank's authority to offset**

Whilst the Bank may terminate for a serious reason (point 18, paragraph 3), it shall be entitled notwithstanding the provisions of point 4, paragraph 1, of these Conditions of Business to offset, without prior notice or warning, its own claims against claims of the customer (e.g. credit balances), even when those claims are not yet due. In this connection, where appropriate, amounts in foreign currencies shall be converted.

The Bank shall be entitled to determine against which of several outstanding claims and to what amount in-payments which are not sufficient to offset all claims are to be set off.

### **(3) Limits to the customer's right to offset**

The customer may only offset his claims against claims of the Bank where his claims are uncontested or have been definitively legally adjudged.

### **(4) Connexity of business matters**

The Bank and the customer agree that all obligations of the Bank vis-à-vis the customer and of the customer vis-à-vis the Bank within the framework of the banking business relationship constitute a coherent legal relationship (connexity). Consequently, the Bank and the customer shall be entitled to refuse to fulfil their obligations until such time as the other party has fulfilled its obligations.

## **5. Right of disposal after the customer's death**

After the customer's death, in order to clarify the right of disposal over the deceased's estate, the Bank may require production of a certificate of inheritance, a certificate of executorship or further documents necessary to that effect; documents in foreign languages

are to be submitted translated into German at the Bank's request. The Bank may forgo submission of a certificate of inheritance or a certificate of executorship where it is presented with an original or a certified copy of the last will and testament (will, contract of inheritance) alongside a record of its opening. The Bank may consider any person designated therein as heir or executor as the beneficiary, allow this person to dispose of any assets and, in particular, make payment or delivery to this person, thereby discharging its obligations. This shall not apply if the Bank is aware that the person designated therein is not entitled to dispose (e.g. following challenge or invalidity of the will) or if this has not come to the knowledge of the Bank owing to gross negligence.

In the event that the Bank is submitted foreign documents as proof of entitlement, the Bank shall check their appropriateness as credentials and/or proof. The costs incurred in connection therewith shall be charged to the principal.

Any liability of the Bank for appropriateness, genuineness and completeness and for their correct translation, interpretation and legal application shall exist only in the event of gross negligence.

## **6. Applicable law, jurisdiction**

### **(1) Applicability of Luxembourg law**

As far as the business relationship between the customer and the Bank is concerned, Luxembourg law shall apply unless expressly agreed otherwise.

### **(2) Jurisdiction**

The Bank may bring proceedings against the customer in the court having jurisdiction in the place where the account is held or in any other court having jurisdiction. The Bank itself may be sued only in the court having jurisdiction in the place where the account is held.

## **Account management**

## **7. Balance statements for current accounts**

### **(1) Issue of balance statements**

Unless otherwise agreed upon, in the case of current accounts, including the current account agreed in point 4, paragraph 1, of these Conditions of Business, the Bank shall issue a balance statement at the end of each calendar year, thereby offsetting the claims accrued by both parties since the last balancing of accounts (including interest and charges imposed by the Bank). The Bank may charge interest on the balance arising therefrom in accordance with point 12 of these Conditions of Business or any other agreements entered into with the customer.

### **(2) Term for objections; approval by tacit acquiescence**

Any objections a customer may have concerning the inaccuracy or incompleteness of a balance statement must be raised not later than within one month following its receipt; if the objections are made in writing, it is sufficient to dispatch these within the period of one month. Failure to make objections in due time will be deemed to constitute approval. When issuing the balance statement, the Bank will expressly draw the customer's attention to this consequence. The customer may demand a correction of the balance statement even after expiry of this period, but must then prove that his account was either wrongly debited or mistakenly not credited.

## **8. Reverse entries and adjusting entries made by the Bank**

### **(1) Prior to issuing a balance statement**

Incorrect credit entries on current accounts (for example, owing to a wrong account number) may be reversed by the Bank through a debit entry prior to the issue of the next balance statement to the extent that the Bank has a repayment claim against the customer; in this case, the customer may not object to the debit entry on the grounds that he has already disposed of the sum of the credit (reverse entry). This rule shall apply *mutatis mutandis* in the event of erroneous credits to other accounts.

### **(2) After issuing a balance statement**

If the Bank notices an incorrect credit entry only after a balance statement has been issued and if the Bank has a repayment claim against the customer, it will debit the account of the customer with the amount of its claim (adjusting entry). If the customer objects to the adjusting entry, the Bank will re-credit the account with the amount in dispute and assert its repayment claim separately. This rule shall apply *mutatis mutandis* in the event of erroneous credits to other accounts.

### **(3) Information of the customer**

The Bank will immediately notify the customer of any reverse entries and adjusting entries made.

## **9. Collection orders**

### **(1) Conditional credit entries effected upon presentation of documents**

If the Bank credits the countervalue of cheques and direct debits before they are honoured, this shall be done on condition of payment, even if those items are payable at the Bank itself. If the customer hands in other papers, instructing the Bank to collect an amount due from a debtor (for example, interest coupons), and if the Bank effects a credit entry for such amount, this is done under the reserve that the Bank will obtain the amount. This reserve shall also apply if the papers are payable at the Bank itself. If cheques or direct debits are not honoured or if the Bank does not obtain the amount under the collection order, the Bank will cancel the conditional credit entry regardless of whether or not a balance statement has been issued in the meantime.

### **(2) Honouring cheques and direct debits**

Direct debits, collections and cheques shall be honoured if the debit entry has not been cancelled at the latest on the second bank working day after it was made. Cheques payable in cash are deemed to have been honoured once their amount has been paid to the presenting party. Cheques are also deemed to have been paid as soon as the Bank dispatches a payment notice. Direct debits and cheques presented through the competent clearing house are deemed honoured if they are not returned to the clearing house by the time stipulated by such clearing house.

## **10. Risks inherent in foreign currency accounts and foreign currency transactions**

### **(1) Execution of orders relating to foreign currency accounts**

Foreign currency accounts of the customer serve to effect the cashless settlement of payments to and disposals by the customer in foreign currency. Disposals of credit balances on foreign currency accounts (for example, by means of transfer orders to the debit of the foreign currency credit balance) are settled through or by banks in the home country of the currency unless the Bank executes them entirely in-house.

**(2) Credit entries for foreign currency transactions with the customer**

If the Bank concludes a transaction with the customer (for example, a forward exchange transaction) under which it owes the provision of an amount in a foreign currency, it will discharge its foreign currency obligation by crediting the account of the customer in the respective currency, unless otherwise agreed.

**3) Temporary limitation of performance by the Bank**

The Bank's duty to execute a disposal order to the debit of a foreign currency credit balance (paragraph 1) or to discharge a foreign currency obligation (paragraph 2) shall be suspended to the extent that and for as long as the Bank cannot or can only restrictedly dispose of the currency in which the foreign currency credit balance or the obligation is denominated, on account of political measures or events in the country of the currency in question. To the extent that and for as long as such measures or events persist, the Bank is not obliged either to perform at some other place outside the country of the respective currency, in some other currency or by procuring cash. However, the Bank's duty to execute a disposal order to the debit of a foreign currency credit balance shall not be suspended if the Bank can execute it entirely in-house. The right of the customer and of the Bank to set off mutual claims due in the same currency against each other shall not be affected by the above provisions.

**Customer's duties to cooperate**

**11. Customer's duties to cooperate**

**(1) Changes in the customer's name and address or in the power of representation issued vis-à-vis the Bank**

A proper settlement of business requires in particular that the customer notify the Bank without delay of any changes in his name and address, as well as the termination of, or amendment to, any powers of representation towards the Bank conferred upon any person (in particular, a power of attorney). This notification duty shall also exist where the powers of representation are recorded in a public register (for example, in the Commercial Register) and any termination thereof or any amendments thereto are entered in that register. The Bank shall be entitled to require the customer to provide further information relevant to the business relationship at any time. In particular, extensive statutory notification obligations may arise from the Money Laundering Act (Geldwäschegesetz). The customer shall be under an obligation to answer such queries without delay.

**(2) Clarity of orders**

Orders of any kind must unequivocally disclose their contents. Orders that are not clearly worded may lead to queries, which may result in delays, for the consequences of which the Bank assumes no liability. Above all, in the case of orders and transfers, the customer must ensure the accuracy and completeness of the name of the payee, as well as of the account number and the bank identification code stated or IBAN (International Bank Account Number) and BIC (Bank Identifier Code). Amendments, confirmations or repetitions of orders must be designated as such.

