B 10 (Official Form 10) (04/07)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor	Case Number
Sea Containers Ltd	06 11156

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A request for payment of an administrative expense may be filed pursuant to 11 U S C § 503

Name of Creditor (The person or other entity to whom the debtor owes money or property)	☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars
Trilogy Portfolio Company LLC	☒ Check box if you have never received any notices from the bankruptcy court in this case
Name and address where notices should be sent Trilogy Capital LLC 2 Pickwick Plaza, Greenwich CT 06830 ATTN Joe-Victor Shammas Telephone No 203 971-3430 Winston & Strawn LLP 200 Park Avenue New York, NY 10166 ATTN David Neier Telephone No 212-294-6700	☐ Check box if the address differs from the address on the envelope sent to you by the court
Last four digits of account or other number by which creditor identifies debtor N/A	Check here if this claim ☐ replaces ☐ amends a previously filed claim dated _____

THIS SPACE IS FOR COURT USE ONLY

1 Basis for Claim

☐ Goods sold
☐ Services performed
☒ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Retiree benefits as defined in 11 U S C § 1114(a)
☐ Other_____
☐ Wages salaries and compensation (fill out below)
Last four digits of your SS# _____
Unpaid compensation for services performed
From _____ (date) to _____ (date)

2 Date debt was incurred See attached

3 If court judgment, date obtained See attached

4 Classification of Claim Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed See reverse side for important explanations

Unsecured Nonpriority Claim See attached, not less than $4,777,782 33

☒ Check this box if a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it or c) none or only part of your claim is entitled to priority

Unsecured Priority Claim

☒ Check this box if you have an unsecured claim all or part of which is entitled to priority

Amount entitled to priority See attached

Specify the priority of the claim See attached

☐ Domestic support obligations under 11 U S C § 507(a)(1)(A) or (a)(1)(B)

☐ Wages salaries or commissions (up to $10 950) * earned within 180 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier – 11 U S C § 507(a)(4)

☐ Contributions to an employee benefit plan – 11 U S C § 507(a)(5)

Secured Claim

☐ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral
☐ Real Estate ☐ Other See attached
☐ Motor Vehicle

Value of Collateral

Amount of arrearage and other charges at time case filed included in secured claim if any

☐ Up to $2 425* of deposits toward purchase lease or rental of property or services for personal family or household use – 11 U S C § 507(a)(7)

☐ Taxes or penalties owed to governmental units – 11 U S C § 507(a)(8)

☒ Other – Specify applicable paragraph of 11 U S C § 507(a)(1)

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

5 Total Amount of Claim at Time Case Filed

See Attached, not less than $4,777,782.33		See Attached	See attached, not less than $4,777,782 33
(unsecured)	(secured)	(priority)	(total)

☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim Attach itemized statement of all interest or additional charges

6 Credits The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

7 Supporting Documents *Attach copies of supporting documents* such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments, mortgages security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available explain If the documents are voluminous attach a summary

8 Date-Stamped Copy To receive an acknowledgement of the filing of your claim enclose a stamped self-addressed envelope and copy of this proof of claim

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FILED
JUL 16 2007
BMC

Date July 12 2007

Sign and print the name and title if any of the creditor or other person authorized to file this claim (attach copy of power of attorney if any)

Penalty for presenting fraudulent claim Fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 and 3571

SEA CONTAINERS LTD
00130

NY 1122325 3

ATTACHMENT TO PROOF OF CLAIM OF
Trilogy Portfolio Company, LLC

The Proof of Claim ("Claim") of Trilogy Portfolio Company, LLC ("Claimant") arises from and relates to amounts due and owing by Debtor Sea Containers Ltd ("Debtor") for monies loaned that were guaranteed by the Debtor in connection with the purchase of SeaCat Scotland The details with respect to the claim of Claimant are set forth in the attached documentation

After taking into account amounts previously paid to Claimant in respect of its secured claim against a non-debtor affiliate of the Debtor, Claimant is owed €3,471,469, currently valued at $4,777,782 33 in United States Dollars, plus interest, fees and expenses in a presently unliquidated amount, in respect of this Claim

Claimant reserves its right to file additional and other pleadings to assert any of the amounts set forth in this Claim as post-petition administrative expenses pursuant to 11 U S C §§503, 507

Claimant claims costs of collection and enforcement, and prepetition and postpetition interest, fees, costs and other charges, to the extent provided for at law or in equity Such amounts are presently unliquidated

Claimant reserves the right to amend, supplement or modify this Claim at any time

Supporting documentation with respect to the Claims is attached hereto Additional documentation is (i) in the possession of the Debtor, (ii) too voluminous to attach hereto and/or (iii) is confidential, and may be obtained by contacting

Joe-Victor Shammas, CPA, CFA
Trilogy Capital, LLC
2 Pickwick Plaza
Greenwich, CT 06830
(203) 971-3430
(203) 971-3499 (fax)
jshammas@3cap com

David Neier, Esq
200 Park Avenue
Winston & Strawn LLP
New York, New York
(212) 294-5318
(212) 294-4700 (fax)
dneier@winston com

Damages asserted pursuant to this Claim are presently only partially liquidated in the amounts set forth herein

To the extent the Debtor assert claims against Claimant, Claimant reserves the right to assert that such claims are subject to rights of setoff and/or recoupment, which rights are treated as secured claims under the Bankruptcy Code and similar state and federal laws as well as in equity To the extent that the Debtor or any other party take any action that would give rise to a counterclaim or other rights or claims Claimant may have against the Debtor, Claimant reserves all of its respective rights

In addition, with the filing of this Claim, Claimant does not waive any of its rights to claim specific assets or any other rights or rights of action that Claimant has or may have against the Debtor, and Claimant expressly reserves such rights

By filing this Claim, Claimant does not waive, and specifically reserves, its respective procedural and substantive defenses to any claim that may be asserted against it by the Debtor, by any trustee of its estates, by the Official Committee, or by any other party

Claimant reserves all rights accruing to it against the Debtor, and the filing of this Claim is not intended to be and shall not be construed as an election of remedy or a waiver or limitation of any rights of Claimant In addition, Claimant reserves the right to withdraw this Proof of Claim for any reason whatsoever

All matters concerning this Claim should be addressed to

Joe-Victor Shammas, CPA, CFA
Trilogy Capital, LLC
2 Pickwick Plaza
Greenwich, CT 06830
(203) 971-3430
(203) 971-3499 (fax)
jshammas@3cap com

David Neier, Esq
200 Park Avenue
Winston & Strawn LLP
New York, New York
(212) 294-5318
(212) 294-4700 (fax)
dneier@winston com

L O A N A G R E E M E N T

Construction and Post Delivery Financing

of Hull No. 028 a SeaCat catamaran of about 700 tonnes displacement, registered tonnage of about 3.000 t, capacity of 450 passengers and 80 cars, year of built 1992.

This Loan Agreement is made the 30th day of September, 1991, between

Sea Containers Ltd.
41 Cedar Avenue
P.O. Box HM 1179
Hamilton HM EX, Bermuda

- hereinafter called the "Borrower" -

on the one part and

Hamburgische Landesbank - Girozentrale -
50, Gerhart-Hauptmann-Platz
2000 Hamburg 1
Federal Republic of Germany

- hereinafter called "the Landesbank" -

on the other part upon the following terms and conditions:

WHEREAS

(1) According to the terms of a Shipbuilding Contract dated December 21st, 1989, the Borrower ordered a ferry-catamaran (Sea-Cat) of about 450 passengers, 80 cars capacity (- building-no. 028 -) (hereinafter called "the Vessel") built at Hobart, Tasmania, to be delivered during the first three months of 1992. The contract price amounts to the countervalue of about US$ 18,5 Mio.

(2) The Borrower has requested the Landesbank to grant two loans of US$ 15,0 Mill. each for the purpose of financing advances during the construction period (Interim Facility) and for the purpose of long term partfinancing of the new building price (Long Term Facility).

(3) If the Borrower decides that the vessel will be delivered to and/or owned by a wholly owned subsidiary of the Borrower then the Landesbank, the Borrower and the subsidiary will enter into an additional agreement to the Loan Agreement in which the subsidiary agrees to become a party of the Loan Agreement liable to the Landesbank on a joint and several basis together with the Borrower. The subsidiary and the Borrower are hereinafter together referred to as the "Borrower".

(1) Upon and subject to the terms and conditions mentioned in this Loan Agreement, the Landesbank shall make available to the Borrower loans of:

(1.1) US$ 15,000,000.--

(in words: US-Dollar fifteen million)

- hereinafter referred to as "Interim Facility" -

for the purpose of financing advances paid to the yard during time of construction and

(1.2) US$ 15,000,000.--

(in words: US-Dollar fifteen million)

- hereinafter referred to as "Long Term Facility" -

for the purpose of financing about 80 % of the contract price of the vessel after delivery took place.

The Interim Facility and the Long Term Facility are hereinafter collectively referred to as the "Loans"

(2) The Loans will be made available to the Borrower in US-Dollars or other currencies in accordance with the conditions contained in Art 2 of this Loan Agreement and will be drawn down by the Borrower for the purpose referred to in para. (1), only after all conditions of this Loan Agreement have been fulfilled.

(3) The Interim Facility will be drawn in one amount or several tranches of at least US$ 3,000,000.-- each at the Borrower's option by 30th March, 1992 at the latest. The Borrower will proof to have effected payments to the yard in an amount that is not less than the drawn sum under this facility by presenting copies of the yard invoices.

The Long Term Facility can be drawn only in one amount after delivery of the vessel to the Borrower. Drawdown has to be effected by June 30th, 1992 at the latest.

The drawn amount has to be used with first priority to repay outstanding amounts under the Interim Facility including interest and costs Any exceeding amount can be disposed of without restrictions.

Whenever the Borrower wishes to draw under the aforementioned facilities it will inform the Landesbank at least three banking days prior to the date of drawdown.

Article 2: Currency

(1) The Funds of the Loans shall be made available under the terms of this Loan Agreement for one or more of the interest periods agreed to hereunder in US-Dollar (hereinafter called the "Leading Currency") or at request of the Borrower in any other customary Euro-Currency (hereinafter collectively called "Euro-Currency-Advances") respectively in domestic Deutsche Mark in an amount equivalent to the US-Dollar amount then outstanding under the repayment-scheme as per Article 3. Any request of the Borrower to change the currency has to be made at least three Banking days (days on which banks are open for business in Hamburg, London and Hong Kong respectively) before the beginning of the next succeeding period. In the absence of any such request the Loans shall be continued in the currency of the current interest period. If the Borrower is changing the Loans into domestic DM for the remaining life-time of the Loans, the DM shall be considered as the Leading Currency.

(2) The granting of such Euro-Currency Advances will at all times be conditional upon the availability of the relevant means at acceptable terms through the Landesbank in Hamburg or through its Hong Kong- or London Branch and the unconditional conformity with the requirements of the Deutsche Bundesbank and all other competent and appropriate authorities. Should these conditions at any time cease to be fulfilled then the Borrower shall immediately repay in full the Euro-Currency Advances involved and the Funds involved be made available in domestic Deutsche Mark. Should the Landesbank as a result thereof incur any extra charges or costs, then the Borrower shall indemnify the Landesbank for all such charges or costs.

(3) The exact amount to be made available under the Loans as a Euro-Currency Advance or as domestic DM will be conclusively determined by the Landesbank. It is understood that any calculations to be made by the Landesbank under this Article shall be conclusive and binding upon the Borrower, save for any manifest error.

Article 3: Term / Repayment / Prepayment

(1) Outstanding amounts under the Interim Facility have to be repaid on June 30th, 1992 at the latest.

(2) The Long Term Facility if drawn in US-Dollar has to be repaid in twenty equal and consecutive semi-annual instalments of US$ 750,000.-- each.

The first instalment is due and payable on September 30th, 1992 and the last on March 30th, 2002.

If the loan is drawn in a currency other than the Leading Currency the Borrower has to repay amounts in this currency at the repayment dates to an extent that the outstanding amounts after deduction of the repayments, when converted into the Leading Currency at the then prevailing exchange rate do not exceed the maximum amount of the Long Term Facility according to the repayment schedule which is attached as Exhibit "1" If domestic DM becomes Leading Currency, Landesbank will provide a new repayment schedule reflecting the exchange rate at the time of conversion of the loan into domestic DM.

(3) On giving not less than thirty days prior written notice (effective upon receipt by the Landesbank) the Borrower may prepay all or part of the Loans at the end of any interest period agreed therefor in accordance with Article 4 below. All prepayments shall be applied against the outstanding repayment instalments in inverse order of their maturity. Prepaid amounts may not be reborrowed.

(4) Prepayments during fixed interest periods are not permitted unless the Borrower reimburses all costs arising for the Landesbank in connection with the breakage of such interest periods including loss of profit.

(5) It is understood that any calculations to be made by the Landesbank under this Article shall be conclusive and binding upon the Borrower, save for any manifest error.

Article 4· Interest, Arrangement Fee, Commitment Fee

(1) The Borrower shall pay interest on the outstanding amounts under the Loans at the applicable base-rate as conclusively determined by the Landesbank for the interest periods plus a margin of 1 1/4 % p.a.

In case of Euro-Currency-Advances including US-Dollar the applicable base rate shall be the rate per annum at which deposits of like currency, amount and period agreed upon are offered to leading banks in the London or the Hong Kong Interbank Euro-Currency Market at 11.00 a.m. (London/Hong Kong Time) on a day which is two Banking days prior to the beginning of the new interest period. In case of domestic DM the applicable base rate shall represent the Landesbank's refinancing costs as certified by the Landesbank.

(2) Within the term interest periods of 1, 3, 6 months or a multiple thereof shall be agreed, unless otherwise agreed upon.

An interest period of 3 months shall be used for the purpose of fixing the interest rates in the absence of prior agreement between the Borrower and the Landesbank.

Unless otherwise agreed upon from time to time interest shall be payable at the end of any interest period, but at least every six months in the case of longer interest periods, in arrears

(3) Interest shall be calculated on the outstanding amount of the Funds and on the basis of a year of 360 days and the actual number of days elapsed.

cont. Article 4: Interest, Arrangement Fee, Commitment Fee

(4) The Borrower agrees to pay to the Landesbank an Arrangement Fee of 1/4 % calculated on US$ 15,000,000.-- that means US$ 37,500.-- within seven banking days after the date of signing of the Loan Agreement.

(5) The Borrower will pay to the Landesbank Commitment Fees of 1/4 % p.a. calculated on the undrawn portion of the Interim Facility for the period beginning with the date of signing of the Loan Agreement. Commitment Fees are payable in arrears on October 30th, 1991, January 30th, 1992, April 30th, 1992 and June 30th, 1992.

(6) Should any amount not be paid when due under the terms of this Loan Agreement then the applicable interest rate shall be the rate certified by the Landesbank as the rate representing its loss - including loss of profit - resulting from such late payment or non-payment.

The Landesbank shall retain the right to claim compensation for further losses suffered by it as a result of any default. The Borrower shall retain the right to prove that the loss suffered by the Landesbank was substantially less or non-existent.

Article 5: Payments

(1) Any amounts due to the Landesbank under this Loan Agreement shall be paid in the currency in which they are owed in accordance with Art. 2 of the General Loan Conditions unless the Landesbank shall specify otherwise.

(2) Where the date on which any payment of interest or repayment instalment is due is not a Banking day in the meaning of Art. 3 of the General Loan Conditions in the place where such payment is to be made, such payment shall be due on the next day on which banks are open for business there unless this day falls in a new calendar month in which case the Banking Day immediately preceding the original date for payment shall be considered as the date on which the payment involved was due.

Article 6. Security

The Interim Facility is unsecured.

All amounts due to the Landesbank under the Long Term Facility are to be secured as follows:

(1) The Borrower shall cause the Vessel to be registered in the ships' register of the Bahamas.

(2) After registration of the Vessel the Borrower shall execute and deliver to the Landesbank in form and substance acceptable to the Landesbank and in accordance with the laws of the Bahamas a first ranking Naval Mortgage to secure account current on the Vessel in respect of the Long Term Facility of up to US$ 15,000,000.-- and all other obligations of the Borrower under this Loan Agreement, including any amendments or variations thereof from time to time agreed between the Borrower and the Landesbank.

The terms and conditions of this Loan Agreement and of the General Loan Conditions and General Business Conditions shall be incorporated in the mortgage deed in so far as this is legally permitted by the laws of the Bahamas The mortgage deed shall also contain such terms and conditions as are customary under the laws of the Bahamas.

The mortgage shall be drafted on behalf of the Landesbank and its registration obtained by the lawyers Messrs. Appleby, Spurling & Kempe, Bermuda in cooperation with Messrs. Higgs & Johnson, Bahamas (hereinafter called the "Lawyers").

One certified copy and one ordinary copy of the mortgage deed and one certified copy of the records of the registration of the ship and the mortgage in the Bahamian ships' register and the Certificate of Charge confirming the registration of the mortgage against the Borrower in the Bahamian Companies' register are to be submitted to the Landesbank.

cont. Article 6· Security

(3) The Lawyers shall notify the Landesbank of any alterations to the Vessel's registration in the Bahamian ships' register and/or of any foreclosure proceedings instituted against the Vessel. At the request of the Landesbank the Borrower shall provide an extract from the Bahamian ships registry to the Landesbank.

Any costs arising from such activities of the Lawyers shall be borne by the Borrower.

(4) Without the prior written consent of the Landesbank the Borrower may not execute or deliver any mortgage on the Vessel nor may the Borrower sell or in any way dispose of the Vessel either in part or in full, nor cancel its registration in the Bahamas.

(5) The Borrower shall assign by a legal first priority assignment in favour of the Landesbank all its claims and benefits under all insurance policies and the proceeds thereof which have been or will be arranged with reference to the terms hereof with the deed as attached hereto (Exhibit "2").

(6) All charter claims that are existing or might arise in the future shall be assigned by the Borrower by a first priority assignment to the Landesbank by a deed of assignment as attached hereto (Exhibit "3") provided that the Landesbank will only present the notice of assignment to a charterer of the vessel if the Borrower is in default

Any Bare-Boat-Charter Agreement excluding Bare-Boat-Charters inside the Sea Containers Group regarding the vessel is subject to the Landesbank's prior written consent.

(7) Amounts received by the Landesbank in excess of amounts due shall be paid over immediately upon receipt to the Borrower.

Article 7. Approvals/Registration

The Landesbank shall be provided with proof that all approvals, consents and permissions required for the conclusion and performance of this Loan Agreement and in particular those pertaining to the granting and registration of the mortgage on the Vessel, and the payment of interest and all other sums payable under the terms of this Loan Agreement have been given by the relevant authorities and that such approvals, consents and permissions are still in force. The necessary exchange and transfer permits for all amounts due under this Loan Agreement, must be irrevocable. Where such approvals, consents or permissions are not necessary, this has to be confirmed to the Landesbank by first class lawyers acceptable to the Landesbank

Should any permission become necessary at any time during the term of this Loan Agreement the Borrower herewith undertakes to furnish the Landesbank with such permission immediately.

Article 8. Insurance

The Vessel shall be insured in accordance with the terms and conditions contained in Article 6 of the General Loan Conditions.

In consequence of the new developments as far as oil pollution liability is concerned the Landesbank may take out insurances in its own name against mortgagee`s interest additional perils (oil pollution). Any costs arising from such insurance shall be borne by the Landesbank.

Article 9: Representations, Warranties and Covenants

(1) The Borrower hereby represents and warrants to the Landesbank that:

(a) the Borrower is a corporation duly incorporated, validly existing and in good standing under the laws of Bermuda;

(b) the execution and delivery of this Loan Agreement and the mortgage and all other documents and the completion of all other transactions herein contemplated and their performance are within the Borrower's corporate authority, have been duly authorized by proper corporate resolutions and will not contravene any applicable law or regulation or order, nor violate the Borrower's statutes, by-laws or regulations nor any agreement binding on the Borrower nor any applicable law or regulation or order or decree of any Governmental authority or agency;

(c) this Loan Agreement represents a valid and binding obligation upon the Borrower, enforceable in accordance with its terms;

(d) the legality, validity, enforceability or admissibility in evidence of this Loan Agreement and the mortgage documentation and/or any Assignments according to Article 6 of this Loan Agreement in the Bahamas and Bermuda are not subject to or conditional upon this Loan Agreement and/or the mortgage documentation and/or any Assignments being filed, recorded or enrolled with any Governmental authority or agency in any country or stamped with any stamp duty or similar transaction tax in any country (subject to the registration of the mortgage in the ship's register of the Bahamas);

(e) under the laws of Bermuda, the Borrower may validly and effectively agree that this Loan Agreement and all rights of the Landesbank against the Borrower - with the exception of the mortgage - shall be governed by and construed in accordance with the laws of the Federal Republic of Germany and that the place of jurisdiction shall be Hamburg without prejudice to the right of the Landesbank to commence any legal action or proceedings in any other place chosen by the Landesbank under the provisions of Article 15 of this Loan Agreement

cont. Article 9: Representations, Warranties and Covenants

(f) the Borrower will keep the Vessel registered in the Bahamian ships' register and will execute the ship mortgage and mortgage deed as per Article 6 (2) hereof and the according charges in the companies register to secure all amounts which may become due to the Landesbank from the Borrower under the terms of this Loan Agreement.

(2) Each of the representations and warranties contained in the preceding Clause shall survive and continue to have full force and effect after the execution of this Loan Agreement and the Borrower hereby warrants to the Landesbank that the above representations and warranties will be true and correct and fully observed as though made on each instalment payment date according to Article 3 of this Loan Agreement.

(3) The Borrower hereby covenants that it will.

