

# Special Terms

## for the Centralised Settlement and Del Credere Business

### 1. General Part

#### 1.1 Field of Application

The "Special Terms" below shall be aimed at setting the framework of the customers' relationships with the bank in the centralised settlement and del credere business in the context of legal transactions. They shall also continue to apply after cessation of the business relationship pending full completion. As from 01/07/2007, these Special Terms shall supersede the previously applicable General Terms & Conditions of the company SABU Schuh & Marketing GmbH.

The bank's General Terms & Conditions shall apply complementarily.

Subject to any individual contract terms agreed in a given case, derogating terms and conditions of the customers may not be accepted in the interest of ensuring equal treatment of all customers and a streamlined sequence of the business transactions. This shall also apply if we explicitly not object to derogating terms and conditions of the customers.

#### 1.2 Signatures and Power of Disposition

The powers of representation and disposition made known to the bank shall apply until revoked in writing, unless a change has remained unknown to the bank in consequence of gross fault. The customer has to communicate all facts essential for the business relationship, in particular change of (corporate) name, capability of disposition and address, in writing without delay.

#### 1.3 Receipt of Notifications, Transmission Errors, Confirmations

Written notifications of the bank shall be deemed received within the usual mail delivery times if they were sent to the last address having become known to the bank or were uploaded to and can be retrieved from the RSB portal (electronic mailbox). This shall not apply if it is a declaration of particular significance, if a written notification is returned to the bank as undeliverable and the customer is not responsible for the undeliverability or if the bank recognises that the notification cannot have been received by the customer due to a general interruption of mail operations. Receipt shall be deemed proven if sending follows from a signed dispatch note or signed dispatch list of the bank.

#### 1.4 Order Execution by Third Parties

The bank may engage third parties to execute in its own name, in whole or in part, all transactions assigned to it if it deems this justified also when giving due consideration to the interests of the customer. If the bank makes use of this option, its responsibility shall be limited to the careful selection and instruction of the third party it engaged. If the bank follows an instruction of the customer when selecting or instructing the third party, it may not be held liable. The bank shall be obliged, however, to assign any existing claims against the third party to its customer on demand.

#### 1.5 Invoice Portal

A service provider was engaged to operate an invoice portal and an archive.

The customer shall authorise this service provider to receive the original receipts (invoices and credit notes from the suppliers) and shall engage the third party to operate a receipt archive in the customer's name.

This service provider may set up access to the receipt archive exclusively for the parties to the invoices, the purchasing association and the RSB bank.

#### 1.6 Information and Counselling

The bank shall be at the customer's disposal to the best of its knowledge for all information and counselling relating to the customer's business. Where information is provided verbally, the bank reserves the right to a prompt written confirmation, the content of which shall then be authoritative. The bank shall be liable for both all information and counselling and their omissions only in case of gross negligence and wilful intent.

#### 1.7 Liability of the Bank

1.7.1 Damages claims of the customer against the bank, its employees, vicarious and performing agents for any legal reason whatsoever shall be limited to wilful intent and gross negligence.

1.7.2 If the bank also has to vouch for third parties in a given case, it shall always be liable only for wilful intent and gross negligence to this extent as well.

#### 1.8 Severability Clause

If individual provisions of these Special Terms are or become legally ineffective or lose their legal effectiveness at any later point in time in whole or in part, this shall not affect the validity of the remaining provisions. The same shall apply to the extent that these Special Terms turn out to contain a loophole.

A reasonable regulation superseding the ineffective provision or filling out the loophole shall come economically closest, to the extent legally possible, to what we as users of the Special Terms would have wanted if this loophole had been considered.

## **2. Bases of Clearing Transactions**

### **2.1 Account Management and Clearance of Accounts**

- 2.1.1 The bank shall set up a commodity account for the borrower. A current account agreement exists between the customers and the bank. Invoicing, offsetting and balance establishment of any and all invoices and credit notes have been agreed. Unless otherwise agreed, decadic current account periods have been agreed; invoices and credit notes shall be aggregated from the 6<sup>th</sup> to the 15<sup>th</sup>, from the 16<sup>th</sup> to the 25<sup>th</sup> and from the 26<sup>th</sup> to the 5<sup>th</sup> day of each month to the last day of these decades, balanced and notified to the customer by account statement.