**(3) Special reference to urgency in connection with the execution of an order**

If the customer considers that an order requires particularly prompt execution (for example because a money transfer must be credited to the payee's account by a certain date), the customer shall notify the Bank of

this fact separately. For orders given on a printed form, this must be done separately from the form.

**(4) Examination of, and objections to, communications received from the Bank**

The customer must immediately examine statements of account, security transaction statements, statements of deposit and of investment income, other statements, notices of execution of orders, as well as information on expected payments and consignments (advices) as to their accuracy and completeness and immediately raise any objections relating thereto. Failure to object within a period of four weeks shall be deemed to constitute approval. This provision shall apply also in the event that post is domiciled at the Bank.

**(5) Notice to the Bank in case of non-receipt of communications**

The customer must notify the Bank immediately if periodic balance statements and deposit statements are not received. The duty to notify the Bank also exists if other communications expected by the customer (security transaction statements, statements of account after execution of customer orders or payments expected by the customer) are not received.

**(6) Notification of the Bank in connection with US tax legislation**

In the event that the customer is or becomes a US customer within the meaning of the US tax legislation in force for the time being, the customer shall notify the Bank thereof immediately and authorise the Bank to provide the Internal Revenue Service (IRS) with any information about income from the Bank's US custodian or to exclude from the account assets accruing income from a US source. If the customer grants a power to sell the assets without disclosing the relevant information, the Bank shall be empowered to sell those assets within 60 days of finding them in the account. If the Bank becomes aware that the customer is a US person and has already opened the account, the customer has to agree to the disclosure of the information or to a sale of the assets within the time specified.

If the Bank receives no instruction from the customer within that time, the Bank may disclose the information. The Bank may be obliged to withhold tax in accordance with the US tax legislation.

**Cost of banking services**

**12. Interest, charges and disbursements**

**(1) Interest and charges in retail banking business**

The level of interest payable in respect of loans and services customary in retail banking may be ascertained from the relevant credit agreement with the customer or from the list of prices for services. The level of charges for usual services is set out in the list of prices for services in force from time to time, which will be provided to the customer on request. If a customer makes use of a service listed therein, then unless otherwise agreed the interest rates(s) and charges for services stated in the then valid price list shall be applicable. As regards remuneration for any services not stated therein which are provided following the instructions of the customer, or which are believed to be in the interests of the customer and which can, in the given circumstances, only be expected to be provided against remuneration, the relevant statutory provisions shall apply, save in so far as may be otherwise agreed.

**(2) Interest and charges other than for retail banking business**

The amount of interest and charges other than for retail banking business shall, in the absence of any other agreement, be determined by the Bank at its reasonable discretion.

**3) Changes in interest and charges**

In the case of variable interest rate loans, the interest rate will be adjusted in accordance with the terms of the relevant loan agreement with the customer. The Bank shall indicate in a transparent manner in the list of prices for services the underlying reference interest rate in accordance with which interest rate changes are determined.

**(4) Services for which no fee is payable**

The Bank shall not charge any fee for services which it is required to provide by law or pursuant to an ancillary contractual obligation, or for services which it renders in its own interests, unless the charging of such a fee is legally permissible and it is charged in accordance with the statutory rules.

**(5) Customer's right of termination in case of changes in interest and charges**

In the event of an increase in the reference interest rate pursuant to paragraph 3, the customer may, unless otherwise agreed, give notice within six weeks from the announcement of the change, terminating with immediate effect the business relationship affected by the increase in question. If the customer terminates the business relationship, the increased interest and charges shall not be applied to the terminated business relationship. The Bank will allow an adequate period of time for winding up the relationship.

**(6) Changes in charges for services typically used on a long-term basis**

Changes in the charges for services which are typically used on a long-term basis by the customer in the context of the business relationship (e.g. management of ordinary accounts and securities accounts) shall be submitted to the customer in writing not less than two months before the date on which it is proposed that they should take effect. The changes shall be deemed to have been approved if the customer has not raised any objection thereto by the date on which it is proposed that they should take effect. When submitting the proposed changes, the Bank shall specifically draw the customer's attention to the fact that silence on the latter's part will have the effect of constituting tacit approval. Where such changes are proposed to the customer, he/she may forthwith and without charge terminate the contract thereby affected by giving notice to that effect at any time prior to the date on which it is proposed that the changes should take effect. When submitting the proposed changes, the Bank shall specifically draw the customer's attention to this right of termination. If the customer terminates the contract, the altered charge(s) shall not be used as the basis for the terminated business relationship.

**(7) Disbursements**

The customer shall bear all disbursements which are incurred when the Bank carries out the instructions or acts in the presumed interests of the customer (in particular, long-distance telephone calls, postage costs) or when collateral is furnished, administered, released or realised (in particular, notarial fees, storage charges, cost of custodianship of items serving as collateral).

**Security for the Bank's claims against the customer**

**13. Providing or increasing security**

**(1) Right of the Bank to request or increase security**

The Bank may require the provision of banking security for any claims that may arise from the banking relationship, even if such claims are conditional (for example, claim for reimbursement of expenses in relation to the assertion of a claim resulting from a guarantee assumed for the customer).

**(2) Changes in the risk**

If the Bank, upon claims arising against the customer, has initially dispensed wholly or partly with demanding that security be provided or increased, it may nonetheless make such a demand at a later time, provided, however, that circumstances occur or become known which justify a higher risk assessment of the claims against the customer.

This may, in particular, be the case where the economic status of the customer has changed or threatens to change for the worse or the value of the existing security has deteriorated or threatens to deteriorate.

The Bank has no right to demand security if it has been expressly agreed that the customer either does not have to provide any security or must only provide that security which has been specified.

**(3) Setting a time limit for providing or increasing security**

The Bank shall set an appropriate time limit for providing or increasing security. If the Bank intends to make use of its right of termination without notice in accordance with point 18, paragraph 3, of these Conditions of Business should the customer fail to comply with the obligation to provide or increase security within the time limit, it will draw the customer's attention to this consequence before doing so.

**14. Agreement of a lien in favour of the Bank**

**(1) Agreement on the lien**

The customer and the Bank agree that the Bank acquires a lien on the customer's securities and items which have come or will come into the possession of the Bank in the course of banking business. The Bank shall also acquire a lien on any claims which the customer has or may in future have against the Bank arising from the banking relationship (e.g. credit balances). The customer and the Bank agree that the deposit opened in the name of the customer to which precious metals are booked constitutes a special deposit set up for that purpose.

In so far as it is necessary for setting up the lien, the Bank shall be empowered

- to transfer securities and items of the customer to itself as security,
- to have registered securities registered under its own name in the issuer's register as security, and
- to have papers to order duly endorsed in the name and on behalf of the customer showing that the papers to order have been transferred as security.

**(2) Secured claims**

The lien serves to secure all existing, future and contingent claims arising from the banking relationship which the Bank is entitled to against the customer.

### **(3) Exemptions from the lien**

The lien does not extend to shares issued by the majority shareholder in the Bank itself (own shares). The same applies to participation rights/ participation certificates issued by the Bank itself or its majority shareholder and the securitised subordinated liabilities of the Bank or its majority shareholder.

### **(4) Interest and dividend coupons**

If securities are subject to the Bank's lien, the customer is not entitled to demand the delivery of the interest and dividend coupons pertaining to such securities.

## **15. Limitation of the claim to security and obligation to release**

### **(1) Cover limit**

The Bank may assert its claim that security be provided or increased until the realisable value of all security corresponds to the total amount of all claims arising from the banking business relationship (cover limit).

### **(2) Release**

If the realisable value of all security exceeds the cover limit on a more than temporary basis, the Bank shall, at the customer's request, release such security items as it may choose in the amount exceeding the cover limit; when selecting the security items to be released, the Bank will take into account the legitimate concerns of the customer or of any third party having provided security for the customer's liabilities. In this context, the Bank is also obliged to execute orders of the customer relating to the items subject to the lien (for example, sale of securities, paying out of assets).

### **(3) Special agreements**

If for a specific security item assessment criteria other than the realisable value, another cover limit or another limit for the release of security have been agreed, those other criteria or limits shall apply.