(a) furnish the Landesbank with a certified copy of the resolutions of its board of directors specifically authorizing its entry into this Loan Agreement, the acquisition of the Vessel if available, the execution of the mortgage deed, the mortgage and its registration in the Bahamian ships' register in accordance with the laws of the Bahamas and all other matters contemplated hereby and naming the person or persons authorized to sign on behalf of the Borrower this Loan Agreement and all such other documents as the Landesbank may require to be signed by the Borrower hereunder;

(b) furnish the Landesbank with a certified copy of the registration of the Borrower in Bermuda,

(c) furnish the Landesbank with a certified copy of the Borrower's Certificate of Incorporation and Memorandum & By Laws (or analogous documents),

(d) furnish the Landesbank with a copy of the building contract, the delivery protocol, a copy of the yard's final invoice, copies of all class certificates for the vessel.

(4) Financial Covenants (only applicable to Sea Containers Ltd.)

The Borrower covenants and undertakes that·

(a) it will maintain a net worth of not less than 240 million Dollars (U.S.) and for the purposes of this Clause "Net Worth" means an amount equal to the aggregate of the paid up issued share capital (including preferred shares and common shareholder' equity) and consolidated reserves of the Company and

cont. Article 9: Representations, Warranties and Covenants

its consolidated subsidiaries as shown in the latest audited published consolidated balance sheet of the Company and its consolidated subsidiaries adjusted to:

(i) include any shares premium account or capital redemption reserve fund or retained earnings and plus or minus the amount standing to the credit or debit as the case may be of the latest published consolidated profit and loss account of the Company and its consolidated subsidiaries and all consolidated subordinated indebtedness, but

(ii) exclude from reserves all deferred charges and provisions for depreciation or obsolescence bad or doubtful debts and other specific provisions, and

(iii) deduct all amounts attributable to intangible assets in particular goodwill, patents, trade marks, licenses and all other assets which would be treated as intangibles under generally accepted accounting principles in the United States of America, and

(iv) exclude from share capital shares in the Company directly or indirectly owned by, or the voting rights in which are directly or indirectly owned by or controlled by or on behalf of, the Company's subsidiaries.

(b) the ratio of its Debt to its Net Worth shall not at the time of the latest audited consolidated balance sheet exceed 3 0:1 and for the purposes of this Clause "Debt" means all moneys borrowed by the Company and its consolidated subsidiaries at the date of calculation thereof before allowing any set off (except to the extent that such money has already been brought into account as Debt) and includes (i) all loan capital excluding subordinated indebtedness (ii) all deferred indebtedness for the payment of the purchase price of property or assets acquired (iii) all acceptance credits and discounted bills or other discounted negotiable instruments and (iv) obligations under hire purchase and leasing agreements (other than operating leases) excluding unearned interest.

(c) the amount of dividends payable to Ordinary Shareholders in one financial year will not exceed US$ 17.8 million plus 50 % of the annual consolidated net earnings of the Company and its subsidiaries arising since 31st December, 1990 after payment of dividends on any preferred Shares.

Article 10. Change in applicable Law / Circumstances

(1) In the event that any change in any applicable law, regulation or regulatory requirement or in the interpretation thereof shall make it unlawful or any other circumstances shall make it impossible for the Landesbank to maintain or give effect to its obligations under this Loan Agreement, the Landesbank shall be entitled to terminate this Loan Agreement partially or totally. The Landesbank will, however, negotiate with the Borrower in good faith in the light of the new situation. Should it not be possible to agree on new conditions within thirty days the Landesbank shall be entitled to demand immediate repayment by the Borrower of all amounts due to the Landesbank under this Loan Agreement together with accrued interest and costs

(2) If any change in any applicable law, regulation or regulatory requirement or in the interpretation thereof or if compliance by the Landesbank with any applicable direction, request or requirement (whether or not having the force of law) of any competent Governmental or other authority shall:

I. subject the Landesbank to any taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature in respect of the Loan; or

II. change the basis of taxation to the Landesbank of any payment due or to become due to it pursuant to this Loan Agreement (other than tax on overall net income); or

III impose, modify or deem applicable any reserve requirements and/or require the making of any special deposits, against or in respect of any assets or liabilities of, deposits with or for the account of, or loans by the Landesbank, or

IV. impose on the Landesbank any other condition affecting this Loan Agreement

and the result of any of the foregoing is to increase the costs to the Landesbank of making or maintaining advances under this Loan Agreement or to reduce the amount(s) receivable by the Landesbank under this Loan Agreement, then the Borrower shall pay to the Landesbank such additional costs The statement of the Landesbank setting out the amount of such additional costs shall be conclusive and binding on the Borrower, save for manifest error

cont. Article 10. Change in applicable Law / Circumstances

In such case the Borrower is entitled to prepay the Loan then outstanding together with accrued interest and other costs on giving the Landesbank not less than ten days prior written notice (effective on receipt thereof).

(3) The foregoing provisions do not affect Article 11 of the General Loan Conditions.

Article 11: Legal Opinion

(1) The Lawyers shall supply the Landesbank with a legal opinion confirming that:

(a) the Borrower is a corporation duly incorporated, validly existing and in good standing under the laws of Bermuda.

(b) the execution and delivery of this Loan Agreement and the mortgage and any other documents and the completion of all other transactions herein contemplated and their performance are within the Borrower's corporate authority, have been duly authorized by proper corporate resolutions and will not contravene any applicable law or regulation or order, nor violate the Borrower's statutes, by-laws or regulations nor any agreement binding on the Borrower nor any applicable law or regulation or order or decree of any Governmental authority or agency.

(c) this Loan Agreement has been validly signed on behalf of the Borrower and represents a valid and binding obligation upon the Borrower, enforceable in accordance with its terms subject to such obligation being valid, binding and enforceable under Bermuda law

(d) the mortgage deed has been validly signed on behalf of the Borrower and represents a valid and binding obligation upon the Borrower, enforceable in accordance with its terms.

(e) the Borrower is entitled to appoint irrevocably Sea Containers Services Ltd , London, as its representative to effect and receive on behalf of the Borrower any communication in connection with this Loan Agreement, the mortgage and any other document required. In this connection the Lawyers shall confirm that all necessary steps for the appointment of the representative have been properly taken and that this appointment is valid and irrevocable.

(g) the legality, validity, enforceability or admissibility in evidence of this Loan Agreement and/or the mortgage documentation and/or any assignment according to Article 6 of this Loan Agreement in Bermuda or the Bahamas are not subject to or conditional upon this Loan Agreement and/or the mortgage documentation and/or any

cont. Article 11: Legal Opinion

assignment being filed, recorded or enrolled with any Governmental authority or agency in any country or stamped with any stamp duty or similar transaction tax in any country (subject to the registration of the mortgage in the ships' register of the Bahamas and the Companies Register of the Bahamas and Bermuda respectively).

(h) under the laws of Bermuda the Borrower may validly and effectively:

(i) agree that this Loan Agreement and all rights of the Landesbank against the Borrower - with the exception of the mortgage - shall be governed and construed in accordance with the laws of the Federal Republic of Germany and that the place of jurisdiction shall be Hamburg or any other place chosen by the Landesbank under provisions of Article 15 of this Loan Agreement;

(ii) have the Vessel after delivery validly registered in the Bahamian ships' register;

(i) all Governmental and other approvals and certificates as specified in Articles 7 and 9 of this Loan Agreement have been obtained, or as the case may be, are not necessary.

(j) the first preferred mortgage on the Vessel has been legally and validly executed and its registration in the ships' register as well as the companies register of the Bahamas and Bermuda respectively has been duly effected.

(k) the registration of the Vessel in the ships' register of the Bahamas can only be cancelled with the prior written consent of the mortgagee.

Article 12: Other Costs, Expenses and Fees

(1) The Borrower shall indemnify the Landesbank on demand for any legal or other costs or expenses incurred by the Landesbank in connection with the preparation, conclusion and performance of this Loan Agreement, irrespective of whether the Loan has been disbursed or not. Such costs shall include in particular those incurred in connection with the registration, maintenance and administration of the mortgage, with the lifting of any embargo on the Vessel, with the insurance, safekeeping and maintenance of the Vessel and with the enforcement of any claims against the Borrower and/or any Guarantor, Charterer or Insurer and/or the preservation of the Landesbank's rights against the Borrower. The Borrower also shall pay all fees, costs, expenses etc. charged by any of the Landesbank's lawyers in connection with this Loan Agreement and the mortgage as well as costs and expenses of any kind which might occur if the Borrower shall be in default with its obligations under this Loan Agreement.

(2) If at any time duties, taxes or any charges whatsoever should be levied (except for taxes on the overall net income of the Landesbank) or any interest on any outstanding amounts or any amounts otherwise due under this Loan Agreement or any of the security documents or any other instruments to be effected hereunder or in any other manner whatsoever as a consequence of or in connection with this Loan Agreement such taxes duties and charges shall be paid by the Borrower when due.

Article 13: General Conditions

The General Loan Conditions and General Business Conditions (Exhibit "4") of the Landesbank are an integral part of this Loan Agreement. They are hereby recognized as binding. In case of any conflict between this Loan Agreement and the General Loan Conditions or the General Business Conditions the provisions of this Loan Agreement shall prevail.

Article 14: Part Invalidity

If at any time any provision hereof is or becomes invalid, illegal or unenforceable in any respect under any law, or the Landesbank waives any of its rights under the terms and conditions of this Loan Agreement the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

Terms and conditions which are invalid illegal or unenforceable shall be replaced, and circumstances not covered shall be covered, by appropriate provisions and arrangements in conformity with the spirit and purpose of this Loan Agreement.

Article 15· Applicable Law and Jurisdiction

This Loan Agreement shall be governed by and construed in accordance with the Law of the Federal Republic of Germany. Place of jurisdiction is Hamburg. The Landesbank, however, reserves the right to enforce all rights under this Loan Agreement against the Borrower at any other place where this is legally permissible.

Article 16: Control Accounts

The Landesbank shall maintain and keep accounts showing all sums due to the Landesbank from the Borrower hereunder and the amount of the claims of the Landesbank against the Borrower under this Loan Agreement shown in the books of the Landesbank shall be conclusive, save for manifest error.

Article 17: Language

All certificates, instruments, opinions, notices and other documents to be delivered hereunder shall be in English. Should this not be possible, then any such aforesaid shall be accompanied by a certified translation into English language.

Article 18: Conversion and Extraordinary Repayment

If for the purposes of obtaining judgement in any court outside the Federal Republic of Germany it becomes necessary to convert any amount in US-Dollar due hereunder into another currency, then the conversion shall be made at the rate of exchange prevailing on the day before an action is brought into court. For the purpose of this Article "rate of exchange" means the best possible rate such currencies in the respective country against US-Dollar. In the event that there is a change in the rate of exchange prevailing between that date and the date of payment of the amount due, the Borrower will pay such additional amounts, if any, as may be necessary to ensure that the amount paid on such date is the amount in the respective currency which when converted at the rate of exchange prevailing on the day of payment is the amount then due under this Loan Agreement in US-Dollar. Any additional amounts due from the Borrower under this Article will be due as a separate debt and shall not be affected by judgement being obtained for any other sums due under or in respect of this Loan Agreement.

If serious disturbances of a political, military, economic or financial nature or other events occur, which in the reasonable view of the Landesbank might prejudice its rights under the mortgage registered in the Bahamas, the Landesbank may demand that the Borrower negotiate with it on a transfer of the Vessel's registration. Should agreement thereon not be reached within two weeks of the Landesbank's demand, then the Landesbank may require the immediate transfer of the Vessel's registration to another country of its choice and the completion of all steps necessary to this end including, where need be, the transfer of the Vessel's ownership to an owner resident or a company registered in such country and the entry of the mortgages corresponding to the amount of the Loan then outstanding in the new register. Should such demand not be met or the circumstances be such as to make in the view of the Landesbank a regular continuation of this Loan Agreement impossible or seriously endanger such a continuation, the Landesbank may require by cable or telex advise the immediate discharge from all liabilities under this Loan Agreement and the immediate repayment of the outstanding principal amounts of the Loan together with all accrued interest, expenses etc. due thereon

Article 19: Miscellaneous

(1) No failure by the Landesbank to exercise and no delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege (the rights and remedies herein are cumulative and not exclusive of any right or remedies provided by law).

(2) Changes, amendments and/or addenda to this Loan Agreement shall be made in writing only

(3) The headings in this Loan Agreement are inserted for convenience of reference only and shall be ignored in construing it.

Article 20: Notices and Demands

(1) Any notice given and any demand made in relation to this Loan Agreement, and/or the mortgage shall be sufficiently given or made, if sent by letter, telefax or telex.

(2) The Borrower herewith irrevocably appoints Sea Containers Services Ltd., London, to be its representative to effect and receive on behalf of the Borrower any communication in connection with this Loan Agreement, the mortgage and any other document required.

In event that the aforementioned representative refuses to act on behalf of the Borrower then the Borrower will immediately appoint a successor acceptable to the Landesbank.

Except as otherwise provided herein, any notice or demand sent by letter shall therefor be addressed

(a) in the case of the Borrower to

i Sea Containers Ltd.
c/o Sea Containers Services Ltd
Sea Containers House
20 Upper Ground
London S.E 1
England
Telex: 8955803 SCLDN G
Fax: 071-928 1469

or to the Lawyers,

ii Appleby, Spurling & Kempe
Barristers & Attorneys
Cedar House
41 Cedar Avenue
Hamilton HM 12
Bermuda
Telex.
Fax: (809) 292-8666
295-5328
295-0796

(or the latter's successors), who are particular irrevocably authorized to accept Service of Process on behalf of the Borrower

Nothing herein, however, shall affect the right to serve process in any other manner permitted by law. The same applies to the mortgage and all other documents herein contemplated

(b) in the case of the Landesbank to

Hamburgische Landesbank
- Girozentrale -
50, Gerhart-Hauptmann-Platz
2000 Hamburg 1
Federal Republic of Germany
Telex no. 2 161 632
Fax no. 3333-2707
3333-2638

IN WITNESS WHEREOF the parties hereto have caused this Loan Agreement to be duly executed.

For and on behalf of

Sea Containers Ltd

30th day of September, 1991

By .....
Attorney

For and on behalf of
Hamburgische Landesbank
- Girozentrale -

30th day of September, 1991

.....

Exhibit "1"

Repayment Schedule

no.	date	instalment US$	maximum loan amount US$
			15.000.000,--
1	30.09.92	750.000,--	14.250.000,--
2	30.03.93	750.000,--	13.500.000,--
3	30 09.93	750 000,--	12.750.000,--
4	30 03.94	750.000,--	12.000.000,--
5	30.09.94	750.000,--	11.250.000,--
6	30.03.95	750.000,--	10.500.000,--
7	30.09.95	750 000,--	9.750.000,--
8	30.03.96	750.000,--	9.000.000,--
9	30.09 96	750.000,--	8.250.000,--
10	30.03.97	750.000,--	7 500 000,--
11	30.09.97	750.000,--	6 750.000,--
12	30 03.98	750.000,--	6.000 000,--
13	30 09.98	750.000,--	5.250.000,--
14	30.03.99	750.000,--	4.500 000,--
15	30.09.99	750.000,--	3.750 000,--
16	30 03.00	750.000,--	3.000.000,--
17	30.09.00	750.000,--	2.250.000,--
18	30.03.01	750.000,--	1.500.000,--
19	30.09.01	750 000,--	750.000,--
20	30.03.02	750.000,--	0,--
		15.000.000,--	

Exhibit "2"

Assignment of Insurance

Re.: M.V.

We,

Sea Containers Ltd.,
Hamilton, Bermuda as owners

herewith assign all our claims and rights against all underwriters out of the insurance contracts of whatsoever nature that have been or may hereafter be taken out in respect of the above vessel to

Hamburgische Landesbank
- Girozentrale -

- hereinafter called the "bank" -

The bank is entitled to notify the leading underwriters of this Assignment at any time.

This assignment is securing any and all present and future amounts of principal plus interest and incidential costs due to the bank under any loan granted to the Owner.

The bank herewith agrees that underwriters may fulfill following obligations against us under the insurance contract with binding effect on the bank:

1.1. payments by underwriters directly to repairers for the purpose of the repair or after having repaired the vessel

1.2. payments to us up to a maximum amount of 5 % of the insured value

1.3. in the event that the bank has notified underwriters in writing that the assured owner is in default under his obligations out of the granted loans, payments according to items 1.1. and 1.2. must only be effected with the consent of the bank, unless such payments are satisfying obligations that had been assumed for the purpose of the repair of the vessel prior to the receipt of such notice of default.

2. indemnity payments by underwriters directly to third parties in cases of salvage, assistance and third party liability claims.

After the bank has been fully satisfied out of the assigned insurance proceeds in respect of all its claims it shall be bound to release to us any claim or part of claim no longer required by the bank.

We herewith confirm that we have not assigned, charged or pledged our claims and rights under the insurance contracts to anyone else than the bank. This Assignment shall be governed by and construed in accordance with the law of the Federal Republic of Germany.

London, the 30th day of September, 1991

.....
Sea Containers Ltd.

Above Assignment is hereby accepted for and on behalf of the bank.

London, the 30th day of September, 1991

.....
Hamburgische Landesbank
- Girozentrale -

Exhibit "2"

Notice of Assignment

(For attachment by way of endorsement to the Policy)

We the undersigned

Sea Containers Ltd.
Hamilton / Bermuda

the Owner of MV (the "Vessel") hereby give notice that by a Deed of Assignment dated the 30th day of September, 1991, and entered into, by us with

Hamburgische Landesbank
- Girozentrale -, Hamburg (the "Bank")

there have been assigned by us to the Bank as Mortgagee of the Vessel all benefits arising under all insurances taken out or to be taken out for the Vessel including but not limited to the insurances constituted by the policy whereon this notice is endorsed or shall be endorsed.

Signed this day of
for and on behalf of

.....
Sea Containers Ltd.

Exhibit "3"

ASSIGNMENT OF CHARTER HIRE

THIS ASSIGNMENT is made the 30th day of September One thousand nine hundred and ninety one B E T W E E N Sea Containers Ltd., a company incorporated under the laws of Bermuda whose registered office is situated at 41, Cedar Avenue, Bermuda (hereinafter called "the Assignor") of the one part and Hamburgische Landesbank - Girozentrale -, Hamburg 1, Gerhart-Hauptmann-Platz 50, Germany (hereinafter called "the Assignee") of the other part.

W H E R E A S:-

(a) The Assignor is the owner of the m.v. " " registered in the ship's Register of the Bahamas under Official Number (hereinafter called "the Vessel").

(b) The Assignee has by a Loan Agreement dated the 30th day of September, 1991 agreed to lend US$ 15.000.000,-- to the Assignor in order to finance the Vessel. For the purpose of better securing repayment of this Loan and in addition to and independent of any other security that the Assignee may obtain or require, the Assignor wishes to assign to the Assignee all the Earnings that are or may become due to the Assignor as Owner of the Vessel whether in respect of any charterparty or any contract of affreightment (hereinafter called "Earnings"). For the purpose of this Assignment the expression "Earnings" shall include all freight, hire and passage moneys, remuneration for towage, salvage services, demurrage, detention claims in contract or tort and other earnings of the Vessel due or to become due to the Assignor.

N O W THIS ASSIGNMENT WITNESSETH as follows:-

1. IN CONSIDERATION of the premises and other good and valuable consideration THE ASSIGNOR as HEREBY ASSIGNS to the Assignee

   (a) the Earnings;

   (b) all its right title and interest in any charterparty or any contract of affreightment;

   (c) all moneys and claims for moneys due or to become due to the Assignor from any charterers in respect of any charterparty or contract of affreightment.

   Unless and until the Assignee has otherwise directed all Earnings and other moneys referred to herein shall be payable to the account no. of the Assignor with Hamburgische Landesbank - Girozentrale - or to such other bank or place as the Assignee may direct in writing.

2. THE ASSIGNOR HEREBY WARRANTS AND REPRESENTS as follows:

(a) THAT it has not assigned or pledged AND IT HEREBY COVENANTS that it will not assign or pledge hereafter the whole or any part of the moneys claims and rights assigned hereby to anyone other than the Assignee its successors or assigns

(b) THAT this Assignment does not constitute a breach of the Assignor's obligations under the terms of any mortgage or other security relating to the Vessel or any other ship owned by the Assignor.

3. THE ASSIGNOR COVENANTS duly to perform its obligations under any charterparty or contract of affreightment made by it in respect of the Vessel and not in any event to cancel any of the same otherwise than in accordance with the provisions thereof and to use its best endeavours to ensure that any charterers likewise perform their obligations thereunder. Furthermore, the Assignor covenants not to conclude any charterparty or other contract of affreightment without supplying to the charterer a notice of assignment.

4. IT IS EXPRESSLY AGREED that notwithstanding anything to the contrary herein contained the Assignor shall remain liable to all persons under any charterparty or contract of affreightment made by it and to observe and perform all of the conditions and obligations assumed by it thereunder and the Assignee shall have no obligations or liability under any charterparty or contract of affreightment made by the Assignor by reason of or arising out of this Assignment nor shall the Assignee be required or obliged in any manner to perform or fulfill any obligations of the Assignor under or pursuant to any charterparty or contract of affreightment made by the Assignor or to make any payment or to make any enquiry as to the nature or sufficiency of any payment received by the Assignor or to present or file any claim or to take any other action to collect or enforce the payment of any amount which may have been assigned to it or to which it may be entitled hereunder at any time or times.

5. THE ASSIGNOR DOES HEREBY CONSTITUTE the Assignee the Assignor's true and lawful Attorney irrevocably with full power (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and/or to become due under or arising out of any charterparty or contract of affreightment made by the Assignor and to endorse any cheque or instrument or order in connection therewith and to file any claims or take any action or institute any proceedings which to the Assignee may deem to be necessary or advisable in the premises.

6 THE ASSIGNOR AGREES that at any time and from time to time upon the written request of the Assignee the Assignor will promptly and duly execute and deliver any and all such further instruments notices and documents as the Assignee may deem desirable for obtaining the full benefit of this Assignment and of the rights and powers hereby granted.

7. THE ASSIGNOR AGREES upon demand to pay to the Assignee the amount of all legal expenses, stamp duties and any other charges incurred by the Assignee in connection with the preparation and completion of this Assignment and otherwise in connection therewith.

