

General Terms and Conditions Orco Bank N.V.  
and Orco Bank International N.V.

We hand you herewith our *General Terms and Conditions*, the contents of which you will find in this booklet.

Please be guided accordingly, as these conditions are applicable to and govern all transactions between our clients and ourselves.

“These Terms and Conditions were shelved on December 30<sup>th</sup>, 2010 at the office of the Chamber of Commerce and at the Registry of the Court of First Instance”.

Upon receipt:

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Signature client

Date

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and Orco Bank International N.V.**

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# GENERAL TERMS AND CONDITIONS

## I. General Section

### Article 1 *Scope of application*

- 1.1 Exclusively these general terms and conditions shall apply to all existing and future agreements between (i) Orco Bank N.V. and/or (ii) Orco Bank International N.V., hereinafter each individually to be referred to as “the Bank”, and the Customer, and all acts arising from same, without prejudice to the provision in Article 1.3, and in as far as these general terms and conditions have not been deviated from in special terms and conditions applying to the specific services the Bank provides.
- 1.2 In the event of any conflict between the general section of these general terms and conditions and one of the special sections of these general terms and conditions, the provisions of the special general terms and conditions in question shall prevail.
- 1.3 (i) Applicability of the general terms and conditions of the Customer is hereby explicitly rejected. (ii) If different general terms and conditions are applicable or have been declared applicable by or on behalf of Customer, they shall not apply in the legal relationship with the Bank, unless the Bank has agreed to same in writing.

### Article 2 *Duty of due care Bank and Customer*

- 2.1 In the execution of all instructions of the Customer, the Bank shall observe due care and take the Customer's

interests into account to the best of its ability, it being understood that it is not obligated to use non-public information it has knowledge of, including price sensitive information.

- 2.2 In all acts arising from its relationship with the Customer, the Bank shall act in accordance with the instructions, customs and/or regulations existing in this respect at the time and place of these acts. If these instructions, customs and/or regulations would differ from each other, the Bank is authorized to determine what rule has priority.
- 2.3 The Customer shall observe due care towards the Bank and while doing so shall take the Bank's interests into account to the best of his ability. The Customer shall enable the Bank to observe its statutory and contractual obligations and to perform its services accurately. The Customer shall not make improper or unlawful use (cause to be used) of the services and/or products of the Bank, including use that is in conflict with legislation and regulations, serves offenses, or prejudices the Bank or its reputation or the integrity of the financial system.

### Article 3 *Customer information*

- 3.1 The Customer and his representatives are obligated to give the Bank any cooperation and provide any information to establish and verify inter alia their identity, date of birth, civil status, legal capacity, power to act, marital property regime or partnership property regime, legal form, place of residence and/or place of domicile (according to Articles of Incorporation), - in as far as applicable - their registration number in the Trade

Register and/or other registers, and their CRIB number. The Bank shall be notified of any changes in this information in writing as soon as possible. The Bank can make copies of documents showing this information and register and retain the information. If the Customer is a legal entity or a partnership, the Customer and its representatives are also obligated, upon the Bank's first request, to provide insight in the ownership and control structure of the legal entity or partnership.

- 3.2 The Customer is obligated to notify the Bank in writing of the address to which all documents meant for him are addressed. The Customer shall promptly notify the Bank of name changes and/or address changes.
- 3.3 The Bank is entitled to consider the Customer's most recent address known to it as the elected domicile of the Customer for all that concerns his relationship with the Bank. Consequently, any and all documents and processes meant for the Customer can be delivered or served at this address. The Customer shall be considered to have received any and all documents the Bank has sent to this address. If the Customer's address is not known to the Bank (anymore) due to the Customer, the Bank may conduct an investigation regarding the Customer's address without being obligated to do so. The costs of this investigation shall be paid by the Customer.
- 3.4 If a product or service of the Bank is bought by two or more persons, the Bank shall send the documents and/or information to the address these persons have given the Bank. If these persons do not agree (anymore)

on this matter, the Bank itself may choose what address of these persons it sends the documents and/or information to.

- 3.5 As long as the Bank has not received notification of the address of the Customer, the Customer shall be considered to have elected domicile at the address of the offices of the Bank in Willemstad, Curaçao.

