

## General Conditions

**These conditions govern the relationship between the client and Bank Cler Ltd (hereinafter referred to as the Bank). Special agreements remain reserved. Certain categories of business are subject to the Bank's special regulations as well as to established rules of banking practice. The German language version is authoritative.**

### 1. Power of disposition

Instructions pertaining to authorized signatures communicated to the Bank in writing shall be valid until revoked in writing, regardless of any other entries in the Commercial Register or public announcements.

### 2. Responsibility for risk in the event of inadequate proof of identify and insufficient legal capacity to act

Damage resulting from the failure to recognize forgeries or inadequate proof of identity, especially such arising from signature and document forgeries (e.g. fax documents), shall be borne by the client unless the Bank has acted in a grossly negligent manner.

The client shall bear all damage relating to any insufficient incapacity to act unless such incapacity has been published in an official gazette. In any case the client shall be responsible for damage resulting from insufficient capacity to act on the part of his/her authorized agent or other third party.

### 3. Information about clients

The Bank shall be entitled to obtain information about the client deemed necessary for the purpose of the business relationship, especially in the case of credit or financing transactions.

### 4. Communications from the Bank

Communications from the Bank shall be deemed to have been delivered if sent to the latest address or correspondence address provided in writing by the client. The date on the copies or mailing lists held by the Bank shall be considered the mailing date.

### 5. Dormancy

To avoid dormancy as defined by the relevant provisions and/or statutory regulations, any change to the client's address or name (e.g. as a result of marriage) must be communicated to the Bank in writing immediately, even if the change was publicly announced. For longer absences, the Bank should be provided with a delivery address for Bank communications. In the event of dormancy, the Bank is required to report the business relationship to a central reporting office unless contact is resumed within the specified periods.

In the event of dormancy, the Bank shall be entitled to debit a special charge plus the costs of enquiries, special handling and monitoring of dormant assets.

### 6. Transmission errors and system failures

Any damage arising from the use of postal services, telephone, fax, telex, electronic or other means of transmission, or transport and courier companies, and especially from loss, delay, misunderstandings, distortion, illegibility or duplicates, shall be borne by the client, unless the Bank has acted in a grossly negligent manner.

The Bank shall not be liable for damage arising as a result of malfunctions and interruptions in telephone, Internet or Bank systems, regardless of the cause, provided it has acted with the usual due diligence.

The Bank shall not be required to execute instructions or orders issued via unencrypted e-mail messages. Unencrypted e-mail messages notifying the termination of Bank agreements shall not be accepted by the Bank.

### 7. Inadequate execution of orders

If damage is incurred as a result of non-execution, insufficient or late execution of orders (excluding stockmarket orders), the Bank shall be liable only for the loss of interest, except in those cases where its attention had already been drawn to the risk of more extensive damage.

### 8. Client complaints

Complaints from a client relating to the execution or nonexecution of orders of any kind or objections to communications must be lodged immediately, and no later than the deadline specified by the Bank. If no immediate or timely objection is received, the execution or non-execution as well as the relevant statements and communications shall be deemed to have been approved. If the Bank fails to send an advice relating to a transaction, the client must lodge an objection as soon as he/she should have received said advice in the course of normal business.

If account or custody account statements sent by the Bank are not contested within one month they shall be deemed to have been approved, even if the Bank has not received the certificate of correctness to be signed by the client. Express or tacit acknowledgement of the account statement implies approval of all items contained therein and of any reservations on the part of the Bank.

### 9. Conditions

Credits and debits of agreed or customary interest, commissions, fees and taxes shall be made either quarterly, semiannually or annually, at the discretion of the Bank. The Bank reserves the right to adjust its interest and commission rates at any time, especially if money market conditions change. Such adjustments shall be brought to the client's attention in a circular letter, by posting a notice in the customer lobby or in another suitable form.

For services not included in a fee schedule which are performed on the client's instructions or are presumed to be in the client's

interest and which, given the circumstances, can only be performed for a fee, the Bank may determine the amount of said fee at its own discretion.

#### **10. Account transactions**

The Bank may refuse to execute an order that exceeds the client's available balance or a loan granted to him/her. In the event of various instructions issued by the client that exceed the total of his/her available balance or loan granted to him/her, the Bank is entitled, without regard to the date or time of receipt, to determine at its own discretion which instructions should be executed in part or in full.

