

## Introduction

These General Terms and Conditions (the "GTC") govern the business relationship between the customer and TradeXBank AG (the "Bank"). In addition, any other relevant regulations of the Bank shall apply.

Special regulations of the Bank and specific agreements with the customer shall prevail in case of inconsistencies or discrepancies between such special regulations and the GTC.

## Article 1 Power of disposition

- (1) The signature regime submitted to the Bank in writing shall be exclusively applicable until it is revoked by written notification to the Bank, irrespective of any differing entries in the commercial register and publications to the contrary.
- (2) If an account is held in the name of several persons, each of them may individually dispose of the account unless otherwise agreed in writing with the Bank.

## Article 2 Verification of legitimation and prevention of unauthorized access

- (1) The Bank undertakes to verify the signatures of the customers and of their representatives with the standards of due care and diligence customary in the business (e.g. by comparing the signatures with those on record with the Bank or via electronic verification methods). The Bank is not obliged to undertake any further verification, but is entitled to do so.
- (2) The customer shall take appropriate precautionary measures to reduce the risk of fraud or unauthorized access on the customer's side. In particular, the customer is obliged to keep any access codes secret and to store his banking documents securely to prevent unauthorized third parties from accessing the information. The customer shall bear all damages resulting from fraud, unauthorized access and lacking

authority, except when caused by gross negligence or willful misconduct of the Bank.

## Article 3 Lack of capacity to act

The customer shall immediately notify the Bank in writing about lack of capacity to act on his own part or on the part of the customer's representatives, and shall bear all damages caused by failure to notify the Bank or untimely notice.

## Article 4 Instructions and Notifications

- (1) The customer shall immediately notify the Bank in writing on all facts relevant for the business relationship, namely changes of the name and address.
- (2) All notifications from the Bank may, at the sole discretion of the Bank, be sent by email, post or any other mode of communication the Bank deems appropriate. The customer shall bear all risk of delay, loss or falsification of the notifications sent to him. Risk associated with the use of various delivery and transmission methods include, without limitation, failure to deliver (loss of correspondence), incomplete transmission, connection errors, interception or modification or any other improper use by unauthorized third parties.
- (3) **UNLESS THE CUSTOMER INSTRUCTS THE BANK IN WRITING THAT ALL CORRESPONDENCE SHALL BE DELIVERED BY HAND IN THE BANK'S OFFICE, THE CUSTOMER HEREBY WAIVES APPLICABLE BANKING SECRECY RULES TO THE EXTENT REQUIRED TO USE OTHER MEANS OF COMMUNICATION.**
- (4) Notifications by the Bank shall be deemed to be delivered if sent to the last address given by the customer to the Bank or if kept at the customer's disposal. The date of delivery is the date of the copies in

possession of the Bank or the date indicated on the delivery list. Hold mail is deemed to have been delivered on the date indicated.

- (5) Instructions and other notifications by the customer to the Bank shall be given in writing and carry an original signature of duly authorized persons in accordance with the signature regime. The Bank is generally under no obligation to accept instructions and other notifications other than in writing and duly signed, but may do so at its sole discretion.
- (6) Nevertheless, the customer authorizes the Bank to carry out instructions transmitted by telephone, telefax or email immediately upon receipt without waiting for a written confirmation by, or an additional identification of, the customer. The customer recognizes all transactions carried out for the customer's account on the basis of instructions given by telephone, telefax or email to be legitimate.
- (7) The customer shall bear all damages resulting from the use of a certain method for delivery of correspondence (instructions, notifications, etc.), whether electronic or paper-based, except when caused by gross negligence or willful misconduct of the Bank.
- (8) The customer expressly authorizes the Bank to record and store, without further prior notice, telephone conversations and other communications, particularly electronic communications, in a manner which the Bank, at its sole discretion, deems appropriate, and to monitor the customer's electronic communications with the Bank. The customer agrees that such recordings shall be admissible evidence in case of dispute.

#### **Article 5 Failure or inadequate execution of orders**

In case the Bank fails to execute an order, or executes it inadequately the Bank shall only be liable in case of gross negligence or willful misconduct. It is the responsibility of the

customer to inform the Bank when a transaction has to be executed with greater urgency than is customary in the normal course of business, and the Bank may in all cases deny urgent orders. The liability of the Bank is, to the maximum extent allowed by Swiss law, limited to the loss of interest.