8. THE ASSIGNOR COVENANTS duly to perform all its obligations under this Assignment and to obtain such consents as may be necessary therefore under any Exchange Control or other Governmental Regulations.

9. THE ASSIGNOR UNDERTAKES to inform the Assignee immediately of any charterparty or contract of affreightment to be concluded in respect of the Vessel and to provide the Assignee with a copy of any such contract made immediately upon the signing thereof.

10. APPLICABLE LAW AND JURISDICTION This Assignment of Earnings shall be governed by and construed in accordance with the Law of the Federal Republic of Germany, place of jurisdiction being Hamburg or such other place or country as may in its sole discretion be selected by the Assignee.

IN WITNESS whereof the Assignor by its duly authorised signatory has signed this Assignment the day and year first before written.

SIGNED by
the 30th day of September, 1991

By .....
Sea Containers Ltd.

Accepted
the 30th day of September, 1991

By .....
Hamburgische Landesbank
- Girozentrale -

Exhibit "3"

NOTICE OF ASSIGNMENT

FROM:

TO:

Dear Sirs,

MV " "

We refer to the Charterparty dated the day of and made between yourselves and ourselves in respect of the motor vessel " " (hereinafter called "the Vessel")

NOW WE HEREBY GIVE YOU NOTICE THAT:-

1. By an Assignment dated the 30th day of September, 1991 and made between ourselves and Hamburgische Landesbank - Girozentrale - ("the Bank") we have assigned to the Bank all our right, title and interest in the said Charterparty but we shall continue to be responsible to you for performance of our obligations under the said Charterparty.

2. All moneys whatsoever under the said Charterparty including but not limited to claims for damages in respect of any breach by you of the said Charterparty shall be paid to our

account No. with the Bank unless and until the Bank otherwise directs and you are HEREBY IRREVOCABLY instructed to follow such directions as may from time to time be given to you by the Bank in writing.

The authority and instructions herein contained cannot be revoked or varied by us without the consent of the Bank.

DATED the th of

for and on behalf of

Sea Containers Ltd.

By: _____

Exhibit "3"

ACKNOWLEDGEMENT OF ASSIGNMENT OF EARNINGS

M.V. " "

We, the undersigned Charterers of the above vessel under a Charterparty dated the (hereinafter called "the Charterparty") hereby acknowledge receipt of a Notice of Assignment dated signed by the Owners of the M.V. " " (hereinafter called "the Vessel") that they have assigned to Hamburgische Landesbank - Girozentrale - (hereinafter called "the Bank") all their right title and interest in and to all freights, charterhire and other earnings of the M.V. " " and consent and agree that:-

(i) We will make payment of all moneys due and to become due under the Charterparty directly to the Owners' account No. with the Hamburgische Landesbank - Girozentrale -, Hamburg, or to such other account as the Bank may from time to time direct in writing.

(ii) That any payment shall be final and the undersigned shall not seek to recover from the Bank for any reason whatsoever any moneys paid by the undersigned to the Bank by virtue of the foregoing Assignment and this Agreement provided however that this Agreement is without prejudice to any rights which the undersigned may have under the Charterparty to set-off amounts due to it by the Owners of the Vessel thereunder and to recover from the Owners of the Vessel for any other payments which may be made thereunder.

(iii) The undersigned will not permit any amendment to nor modification of or other alteration in the Charterparty without the prior written consent of the Bank.

For and on behalf of

By

Authorised Signatory Dated

Exhibit "4"

HAMBURGISCHE LANDESBANK

GIROZENTRALE

General Loan Conditions for Mortgages on Seagoing Vessels and on Ships under Construction

These »General Loan Conditions for Mortgages on Seagoing Vessels and on Ships under Construction« are Special Conditions as provided for in clause 29 of the General Business Conditions of the Hamburgische Landesbank — Girozentrale — hereinafter referred to as »the Landesbank« and are applicable in conjunction with these to loans and mortgages on vessels and ships under construction entered in a register of seagoing vessels or ships under construction

1 Contents of the Loan Agreement

The details of the disbursement term and repayment of the loan of interest rates and periods of other payments due from and additional obligations to be fulfilled by the Borrower will be the subject of a specific Loan Agreement with the Borrower

2. Payments, Counter-claims, Set-offs, Assignment of claims

Amounts due are to be paid free of costs fees taxes and deductions of any sort in the agreed currency to the Landesbank in Hamburg or to such account in or outside Germany as the Landesbank may specify in time for the amounts in question to be at the Landesbank's free disposal at the latest on the due date In the event that any law or official regulation provides for payments by the Borrower or the Shipowner to be deemed as having been actually made although these — for reasons for which the Landesbank is not responsible — have not come into the free disposal of the Landesbank on the account specified by it then the obligation of the Borrower to make payment of the amounts owed shall continue to exist until the full amount of such payments is in fact at the free disposal of the Landesbank

Borrowers and Shipowners may set claims against the Landesbank off against payments due to the Landesbank only in so far as such claims are uncontested or a final unappealable award thereof has been obtained

The Landesbank may decide at its discretion whether payments received from the Borrower or from others on his behalf are to be credited against sums due in respect of the loan or under other aspects of the Borrower s relationship with the Landesbank Any assignment of the claims to disbursement of the loan shall require the Landesbank s consent

3. Banking Days

Banking Days are all days on which banks are generally open at the place where the Loan Agreement provides for deeds to be done or payments to be made

Should a payment be due on a day which is not a Banking Day then the next Banking Day shall be considered as the day on which this payment is due and interest shall be charged until such day unless this falls in a new calender month in which case the Banking Day immediately preceding the original date for payment shall be considered as the date on which the payment involved was due

4 Ship mortgages as security

The loan together with interest thereon costs and all other amounts due under the Loan Agreement is to be secured by the registration of a ship mortgage with the agreed ranking in the ship s register in which the Vessel is registered

Where possible the Landesbank's accessory claims are to be secured by increasing the amount of the ship mortgage or through a separate maximum-sum ship mortgage

The terms of the Loan Agreement and these General Loan Conditions shall insofar as this is legally possible be included in the ship mortgage deed The ship mortgage deed shall also contain all such other terms and conditions as are customary under the law of the country involved

The ship mortgage shall be registered and all documents required in connection with such registration prepared, respectively obtained by a lawyer acquainted with the law of the country involved and acceptable to the Landesbank A certified and a plain copy of the mortgage registration certificate and a certified extract from the ship s register showing the registration of the Vessel and the ship mortgage(s) are to be presented to the Landesbank

The Borrower and the Shipowner may not unless the Landesbank has previously given its written consent grant any mortgages on the Vessel other than that or those in favour of the Landesbank nor sell the Vessel nor otherwise dispose in part or in full of the Vessel nor have the Vessel deleted from the register in which it was registered on the date of the Loan Agreement respectively was to be registered under the Loan Agreement

Where legally possible the Borrower shall grant the Landesbank the right to enforce its claims by the levying of immediate execution against his entire assets and the Shipowner shall grant the Landesbank the same rights against the Vessel itself this right to remain valid irrespective of any change in the Vessels s ownership

The Borrower and/or the Sipowner may not require cancellation of any part of the mortgage and/or the maximum sum mortgage entered in the ship register before the loan has been repaid in full together with all amounts due for interest costs and any accessory claims

5 Assignment of charter and freight earnings

~~By acceptance of these General Loan Conditions but at the latest by signing the mortgage deed the Shipowner assigns to the Landesbank all his present and future claims under existing and future charter and freight agreements concluded in respect of the Vessel He undertakes to confirm this assignment in a separate document upon the Landesbank s so demanding and to take all other steps which may be necessary to make such assignment legally effective He warrants that he has not assigned such claims under charter or freight agreement to other parties nor pledged these nor otherwise disposed of these and that he will not do so.~~

6 Insurance

The Borrower and the Shipowner are obliged to fulfil all requirements of the Landesbank as regards the insurances of the mortgaged vessel They must ensure that the Vessel is insured at least in accordance with the following conditions

a) The completed Vessel is to be insured for its full value but in no event for less than 120 % of the total current value of the Landesbank s claims under the Loan Agreement and of any other prior charges on the Vessel The insurer and the insurance broker must be acceptable to the Landesbank

b) The insurance policy must cover all risks and contain the usual additional clauses War risks must be covered should the Landesbank so demand The insurance policies are to be delivered to the Landesbank Where insurances are arranged partly or wholly in an insurance market outside the Federal Republic of Germany then the insurance shall be subject to German conditions and the Landesbank is in so far as it is usual in such market for the originals of the insurance policy to be deposited with an insurance broker to be presented with a letter of undertaking in form and substance acceptable to the Landesbank duly signed by the insurance broker and at least yearly with a cover note and a copy of the policy for the insurance in question and the period for which the insurance was concluded

c) The Landesbank must be informed immediately should it be intended to send the Vessel into waters where there is a risk of war or into such areas as are excluded from the hull insurance policy The Vessel may be employed in such waters only when an additional insurance as specified under a) above has been concluded The war risk insurance must include a Blocking and Trapping Clause should the Landesbank so demand

   Insurances concluded in accordance with the aforegoing paragraph must include the interest of the Landesbank as mortgagee and provide for all payments under the war risk insurance and/or the additional cover to be made to the Landesbank or in accordance with its instructions An original copy of the war risk policy is to be provided to the Landesbank

d) The Vessel may not be used to carry contraband nor to run blockades nor may it be used in waters for which its insurance does not provide full cover

e) The Landesbank must be provided with evidence that the insurance policies allow the Vessel to deviate from its specified or usual routes respectively its usual sailing areas

f) The interest of the Landesbank as mortgagee is to be expressly included in the insurance policy The policy must in particular provide that the insurers obligations towards the Landesbank remain in force even though they are otherwise released from obligations on account of acts or omissions for which the insurant or the insured party are responsible

   The Landesbank must inter alia be provided with evidence that the insurers have given the undertaking to the Landesbank not to raise any objection in respect of any claim in case the ship started her voyage in an inappropriate (not seaworthy) condition or insufficiently equipped or manned Furthermore evidence has to be provided to the Landesbank that in case the insurers are

free from their liability of performance against the insurant or the insured party in case of cancellation withdrawal or contest resulting in premature or retrospective cancellation of the contract of insurance or in case the insurance policy is amended so as to reduce the extent of the insurance cover then the liability of the insurers towards the Landesbank shall continue to exist for at least 14 days after the Landesbank has received the insurers notification of the reason for such cessation of the insurance contract or change in the insurance policy

In order to secure the Landesbank s interest as mortgagee the insurance policy must contain

— where the ship is registered and insured in the Federal Republic of Germany the »Hypothekenklausel B« — where the ship is registered abroad but insured in the German market the »Hypothekenklausel B« with the following additional clause

»The insurers have noted that all present and future claims under the insurance of the (name of Vessel) have been assigned to the Hamburgische Landesbank — Girozentrale — Insofar as the rules of the German Schiffsrechtegesetz are not applicable the insurers herewith agree that the Landesbank shall have those rights contained in § 32 subpara 2 to § 38 of the German Schiffs rechtegesetz and that the provisions of the Hypothekenklausel B shall be applicable as if the above Vessel were registered in a German ships register«

— where the Vessel is insured outside the German market a supplement acceptable to the Landesbank, — where the insurers do not accept such supplement a mortgagee clause in favour of the Landesbank — must be part of the insurance policy or policies and in addition a mortgagee interest insurance acceptable to the Landesbank be concluded in its favour

g) The Vessel is to be insured with a P & I Club acceptable to the Landesbank against all risks usually covered Proof of such insur ance is to be provided to the Landesbank in form of the »Certificate of Entry« together with the Club s »Letter of Undertaking« in a form acceptable to the Landesbank

h) The Borrower and the Shipowner undertake to pay all insurance premiums in good time to present the receipts to the Landesbank if so requested to prolong or renew all insurance policies in good time and without being so requested to provide the Landesbank with proof hereof at least 14 days prior to the expiry date of the old insurance

The insurers shall undertake to make any payment under the terms of the insurance only as instructed by the Landesbank and to notify the Landesbank of any changes to the insurance

The Borrower and the Shipowner undertake to comply with all other instructions given by the Landesbank with respect to the insur ance of the Vessel

The Landesbank is entitled if its instructions have not been properly complied with, to insure as it thinks fit its interest or the Vessel without prejudice to its right to demand repayment of the loan together with interest and all other amounts due It is entitled to insure the Vessel against any and all risks excluded from or not covered by the insurance policy

The Borrower and the Shipowner are responsible for the repairs of damage to the Vessel and for the settlement of incurance claims The Landesbank is however entitled to demand that the insurers pay any eventual compensation directly to it and to offset such payments against its claims for principal interest costs and accessory claims if the loan is due or the Vessel is an actual or constructive total loss The payment of repair costs must be proved by the production of receipts if the Landesbank so requests Should the Landesbank itself have repairs carried out then the Borrower and the Shipowner must give it all such assistance as may be required

Should any dispute arise with an insurer as to its obligation to pay losses or as to the amount to be paid, then the Landesbank may negotiate a settlement of the issue with the insurer by which both the Borrower and the Shipowner will be bound

7 Assignment of insurance claims

By accepting these General Loan Conditions or at the latest on signing the mortgage deed and the registration documents appertaining thereto the Borrower and the Shipowner shall (automatically) assign to the Landesbank all present and future claims and all present and future insurance policies on the Vessel They undertake to provide the Landesbank with an appropriate deed of assignment and a notice of assignment They warrant that their insurance claims have not been and will not be assigned to any party other than the mortgagees of the Vessel nor pledged or otherwise disposed of

In case any other party than the Borrower or the Shipowner takes the insurances of the vessel the Shipowner and the Borrower warrant that they will arrange for the insurances being assigned to the Landesbank by the assured

8 Legal opinion, official authorizations

Where non-German law is involved the Landesbank is to be provided a legal opinion acceptable to it by lawyers named or agreed to by it on all matters of foreign law which appear to it to be of importance in connection with the loan and the security therefor

Before disbursement of the loan the Landesbank is to be provided with evidence that all official consents, authorizations and permits including foreign exchange control permits as are necessary for the conclusion of the Loan Agreement to be effective and for the performance of the Loan Agreement and for the granting of the securities have been irrevocably granted for the whole period of the loan Where such consents permits and authorizations are not necessary this must be confirmed in the legal opinion

9 Information and rights of examination

The Landesbank must be given such information on the Borrower s financial situation as it thinks necessary within two weeks of so requesting The Borrower must also provide the Landesbank within six months of the conclusion of each financial year with its duly signed balance sheet and profit and loss account for such year certified by an accountant or certified auditor The Landesbank may at all time conduct or have its agent conduct an audit of the Borrower s books and business at the Borrower s expense in case of defau

Where the Borrower is a company of whatever legal form the management thereof shall provide the Landesbank at its request with copies of all decisions taken by its directors, partners, members or shareholders as the case may be Where the Borrower is the subsidiary of another company or part of a group of companies the consolidated balance sheet and profit and loss account and annual report of the holding company respectively of the group are to be presented to the Landesbank Where consolidated accounts are not prepared the accounts of the borrowing subsidiary and all other companies in the holding group are to be presented to the Landesbank

The Landesbank s representatives may at all times board the Vessel demand to see the Vessel s papers and logbook(s), have the condition of the Vessel examined by experts and have a report thereon complied The Landesbank is to be supplied with copies of the classification certificates of the Vessel and its engines and of its sailing permission (Fahrterlaubnisschein) and with information as to the Vessel s current employment and is entitled to see the Vessel s records at the classification society if it so requests

10 Default payments

Where the Borrower has failed to make payments when due the Landesbank may charge the Borrower for any losses incurred by it as a result thereof without prejudice to any further claim it may have

11 Compensation for premature repayment

Where a fixed rate of interest has been agreed for a specified period and for reasons outside the responsibility of the Landesbank all or part of the loan is not disbursed or is accelerated or repaid before the earliest date for which the Borrower would have been entitled to give notice of repayment of the loan the Borrower shall make a supplementary payment of 1 % of the undisbursed accelerated or repaid amount for each year or part thereof remaining until the earliest date for which the Borrower would have been entitled to give notice of repayment of the loan The Borrower shall remain entitled to prove that the loss suffered by the Landesbank was substantially less or non-existent The Landesbank shall remain entitled to claim for damages in excess of such amount

12. The Landesbank's right to give notice / Events of default

The Landesbank may demand immediate repayment of the loan and initiate proceedings to enforce the ship mortgage should there be an important reason to do so Such reason shall in particular exist where

a) amounts due to the Landesbank have not been paid within two weeks of being due

b) the Borrower and/or Shipowner go into liquidation or suspend payments or composition proceedings are commenced against either or both of them or any other proceedings be opened inside or outside courts to avoid the occurence of insolvency or where the Vessel ceases to be used for its proper purposes or is laid up for more than three months

c) the Borrower dies

d) ~~the financial position of the Borrower or the Shipowner or, in the case of one or both of these being partnerships, of one of the personally liable partners, or, in the case of a shipowning partnership («Partenreederei»), of one of the participants therein, substantially deteriorates, or where changes with respect to such personally liable partner or in the composition of any such «Partenreederei» occur, (e.g. as a result of one of the partners contracting out, resigning or dying), or where a substantial deterioration in the financial situation of the Borrower or Shipowner is to be expected as a result of the relationship between either of them on (another) company to which it/they is/are affiliated or similarly connected,~~

e) any of the events mentioned in b c or d above affect a third party that is in any way responsible for the security of all or part of the loan be it as liable party guarantor or otherwise

f) the Borrower does not use the loan for the purpose stated or provide the Landesbank with proof of its proper use within a week of being so requested

g) the Borrower or his representative(s) have made false statements either during the negotiations before or at the time that the loan was granted

h) a court order for the sale of the Vessel is applied for or issued or the Vessel subjected to an embargo or the Vessel wholly or partly ceases to be at the free disposal of the Shipowner or the Shipowner s right to dispose over the Vessel is in any way limited or the Vessel is subjected to a mortgage as a result of debt enforcement proceedings

j) the Vessel is wholly or partly disposed of whithout the consent of the Landesbank (e g sold or encumbered) or its ownership changes in any other way or its purpose is altered or its port of registration changes *)

k) the Vessel is wholly or partly lost or abandoned or its deletion from the register in which it is registered is effected or attempted or its flag of registration changed without the consent of the Landesbank or its right to fly the flag of its home country is with drawn

l) it transpires that the person registered as owner in the ship s register is not the owner of the Vessel or such ownership is challenged

m) the mortgages on the Vessel in the Landesbank s favour are not awarded the agreed priority or their validity resp priority is challenged

n) any maritime liens or mortgages with priority over the Landesbank s mortgage increase to such an extent that the loan is no longer covered by the first sixty per cent of the Vessel s value as estimated by the Landesbank s authorized experts, or the Borrower or Shipowner do not furnish the Landesbank with proof that all claims secured by maritime liens have been paid within two weeks of this being requested

o) the Vessel is not kept in due order so that its condition deteriorates and/or any equipment or fixtures are removed

p) alterations or repairs to the Vessel costing more than 10 % of the hull insurance value are carried out without the Landesbank's consent or the Landesbank s experts are refused permission to supervise any alterations or repairs or the Landesbank is not supplied within two weeks of so requesting with proof that such repairs or alterations have been paid for in full

q) the Vessel looses its class or its sailing permit or is in danger of doing so or the renewal certificates thereof have not been presented to the Landesbank within two weeks of being issued

r) the Borrower or the Shipowner do not punctually fulfill the requirements laid down in Articles 6 and 7 above as to the Vessel s insurance

s) the Borrower the Shipowner or the appointed master of the Vessel fail to inform the Landesbank by cable from the nearest place with cable services of any accident, loss of classification seizure of whatever sort in times of peace or war average, salvage or assistance of any kind rendered by third parties and of all legal or maritime proceedings against the Vessel within 48 hours of such event becoming known to them

t) the Borrower or Shipowner do not obtain the prior consent of the Landesbank to contracts either for the employment of the Vessel for more than one year and/or under which nothing or less than the proper value is to be paid for the use of the Vessel and where other benefits provided or claims arising out of charters or freight contracts are assigned or pledged without the consent of the Landesbank or are attached by third parties

u) damage suffered by the Vessel amounts to more than 40 % of its estimated value as stated in the hull insurance policy or a valuation of the Vessel arranged by the Landesbank shows that it has so declined in value that the outstanding amount of the loan and all prior ranking claims are in excess of 80 % of its estimated value and the Borrower does not repay within one month of the Landesbank so demanding the amount required to ensure that the outstanding amount of the loan and all prior claims no longer exceed sixty per cent of the Vessel s estimated value or provide the Landesbank with an additional security acceptable to it for such excess

*) in case the vessel is wholly or partly lost this shall not be a case of default but the Landesbank's right to demand immediate repayment shall be uneffected

v) the value of any additional collateral suffers a substantial deterioration

w) the situation described in the second sentence of Article 2 of these conditions occurs so that as a result of legal changes or acts of government payment orders given by the Borrower or the Shipowner are to be considered as having been carried out although the amounts in question were not placed at the free disposal of the Landesbank on the account specified by it for reasons for which the Landesbank was not responsable or the Landesbank, because of the introduction amendment or application of laws regulations or other acts of government or because of changed market conditions after the conclusion of the loan agreement is unable to continue the loan or can do so only under unacceptable difficulties

x) serious disturbances or disorders of a political military economic or financial nature occur which seriously endanger or make im possible a normal continuation of the loan the Landesbank s written notification of the occurence of such event being binding and conclusive

y) the Borrower has liabilities to the Landesbank in respect of any other loan(s) on other accounts and an event has occurred which entitles the Landesbank to demand immediate repayment of any such loan

z) the Borrower or the Shipowner do not promptly fulfill all other obligations under the Loan Agreement und these General Loan Conditions despite having been given notice to do so

Should there be more than one Borrower and/or Shipowner or the mortgage be a joint mortgage on two or more vessels the Landes bank shall also be entitled to demand immediate repayment if any of the above mentioned events occur with respect to any one of the parties or vessels concerned

