



Commerzbank AG, New York Branch

# General Business Conditions

## PART I:

### GENERAL BUSINESS CONDITIONS APPLICABLE TO ALL ACCOUNTS, PRODUCTS AND SERVICES OF COMMERZBANK AG, NEW YORK BRANCH

These General Business Conditions (as they may be amended or otherwise modified, this "Agreement") contain the general business conditions for all of the accounts and services which you as a customer (the "Customer" or "you") may establish and select, followed by service-specific provisions, and constitute a written contract between Commerzbank AG, New York Branch, (together with any of its bank affiliates and successors and assigns, the "Bank" or "we") and you, the Customer. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

**By signing an account application, signature card or similar document, by accepting a copy of this Agreement, or by using or continuing to use the Account (as defined in Section 1(1) below), the Customer consents to this Agreement. Please also note that by using the Bank's services or products including, but not limited to, remote deposit capture, lockbox, ACH, fax/e-mail, payment order or positive pay, the Customer is confirming that the Customer has read and understands the service or product terms and conditions sent separately to the Customer and updated from time to time and that the Customer agrees to be bound by them in all respects.**

**Note: DEPOSITS WITH THE BANK ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION ("FDIC"). The Bank is NOT a member of the FDIC. As a German banking institution, the Bank participates in the German statutory deposit protection program. In addition, the bank is a member of the Deposit Protection Fund of the Federal Association of German Banks, which provides insurance for deposits held at Commerzbank Aktiengesellschaft ("AG") in the Federal Republic of Germany. The limits of those deposit protection programs are further described in Section 20 below.**

## 1. Establishment of Accounts

- (1) All accounts of whatever nature, present or future, established by the Customer with any U.S. office of the Bank or with the Grand Cayman Branch of Commerzbank AG (which is administered by the Bank) (collectively, the "Account") are subject to this Agreement and any other relevant Account documentation. The Customer agrees to use the Account only for commercial purposes and the Account may not be used for personal or consumer purposes.
- (2) The Customer shall not transfer any of its rights and obligations in any Account or with respect to any service provided by the Bank, or create any lien or security interest over such rights and obligations or in any Account, without the prior written consent of the Bank.
- (3) The Customer agrees at its sole expense: (a) to advise each of its employees, officers, agents or other persons accessing any service provided by the Bank by or on behalf of the Customer of their obligations under this Agreement or under any other Account documentation; and (b) to provide the Bank with all information required by the Bank to establish an Account and provide services for the Customer.
- (4) The Customer represents and warrants that it has established and is employing know-your-customer policies, procedures and controls, to the extent applicable, for purposes of ensuring that it is, and its customers are, in compliance with applicable laws and regulations relating to anti-money laundering and the economic sanctions of the Office of Foreign Asset Controls of the U.S. Department of the Treasury ("OFAC"). The Customer also represents and warrants to the Bank that it is in compliance with the requirements of the Foreign Corrupt Practices Act (the "FCPA").
- (5) The Bank is required by law to implement procedures to verify the identity of any person seeking to establish an account with the Bank. The Customer acknowledges that the Bank's identity verification procedures require the Bank to request certain information from the Customer or third parties regarding the Customer and the Customer

agrees to provide the Bank with and consents to the Bank obtaining from third parties any such information requested as a condition of establishing the Account with the Bank or using any service provided by the Bank. Any failure by the Customer to provide or to consent to the provision of any such information shall be grounds for the Bank to refuse to establish any account or provide any service hereunder and/or to close the Account or discontinue providing any service.

- (6) *DISCLOSURE NOTICES* – (a) To assist the U.S. government in regard to anti-terrorism and anti-money laundering activities, the USA Patriot Act requires all banks to obtain, verify, and record information that identifies each person and each legal entity that establishes the Account, such as the Customer's name, mailing address (not P.O. Box) and U.S. taxpayer identification number ("TIN") or other government-issued ID. Please contact the Bank if you have any questions regarding the Account opening procedures mandated by the USA Patriot Act or otherwise.
- (7) The Unlawful Internet Gambling Enforcement Act of 2006 (the "Internet Gambling Act") prohibits the Bank from processing "restricted transactions" as defined under the Internet Gambling Act. Restricted transactions are those in which a person accepts credit, funds, instruments or other proceeds from another person in connection with unlawful internet gambling. The Internet Gambling Act prohibits any person engaged in the business of betting or wagering (as defined in the Internet Gambling Act) from knowingly accepting payments in connection with the participation of another person in unlawful internet gambling. The United States Department of the Treasury and the Federal Reserve Board have issued a joint rule, Regulation GG, to implement the Internet Gambling Act. As defined in Regulation GG, unlawful internet gambling means to "place, receive or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the internet when such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager was initiated, received or otherwise made. As a customer of the Bank, please be aware that such restricted transactions are prohibited. If you do engage in an internet gambling business and open a new account with us, we will ask that you provide us evidence of your legal authority to do so.

## 2. Representations and Warranties

- (1) The Customer represents and warrants that (a) it is solvent and validly existing and in good standing in the jurisdiction of its organization, (b) it has all requisite power and authority to enter into this Agreement, and (c) any consent or authorization required by its governing documents, any governmental authority or third party to enter into, or perform under this Agreement has been obtained.

## 3. Authorized Account Persons; Electronic Signatures

- (1) The Customer will provide to the Bank specimen signatures of each person it authorizes to act on its behalf with respect to the Account (each, an "Authorized Account Person") in the manner requested by the Bank. The Bank is authorized to rely upon any document executed by a person who it reasonably believes is authorized to act on behalf of the Customer with respect to the Account and the services provided by the Bank until (a) the authority for such person is terminated by the Customer upon written notice to the Bank and (b) the Bank has been afforded a reasonable opportunity to act on the termination instruction. The Customer acknowledges and consents to the use of electronic signatures and agrees that electronic signatures shall be of the same legal effect, validity and enforceability as a manually executed signature, to the extent permitted by applicable law.
- (2) Each Authorized Account Person, subject to any written limitation agreed upon by the Bank, is authorized to act on behalf of, and legally bind, the Customer with respect to the Account and any service provided by the Bank, which includes, without limitation, the authority of each Authorized Account Person to: open, manage and close the Account; execute or otherwise agree to any agreement relating to the Account or the services provided by the Bank; execute guarantees, indemnities or other undertakings to the Bank in relation to guarantees, letters of credit or other financial transactions (including, without limitation, transfer orders); draw, accept or endorse checks, drafts, bills of exchange, notes and other financial instruments (collectively "Items"); receive information and/or documentation relating to security procedures relating to the Account; and give instructions regarding (a) the payment, transfer or withdrawal of funds by wire, computer or other electronic means; (b) money, credits, Items or property at any time held by the Bank for

the account of the Customer; or (c) any other transaction of the Customer with the Bank.