#### **Article 6 Objections of the customer**

- (1) Objections of the customer with regard to the execution or failure to execute instructions of any kind, and objections to statements of account, and to other notices of the Bank shall be made immediately after receipt of the respective notice, at the latest within the period stipulated by the Bank. If an expected notice is not made by the Bank, the objection shall be made as if the notice were delivered to the customer in the ordinary course of business by mail.
- (2) The customer shall bear all damages caused by delay of objections.
- (3) Irrespective of acknowledgement, a notice of execution sent to the customer by the Bank constitutes proof of the customer's instruction unless objection is raised immediately upon receipt of the notice. The express or tacit acknowledgement of a statement of account includes the customer's approval of all items included therein, as well as any reservations by the Bank with regard to credit advice.

#### **Article 7 Account maintenance and transactions**

- (1) The Bank maintains and operates the accounts in accordance with the GTC and various special regulations (cut-off time schedules, fee schedules, tariffs, etc.) as the Bank may from time to time implement and change in its sole discretion.
- (2) Payments in respect of the agreed or usual interest, fees, expenses and taxes shall be credited or debited monthly, quarterly, semi-annually or annually, in the sole discretion of the Bank. The Bank reserves the right to adjust its interest rates and

fees at any time, notably in the light of changed conditions on the money market, and to inform the customer of such action by circular letter or by other appropriate means. Interest and fees are understood as net amounts for the Bank. Taxes, costs and expenses will be charged to the customer separately.

- (3) Statements of account shall be objected to within ten days as from the date of the statement.
- (4) All accounts held by the customer with the Bank shall, irrespective of designation and currency, constitute a single current account. The Bank shall be entitled to offset the various accounts against one another in respect of interest payments and balances. The Bank is nevertheless free to treat each individual balance as an independent account.
- (5) Debit (negative) balance of an account constitutes acknowledged debt of the customer to the Bank even if the account continues to be operated.
- (6) If the customer has given the Bank a number of orders, the total amount of which exceeds the funds available in his account or the credit limit granted to him, the Bank may at its sole discretion decide which instructions are to be executed in part or in full, without regard to the date of said instructions or the order in which they were received by the Bank.

#### **Article 8 Foreign currency accounts**

- (1) Assets of the Bank corresponding to balances in foreign currency in favor of the customer shall be held with correspondent banks inside or outside the relevant currency area in the name of the Bank. The customer shall proportionally bear all economic and legal risks affecting the overall balance of the bank in the land of the currency or of the deposit as a consequence of official restrictions.
- (2) The Bank will fulfil its commitments to the customer in respect of foreign currency accounts exclusively at the domicile of the Bank and only by way of providing a credit

in the country of the currency with a correspondent bank or with the bank designated by the customer.

#### **Article 9 Credits of moneys in foreign currencies**

- (1) Moneys received in a foreign currency for which there is no account held with the Bank may be credited by the Bank to an existing account or kept in the original currency. The Bank may at its sole discretion open additional accounts in the name of the customer to credit foreign monies received.
- (2) If the customer has only accounts in foreign currencies, the Bank may credit amounts received to one of the existing accounts. If monies are received for a customer for which the Bank holds one or several accounts in debit, the Bank reserves the right to determine to which account the payments will be credited.

#### **Article 10 Deposits and interest**

- (1) The Bank pays interest on the positive account balances in its sole discretion.
- (2) A cash deposit, placed by the customer with the Bank for an agreed period of time, may not be revoked by the customer prior to expiration of such period, unless the contrary is specifically agreed between the Bank and the customer when the deposit is placed.
- (3) The Bank will pay the interest for such time deposit together with the principal amount, with no interim interest payments, unless agreed otherwise with the customer.
- (4) If the customer fails to place a deposit agreed with the Bank, the customer is liable for loss of interest and other damages caused.
- (5) To the extent required by Swiss law, the Bank will make the necessary deductions and withholdings from the interest accrued on positive account balances and deposits, and will pay interest to the customer net of such deductions or withholdings.

## **Article 11 Overdraft and negative account balance**

- (1) The Bank may at its sole discretion allow account overdraft, i.e. fulfil the customer's payment instructions even if the credit balance of the respective account is insufficient, so that the balance of the account becomes negative.
- (2) The Bank will accrue interest on any negative account balance on a daily basis. Such interest will be charged and added to the negative balance of the account on a periodic basis as determined by the Bank.
- (3) The rate applicable to the negative account balance will be determined by the Bank daily at the Bank's sole discretion on a commercially reasonable basis (and may include the cost of funding for the Bank and the Bank's margin).
- (4) The customer shall repay any negative balance in full promptly, within one business day as from the Bank's demand.

