General Terms and Conditions of Oesterreichische Kontrollbank for Banking Transactions

Version dated November 2019, valid as of 1 February 2020
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General Provisions

1 Fundamental rules for the business relationship between the customer and Oesterreichische Kontrollbank AG (hereinafter OeKB)

1.1 Scope of application and amendments to these General Terms and Conditions

1.1.1 Scope of application – Transactions with entrepreneurs

No. 1.

(1) These General Terms and Conditions (hereinafter “GTC”) apply to the entire business relationship between the customer and OeKB. Terms and conditions of agreements concluded with the customer or special terms and conditions take precedence over these.

(2) Given that OeKB, as a special bank, does not maintain any business relationships with private customers, these GTC only apply to transactions with entrepreneurs within the meaning of the Consumer Protection Act (Konsumentenschutzgesetz).

(3) The Export Services division of OeKB has its own terms and conditions (T&Cs) for the export financing scheme, which can be found on the OeKB's website (www.oekb.at) (some parts in a login-only area) and can be downloaded at any time. The T&Cs of the export financing scheme shall have priority and, insofar as they do not contain any provisions, shall be supplemented by these General Terms and Conditions. Attention is drawn in particular to the fact that the T&Cs of the export financing scheme contain more extensive security rights.

1.1.2 Amendments

No. 2.

(4) OeKB shall notify the customer of any amendments to these GTC no later than two months before their scheduled entry into force; such amendments shall apply to all present and future business relations between the customer and OeKB unless OeKB has received written objection from the customer within two month following notification. The notification of an amendment to the GTC to the customer may be effected in any form agreed with the customer in the context of the business relationship. The agreed form of service of statements of OeKB shall also apply to the notification of amendments to the GTC. In case the current address of the customer is not known to OeKB and there is no agreement on where to send information, publication of the amended GTC on OeKB’s website (www.oekb.at) shall be decisive; the first sentence of this paragraph on amendments entering into force if the customer does not object to them applies accordingly, with notification of the amendment being replaced by publication on the website.
OeKB shall inform the customer in the notification of the amendment to the GTC or in the publication on the website that, after expiry of two months, their acquiescence shall be deemed a consent to the amendment.

OeKB shall publish a comparison of the provisions of the GTC affected by the amendment as well as the entire version of the new GTC on its website and on request hand it over to the customer in writing or send it by mail, without any effect of the effectiveness of the amendment. OeKB will inform its customers of these options in the notification of the planned amendment.

1.2 Statements

1.2.1 Customer orders

No. 3.

(1) Orders must be made in writing.

(2) OeKB shall also be entitled to execute orders placed via telecommunication (in particular by phone, fax, remote data transmission or email). Subject to the fulfilment of all other prerequisites, OeKB shall be obliged to carry out such orders only if agreed upon by the customer and OeKB. See also no. 4.

(3) OeKB shall be entitled to execute orders placed in any form by an entrepreneur within the scope of the business relationship for the latter’s account, if OeKB is, through no fault of its own, of the opinion that they originate from the entrepreneur and if OeKB cannot be blamed for the invalid order.

1.2.2 Request of confirmations by OeKB

No. 4

For security reasons OeKB shall be entitled, in particular in case of orders placed via telecommunication, to request a confirmation of the order via the same or a different means of communication, as the case may be.

1.2.3 Statements made by OeKB

No. 5

Notifications and statements by OeKB made via telecommunication are only valid if confirmed in writing, unless otherwise agreed in writing or other banking practices exist in this respect.
1.3 Right of disposal upon the death of a customer

No. 6.

(1) As soon as notice of the death of a customer is received, OeKB shall permit dispositions on the basis of a decision rendered by the probate court, of the Einantwortungsbeschluss (court decision concerning transfer of estate) or of a European certificate of inheritance. In case of joint accounts, dispositions made by an account holder vested with individual authority to dispose of the account shall not be affected by this provision.

(2) No authority to sign on an account granted by an entrepreneur for a business account shall terminate upon the death of the customer. In case of doubt, accounts of an entrepreneur shall be considered business accounts.

1.4 Duties and liability of OeKB

1.4.1 Information duties

No. 7.