#### 4. Agents; Information

- (1) The Customer authorizes the Bank to retain an affiliated company and/or any other agents to perform data processing, collection and other services with respect to any Account which the Bank considers necessary or desirable for the Bank. The Bank reserves the right to modify or terminate the Bank's arrangements with the Bank's agents at any time.
- (2) The Customer agrees that requests, instructions, and information with respect to the Account, the Customer itself, and transactions relating to the Account or Customer, and any information disclosed in accordance with this Agreement and any other Account documentation (collectively, "Account Data"), may be processed, collected and transmitted for any legitimate purpose. The Customer specifically understands and agrees that Account Data may be transmitted across national boundaries and through networks, including networks owned and operated by third parties. The Customer explicitly authorizes the Bank to disclose Account Data (including any confidential information as may be protected under U.S. Federal or State law, or any law of the Federal Republic of Germany, any law of the European Union, or as defined in the "Confidential Relationships (Preservation) Law" of the Cayman Islands) for any legitimate purpose, including without limitation, under any of the following circumstances: (a) the disclosure, in the Bank's opinion, is necessary or desirable for the purpose of allowing the Bank to perform its duties and to exercise its powers and rights hereunder or under any other Account documentation; (b) the disclosure is to a proposed assignee of the rights of the Bank; (c) the disclosure is to a branch, affiliate, subsidiary, employee or agent of the Bank or to its or their respective auditors, regulators or legal advisers; (d) the disclosure is to the auditors of the Customer; or (e) the disclosure is permitted or required by law or regulation (including any law of the Federal Republic of Germany or the European Union), regardless of whether the disclosure is made in the country in which the Customer resides, in which the Account is maintained, or in which the transaction is conducted.

#### 5. Deposits

- (1) The Customer represents and warrants that it has good title to all Items presented to the Bank for deposit. All Items deposited are received for collection only, and subject to final payment. The Bank chooses the method of collecting Items and may retain or engage another bank or savings institution, a Federal Reserve Bank, or any clearing house association in the process. The Bank will present Items in accordance with its usual and customary practices. The Bank is not responsible for actions taken by other banks, nor for the loss or destruction of any Item in transit or in the possession of other banks. The Bank may agree with other banks and clearing houses to vary procedures regarding the collection or return of Items, and deadlines to the extent permitted by applicable law or practice.
- (2) The Customer agrees that the Bank has acted with due care in selecting any collecting agent that is: (a) another bank or savings institution, (b) a Federal Reserve Bank, or (c) any clearing house association.
- (3) Funds deposited into an Account are subject to the Bank's funds availability policy, a copy of which is attached as Part II to this Agreement.
- (4) The Bank may return or refuse to accept all or any part of a deposit or credit to an Account at any time, and will not be liable to the Customer for doing so even if such action causes outstanding Items to be dishonored and returned, or payment orders to be rejected. Refused deposits will be returned to the Customer. In addition, any credit card deposit made by the Customer must be in line with the overall business of the Customer.
- (5) If the Bank credits an Account (a) in anticipation of receiving funds for the Customer's credit and such funds are not received by the Bank, or (b) in reliance on a transaction which is subsequently set aside or revoked, or if the Bank does not receive funds for the Customer's credit for value on the date advised by the Customer, then the Bank shall be entitled to debit any Account of the Customer with the amount previously credited and any other charges incurred.
- (6) If the Customer sends an Item to the Bank, the Bank may defer credit or payment for a reasonable time period, without dishonor, and the Bank shall not be obligated thereon until it has received final payment. For all Items, credit will be given only after the Bank ascertains that the Item will not be returned subsequently for lack of funds or genuineness of the drawer's signature.

- (7) In the event the payor bank, drawer or payee on any Item returns the Item to the Bank or makes a claim against the Bank for recovery of any part of any Item after final payment thereof, in each case, on the grounds that such Item was altered or bore a forged or unauthorized endorsement or was otherwise not properly payable, the Bank may accept that return or pay that claim and charge the Customer's Account for all or any part of the amount of the Item. If the Customer deposits an Item drawn on the Bank and the Item or any endorsement is asserted to be forged, unauthorized or altered, the Bank may charge back all or any part of the amount of the Item. The Bank reserves the right to refuse to accept any such Item for deposit or collection.
- (8) If the Bank receives notice that an Item deposited in an Account or an Item directed to be returned to the Bank has not been paid, then the Bank may either immediately charge back any Account or place a hold on any Account and charge any Account for the Item when the Item is returned to the Bank. If a returned Item is one that the Bank agreed to process as a return, the Bank may charge back or hold funds in the Customer's Account.