Verifying the balance decadally communicated on the account statement for inaccuracy or incompleteness and notifying the bank under clause 2.1.2 shall be incumbent upon the customer.

- 2.1.2 The balance shall be deemed acknowledged, unless the customer objects in writing within 10 days from the account statement date.

Balance acknowledgement shall mean that the individual claims, crediting the services rendered during the period, shall be superseded by the balance claim in terms of an abstract acknowledgement of debt at the end of the decade period.

- 2.1.3 The customer shall be obliged to regularly disclose the customer's asset and income situation (e.g. annual financial statement documents), to allow inspection of the customer's business records and documents and to provide all information necessary to that end on the bank's demand.

### **2.2 Payment Handling and Default**

- 2.2.1 The day on which the payment is credited to an account of the bank shall be the payment day.

- 2.2.2 Unless otherwise agreed, the following payment terms shall apply:

within 10 days	4% cash discount
within 30 days	2.25% cash discount
within 60 days	net.

Cash discounting shall imply that older receivables have been settled.

- 2.2.3 If the customer has given the bank a direct debit authorisation, crediting shall be subject to the execution of the collection order. The customer shall waive any chargeback right due to the customer.
- 2.2.4 Bills of exchange and cheques shall always be accepted only on account of performance after prior agreement.
- 2.2.5 If the agreed term of payment is exceeded, default interest shall be charged. Interest shall be billed retrospectively every calendar quarter.
- 2.2.6 If the customer falls behind with a due invoice or receivable of the bank from assumed centralised settlement or the customer's asset situation significantly deteriorates, the bank shall be entitled to withdraw from the contract part not yet performed or to demand cash payment or securing of the commodity for the further deliveries, without any prior setting of a grace period being required.

## **3. Centralised Settlement for Commodity Transactions and Services**

### **3.1 Centralised Settlement and Del Credere**

- 3.1.1 Centralised Settlement Bases, Legal Relationship to the Contract Supplier

- 3.1.1.1 The bank and the association group cooperating with it jointly concluded contracts with contract suppliers for its customers under which the bank basically assumes the directly-enforceable suretyship (del credere) for all orders placed by the customer with the contract suppliers. The bank further undertook therein to perform the clearing transactions (centralised settlement) with the suppliers via these orders of the customer.

- 3.1.1.2 The suppliers acknowledged that the customers shall be fully exempted towards the contract suppliers at the respective invoice amounts upon payment by the bank. The suppliers' receivables shall hence pass to the bank, with the result that the customer may continue to pay the invoice amount with discharging effect only to the bank as centralised settlement body (under sect. 398 BGB (German Civil Code)).

Since the bank assumes the del credere for all orders already existing towards the contract suppliers as from the customer's admission, even if they have not yet been delivered, the bank is required to be notified of the order total existing on the admission day, divided into contract suppliers, whilst deducting the payments already effected.

- 3.1.1.3 The customers agree to the clearing transactions agreed between the bank and the suppliers. They undertake to pay the invoices received by them from the supplier at the full invoice amount exclusively to the bank, unless any other regulation has been made in writing in the particular individual case.

- 3.1.1.4 Purchases concluded within the del credere transactions shall entail entitlements and obligations only for the relevant customer and the contract supplier. This shall also apply if the order is submitted via the bank.

- 3.1.2 Cessation of the Del Credere Assumption

- 3.1.2.1 The bank shall be entitled to reject the del credere assumption for individual or all orders of the customer, with the customer hence no longer being party to the clearing transactions with the contract suppliers. The relevant customer shall be notified of this measure by the bank without delay, without any reasoning for the rejection being required.

- 3.1.2.2 The balance of each current account managed for the customer shall become due immediately upon receipt of the bank's notification of the exclusion from the centralised settlement.

- 3.1.2.3 The customer shall be obliged to exempt the bank from all obligations assumed for or by order of the customer or, to the extent that this is not possible, provide standard bank collaterals. This shall also apply to existing remaining balances from ongoing business transactions.

- 3.1.2.4 If the contract suppliers draw conclusions for the handling of future orders of the customer from the rejection/cessation of the del credere, the customer may not assert any kind of claims against the bank.

### **3.2 Notices of Defects, Defect Handling in Conjunction with Centralised Settlement**

- 3.2.1 For purchase contracts with contract suppliers (with centralised settlement), complaints, notices of defects and objections from the purchase contracts are to be directly addressed to the contract suppliers in due time and form and to be handled with them under the warranty provisions agreed with the contract suppliers.