In the event that any of the events mentioned in this Article occurs or becomes known before disbursement of the loan, the Landesbank may refuse to disburse the loan and withdraw from the Loan Agreement even if all other preconditions have been fulfilled

13 Duties of Information

The Borrower and/or the Shipowner must inform the Landesbank of the occurence of any of the events mentioned in Article 12 paragraphs b d e h j k q s and u without delay at the latest within 48 hours of receiving knowledge thereof

14. Transfer of the Vessel

The Landesbank may as soon as it becomes entitles to cancel the loan under the terms of Article 12 demand that the Borrower or the Shipowner move the Vessel to a harbour acceptable to it or, should the Borrower or the Shipowner not comply with its request without delay have the Vessel moved to such harbour Where it is necessary for the fulfilment of this provision, the Landesbank may give the captain and crew of the Vessel binding orders and take all other steps necessary thereof in the name and for the account of the Borrower and/or the Shipowner and issue and accept all necessary statements to and from official authorities and other parties on behalf of the Borrower and/or the Shipowner

15 Costs, Expenses, Taxes

The Borrower shall bear all costs expenses and taxes including withholding taxes, other fees, charges and disbursements arising in connection with the arranging and securing of the loan such as those of registering maintaining and securing the mortgages on the Vessel of consents to delete mortgages for the granting of prior ranking of notarising and/or legalising documents emanating from the Landesbank of postage of any necessary translation of documents and those of maintaining repairing, securing, insuring moving guarding and keeping the Vessel those for the lifting of any seizure of the Vessel for reports obtained by the Landesbank on the value and condition of the Vessel and the fees of any lawyers and/or other persons employed by the Landesbank and any minimum reserve costs incurred by the Landesbank in connection with the conclusion performance maintenance and enforcement of the Loan Agreement arising now or in future and which have not been taken into account in the agreed interest rate Should the Landesbank be required by legal regulations to pay costs fees or taxes (with the exeption of taxes on the overall net income of the Landesbank) in respect of the payments to be made to it or suffer other reductions in respect thereof then the Borrower shall compensate the Landesbank therefor by paying an additional amount so that the Landesbank thereafter has the full amount due to it at its free disposal

Should the introduction or change of any law any official regulation or any other official instruction (whether or not having the force of law) or a change in the interpretation thereof by any governmental or other authority or court or the voluntary compliance with any wish or demand (whether or not having the force of law) expressed to the Landesbank by any relevant governmental or other authority

— subject the Landesbank to any taxes levies fees or deductions of any nature in connection with the granting and/or funding of the loan or

— change the basis of taxation of the Landesbank with respect to payments of principal interest or other amounts due or to become due to the Landesbank under the Loan Agreement (other than taxes on the overall net income of the Landesbank) or

— impose modify or deem applicable any reserve requirements or require the making of any special deposits against or in respect of any assets or liabilities of the Landesbank in respect of the loan or

— impose on the Landesbank any other conditions with respect to the Loan Agreement

and the result thereof is to increase the costs to the Landesbank of making funding or maintaining the loan or to reduce payments of capital interest or other amounts to the Landesbank then the Borrower shall pay to the Landesbank such additional amounts as will compensate it for such additional costs or reductions in receipts The Landesbank s written confirmation to the Borrower of the fact that such additional amounts are to be paid shall be conclusive and shall mean that these amounts are immediately due and payable

The Borrower may as long as the circumstances exist which are responsible for such increase in costs or reduction in receipts repay the loan at the end of any interest period agreed therefor together with all amounts due under the terms of the Loan Agreement subject to ten days notice of such repayment having been given

The Borrower shall pay interest on expenses incurred and other amounts due to the Landesbank under this Article from the date on which such amounts were demanded from the Borrower by the Landesbank at the interest rate applicable to the loan or at the Landesbank s then current rate for overdrafts whichever is the higher

Should double taxation agreements between the countries of the parties to the Loan Agreement provide for deductions at source to be repaid or to be credited to the Landesbank then the amounts so repaid or credited will be passed on to the Borrower when and insofar as the Landesbank has received these and an increased amount from the Borrower

16 Compensation and expenses in cases of premature cancellation of the loan

The Landesbank s rights to commitment fees and all other fees agreed in the Loan Agreement and to repayment of all costs expenses and taxes shall remain valid even where it withdraws from the Loan Agreement before disbursement of the loan for a reason for which the Borrower or the Shipowner is responsible or if the Borrower does not draw the loan granted to him

17 Representation of the Borrower/Shipowner where more than one party is involved

Where more than one party is involved as Borrower and/or Shipowner each of such parties shall by the acceptance of these General Loan Conditions grant every other party the irrevocable power to act for and on behalf of all other Borrowers and/or Shipowners with respect to their obligations towards the Landesbank and in particular to accept communications and declarations by and from the Landesbank and service of process by or on behalf of the Landesbank to issue declarations and to make and accept payments Bor rowers and Shipowners who are not or cease to be resident in the area in which the Deutsche Mark is legal tender shall appoint a representative at the Landesbank's place of domicile and give such representative the powers mentioned in the previous sentence They are also responsible for ensuring that such representatives inform the Landesbank of their acceptance of such appointment

18 Non Exercise of Rights by the Landesbank

Where the Landesbank does not insist in individual cases that the Borrower observe obligations laid upon him by these conditions or the Loan Agreement or does not exercise any right it may have such non-insistance or non-exercise shall not constitute a waiver of any such rights

19 Partial Invalidity

If at any time one or more provisions of these conditions or of the Loan Agreement should be wholly or partially invalid then the validity of the remaining provisions of these conditions and the Loan Agreement shall not be affected thereby The parties to the Loan Agreement shall then be bound to replace any invalid provisions by such provisions as shall best suit the purpose of the Loan Agreement

20 Judgement Currency

If for the purpose of court proceedings against a Borrower it is necessary to convert any amount owed under the Loan Agreement in one currency to another currency (the »judgement currency«) then such conversion shall take place at the rate of exchange prevailing on the day before the action is brought into court

Should a judgement in favour of the Landesbank be awarded in a currency other than that in which the amount owed was due without such conversion having been made at the time the action was brought into court then such conversion shall be made on the day on which judgement was given

Should it be necessary for the inforcement of a judgement that conversion be made into a currency other than that in which the amount owed was due then such conversion shall be made at the rate of exchange prevailing on the day before the application for enforcement is presented to the appropriate authority

Rate of exchange shall mean for the purpose of this Article the spot rate at which the Landesbank is able on the date in question in accordance with its normal practice to purchase the currency owed with the judgement currency after all commissions and costs have been taken into account

Should the rate of exchange change between the date on which such conversion was made and the date on which payment was received by the Landesbank then the Borrower and/or the Shipowner shall pay such additional amount as is necessary to ensure that the Landesbank receives the amount it would have received if the Borrower and the Shipowner had paid in the currency in which the amount was owed under the terms of the Loan Agreement

21 Place of Perfomance and Jurisdiction, Applicable Law

All agreements are subject to the law of the Federal Rebublic of Germany unless otherwise agreed

Place of Performance is Hamburg

Place of jurisdiction is Hamburg or at the choise of the Landesbank Rotterdam or the domicile of the Borrower resp the Shipowner or any other place where the Vessel or other property owned by the Borrower may be

22 Ships under Construction, (guaranteed) Credits

The aforementioned terms apply mutatis mutandis to the granting of loans on ships under construction and to the granting of other credit in particular in the form of guarantees for loans given to the Borrower by other parties and secured by mortgages on ships or on ships under construction

Allgemeine Geschäftsbedingungen

Fassung Juli 1988
(Mit unverbindlicher englischer Übersetzung)

General Business Conditions

July 1988 Edition
(Non-committal English Translation)

HAMBURGISCHE LANDESBANK
GIROZENTRALE

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Das Geschäftsverhältnis zwischen der Bank und dem Kunden beruht auf dem gegenseitigen Vertrauen Der Kunde kann sich darauf verlassen, daß die Bank seine Aufträge mit der Sorgfalt eines ordentlichen Kaufmannes ausführt Die Vielfalt der von der Bank zu erledigenden Aufträge macht die Aufstellung allgemeiner Regeln durch die das Geschäftsverhältnis der Bank mit ihrem Kunden einheitlich bestimmt wird erforderlich Die Allgemeinen Geschäftsbedingungen gelten für jegliche Tätigkeit der Bank soweit nicht im Einzelfall etwas anderes vereinbart ist

Sie verfolgen den Zweck klare Rechtsverhältnisse zu schaffen Sie dienen der Rechtssicherheit und tragen zur Vereinfachung des Geschäftsablaufes und damit zur Kostenersparnis bei

Die Kunden können die Allgemeinen Geschäftsbedingungen in den Kassenräumen einsehen dort sind sie jederzeit zugänglich gemacht

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This translation is furnished for the customer's convenience only The original German text is binding in all respects, in the event of any differences between the English and the German wording, construction, meaning or interpretation the German wording, construction, meaning or interpretation shall govern exclusively

The business relationship between the Bank and its customer is based on mutual trust and goodwill The customer may be assured that the Bank will execute his instructions with care and in a businesslike manner The great variety of instructions to be carried out by the Bank requires the creation of general rules by which the business relationships between the Bank and its customers are given a uniform character The General Business Conditions apply to all activities of the Bank unless any other arrangements have been made in individual cases

The purpose of the General Business Conditions is to clarify the legal position of the relationship between the customer and the Bank and to contribute to the simplification of the business relationship and thus ultimately to reduce charges

Customers may inspect the General Business Conditions at the counters in the Banking hall, where they are available at all times

A Vereinbarungen für alle Geschäftsarten
A. Terms and conditions governing all types of business

I Laufender Geschäftsverkehr

1 Grundsätze der Kontoführung, Stornierung von Buchungen

(1) Nach der Errichtung eines Kontos ist die Bank befugt Geldbeträge für den Kunden entgegenzunehmen Den Auftrag einem Kunden einen Geldbetrag zur Verfügung zu stellen oder zur Verfügung zu halten, darf die Bank durch Gutschrift des Betrages auf dem Konto des Kunden ausführen wenn der Auftraggeber nicht eine gegenteilige Weisung erteilt hat

(2) Geldbeträge in ausländischer Währung darf die Bank mangels ausdrücklicher gegenteiliger Weisung des Kunden in Deutscher Mark gut schreiben sofern sie nicht für den Kunden ein Konto in der betreffenden Währung führt Die Abrechnung erfolgt zum amtlichen Geldkurs — bei Fehlen eines solchen zum Marktkurs — des Tages an dem der Geldbetrag in ausländischer Währung zur Verfügung der Bank steht und von dieser verwertet werden kann

(3) Jede unter dem Vorbehalt des Eingangs — »E v « — stehende Gut schrift wird erst nach Eingang des Gegenwertes endgültig Der Vorbehalt behält seine aufschiebende Wirkung auch gegenüber einem Rechnungsabschluß

(4) Gutschriftsbuchungen die vorgenommen werden ohne daß im Zeit punkt der Gutschrift ein entsprechender verpflichtender Auftrag vorliegt (z B wegen Irrtums, Schreibfehlers Widerrufs) darf die Bank durch einfache Buchung rückgängig machen (stornieren)

(5) Belastungsbuchungen führen nicht zu einer wirksamen Belastung (Einlösung) wenn sie bis zum übernächsten Buchungstag storniert werden zu der Stornierung ist die Bank bis dahin berechtigt Unberührt bleibt das Recht der Bank Belastungsbuchungen die aus anderen Gründen nicht zu einer Einlösung geführt haben zu berichtigen

(6) Unterhält der Kunde mehrere Konten so bildet jedes Kontokorrentkonto ein selbständiges Kontokorrent

(7) Der Kunde kann Forderungen gegen die Bank nur mit Verbindlichkeiten in derselben Währung und nur insoweit aufrechnen als seine Forderungen unbestritten oder rechtskräftig festgestellt sind

(8) Die Bank kann bevorrechtigte Forderungen trotz Einstellung in das Kontokorrent in gleicher Weise wie durch Pfand oder Bürgschaft gesicherte Forderungen selbständig geltend machen

(9) Die Bank kann bei Fehlen einer Weisung des Kunden bestimmen auf welche von mehreren fälligen Forderungen Zahlungseingänge die zur Begleichung sämtlicher Forderungen nicht ausreichen zu verrechnen sind

2. Gemeinschaftskonten

Über Guthaben und Wertpapierbestände auf einem Gemeinschaftskonto kann jeder der Inhaber allein verfügen es sei denn daß sie der Bank schriftlich eine gegenteilige Weisung erteilt haben Für Verbindlichkeiten aus einem Gemeinschaftskonto haftet jeder Inhaber in voller Höhe als Gesamtschuldner

3 Informationspflichten des Kunden, Zeichnungsberechtigte der Bank und des Kunden, Haftung bei mangelnder Geschäftsfähigkeit

(1) Alle für die Geschäftsverbindung wesentlichen Tatsachen insbesondere Änderungen des Personenstands der Verfügungs- oder Verpflichtungsfähigkeit des Kunden (z B Eheschließung Änderung des ehelichen Güterstands Eintritt der Volljährigkeit) oder der für ihn zeichnungsberechtigten Personen einschließlich der jeweils gültigen Anschriften sind der Bank unverzüglich schriftlich anzuzeigen Dies gilt auch dann, wenn die Tatsachen in öffentlichen Registern eingetragen und veröffentlicht werden

(2) Die Namen der Unterschriften der für die Bank zeichnungsberechtigten Personen sowie der Umfang der Zeichnungsberechtigung ergeben sich aus dem jeweils maßgebenden Unterschriftenverzeichnis

(3) Die Namen der für den Kunden vertretungs- oder verfügungsbefugten Personen sind der Bank mit eigenhändigen Unterschriftsproben auf den von der Bank gelieferten Vordrucken bekanntzugeben Der Bank bekanntgegebene Vertretungs- oder Verfügungsbefugnisse gelten bis zum Empfang des schriftlichen Widerrufs bei der Bank es sei denn daß der Bank das Erlöschen oder die Änderung dieser Befugnisse bekannt sind Dies gilt auch dann wenn die Befugnisse in einem öffentlichen Register eingetragen sind und eine Änderung veröffentlicht wird

(4) Der Kunde trägt den Schaden der etwa daraus entstehen sollte daß die Bank von einem eintretenden Mangel in der Geschäftsfähigkeit des Kunden oder seines Vertreters unverschuldet keine Kenntnis erlangt

4 Ausländische Legitimationsurkunden

Werden der Bank als Ausweis der Person oder zum Nachweis einer Berechtigung ausländische Urkunden vorgelegt so darf sie wenn ihr die Urkunden nach sorgfältiger Prüfung zur Legitimation geeignet erscheinen von der Legitimation ausgehen insbesondere mit befreiender Wirkung an die danach Berechtigten leisten sie übernimmt jedoch keine Gewähr für die Echtheit Gültigkeit Vollständigkeit und Eignung der Urkunden und für richtige Auslegung und Übersetzung

I Current business operations

1 Principles of account keeping, reversal of entries.

(1) Once an account has been opened the Bank shall be authorized to accept monies on the customer s behalf Orders to place or keep a sum of money at the customer s disposal may be carried out by the Bank by crediting the amount to the customer s account unless instructions to the contrary have been given by the customer

(2) In the absence of the customer s express instructions to the contrary sums of money in a foreign currency may be credited by the Bank in Deutsche Marks unless the Bank maintains an account in the relevant currency in the customer s name Settlement will be made at the official bid-rate of exchange in the absence thereof at the market rate prevailing on the day on which the sum of money in foreign currency is at the disposal of and can be realized by the Bank

(3) Any credit entry made subject to funds being received »E v «- shall not become final until receipt thereof This reservation shall also survive any balance drawn

(4) Any credit entries effected despite the absence of a valid order to such effect at the time of crediting e g as a result of a misunderstanding clerical error or cancellation may be reversed by a simple book entry

(5) Debit entries shall not result in a valid debit (payment) if they are reversed within two days under the date of which entries are made in the Bank s books within which period the Bank shall be entitled to reverse such entries This provision shall not limit the Bank s right to correct debit entries which have not led to a payment for any other reason

(6) If the customer keeps more than one account each current account shall constitute an independent current account

(7) The customer may offset claims against the Bank only against liabilities in the same currency and only to such extent as his claims are uncontested or final legal confirmation has been obtained

(8) Preferred claims may even if they have been included in the current account be enforced separately by the Bank in the same manner as claims secured by pledge or guarantee

(9) In the absence of the customer s specific instructions the Bank may decide against which of its several claims due it may credit payments received where such payments are insufficient for the settlement of all claims

2 Joint accounts.

The credit balances and security holdings of joint accounts may be disposed of by each of the holders individually unless they have given the Bank instructions to the contrary in writing Each of the holders shall be fully liable jointly and severally for all liabilities resulting from a joint account

3. Customer's obligation to provide information, authorized signatories of the Bank and the customer, liability in the event of legal incapacity

(1) All facts with relevance to the customer's relationship with the Bank in particular changes in civil status or the capacity to make dispositions or enter into obligations (e.g marriage alterations of the matrimonial property regime or attainment of majority) of the customer or of authorized signatories including changes of address are to be notified to the Bank in writing without delay This shall also apply where the facts involved are recorded in a Public Register

(2) The names and signatures of the persons authorized to sign on behalf of the Bank as well as the extent of their authority to sign will be indicated on the relevant current List of Authorized Signatures

(3) The names of persons authorized to represent the customer and/or give orders with respect to his account(s) are to be notified to the Bank with specimen signatures on the forms supplied by the Bank Such authority to deputize for the customer or to give orders with respect to his account(s) shall be valid until the Bank has received a revocation thereof in writing unless the Bank has actual notice of the expiry of or change to such authority This shall also apply when such authority is recorded in a Public Register and a change thereto has been published

(4) The customer shall bear any damage or loss which may arise from the fact that the Bank through no fault of its own does not become aware of any limitation in the legal capacity of the customer or of his representative

4 Foreign documents proving identity and authority

In the event of foreign documents being produced to the Bank as proof of identity or of proper authority the Bank may if it considers such documents after careful examination thereof to be suitable proof assume this to be the case and make payments to the persons named in good faith and without further liability However it cannot assume liability as to the authenticity validity completeness or suitability as proof of the documents presented nor as to their correct translation and construction

5. Ableben des Kunden, Verfügungsbeschränkung, Legitimationsurkunden

(1) Beim Ableben des Kunden ist die Bank berechtigt die Vorlegung eines Erbscheins eines Zeugnisses des Nachlaßgerichts über die Fortsetzung der Gütergemeinschaft oder die Vorlegung ähnlicher gerichtlicher Zeugnisse oder eines Testamentsvollstreckerzeugnisses zu verlangen Wird eine Ausfertigung oder beglaubigte Abschrift einer Verfügung von Todes wegen sowie der Niederschrift über die zugehörige Eröffnungsverhandlung vorgelegt so ist die Bank berechtigt die darin als Erbe oder Testamentsvollstrecker bezeichneten Personen verfügen zu lassen Insbesondere mit befreiender Wirkung an sie zu leisten Das gleiche gilt wenn der Bank ausländische Urkunden zum Nachweis des Erbrechts oder der Verfügungsbefugnis über den Nachlaß vorgelegt werden sofern ihr die Urkunden nach sorgfältiger Prüfung als Nachweis geeignet erscheinen Die Bank übernimmt jedoch für die Eignung Echtheit Wirksamkeit und Vollständigkeit sowie für richtige Übersetzung und Auslegung keine Gewähr

(2) Der Kunde trägt den Schaden der etwa daraus entstehen sollte, daß die Bank von einem Mangel in der Wirksamkeit derartiger Urkunden unverschuldet keine Kenntnis erlangt Die Bank ist nicht verpflichtet die Urkunden auf ihre fortdauernde Wirksamkeit zu prüfen es sei denn daß Zweifel hierüber für sie erkennbar sind

(3) Die Absätze 1 und 2 gelten entsprechend für Bestallungen von Vormündern Pflegern Konkursverwaltern und ähnliche Ausweise

6. Mitteilungen der Bank; Verwendung von urkundenechten Schreibstoffen

(1) Schriftliche Mitteilungen der Bank (in Fällen allgemeiner Natur wirksam auch in der Form von nichtunterzeichneten Rundschreiben) gelten als nach dem gewöhnlichen Postlauf zugegangen wenn sie unter der letzten der Bank bekanntgewordenen Anschrift abgesandt worden sind Dies gilt nicht wenn es sich um eine Mitteilung von besonderer Bedeutung handelt oder wenn eine schriftliche Mitteilung als unzustellbar an die Bank zurückgelangt und die Unzustellbarkeit von der Bank zu vertreten ist oder begründeter Anlaß zu der Annahme besteht daß die Mitteilung aufgrund einer Störung des Postbetriebs nicht zugegangen ist Die Absendung wird vermutet wenn sich ein abgezeichneter Durchschlag des betreffenden Schreibens im Besitz der Bank befindet oder wenn sich die Absendung aus einem abgezeichneten Versandvermerk oder einer abgezeichneten Versandliste ergibt

(2) Der Text sowie sonstige Eintragungen und Unterschriften in Schriftstücken (insbesondere Wechseln und Schecks) die der Bank zugehen sollten mit urkundenechten Schreibstoffen hergestellt sein Die Bank ist nicht verpflichtet zu prüfen ob urkundenechte Schreibstoffe verwendet worden sind Für Schäden die durch Verwendung nicht urkundenechter Schreibstoffe verursacht worden sind haftet der Einreicher des Schriftstücks