## 6. Payment of Items

- (1) The Bank is authorized to pay any Item drawn on an Account, in accordance with the Bank's procedures. The Bank is authorized to debit the Account on which the Item is drawn on the day the Item is presented, certified or accepted, or at such earlier time that the Bank receives notice by electronic or other means that an Item drawn on an Account has been deposited for collection at another depository institution. The Bank may determine Account balances in order to decide whether to dishonor an Item for insufficient funds at any time between receiving such presentment or notice and the time of the return of the Item.
- (2) The Bank is authorized to pay all Items presented to it regardless of amount and without inquiry as to the circumstances of issue, negotiation or endorsement or as to the disposition of proceeds, even if drawn, endorsed or payable to cash, bearer or the order of the signer or any Authorized Account Person or to a lender in payment of that individual's obligations.
- (3) The Customer is responsible for protecting blank check stock and other Items from theft or loss, and for issuing Items in a manner so as to prevent unauthorized completion, alteration or addition. The Customer shall not issue Items that are post-dated, and the Bank shall not be liable for any damages caused by early payment or certification of a post-dated Item.
- (4) The Bank will not be required to pay any Item presented more than six (6) months after its date or that is a non-negotiable Item, but the Bank may pay such an Item and charge the Account on which the Item is drawn for the Item.
- (5) The Bank may process any Item by electronic means. All Items the Customer draws against any Account must comply with any check specifications and image standards adopted by the Bank from time to time as well as industry standards. The Bank shall not be liable for damages or losses due to any delay or failure in procuring, collecting or paying Items not conforming to such specifications or standards, except to the extent such losses or damages are the result of the Bank's gross negligence or willful misconduct.
- (6) The Customer assumes all responsibility and liability for any claim or loss that the Customer or the Bank may suffer as a result of the Customer: (a) issuing a check in such a manner that information, marks or bands on the back of the check obscure endorsements, or (b) placing an endorsement on the back of the check which obscures other endorsements, and which thereby causes a delay in the forward processing and/or return processing of the check. The Bank retains the right to refuse to accept a check for deposit when the back of the check is obscured.
- (7) If the Customer establishes an Account which purports to require two or more signatures on any Item drawn on the Account, or limits the maximum amount for which any person can sign an Item, the Customer acknowledges and agrees that any such requirement is solely for the Customer's own internal control purposes. The Customer agrees that as long as the Bank follows its own procedures for processing and paying Items, the Bank will not be liable for paying any Item lacking Customer's required number of signatures, or in an amount exceeding the maximum limit assigned to the signer.
- (8) If an Item issued by the Customer is transferred or negotiated outside of the United States and is subsequently sent to the Bank for deposit, collection or payment in the United States, the Customer shall be deemed to make to the Bank the transfer and presentment warranties under the Uniform Commercial Code as in effect from time to time in the State of New

York, as if such Item were negotiated or otherwise transferred in the United States.

## 7. Customer Requests and Instructions

- (1) The Customer may communicate its requests and instructions to the Bank in any form that is mutually acceptable to the Customer and the Bank. The Bank is authorized to act and rely on such requests and instructions that it believes to be genuine and is not obligated to confirm any such requests or instructions. The Bank may request that the Customer confirm or clarify any instruction or request. Any confirmation or clarification of an instruction or request by the Customer must be clearly marked as such, and, if there is any discrepancy between an instruction and a confirmation, the terms of the instruction shall prevail. The Bank may, at its option, use any means to confirm or clarify any request or instruction, even if any agreed security procedure appears to have been followed. In the event that the Bank is not satisfied with any confirmation or clarification, it may decline to honor the request or instruction.
- (2) If the Bank and the Customer agree on a security procedure to be used for any type of request or instruction, the Customer and the Bank shall safeguard any test keys, passwords, identification codes or other security or authentication procedures, and the Customer shall make them available only to Authorized Account Persons, and shall be responsible for any requests or instructions using such security procedures. It is understood that the security procedures used by the Bank and the Customer are designed to verify the authenticity of, and not to detect errors in, the requests or instructions of the Customer.
- (3) Subject to Article 4A of the Uniform Commercial Code as in effect from time to time in the State of New York, (a) the Bank shall be under no obligation to act upon any request or instruction given to it over the telephone unless there is a specific written agreement to that effect with the Customer, (b) the Bank reserves the right to confirm prior to the execution thereof, any request or instruction received by telephone, at the Customer's expense, by either telephone or in writing, and (c) any communication to the Bank over the telephone is understood to be subject to immediate confirmation by the Customer in writing, and if such written confirmation is not received within five (5) days of the date of the transaction, the transaction shall be deemed ratified by the Customer.

- (4) All payment instructions, whether Items, payment orders or otherwise, are subject to applicable law and the rules of the payment system used.
- (5) The Bank will not be obligated to execute payment orders or effect any other transaction hereunder where the beneficiary or other payee is a person or entity with whom the Bank is prohibited to do business by law, regulation or internal policy, or in any case where compliance would, in the Bank's judgment, conflict with applicable law or banking practice, or subject it to risk of loss.
- (6) If the Bank determines that any request or instruction of the Customer, if followed, might expose it to any liability under law or regulation, or threat of legal or regulatory action, expense or loss, then the Bank may refuse to act on such request or instruction or require the Customer to provide a bond or to indemnify the Bank, in a manner satisfactory to it, against any such potential liability, expense or loss before proceeding to follow such request or instruction.
- (7) In the event that any credit entry in favor of a Customer is made in consequence of a mistake or clerical error or for any other reason without corresponding requests or instructions having been given by the Customer, the Bank may reverse such credit entry by simple Account entry.

## 8. Funds Transfer Instructions

- (1) The Customer may issue funds transfer instructions, including amendments and cancellation requests, against the Account with the Bank, subject to the Bank's acceptance. Funds transfer instructions will be received, processed and transmitted only on the Bank's funds transfer business days, and within the Bank's established cut-off hours on such days. Cancellations of funds transfer instructions are subject to the consent of the beneficiary's bank. The Bank will debit the Account for the amount of each funds transfer instruction accepted by the Bank, and may debit the Account for all fees associated therewith.
- (2) Notwithstanding any instructions by the Customer to the contrary, the Bank reserves the right to use any funds transfer system in the execution of any funds transfer instruction and may otherwise use any means of executing the funds transfer instruction which the Bank deems reasonable in the circumstances. The Bank is not responsible for any breakdowns or error occurring in such systems or methods.