The customer shall not be entitled in any case to reduce the customer's payment to the bank solely by returning the commodity to the contract supplier. The customer may invoke credit notes from returns only after receipt of the contract supplier's credit note by the bank.

- 3.2.2 In case of proprietary transactions of the association groups, in particular wholesale commodity, complaints, notices of defects and objections from the purchase contracts are to be addressed to the respective association group performing invoicing.

### **3.3 Retention of Title, Collaterals**

- 3.3.1 Title to any and all delivered commodities shall remain with the bank until all receivables from the business relationship including accessory receivables have been paid.

- 3.3.2 Due to the contracts with the bank, the contract suppliers transferred to the bank the title each of them reserved to the commodities delivered to the customer and paid by the bank, with the result that the title shall pass to the bank upon the bank's payment to the supplier.

It shall herewith be agreed in advance that the title to the commodity each unambiguously termed by invoice shall not yet pass to the customer upon the bank's payment to the contract supplier, but only at the time at which any and all payables of the customer from the business relationship (commodities receivable, loans, bills receivable) including the accessory receivables from the current account relationship have been settled towards the bank.

The customer shall consent to this transfer.

- 3.3.3 Until revoked, delivered commodity either subject to the bank's retention of title or to an expectant right of the bank may be used by the customer as intended in the ordinary course of business.

For any case of alienation of the delivered commodity, the customer shall herewith assign the receivables arising from the sale and established by a copy of the outgoing invoice to the bank in advance to collateralise all existing and future receivables up to the amount of the delivered commodity subject to the bank's centralised settlement.

The bank shall accept this assignment. In case of current account, the collaterals granted to the bank shall serve to collateralise the settlement of its balance receivables.

Despite this assignment of receivables, the customer shall be irrevocably authorised to collect the receivables from the commodity sales until further notice, but the bank's collection power shall remain unaffected by the customer's collection authorisation. At the bank's request, the customer has to communicate the debtors of the assigned receivables and advise the debtors of the assignment.

- 3.3.4 The bank shall be obliged to release both the collateral goods transferred to it and any other collaterals provided to it, at its option, to the respective collateral provider in whole or in part upon request, even before its claims collateralised by the prolonged retention of title have been satisfied in full, where the realisable value of any and all collaterals exceeds 120% of the bank's collateralised claims not only temporarily.

- 3.3.5 The customer shall be entitled to neither any other dispositions of the commodities subject to retention of title nor to dispose of the receivables assigned as collaterals in advance. In particular, the commodities subject to retention of title and the assigned receivables must be neither pledged for the benefit of third parties nor conveyed or transferred as collaterals without the bank's consent.

In case of attachment measures or other infringements of the bank's collateral rights by third parties, the customer has to notify the bank without delay. The customer has to send the bank all documents required to assert these rights (e.g. transcript of the attachment record) and notify both the bailiff and the garnisher of the bank's titles and other rights straightaway.

- 3.3.6 In case of any dwindling of the customer's assets (judicial dunning proceedings, actions, attachments etc.), the customer shall be entitled to dispose of the commodity subject to retention of title or conveyed as collateral only with the bank's consent, but must no longer collect the receivables assigned to the bank.

- 3.3.7 In case of repudiatory conduct, in particular default in payment, by the customer, the bank shall be entitled to withdraw from the contract and to demand surrender of, pick up, take direct possession of and realise the commodity subject to retention of title in the open market on a discretionary basis.

Moreover, the customer shall be obliged to prove the existence and whereabouts of the commodities owned by the bank or the outstandings and incoming payments having superseded them in detail to the bank.

The customer shall already now agree to this.

- 3.3.8 The customer shall be obliged to insure the commodity subject to retention of title in a reasonable amount against fire, water damage, burglary and other hazards at the customer's expense, to keep it insured and to prove the conclusion of the insurance policy and the ongoing premium payments at the bank's request.

The customer shall herewith assign all claims arising upon damage, destruction or other loss of this commodity subject to retention of title, e.g. insurance claims, to the bank. The customer has to notify the insurer of the assignment of receivables without delay.

- 3.3.9 For the case that the commodities subject to titles of the bank are in the direct possession of third parties, the customer shall herewith assign the customer's present and future claims against them, in particular the claim for surrender of the commodities, to the bank.