Apart from statutory duties to provide information, OeKB shall have no other obligations to provide information than those stated in its Terms and Conditions, unless separately agreed. Accordingly, OeKB is not – unless there is a statutory or contractual obligation to do so – obliged to inform the customer about imminent price or exchange losses, about the value or worthlessness of objects entrusted to it or any facts or circumstances likely to affect or jeopardise the value of such objects or to give the customer any advice or information.

1.4.2 Execution of orders

No. 8.

(1) OeKB shall execute an order which, due to its nature, requires the assistance of a third party, by calling in a third party in its own name. In case OeKB selects the third party, it shall be liable for its diligent selection.

(2) OeKB shall be obliged to assign claims against the third party, if any, to the customer if so requested by the latter.

1.5 Duties to co-operate and liability of the customer

1.5.1 Introduction

No. 9.

The customer shall, in their transactions with OeKB, observe in particular the duties stated below to co-operate. Any violation thereof shall lead to an obligation to pay damages on the part of the customer or to a reduction in their claims for damages vis-à-vis OeKB.
1.5.2 Duty to identify customers, notification of important changes

Identity, address and contact details

No. 10.

(1) The customer must prove their identity pursuant to sections 5 et seq. of the Financial Market Money Laundering Act (Finanzmarkt-Geldwäschegesetz, FM-GwG). Moreover, the customer must report the identity of an authorised representative as well as of any trustee, trustor or beneficial owner and prove it in the same way by appropriate documents. The customer must also notify OeKB immediately in writing of any changes to this information (including changes to the company name and legal form) and provide evidence by means of suitable documents.

(2) When establishing any business relationship and when making use of an occasional transaction, the customer must inform OeKB whether they wish to operate the business relationship and/or the transaction for their own account or for the account of or on behalf of a third party. The customer must promptly inform OeKB of their own volition of any changes in this regard during the current business relationship.

(3) If the customer fails to provide OeKB with the information and evidence pursuant to paragraphs 1 and 2, OeKB shall be entitled to refuse to carry out transactions and to terminate the business relationship.

(4) If the customer does not disclose changes of address, written statements from OeKB shall be deemed to have been received if they were sent to the last address disclosed by the customer to OeKB.

(5) Electronic statements made by OeKB (e.g. statements made via email or text message) to the last email address or mobile phone number provided by the customer shall be deemed to have been received by the customer for whom they are intended if they can retrieve them under normal circumstances (section 12 of the E-Commerce Act [E-Commerce-Gesetz]).

Power of representation

No. 11.

(1) The customer shall immediately notify OeKB in writing of any cancellation or of changes of any power of representation, including an authority to operate and sign on an account (No. 28. and No. 29.), and shall provide appropriate documentary evidence thereon.

(2) Any power of representation advised to OeKB continues to be effective until written notification of cancellation of the same or of a change in its current scope, unless OeKB had knowledge of such cancellation or change or was not aware thereof due to gross negligence. In particular the duty of the customer to notify shall also apply, if the cancellation or change in the power of representation is registered in a public register and was duly published.

Capacity to enter into legal transactions; dissolution of the company

No. 12.

OeKB shall immediately be notified in writing of any loss of or reduction in the customer’s capacity to enter into legal transactions. In case the customer is a company or legal entity, a dissolution of the same shall be notified to OeKB immediately.
1.5.3  Clarity of orders

No. 13.

(1) The customer shall ensure that their orders placed with OeKB are clear and unambiguous. Any modifications, confirmations or reminders shall expressly be marked as such.

(2) In case the customer wishes to give special instructions to OeKB regarding the execution of orders, the customer shall inform OeKB thereof separately and explicitly, and in case of orders placed by means of forms, the instructions shall be given separately, i.e. not on the form. This applies above all in case the execution of the order is extremely urgent or subject to certain periods and deadlines.

1.5.4  Due care and diligence in using means of telecommunication

No. 14.

In case the customer places orders or makes other statements via telecommunication, the customer shall take appropriate precautions according to the state of the art to avoid transmission errors and abuse.

1.5.5  Raising of objections

No. 15.

(1) The customer shall immediately verify statements of OeKB, such as confirmations of their orders to OeKB, communication about the execution of the same, statements of account, closing statements and any other accounts as well as mails and payments of OeKB as to their completeness and correctness and shall raise objections, if any, without delay.