- (3) The Bank may refuse to allow a withdrawal or funds transfer regarding the Account for any reason, including, without limitation: (a) an order to withdraw or transfer funds prior to maturity or without giving sufficient notice, (b) an order to withdraw or transfer funds not yet available, (c) a legal garnishment or attachment is served, including, but not limited to, a levy, restraining notice or court order, (d) if money is otherwise owed to the Bank by the Customer and not repaid on time, (e) Account documentation has not been presented, (f) if the Account is pledged as collateral to secure a debt, (g) if the Bank suspects fraudulent or suspicious activity, or (h) if the Bank believes it has an obligation to do so pursuant to law, regulation or internal policy. Unless prohibited from doing so by law or regulation, the Bank shall notify the Customer of the reason for each such refusal. In addition, the Bank may refuse to pay out any money from an Account until any dispute over the deposits or funds (including, without limitation, any dispute over which persons are authorized to represent or act for the Customer) has been resolved by a court, or by agreement of the parties which is documented to the Bank's satisfaction. The Bank may file an action in interpleader with respect to any money concerning which the Bank has been notified of disputed claims. If any person asserts that a dispute exists, the Bank is not required to determine whether that dispute has merit in order to refuse to pay funds or interplead the funds. The Customer agrees to reimburse the Bank for any expenses, including attorneys' fees that the Bank incurs because of such dispute, or due to the Bank's receipt of a subpoena or other court process, or prosecutorial or regulatory inquiry with respect to the Account or any services. The Bank has the right to pay any money from an Account that is required by law or regulation to be paid even if it results in an overdraft or reduces an Account to the point where the Bank returns one or more Items for insufficient funds.
- (4) In connection with any funds transfer, the Bank and other banks may rely upon the identifying number of the beneficiary, the beneficiary's bank or any intermediary bank included in the funds transfer. Also, the beneficiary's bank in the funds transfer instruction may make payment on the basis of the identifying number even though it identifies a person different from the named beneficiary. Accordingly, the Customer shall be responsible for the consequences of any inconsistency between the name and identifying number of any party in such a funds transfer instruction.
- (5) The authenticity of oral or written funds transfer instructions (including writings transmitted by facsimile) and amendments and cancellations thereof may, at the Customer's written direction, be verified by telephone call-back, test key or password confirmation by an individual purporting to be an Authorized Account Person. If the Bank is not satisfied with any such confirmation, it may decline to honor any such funds transfer instruction or amendment or cancellation thereof. The Customer agrees that the security procedure it selects is commercially reasonable for those funds transfer instructions, amendments and cancellations, and further agrees to be bound by such funds transfer instructions, amendments and cancellations, whether or not authorized, issued in the name of the Customer using this security procedure.
- (6) All Automated Clearing House ("ACH") entries received for an Account will be received by the Bank subject to the rules of the National Automated Clearing House Association ("NACHA") and any other applicable ACH rules. The Customer agrees to be bound by such ACH rules. In case of any credit given by the Bank to the Customer for an ACH entry or any other situation in which the rules of any funds transfer system provide for provisional payments or for the multilateral netting of accounts, all such payments made to or received by the Bank shall be provisional until the Bank receives final settlement. If the Bank does not receive final settlement, the Bank may revoke the provisional credit and charge back the amount to the Account or obtain a refund from the Customer, in which case the originator of the credit entry shall not be deemed to have paid the Customer the amount of such entry. The Bank shall not be obligated to notify the Customer of the receipt of a payment order or a credit entry for credit to an Account.
- (7) To the extent permitted by Article 4A of the Uniform Commercial Code as in effect from time to time in the State of New York, for all payments executed through the employment of correspondent banks or agents (including other branches or subsidiaries of Commerzbank AG), their related charges, if any, will be deducted from the payment unless other arrangements have been made with the Customer.
- (8) If the Bank accepts a funds transfer purported to be made on the Customer's behalf requesting payment in a currency other than U.S. dollars, the Bank will endeavor in good faith and on a best efforts basis to make such payment within two (2) Business Days in accordance with such order, and the Customer agrees to hold the Bank

harmless from any liabilities, and for any losses, costs or expenses imposed on, or suffered by the Bank, arising from the currency transaction. If, for any reason, the funds transfer cannot be completed, the Bank's sole obligation will be to re-credit the Customer's Account with the funds returned to the Bank and any further obligation of the Bank shall be suspended pending such return. If the Customer issues, and the Bank accepts, a funds transfer for payment in or outside the U.S. in a currency (the "Transfer Currency") other than the currency in which the account is denominated, the Bank will, prior to execution of payment, debit the relevant transaction for the equivalent of the amount of the Transfer Currency transferred, at the rate of exchange determined by the Bank. In any such case the funds transfer will not be accepted unless the Bank has been able to complete the conversion and to confirm the payment from the Customer. The Customer agrees that if the beneficiary's bank is instructed to pay in a currency other than its local currency, payment may be made by the beneficiary's bank at its rate of exchange on the date of its payment. In connection with each such funds transfer, the Customer shall comply with all applicable local currency restrictions and any other local law governing the transaction.

- (9) If for any reason it is not feasible for Bank to complete a funds transfer using the instructions given by the Customer, then the Bank shall have no obligation to execute the transfer and no liability for non-execution. If not given instructions, the Bank may elect to use any means of payment or communication deemed reasonable by it under the circumstances, and shall not be liable for acts or omissions of others arising therefrom, or may contact the Customer for further instructions.

## 9. Overdrafts

- (1) The Bank may debit the Account even though the debit may result in or increase an overdraft. Unless otherwise agreed, if any debit to the Account results in or increases an overdraft, such overdraft shall be immediately due and payable. If the Bank permits an overdraft, the Bank is authorized to charge interest on the amount of the overdraft as long as the overdraft is outstanding, at the rate determined by the Bank, up to the maximum rate permitted by law at the time of the overdraft or at the specific rate negotiated between the Customer and the Bank. Whether or not the Bank pays an overdraft Item, the Bank may deduct the applicable overdraft fees and expenses from the Account without notice. Unless agreed in writing, the Bank is under no obligation to permit any

overdraft or to continue to permit overdrafts after having permitted an overdraft, notwithstanding any prior action or course of dealing.

- (2) When Items drawn on the Account and other debits to the Account are presented to the Bank for payment on the same day and there are insufficient available funds in the Account to pay all of these transactions, the Bank may choose the order in which it pays transactions, including, without limitation, the largest transaction first or any other order determined by the Bank.

## 10. Stop Payments; Cancellations and Amendments; Reversals

- (1) A stop payment instruction from the Customer will be effective on an Item if: (a) the Bank receives the stop payment instruction in time for the Bank to act on such instruction, which shall be at least one (1) full Business Day following the Business Day of the Bank's confirmed receipt of the instructions at the applicable Bank location; (b) the instruction contains all information concerning the Item that the Bank requires, and is in the form required by the Bank; and (c) the Item was not paid prior to the effective date. For purposes of this Agreement, "Business Day" means a day on which the Federal Reserve Bank of New York is open and a day on which the Bank is generally open for business in the jurisdiction where the Account is maintained. Stop payment instructions on Items, unless otherwise provided, will be valid for six (6) months and may be renewed in writing from time to time. The Bank is not obligated to notify the Customer when a stop payment instruction expires. The Bank shall not be liable for any Item properly paid (x) prior to the effective date of a stop payment instruction or (y) once the stop payment instruction has expired. Also, stop payment instructions may have no effect on the rights of a holder in due course with respect to an Item returned unpaid by the Bank to make a claim directly against the Customer. Any stop payment instruction or similar communication hereunder shall be subject to the Customer's continuing obligation to indemnify the Bank under the terms of Section 14 hereof for the Customer's use of the Account and the service hereunder.
- (2) Communications requesting amendment or cancellation of payment orders must be received at a time and in a manner affording the Bank a reasonable opportunity to act prior to the Bank's execution of the payment order. The Bank has no obligation to adjust, reverse or stop payment, or the posting of a payment order or

cancellation, except to the extent, if any, permitted by the applicable funds transfer system rules.