7a. Bankauskünfte

(1) Die Bank steht dem Kunden im Rahmen der Geschäftsverbindung für Bankauskünfte nach bestem Wissen zur Verfügung Bankauskünfte sind allgemein gehaltene Feststellungen und Bemerkungen über die wirtschaftlichen Verhältnisse des Kunden seine Kreditwürdigkeit und Zahlungsfähigkeit betragsmäßige Angaben über Kontostände, Sparguthaben Depot oder sonstige dem Kreditinstitut anvertraute Vermögenswerte sowie Kreditinanspruchnahmen werden nicht gemacht Bankauskünfte erhalten nur eigene Kunden sowie andere Kreditinstitute für deren eigene Zwecke und die ihrer Kunden sie werden nur erteilt, wenn der Anfragende ein berechtigtes Interesse an der gewünschten Auskunft glaubhaft darlegt

(2) Die Bank kann Bankauskünfte über juristische Personen und im Handelsregister eingetragene Kaufleute erteilen, sofern ihr keine anderslautende Weisung des Kunden vorliegt Bankauskünfte über andere Kunden kann die Bank nur erteilen wenn diese allgemein oder im Einzelfall ausdrücklich zugestimmt haben

(3) Bei mündlichen Auskünften über Kreditwürdigkeit und Zahlungsfähigkeit behält sich die Bank eine unverzügliche und schriftliche Bestätigung vor deren Inhalt von diesem Zeitpunkt an maßgeblich ist Die Bank haftet dem Auskunftsempfänger bei der Erteilung von Bankauskünften sowie — soweit sie hierzu im Einzelfall eine Verpflichtung trifft — für deren Unterlassung im Rahmen ihrer Verantwortlichkeit jedoch nur für grobes Verschulden

7b Anderweitige Auskünfte, Raterteilungen und Hinweise

Die Bank steht dem Kunden im Rahmen der Geschäftsverbindung für Auskünfte Ratschläge und Hinweise nach bestem Wissen zur Verfügung Sie haftet für deren Erteilung sowie — soweit sie hierzu im Einzelfall eine Verpflichtung trifft — für deren Unterlassung im Rahmen ihrer Verantwortlichkeit jedoch nur für grobes Verschulden sofern sie nicht eine vertragswesentliche Pflicht zur Auskunftserteilung oder Beratung trifft die im Einzelfall von besonderer Bedeutung ist

8 Übernahme von Verwaltungspflichten

Ohne eine ausdrückliche und schriftliche abweichende Vereinbarung kann die Bank keine anderen als die in diesen Geschäftsbedingungen

5 Death of the customer, limitation of the right of disposal, proof of identity and authority

(1) On the death of the customer the Bank shall be entitled to demand the production of a certificate of inheritance of the Probate Court attesting to the continuation of property or the production of similar judicial certificates or of a certificate of probate If a duplicate or a certified copy of a testamentary disposition is produced together with a record of the probate proceedings then the Bank shall be authorized to permit the persons described therein as heirs or testamentary executors to dispose of the assets held by the Bank and in particular to accept and execute all instructions thereby fully discharging its liabilities The same shall apply in the event of any foreign document(s) being produced to the Bank as proof of rights of inheritance or of the power to dispose of the estate If the Bank after careful examination considers such documents as appropriate proof The Bank will not however assume any responsibility with regard to their appropriateness authenticity validity and completeness nor for their correct translation and interpretation

(2) The customer shall bear any damage or loss which may arise from the Bank, through no fault of its own failing to obtain knowledge of any defect in the validity of such documents The Bank is under no obligation to examine documents as to their continued validity unless there are manifest reasons for so doing

(3) Paragraphs 1 and 2 shall apply analogously to the letters of appointment of guardians curators and bankruptcy receivers and to similar documents

6 Communications by the Bank; use of indelible ink.

(1) Written communications by the Bank (such communications of a general nature being also valid in the form of unsigned circulars) shall be considered to have been received in the ordinary course of postal delivery if they have been posted to the last address known to the Bank This shall not apply to communications of particular importance or if a written communication is returned to the Bank as non-deliverable and such non-delivery is the fault of the Bank or if there is any reasonable cause to suppose that the communication has not been received owing to disruption of the postal service The dispatch of letters will be presumed if an initialled carbon copy of the relevant letter is in the possession of the Bank or if the dispatch is recorded on an initialled dispatch note or list

(2) The wording as well as other particulars and signatures on documents (in particular bills of exchange and cheques) received by the Bank should be made in indelible ink The Bank shall not be required to check whether indelible ink has been used Any damages or losses occasioned by the use of any other writing medium shall be borne by the presenter

7a. Status reports

(1) As part of its services the Bank is willing to provide the customer with status reports to the best of its knwowledge Status reports consist of observations and remarks of a general nature on the customer s financial situation his credit worthiness and solvency Figures on account balances savings deposits securities or other assets entrusted to the Bank or outstanding borrowings will not be provided Status reports will be provided only to the Bank's customers and to other banks for their own use or that of their customers They will only be provided when the inquirer substantiates a legitimate interest in the desired information

(2) The Bank may provide status reports on corporate customers and merchants entered in the commercial register unless instructions to the contrary have been given by the customer Status reports on other customers may only be provided by the Bank when these have given their express consent thereto either generally or in the specific case insolved

3) Where the Bank provides oral information on credit-worthiness and solvency it is entitled to provide a prompt written confirmation thereof the contents of which will then be the binding version The Bank will be liable to the recipient of information provided or — where in the particular case involved it was under an obligation to do so — for not providing such information to the extent of its responsibility but only where it has been grossly negligent

7b Other information, advice and suggestions

The Bank will provide the customer as part of its services with information advice and suggestions to the best of its knowledge It will be liable for the information provided and — where in the particular case involved it was under an obligation to do so — for not providing such information to the extent of its responsibility but only where it has been grossly negligent unless it was under a substantive contractual obligation to provide information or advice which was of particular importance in the individual case involved

8 Acceptance of administrative duties

Unless otherwise expressly agreed in writing the Bank cannot accept administrative duties other than those mentioned in these General Business Conditions In particular the Bank is not able to advise the customer of probable

erwähnten Verwaltungspflichten insbesondere nicht die Unterrichtung des Kunden über drohende Kursverluste über den Wert oder die Wertlosigkeit anvertrauter Gegenstände oder über Umstände die den Wert dieser Gegenstände beeinträchtigen oder gefährden könnten übernehmen

9 Entgelte, Auslagen

(1) Die Bank ist berechtigt für ihre Leistungen Entgelte insbesondere Zinsen Gebühren und Provisionen vom Kunden zu verlangen Dies gilt auch für Leistungen die zusätzlich zu einer üblichen Grundleistung im Auftrag oder nach den Grundsätzen der Geschäftsführung ohne Auftrag im Interesse des Kunden erbracht oder im Zusammenhang mit der Geschäftsverbindung mit ihm erforderlich werden

(2) Gleiches gilt für Maßnahmen und Leistungen der Bank die auf nicht vertragsgemäßer Geschäftsabwicklung durch den Kunden oder auf dessen vertragswidrigem Verhalten oder auf Zwangsmaßnahmen Dritter gegen den Kunden beruhen

(3) Die Entgelte werden von der Bank unter Berücksichtigung der Marktgegebenheiten und des Aufwandes nach billigem Ermessen (§ 315 des Bürgerlichen Gesetzbuchs) festgelegt Im Privatkundengeschäft ergibt sich die Höhe der Entgelte für typische regelmäßig vorkommende Bankleistungen aus dem in den Kassenräumen aushängenden Preisaushang »Regelsätze im standardisierten Privatkundengeschäft« ergänzend aus dem Preisverzeichnis »Preise für Dienstleistungen im normalen Geschäftsverkehr mit Privatkunden« und zwar in der jeweils geltenden Fassung Für dort nicht aufgeführte Leistungen, die nach den Umständen nur gegen eine Vergütung zu erwarten sind kann die Bank ein Entgelt nach billigem Ermessen (§ 315 des Bürgerlichen Gesetzbuchs) berechnen soweit keine anderweitige Vereinbarung getroffen worden ist Der Kunde kann die Vorlage einer Abrechnung verlangen

(4) Dem Kunden können alle im Zusammenhang mit der Geschäftsverbindung mit ihm entstehenden Auslagen die die Bank für erforderlich halten durfte und die über die allgemeinen Geschäftsunkosten hinausgehen z B für Versicherungen Vordrucke Steuern Briefporti Ferngespräche Telegramme und Fernschreiben in Rechnung gestellt werden

10 Kontoüberziehung

Nimmt der Kunde Kredit ohne ausdrückliche Vereinbarung oder über den vereinbarten Betrag oder über den Fälligkeitstermin hinaus in Anspruch so hat er im Privatkundengeschäft statt etwa vereinbarter niedrigerer Zinsen Gebühren und Provisionen die von der Bank für solche Überziehungen bestimmten im Preisaushang jeweils ausgewiesenen Zinsen Gebühren und Provisionen zu zahlen Außerhalb des Privatkundengeschäfts hat der Kunde die von der Bank allgemein nach billigem Ermessen für Überziehungen bestimmten Zinsen Gebühren und Provisionen zu zahlen (§ 315 des Bürgerlichen Gesetzbuchs)

11 Rechnungsabschlüsse

(1) Die Bank schließt die Konten in den von ihr bestimmten Zeitabschnitten ab und erteilt Rechnungsabschlüsse

(2) Die Bank kann ihre Auslagen aus Vereinfachungsgründen ohne Einzelaufstellung in einem Betrag in Rechnung stellen Sie gibt in diesem Fall dem Kunden auf Wunsch Auskunft über die Einzelposten Für die Verwahrung und Verwaltung von Wertpapieren können ohne Rücksicht auf die Dauer der Verwahrung und Verwaltung jeweils für ein Kalenderjahr im voraus die Gebühren in Rechnung gestellt werden

(3) Auslagen die aus Wertpapier Devisen- und Sortengeschäften entstehen werden stets besonders abgerechnet

12. Einwendungen gegen Rechnungsabschlüsse, Wertpapieraufstellungen und sonstige Mitteilungen Ausbleiben von Anzeigen

(1) Einwendungen gegen Rechnungsabschlüsse und Wertpapieraufstellungen müssen der Bank schriftlich zugehen und innerhalb einer Ausschlußfrist von vier Wochen nach Zugang des betreffenden Schriftstücks abgesandt werden Einwendungen gegen sonstige Mitteilungen z B Abrechnungen müssen unverzüglich Einwendungen gegen die Ordnungsmäßigkeit von der Bank gelieferter Wertpapiere oder sonstiger Werte müssen sofort nach Empfang erhoben werden Die Unterlassung rechtzeitiger Einwendung gilt als Genehmigung Die Bank wird den Kunden bei Fristbeginn hierauf besonders hinweisen Stellt sich nachträglich die Unrichtigkeit heraus so können sowohl der Kunde als auch die Bank eine Richtigstellung aufgrund gesetzlicher Ansprüche verlangen

(2) Einwendungen gegen Kontoauszüge hat der Kunde unverzüglich zu erheben

(3) Das Ausbleiben zu erwartender Anzeigen insbesondere über die Ausführung von Aufträgen jeder Art über Zahlungen und Sendungen ist der Bank unverzüglich nach Ablauf der Frist mitzuteilen innerhalb derer die Benachrichtigung im gewöhnlichen Postlauf hätte zugehen müssen

13 Auflösung der Geschäftsverbindung

(1) Der Kunde und die Bank dürfen mangels anderweitiger Vereinbarung die Geschäftsverbindung im ganzen oder hinsichtlich einzelner Geschäftsbeziehungen nach freiem Ermessen einseitig auflösen Dies gilt für und gegenüber Kaufleuten soweit der in Betracht kommende Vertrag zum Betriebe ihres Handelsgewerbes gehört für und gegenüber juristischen

falls in stock exchange prices or currency values nor on the value or other wise of articles entrusted to the Bank or of events which might affect the value of such articles

9 Charges; expenses

(1) The Bank is entitled to charge for its services in particular by way of interest fees and commissions This shall also apply to services rendered in addition to one of the usual standard services either on the customer s instructions or where these were not available in the interest or presumed interest of the customer or required in connection with its relationship with him

(2) The same shall apply to services rendered and measures taken by the Bank as a result of the customer s failure to conform to contract or of his breach of contract or as a result of legal proceedings taken against the customer by third parties

(3) The Bank s charges shall be fixed by the Bank at its reasonable discretion taking into account the market situation and the amount of work and expense involved (section 315 of the Civil Code) The charges to be paid by personal customers for typical recurrent banking services will be based on the scales displayed in the banking hall »Regelsätze im standardisierten Privatkundengeschäft« supplemented by the price list »Preise für Dienstleistungen im normalen Geschäftsverkehr mit Privatkunden« each in its current version For services not listed therein but with which the customer in the circumstances can only expect to be provided for a fee the Bank can fix its charges at its reasonable discretion (section 315 of the Civil Code) unless otherwise agreed The customer may demand a specified calculation thereof

(4) The customer may be charged for all expenses incurred by the Bank in connection with its relationship with him which the Bank might consider necessary and which are over and above its general business expenses e g insurance premiums forms taxes postage, long distance calls telegrams and telexes

10 Overdrafts

To the extent that a customer overdraws his account without express agreement or for a higher amount or a longer period than agreed he has if a personal customer to pay instead of such lower interest fees and commissions as may have been agreed such interest fees and commissions as has been fixed by the Bank for such overdrafts and are shown in its displayed price scales Customers who are not personal customers shall pay the interest fees and commissions set by the Bank generally at its reasonable discretion for unauthorized overdrafts (section 315 of the Civil Code)

11 Periodic statements of account

(1) The Bank will make up accounts at intervals determined by it and will issue periodic statements of account

(2) The Bank may for reasons of simplicity charge its expenses in a lump sum without a detailed statement In such cases it will furnish the customer with detailed information if so requested The fees for the safe custody and administration of securities may be charged once every calendar year in advance irrespective of the duration of the safe custody and administrative duties

(3) Expenses resulting from transactions in securities foreign exchange and notes will always be charged separately

12. Objections to periodic statements of account, lists of securities and other communications; non-receipt of advices.

(1) Any objections to periodic statements of account and lists of securities must be received by the Bank in writing and must be dispatched within a maximum period of four weeks after receipt of the document in question Objections to any other communications e g settlement statements must be made without delay and objections to the regularity of any securities or other valuables delivered by the Bank must be made immediately on receipt thereof Failure to submit an objection in due time will be construed as approval The Bank will draw the customer's particular attention to this fact at the beginning of the period for such objection Both the customer and the Bank may should any statement of account list of securities or other communication subsequently prove to have been incorrect exercise their legal rights to demand correction

(2) Objections to statements of account are to be raised by the customer without delay

(3) Non-receipt of awaited communications in particular those concerned with the execution of any kind of instruction payment or shipment must be notified to the Bank without delay on the expiry of the period within which such communication should have been received in the ordinary course of postal delivery

13 Termination of the business relationship

(1) In the absence of any agreement to the contrary the customer and the Bank may unilaterally terminate at their discretion the business relationship between them either as a whole or in respect of any part thereof This condition shall be applicable to the relationship with commercial customers in so far as the contract concerned is connected with their business affairs

Personen des öffentlichen Rechts und öffentlich-rechtlichen Sondervermögen im übrigen jedoch nur soweit es sich um Dauerschuldverhältnisse handelt

(2) Auch wenn eine anderweitige Vereinbarung getroffen ist dürfen der Kunde und die Bank die Geschäftsverbindung im ganzen oder hinsichtlich einzelner Geschäftsbeziehungen aus einem wichtigen Grunde jederzeit beendigen Ein solcher Grund ist für die Bank insbesondere dann gegeben

a) wenn der Kunde unrichtige Angaben über seine Vermögensverhältnisse oder über die seiner Firma gemacht hat

b) wenn eine wesentliche Verschlechterung oder eine erhebliche Gefährdung seiner Vermögensverhältnisse oder der seiner Firma eintritt insbesondere wenn der Kunde oder seine Firma die Zahlungen einstellt oder erklärt sie einstellen zu wollen oder wenn von dem Kunden oder seiner Firma angenommene Wechsel zu Protest gehen oder eine Zwangsvollstreckung gegen den Kunden oder seine Firma eingeleitet wird

c) wenn der Kunde eine Gesellschaft ist und die Vermögensverhältnisse eines persönlich haftenden Gesellschafters sich wesentlich verschlechtert haben oder erheblich gefährdet sind oder wenn hinsichtlich einee persönlich haftenden Gesellschafters Änderungen (z B Personenwechsel Todesfall) eingetreten sind

d) wenn der Kunde seiner Verpflichtung zur Stellung oder Verstärkung von Sicherheiten (Nr 21 Abs 6 Satz 1) nach Aufforderung durch die Bank nicht innerhalb angemessener Frist nachkommt

e) wenn der Kunde Zahlungsverpflichtungen gegenüber der Bank innerhalb von vierzehn Tagen nach Absendung einer auf die Kündigungsmöglichkeit hinweisenden Mahnung nicht nachkommt

(3) Mit der Auflösung der Geschäftsverbindung im ganzen oder einzelner Geschäftsbeziehungen werden die auf den betroffenen Konten geschuldeten Beträge sofort fällig Von diesem Zeitpunkt ab gilt für Zinsen Gebühren und Provisionen Nr 10 Der Kunde ist außerdem verpflichtet die Bank insoweit von allen für ihn oder in seinem Auftrag übernommenen Verpflichtungen zu befreien und solange er dieser Verpflichtung nicht nachgekommen ist der Bank genehme Sicherheiten im erforderlichen Umfange zu bestellen

(4) Die Bank ist berechtigt die für den Kunden oder in seinem Auftrag übernommenen Verpflichtungen zu kündigen und sonstige Verpflichtungen insbesondere solche in fremder Währung glattzustellen sowie hereingenommene Wechsel und Schecks sofort zurückzubelasten die wechsel oder scheckrechtlichen Ansprüche gegen den Kunden und jeden aus dem Papier Verpflichteten auf Zahlung des vollen Betrages der Wechsel und Schecks mit Nebenforderungen verbleiben der Bank jedoch bis zur Abdeckung eines etwaigen Schuldsaldos

(5) Auch nach Auflösung der Geschäftsverbindung im ganzen oder einzelner Geschäftsbeziehungen gelten für die Abwicklung die Allgemeinen Geschäftsbedingungen weiter

14. Form und Inhalt von Aufträgen

(1) Aufträge jeder Art müssen den Gegenstand des Geschäfts zweifelsfrei erkennen lassen Abänderungen Bestätigungen und Wiederholungen müssen als solche bezeichnet sein

(2) Schriftliche Aufträge sollen unterzeichnet sein Für aus der Nicht einhaltung dieser Form sich ergebende Schäden und Nachteile haftet die Bank nur bei grobem Verschulden

(3) Bei Aufträgen insbesondere bei Verfügungen durch Scheck Barabhebung Überweisung und Lastschrift sind nur die von der Bank zugelassenen Vordrucke zu benutzen und nach den jeweils von der Bank getroffenen Bedingungen und gegebenen Hinweisen zu behandeln Dies gilt auch soweit die Bank im übrigen Geschäftsverkehr die Benutzung weiterer Vordrucke vorschreibt

(4) Für Verzögerungen oder Ausführungsmängel die durch unrichtige unvollständige mißverständliche oder unleserliche Angaben des Auftraggebers oder durch Nichtbenutzung der in Abs 3 genannten Vordrucke entstehen haftet die Bank im Verhältnis zum Auftraggeber wie zum Überweisungsempfänger nur wenn die Verzögerungen oder Ausführungsmängel durch grobes Verschulden der Bank entstanden sind oder diese keine zumutbaren Maßnahmen getroffen hat um Fehlleitungen zu vermeiden Dies gilt insbesondere für Fehlleitungen infolge unrichtiger, unvollständiger oder voneinander abweichender Angaben der Kontobezeichnung der Kontonummer oder der Bankleitzahl in Überweisungsaufträgen

(5) Bei der Ausführung von Aufträgen im belegiosen Datenträgeraustausch kann die Bank sich nach der angegebenen Kontonummer und Bankleitzahl richten

(6) Bei wiederkehrenden Dienstleistungen insbesondere Überweisungen und Auszahlungen haftet die Bank wegen der damit verbundenen unübersehbaren Risiken für die rechtzeitige Ausführung nur bei grobem Verschulden

to the relationship with a »legal entity incorporated under public law« (juristische Person des öffentlichen Rechts) and with a »separate property incorporated under public law« (öffentlich-rechtliches Sondervermögen) in other cases however only in so far as permanent obligations are concerned

(2) Even if an agreement to the contrary has been made the customer and the Bank may terminate the business relationship at any time for any important reason either as a whole or in respect of individual parts thereof Such reasons shall in particular exist for the Bank in the following circumstances

a) if the customer has made incorrect statements regarding his financial situation or that of his company

b) if the customer s financial situation or that of his company substantially deteriorates or is placed in jeopardy In particular if the customer or his company discontinues payment or declares the intention to do so or if any bills of exchange accepted by the customer or his company are protested or if distraint has been levied against the customer or his company

c) if the customer is a partnership or company and the financial situation of one of the personally liable partners has substantially deteriorated or is considerably endangered or if changes e.g change of partner death have occurred in respect of those personally liable

d) if the customer fails to fulfil within a reasonable period his obligation to provide or to increase collateral (clause 21 para 6 sentence 1) when so requested by the Bank

e) if the customer fails to make payments due to the Bank within a period of 14 days after dispatch of a notice warning him of the possibility that the Bank may terminate the relationship

(3) On termination of the business relationship as a whole or any part thereof any amounts owing in the accounts involved will be immediately due for payment With effect from that date the provisions of clause 10 shall apply in respect of interest fees and commissions The customer is, moreover obliged to release the Bank from any obligations entered into on his behalf or on his instructions if affected by such termination and to provide the necessary amount of collateral acceptable to the Bank until such release has been secured

(4) The Bank shall be entitled to give notice of termination of any obligations entered into on the customer's behalf or on his instructions, and to unwind any other obligations particularly those in foreign currency and to debit immediately any bills of exchange or cheques received however the Bank shall retain until a debit balance if any has been repaid all claims against the customer and against any other party to the instrument under the laws on bills of exchange and cheques to the payment of the full amount of such bills of exchange or cheques, including any accessory claims