(2) In case OeKB receives no written objections within a period of six weeks, the respective statements and services of OeKB shall be deemed approved. OeKB shall in each case inform the customer about the significance of their conduct at the beginning of the period. It shall be sufficient if such information is provided on the statement of account.

1.5.6  Notification in case of non-receipt of communication

No. 16.

The customer shall notify OeKB immediately if he/she has not received regular communication from OeKB (such as closing statements) or other communication or mail from OeKB which the customer would have had to expect in his/her circumstances within the period of time normally to be expected with respect to the agreed form of transmission.
1.5.7  Translations

No. 17.

Any foreign-language documents shall be presented to OeKB together with a German translation which has been verified by a judicially certified translator, in case OeKB so requires.

1.6  Place of performance; applicable law; jurisdiction

1.6.1  Place of performance

No. 18.

The place of performance for both parties shall be the registered office of OeKB.

1.6.2  Applicable law

No. 19.

All legal relations between the customer and OeKB shall be subject to Austrian law, excluding the rules of conflict of law and of the UN Convention on Contracts for the International Sale of Goods.

1.6.3  Place of jurisdiction

No. 20.

Legal actions brought by an entrepreneur against OeKB may only be filed in the court having subject-matter jurisdiction at the place of OeKB’s registered office. This shall also be the place of jurisdiction in case of legal actions brought by OeKB against an entrepreneur, notwithstanding OeKB’s right to file a claim in any court having local jurisdiction and jurisdiction over the subject-matter.
1.7 Termination of the business relationship

1.7.1 Termination

Contractual notice of termination

No. 21.

Unless the agreement has been concluded for a definite period of time, OeKB and the customer shall be entitled to terminate the entire business relationship or individual parts thereof at any time by observing a notice period of one month.

Termination for cause

No. 22.

(1) Notwithstanding any agreements to the contrary, OeKB and the customer shall be entitled to terminate the entire business relationship or individual parts thereof at any time with immediate effect for good cause.

(2) There is cause for termination by OeKB in particular if:

- a deterioration of or risk to the financial situation of the customer or a co-obligated party arises which jeopardises the ability to meet commitments to OeKB, or
- the customer furnishes incorrect information about their financial situation or other essential facts and circumstances
- the customer does not meet their obligation to prove their identity under banking regulations (No. 10) or
- the customer fails or is unable to fulfil the obligation to provide or increase collateral.

1.7.2 Legal consequences

No. 23.

(1) Upon termination of the entire business relationship or individual parts thereof, the amounts owed thereunder will immediately become due and payable. In addition, the customer shall be obliged to release OeKB from all liabilities assumed for it.

(2) Furthermore, OeKB shall be entitled to terminate all liabilities assumed for the customer and to settle these on behalf of the customer as well as to immediately redebit conditionally credited amounts. Claims arising from securities, in particular bills of exchange or cheques, may be asserted by OeKB until potential debit balances, if any, are covered.

(3) These GTC shall continue to apply even after termination of the business relationship until complete settlement.

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2 Bank information

No. 24.

General information which is customary in banking practice about the financial situation of an enterprise will only be provided in a non-binding manner, unless there is an obligation to provide such information, and, vis-à-vis entrepreneurs, only in writing.

3 Opening and keeping of accounts

3.1 Scope of application

No. 25.

OeKB only provides cashless transactions using accounts. The following provisions apply to all accounts.

3.2 Opening of accounts

No. 26.

When opening an account the future account holder shall prove their identity and supply OeKB with the additional information under no. 10. Accounts shall be kept under the name of the account holder or the company name together with an account number.

3.3 Specimen signatures

No. 27.

Persons who are to be authorised to operate or sign on an account or securities account shall deposit their signature with OeKB. Based on the signatures deposited, OeKB shall permit written disposition in accordance with the account relationship. See also no. 3. paragraph 3.
3.4 Authority to dispose and to sign

3.4.1 Authority to dispose

No. 28.

Only the account holder shall be entitled to dispose of the account. Only persons whose power of representation is provided for by law or persons who hold an express written power of attorney to dispose of the account shall be entitled to represent the account holder; they shall be obliged to prove their identity and power of representation.