- (3) Unless otherwise agreed by the Bank and the Customer, all requests and instructions including, without limitation, payment orders, shall continue in full force and effect until terminated. The Customer may reverse, amend, cancel or revoke any request or instruction only with the consent of the Bank, and the beneficiary's bank, as applicable, or in accordance with applicable law or regulation.
- (4) An electronic foreign exchange payment order may be cancelled or closed-out, in whole or in part. In the event of such a cancellation or close-out, the Bank shall offset the amount of a foreign currency cancelled or closed-out by the Customer at the prevailing market rate, and the Customer will hold the Bank harmless from any loss suffered as a result of such offset necessitated by the Customer's cancellation or close-out, including any loss incurred by the Bank arising from any change in the value of the applicable currency between the time the Bank purchases the applicable currency to cover the initial payment order and the time the Bank is able to convert such currency into a freely transferable currency of its choice.

## 11. Set-Off

- (1) In addition to any common law right of set off in favor of the Bank, the balance of the Account, and every account at Commerzbank AG or any of its affiliates (the "Related Accounts") at any time or from time to time existing in favor of Customer is hereby pledged and made the subject of a general and continuing first priority security lien and right of set-off in favor of the Bank as security for the payment and performance of any obligation (whether matured or unmatured) now or at any time hereafter owing by the Customer to the Bank or any of its affiliates.
- (2) The Bank may at any time and without prejudice to any other rights which it may have, and without prior notice or demand for payment, combine, consolidate or merge all or any of the Accounts and/or the Related Accounts of the Customer or may retain, apply or set-off any money held in any Account and/or any Related Account in any currency towards payment of any amount owing by the Customer to the Bank or any of its affiliates. For the purposes of this Section, the Bank shall be entitled to accelerate the maturity of any time deposit or fixed term deposit. For the purposes of this Section, the Bank may effect currency conversions at such times or rates as it

deems reasonable and may affect such transfers between any Account and/or any Related Account as it considers necessary.

## 12. Fees and Service Charges; Security Deposit

- (1) Each Account shall be subject to such fees and service charges as may be adopted by the Bank from time to time. A schedule showing such fees and service charges will be provided to the Customer upon request. The Bank is authorized to debit the Account for fees and service charges, whether or not such fees or service charges will result in an overdraft of the Account, or to bill the Customer separately. All payments to the Bank shall be in full, without set-off or counterclaim and free of any deduction or withholdings on account of any tax or otherwise.
- (2) In addition to the fees and service charges referred to above, the Bank may request Customer to make a security deposit with the Bank in consideration for the Bank offering certain services to the Customer. The terms and conditions of the security deposit are to be mutually agreed between the Bank and the Customer.

## 13. Taxes

- (1) The Customer agrees to pay or reimburse the Bank for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings (together with any related interest, penalties, fines, and expenses in connection with them) in connection with the Account or services offered by the Bank (including payments or receipts to the Account) except if and to the extent imposed on the overall net income of the Bank.
- (2) The Customer will provide the Bank with such documentation, declarations, certifications and information as the Bank may require in connection with taxation, and warrants that such information is true and correct in every respect. The Customer undertakes to notify the Bank immediately if any information requires updating or correction. The Bank is authorized to charge an Account for any taxes or levies imposed by any revenue or governmental authority for whatever reason with respect to the Account.

## 14. Indemnity; Limitation of Liability; Force Majeure

- (1) The Customer indemnifies and holds the Bank, its branches, affiliates and subsidiaries, and its and their employees, officers, directors, agents and service



providers (hereinafter in this Section, the “Indemnified Persons”), harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses (including legal fees) resulting directly or indirectly from: (a) the Customer’s use of any service provided by the Bank, including, but not limited to, the Bank’s acceptance or execution of any request or direction, including, without limitation, Items and instructions issued in the name of an Authorized Account Person; (b) the Bank’s acts or omissions pursuant to this Agreement except for the Bank’s gross negligence or willful misconduct; (c) the Bank’s payment of any taxes, interest or penalty otherwise due from the Customer paid on the Customer’s behalf, or for which the Bank has no responsibility under this Agreement; or (d) the Customer’s violation of law or regulation, or failure to observe any provision of this Agreement or any other Account documentation.

- (2) The Bank and any other Indemnified Person shall have no liability for any damage, loss, expense or liability of any nature which the Customer may suffer or incur, except to the extent of direct losses or expenses attributable solely to the Bank’s or such Indemnified Person’s gross negligence or willful misconduct. Neither the Bank nor any other Indemnified Person shall, in any event, be liable for any indirect, special, consequential or punitive loss or damage of any kind (including, but not limited to lost profits), whether or not foreseeable, even if the Bank or such Indemnified Person has been advised of the likelihood of such loss or damage, and regardless of whether the claim for loss or damage is made in negligence, gross negligence, for breach of contract or otherwise; provided, however, that the foregoing shall not apply to the extent such loss or damage is caused by fraud on the part of the Bank or such Indemnified Person.
- (3) Neither the Bank nor any other Indemnified Person shall be liable for any loss or damage to the Customer caused by the Bank’s or such Indemnified Person’s failure to provide any service, or delay in providing such service, resulting from an act of God, act of governmental authority whether de jure or de facto, legal constraint, war, terrorism, civil unrest, fire, flood, storm, catastrophe, pandemics, or electrical, computer, mechanical or telecommunications failure, or failure of any agent or correspondent, or unavailability of a payment system, or any cause beyond the Bank’s reasonable control.
- (4) Any claim which the Customer may assert against the Bank in connection with the Account, or in connection

with any services offered by the Bank under this Agreement or any other account documentation, may only be brought as a breach of contract claim. The Customer waives all right in any action, proceeding or counterclaim, of whatever type or nature, to bring any claim against the Bank sounding in negligence or tort or based upon a statutory violation.