## **16. Realisation of security**

### **(1) Right of election of the Bank**

In case of realisation, the Bank may choose between several security items. When realising security and selecting the items to be realised, the Bank will take into account the legitimate concerns of the customer and any third party who may have provided security for the liabilities of the customer.

### **(2) Realisation**

In the event that the customer does not meet his liabilities when they fall due, the Bank may realise the securities pledged to it by giving one month's notice by registered letter; where there is a serious reason, in particular an impending price loss, a shorter period of notice of at least two days may be given.

The manner and place of realisation and any official ("officier public") or other person to be involved shall be determined by the Bank.

The Bank shall also have the right to obtain a court order that, in accordance with an expert valuation, it is entitled to all or part of the security items as payment to the extent of its claims against the customer.

### **(3) Realisation of money claims**

Without prejudice to the provisions of point 4, paragraphs 1 and 2, the Bank shall be entitled, after giving the customer warning, to set off its claims against the customer against the customer's money claims subject to the lien.

## **Termination**

### **17. Termination rights of the customer**

#### **(1) Right of termination at any time**

The customer may at any time, without notice, terminate the business relationship as a whole or individual business relations for which neither a maturity nor different termination arrangements have been agreed.

#### **(2) Termination on serious grounds**

If the Bank and the customer have agreed on a maturity or different termination arrangements for a particular business relation, such relation may be terminated without notice only if there is a serious ground which makes it unacceptable to the customer to continue the business relationship, after having given due consideration to the legitimate concerns of the Bank.

### **18. Termination rights of the Bank**

#### **(1) Termination upon notice**

Upon observing an adequate notice period, the Bank may at any time terminate the business relationship as a whole or individual relations for which neither a maturity nor different termination arrangements have been agreed. In determining the period of notice, the Bank will take into account the legitimate concerns of the customer. The notice period for termination of a payment service framework agreement, or of an agreement for the maintenance of a securities account, shall be at least two months.

#### **(2) Termination of loans without a fixed term**

Loans and loan commitments for which neither a fixed term nor different termination arrangements have been agreed may be terminated at any time by the Bank without notice. When exercising this right of termination, the Bank will give due consideration to the legitimate concerns of the customer.

#### **(3) Termination on serious grounds without notice**

Termination of the business relationship as a whole or of individual business relations without notice is permitted if there is serious ground which makes it unacceptable to the Bank to continue the business relationship, after having given due consideration to the legitimate concerns of the customer. Such reason shall exist in particular if the customer has made incorrect statements as to his financial situation which were of significant importance for the Bank's decision concerning the granting of loans or other operations involving risks for the Bank or if a substantial deterioration occurs or threatens to occur in the customer's financial situation, jeopardising the discharge of obligations towards the Bank. The Bank may also terminate the business relationship without notice if the customer fails to comply, within the required time period allowed by the Bank, with the obligation to provide or increase security in accordance with point 13, paragraph 2, of these Conditions of Business or under any other agreement, or if the customer's transactions are, in the Bank's view, not compatible with the applicable law.

#### **(4) Settlement following termination**

In the event of termination without notice, the Bank shall allow the customer an appropriate time for settlement (in particular for the repayment of any loan), unless it is necessary to attend immediately thereto. The Bank's rights in accordance with the provisions set out in point 4 of these Conditions of Business shall remain unaffected hereby.

## Protection of deposits

### 19. Deposit Protection

The Bank is a member of the Deposit Guarantee Association ("Association pour la Garantie des Dépôts Luxembourg") of the banks belonging to the Luxembourg Bankers' Association ("Association des Banques et Banquiers Luxembourg" ABBL), hereinafter referred to as

the Deposit Guarantee Association. The Bank is empowered to provide any necessary information in connection with the tasks laid down in the Association's Statutes as well as documents to the Deposit Guarantee Association or to a person acting on its behalf.

## Special Terms and Conditions governing trading in securities and safe custody

These Special Terms and Conditions apply to the purchase, sale and safe custody of securities, even where the rights attaching thereto are not represented by certificates (hereinafter "securities").

### Execution of customer orders for the purchase or sale of securities

#### 1. Forms of securities transactions

##### (1) Commission transactions/fixed-price transactions

The Bank and the customer shall conclude securities transactions in the form of commission transactions (paragraph 2) or fixed-price transactions (paragraph 3).

##### (2) Commission transactions

Where the Bank executes orders placed by its customer for the purchase or sale of securities in the capacity of a commission agent, it shall conclude for the customer's account a purchase or sale transaction (execution transaction) with another market participant or a central counterparty, or it shall engage another commission agent (the intermediate commission agent) to conclude an execution transaction. In electronic trading on a stock exchange, the customer's order may also be executed directly against the Bank or the intermediate commission agent if the terms and conditions for trading on the stock exchange permit this.

##### (3) Fixed-price transactions

Where the Bank and the customer mutually agree on a fixed or determinable price for an individual transaction (fixed-price transaction), this shall result in a purchase contract; the Bank shall accordingly take delivery of the securities as purchaser from the customer or it shall deliver the securities as seller to the customer. The Bank shall charge the customer the agreed price plus, where interest-bearing bonds are concerned, accrued interest.

#### 2. Execution policy for securities transactions

The Bank shall execute securities transactions on the basis of its execution policy applying at the time. The execution policy shall form part of the Special Terms and Conditions. The Bank shall be authorised to amend the execution policy in accordance with supervisory requirements. The Bank shall inform the customer of any amendments to the execution policy.

### Special rules governing commission transactions

#### 3. Usages and practices/notification/price

##### (1) Application of legal provisions/usages and practices/terms of business

Execution transactions shall be subject to the legal provisions and terms of business (usages and practices) applying to securities trading in the place of execution; in addition, the general conditions of business of the party contracting with the Bank shall apply.

##### (2) Notification

The Bank shall notify the customer without delay of the execution of the order.

##### (3) Price of the execution transaction/remuneration/disbursements

The Bank shall charge the customer the price of the execution transaction; it shall be entitled to charge its remuneration and disbursements including third-party costs.

#### 4. Requirement of an adequate credit balance/securities holding

The Bank shall be required to execute orders or to exercise subscription rights only to the extent that the customer's credit balance, or a credit facility available for securities trading, or the customer's securities holding, is adequate for such execution. If the Bank does not execute all or part of the order, it shall advise the customer thereof without delay.

#### 5. Fixing of price limits

When placing orders, the customer may stipulate to the Bank price limits for the execution transaction (orders with price limits).

#### 6. Period of validity of customer orders unlimited in time

##### (1) Orders without price limits

An order without price limits shall be valid in accordance with the execution policy (Clause 2) for one trading day only; if an order for same-day execution is not received in sufficient time for it to be dealt with in the ordinary course of that day's business, it shall be registered for execution on the next trading day. If the order is not executed, the Bank shall advise the customer of such non-execution without delay, provided the customer can be contacted without unreasonable expense.

## **(2) Orders with price limits**

An order with price limits shall be valid in accordance with the execution policy (Clause 2) for one trading day only.

## **7. Period of validity of orders for the purchase or sale of subscription rights**

Orders without price limits for the purchase or sale of subscription rights which are traded in Luxembourg shall be valid for the duration of trading in those rights. Orders with price limits for the purchase or sale of such rights shall lapse at the close of business on the penultimate day of trading in the rights concerned. The period of validity of orders for the purchase or sale of foreign subscription rights shall be determined in accordance with the relevant foreign usages and practices.

The handling of subscription rights which form part of the customer's securities portfolio on the last day of trading in such rights shall be governed by Clause 15.

## **8. Expiry of pending orders**

### **(1) Dividend payments, other distributions, granting of subscription rights, capital increase from the company's funds**

In the case of dividend payments or other distributions, the granting of subscription rights or a capital increase from the financial resources of the company concerned, orders with price limits for the purchase or sale of shares in domestic execution venues shall lapse at the close of business on the trading day on which the shares, including the aforementioned rights, are last traded, if the rules applying in the relevant execution venue provide for such lapsing. In the event of a change in the portion of paid-in capital required in respect of partly paid shares or in the nominal value of shares, or in the event of a share split, orders with price limits shall lapse at the close of business on the trading day preceding the day as of which such shares are listed with an increased portion of paid-in capital or with the changed nominal value or with a share split.