#### **Article 4 *Power to act***

- 4.1 The Customer shall vouch for his full and unlimited power to act towards the Bank.
- 4.2 The Customer shall be liable towards the Bank for any loss the Bank suffers or will suffer, which loss is the consequence of the Customer's non-existing or not fully existing power to act. The Customer shall indemnify the Bank against any harmful consequences, claims of third parties included, that arise in whole or in part from the Customer's non-existing or not fully existing power to act.
- 4.3 Unless the Bank has confirmed in writing that it has taken proper note hereof, the Customer cannot invoke towards the Bank changes in the Customer's power to act or the power to act of the one representing the Customer towards the Bank, or any change, revocation, or any other cancellation of powers.
- 4.4 Retiring partners (or former partners in the event of dissolution) shall remain jointly and severally liable towards the Bank for what the Bank has to claim from the Customer, whether or not due and payable, and

the Customer, whether or not due and payable, and whether or not subject to conditions, at the time the Bank has confirmed in writing to have taken note of the retirement (dissolution); also after this the joint and several liability of the (former) partners continues to exist for the Customer's obligations entered into before notification to the Bank of a retirement or dissolution. The joint and several liability also continues to exist for obligations of the Customer based on acts already performed before the notification to the Bank of the retirement or dissolution.

**Article 5 *Power of attorney and power of representation***

- 5.1 The Customer can give a third party power of attorney to act with the Bank on his behalf. The authorized person is not authorized to pass the power of attorney granted to him to a third party. The Customer shall be liable towards the Bank for fulfilling obligations entered into by the authorized person. The Bank may require a power of attorney being granted in a certain manner and/or in a certain form and/or in conformity with a certain procedure. The Bank is not obligated to (continue to) act with an authorized person.
- 5.2 The Customer is obligated to provide the Bank with one or more specimens of the signature of the Customer and of third parties authorized to dispose of the account or other assets in the Bank's custody together with, for or on behalf of the Customer and to represent the Customer in the transactions with the Bank, together with a written statement of restrictions of these powers, if any.

- 5.3 The Customer, apart from his representative or agent, if any, shall be jointly and severally and fully liable towards the Bank for any loss the Bank might suffer on account of the acts of those who represent the Customer towards the Bank.
- 5.4 If no restrictions have been stated to the Bank as referred to in paragraph 5.2, even if aforementioned restrictions have been specified in Articles of Incorporation, regulations, general or specific powers of attorney, and/or other documents, each of the signatures the Bank has been provided with shall fully bind the Customer for any amount.
- 5.5 If the authorization of a representative of the Customer ends or a change occurs in relation to this authorization, the Customer is obligated, irrespective of registration in the public registers or publication hereof, to notify the Bank of this end or change as soon as possible in writing. The Customer cannot invoke toward the Bank registration in the Trade Register, Marital Property Register, or other registers, whether or not public, or changes in these registrations, unless the Bank has confirmed that it has taken note of a registration or change. The Bank can validly (continue to) execute instructions given to it by a representative before or briefly after the Bank has received this notification of the end or change, if it cannot reasonably prevent this execution.
- 5.6 The general terms and conditions and all other provisions, rules, and restrictions applicable between the Customer and the Bank shall apply by analogy to the representative in connection with his exercising his re-

presentation. The Customer shall be responsible for the compliance with same by his representative and shall see to it that the Customer and the representative keep each other fully informed of anything that is or may be important to them as Customer and representative.

## **Article 6 *Data and instructions***

- 6.1 The Bank may claim that for all acts with the Bank the Customer uses forms, data carriers and/or other means of communication established and/or approved by the Bank, notably in conformity with instructions to be given by the Bank for this purpose. The Customer shall see to it that the Bank timely has the disposal of any data of which the Bank indicates or of which the Customer should reasonably understand that they are necessary for correct service by the Bank.
- 6.2 The Customer shall never invoke towards the Bank that the signature cards given or sent to him by the Bank have been completed wrongly. The Customer shall see to it that instructions, statements, and notifications to the Bank are clear and contain the correct data. The Bank shall execute instructions for transfer based on the account number stated by the Customer, and it is not obligated to verify the accuracy of the data stated in the instruction.
- 6.3 Forms shall be fully completed by the Customer. The Customer shall use other data carriers or means of communication approved by the Bank in accordance with the instructions of the Bank. The Bank is authorized to not execute instructions if, at the time these instructions were given, the Customer did not use forms established

or approved by the Bank or other data carriers explicitly approved by the Bank. Notifications to the Bank shall only be deemed to have been given if the receipt hereof has been confirmed by the Bank in writing.