- (5) **THE BANK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND DISCLAIMS ALL WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SUITABILITY OF THE SERVICES FOR CUSTOMER, OR AS TO THE COMPATIBILITY OF THE BANK’S SOFTWARE EQUIPMENT, OR COMMUNICATION INTERFACES WITH THOSE OF THE CUSTOMER.**

## 15. Statements of Accounts

- (1) Statements of Accounts are available at the Customer’s option for mailing on a daily, weekly, monthly, quarterly, semi-annual or annual basis, as may be requested in writing by the Customer. The Customer will exercise reasonable care and promptness in examining all Statements of Accounts and the Items, if any, accompanying them in order to discover any irregularities. The Bank shall not be responsible for the Customer’s reliance on balance, transaction or related information which is subsequently updated or corrected or for the accuracy or timeliness of information supplied by any third party to the Bank.
- (2) The Customer must notify the Bank in writing of any unauthorized, improper, or missing endorsements or of any other errors, discrepancies or irregularities in any Statement of Account, or of the non-receipt of an expected Statement of Account, within thirty (30) days after the Account Statement is mailed, transmitted or otherwise made available to the Customer. Any Customer who requests receipt of mailed Statements of Accounts on any basis less frequently than monthly shall be required to receive Statements of Accounts via an electronic transmission on a monthly or more frequent basis. Such Customer agrees that since its account information is also made available to it via an electronic transmission (including, without limitation, via the internet) on a monthly or more frequent basis, that it is deemed to have received its Statements of Accounts on such monthly or more frequent basis for purposes of this notice requirement. The Customer must provide the Bank with

all information necessary for the Bank to investigate the alleged error, discrepancy or irregularity, including, without limitation, (i) the Customer's name and Account number, (ii) the dollar amount of the suspected error and the booking date of the transaction, and (iii) a description of the error and an explanation as to why an error is suspected, and must provide all supporting affidavits and testimony that the Bank requests. In the event that notice is not given within the specified time, particularly in the case of requests for back-valuing Items, claims for the loss of interest, damages, or charges or other expenses, no liability will be accepted by the Bank.

- (3) The Customer shall not institute any legal proceeding or action against the Bank for any claim which it may have regarding any such error, discrepancy or irregularity unless: (i) the Customer has given the timely written notice and provided requested affidavits and testimony, as provided in clause (2) of this Section, and (ii) such legal proceeding or action has been commenced within the following time periods after the date when such Statement of Account was mailed, transmitted or made available to the Customer: (a) within eighteen (18) months in the case of an unauthorized, improper, or missing endorsement; or (b) one (1) year for all other claims.
- (4) If an Account has no activity other than charges assessed or interest credited by the Bank for a period of at least six (6) months, the Bank is not required to provide a Statement of Account until the Account has additional activity. If an Account has no activity other than charges assessed or interest credited by the Bank for a period of at least twelve (12) months, the Customer may be unable to access the Account until appropriate contact is made between the Customer and the Bank.

## 16. Recordings; Records

- (1) The Bank hereby notifies the Customer, and the Customer hereby agrees that the Bank may record telephone conversations with the Customer by using electronic recording devices and the Bank shall not be obligated to expressly inform the Customer when doing so.
- (2) The Bank may retain copies of any documents or Items relating to the Account and services offered by the Bank in any form, including without limitation, by preserving a digital copy or other format of any such documents or Items or a regular business record and discard the

original documents or Items. The Customer hereby waives any objection to the use of such records in lieu of their paper equivalents for any purpose and in any forum, venue or jurisdiction, including, without limitation, objections arising from the Bank's role or acquiescence in the destruction of the originals.

## 17. Notices

- (1) All Statements of Accounts and notices may be sent to the Customer at the address of the Customer on the books and records of the Bank by ordinary mail, by courier, by facsimile transmission, by electronic transmission or by such other means as the Customer and the Bank agree upon. Unless otherwise agreed, all notices to the Bank must be sent to the Bank at 225 Liberty Street, New York, New York 10281-1050, and must be sent by ordinary mail, by courier, by facsimile transmission, by electronic transmission or by such other means as the Customer and the Bank agree upon from time to time. The Bank shall be afforded a reasonable time to act on any notices received.
- (2) The Customer shall notify the Bank promptly, in writing, of any change in its address. Any Statement of Account or notice sent to the Customer's last address on the books and records of the Bank shall be deemed to have been properly sent.

## 18. Termination

- (1) The Bank may close an Account or terminate a service offered by the Bank at any time.
- (2) The Customer may close an Account or terminate a service offered by the Bank only on the last Business Day of each calendar month. Written notice of closure or termination must be given by the Customer to the Bank no later than ten (10) Business Days prior to the last Business Day of the calendar month in which the Customer wishes to close such Account or terminate the service.
- (3) If an Account is closed in accordance with clause (1) or (2) of this Section, the Bank will transfer any balance in such Account in accordance with the Customer's reasonable written instructions, subject to the following: (a) the Bank will not transfer any Account balance if the Bank determines there is a legal or regulatory reason that restricts it from doing so, (b) the Bank may deduct from the Account balance all amounts due to the Bank under

this Agreement unless the Customer has satisfied the Bank's request, if any, for cash collateral to protect the Bank against any liabilities or obligations under this Agreement, and (c) the Bank's obligations in respect of the Account shall immediately terminate upon the Bank's transfer of the balance of such Account. If the Customer does not respond to the Bank's requests or otherwise fails to direct the Bank to so transfer any such balance pursuant to this Section 18(3) within thirty (30) days after the Bank's request to the Customer, then the Bank may close the Account and classify such balance as abandoned property any may take such actions it deems appropriate (including, without limitation, the actions described in Section 19) in accordance with applicable law.

- (4) If a service is terminated in accordance with clause (1) or (2) of this Section, all amounts due to the Bank with respect to such service are immediately due and payable. The Bank may deduct all amounts due to the Bank with respect to such service from any Account.
- (5) Please note that the Customer may select from time to time services that contain more restrictive termination provisions than the foregoing.