(5) Even after the termination of the business relationship as a whole or individual aspects thereof the General Business Conditions shall remain effective for the winding up thereof

14 Form and content of orders.

(1) Orders of any nature must indicate beyond doubt the subject of the transaction any amendments confirmations or repetitions must be indicated as such

(2) Orders given in writing should be signed The Bank shall be liable for losses and damages resulting from non-compliance with this requirement only where it has been grossly negligent

(3) For orders particularly in the case of disposal of funds by cheque cash withdrawal remittance or direct debit only the printed forms supplied by the Bank may be used and these must be treated in accordance with the conditions and instructions issued by the Bank The requirement shall also apply in so far as the Bank requires the use of further printed forms for other business transactions

(4) The Bank shall be liable to the party giving it instructions and payees for delays or mistakes in implementation which may result from incorrect incomplete ambiguous or illegible details given by such party or from the failure to use the printed forms mentioned in para 3 above only where such delays or mistakes result from gross negligence on the part of the Bank or its failure to take measures which could reasonably be expected of it to avoid a misdirection of funds This shall apply in particular to the incorrect transmission of funds as a result of incorrect incomplete or inconsistent information on remittance orders as to the name or number of accounts or as to bank code numbers

(5) When executing orders received solely by electronic data file exchange the Bank may rely on the account numbers and bank code numbers as given

(6) The Bank will not because of the risks involved assume any liability for the punctual execution of orders of a recurrent nature, in particular transfers and payments unless it has been grossly negligent

II Aufträge, Wertsendungen und Burgschaften

15 Telefonische, telegrafische drahtlose, fernschriftliche Aufträge und Mitteilungen

(1) Der Kunde trägt den Schaden der aus Übermittlungsfehlern Mißverständnissen Mißbräuchen und Irrtümern im telefonischen telegrafischen drahtlosen oder fernschriftlichen Verkehr mit dem Kunden oder Dritten entsteht sofern die Bank ihn nicht verschuldet hat

(2) Die Bank behält sich vor bei telefonischen telegrafischen drahtlosen oder fernschriftlichen Aufträgen vor Ausführung auf Kosten des Kunden auf einem der vorgenannten Wege eine Bestätigung einzuholen

(3) Telefonische, telegrafische drahtlose oder fernschriftliche Mitteilungen der Bank gelten vorbehaltlich schriftlicher Bestätigung

16 Haftung für Fehlleitungen und Verzögerungen

Der Kunde ist verpflichtet die Bank in jedem Einzelfall und gesondert darauf hinzuweisen daß Aufträge fristgebunden sind und daß aus Verzögerungen oder Fehlleitungen bei der Ausführung der Aufträge oder von Mitteilungen hierüber ein über einen Zinsnachteil hinausgehender Schaden entstehen kann Ist ein solcher Hinweis erfolgt so haftet die Bank im Rahmen ihres Verschuldens. Anderenfalls haftet die Bank nur für grobes Verschulden und wenn der Auftrag zum Betriebe eines Handelsgewerbes gehört oder von einer juristischen Person des öffentlichen Rechts oder einem öffentlich-rechtlichen Sondervermögen erteilt ist beschränkt auf den Zinsnachteil

17 Aufträge im Überweisungsverkehr

(1) Aufträge zur Auszahlung oder Überweisung von Geldbeträgen führt die Bank grundsätzlich im bargeldlosen Überweisungsverkehr aus sofern nicht der Kunde im Einzelfall einen anderen Weg vorschreibt Für den Überweisungsverkehr gelten Sonderbedingungen

(2) Bei brieflich auszuführenden Zahlungsaufträgen ins Ausland darf die Bank die Art der Erledigung nach ihrem Ermessen bestimmen

18 Wertsendungen

Die Bank darf nach ihrem Ermessen in handelsüblicher Weise Geld und sonstige Werte auf Gefahr des Kunden versenden und zwar mangels abweichender Weisung unversichert durch eingeschriebenen Brief oder als Wertbrief unter Angabe eines geringen Werts oder versichert Wechsel Schecks Anweisungen und Quittungen darf die Bank im einfachen Brief versenden

19 Geschäftsausführung durch Dritte

(1) Die Bank darf sich zur Ausführung aller Geschäfte wenn sie es unter Berücksichtigung ihrer eigenen und der Interessen des Kunden für zweckmäßig hält Dritter bedienen Folgt sie bei der Auswahl des Dritten einer Weisung des Kunden so trifft sie keine Haftung anderenfalls haftet sie nur für sorgfältige Auswahl Die Bank ist jedoch verpflichtet dem Kunden auf Verlangen etwaige Ansprüche gegen den Dritten abzutreten

(2) Hat die Bank abweichend von Abs 1 für das Verschulden Dritter einzustehen so haftet sie nur für grobes Verschulden

(3) Bei der Ausführung von Einzugsaufträgen im Ausland ist die Bank nur nach Maßgabe der zur Verfügung stehenden Zeit und der beschränkten Erhebungsmöglichkeiten zu sorgfältiger Auswahl der Einzugsstelle verpflichtet

20 Bürgschafts und sonstige Gewährleistungsverpflichtungen

Wird die Bank aus einer im Auftrag oder für Rechnung des Kunden übernommenen Bürgschafts- oder sonstigen Gewährleistungsverpflichtung in Anspruch genommen so ist sie auch ohne gerichtliches Verfahren auf ein seitiges Anfordern des Gläubigers zur Zahlung berechtigt

III Pfand und Sicherungsrechte

21 Art und Umfang der Sicherheiten

(1) Wertgegenstände jeder Art die in den Besitz oder sonst in die Verfügungsmacht irgendeiner Stelle der Bank gelangen oder gelangt sind dienen als Pfand für alle bestehenden und künftigen auch bedingten oder befristeten Ansprüche der Bank gegen den Kunden Dabei ist gleichgültig ob diese Wertgegenstände durch den Kunden selbst oder sonst für seine Rechnung durch Dritte in den unmittelbaren oder mittelbaren Besitz oder sonst in die Verfügungsmacht irgendeiner Stelle der Bank gelangen oder gelangt sind Zu den Wertgegenständen zählen z B Wertpapiere einschließlich der Zins , Renten- und Gewinnanteilscheine Sammeldepotanteile Bezugsrechte Schecks Wechsel Devisen Waren Konnossemente Lager und Ladescheine Konsortialbeteiligungen oder sonstige Rechte jeder Art einschließlich der Ansprüche des Kunden gegen die Bank selbst Das Pfandrecht besteht auch für Ansprüche gegenüber Kunden die von Dritten auf die Bank übergehen und für Ansprüche der Bank gegen Dritte für deren Verbindlichkeiten der Kunde persönlich haftet Unter den vorstehenden Voraussetzungen und zu dem gleichen Zweck sind Forderungen des Kunden gegen Dritte an die Bank abgetreten sofern über die Forderungen ausgestellte Urkunden in die Verfügungsmacht der Bank gelangen oder gelangt sind

II Orders, dispatch of valuables and guarantees

15 Telephone, telegraphic, wireless or telex orders and communications

(1) The customer shall bear any damages or losses resulting from errors in transmission misunderstandings misuses of or errors in telephone telegraphic wireless or telex communications with the customer or with third parties, unless such losses or damages are due to any negligence on the part of the Bank

(2) The Bank reserves the right in the case of telephone telegraphic wireless or telex instructions to obtain a confirmation by one of the above mentioned methods at the customer s expense before carrying out the order

(3) Communications from the Bank by telephone telegraph wireless or telex shall be valid subject to confirmation in writing

16 Liability for misdirection of funds and delays

The customer is required to give the Bank special notice on each occasion on which orders are subject to time limits and any delay or misdirection in the execution of orders or the transmission of messages in connection therewith might cause damages or losses over and above loss of interest Where such notice has been given the Bank shall be liable to the extent to which it is at fault In other cases the Bank shall only be liable where it has been grossly negligent and where the orders is concerned with the running of a commercial business or has been given by a »legal entity incorporated under public law« (juristische Person des öffentlichen Rechts) or by a »separate property incorporated under public law« (öffentlich rechtliches Sondervermögen) only for loss of interest

17 Giro transfer orders

(1) All orders for the payment or remittance of sums of money will be carried out by the Bank by means of giro transfers with the exception of those individual cases in which the customer has prescribed a different method Giro transfers are subject to special conditions

(2) In the case of mail payment orders to foreign countries the Bank may determine the method of implementation at its discretion

18. Dispatch of valuables

The Bank may dispatch money or other valuables at the customer s risk by such methods as are normal commercial procedure at its discretion i e in the absence of any instructions to the contrary either uninsured by registered letter as an insured letter indicating a low value or fully insured Bills of exchange cheques authorities to make payments and receipts may be sent by the Bank by ordinary mail

19 Transactions through third parties

(1) The Bank may use the services of third parties for the performance of transactions as it may consider expedient in its own and the customer s interest In so far as it complies with the customer s instructions in the selection of third parties the Bank shall carry no responsibility therefor in other cases it shall only be responsible for the diligent selection of such third parties The Bank shall however be bound to assign any claims against the third party to the customer at his request

(2) Where contrary to the above para (1) the Bank is liable for the actions of third parties its liability shall be limited to cases of gross negligence

(3) In executing collection orders abroad the Bank will only be responsible for selecting the collecting agency as diligently as possible within the limited time for and means of making the appropriate enquiries

20. Guarantees and similar obligations

If a claim is made against the Bank on the basis of any guarantee or similar obligation entered into on the customer s instructions or for his account the Bank shall be entitled to make payment simply at the request of the claimant without judicial proceedings

III Rights of lien and charge

21 Nature and extent of collaterals.

(1) Valuables of any nature which come or have come into the possession or otherwise under the control of any department of the Bank shall as far as is legally permissible serve as a pledge for any present or future claims of the Bank against the customer even if these are conditional or limited in time It shall be irrelevant whether such valuables have been brought or are brought into the direct or indirect possession or otherwise under the control of any department of the Bank by the customer himself or by third parties for his account Such valuables shall include inter alia securities together with their interest coupons annuity coupons or dividend coupons participations in a collective safe custody account (»Sammeldepotanteile«) subscription rights cheques bills of exchange foreign currency goods bills of lading warehouse warrants and waybills participations in consortiums or other rights of any description including the customer s claims against the Bank itself The right of lien also exists in respect of claims against the customer transferred from third parties to the Bank and in respect of the Bank s claims against third parties for whose obligations the customer is personally liable Subject to the aforesaid conditions and for the same purpose any claims of the customer against third parties shall be deemed to have been assigned to the Bank in so far as the latter obtains or has obtained control of any documents in respect of such claims

(2) Im Ausland ruhende Wertpapiere unterliegen vorbehaltlich anderweitiger Vereinbarung dem Pfandrecht nicht

(3) Der Bank übertragene oder sonst zur Sicherung dienende Gegenstände Rechte und Ansprüche haften ebenfalls für alle bestehenden und künftigen auch bedingten und befristeten Ansprüche der Bank gegen den Kunden

(4) Die der Bank verpfändeten übertragenen oder sonst zur Sicherung dienenden Gegenstände Rechte und Ansprüche haften auch dann für sämtliche Forderungen der Bank wenn sie dieser als Sicherheit nur für bestimmte Forderungen oder für Forderungen bestimmter Art gegeben worden sind es sei denn daß die Haftung für andere Forderungen ausdrücklich ausgeschlossen worden ist

(5) Über die Erhaltung und Sicherung aller der Bank als Sicherheit dienenden Gegenstände sowie über den Einzug der ihr haftenden Forderungen Grund- und Rentenschulden hat der Kunde selbst zu wachen und die Bank entsprechend zu unterrichten

(6) Die Bank kann von dem Kunden jederzeit die Bestellung geeigneter oder die Verstärkung bestehender Sicherheiten für alle Ansprüche verlangen auch soweit sie bedingt oder befristet sind Die Bank ist andererseits verpflichtet auf Verlangen des Kunden Sicherungsgegenstände nach ihrer Wahl freizugeben soweit sie diese nach ihrem billigen Ermessen nicht mehr benötigt

(7) Soweit nicht zwingende gesetzliche Bestimmungen entgegenstehen kann die Bank ihr obliegende Leistungen an den Kunden und seine Firma wegen eigener Ansprüche zurückhalten auch wenn diese Ansprüche befristet oder bedingt sind oder nicht auf demselben rechtlichen Verhältnis beruhen

22. Verwertung von Sicherheiten

(1) Wenn der Kunde seinen Verbindlichkeiten bei Fälligkeit nicht nachkommt ist die Bank berechtigt die Sicherheiten ohne gerichtliches Verfahren unter tunlichster Rücksichtnahme auf den Kunden zu beliebiger Zeit an einem ihr geeignet erscheinenden Ort auf einmal oder nach und nach zu verwerten wobei Abrechnungen mit Gutschriften über die Verwertungserlöse erteilt werden Unter mehreren Sicherheiten hat die Bank die Wahl Sie darf zunächst aus dem sonstigen Vermögen des Kunden Befriedigung suchen Die von der Bank dem Kunden erteilten Gutschriften über Verwertungserlöse gelten als Rechnungen im Sinne des Umsatzsteuerrechts

(2) Einer Androhung der Verwertung der Innehaltung einer Frist und der Ausbedingung sofortiger Barzahlung des Kaufpreises bedarf es nicht Eine Abweichung von der regelmäßigen Art des Pfandverkaufs kann nicht verlangt werden Die Bank wird nach Möglichkeit Ort Zeit und Art der Verwertung mitteilen sofern dadurch eine sachgemäße Verwertung nicht gefährdet wird

(3) Pfänder die einen Börsen- oder Marktpreis haben darf die Bank freihändig durch einen zu solchen Verkäufen ermächtigten Handelsmakler zum laufenden Preis verkaufen andere Pfänder sind öffentlich zu versteigern Der Verpfänder ist nicht berechtigt die Herausgabe von Zins- und Gewinnanteilscheinen der als Pfand haftenden Wertpapiere zu verlangen Die Bank darf diese Scheine auch vor Fälligkeit ihrer Forderung verwerten und den Erlös als Sicherheit behandeln

(4) Die Bank darf die ihr als Pfand haftenden Forderungen und Grundpfandrechte schon vor Fälligkeit ihrer Forderungen kündigen und einziehen Der Kunde ist verpflichtet auf Verlangen der Bank die Zahlung an die Bank auf seine Kosten zu betreiben Beim Einzug darf die Bank ohne vorherige Befragung des Kunden alle Maßnahmen und Vereinbarungen mit Drittschuldnern treffen die sie zur Eintreibung von Forderungen für zweckmäßig hält insbesondere Stundungen oder Nachlässe gewähren und Vergleiche abschließen Eine Verpflichtung zum Einzug übernimmt die Bank nicht

(5) Zur Sicherung übertragene Gegenstände darf die Bank insbesondere auch freihändig verwerten Grund- und Rentenschulden wird die Bank falls der Sicherungsgeber nicht einem abweichenden Verfahren zustimmt auf freihändigem Wege nur zusammen mit der gesicherten Forderung und nur in einer im Verhältnis zu ihr angemessenen Höhe verkaufen Im übrigen gelten die Bestimmungen des Abs 4 entsprechend

23. Prüfung der Sicherheiten

Die Bank ist berechtigt sich auf Kosten des Kunden alle Unterlagen zu beschaffen die sie zur Prüfung der Sicherheiten für erforderlich halten darf dazu zählen insbesondere Gutachten vereidigter Sachverständiger und beglaubigte Abschriften aus öffentlichen Registern behördliche Bescheinigungen sowie Unterlagen über den Versicherungsschutz

24 Kosten, Auslagen und Entgelte

(1) Kosten und Auslagen die bei der Bestellung Verwaltung und Verwertung oder Freigabe von Sicherheiten sowie durch die Inanspruchnahme von Mitverpflichteten erwachsen (z B Lagergelder Kosten der Beaufsichtigung und Instandhaltung Versicherungsprämien Provisionen und Prozeßkosten) einschließlich der dadurch begründeten steuerlichen Verpflichtungen gehen zu Lasten des Kunden

(2) Außerdem kann die Bank für ihre Maßnahmen und Leistungen ein angemessenes Entgelt gemäß Nr 9 berechnen

(2) Securities deposited abroad will not be subject to the right of lien unless otherwise agreed

(3) Articles rights and claims to which title has been assigned to the Bank or which otherwise serve it as security shall be collateral for all existing and future claims which the Bank may have against the customer including such as are conditional or limited in time

(4) Articles rights and claims pledged to the Bank transferred to it or otherwise serving as security shall be collateral for all claims of the Bank even where they were provided as security for particular claims of a particular category unless their use as security for other claims has been specifically excluded

(5) The customer himself shall ensure that all articles serving as collateral for the Bank are properly maintained and safeguarded and that any claims land and annuity charges serving as collateral for the Bank are duly collected he shall keep the Bank informed thereof

(6) The Bank may at any time require the customer to provide suitable collateral or increase existing collateral for all claims even if such claims are conditional or limited in time However the Bank shall be bound to release at the customer s request collateral of its choice when such collateral at the Bank s discretion is no longer required

(7) Unless there are binding legal provisions to the contrary the Bank may withhold the performance of any duty action or obligation incumbent upon it with respect to the customer or his company by reason of its own claims even when such claims are conditional or limited in time or are not based on the same legal relationship

22. Realization of collateral

(1) If the customer fails to meet his liabilities when due the Bank shall be entitled to realize the collateral held with due regard to the customer s interest where and when it considers appropriate either all at once or in stages and without recourse to judicial proceedings In such cases settlement notes will be made out crediting the proceeds of such realization to the customer The Bank shall have the right of choice should several different collaterals be held First of all it may also seek satisfaction by the realization of other assets owned by the customer Credit notes made out by the Bank in favour of the customer with respect to the proceeds of such realization are to be regarded as invoices within the meaning of the Turnover Tax Law

(2) The Bank shall not be required to give notice of realization to act within a time limit or to stipulate the immediate payment of the purchase price in cash Any request by the customer for a departure from the normal procedure for the sale of pledged securities need not be met The Bank will as far as possible provide information as regards the place time and manner of realization unless a normal sale would thereby be jeopardized

(3) Any pledge which has a stock exchange or market price may be sold by the Bank on the open market at the current price through a commercial broker authorized to effect such sales other pledges must be sold by auction The pledgor is not entitled to demand the surrender of any interest or dividend coupons of pledged securities The Bank may realize such coupons even before the due date of its claim and treat the proceeds as collateral

(4) The Bank may even before the due date of its claim call in and collect any claims and any land charges serving as its security The customer is obliged to enforce at his expense payment to the Bank should the latter so demand When collecting debts the Bank may adopt such measures or make such agreements with the ultimate debtor as it may consider expedient without any prior consultation with the customer, it may in particular extend the term of payment grant discounts or negotiate a settlement The Bank has no obligation to effect collection

(5) Assets transferred to the Bank as collateral may in particular be realized by the Bank by private treaty Land and annuity charges will if the mortgagor does not consent to a different procedure be sold by the Bank by private treaty only in conjunction with the claim secured and only up to an amount having a fair relation to the claim outstanding In other respects the provisions of para 4 will be applied analogously

23 Examination of collateral

The Bank shall be entitled to obtain at the customer s expense any documentary evidence which it may consider necessary for the examination of the collateral this shall include the reports of sworn experts certified copies of public registers the certificates of public authorities and documents in respect of insurance cover

24 Costs, expenses and charges

(1) Any costs and expenses incurred in the arrangement management realization or release of collateral or in the making of claims against parties that are jointly liable, e.g storage fees costs of supervision and maintenance insurance premiums commissions and costs of legal proceedings including any tax liabilities resulting therefrom shall be borne by the customer

(2) The Bank may also make appropriate charges as provided for in clause 9 above for all steps taken by it and services provided by it

IV Weitere Vereinbarungen

25 Störung Schließung und Einschränkung des Betriebs

Die Bank haftet nicht für Schäden die durch Störung ihres Betriebs (z B Bombendrohung Banküberfall) insbesondere infolge von höherer Gewalt (z B von Kriegs und Naturereignissen) sowie in Folge von sonstigen von ihr nicht zu vertretenden Vorkommnissen (z B Streik, Aussperrung Verkehrsstörung) veranlaßt sind oder die durch Verfügungen von hoher Hand des In- oder Auslandes eintreten Die Bank wird eine beabsichtigte Schließung oder eine Einschränkung des Betriebs tunlichst öffentlich bekanntgeben

26. Geschäftstage

Geschäftstage im Sinne dieser Geschäftsbedingungen sind die Tage Montag bis Freitag soweit sie nicht gesetzliche Feiertage oder Bankfeiertage sind

26a Haftung der Bank

Soweit Bestimmungen dieser Allgemeinen Geschäftsbedingungen einen Ausschluß oder eine Begrenzung der Haftung für einen Schaden enthalten der auf einer grob schuldhaften Vertragsverletzung der Bank eines ihrer gesetzlichen Vertreter oder Erfüllungsgehilfen beruht gelten diese Bestimmungen nicht gegenüber Nichtkaufleuten und auch nicht gegenüber Kaufleuten wenn der in Betracht kommende Vertrag nicht zum Betriebe ihres Handelsgewerbes gehört sie gelten jedoch ohne Einschränkung auch gegenüber juristischen Personen des öffentlichen Rechts und öffentlich-rechtlichen Sondervermögen

27 Erfüllungsort, anzuwendendes Recht und Gerichtsstand

(1) Erfüllungsort für beide Teile sind die Geschäftsräume der kontoführenden Stelle der Bank Für alle Rechtsbeziehungen zwischen dem Kunden und der Bank ist das am Erfüllungsort geltende Recht maßgebend und zwar auch dann wenn ein Rechtsstreit im Ausland geführt wird

(2) Ist der Kunde ein Kaufmann der nicht zu den in § 4 des Handelsgesetzbuchs bezeichneten Gewerbetreibenden gehört, eine juristische Person des öffentlichen Rechts oder ein öffentlich-rechtliches Sondervermögen kann die Bank an ihrem allgemeinen Gerichtsstand klagen und nur an diesem Gerichtsstand verklagt werden