### **(2) Suspension of quotation**

Where, in a domestic execution venue, special circumstances relating to the issuer cause the fixing of prices to cease (suspension of quotation), all customer orders for execution in that venue in respect of the securities concerned shall lapse, if the terms and conditions applying in the execution venue provide for this.

### **(3) Execution of customer orders in foreign execution venues**

The execution of customer orders in foreign execution venues shall be governed to that extent by the usages and practices prevailing in the relevant execution venue. If a customer order without limits is not executed, the Bank shall inform the customer of such non-execution without delay, provided the customer can be contacted without unreasonable expense.

## **9. Responsibility of the Bank in commission transactions**

The Bank shall be responsible for the proper performance of the execution transaction by the party with whom it contracts or by the party with whom the intermediate commission agent contracts. Pending completion of an execution transaction, the Bank's responsibility in engaging an intermediate commission agent shall be limited to exercising due care in selecting and giving instructions to that agent.

## **Performance of securities transactions**

### **10. Settlement on the domestic market as a general rule**

The Bank shall perform securities transactions on the domestic market, unless the conditions set out below or a contrary agreement provide for acquisition of the securities abroad.

### **11. Acquisition on the domestic market**

Where performance takes place on the domestic market, the Bank shall, if the shares are held in collective safe custody, procure for the customer co-ownership of the collectively held securities concerned. Where securities are not eligible for collective safe custody, sole ownership of them shall be procured for the customer. The Bank shall keep those securities for the customer physically segregated from its own holdings and from those of third parties (jacket custody).

### **12. Acquisition abroad**

#### **(1) Acquisition agreement**

The Bank acquires securities abroad where, acting as a commission agent, it executes abroad purchase orders in respect of domestic or foreign securities, or where it sells to the customer, by way of a fixed-price transaction, foreign securities which are not traded on the domestic market either on or off-exchange, or where, acting as a commission agent, it executes purchase orders in respect of foreign securities or sells to the customer, by way of a fixed-price transaction, foreign securities which, although traded on or off-exchange on the domestic market, are customarily acquired abroad.

#### **(2) Engagement of intermediate depositories**

The Bank shall arrange for securities acquired abroad to be held in safe custody abroad. In so doing, it shall engage other domestic or foreign depositories or shall entrust one of its offices abroad with such safe custody. The safe custody of the securities shall be subject to the legal provisions, usages and practices applying in the place of deposit and to the general conditions of business of the foreign depository or depositories.

#### **(3) Securities credit**

The Bank shall in the proper exercise of its discretion and with due regard to the customer's interests procure the ownership or co-ownership of the securities or any other equivalent legal position customary in the country of deposit, and shall hold that legal position for the customer. In this connection, it shall issue to the customer a securities credit in respect of collective custody, a foreign depository or jacket custody.

#### **(4) Cover holding**

The Bank need only meet the customer's delivery claims arising from the customer's securities credit from the cover holding maintained by the Bank in the country in question. The cover holding shall comprise the securities of the same type held in safe custody for customers and for the Bank in the country of deposit. A customer to whom a securities credit has been issued shall therefore bear proportionally any economic or legal prejudice, loss or damage that may affect the cover holding as a result of force majeure, riot, war or natural phenomenon or by reason of other interventions by third parties in the country in question for which the Bank is not answerable, or in connection with acts of domestic or foreign authorities.

#### **(5) Treatment of consideration**

Where, pursuant to paragraph 4, a customer has to bear any prejudice, loss or damage in respect of the cover

holding, the Bank shall not be required to refund the purchase price to the customer.

## **Services rendered in connection with safe custody**

### **13. Securities account statement**

The Bank shall issue a securities account statement at least once a year.

### **14. Redemption of securities/renewal of coupon sheets**

#### **(1) Securities held in safe custody by the Bank domestically**

In the case of securities held in safe custody by the Bank itself domestically, the Bank shall attend to the redemption of interest and dividend coupons and redeemable securities upon their maturity. The counter-value of interest and dividend coupons and of matured securities of any kind shall be credited subject to actual receipt by the Bank, even if the instruments are payable at the Bank itself. The Bank shall procure new sheets of interest and dividend coupons (renewal of coupon sheets).

#### **(2) Other securities held in safe custody domestically or abroad**

In the case of securities held in safe custody abroad, the duties referred to above shall be the responsibility of the foreign depository.

#### **3) Drawing and notice of repayment of bonds**

In the case of bonds held in safe custody by the Bank itself domestically, the Bank shall monitor the date of redemption resulting from drawings and notices of repayment, provided it receives notification thereof. Where other redeemable bonds are drawn on the basis of their certificate numbers (number drawing), the Bank shall, at its option, either allocate to the customer, for drawing purposes, certificate numbers in respect of the securities credited to him/her or proceed by way of an internal drawing to distribute between the customers the amount allocated to the cover holding. This internal drawing shall take place under the supervision of an independent monitoring agency; alternatively, it may be carried out using electronic data-processing equipment, provided an impartial drawing is assured.

#### **4) Redemption in a foreign currency**

Where interest and dividend coupons or matured securities are redeemed in a foreign currency or in units of account, the Bank shall credit the amount collected to the customer in that currency, provided the customer has an account in the currency concerned. Otherwise, it shall credit the customer with the corresponding amount in euros, save in so far as may be otherwise agreed.

### **15. Treatment of subscription rights**

The Bank shall notify the customer of the granting of subscription rights where the Bank has received notice thereof from issuers or from its intermediate depositories. Provided the Bank has not received any other instructions from the customer by the close of business on the penultimate day of trading in such subscription rights, it shall sell at the best price obtainable all domestic subscription rights forming part of the customer's securities holding; the Bank may arrange for foreign subscription rights to be realised at the best price obtainable in accordance with the usages and practices applying abroad.

### **16. Communication of information**

Where the Bank receives information relating to

- statutory compensation and exchange offers,
- voluntary purchase and exchange offers,
- financial reorganisation proceedings,

it shall communicate that information to the customer. The customer need not be notified if the Bank does not receive the information in time or where the measures to be taken by the customer are not economically justifiable because the costs involved are out of proportion to the customer's possible claims.

### **17. Duty to verify on the part of the Bank**

The Bank shall verify once only, at the time of lodgement of securities certificates, by reference to information in the public domain, whether the certificates are affected by notices of loss (stops), payment stoppages and the like. Verification by the Bank as to whether securities certificates are the subject of invalidation proceedings by public notice shall also be conducted after lodgement.

### **18. Exchange, removal and destruction of certificates**

#### **(1) Exchange of certificates**

The Bank may, without prior notice to the customer, comply with a request received by it from the issuer or its intermediate depository for the surrender of securities certificates, provided such surrender is manifestly in the customer's interests and does not involve an investment decision (e.g. following the merger of the issuer with another company or if the securities documents are incorrect as to their content). The customer shall be advised thereof.

#### **(2) Removal and destruction following loss of securities status**

If the securities certificates held in safe custody for the customer lose their status as securities following extinction of the rights they represent, they may be removed from the customer's securities account for destruction.

Certificates held in safe custody domestically shall, where possible, be placed at the customer's disposal if so requested. The customer shall be advised of the removal, possible delivery and possible destruction of the certificates. If the customer fails to give any instructions, the Bank may destroy the certificates following the expiry of a period of two months after despatch of such advice to the customer.

### **19. Liability**

#### **(1) Safe custody by the Bank**

Where securities are held in safe custody by the Bank itself domestically, the Bank shall be liable only for gross negligence on the part of its employees and of persons engaged by it for the fulfilment of its obligations.

#### **(2) Safe custody by third parties**

Where securities are held in safe custody abroad, the Bank's responsibility shall be limited to exercising due care in the selection and instruction of the foreign depository or intermediate depository engaged by it.

### **20. Miscellaneous**

#### **(1) Requests for information**

Foreign securities which are acquired or sold abroad, or which a customer entrusts to the Bank for safe custody domestically or abroad, are regularly subject to foreign

law. Rights and duties of the Bank or the customer are therefore also determined by that law, which may provide for disclosure of the customer's name. The Bank will provide corresponding information to foreign authorities where it is obliged to do so; it shall advise the customer thereof.

## **(2) Lodgement/transfer**

These Special Terms and Conditions shall also apply where the customer physically lodges domestic or foreign securities with the Bank for safe custody or arranges to have securities account credit balances transferred from another depository. Customers who request safe custody abroad shall be issued with a securities credit in accordance with these Special Terms and Conditions.