## **Article 12 Bills of exchange, checks and similar instruments**

- (1) Covering funds for checks and bills of exchange on, or domiciled with, the Bank must be available at the Bank at least one business day prior to the due date or payment date, unless the Bank has expressly agreed in advance to provide the necessary credit to cover the payment.
- (2) The Bank shall be entitled to re-debit discounted or credited bills of exchange, checks and other instruments if these items are not paid. Pending the settlement of any outstanding debit balances, however, the Bank shall retain a claim to payment of the total amount of the instrument plus related claims against any party liable under the instrument, whether such claims emanated from the instrument or exist for any other legal reason.

## **Article 13 Right of lien and set-off**

- (1) The customer hereby grants the Bank a right of lien on all assets the Bank holds for the account of the customer, whether in

the Bank's possession or custody or otherwise accessible to the Bank, including, without limitation:

- all monies standing to the credit of the customer's accounts with the Bank;
  - negotiable instruments, securities, whether certificated or book entry;
  - other valuables;
  - present or future claims of the customer against the Bank;
  - the rights related to the assets financed by the Bank on the customer's order.
- (2) This right of lien shall secure all claims, whether current, future or potential, which the Bank might have against the customer, irrespective of the due dates of such claims or the currencies in which they are expressed, and irrespective of the legal nature of such claims (be they based on contract, tort or unjust enrichment or on any other ground). This includes, without limitation, the Bank's claims arising from any loans and credit facilities with or without separate collateral, and any right of the Bank to be indemnified and held harmless (including when claims are asserted against it by third parties such as issuers, liquidators, commissioners, receivers, bankruptcy administrators, government authorities or courts in connection with transactions conducted or assets held on behalf of the customer).
  - (3) To the extent required by the laws applicable to the customer or the assets under the lien, the customer shall make all necessary formalities (filings, registrations, etc.) to make the lien valid, binding and enforceable against the customer.
  - (4) Upon an event of default on the part of the customer, including a failure to satisfy any margin call, the Bank may, at its own sole discretion and without regard to any existing forward transactions, elect to liquidate the assets under lien either by foreclosure or (to the extent permitted by law) by private sale or sale in an open market without any further formalities and without notifying the customer first,

or may arrange for their liquidation by any third party. The Bank reserves the right to pursue the customer personally, i.e. to initiate debt collection enforcement proceedings through seizure of assets or bankruptcy, as applicable, even before the realization of any pledged assets or rights, and the customer explicitly waives any right of objection. When realizing assets under lien, the Bank shall be entitled to acquire such assets for its own account or for the account of any third parties. The Bank is further entitled to cover short sale positions through corresponding spot or forward purchases at the customer's expense.

- (5) The Bank shall have the right to set-off any claims of the customer against the Bank against any claims accruing to the Bank from its business relationship with the customer at any time, or to enforce them individually, irrespective of the designation, currency and maturity of the reciprocal monetary or other claims.

#### **Article 14 Assignment, risk sharing, and sub-participation**

The customer acknowledges and accepts that the Bank may, in Switzerland or abroad, assign all or part of its rights against the customer, or enter into risk sharing or similar arrangements in respect thereof, or may enter into sub-participation agreements or similar arrangements in respect of the obligations of the Bank to the customer.

#### **Article 15 Termination of business relationship**

The Bank reserves the right, at any time and at its sole discretion, to terminate the business relationship with the customer, with immediate effect or as per any date determined by the Bank, in full or in any specific part, and in particular to cancel credit facilities granted or promised, whereby eventual claims become due for repayment immediately, unless otherwise agreed.

#### **Article 16 Official holidays**

In all business transactions with the Bank, Saturdays and official holidays in the Canton of Zurich and the city of Zurich shall be treated as official bank holidays.