(3) Die Bank hat bei Verfolgung ihrer Ansprüche bezüglich der sachlichen Zuständigkeit soweit gesetzlich zulässig das Recht der Wahl zwischen Amtsgericht und Landgericht

(4) In Fällen in denen eine Vollstreckung des Urteils im Ausland in Frage kommt ist die Bank berechtigt ihre Ansprüche daselbst zu verfolgen

28 Allgemeine Bekanntmachungen und Mitteilungen

Allgemeine Bekanntmachungen und Mitteilungen der Bank erfolgen durch Aushang oder Auslegung in den Kassenräumen der kontoführenden Stelle der Bank Das Datum des Aushangs oder der Auslegung wird auf dem Schriftstück vermerkt

29 Sonderbedingungen

(1) Für einzelne Geschäftszweige gelten neben diesen Allgemeinen Geschäftsbedingungen Sonderbedingungen z B für den Überweisungsverkehr den Sparverkehr den Scheckverkehr und für eurocheque-Karten den Lastschriftverkehr für Anderkonten und -depots für die Vermietung von Schließfächern und für die Benutzung des Nachttresors für das Auslandsgeschäft in Wertpapieren und für Optionsgeschäfte im Börsenterminhandel für die Beleihung von Grundstücken Erbbaurechten Wohnungs und Teileigentum und für die Beleihung von See- und Binnenschiffen und von Schiffsbauwerken Sie stehen auf Wunsch in den Kassenräumen der kontoführenden Stelle der Bank zur Einsicht zur Verfügung

(2) Sowohl die von der Bank zur Verfügung gestellten als auch die kundeneigenen Vordrucke sind entsprechend den jeweiligen Bedingungen zu behandeln Hinsichtlich der Behandlung der zugelassenen Vordrucke und der Haftung gilt Nr 14 Abs 3 und 4 entsprechend

30 Änderungen der Geschäftsbedingungen

(1) Änderungen dieser Allgemeinen Geschäftsbedingungen oder von Sonderbedingungen oder die Einführung zusätzlicher Bedingungen wird die Bank dem Kunden ausdrücklich oder wenn ein ausdrücklicher Hinweis nur unter unverhältnismäßigen Schwierigkeiten möglich ist durch Aushang nach Nr 28 mitteilen Im Falle einer Änderung dieser Allgemeinen Geschäftsbedingungen wird die Bank außerdem die Tatsache der Änderung und den Ort des Aushangs der Änderungen in einer Tageszeitung in Hamburg bekanntmachen Die Änderungen gelten als genehmigt wenn der Kunde ihnen nicht binnen eines Monats nach der Mitteilung schriftlich widerspricht Die Frist ist gewahrt wenn der Widerspruch innerhalb eines Monats nach der Mitteilung abgesandt worden ist Die Bank wird den Kunden auf diese Folge bei der Mitteilung besonders hinweisen

(2) Abweichungen von diesen Allgemeinen Geschäftsbedingungen oder von Sonderbedingungen im Verhältnis der Bank zu einem einzelnen Kunden bedürfen zu ihrer Wirksamkeit der schriftlichen Bestätigung durch die Bank

IV Other terms and conditions

25 Disruption, cessation and limitation of operations

The Bank shall not be liable for any damages or losses which may be caused by the disruption of its operations e g by bomb scare bank raid or in particular by force majeure e g by war and natural events or other events for which it is not responsible e g strikes lock-outs or traffic delays or by acts of national or foreign governments The Bank will as far as possible give public notice of any intended closure or restriction of its operations

26. Business days

Business days shall mean for the purpose of these General Business Conditions the days from Monday to Friday unless they are public holidays or special Bank holidays

26a. Liability of the Bank

In so far as these General Business Conditions provide for the exclusion or limitation of the Bank s liability for a damage or loss which is the result of gross negligence resulting in breach of contract by the Bank by one of its legal representatives or employees or agents acting on behalf of the Bank such provisions shall not apply to private customers nor to commercial customers if the relevant contract has no connection with the running of their business However they shall also apply without limitation to »legal entities incorporated under public law« (juristiche Personen des öffentlichen Rechts) and to »separate properties incorporated under public law« (öffentlich-rechtliche Sondervermögen)

27 Place of performance, applicable law and jurisdiction

(1) The place of performance for both parties shall be the Bank s premises where the account is maintained All legal relations between the customer and the Bank shall be governed by the laws of the place of performance this shall also apply to legal actions or proceedings in foreign countries

(2) If the customer is a businessman to whom the provisions concerning persons carrying out a trade as defined in Section 4 of the Commercial Code are not applicable a »legal entity incorporated under public law« (juristische Person des öffentlichen Rechts) or a »separate property incorporated under public law« (öffentlich-rechtliches Sondervermögen) the Bank may file suit at its court of general jurisdiction and it may be sued at the said court only

(3) The Bank shall when pursuing its claims have as far as legally permitted the right to choose between the local courts either the Lower Court or the Country Court as to which shall be the competent court

(4) The Bank shall in cases where an enforcement of a judgement in a foreign country may arise be entitled to pursue its claims in such foreign country

28. General notices and communications

The Bank s notices and communications of a general nature will be displayed in the banking hall of the branch where the account is kept Such notices and communications will carry the date of display

29 Special Conditions

(1) Individual sectors of the Bank's operations are governed not only by these General Business Conditions but also by Special Conditions e g for giro transfers savings accounts, cheques and Eurocheque cards direct debiting trust accounts (including safe custody) the hire of safes foreign security transactions and stock exchange forward option contracts mortgages on real estate leasehold properties residential and business properties and shares therein, mortgages on seagoing vessels and other ships and vessels under construction These Special Conditions may be inspected if so desired at the counters of the Bank s premises where the account is maintained

(2) Both the printed forms made available by the Bank and those issued by customers must be used in accordance with their respective conditions With regard to the Bank s liability and the use of these printed forms the provisions of clause 14 paras 3 and 4 shall apply analogously

30 Amendment of business conditions

(1) The Bank will give the customer express notification of any amendment to these General Business Conditions or to the Special Conditions or the introduction of additional conditions or if such express notification entails disproportionate problems make such amendment known by way of display in accordance with clause 28 In the event of these General Business Conditions being amended the Bank will in addition publish the fact of such amendment and the place of display of the amendment in a daily newspaper in Hamburg The amendment shall be regarded as approved if the customer has not objected thereto in writing within one month of the date of notification The time limit shall be considered to have been observed if the objection has been posted within one month of the date of notification The Bank will draw the customer's particular attention to these consequences in such notification

(2) Any departure from these General Business Conditions or from the Special Conditions in the relationship between the Bank and an individual customer shall require written confirmation by the Bank in order to be valid

B Terms and conditions for individual types of business
B. Vereinbarungen über einzelne Geschäftsarten

I Einlagengeschäft

31 Fälligkeit und Verzinsung

(1) Mangels abweichender von der Bank schriftlich bestätigter Vereinbarung sind Einlagen ohne Kündigung fällig (täglich fällige Gelder)

(2) Es kann vereinbart werden daß Einlagen erst nach Kündigung unter Einhaltung einer Kündigungsfrist oder an einem vorher bestimmten Tage fällig werden (Kündigungs- oder Festgelder) Nach Eintritt der Fälligkeit werden diese Einlagen als täglich fällige Gelder behandelt soweit nicht eine andere Vereinbarung getroffen wurde oder wird

(3) Einlagen nach Abs 1 und 2 werden — soweit keine ausdrückliche Zinsvereinbarung getroffen wird — mit dem jeweiligen von der Bank für Einlagen dieser Art festgesetzten und durch Aushang bekanntgemachten Zinssatz verzinst

(4) Für die Zinsberechnung wird jeder Monat zu 30 Tagen berechnet

(5) Für die Verzinsung Kündigung und Fälligkeit von Spareinlagen gelten die besonderen Vorschriften des Kreditwesengesetzes

II. Guthaben und Kredite in ausländischer Währung

32. Guthaben

Die Inhaber von Guthaben in ausländischer Währung tragen anteilig bis zur Höhe ihres Guthabens alle wirtschaftlichen und rechtlichen Nachteile und Schäden die das im In- und Ausland unterhaltene Gesamtguthaben der Bank in der entsprechenden Währung als mittelbare oder unmittelbare Folge von höherer Gewalt Krieg Aufruhr oder ähnlichen Ereignissen oder durch von der Bank nicht verschuldete Zugriffe Dritter im Ausland oder im Zusammenhang mit Verfügungen von hoher Hand des In- oder Auslandes treffen sollten

33. Kredite

Kredite in ausländischer Währung sind in der Währung zurückzuzahlen, in der sie gegeben worden sind. Zahlungen in anderer Währung gelten als Sicherheitsleistung Die Bank ist jedoch berechtigt den Kredit jeder zeit auf inländische Währung umzustellen wenn dessen ordnungsgemäße Abwicklung aus Gründen, die von der Bank nicht zu vertreten sind nicht gewährleistet erscheint

III Urkunden, Akkreditive, Kreditbriefe

34. Urkunden

Hat die Bank im Auftrag des Kunden Urkunden (z B Dokumente) entgegenzunehmen oder auszuliefern so wird sie die Urkunden sorgfältig prüfen Sie übernimmt keine Gewähr für Echtheit, Gültigkeit und Vollständigkeit der Urkunden für richtige Auslegung und Übersetzung und für Art, Menge und Beschaffenheit in den Urkunden erwähnter Waren oder sonstiger Werte

35. Akkreditive, Kreditbriefe

Zahlungen aufgrund eines Akkreditivs Kreditbriefs oder sonstigen Ersuchens darf die Bank an denjenigen leisten den sie nach sorgfältiger Prüfung seines Ausweises als empfangsberechtigt ansieht Für Dokumentenakkreditive gelten sofern nicht abweichende Weisungen aus dem Akkreditiv ersichtlich sind neben etwaigen Sonderbedingungen die von der Internationalen Handelskammer aufgestellten »Einheitlichen Richtlinien und Gebräuche für Dokumentenakkreditive«

IV Wertpapiere, Devisen und Sorten

1 Kauf und Verkauf

36 Usancen, Allgemeines

(1) Für die Ausführung von Aufträgen zum Kauf und Verkauf von Wertpapieren durch die Bank sind die Usancen des Ausführungsplatzes maßgebend Für den Kauf und Verkauf von Wertpapieren die nicht zum amtlichen Handel oder nicht zum geregelten Markt zugelassen sind gelten die von der »Ständigen Kommission für Angelegenheiten des Handels in amtlich nicht notierten Werten« jeweils festgesetzten Usancen das

I Deposits

31 Due date and interest.

(1) In the absence of any agreement to the contrary confirmed in writing by the Bank deposits may be withdrawn without notice (money at call)

(2) It may be agreed that deposits shall only fall due after a certain period of notice has been given or on a date previously fixed (deposits at notice or deposits for a fixed period) After the due date such deposits will be treated as money at call unless a new agreement has been or is made

(3) Deposits accepted in accordance with paras (1) and (2) will bear — except where a separate agreement has been concluded — interest at the then current rate fixed by the Bank for such deposits and made known by public display

(4) For the purpose of computing the interest each month shall be considered as having 30 days

(5) The interest on, withdrawal notices for and the maturity of savings deposits are governed by the relevant provisions of the Banking Act (»Kreditwesengesetz«)

II Credit balances and loans granted in foreign currencies

32. Credit balances.

Holders of accounts with credit balances in a foreign currency shall bear proportionately up to the total amount of their holding any financial and legal damages or losses which may affect the Bank s total holding in or outside the Federal Republic in the currency concerned be it as a direct or indirect consequence of force majeure war insurrection or similar events or of seizures by third parties abroad through no fault of the Bank or which occur in connection with any action of domestic or foreign governments

33 Loans granted.

Loans granted in a foreign currency must be repaid in the currency in which they were made available Payments in any other currency will be regarded as collateral However the Bank shall be entitled to convert the loan at any time into its domestic currency if the orderly settlement, for reasons for which the Bank is not responsible of such facility does not seem certain

III Documents, documentary credits, letters of credit

34 Documents

If the Bank has to receive or deliver any documents upon the customer's instructions it will examine such documents with care it does not assume any responsibility for the authenticity validity and completeness of the documents, for their correct interpretation and translation, nor for the nature quantity of any goods or other assets mentioned in such documents

35 Documentary credits, letters of credit.

Payments on the basis of any documentary credit letter of credit or other order may be made by the Bank to whomsoever it may consider after carefully checking his identity and authority to be the rightful recipient Documentary credits shall unless otherwise specified in the orders be governed in addition to any eventual Special Conditions by the »Uniform Customs and Practice for Documentary Credits« laid down by the International Chamber of Commerce

IV Securities, foreign exchange and foreign notes and coin

1 Purchase and sale

36. Customs and practice; general

(1) The execution of orders for the purchase and sale of securities by the Bank shall be governed by the customs and practices of the place of execution The purchase and sale of securities not admitted to official trading or to the regulated market shall be governed by the current practices laid down by the »Permanent Commission for Matters concerning Dealings in Securities not admitted to Official Trading« the same shall apply to securities

admitted to official trading or to the regulated market while the quotation has been suspended by a notice of the stock exchange authorities

(2) If securities are either listed officially or subject to inofficial dealings on more than one stock exchange the choice of the place of execution shall be left to the discretion of the Bank unless the customer has instructed other wise Orders for other places will be forwarded by the Bank by letter telex telegram or telephone at its discretion unless the customer has given specific instructions

(3) The Bank does not assume any obligation to execute orders on the date when they are received

(4) The Bank may carry out any orders to sell securities or to exercise or sell subscription rights without checking whether the customer holds the relevant securities at the Bank Any loss resulting from compliance with such orders shall be borne by the customer

(5) The Bank may ignore the whole or part of orders or reverse or balance the whole or part of transactions if the balance or the securities held by the customer are insufficient It will notify the customer of its action

(6) Any objections to advices concerning the execution of security transac tions must be made directly in the Bank or by telephone telegram or telex without delay on receipt of the advice of execution Objections concerning the non-execution of such transactions must be lodged by the same means without delay after the date on which the advice of execution should have been received by the customer in the ordinary course of postal delivery Fai lure to lodge an objection to advices of execution without delay will be con strued as approval of such advices the Bank will draw the customer's parti cular attention to this fact at the beginning of the period

37 Period of validity of orders

Orders given by mail or telex without a time limit will be valid until the last stock exchange working day of the month concerned or at most until the date mentioned by the Bank in its confirmation of the order, unless the orders have been revoked in the meantime Orders given by telephone or telegram will unless instructions to the contrary have been received only be valid on the day of receipt orders which could not be executed on the date of receipt will be carried over to the next stock exchange working day unless express instructions to the contrary have been given by the customer Orders for the purchase or sale of subscription rights are subject to the time limits which have been fixed in each individual case

38. Share transactions

(1) In the case of transactions in shares the final certificates of which at that time are not in circulation the customer shall bear the risk of any impair ment of shareholders rights before the issue of the certificates. The Bank will not assume any liability for the issue of certificates by a joint stock company

(2) In the event of the Bank selling on the customer's instructions any shares that have not been fully paid up the customer shall if he is held responsible for payment of the outstanding amount either by the company (in accordance with Section 65 of the Joint Stock Companies Act -Aktiengesetz) or by a previous holder of his shares be entitled once the transaction has been contracted to demand from the Bank only the assignment of any rights vested in the Bank against its assignee under the sales agreement

(3) Where in contravention of Section 71 d of the Joint Stock Companies Act a company affiliated to, controlled by or majority owned by another com pany causes any shares of the latter to be purchased by the Bank then it shall be liable for any damage or loss which the Bank may thereby incur

39 Variably quoted securities.

In the case of securities quoted at different prices during a stock exchange day (variably quoted securities) orders for the minimum nominal amount or number of shares required for such stock exchange transactions or a multiple thereof will be carried out within the framework of variably quoted dealings unless the principal has expressly prescribed execution at the standard stock exchange price

39a. Commission agent appearing as a principal and dealings for the Bank's own account.

(1) The Bank will carry out all orders for the purchase and sale of securities that are admitted to official trading or to the regulated market on the relevant stock exchange as a commission agent appearing as a principal without any express declaration in accordance with Section 405 of the Commercial Code being required Any departure from this method must be expressly agreed The wording of the advice of execution shall in all cases be without any special significance with regard to the method of execution The Bank will channel customer's orders in respect of shares admitted to official trading or to the regulated market through the stock exchange unless instruc tions to the contrary have been expressly given by the customer

gleiche gilt für zum amtlichen Handel oder zum geregelten Markt zugelas sene Wertpapiere deren Notierung durch Bekanntmachung der Börsen organe ausgesetzt ist

(2) Sind Werte an mehreren Börsen zugelassen oder in den Freiverkehr einbezogen so bleibt der Bank mangels anderweitiger Weisung des Kun den die Wahl des Ausführungsplatzes überlassen Aufträge für auswärtige Plätze gibt die Bank mangels besonderer Weisung des Kunden nach ihrem Ermessen brieflich fernschriftlich telegrafisch oder telefonisch weiter

(3) Die Bank übernimmt keine Verpflichtung Aufträge noch am Eingangs tage auszuführen

(4) Die Bank darf Aufträge zu Verkäufen sowie zur Ausübung oder zum Ver kauf von Bezugsrechten ausführen ohne zu prüfen ob dem Kunden ent sprechende Werte bei ihr zur Verfügung stehen Der Kunde trägt den aus der Erteilung solcher Aufträge entstehenden Schaden

(5) Die Bank darf Ausführungen ganz oder teilweise unterlassen oder Abschlüsse ganz oder teilweise rückgängig machen oder glattstellen wenn das Guthaben oder der Wertpapierbestand des Kunden nicht aus reicht Sie wird den Kunden hiervon benachrichtigen

(6) Einwendungen gegen Anzeigen über die Ausführung von Geschäften in Wertpapieren müssen unverzüglich nach Zugang der Ausführungsanzeige mündlich, telefonisch telegrafisch oder fernschriftlich erhoben werden Auf dem gleichen Wege sind Einwendungen wegen Nichtausführung sol cher Geschäfte unverzüglich nach dem Zeitpunkt zu erheben an dem die Ausführungsanzeige dem Kunden im gewöhnlichen Postlauf hätte zugehen müssen Die Unterlassung unverzüglicher Einwendung gegen Ausführungsanzeigen gilt als deren Genehmigung die Bank wird den Kunden bei Fristbeginn hierauf besonders hinweisen

37 Gültigkeitsdauer des Auftrags

Briefliche und schriftliche Aufträge ohne zeitliche Beschränkung sind bis zum letzten Börsentag des laufenden Monats oder längstens bis zu einem von der Bank in ihrer Auftragsbestätigung genannten Termin gültig wenn sie nicht vorher widerrufen werden Telefonische und telegrafische Auf träge gelten sofern der Kunde keine andere Weisung erteilt nur für den Empfangstag jedoch werden Aufträge die am Tage des Eingangs nicht mehr erledigt werden konnten für den nächsten Börsentag vorgemerkt sofern nicht eine ausdrückliche Weisung des Kunden entgegensteht Für Aufträge zum Kauf und Verkauf von Bezugsrechten gelten die für den Bezugsrechtshandel im Einzelfall festgesetzten Fristen

38 Geschäfte in Aktien

(1) Bei Geschäften in Aktien deren endgültige Stücke noch nicht im Ver kehr sind trägt der Kunde die Gefahr der Beeinträchtigung des Aktien rechts vor Lieferung der Stücke. Für die Ausgabe der Stücke seitens der Aktiengesellschaft übernimmt die Bank keine Gewähr

(2) Verkauft die Bank im Auftrag des Kunden nicht voll eingezahlte Aktien so hat der Kunde falls er von der Gesellschaft gemäß § 65 des Aktiengesetzes oder von seinem Vormann auf die Nachzahlung in Anspruch genommen wird bereits vom Abschluß des Geschäfts an gegen die Bank lediglich Anspruch auf Abtretung der ihr aus dem Kaufvertrag gegen ihren Nachmann zustehende Rechte

(3) Läßt ein abhängiges Unternehmen oder ein in Mehrheitsbesitz stehendes Unternehmen der Vorschrift des § 71 d des Aktiengesetzes zuwider Aktien der herrschenden Gesellschaft bzw der an ihm mit Mehrheit beteiligten Gesellschaft durch die Bank anschaffen so haftet es für alle der Bank daraus erwachsenden Schäden

39 Fortlaufend notierte Wertpapiere

Bei fortlaufend (variabel) notierten Wertpapieren werden die Aufträge mit den Nennbeträgen oder Stückzahlen die den Mindestschluß oder ein Mehrfaches davon erreichen im variablen Verkehr ausgeführt sofern der Auftraggeber nicht ausdrücklich die Ausführung zum Einheitskurs vorgeschrieben hat

39a Selbsteintritt und Eigenhandel

(1) Die Bank führt alle Aufträge zum Kauf und Verkauf von Wertpapieren die an der Börse des Ausführungsplatzes zum amtlichen Handel oder zum geregelten Markt zugelassen sind als Kommissionär durch Selbsteintritt aus ohne daß es einer ausdrücklichen Erklärung gemäß § 405 des Handelsgesetzbuchs bedarf Abweichungen von dieser Ausführungsart müs sen ausdrücklich vereinbart werden Die Fassung der Ausführungsanzeige ist in allen Fällen ohne Bedeutung Kundenaufträge in zum amtlichen Han del oder zum geregelten Markt zugelassenen Aktien werden von der Bank über die Börse geleitet es sei denn daß eine andere ausdrückliche Wei sung des Kunden vorliegt

(2) Bei Geschäften in nicht zum amtlichen Handel oder nicht zum geregelten Markt zugelassenen Wertpapieren behält sich die Bank vor, Aufträge entweder als Eigenhändler oder als Kommissionär durch Selbsteintritt auszuführen Das gleiche gilt für zugelassene Wertpapiere deren Notiz durch Bekanntmachung der Börsenorgane ausgesetzt ist Nettoabrechnung bedeutet Ausführung im Eigenhandel Bruttoabrechnung Ausführung im Kommissionswege unter gleichzeitiger Erklärung des Selbsteintritts gemäß § 405 des Handelsgesetzbuchs Soweit die Geschäfte im Eigenhandel ausgeführt werden gelten die Bestimmungen der Nummern 36 Abs 2 Satz 2 und Abs 3 bis 6 37 und 38 entsprechend

(3) Die Bank kann Aufträge auch teilweise annehmen.