## **21. Securities lending operations**

The Bank may from time to time, in the context of securities lending operations, dispose for its own account and at its own risk of securities forming part of a customer's securities portfolio. The Bank warrants that this will not result in any prejudice to the customer.

## **22. Duty of care vis-à-vis third-party depository banks**

### **(1) External depository banks**

It may happen, where customers' financial instruments are held by a third-party depository bank, that the third-

party bank in question is precluded by local law from showing the customer's financial instruments separately from its own assets. Should the third-party bank default or become insolvent, the customer may not be able to get back all of his assets in their entirety if the total value of the financial instruments is insufficient. In all such cases, the Bank's responsibility shall be limited to exercising due care in selecting and giving instructions to the external depository bank. Save as laid down in the foregoing provisions, no liability shall attach to the Bank for loss or damage suffered by the customer as a result of acts or omissions of an external depository bank.

### **(2) Acting as an intermediary**

Where the Bank acts as an intermediary (nominee) by purchasing, subscribing for or holding financial instruments not on its own behalf but for the account of the customer, it is subject only to the obligations provided for in paragraph 1. If the customer gives the Bank instructions which the Bank is unable or unwilling to carry out on the customer's behalf, it shall take all measures to enable the customer to act in his/her own name. The customer undertakes to indemnify the Bank in respect of all prejudice, costs, losses, claims and/or expenses which the Bank may suffer, sustain or bear in its capacity as intermediary.

## **23. General Conditions of Business**

In addition, the Bank's General Conditions of Business shall apply.

# **Special Terms and Conditions governing trading in foreign exchange, notes and coins**

## **1. Manner of execution and settlement**

### **(1) Manner of execution**

In executing all orders for the purchase and/or sale of foreign exchange, notes and coins, the Bank shall, at its option, act either as a commission agent dealing in its own name, without its being required to make any express announcement to that effect, or as a dealer for its own account. Deviations from the normal mode of execution must be expressly agreed. Purchase and sale orders may also be accepted by the Bank on a partial basis if it considers this to be expedient in the interests of the customer.

### **(2) Execution venue**

The usages and practices prevailing in the relevant execution venue shall apply to transactions in respect of foreign exchange, notes and coins.

### **(3) Settlement**

Transactions in respect of foreign exchange, notes and coins may be settled by the Bank on a net basis, unless the customer demands settlement on a gross basis.

## **2. Execution of orders; insufficient cover**

### **(1) Execution of orders**

The Bank shall if possible execute orders on the day that they are received. Where an order is not executed in a

timely manner, the Bank shall be liable only for gross negligence.

### **(2) Insufficient cover**

The Bank may decline to execute purchase and/or sale orders, either wholly or in part, or may cancel and annul such orders, if the customer's credit balance or securities account balance is insufficient. The Bank may execute sale orders even where the customer does not have the corresponding assets at his/her disposal.

## **3. Objections by the customer**

Objections to settlements and advices of execution must be raised without delay following receipt thereof, by telegram, telex or fax, or by attendance in person in the Bank's premises. In the absence of any such objection, such settlements and advices, etc. will be deemed to have been approved; when issuing them, the Bank shall specifically draw attention to this consequence of failure to raise an objection in good time. Objections concerning the non-execution of orders must be raised without delay by telegram, telex or fax, or by attendance in person in the Bank's premises, following the point in time at which the relevant settlement or advice of execution would ordinarily have been received by the customer in the post.

## **4. General Conditions of Business**

In addition, the Bank's General Conditions of Business shall apply.

# Special Terms and Conditions governing precious metal accounts and metal accounts

## 1. Precious metal accounts

### (1) Items standing to the credit of precious metal accounts

The items standing to the credit of a precious metal account are comprised of fungible precious metals which are owned by the account-holder. Fungible precious metals are precious metals of the same type and form, and of customary quality, which are held in safe custody without possessing any specific identifying features.

### (2) Cover holding

A quantity of precious metal corresponding to the amount credited to the customer's precious metal account shall be held by the Bank for the account-holder in its own premises and/or in those of third-party depositories domestically or abroad; it shall be held in the Bank's own name without being separated from the Bank's own holdings and those of its other customers.

### (3) Right to delivery

The holder of a precious metal account shall at all times be entitled to demand delivery of the precious metal(s) belonging to him/her.

### (4) Fungibility of precious metals

Precious metal accounts are subject to the provisions of the Grand-Ducal Regulation of 18 December 1981 on fungible deposits of precious metals (Règlement grand-ducal du 18 décembre 1981 concernant les dépôts fongibles de métaux précieux et modifiant l'article 1er du règlement grand-ducal du 17 février 1971 concernant la circulation de valeurs mobilières).

## 2. Metal accounts

### (1) Items standing to the credit of metal accounts

The items standing to the credit of a metal account are comprised of credits which grant the account-holder solely a contractual right, exercisable against the Bank, to delivery of metal. No interest shall be payable on credit balances in metal accounts. Metal accounts are not subject to the Grand-Ducal Regulation referred to in Clause 1(4).

### (2) Acquisition of ownership

Upon delivery of items standing to the credit of a metal account, the account-holder shall acquire ownership of the metal delivered.

### (3) Redemption

The account-holder may at any time offer the Bank, for redemption, his or her claim to delivery of metal. Where such an offer is accepted by the Bank, the redemption price shall be determined by reference to the market price prevailing on the date of the incoming order. The claim to delivery of metal shall become extinct when the redemption price is credited to the account-holder.

## 3. Provisions applying to precious metal accounts and metal accounts

### (1) Credits

Credits shall be expressed in terms of troy weight or gross weight, or in terms of a number of units customary in the trade.

## (2) Delivery

Items standing to the credit of precious metal accounts or of metal accounts shall be delivered (hereinafter "the delivery") by the Bank as follows:

### (a) precious metals:

(aa) in the case of credit items expressed in terms of troy weight or gross weight, in bars recognised internationally as constituting "good delivery";

(ab) in the case of credit items expressed in terms of a number of units customary in the trade:

- in bars of the type credited, or
- in coins of the type credited which are customary in the trade. There shall be no entitlement to delivery of coins minted in any particular year or coins of any particular mintage;

(b) other metals: in the units and finenesses customary in the trade.

In the case of precious metals, the troy weight or gross weight delivered, or the number of items delivered, shall be debited to the precious metal account; in the case of other metals, the gross weight of the goods thus delivered shall be debited to the metal account. Any difference between the weight credited and the weight physically delivered shall at the Bank's discretion be made up by small units or settled on the basis of the market price prevailing on the date on which the settlement is drawn up.

## (3) Time and place of delivery

(a) Delivery of precious metal(s) or of metal(s) standing to the credit of a precious metal account or metal account shall, upon demand by the account-holder, be effected in the depository's business premises in Luxembourg.

(b) Delivery may not take place earlier than five bank working days after receipt of a corresponding order from the holder of the precious metal account or metal account, as the case may be, and payment of a delivery fee. If the account-holder does not take delivery within four weeks following receipt of the order, a fresh delivery order shall be required.

(c) Upon request, the Bank shall deliver precious metal(s) or metal(s) standing to the credit of a precious metal account or metal account in a different place, provided the Bank considers this to be feasible without disproportionate expense and provided it is in conformity with the laws applying in the place in question. However, delivery to a place outside Luxembourg shall be effected exclusively at the risk and expense of the account-holder. The Bank may demand from the account-holder payment of a reasonable advance in respect of the transport and insurance costs.

(d) The delivery shall be subject to the tax laws applying at the time of delivery in the place of delivery.

## 4. Assumption of risk

(a) Holders of precious metal accounts or metal accounts maintained with the Bank shall bear, in proportion to and up to the amount of their credit balances, all economic and legal prejudice, loss or damage that may affect the cover holding in the corresponding precious metal or metal existing with the Bank or third parties domestically or abroad in respect of precious metal accounts or metal accounts, as a result of force majeure, war, riot or similar occurrences, or by reason of interventions by third parties

abroad for which the Bank is not responsible, or in connection with acts of domestic or foreign authorities, or in consequence of acts or failures to act on the part of any third-party depository carefully selected and instructed by the Bank or of persons employed by such depository in the performance of the latter's obligations.