#### **Article 17 Compliance, disclosure and reporting obligations**

- (1) The customer undertakes to comply, and shall be responsible that the representatives, any direct or indirect holders, beneficial owners or controlling persons or other persons involved in the banking relationship comply with any applicable Swiss and foreign laws and regulations or other (contractual) rules. This includes, but shall not be limited to, compliance with sanctions, prevention of money laundering, correct declaration of the assets and/or revenues held or received on any accounts with the Bank, any reporting obligations under any mandatory disclosure rules (be it tax or otherwise) applicable to the customer.
- (2) The Bank may take any actions whatsoever considered appropriate to ensure compliance with the rules and regulations on, and meet any obligations relating to, the prevention of, fraud, money laundering, bribery, corruption, tax offences or crimes, terrorist activities or any other relevant offences or crimes, and of the provision of financial or other services to persons who may be subject to embargoes or international sanctions. This may include, but is not limited to, investigations, the nonexecution of orders and/or the rejection of funds or assets. To the extent that the Bank depends on the customer's assistance in complying with the laws in Switzerland and abroad, the customer shall support the Bank upon the Bank's request.
- (3) Specifically, and without limitation, the Bank is not obliged to execute or process any payments or transactions that are likely to infringe any applicable laws, regulatory provisions, official orders (including embargo and anti-money

laundering rules), or that in some other way do not comply with the Bank's internal or external rules of conduct.

- (4) The customer acknowledges and agrees that the Bank may be obliged to disclose or report certain personal information, including but not limited to the identities, registered names, addresses/registered offices/Legal Entity Identifier (LEI) and dates of birth/incorporation, of the customer and/or any direct or indirect holders, beneficial owners or controlling persons and/or any other persons involved in the banking relationship.

### Article 18 Outsourcing

The Bank may at its sole discretion outsource specific services to other providers in Switzerland or abroad, always in compliance with the outsourcing regulations of the Swiss Financial Market Supervisory Authority FINMA. The outsourcing may require the transfer of data to a related party or to a third-party service provider. All service providers are required to comply with respective confidentiality obligations. With regard to service providers located abroad, and subject to the Bank informing the customer otherwise, the Bank only passes on data that does not refer to the identity of the customer.

### Article 19 Banking secrecy and other confidentiality provisions

- (1) The Bank's representatives, directors, employees and agents are obliged by applicable law to treat the customer's identity, the business relationship between the Bank and the customer and business transactions of the customer as confidential.
- (2) **THE CUSTOMER, ON ITS BEHALF AND ON BEHALF OF ANY DIRECT AND INDIRECT HOLDERS, BENEFICIAL OWNERS OR CONTROLLING PERSONS OF ASSETS OR OTHER PERSONS INVOLVED IN THE BANKING RELATIONSHIP, RELEASES THE BANK AND ANY OF ITS REPRESENTATIVES, DIRECTORS, EMPLOYEES AND AGENTS FROM THE**

### **BANKING SECRECY, DATA PROTECTION AND ANY OTHER STATUTORY OR CONTRACTUAL CONFIDENTIALITY DUTIES AS FOLLOWS BELOW:**

- (3) Insofar as this may be reasonably necessary to safeguard the legitimate interests of the Bank in Switzerland or abroad, specifically:
- in connection with any judicial, administrative or other proceedings (even where the Bank is a third party) as well as contractual or other claims initiated by the customer or any third party against the Bank;
  - to enable the Bank or, as the case may be, any related entity or third party involved, to secure or collect and enforce any claims of the Bank and to enable it to make use of or to realize any security or other collateral of the customer or any third parties (insofar as the security or collateral of third parties was provided with respect to claims against the customer);
  - when collecting receivables belonging to the Bank from the customer, in relation to attachments or relating to claims against the customer or the Bank aiming at deposited assets; or
  - in case of any accusations against the Bank in public or to authorities.

The customer acknowledges and agrees that these examples are non-exhaustive and that safeguarding the legitimate interests of the Bank may be reasonably necessary in other situations or circumstances not explicitly mentioned herein.

- (4) For transactions and services that the Bank provides for the customer, in particular if they present a foreign connection, e.g.:
- to execute any orders of the customer in Switzerland or abroad (such as for processing any payment);
  - to perform any administrative activities in Switzerland or abroad in connection with assets deposited with the Bank (in particular, but not limited

to, obligations of the Bank in connection with international automatic exchange of information);

- to obtain any legal advice or opinions sought by the Bank from external lawyers in Switzerland or abroad related to a credit facility or any collateral provided therefor by the customer or a third party as well as any other customer transaction; or
- to comply with any other applicable disclosure and reporting obligations.

The Bank also recommends to the customer to take note of the Swiss Bankers Association information on SWIFT.