3.4.2 Authority to sign

No. 29.

The account holder may explicitly grant signatory power to other persons in writing. The person authorised to sign must prove their identity to OeKB. The authorised signatory shall be exclusively authorised to effect and revoke acts of disposition with respect to the credit balance.

3.5 Special types of accounts

3.5.1 Sub-account

No. 30.

An account may also include sub-accounts. Even if they are given sub-account names, the account holder shall be exclusively entitled and obligated towards OeKB in connection with the same.

3.5.2 Trust account

No. 31.

In case of trust accounts, only the trustee shall be entitled and obligated vis-à-vis OeKB as the account holder.
3.5.3 Joint account

No. 32.

(1) An account may also be opened for several account holders (joint account). Dispositions of the account, in particular the closing thereof and the granting of authority to sign, may only be made jointly by all account holders. Every account holder may be represented by an authorised representative, as the case may be.

(2) The account holders shall be jointly and severally liable for obligations arising out of the account.

(3) Unless otherwise expressly agreed, every joint account holder shall have individual power to dispose of the account. This authority will, however, be terminated by the express objection of another account holder. After this time, the joint account holders must act together.

(4) The authority to sign may be withdrawn by each account holder individually.

3.5.4 Foreign currency account

No. 33.

(1) If OeKB keeps a foreign currency account for the customer, transfers in the respective foreign currency shall be credited to such account unless a different transfer instruction has been given. If no foreign currency account exists, OeKB shall be entitled to credit foreign currency amounts in the national currency unless expressly instructed to the contrary by the customer (EUR at value date +2 working days). The amount shall be converted at the exchange rate of the day on which the amount in foreign currency is at OeKB’s disposal and may be used by it. The bid price of UniCredit Bank Austria AG or a comparable Austrian bank announced for the respective day shall be decisive here.

(2) Holders of credit balances in foreign currency shall bear pro rata up to their respective credit balances any and all financial and legal consequences and losses affecting the total credit balance in the respective currency held by OeKB in Austria and abroad which were caused by measures or events for which OeKB is not responsible.

(3) The obligation of OeKB to execute a disposition debiting a foreign currency credit balance or to fulfil a foreign currency liability shall be suspended to the extent that and for as long as OeKB is unable to dispose of the currency in which the foreign currency credit balance or liability is denominated, due to political measures or events in the country of that currency, or only to a limited extent. To the extent and as long as these measures or events continue, OeKB shall not be obliged to perform at another location outside the country of the currency, in another currency (also not in euro) or by purchasing cash. OeKB’s obligation to execute a disposition debiting a foreign currency credit balance shall not be suspended, however, if OeKB is able to execute it entirely in-house. The right of the customer and OeKB to offset mutual claims due in the same currency shall remain unaffected by the above provisions.

3.6 Balancing of accounts

No. 34.

(1) Unless otherwise agreed, OeKB shall balance the account on a monthly basis at the end of each month. All interest and fees accrued in the respective month form part of the closing balance which will be subject to further interest to be paid thereafter (compound interest).
(2) Hard copies of the statement of account including the balance of account shall be kept available for the customer at the account-keeping branch office of OeKB, or if the customer has an agreement to use the OeKB’s “Account Information” online service, transactions can be accessed online.

4 Current account transactions

4.1 Transfer orders

No. 35.

(1) In case of transfer orders for the benefit of a payee whose account is maintained by payment service providers domiciled in Austria, in another State of the European Economic Area (EEA) or in Switzerland, the customer has to designate the payee with its International Bank Account Number (“IBAN”).

In case of transfer orders for the benefit of a payee whose account is maintained by a payment service provider domiciled outside the EEA and Switzerland, the customer has to designate the payee:

- with their name and account number and either the name, bank sort code or the BIC of the payee’s payment service provider or
- with the name and IBAN of the payee and the BIC of the payee’s payment service provider.

The IBAN and BIC or account number and name/bank code/BIC details of the payee’s payment service provider to be provided by the customer shall constitute the payee’s unique identifier on the basis of which the transfer order is executed. If the customer provides information about the payee that goes beyond the IBAN and BIC, such as in particular the name of the payee, this information shall not form part of the customer identifier. It is therefore only used for documentation purposes and is not taken into account by OeKB when executing the transfer.

