



COMMERZBANK

Transaction Banking

Terms and Conditions governing the Guarantee Business

Commerzbank AG Vienna Branch (“Commerzbank Vienna Branch“) shall issue guarantees and standby letters of credit (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 for Corporates of Vienna Branch which are sent to the Customer by Commerzbank Vienna Branch shall apply additionally.

1. Direct and indirect Guarantees

In accordance with the Customer’s instruction, Commerzbank Vienna Branch 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”).

In the absence of an express instruction by the Customer, Commerzbank Vienna Branch may issue an Indirect Guarantee provided it considers this to be necessary under the circumstances, taking into account the Customer’s interests. It will notify the Customer thereof without delay.

Prior to issuing the Guarantee, the Customer is required to check to what extent he/she will agree to a text proposed by Commerzbank Vienna Branch. Insofar, Commerzbank Vienna Branch assumes no legal advice and shall not be liable for the content of a Guarantee’s text proposed by it and shall not be obliged to check this text or another specified text requested by the Customer as to legal aspects.

In the event of a Guarantee assumption by a foreign Second Bank, such Guarantee is usually subject to the legal regulations applicable in the respective country. Commerzbank Vienna Branch assumes no responsibility whatsoever for the text of the Guarantee provided by the foreign Second Bank and for any special aspects which may arise from the foreign jurisdiction. The Customer is required to check himself/herself whether he/she agrees to the content of the Guarantee provided by the Second Bank. The Customer is required to inform himself/herself about special aspects, if any, relating to the foreign jurisdiction.

2. Recognition and Guarantee commission/fees

Commerzbank Vienna Branch shall charge the amount of the Guarantee to the Customer’s Guarantee account as soon as the Guarantee has been issued or sent or Commerzbank Vienna Branch 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, Commerzbank Vienna Branch shall periodically charge the Customer for expenses in addition to a Guarantee commission and a fee for processing the Guarantee.

3. Document review

Commerzbank Vienna Branch shall carefully check payment requests and all documents required by and presented under a Guarantee to verify that they appear on their face to conform with the terms and conditions of the Guarantee and do not contradict one another.

If documents are not transmitted in the original but as authenticated or encrypted tele transmission (e.g. SWIFT message, encrypted teleprinted communication), Commerzbank Vienna Branch may treat them as originals.

4. Notification of the Customer

Commerzbank Vienna Branch shall notify the Customer immediately upon receipt of a payment request complying with the terms and conditions of the Guarantee.

5. Payment under the Guarantee

Commerzbank Vienna Branch shall be obliged to make payment if it has received a payment request from the Beneficiary/Second Bank complying with the terms and conditions prior to the expiry of its Guarantee.

Commerzbank Vienna Branch may make a payment on a Guarantee even after derecognition thereof 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 notice for demand Guarantees

In the case of a demand Guarantee, Commerzbank Vienna Branch must make payment as soon as the Beneficiary requests that Commerzbank Vienna Branch pay in accordance with the terms and conditions of the Guarantee. Commerzbank Vienna Branch may only reject the payment request if an objection can be lodged claiming an abuse of rights and such objection can be effectively proven, i.e. supported by documentation. After receipt of the notice according to Z 4 on the utilization, the Customer shall have the opportunity to express its objections and present corresponding documents immediately and in good time in advance to allow Commerzbank Vienna Branch to perform a check prior to the expiry of the payment period (usually 3 banking days prior to the expiry of the payment period). Commerzbank Vienna Branch will therefore charge the Customer's account even if it considers the Beneficiary's request for payment unlawful, but an abuse of rights could not be proven in the event of a utilization. Any repayment claims must be enforced after payment by Commerzbank Vienna Branch by the Customer towards the Beneficiary. The Customer therefore bears the risk that the Beneficiary may later not be willing to reimburse the received amount or may no longer be able to do so due to insolvency.

6. Derecognition and Guarantee commission

Commerzbank Vienna Branch shall derecognize Direct Guarantees that are not expressly subject to foreign law after expiry and suspend the calculation of 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 Commerzbank Vienna Branch has not received a payment request by that time. For all other Direct and Indirect Guarantees and standby letters of credit that can be utilized at or have been confirmed by a Second Bank, Commerzbank Vienna Branch shall only derecognize the Guarantee and suspend the calculation of the Guarantee commission if the original Guarantee deed has been returned to it for discharge or it has been released from liability by the Beneficiary/Second Bank in writing unconditionally.

The Bank's liability under the Counter-Guarantee towards the Second Bank will usually exceed the validity period of the Guarantee provided by the Second Bank by 15 calendar days. The Customer shall be responsible for satisfying the requirements for derecognition of the Guarantee.

7. Reduction

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

8. Claim for reimbursement of expenses of Commerzbank Vienna Branch

The Customer shall be obliged to reimburse Commerzbank Vienna Branch for all necessary expenses incurred in connection with the execution of the Guarantee order, including judicial or extra-judicial prosecution or legal defense proceedings in Austria and abroad. Without prejudice to the Bank's right of recourse pursuant to §1358 ABGB (Austrian Civil Code), the Customer acknowledges all payments of Commerzbank Vienna Branch from and/or in connection with the Guarantee as necessary and useful expenses (§1014 ABGB). This shall also apply to any fees and taxes incurred by Commerzbank Vienna Branch on account of the conclusion of or compliance with this agreement if Commerzbank Vienna Branch provides documentary evidence of the payment thereof to the Customer. This duty of reimbursement also covers expenses incurred after derecognition of a Guarantee, especially insofar as 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 Commerzbank Vienna Branch is based ends and if the Customer fails to meet his/her obligation to release Commerzbank Vienna Branch from any existing guarantee risks within a reasonable period set by Commerzbank Vienna Branch, the Customer shall be obligated to pay to Commerzbank Vienna Branch a cash amount equal to these Guarantee risks in order to secure the claim for reimbursement of expenses of Commerzbank Vienna Branch.

10. Uniform Rules for Demand Guarantees

If, according to instruction, a Guarantee is subject to the “Uniform Rules for Demand Guarantees” of the International Chamber of Commerce, Paris, they shall apply additionally, 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 Commerzbank Vienna Branch shall be subject to the “Uniform Customs and Practice for Documentary Credits”, as amended, of the International Chamber of Commerce, Paris, which shall apply additionally insofar as they do not contradict these Terms and Conditions Governing the Guarantee Business.

Impressum

Editor

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