40. Devisen und Sorten

Die Bank führt Aufträge zum Kauf und Verkauf von Devisen und Sorten als Kommissionär durch Selbsteintritt aus ohne daß es einer ausdrücklichen Erklärung gemäß § 405 des Handelsgesetzbuchs bedarf Die Bestimmungen der Nummern 36 Abs. 2 Satz 2 Abs 3 bis 6 und 39a Abs 1 Satz 2 und 3 gelten entsprechend, und zwar auch dann, wenn die Geschäfte auf Grund ausdrücklicher Vereinbarung im Eigenhandel ausgeführt werden

2 Verwahrung und Verwaltung

41 Verwahrung bei Dritten

(1) Die Bank ist berechtigt die Wertpapiere unter ihrem Namen an auswärtigen Plätzen und bei Dritten zu verwahren

(2) Für ein Verschulden des Drittverwahrers haftet die Bank wie für eigenes Verschulden Folgt sie bei der Auswahl des Dritten einer Weisung des Kunden so trifft sie keine Haftung

42. Zins- und Gewinnanteilscheine

(1) Mangels besonderer Weisung des Kunden sorgt die Bank für die Trennung der fälligen Zins- und Gewinnanteilscheine und zieht den Gegenwert ein oder verwertet sie

(2) Neue Zins- und Gewinnanteilscheinbogen erhebt die Bank ohne besonderen Auftrag für alle Wertpapiere deren Zins- und Gewinnanteilscheine regelmäßig getrennt werden

43. Verlosungen und Kündigungen

Verlosungen und Kündigungen überwacht die Bank soweit Bekanntmachungen hierüber in den »Wertpapier-Mitteilungen« (Köln) erscheinen und die Bank die Papiere verwahrt Pfandbriefe und Schuldverschreibungen werden ohne besondere Weisung des Kunden eingelöst die Einlösung und Verwertung von Wertpapieren anderer Art darf die Bank mangels besonderer Weisung des Kunden nach ihrem Ermessen vornehmen Verloste und gekündigte Wertpapiere die auf ausländische Währung lauten sowie Zins- und Gewinnanteilscheine zu solchen Wertpapieren darf die Bank mangels anderer Weisung für Rechnung des Kunden bestens verwerten

44 Gutschriften

Der Gegenwert von Zins- und Gewinnanteilscheinen sowie von verlosten und gekündigten Wertpapieren jeder Art wird vorbehaltlich des Eingangs, bei Werten die einer Kursberechnung unterliegen, abzüglich der üblichen Provisionen gutgeschrieben

45. Aufgebote und Zahlungssperren

Ob Wertpapiere durch Aufgebote Zahlungssperren, Oppositionen und der gleichen betroffen werden wird nur einmalig nach ihrer Einlieferung an Hand der »Wertpapier-Mitteilungen« geprüft

46. Sonstige Vorgänge

Über Konvertierungen Ausübung oder Verwertung von Bezugsrechten Aufforderungen zu Einzahlungen über Fusionen Sanierungen, Zusammenlegungen Umstellungen Umtauschangebote und dergleichen wird die Bank wenn hierüber eine Bekanntmachung in den »Wertpapier Mitteilungen« erschienen ist den Kunden zu benachrichtigen suchen Die Bank erwartet die besondere Weisung des Kunden sollte diese nicht rechtzeitig eintreffen so kann die Bank nach ihrem Ermessen handeln ohne dazu verpflichtet zu sein Insbesondere darf sie Bezugsrechte bestens verkaufen sofern sie bis zu dem der letzten Notiz des Bezugsrechts vorhergehenden Börsentag keine anderweitige Weisung des Kunden erhalten hat geht eine besondere Weisung des Kunden und handelt die Bank nach ihrem Ermessen so trifft sie keine Haftung

(2) In the case of transactions in securities not admitted to official trading or to the regulated market the Bank reserves the right to carry out any orders either as a dealer for its own account or as a commission agent appearing as a principal This shall also apply to any securities admitted to official quotation the quotation of which has been suspended by a notice of the stock exchange authorities A settlement advice with a net sum only shall mean that the Bank has acted for its own account a settlement advice with all details of the transaction shall mean that the Bank has acted as a commission agent declaring at the same time that the Bank has taken over the role of the principal in accordance with Section 405 of the Commercial Code To such extent as transactions are carried out for the Bank's own account the provisions of clauses 36 para 2 sentence 2 and paras 3 to 6 37 and 38 shall be applied analogously

(3) The Bank may accept orders as a whole or in part

40. Foreign exchange and foreign notes and coin.

The Bank shall carry out orders for the purchase and sale of foreign exchance and foreign notes and coin as a commission agent appearing as a principal without any express declaration in accordance with Section 405 of the Commercial Code being required. The provisions of clauses 36 para. 2 sentence 2 paras 3 to 6 and 39a para. 1 sentences 2 and 3 shall be applied analogously even when the transactions are carried out for the Bank's own account by virtue of an explicit agreement

2. Safe custody and portfolio administration

41 Safe custody with third parties.

(1) The Bank shall be authorized to deposit securities in its own name at other places and with third parties.

(2) The Bank shall be liable for any negligence of a third party depositary as if it had been negligent itself However no liability shall accrue to the Bank if it has followed the customer s instructions in selecting the third party

42. Interest and dividend coupons.

(1) Where the customer has given no special instructions the Bank shall ensure that any interest and dividend coupons due are detached and will collect the proceeds or otherwise realize the coupons

(2) The Bank will claim without explicit instructions new interest or dividend coupon sheets for all securities the interest or dividend coupons of which are regularly detached.

43. Drawings and notices of repayment

The Bank will act on drawings and notices of repayment in so far as notices thereof appear in the »Wertpapier-Mitteilungen« (Special review of securities) Cologne and such papers are in the Bank's safe keeping Mortgage bonds and debentures will be redeemed without any special instructions from the customer the encashment and realization of other kinds of securities may be carried out by the Bank at its discretion in the absence of the customer's special instructions The Bank may in the absence of instructions to the contrary realize in the best possible manner for the customer's account foreign currency securities which have been drawn or recalled for repayment and the interest and dividend coupons of such securities

44 Credit entries.

The proceeds of interest and dividend coupons and of securities of any kind which have been drawn or recalled for repayment will be credited subject to the funds being received and, in the case of quoted securities, after deduction of the usual commission.

45 Public summonses and court orders blocking payment.

The possibility as to whether any securities are subject to a public summons court order, opposition or the like will be checked only once upon the receipt of the securities by means of the »Wertpapier Mitteilungen«

46. Other transactions.

The Bank will endeavour to notify the customer of any conversions,exercise or realization of subscription rights calls for payments mergers financial reorganisations amalgamations reductions of capital changes in the denomination of shares, conversion offers etc. if a notice relating thereto has been published in the »Wertpapier-Mitteilungen« The Bank will wait for the customer s specific instructions However, should these not arrive in due time then the Bank may act at its discretion without being obliged to do so It may in particular sell subscription rights at the best possible price unless it has received the customer's instructions to the contrary by the stock exchange working day preceding that of the last quotation of the subscription rights Where however the Bank acts at its discretion in the absence of the customer s specific instructions it will carry no liability

V Wechsel, Schecks, Anweisungen, Quittungen und ähnliche Papiere

1 Wechsel

47 Diskontwechsel

(1) Die Bank darf die von ihr diskontierten Wechsel bereits vor Verfall ohne Rücksicht auf das bestehende Rechnungsverhältnis Insbesondere auf eine etwa vorausgegangene Saldierung im Konto zurückbelasten wenn von der Bank eingeholte Auskünfte über einen Wechselverpflichteten nicht zur Zufriedenheit ausfallen oder wenn Akzepte eines Wechselverpflichteten protestiert werden oder wenn in den Verhältnissen eines Wechselverpflichteten eine wesentliche Verschlechterung eintritt

(2) Gibt die Deutsche Bundesbank der Bank rediskontierte Wechsel zurück weil sie sie nachträglich als zum Rediskont nicht geeignet befindet so ist die Bank berechtigt diese Wechsel dem Kunden zurückzubelasten Der Rückbelastung wird der Nettobetrag der Diskontabrechnung zuzüglich der Zinsen vom Tag der Diskontierung durch die Bank bis zum Rückbelastungstag zu dem bei der Diskontierung angewendeten Diskontsatz zugrunde gelegt

(3) Werden von der Bank diskontierte Wechsel bei Vorlegung nicht oder nicht voll bezahlt oder ist die freie Verfügung über den Gegenwert durch Gesetz oder behördliche Maßnahmen beschränkt oder können die Papiere infolge unüberwindlicher Hindernisse nicht oder nicht rechtzeitig vorgelegt werden oder ist in dem Land in dem die Wechsel einzulösen sind ein Moratorium ergangen so darf die Bank zurückbelasten

(4) Die Zurückbelastung ist auch dann zulässig wenn Wechsel nicht zurückgegeben werden können Die Bank wird versuchen den Gegenwert zurückbelasteter aber nicht zurückgegebener Wechsel hereinzuholen oder dem Einreicher die ihr zustehenden Rechte übertragen

(5) Werden Wechsel auf Grund ausländischen Rechts oder auf Grund einer mit ausländischen Kreditinstituten getroffenen Vereinbarung der Bank wegen Fälschung von Unterschriften oder wegen Veränderung anderer Bestandteile der Wechsel belastet so darf die Bank sie dem Kunden zurückbelasten

(6) In allen Fällen der Zurückbelastung von Wechseln verbleiben der Bank die wechselrechtlichen Ansprüche auf Zahlung des vollen Betrags der Wechsel mit Nebenforderungen gegen den Kunden und jeden aus dem Papier Verpflichteten bis zur Abdeckung eines etwa vorhandenen Schuldsaldos

(7) Mit den von der Bank diskontierten Wechseln sind zugleich die dem Wechsel oder seinem Erwerb durch den Kunden zugrunde liegenden Forderungen sowie alle gegenwärtigen und zukünftigen Rechte aus den zugrunde liegenden Geschäften auf die Bank übertragen Der Kunde ist verpflichtet der Bank auf Verlangen eine Übertragungsurkunde zu erteilen Soweit die für die Forderungen und Rechte bestehenden Sicherheiten nicht kraft Gesetzes auf die Bank übergehen (z B Grundschulden Sicherungs- und Vorbehaltseigentum) ist der Kunde verpflichtet, diese Sicherheiten auf die Bank zu übertragen und die hierzu erforderlichen Erklärungen in der von der Bank verlangten Form abzugeben Er hat ferner die zur Geltendmachung der Forderungen Rechte und Sicherheiten nötige Auskunft zu erteilen sowie die über die Forderungen, Rechte und Sicherheiten ausgestellten oder zu ihrem Beweise dienenden Urkunden auszuhändigen

(8) Werden Wechselbeträge nicht in der Währung über die die Papiere lauten angeschafft so behält sich die Bank vor dadurch entstehende Kursdifferenzen nachträglich dem Kunden zu belasten oder gutzubringen

(9) Bei Wechseln auf Auslandsplätze übernimmt die Bank keine Gewähr für rechtzeitige Vorlegung und Protesterhebung Das gleiche gilt bei im Inland zahlbaren Wechseln, die zum Zeitpunkt des Eingangs bei der Bank nicht noch mindestens 12 Tage laufen Bei Wechseln auf Auslandsplätze übernimmt die Bank auch für die sonstige wechselmäßige Behandlung keine Gewähr

(10) Nicht oder nicht genügend versteuerte Wechsel darf die Bank zurückgehen lassen

(11) Die Bank ist berechtigt dem Einreicher für die Zeit von der Fälligkeit bis zur endgültigen Einlösung des Wechsels bankübliche Zinsen zu berechnen

48 Inkassowechsel

(1) Aufträge zum Einzug von Wechseln führt die Bank auf Gefahr des Kunden aus Sie ist nicht verpflichtet sich besonderer Eilmittel zu bedienen

(2) Wechsel deren Einzug mit unverhältnismäßigen Schwierigkeiten verbunden ist darf die Bank zurückgeben auch wenn sie den Einzugsauftrag angenommen hat Dies gilt nicht wenn der Bank die unverhältnismäßigen Schwierigkeiten bekannt waren

(3) Schreibt die Bank den Gegenwert von zum Einzug übernommenen Wechseln schon vor Eingang gut oder zahlt sie den Gegenwert schon vor Eingang aus so geschieht dies nur unter Vorbehalt des Eingangs

V Bills of exchange, cheques, authorities to make payment, receipts and similar documents

1 Bills of exchange

47 Discounting of bills of exchange.

(1) The Bank may debit an account with any bills of exchange discounted by it even before maturity irrespective of the existing accounting arrangements and in particular of any balance drawn previously if it is dissatisfied with the information obtained concerning any party liable on such bill of exchange or if any acceptance of any of such parties is protested or if any substantial deterioration in any of the parties financial situation occurs

(2) Should the Deutsche Bundesbank (the Central Bank) return any bills rediscounted because it subsequently finds such bills unsuitable for rediscounting then the Bank shall be entitled to debit such bills to the customer The debit will be made on the basis of the face amount of the discount advice plus interest from the date at which the bill was discounted by the Bank up to the date of the debit at the rate applied when the bill was discounted

(3) Should any bills discounted by the Bank not be honoured or not be fully honoured on presentation or should the disposal of the proceeds be restricted by law or by any official measures, or should it not be possible to present the bills or to present them in time for payment owing to insurmountable difficulties or should a moratorium be declared in the country where the bills of exchange are to be presented for payment then the Bank may debit the customer s account

(4) Such debits shall also be permissible when the bills cannot be returned The Bank will endeavour to collect the proceeds of any bills so debited but not returned or will assign any rights vested in it to the customer

(5) If the amounts of any bills of exchange are charged to the Bank by virtue of a foreign law or by virtue of any agreement made by the Bank with foreign credit institutions because the signatures thereto have been forged or other particulars of such bills of exchange have been altered then the Bank may debit such amounts to the customer s account

(6) In all cases of bills of exchange being debited the Bank shall retain all rights under the laws governing bills of exchange to full payment of the bill and all accessory claims against the customer and every party liable on the bill until the outstanding balance if any has been repaid

(7) Together with bills of exchange discounted by the Bank, any claims on which the bill or its acquisition by the customer is based and any present or future rights arising out of the underlying transactions shall be assigned to the Bank The customer shall be obliged to provide the Bank with a deed of assignment if so requested Insofar as any collateral held in respect of claims and rights is not transferred to the Bank by virtue of law e.g land charges and title to ownership for security purposes and reservation of rights or ownership the customer shall be obliged to transfer such collateral to the Bank and to make any declaration required therefor in the form prescribed by the Bank The customer shall furthermore provide any information required for the exercise of such claims rights or collateral and surrender any documents issued in respect of such claims rights and collateral or serving as evidence thereof

(8) If the amount of a bill of exchange is not paid in the currency indicated on the instrument the Bank reserves the right to subsequently debit or credit to the customer any differences in the exchange value resulting therefrom

(9) In the case of bills of exchange payable abroad the Bank will not assume any responsibility for the presentation and the protest of the bills in good time The same shall apply to bills payable in the Federal Republic which do not mature at least 12 days after the date when they were received by the Bank In the case of bills drawn on places abroad the Bank will not assume any liability for the observance of any other formalities under the laws governing bills of exchange

(10) The Bank is entitled to return unstamped or insufficiently stamped bills

(11) The Bank may charge the presenter of a bill its usual rate of interest for the period from the bill s date of maturity to final payment thereof

48 Collection of bills of exchange

(1) Instructions for the collection of bills of exchange will be carried out by the Bank at the customer s risk The Bank is not obliged to employ means of particular urgency

(2) Bills the collection of which entails disproportionate difficulties may be returned by the Bank even when it has accepted the order for collection This shall not apply if these disproportionate difficulties were known to the Bank at the time the bills were received for collection

(3) Where the Bank credits or pays out the countervalue of bills received for collection such credit or payment prior to actual receipt of funds is subject to the actual receipt thereof

(4) Die Bestimmungen über Diskontwechsel (Nr 47) gelten entsprechend Außerdem gelten die von der Internationalen Handelskammer aufgestellten »Einheitlichen Richtlinien für Inkassi«

49 Einholung von Akzepten

Bei der Einholung von Akzepten übernimmt die Bank keine Gewähr für die Rechtsgültigkeit der Unterschrift des Akzeptanten insbesondere für deren Echtheit und für die Legitimation der Zeichnenden

50 Depotwechsel

Die Bank darf bei ihr ruhende Wechsel mangels anderweitiger Vereinbarung bei Verfall vorlegen und mangels Zahlung protestieren lassen sowie zu diesem Zweck Wechsel auf auswärtige Plätze rechtzeitig versenden sie ist jedoch hierzu nicht verpflichtet

51 Domiziliwechsel

Die Bank braucht bei ihr selbst oder zu ihren Lasten bei einem anderen Kreditinstitut zahlbar gestellte Wechsel nur dann einzulösen bzw einlösen zu lassen wenn ein schriftlicher Auftrag mit allen erforderlichen Angaben bei der kontoführenden Stelle spätestens am letzten Geschäftstag vor Verfall eingegangen und hinreichende Deckung vorhanden ist

52. Wechselakzepte

Die Deckung der von der Bank für Rechnung des Kunden akzeptierten Wechsel muß spätestens am letzten Geschäftstag vor Verfall in ihrem Besitz sein Anderenfalls berechnet die Bank eine besondere Provision die Akzeptprovision deckt nur das Akzept selbst

2 Schecks

53 Inländische Inkassoschecks

(1) Schecks in inländischer Währung auf inländische Kreditinstitute übernimmt die Bank nur zum Einzug

(2) Die Gewähr für die rechtzeitige Vorlegung übernimmt die Bank nur bei Schecks auf Kreditinstitute in Hamburg und nur dann wenn sie spätestens am zweiten Geschäftstag vor Ablauf der Vorlegungsfrist mit der ersten Post eingehen

(3) Wird ein Scheck nicht eingelöst so braucht die Bank nur die Vorlegungsbescheinigung des Bezogenen oder die Bescheinigung der Abrechnungsstelle einzuholen

(4) Bei Schecks auf auswärtige Plätze übernimmt die Bank keine Gewähr für rechtzeitige Vorlegung und Einholung der Vorlegungsbescheinigung oder der Bescheinigung der Abrechnungsstelle

(5) Die Bestimmungen über Inkassowechsel gelten entsprechend die in Nr 48 in Bezug genommene Bestimmung der Nr 47 Abs 7 jedoch nur wenn der Kunde nicht selbst Aussteller des Schecks ist

54. Auslandsschecks

Für den Ankauf und für den Einzug von Schecks die an ausländischen Plätzen zahlbar sind oder auf ausländische Währung lauten gelten die Bestimmungen der Nummern 47 und 48 entsprechend

3 Lastschriften, Anweisungen, Quittungen und ähnliche Papiere

55 Einzug

Für den Einzug von Lastschriften Anweisungen Quittungen und ähnlichen Papieren gelten die Bestimmungen über Inkassoschecks entsprechend

(4) The provisions relating to the discounting of bills (clause 47) shall apply analogously In addition the »Uniform Rules for Collections« as laid down by the International Chamber of Commerce shall be applicable

49 Instructions to seek acceptance of bills of exchange

When seeking the acceptance of a bill the Bank shall not assume any liability for the legal validity of the acceptor s signature in particular for the authenticity thereof nor for the authorization of the signatories

50 Bills of exchange deposited with the Bank.

The Bank may unless otherwise agreed, present any bills of exchange deposited with it on maturity and cause them to be protested if unpaid and may also forward in good time bills for the same purpose which are not domiciled at the Bank however it shall not be under any obligation to do so

51 Bills of exchange domiciled at the Bank.

The Bank shall only honour bills domiciled at it or give instructions to honour bills domiciled at other credit institutions if written instructions including all relevant particulars have been received by the branch at which the customer s account is maintained not later than the last working day before the date of maturity and only if sufficient funds are available

52. Bills of exchange accepted by the Bank

Sufficient funds to cover bills accepted by the Bank must be in the customer s account not later than the last working day before the date of maturity Otherwise the Bank will charge an extra commission the acceptance commission covers only the acceptance as such

2 Cheques

53. Collection of inland cheques.

(1) Cheques in domestic currency drawn on domestic credit institutions will be accepted by the Bank for collection only

(2) The Bank shall assume responsibility only for the punctual presentation of cheques drawn on credit institutions in Hamburg provided that the cheques are received at the latest by the first mail on the second business day prior to the expiry of the period for presentation

(3) If a cheque is not honoured the Bank shall only be obliged to obtain a notice of presentation either from the drawee or the clearing house

(4) In the case of cheques drawn on institutions located outside Hamburg the Bank does not assume any liability for their being presented in good time nor for a notice of presentation being obtained in good time either from the drawee or the clearing house

(5) The provisions relating to bills for collection shall be applied analogously the provision of clause 47 para 7 referred to in clause 48 shall however apply only if the customer is not the drawer of the cheque

54 Foreign cheques

The purchase and collection of cheques payable abroad or drawn in foreign currency shall be governed by the provisions of clauses 47 and 48 analogously

3 Direct debits, authorities to make payments, receipts and similar documents

55. Collection

The provisions relating to the collection of cheques shall be applied analogously to direct debits the collection of authorities to make payments, receipts and similar documents