(2) The designated purpose stated in the transfer order is irrelevant for OeKB.

(3) The mere acceptance of a transfer order by OeKB shall not create any rights of a third party vis-à-vis OeKB.

(4) OeKB shall only be obliged to carry out a transfer order if sufficient funds are available in the customer’s account to cover the total amount to be transferred (credit balance, credit line granted).

4.2 Credit entries and right to cancel

No. 36.

(1) In case of a valid account agreement, OeKB shall be obliged and irrevocably entitled to accept amounts of money on behalf of the customer and credit the same to its account. Even after termination of the account agreement, OeKB shall be entitled to accept monies on behalf of the customer to the extent obligations of the customer exist in connection with the account, and to offset such amounts against any existing liability. The order to provide a customer with an amount of money shall be carried out by OeKB by crediting the amount to the account of the beneficiary unless otherwise instructed.

(2) OeKB shall be entitled to cancel at any time any credit entries made due to an error on its part. In other cases, OeKB will cancel a credit entry only if the invalidity of the transfer order is clearly proven to it. The right to cancel shall not lapse by any balancing of the account in the meantime. In case the right to cancel exists, OeKB may deny disposal of the amounts credited.
4.3 Credit entry – under reservation

No. 37.

(1) When OeKB credits amounts which it has to collect on behalf of the customer (in particular, when collecting cheques, bills of exchange and other securities, debit notes, etc.) to the customer’s account before the collected amount is received by OeKB, the credit entry is only made subject to actual receipt by OeKB of the credited amount. This shall also apply if the amount to be collected should be payable to OeKB.

(2) In view of this reservation, OeKB shall be entitled to reverse the credit entry by means of a simple entry if the collection has failed or if due to the economic situation of a debtor, intervention by a public authority or for other reasons it is to be expected that OeKB will not obtain the unrestricted right of disposition of the amount to be collected.

(3) The reservation may also be exercised in case the amount credited was collected abroad and OeKB is redebited the amount by a third party pursuant to foreign law or on the basis of an agreement entered into with a foreign bank.

(4) While the reservation is pending, OeKB shall also be entitled to refuse the customer to dispose of the credited amounts. The reservation remains in effect if the accounts are balanced in the meantime.

4.4 Debit entries

No. 38.

(1) In case of transfer orders, debit entries shall only be considered a confirmation that the order has been carried out if the debit entry was not reversed within two banking days.

(2) Cheques and other payment instructions as well as debit entries are deemed collected/cashed/honoured if the debit entry has not been cancelled on the debited account of the customer within two banking days unless OeKB has informed the presenter prior thereto.

4.5 Direct debit and company direct debit

No. 39.

(1) A direct debit exists if the payer authorises the payee, by means of a direct debit mandate directly and without the involvement of the payer’s bank, to collect amounts in euros from the payer’s account. A company direct debit exists if the payer authorises the payee, by means of a company direct debit, to collect amounts in euros from the payer’s account; both the payer and the payee must be entrepreneurs and the company direct debit mandate has already been submitted to the payer’s bank before the account is debited. The customer (payer) agrees to the debiting of their account with amounts which third parties authorised by them (payee) collect from their account by direct debit or company direct debit at OeKB. This approval may be revoked at any time in writing by the customer. Such revocation shall take effect on the business day following its receipt by OeKB. In the same way, the approval vis-à-vis OeKB for direct debits of an authorised third party may be limited to a certain amount or a certain period of time or both.

(2) OeKB shall execute direct debits and company direct debits with which the customer’s account is to be debited on the basis of the International Bank Account Number (IBAN) transmitted by the collecting bank. The IBAN details represent the customer identifier on the basis of which the direct debit or company direct debit shall be carried out. If the collecting
bank provides additional information about the customer, such as in particular the name of the account holder of the account from which the debit is to be made, this information shall therefore only be used for documentation purposes and not be taken into account when executing the direct debit or company direct debit.

(3) The customer (payer) may ask OeKB to reimburse the amount debited to their account on the basis of a direct debit mandate issued by them within eight weeks of the date on which their account was debited. OeKB must comply with this request of the customer within ten business days and reverse the debit of their account with the collected amount with value date on the date of the debit of the account.