- (5) Insofar as this may be reasonably necessary for the purposes of Article 14 above.
- (6) For the purpose of exchanging any information between the Bank and its affiliates in Switzerland or abroad to ensure risk management, to comply with legal or regulatory requirements, for compliance-related reasons or for accounting purposes.
- (7) For security purposes (e.g. to protect the customer and the Bank from improper or criminal activities) in order for the Bank to report or share any relevant information with competent authorities or third-party service providers in Switzerland or abroad assisting the Bank in such matters.
- (8) In any event, the rights and duties to disclose or report to which the Bank is subject to under applicable legal and regulatory requirements shall apply. The customer is aware that such rights and duties to disclose or report may also arise after the provision of a particular service or the customer's business relationship with the Bank ceased to exist.
- (9) Any non-disclosure arrangement between the customer and the Bank prior to establishment of a business relationship shall, to the extent non-disclosure obligations of the Bank are concerned, lapse and be substituted with the banking secrecy provisions of the GTC when the

first business relationship between the Bank and the customer is established.

## **Article 20 Treatment of assets without contact and dormant assets**

- (1) If the contact with the customer is broken off (i.e. assets without contact) or if the prescribed period has elapsed since the last contact as foreseen in the relevant legal and regulatory requirements (i.e. dormant assets), the Bank shall endeavor to restore contact even in the event that the customer has given explicit instructions not to contact him. If subsequent inquiries by the Bank are not successful, the relevant laws and regulations require from the Bank to take appropriate steps to safeguard the customer's interest such as to make an internal inventory of the customer's assets, to designate them specifically and to notify the official external contact center for assets without contact and dormant assets. In case of dormancy for a prescribed period of time, dormant assets will in line with the relevant legal and regulatory requirements be reported to the official external contact center for such assets, published, and in case of missing claim within the foreseen deadline, liquidated. All net proceeds resulting from such liquidation will then be transferred to the authorities with any beneficiary claims becoming null and void.
- (2) The ordinary fees and expenses charged by the Bank will continue to be debited against the account even if it is without contact or dormant. In addition, costs and expenses incurred in connection with inquiries conducted in order to restore contact with the customer, or in connection with the special administration and surveillance of assets without contact or dormant assets may be charged to the account as well.
- (3) The Bank also recommends to the customer to take note of the Swiss Bankers

Association information on dormant assets.

### **Article 21 Liability and indemnity**

- (1) Without prejudice to other provisions of the GTC limiting the liability of the Bank, the Bank may only be held liable for direct damages (excluding indirect, consequential or punitive damages and lost profit) caused to the customer by the Bank or any of its employees acting with illegal intent or gross negligence, provided that the customer may establish that the Bank violated its duties owed to the customer and failed to exercise the appropriate standard of care and diligence customary in the business.
- (2) The Bank accepts no liability for any damages caused by circumstances beyond the Bank's control, such as force majeure events.
- (3) The Bank assumes no liability in relation with accounts that the customer is or was holding with another bank or financial institution and from which the customer transferred or will transfer assets onto the customer's account open with the Bank. To the extent necessary, the customer waives, releases and discharges the Bank and third parties through whom it may be acting, as well as their respective directors, officers, employees, shareholders and representatives from any claims (existing, future and potential) of the customer arising out of or in connection with the customer's accounts with another bank or financial institution from which assets were or will be transferred onto the customer's account open with the Bank.
- (4) The customer undertakes to indemnify the Bank, any related entities and third parties through whom it may be acting, as well as their respective directors, officers, employees, shareholders and representatives (the "Indemnified Parties") for any damage whatsoever that the Indemnified Parties may suffer, directly or indirectly, as a result of any acts

or omissions, incomplete, inaccurate or outdated information provided by the customer, and any transactions performed on the customer's behalf. The customer authorizes the Bank to debit any sum owed to the Indemnified Parties from the customer's account.

### **Article 22 Changes to the GTC**

The Bank reserves the right to amend the GTC, as well as any other rules and regulations of the Bank governing the business relationship with the customer, at any time. The customer shall be informed of changes by circular letter or by another appropriate means, including by a publication on the Bank's Internet site. The Bank will endeavor to publish the amendments at least one month prior to the effective date, but a shorter notice shall not delay the effective date of the amendments.

### **Article 23 Applicable law and jurisdiction**

- (1) All legal relations between the customer and the Bank are subject to Swiss law.
- (2) All claims of the customer to the Bank shall be submitted to the Commercial Court of the Canton of Zurich (*Handelsgericht des Kantons Zürich*), without prejudice to the right of the Bank to initiate an action against the customer in any other competent court in Switzerland or abroad.
- (3) Place of jurisdiction, for debt enforcement against customers with foreign domicile and exclusive jurisdiction for all proceedings is Zurich 1. The Bank is entitled to enforce its rights also with the competent court at the domicile of the customer or with any other competent court.