(b) In the event of total or partial loss of the cover holding in the corresponding precious metal or metal as a result of one of the events or occurrences referred to in Clause 4 (a), the Bank shall assign to the holder of the precious metal account or metal account all rights for the purposes of recovering or replacing the lost precious metal(s) or metal(s).

## 5. Costs and taxes

Fees covering the Bank's costs in connection with precious metal accounts and/or metal accounts shall be computed and charged to the account-holder. Those fees shall be payable annually and the amount thereof shall be communicated separately to the account-holder.

All taxes, duties and levies which may become payable in connection with precious metal accounts or metal accounts, including in relation to deliveries, shall be borne by the account-holder.

## 6. General Conditions of Business

In addition, the Bank's General Conditions of Business shall apply.

# Special Terms and Conditions governing transfer operations

The following terms and conditions shall apply in relation to the execution of customers' transfer orders:

## 1. General

### 1.1 Essential characteristics of transfer operations, including standing orders

The customer may instruct the Bank to transmit sums of money in favour of a payee by way of cashless transfer to the payee's payment service provider. The customer may also instruct the Bank to transmit a fixed amount of money to the same account of the payee on a given recurring date (standing order).

### 1.2 Customer identification

For the purposes of the procedure, the customer shall be required to use his/her customer identification (account number and sort code of his/her bank or IBAN<sup>1</sup>) and the payee's customer identification (account number and sort code or IBAN and BIC<sup>2</sup> or other identification of the payee's payment service provider) as indicated to him/her by the payee. The particulars required for the carrying-out of the transfer operation shall be as prescribed in Clauses 2.1 and 3.1.

### 1.3 Issue of the transfer order and authorisation

(1) The customer shall place a transfer order with the Bank using a form approved by the Bank or in some other manner agreed with the Bank, providing the requisite particulars in accordance with Clause 2.1 or Clause 3.1. The customer shall be responsible for ensuring that the particulars given are legible, complete and accurate. Particulars which are illegible, incomplete or inaccurate may lead to transfers being delayed and/or misdirected, and this may cause the customer to suffer loss and/or damage. Where particulars are illegible, incomplete or inaccurate, the Bank may decline to execute the order (see also Clause 1.7). If the customer considers that the transfer needs to be effected particularly expeditiously, he/she must notify the Bank separately to that effect. In the case of transfer orders which are placed using a form, such notification must not be given on the form itself where the form in question does not itself provide for the giving of an instruction to that effect.

(2) The customer shall authorise the transfer operation by appending his/her signature or in such other way as may be agreed with the Bank.

(3) Where the customer so requests, the Bank shall, before executing an individual transfer order, indicate the maximum time that will be taken to carry out the payment operation in question, together with the fees to be charged therefor and, as the case may be, a breakdown of those fees.

### 1.4 Receipt of the transfer order by the Bank

(1) The transfer order shall become effective when it reaches the Bank. It shall be deemed to have reached the Bank when it arrives in the Bank's reception facilities provided for that purpose (for example, by way of delivery in the Bank's business premises).

(2) Where the transfer order arrives in accordance with the second sentence of paragraph 1 on a day which is not a business day of the Bank as indicated in the "List of Prices for Services", it shall be deemed to have reached the Bank on the first business day thereafter.

(3) Where the transfer order is received after the period during which incoming items are accepted, as indicated in the Bank's reception facility or in the "List of Prices for Services", it shall be deemed, having regard to the provision relating to the time for execution (see Clause 2.2.2), to have reached the Bank on the first business day thereafter.

### 1.5 Revocation of the transfer order

(1) Once the transfer order has been received by the Bank (see paragraphs 1 and 2 of Clause 1.4), the customer may no longer revoke it. Up until that time, it may be revoked by means of a declaration to the Bank.

(2) Where the Bank and the customer have agreed on a specific date on which the transfer is to be effected (see paragraph 2 of Clause 2.2.2), the customer may revoke the transfer order or, as the case may be, the standing order (see Clause 1.1) at any time up until the end of the last business day before the agreed date. The Bank's business days are indicated in the "List of Prices for Services". Following the timely receipt by the Bank of a revocation of a standing order, no further transfers shall be executed on the basis of the standing order previously existing.

(3) After the points in time/dates referred to in paragraphs 1 and 2, the transfer order may be revoked only by agreement between the customer and the Bank. Such agreement shall become effective if the Bank manages to prevent the execution from taking place or manages to recover the amount transferred. The Bank shall charge a fee for dealing with any such revocation by the customer; the amount of such fee shall be as indicated in the "List of Prices for Services".

<sup>1</sup> International Bank Account Number.

<sup>2</sup> Bank Identifier Code.

## 1.6 Execution of the transfer order

(1) The Bank shall execute the customer's transfer order where it is in possession of the particulars required for execution (see Clauses 2.1 and 3.1), those particulars are in the agreed form (see paragraph 1 of Clause 1.3), the order is authorised by the customer (see paragraph 2 of Clause 1.3) and the customer's account contains sufficient funds in the currency of the order to carry out the transfer or a credit has been granted in a sufficient amount (execution conditions).

(2) The Bank and any other payment service providers involved in the execution of the transfer operation may carry out the transfer exclusively on the basis of the identification of the payee as provided by the customer (see Clause 1.2).

(3) The Bank shall notify the customer of the carrying-out of transfers in the manner agreed for the provision of account information. Where the standard arrangement for the sending of such information by post applies, the notification shall take place on the next bank working day following the carrying-out of the transfer, by despatch of the relevant written confirmation. Where other arrangements have been agreed, agreements for the retention and holding of mail shall in particular apply.

## 1.7 Cases in which the Bank may decline to execute orders

(1) Where the execution conditions (see paragraph 1 of Clause 1.6) are not met, the Bank may decline to execute the transfer order. The Bank shall notify the customer of this without delay, and in any event within the period of time provided for in Clause 2.2.1 or Clause 3.2, as the case may be. The customer may also be notified in the manner agreed for the provision of account information. In providing such notification, the Bank shall, in so far as may be possible, state the reasons for its having declined to carry out the order and suggest possible ways in which the errors that led to this, may be rectified.

(2) Where it is apparent to the Bank that identification particulars provided by the customer do not relate to any payee, any payment account or any payment service provider of the payee, the Bank shall immediately inform the customer to that effect and, where appropriate, return the transfer amount to the customer.

(3) The Bank shall charge a fee for notifying the customer where it declines for justified reasons to execute an order; the amount of such fee shall be as indicated in the "List of Prices for Services".

## 1.8 Transmission of transfer data

In the context of effecting the transfer, the Bank shall transmit the data contained in the transfer (transfer data), either directly or through the intermediary of agents, to the payee's payment service provider. The payee's payment service provider may make the transfer data, including the payer's account number or International Bank Account Number (IBAN), wholly or partially available to the payee.

In the case of cross-border transfers and express domestic transfers, the transfer data may be forwarded to the payee's payment service provider via the messaging system known as the Society for Worldwide Interbank Financial Telecommunication (SWIFT), having its headquarters in Belgium. For system security reasons, SWIFT stores the transfer data temporarily in its computer centres in the European Union, Switzerland and the USA.

## 1.9 Notification of unauthorised or defectively executed transfers

The customer shall be required to notify the Bank without delay upon finding out about any unauthorised or defectively executed transfer order.

## 1.10 Fees

### 1.10.1 Fees for transfers within the European Economic Area (EEA<sup>3</sup>) in euros or another EEA currency<sup>4</sup>

The fees payable in transfer operations are set out in the "List of Prices for Services".

Notice of proposed changes to the fees charged shall be given to the customer in writing not less than two months before the date on which they are to take effect. Where the customer has agreed with the Bank that communications in the context of the business relationship are to be sent electronically, notice of the proposed changes may be given using that means. Such changes shall be deemed to have been approved if the customer has not raised any objection thereto by the date on which it is proposed that they should take effect. When giving notice of the proposed changes, the Bank shall specifically draw the customer's attention to the fact that silence on the latter's part will have the effect of constituting tacit approval.

Where changes to the fees charged are proposed to the customer, he/she may forthwith and without charge terminate the business relationship by giving notice to that effect at any time prior to the date on which it is proposed that the changes should take effect. When submitting the proposed changes, the Bank shall specifically draw the customer's attention to this right of termination.