## 19. Abandoned Property

- (1) New York State law requires the Bank to treat as abandoned all funds left on deposit in any Account for a period exceeding three (3) years if no transactions regarding the Account have been initiated by, nor any communications received from, the Customer during such time (for time deposits, time starts to run at maturity of the deposit). Such abandoned property has to be turned over by the Bank to the State of New York and any claims of the Customer thereafter run against the State of New York. The Bank therefore urges all Customers to communicate with it in writing at least every three (3) years to show that they are still aware of the existence of their Account(s). The Bank will also charge a fee on each Account or deposit representing abandoned property under New York law, which charge, as determined from time to time by the Bank, is hereby specifically agreed upon between the Customer and the Bank.
- (2) The Bank will make reasonable efforts to notify the Customer in writing before the deposit will escheat to the State of New York. The notice will provide the date the Account will escheat and the effects of the escheat, i.e. account closure and the necessity to file a claim with the

State of New York for return of the property. With the final notice, the Customer will be given the opportunity to reactivate the Account, provided that the Customer declares its intention in writing to maintain that Account on active status.

## 20. Deposit Protection Programs

- (1) **Statutory deposit protection:** The Bank is assigned to the *Entschädigungseinrichtung deutscher Banken GmbH* ("Compensation Scheme of German Banks") as the institution responsible for the statutory deposit protection of private banks. In accordance with the German Deposit Guarantee Act (*Einlagensicherungsgesetz – "EinSiG"*) and subject to the exemptions provided for therein, the statutory deposit protection scheme protects deposits such as credit balances on current accounts, time deposits, savings deposits, savings bonds and registered bonds, up to an equivalent of 100,000 euros per depositor. Not protected are, in particular, deposits of financial firms, public authorities including regional and local authorities, deposits that have arisen in connection with money laundering or terrorist financing, and bearer bonds. Details are set out in *EinSiG*, in particular Section 8 thereof.

- (2) **Deposit Protection Fund:**

- (a) The Bank is a member of the Deposit Protection Fund of the Association of German Banks (*Einlagensicherungsfonds des Bundesverbandes deutscher Banken e.V.*) (hereinafter referred to as the "Deposit Protection Fund"). In accordance with its By-laws – subject to the exceptions provided for therein – the Deposit Protection Fund protects deposits, i.e. credit balances which result from funds left in an account or from temporary situations deriving from banking transactions and which the Bank is required to repay under the applicable conditions.

- (b) Termination of deposit protection at foreign branches. The Deposit Protection Fund will cease to protect deposits held at foreign branches, i.e. branches located outside of the Federal Republic of Germany, after December 31, 2022 except to the extent that, with respect to deposits protected through December 31, 2022, the protection ceilings applicable as of that date shall continue to apply until the deposit matures or is terminated or otherwise reclaimed or if the liability is transferred by way of singular or universal succession. Details on the scope of protection, including the protection ceilings, are set out in

the By-laws of the Deposit Protection Fund, in particular section 6 thereof.

- (3) Transfer of claims. To the extent that the Deposit Protection Fund or its authorized representative makes payments to the Customer, the respective amount of the Customer's claim against the Bank together with all subsidiary rights shall be transferred simultaneously to the Deposit Protection Fund.
- (4) Disclosure of information. The Bank shall be entitled to disclose to the Deposit Protection Fund or to its authorized representative all relevant information and to place necessary documents at their disposal.

## 21. Miscellaneous

- (1) The Bank reserves the right to change the terms and conditions contained in this Agreement or any other Account documentation at any time (followed or preceded by notice thereof to the Customer). In addition, with respect to Account operations and processes, the Bank may change this Agreement or impose other restrictions on the Customer's Account or the services provided by the Bank as the Bank deems desirable or necessary in the course of its business at any time by sending notice thereof to the Customer. The Bank may waive any of the provisions hereof or of any other Account documentation, provided that such waiver is explicit and in writing. Unless otherwise provided, any waiver shall be limited to a single occasion. Any waiver of one or more provisions of this Agreement or any other Account documentation shall not constitute a waiver of any other provision of this Agreement or any other Account documentation.
- (2) The terms of any written supplement, amendment, modification, agreement or other Account documentation, or any notice given by the Bank, which is inconsistent with a provision of this Agreement, shall supersede this Agreement's provision for purposes of the particular Account or service provided by the Bank which is the subject thereof. By signing an account application, signature card or similar document, by accepting a copy thereof, or by using or continuing to use the Account or services provided by the Bank, the Customer agrees to such supplements, amendments, modifications, agreements, terms and conditions or notices.
- (3) If any provision of this Agreement shall be held to be unlawful or unenforceable, the validity of the remaining portions of this Agreement shall not be affected.
- (4) This Agreement supersedes all previous written or oral agreements which may have been entered into between the Bank and the Customer with respect to the subject matter hereof.
- (5) This Agreement, the other Account documentation and the rights and obligations of the Customer and the Bank in respect of each Account and each service provided by the Bank shall be governed by and construed in accordance with the laws of the State of New York (without regard to its conflicts of law rules).
- (6) **BOTH THE CUSTOMER AND THE BANK HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, OF WHATEVER TYPE OR NATURE, ARISING OUT OF THIS AGREEMENT, ANY OTHER ACCOUNT DOCUMENTATION OR THE RELATIONSHIP ESTABLISHED HEREBY OR THEREBY.** Any claim in connection with the Account which is the subject of this Agreement, unless a shorter period of time is expressly provided, must be brought against the Bank within two (2) years of the occurrences of the cause of action.
- (7) In relation to each Account and any services provided by the Bank, any court located in the State of New York shall have exclusive jurisdiction to settle any disputes which arise out of or are connected with this Agreement, the relevant Account documentation and/or the relevant Account. This Section is for the benefit of the Bank only and does not prevent the Bank from taking proceedings in the courts of any other country or state with jurisdiction including, to the extent allowed by law, concurrently in any number of countries or states. The Customer irrevocably and unconditionally submits to the jurisdiction of any state or federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this Agreement, any other Account documentation and/or the Account.
- (8) To the extent that the Customer would have or would be able to claim sovereign immunity in any action, claim, suit or proceeding brought by the Bank, the Customer irrevocably waives such immunity and agrees not to claim such immunity and, further acknowledges that the contractual arrangements entered into with the Bank hereby are primarily commercial in nature.
- (9) Any information obtained by the Customer in connection with an Account or the services provided by the Bank

which is designated by the Bank as confidential or is or should be known by the Customer to be confidential, including the intellectual property rights embodied therein, is the property of the Bank (“Confidential Information”). The Customer agrees to use any such Confidential Information in the manner prescribed by the Bank and agrees not to misappropriate the Confidential Information or disclose the Confidential Information to anyone other than a person authorized by the Bank, except to the extent required to do otherwise by law and except to the extent any such Confidential Information is or becomes part of the public domain through no fault or action of the Customer.