(4) Notwithstanding paragraph 3, in the case of company direct debits, the customer shall have no right to demand reimbursement of the amount charged to their account on the basis of a company direct debit mandate issued by them.

(5) If the direct debit or company direct debit executed on the customer’s account was not authorised by the customer, the customer may demand reimbursement of the debited amount in accordance with no. 15. The period shall start to run once OeKB has made the information available to the customer by means of an account statement.

5 Fees for services and reimbursement of expenses

5.1 Fees

5.1.1 Principle that a fee has to be paid for services

No. 40.

(1) OeKB shall be entitled to charge the customer fees for its services, in particular interest, dues and commissions which are customary in banking practice.

(2) This also applies to appropriate services rendered by OeKB without instruction in case of emergency or to the benefit of the customer.

(3) OeKB is entitled to debit the account of the customer with fees due for payment. The customer must procure an appropriate credit balance on the debit day. The fees are described in detail on the account statement. A separate invoice will not be issued.

(4) The valid conditions (as amended in each case) are provided in the course of the account opening and later on request.

5.1.2 Amount of fees

No. 41.

OeKB shall be entitled to adequate fees for its services in each case, the amount of which will be displayed by OeKB in a scheme of conditions for certain typical services.
5.1.3  Change of fees for ongoing services

No. 42.

(1) OeKB may amend the fees for ongoing services to be provided by OeKB or the customer (including interest payable and interest receivable for accounts, account keeping fees, etc.) by taking into account relevant circumstances (in particular, changes in the legal framework, changes in the money markets or capital markets, changes in the refinancing costs, changes in the staff expenses and material expenditure, changes in the consumer price index, etc.) at its reasonable discretion.

(2) Changes to services provided by OeKB as well as changes to fees going beyond paragraph 1 and the introduction of new fees for already agreed services shall only be possible with the consent of the customer, whereby such changes shall take effect two months after the customer has been informed of the change offered by OeKB, unless the bank has received a written objection from the customer by then. OeKB shall inform the customer in the notification of the changes offered in each case as well as of the fact that the customer’s silence upon expiry of the deadline shall be deemed tantamount to consent. The notification of changes offered to the customer may be effected in any form agreed with the customer in the business relationship. The agreed form of service of statements of OeKB shall also apply to the notification of such changes.

5.1.4  Reimbursement of expenses, default interest

No. 43.

(1) The customer shall bear all expenditure, expenses, disbursements and costs incurred in the business relationship between it and OeKB, in particular stamp duties and legal charges, potential non-personal taxes, postage, cost of insurance, legal counsel, debt enforcement and collection, consultancy services in business administration, telecommunication as well as provision, administration, utilisation and release of collateral. In case OeKB is unable to carry out a payment order by the customer due to lack of cover or if it has to take action against the customer due to enforcement measures taken by third parties, it shall be entitled to collect an appropriate lump-sum expense allowance as displayed in the scheme of conditions.

(2) OeKB shall be entitled to charge such expenses as a lump-sum amount without specifying the individual amounts unless the customer expressly demands itemisation of the individual amounts.

(3) In case the customer is in arrears with the payment of a liability to OeKB, a default interest in the amount of 3 percent above the respective base interest rate is agreed.
6 Collateral

6.1 Provision and increase of collateral

6.1.1 Right to collateral

No. 44.

OeKB may demand from the customer within one week (even if the claims are conditional, limited in time or not yet due) for claims arising out of the business relationship the provision of collateral in form of bonds, issued by Member States of the EU which have adopted the euro, or bonds unconditionally guaranteed by them, to the extent of these claims and a safety margin of 10 percent.

6.1.2 Change in the risk

No. 45.

In case circumstances occur or become known which justify an increased risk assessment of the claims against the customer, OeKB shall be entitled to demand the provision or increase of collateral within one week. This shall, in particular, be the case if the economic situation of the customer has deteriorated or threatens to deteriorate or if the collateral available has deteriorated in value or threatens to deteriorate.

6.2 Lien of OeKB

6.2.1 Scope and coming into existence

No. 46.

(1) The customer grants OeKB a lien on any items and rights which come into the possession of OeKB and irrevocably commits themselves to make statements and take measures necessary for the creation of the lien.