### 1.10.2 Fees payable in other circumstances

The fees payable, and changes thereto, in respect of

- transfers to States outside the EEA (third States<sup>5</sup>), or
- transfers within the EEA States in currencies of States outside the EEA (third-State currencies<sup>6</sup>), and
- transfers by customers who are not retail customers,

shall be governed by the rules set out in Clause 12(1) to (6) of the General Terms and Conditions of Business.

## 1.11 Exchange rate

Where the customer issues a transfer order in a currency other than the account currency, the account shall nevertheless be debited in the account currency. In the case of such transfers, the rate of exchange shall be determined by reference to the conversion rules set out in the "List of Prices for Services".

Any change to the reference exchange rate referred to in the conversion rules shall take effect immediately and without prior notice to the customer. The reference

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<sup>3</sup> The contracting parties to the Agreement on the European Economic Area are currently the EU Member States Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and the United Kingdom of Great Britain and Northern Ireland, and Iceland, Liechtenstein and Norway.

<sup>4</sup> The EEA currencies are currently: the euro, the British pound sterling, the Bulgarian lev, the Czech koruna, the Danish krone, the Estonian kroon, the Hungarian forint, the Icelandic króna, the Latvian lats, the Lithuanian litas, the Norwegian krone, the Polish zloty, the Romanian leu, the Swedish krona and the Swiss franc.

<sup>5</sup> Third States are all States outside the European Economic Area (the States which are currently in the European Economic Area are listed in footnote 3).

<sup>6</sup> E.g. the US dollar.

exchange rate shall be published by the Bank or shall be ascertainable from a source accessible to the public.

## 1.12 Complaints

Any complaints or claims arising in connection with the execution of a cross-border transfer must be addressed to our Complaints Department (Internal Auditing). In the event that no satisfactory settlement results from this, it shall be open to the customer to refer the matter to the national supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF), whose complaints department functions as an extra-judicial mediation body.

## 2. Transfers within European Economic Area (EEA)<sup>7</sup> States in euros or other EEA currencies<sup>8</sup>

### 2.1 Particulars required

The customer must provide the following particulars in the transfer order:

- the name of the payee, the payee's International Bank Account Number (IBAN) and the Bank Identifier Code (BIC) of the payee's payment service provider;
- the currency (where appropriate in the abbreviated form indicated in Annex 1);
- the amount;
- the name of the customer;
- the customer's account number or IBAN.

### 2.2 Maximum time for execution

#### 2.2.1 Length of the period allowed

The Bank is obliged to ensure that the amount to be transferred is received by the payee's payment service provider by no later than the end of the execution period as specified in the "List of Prices for Services".

#### 2.2.2 Commencement of the execution period

(1) The execution period shall commence when the customer's transfer order is received by the Bank (see Clause 1.4).

(2) Where the Bank and the customer have agreed that the transfer is to be effected on a given day or at the end of a given period, or on the day on which the customer has made available to the Bank the amount of money needed for execution of the transfer operation, in the currency of the order, the date specified in the order or otherwise agreed between the Bank and the customer for the commencement of the execution period shall be decisive. Where the agreed date is not a business day of the Bank, the execution period shall commence on the first business day thereafter. The Bank's business days are indicated in the "List of Prices for Services".

(3) Where an order is given for a transfer in a currency other than that in which the customer's account is denominated, the execution period shall not commence until the day on which the amount to be transferred is available in the currency of the order.

### 2.3 Claims by the customer for reimbursement and/or compensation

#### 2.3.1 Reimbursement in the case of an unauthorised transfer

In the event of an unauthorised transfer (see paragraph 2 of Clause 1.3), the Bank shall have no claim against the customer for reimbursement of its costs and expenses. It shall be obliged forthwith to reimburse the transfer amount to the customer and, where the amount in

question has been debited to an account of the customer, to restore that account to the position in which it would have been if it had not been debited with the amount of the unauthorised transfer.

#### 2.3.2 Reimbursement in the case of non-execution or defective execution of an authorised transfer

(1) In the event of non-execution or defective execution of an authorised transfer, the customer shall be entitled to demand from the Bank immediate reimbursement in full of the transfer amount, to the extent that the payment was not made or was defective. Where the amount in question has been debited to an account of the customer, the Bank shall be required to restore that account to the position in which it would have been if it had not been debited with the amount of the unexecuted or defectively executed transfer. To the extent that any fees have been deducted from the transfer amount by the Bank or by any intermediary, the Bank shall forthwith remit, in favour of the payee, the amount deducted.

(2) Over and above the reimbursement provided for in paragraph 1, the customer shall be entitled to demand from the Bank reimbursement of any fees and interest which may have been charged to him/her or debited to his/her account in connection with the non-execution or defective execution.

(3) Where the defectiveness of the execution lies in the fact that the money transferred did not reach the payee's payment service provider until after the expiry of the execution period as prescribed by Clause 2.2.1 (delay), the entitlement to claim pursuant to paragraphs 1 and 2 shall be excluded. If the customer has suffered loss and/or damage as a result of the delay, the Bank shall be liable pursuant to Clause 2.3.3.

(4) Where a transfer has not been executed or has been defectively executed, the Bank shall on demand by the customer check the payment operation and inform the customer of the result of its analysis.

#### 2.3.3 Compensation

(1) In the event of non-execution or defective execution of an authorised transfer, or in the case of an unauthorised transfer, the customer may demand from the Bank compensation for any loss or damage which is not already covered by Clauses 2.3.1 and/or 2.3.2. This shall not apply where the Bank is not responsible for the neglect of duty. The Bank shall not be liable for fault on the part of intermediaries engaged by the Bank. In such cases, the Bank's responsibility shall be limited to exercising due care in selecting and giving instructions to the first intermediary engaged (order passed on). Where negligent conduct on the part of the customer has helped to bring about loss and/or damage, the extent to which the Bank and the customer are respectively required to bear the loss and/or damage in question shall be determined in accordance with the principles governing contributory negligence.

(2) A compensation claim by the customer shall be limited, in terms of the quantum thereof, to the amount of the transfer plus any fees and/or interest charged by the Bank. In so far as any claim is made in that connection for consequential loss, the claim shall be limited to a maximum of EUR 12 500 per transfer. These limitations of liability shall not apply in cases of deliberate wrongful acts or gross negligence on the part of the Bank or in respect of risks which the Bank has specifically assumed.

#### 2.3.4 Exclusion of liability and of the right to raise objections

(1) Liability on the part of the Bank pursuant to Clauses 2.3.2 and 2.3.3 shall be excluded where:

- the Bank demonstrates to the customer that the transfer amount was received by the payee's payment service provider in good time and in full; or

<sup>7</sup> See footnote 3.

<sup>8</sup> See footnote 4.

- the transfer was effected in conformity with erroneous identification particulars provided by the customer in relation to the payee. In that event, the customer may nevertheless demand that the Bank use its best endeavours to recover the amount of the payment. The Bank may charge a fee for such recovery as indicated in the "List of Prices for Services".

(2) Claims by the customer pursuant to Clauses 2.3.1 to 2.3.3, and objections raised by the customer vis-à-vis the Bank on account of the non-execution or defective execution of an authorised transfer or the carrying-out of an unauthorised transfer, shall be excluded where the customer fails to notify the Bank within 13 months after the date of the debiting to his/her account of the amount of an unauthorised or defectively executed transfer. Time shall not begin to run for these purposes until the Bank, acting in accordance with the agreed manner of providing account information, has, within not more than one month after the making of the debit entry relating to the transfer, notified the customer thereof; in all other cases, time shall start to run on the date of notification. Compensation claims pursuant to Clause 2.3.3 may be asserted by the customer even after the deadline prescribed in the first sentence of this paragraph has passed if the customer has been prevented through no fault of his/her own from meeting that deadline.

(3) Claims by the customer shall be excluded where the circumstances on which a claim is founded

- are based on an unusual and unforeseeable event beyond the control of the Bank, the consequences of which could not have been avoided despite the exercise of all due care, or
- have been brought about by the Bank in compliance with a legal obligation.