- (10) Section headings are for convenience only and shall not affect the meaning of this Agreement.
- (11) If this Agreement or any other Account documentation is translated into a language other than English, the English language version shall control.
- (12) This Agreement may not be assigned by the Customer without the prior written consent of the Bank. The Bank may assign this Agreement without Customer consent.

**PART II:****FUNDS AVAILABILITY POLICY (REGULATION CC DISCLOSURE STATEMENT)****1. General Policy**

- (1) The Bank's policy is to make funds from your deposits available to you on the first business day after the day we receive your deposit (this policy is called our "next-day policy"). At that time, you can withdraw the funds and we will use the funds to pay checks that you have written.
- (2) Our policy further provides that in the case of checks deposited on any one day in a total amount exceeding \$6,000, depending on the types of checks you deposit, we will make only the first \$6,000 available to you on the first business day after we receive your deposit.

**A Note on Money Orders and Third-Party Checks**

- (1) We wish to remind you that it is our general policy not to accept for deposit any Money Orders or any "third-party checks". "Third-party checks" means checks originally payable to a party other than the depositor who wishes to deposit the check. The availability rules in this Disclosure Statement do not apply to such third-party checks.

**2. Meaning of Certain Terms Used in This Disclosure Statement**

- (1) The following term in this Disclosure Statement has the following special meaning:

**Business day**

For determining the availability of your deposits, every day is a business day except Saturdays, Sundays and Federal holidays. If you make a deposit (or if we receive your deposit by mail) before 3:00 P.M. EST on a business day on which we are open, we will consider that day to be the day on which you made (or we received) your deposit. However, if you make a deposit (or if we receive your deposit by mail) after 3:00 P.M. EST or on a day we are not open, we will consider that the deposit was made (or received) on the next business day we are open.

**3. Availability of Wire Transfers**

- (1) Wire transfer deposits will be available at the latest on the business day after the day on which we receive the deposit.

**4. Availability of Funds Deposited by Check: Next-Day Policy for Some, But Delays May Apply for Others**

- (1) Next-Day Availability Irrespective of Amount

Funds from the following checks ("next-day checks") will be available to you on the first business day after the day of your deposit, irrespective of the amount. Except as indicated, these checks will not be subject to delay for any of the reasons listed in Paragraph (2) or (3) below:

- "On-Us" Checks - all checks drawn on the New York Branch of Commerzbank,
- U.S. Treasury checks payable to you,
- A Federal Reserve Bank or Federal Home Loan Bank check payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after we receive your deposit, or unless we have reasonable cause to believe that the check is uncollectible),
- A check issued by, or by a unit of general local government located in, New York State payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after we receive your deposit), and
- Cashier's check, certified check or teller's check payable to you (unless not deposited with us in person, in which case funds will be available on the second business day after we receive your deposit, or unless we have reasonable cause to believe that the check is uncollectible).

- (2) Our "Over \$6,000 Exception"

We have already described our general next-day policy. We have also explained that, if you deposit checks (other than next-day checks listed in Paragraph (1) above) totaling more than \$6,000 on any one day, then the first \$6,000 of the funds will generally be available on the following business day. The balance over \$6,000 will be available on the 5th business day after the day of your deposit. Please note that the hold may be placed only on the amount of the check(s) deposited in excess of \$6,000. However, when the deposit consists of multiple Items, the Bank may select which Items of the deposit to apply the hold to.

We will notify you if we delay your ability to withdraw funds for this reason, and we will tell you when the funds will be available. They will generally be available no later than the 9th business day after the day of your deposit.

### (3) Further Delays Are Possible

Finally, under the following circumstances, funds you deposit by check may be delayed for a period in addition to the delays provided herein:

- We believe a check you deposit will not be paid.
- You redeposit a check that has been returned unpaid.
- You have overdrawn your account repeatedly in the last six months.
- There is an emergency, such as failure of communications or computer equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will generally be available. They will generally be available no later than the ninth business day after the day of your deposit.

**PART III:****TRANSMISSION OF MESSAGES BY E-MAIL**

At the Customer's specific request, the Bank transmits messages in connection with banking operations also by e-mail; at the same time, the Customer wishes to send messages to the Bank by the same means.

**1. Explanations on Risks**

- (1) The Customer is aware of the fact that, in the use of this communication medium, abuse - especially by third parties - cannot be excluded as a rule, and may not be immediately recognizable. The Customer is further aware that this type of communication may involve restricted availability and other problems, also in respect of the technology used by it and the services involved (e.g. telecommunication providers). Finally, the messages sent to the Bank and the Customer may possibly be read and even altered by third parties. This entails risks regarding confidentiality, integrity, banking secrecy and trade secrets.
- (2) This is why e-mail correspondence must be encrypted effectively. Today, it is indispensable to safeguard e-mail messages by efficient encryption methods.

The following three methods have been established for this:

<b>Security standard</b>	<b>Method</b>
Very high	Secure / Multipurpose Internet Mail Extensions (S/MIME)
High	Pretty Good Privacy (PGP)

Normal

Transport Layer Security (TLS)

The Customer has to ensure that one of these Security Methods is being used for email correspondence with the Bank.

**2. Legally Binding Messages not to be Sent by E-Mail**

- (1) Notices which are required to be made in writing for reasons of evidence may not be communicated by e-mail between the Bank and the Customer in the absence of an express agreement otherwise.

**3. Responsibilities**

- (1) The Bank shall be liable for the authenticity, completeness and intactness of the notices which it sends by e-mail only to the extent that it is responsible for any direct damage incurred as a result.
- (2) The Customer is obliged to take the required organizational measures in order to check the authenticity and intactness of the notices sent to it by e-mail. The Customer shall also bear the risk of delays or any other malfunctions in the technical transmission, unless the Bank is responsible for the damage caused.

**4. General**

- (1) The foregoing provisions shall remain valid until revoked in writing by the Bank