

Terms and Conditions Governing the Guarantee Business

Vienna Branch

Commerzbank Aktiengesellschaft (“the Bank”) shall issue guarantees, standby letters of credit, demand guarantees and other guarantees (hereinafter the “Guarantee(s)”) to a third party (“the Beneficiary”) on behalf of a customer (“the Customer”) at the following terms and conditions. The General Terms and Conditions of Commerzbank AG, which may be inspected in any branch and can be provided on request, shall apply additionally.

1. Direct and indirect guarantees

In accordance with the Customer’s instructions, the Bank shall issue the Guarantee itself (“Direct Guarantee”) or commission another bank (“Second Bank”) to issue the Guarantee (“Indirect Guarantee”) under the Bank’s counter-guarantee (“Counter-Guarantee”).

If there are no such instructions from the Customer, the Bank may issue an Indirect Guarantee provided it considers this to be necessary under the circumstances and taking into account the Customer’s interests.

2. Recognition and Guarantee commission/fees

The Bank shall charge the amount of the Guarantee to the Customer’s Guarantee account as soon as the Guarantee has been issued or sent or the Bank has issued the Guarantee order to the Second Bank.

From the time of issuing or sending of the Guarantee or Guarantee order to the Second Bank, the Bank shall periodically charge the Customer for expenses in addition to a Guarantee commission and a fee for processing the Guarantee.

3. Document review

The Bank shall carefully check payment requests and all documents required by and provided for a Guarantee to verify that they appear to correspond with the requirements of the Guarantee and that they do not contradict one another.

If documents are delivered as authenticated or encrypted teletransmissions instead of in their original form (e.g. SWIFT message, encrypted teleprinted communication), the Bank may treat them as originals.

4. Notification of the Customer

The Bank shall notify the Customer immediately when it receives a payment request pursuant to the terms and conditions of the Guarantee.

5. Payment under the Guarantee

The Bank shall be obligated to make a payment if it receives a payment request from the Beneficiary/Second Bank in accordance with the terms and conditions prior to the expiry of its Guarantee. The Bank may make a payment on a Guarantee even after derecognition provided a payment obligation still exists under the Guarantee or if a decision for payment is enforceable in the country in which it was rendered.

Risk warning for demand Guarantees

In the case of a demand Guarantee, the Bank must make a payment as soon as the Beneficiary requests that the Bank pay in accordance with the terms and conditions of the Guarantee. The Bank may only reject the payment request if an objection can be lodged claiming infringement of rights and such objection can be effectively proven, i.e. supported by documentation. As a result, the Bank shall still charge the Customer’s account even if it considers the Beneficiary’s request for payment to be wrongly issued but an infringement of rights cannot be proven in the event of a drawdown. Any claims against the Beneficiary subsequent to the Bank’s payment must be asserted by the Customer. The Customer shall therefore bear the risk that the Beneficiary will later not be willing to reimburse the received amount or will no longer be able to do so due to insolvency.

For Guarantees that are not payable “on demand”, however, the Bank shall consider all permissible objections and protests that are credibly asserted in writing within a reasonable period of time so that they can be forwarded to the Beneficiary.

6. Derecognition and Guarantee commission

The Bank shall derecognise Direct Guarantees that are not expressly subject to foreign law after expiry and shall stop calculating the Guarantee commission provided these Guarantees clearly expire on a specific calendar date according to their wording or on provision of documents intended to designate their expiry if the Bank has not received a drawdown by this time. For all other Direct and Indirect Guarantees and standby letters of credit that can be drawn from or are confirmed by a Second Bank, the Bank shall only derecognise the Guarantee and stop calculating the Guarantee commission if the original Guarantee deed has been returned to it for discharge or it has been unconditionally released from liability in writing by the Beneficiary/Second Bank.

In the case of a litigation Guarantee, if the Beneficiary does not return the deed to the Bank for discharge, the Bank's consent to the release from liability or a legally binding handover order from the court must be proven. The Customer shall be responsible for satisfying the requirements for derecognition of the Guarantee.

7. Reductions

In the event of a reduction of a Direct Guarantee, the Bank shall make the corresponding partial derecognition and shall account for this when calculating the commission provided the terms and conditions of the Guarantee's reduction clause have been clearly met or the Bank has received an unconditional, written partial release from the Beneficiary. This provision shall apply to Indirect Guarantees if the the Bank receives such a partial release from the Second Bank. In the event of a partial drawing, the amount of the Guarantee shall be reduced by the amount paid by the Bank.

8. The Bank's claim for expenses

The Customer shall be obliged to reimburse the Bank for all necessary expenses incurred in connection with the execution of the Guarantee order, including judicial and extra-judicial prosecution or legal defence proceedings in Germany and abroad. This duty to compensate also includes expenses incurred after derecognition of a Guarantee, provided a payment obligation still exists under the Guarantee or if a decision for payment is enforceable in the country in which it was rendered.

9. Termination of the contractual Guarantee relationship

If the credit or agency agreement on which the Guarantee agreement with the Bank is based should end and if the Customer cannot meet his/her obligation to relieve the Bank of existing guarantee risks within a reasonable period set by the Bank, the Customer shall be obligated to pay the Bank a cash amount equal to these Guarantee risks in order to secure the Bank's claim for expenses.

10. Uniform rules for demand Guarantees

If a Guarantee is subject to the "Uniform Rules for Demand Guarantees" of the International Chamber of Commerce in Paris pursuant to those directives, they shall also apply insofar as they do not contradict these Terms and Conditions Governing the Guarantee Business.

11. Standby letters of credit

Unless otherwise agreed, standby letters of credit issued by the Bank shall be subject to the valid "Uniform Customs and Practice for Documentary Credits" of the International Chamber of Commerce in Paris, which shall also apply insofar as they do not contradict these Terms and Conditions Governing the Guarantee Business.