(2) In particular the lien exists on all attachable claims of the customer against OeKB, such as under credit balances. In case securities are subject to the lien, the lien shall also extend to the interest and dividend coupons pertaining to such securities.

No. 47.

(1) The lien shall secure OeKB’s claims vis-à-vis the customer under the business relationship, including joint accounts, even if the claims are conditional or limited as to time or not yet due.
(2) The lien shall be created in case claims of OeKB pursuant to paragraph 1 exist when OeKB takes possession of the item; otherwise at any future point in time when such claims arise.

6.2.2 Exemptions from the lien

No. 48.

(1) The lien shall not include items and rights that have been dedicated by the customer to the carrying out of a certain order prior to coming into existence of the lien, such as amounts designated for the cashing of a certain cheque or honouring of a certain bill of exchange as well as for the carrying out of a certain transfer. This shall, however, apply only for as long as the dedication is valid.

(2) Notwithstanding the existing lien, OeKB will carry out dispositions of the customer regarding credit balances on current accounts in favour of third parties for as long as the customer has not received a notification by OeKB of the assertion of the lien. Attachment of the credit balance shall not be considered a disposition by the customer.

(3) The lien shall not include assets which the customer has disclosed in writing to OeKB as trust assets prior to the coming into existence of the lien or which have come into the possession of OeKB without the customer’s will.

6.3 Release of collateral

No. 49.

Upon the customer’s request, OeKB will release collateral to the extent it has no justified interest according to No. 44. and No. 45. in keeping it as security.

6.4 Realisation of collateral

6.4.1 Sale

No. 50.

Collateral having a market price or stock exchange price shall be realised by OeKB in compliance with the provisions of the Financial Collateral Act (Finanzsicherheiten-Gesetz, FinSG), if applicable, primarily by selling it at such price in the open market. However, OeKB and the customer also agree on any other manner of realisation provided for in the Financial Collateral Act, in particular the acquisition and charging of the asset, use in lieu of payment, set-off.

No. 51.

Should the Financial Collateral Act not be applicable or impracticable for OeKB, e.g. when there is neither a market nor a stock market price for the collateral, OeKB and the customer agree on a realisation of the collateral according to the provisions of sections 466a et seq. of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB).
6.4.2 Forced sale of collateral

No. 52.

OeKB shall also be entitled to realise the collateral by forced sale.

6.4.3 Collection

No. 53.

OeKB shall be entitled to terminate and collect all kinds of claims provided to it as collateral (including securities) at the time the secured claim becomes due, if there is a risk that they could not be recovered otherwise. Prior thereto, it is entitled to collect the claim serving as collateral when it becomes due. In case of a considerable and permanent loss in value of the claim serving as collateral, which jeopardises the recovery of OeKB’s claims, the same may be terminated even prior to its falling due. To the extent possible, the customer shall be informed thereof in advance. Amounts collected prior to the due date of the secured claim shall serve as collateral instead of the claim collected.

6.5 Right of retention

No. 54.

OeKB shall be entitled to withhold payments to be made by it to the customer due to claims arising out of the business relationship even if they are not based on the same legal relationship. Number 48. and Number 49. shall apply accordingly.

7 Offsetting and crediting

7.1 Offsetting

7.1.1 By OeKB

No. 54.

(1) OeKB is entitled to offset all of the customer’s claims to the extent they are attachable against all liabilities of the customer vis-à-vis OeKB.

(2) Notwithstanding the existing right to offset, OeKB will carry out dispositions of the customer in favour of third parties in respect of credit balances on current accounts as long as the customer has not received an offsetting statement. Attachment of the credit balance shall not be considered a disposition by the customer.
7.1.2 By the customer

No. 55.

The customer shall only be entitled to offset their liabilities if OeKB is insolvent or if the claim of the customer is related to their liability or has been ascertained by court decision or recognised by OeKB.

7.2 Crediting

No. 56.

Notwithstanding the provisions of section 1416 of the Austrian Civil Code (ABGB), OeKB may credit payments first to claims of OeKB which are either unsecured or where the value of the collateral does not cover the claims. In this respect, it is irrelevant when the individual claims became due. This shall also apply to a current account relationship.