### 3. Transfers within European Economic Area (EEA<sup>9</sup>) States in currencies of States outside the EEA (third-State currencies)<sup>10</sup> and transfers to States outside the EEA (third States<sup>11</sup>)

#### 3.1 Particulars required

The customer must provide the following particulars for the execution of the transfer order:

- the name of the payee;
- the payee's International Bank Account Number (IBAN) or account number;
- the Bank Identifier Code (BIC); where the BIC is not known, the full name and address of the payee's payment service provider must be given;
- the destination country (where appropriate in the abbreviated form indicated in Annex 1);
- the currency (where appropriate in the abbreviated form indicated in Annex 1);
- the amount;
- the name of the customer;
- the customer's account number or IBAN.

#### 3.2 Execution period

Transfers are to be effected as quickly as possible.

### 3.3 Claims by the customer for reimbursement and/or compensation

#### 3.3.1 Liability of the Bank for an unauthorised transfer

(1) In the event of an unauthorised transfer (see paragraph 2 of Clause 1.3 above), the Bank shall have no claim against the customer for reimbursement of its costs and expenses. It shall be obliged to refund the amount of the payment without delay to the customer and, where the amount has been debited to an account of the customer, to restore that account to the position in which it would have been if it had not been debited with the amount of the unauthorised transfer.

(2) As regards other loss and/or damage resulting from an unauthorised transfer, the Bank shall be liable for fault on its own part. Where negligent conduct on the part of the customer has helped to bring about loss and/or damage, the extent to which the Bank and the customer are respectively required to bear the loss and/or damage in question shall be determined in accordance with the principles governing contributory negligence.

#### 3.3.2 Liability in the case of non-execution or defective execution of a transfer

In the event of non-execution or defective execution of an authorised transfer, the customer's entitlement to compensation shall be governed by the following rules:

- the Bank shall be liable for fault on its own part. Where negligent conduct on the part of the customer has helped to bring about loss and/or damage, the extent to which the Bank and the customer are respectively required to bear the loss and/or damage in question shall be determined in accordance with the principles governing contributory negligence;
- the Bank shall not be liable for fault on the part of intermediaries engaged by it. In such cases the Bank's responsibility shall be limited to exercising due care in selecting and giving instructions to the first intermediary engaged (order passed on);
- the Bank's liability shall be limited to a maximum of EUR 12 500 per transfer. This limitation of liability shall not apply in cases of deliberate wrongful acts or gross negligence on the part of the Bank or in respect of risks which the Bank has specifically assumed.

#### 3.3.3 Exclusion of liability and of the right to raise objections

(1) The customer shall not be entitled to claims pursuant to Clause 3.3.2 in respect of the defective execution of a transfer where:

- the transfer was effected in conformity with erroneous identification particulars provided by the customer in relation to the payee; or
- the Bank demonstrates to the customer that the transfer amount was duly received by the payee's payment service provider.

(2) Claims by the customer pursuant to Clauses 3.3.1 and 3.3.2, and objections raised by the customer vis-à-vis the Bank on account of the non-execution or defective execution of a transfer or the carrying-out of an unauthorised transfer, shall be excluded where the customer fails to notify the Bank in writing within 13 months after the date of the debiting to his/her account of the amount of an unauthorised or defectively executed transfer. Time shall not begin to run for these purposes until the Bank, acting in accordance with the agreed manner of providing account information, has, within not more than one month after the making of the debit entry relating to the transfer, notified the customer thereof; in all other cases, time shall start to run on the date of notification. Compensation claims may be asserted by

<sup>9</sup> The contracting parties to the Agreement on the European Economic Area are currently the EU Member States Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and the United Kingdom of Great Britain and Northern Ireland, and Iceland, Liechtenstein and Norway.

<sup>10</sup> E.g. the US dollar.

<sup>11</sup> Third States are all States outside the European Economic Area (the States which are currently in the European Economic Area are listed in footnote 9).

the customer even after the deadline prescribed in the first sentence of this paragraph has passed if the customer has been prevented through no fault of his/her own from meeting that deadline.

(3) Claims by the customer shall be excluded where the circumstances on which a claim is founded

- are based on an unusual and unforeseeable event beyond the control of the Bank, the consequences of which could not have been avoided despite the exercise of all due care, or
- have been brought about by the Bank in compliance with a legal obligation.

#### **4. Rights of termination**

##### **4.1 The customer's rights of termination**

(1) Right to terminate at any time

Where no fixed term has been agreed in respect of the transfer contract, and no other arrangements have been agreed for the termination thereof, the contract may be terminated by the customer at any time without notice.

(2) Termination for cause

Where a fixed term has been agreed in respect of the transfer contract, or other arrangements have been agreed for the termination thereof, the contract may only be terminated without notice if there exists a good and substantial reason rendering it unreasonable - even taking due account of the legitimate interests of the Bank - to expect the customer to continue the business relationship.

##### **4.2 The Bank's rights of termination**

(1) Termination upon the giving of notice

Where no fixed term has been agreed in respect of the transfer contract, and no other arrangements have been agreed for the termination thereof, the contract may be terminated by the Bank at any time upon giving reasonable notice. In assessing the period of notice to be given, the Bank shall have regard to the legitimate

interests of the customer. For termination of the maintenance of a framework agreement for the provision of payment services or a securities account, the notice period may not be less than two months.

##### **(2) Termination without notice for cause**

The transfer contract may be terminated without notice if there exists a good and substantial reason rendering it unreasonable – even taking due account of the legitimate interests of the customer – to expect the Bank to continue the business relationship. Such a reason shall be deemed to exist where the customer has given incorrect particulars of his/her financial situation and those incorrect particulars have significantly influenced the decision of the Bank with regard to a grant of credit or any other transaction exposing the Bank to potential risk, or where the customer's financial position deteriorates substantially, or threatens to do so, and this jeopardises the performance of obligations owed to the Bank. The Bank may also terminate the contract without notice where the customer fails, within such reasonable time-limit as may be set by the Bank, to meet his/her obligation to furnish collateral or provide additional collateral, or to comply with some other agreement, or where, in the Bank's view, the customer's transactions are incompatible with the applicable law in force.

##### **(3) Settlement following termination**

In the event of termination without notice, the Bank shall grant the customer a reasonable amount of time in which to settle outstanding matters (especially for the repayment of a loan), provided immediate settlement is not required.

#### **5. Complaints**

Any complaints or claims arising in connection with the execution of transfers must be addressed to our Complaints Department (Internal Auditing). In the event that no satisfactory settlement results from this, it shall be open to the customer to refer the matter to the national supervisory authority, the *Commission de Surveillance du Secteur Financier* (CSSF), whose complaints department functions as an extra-judicial mediation.

Annex 1: Schedule of abbreviations for countries of destination and currencies

Country of destination	Abbreviated form	Currency	Abbreviated form
Austria	AT	Euro	EUR
Belgium	BE	Euro	EUR
Bulgaria	BG	Bulgarian lev	BGN
Canada	CA	Canadian dollar	CAD
Croatia	HR	Croatian kuna	HRK
Cyprus	CY	Euro	EUR
Czech Republic	CZ	Czech koruna	CZK
Denmark	DK	Danish krone	DKK
Estonia	EE	Estonian kroon	EEK
Finland	FI	Euro	EUR
France	FR	Euro	EUR
Greece	GR	Euro	EUR
Hungary	HU	Hungarian forint	HUF
Iceland	IS	Islandic króna	ISK
Ireland	IE	Euro	EUR
Italy	IT	Euro	EUR
Japan	JP	Japanese yen	JPY
Latvia	LV	Latvian lats	LVL
Liechtenstein	LI	Swiss franc	CHF <sup>12</sup>
Lithuania	LT	Lithuanian litas	LTL
Luxembourg	LU	Euro	EUR
Malta	MT	Euro	EUR
Netherlands	NL	Euro	EUR
Norway	NO	Norwegian krone	NOK
Poland	PL	Polish zloty	PLN
Portugal	PT	Euro	EUR
Romania	RO	Romanian leu	RON
Russian Federation	RU	Russian ruble	RUB
Slovakia	SK	Euro	EUR
Slovenia	SI	Euro	EUR
Spain	ES	Euro	EUR
Sweden	SE	Swedish krona	SEK
Switzerland	CH	Swiss franc	CHF
Turkey	TR	Turkish lira	TRY
United Kingdom of Great Britain and Northern Ireland	GB	British pound sterling	GBP
USA	US	US dollar	USD

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<sup>12</sup> The Swiss franc as legal tender in Liechtenstein