#### **11. Right of lien and set-off**

The Bank has a right of lien on all the client's assets and on all assets it holds for the client's account, either at its own premises or elsewhere, and a right of set-off relating to all receivables for all claims arising from the banking relationship, irrespective of the due date or currency. However, the right of lien arises only in conjunction with the amount receivable. This also applies to credits and loans with special collateral or without collateral. If the client is in arrears with his/her obligations, the Bank may choose to liquidate the pledged items either by enforcement or freely, or to initiate proceedings against the client for distraint or bankruptcy, in accordance with the right of lien.

#### **12. Foreign currencies**

Bank assets that correspond to the client's foreign currency assets shall be invested in the same currency either in or outside the country of the currency in question. The client shall bear the proportionate share of all economic and legal consequences affecting the Bank's total assets in the country of that currency or of the investment as a result of statutory or official provisions. The client may dispose of funds in foreign currencies by sale or transfer as well as by drawing or purchasing cheques. Any other methods require the approval of the Bank.

Credits and debits of amounts in foreign currencies shall be made in Swiss francs, unless the client issued instructions to the contrary in good time or holds an account in the relevant foreign currency. If the client holds accounts in other currencies, the Bank may credit or debit the amounts in one of these currencies at its own discretion.

#### **13. Drafts, cheques and similar instruments**

The Bank reserves the right to debit the client's account with drafts, cheques or similar instruments previously credited or discounted in the event of their non-payment or if the proceeds are not freely available. Pending the payment of any balance resulting, however, the Bank retains a claim to payment of the total amount of the draft, cheque or similar instrument, including ancillary claims, against all obligors associated with said instruments.

#### **14. Termination of the business relationship**

The Bank reserves the right to discontinue existing business relationships with immediate effect, in particular in the event

of promised or utilized loans. In such cases, any outstanding receivables shall be due for immediate payment, subject to other written agreements.

#### **15. Saturdays on a par with public holidays**

In all business transactions with the Bank, Saturday shall be treated as an official public holiday.

#### **16. Outsourcing of specific Bank activities**

In accordance with the relevant regulations, the bank may delegate specific services to third parties either wholly or in part. This concerns mainly payments, administration of securities, handling commercial transactions, information technology, legal advice, supervision and internal controls, asset management, invoicing, loan processing and risk management, data management and storage, printing and mailing of bank documents as well as product and sales management. Within the scope of outsourcing, it may be necessary to transmit data to third parties. All service providers are bound to appropriate confidentiality requirements.

#### **16<sup>bis</sup>. Data Security and Banking Secrecy**

Governing bodies, employees, and agents of the Bank are subject to legal obligations regarding the protection and confidentiality of data relating to the business relationship with the client ("Client Data"). The client acknowledges that the Bank is authorized to disclose Client Data to group companies in Switzerland with a view to group-wide risk management. To this extent, the client releases the Bank from the obligations of secrecy. The Bank will ensure that the recipient of Client Data is obligated to appropriate secrecy and data security obligations.

The client acknowledges that the Bank is authorized to disclose Client Data domestically and abroad in the fulfilment of legal or regulatory information or reporting obligations and for safeguarding of legitimate interests. This applies, for instance, in connection with services performed by the Bank for the client, such as account and custody-account management or processing of payments, securities, currency, and other client transactions (which may have international connection; further information on this subject is available at [www.swissbanking.org](http://www.swissbanking.org)), in case of impending or initiated proceedings of the client against the Bank, for securing and enforcement of claims or other rights of the Bank against the client, for exercise of securities furnished for the client, or objections of the client against the Bank in public, to the media, or to authorities.

The Bank is authorized to store, process, and create profiles from Client Data and data from third-party sources. These data will be used by the Bank in particular to provide the client with individual advice, if applicable, personalized offers, and information regarding products and services of the Bank, as well as for market research, marketing, and risk management purposes. This applies in particular to the following data: master data, financial data, and client requirements.

#### **17. Applicable law and place of jurisdiction**

All legal relationships between the client and the Bank are

subject to **Swiss law exclusively**. The place of performance, place of debt collection for clients with a foreign domicile and **the sole place of jurisdiction for all legal proceedings shall be the registered office of the Bank branch operating the account**. The Bank shall also be entitled to initiate legal proceedings against the client at the competent court of his/her domicile or at any other competent court; Swiss law shall, however, remain applicable. Binding stipulations as to the place of jurisdiction under Swiss

law shall take precedence.

**18. Amendments to the General Conditions**

The Bank may amend the General Conditions at any time. The client shall be notified of any amendments by means of circular letter or other suitable means. If the client does not contest the amendments within one month they shall be deemed to have been approved.