- 6.4 The Customer is obligated to carefully retain the forms given or sent to the Customer by the Bank; the Customer is obligated, immediately after becoming aware of loss or theft of one or more of these forms or any other irregularity, to notify the Bank hereof in writing. Until the time the Bank receives this notification, the consequences of the use of these forms, data carriers, or other means of communication shall be for account and risk of the Customer, unless the Customer proves that the Bank can be blamed in this regard. Upon receipt of this notification, the Bank shall make any effort to prevent the Customer from being prejudiced. However, the Bank does not accept any responsibility for the execution of instructions based on lost, stolen, or unlawfully used, falsified or falsely prepared forms.
- 6.5 The Customer is obligated, immediately upon terminating the relationship with the Bank, to promptly return unused forms to the Bank.

## **Article 7 *Indemnity***

- 7.1 The Customer can give the Bank instructions from time to time by telex/by fax/by e-mail with regard to the account(s) he has with the Bank.
  1. Payment and transfer of funds.
  2. Place, renew, or terminate time deposits.
  3. Such other instructions as the Customer can give the Bank in his capacity of Customer.

- 7.2 The Customer shall request the Bank to promptly execute these instructions given by telex/by fax/by e-mail, and in particular before the Bank has received the written confirmation from the Customer. The Bank itself shall confirm the execution of instructions in conformity with its ordinary business practice.
- 7.3 The Customer shall understand that the risk of misunderstandings, including the risk that instructions are given by unauthorized persons, is his and the Bank is not responsible for any loss that may arise from such misunderstanding or such unauthorized instructions.
- 7.4 This clause shall apply in particular if a written confirmation of the Customer would not correspond with the instruction executed by the Bank or if the written confirmation of the Customer would not correspond with the instruction given to the Bank in the Customer's opinion.
- 7.5 In the event of doubt, as a precaution the Bank can refuse, but without accepting any responsibility if the Bank would not refuse, to execute the Customer's instructions or any part hereof without accepting any liability. In such case the Bank shall notify the one giving the instruction that the Bank refuses to execute it.
- 7.6 The Customer's authorized person(s), if any, can also give the Bank any instructions on behalf of the Customer, provided that he/they has/have individual power to sign. Furthermore, the other general and special terms and conditions of the Bank shall fully apply.

## **Article 8 *Force majeure***

- 8.1 If the Bank fails to meet any obligation it has towards the Customer on account of force majeure, the Bank shall never be liable towards the Customer and/or third parties. Force majeure in the sense of this Article shall at any rate also, but not exclusively, include: international conflicts, violent or armed actions or serious threat of such actions, decisions and measures of the national or any foreign government or of a national, foreign, or international supervisory organization, industrial action, also among its own staff, breakdowns and/or industrial action in companies the services of which the Bank uses, lock-outs and boycott, failures in the power supply, in communications connections, or in equipment or software of the Bank.
- 8.2 If a circumstance as referred to in paragraph 1 of this Article presents itself, in order to limit the adverse effects hereof for the Customer as much as possible, the Bank shall take those measures that can reasonably be required from it.

## **Article 9 *Engagement third parties***

- 9.1 The Bank is authorized to use the services of third parties when executing the instructions of the Customer and when executing other agreements with the Customer, and outsource work (in part), and give third parties goods and/or negotiable instruments of the Customer in the name of the Bank in custody.
- 9.2 When choosing those third parties, the Bank shall observe due care. If the Bank proves that it has observed



due care in its choice, it shall not be liable for the failures of these third parties. If the Customer has suffered loss in that case, the Bank shall at any rate assist him as much as possible in his attempts to reverse this loss. If the Customer himself has engaged or appointed a third party, the consequences of this choice shall be for the Customer's account.

#### **Article 10 *Termination of the relationship***

Both the Customer and the Bank may terminate the relationship between them in whole or in part. If the Bank terminates the relationship, it shall notify the Customer of the reason of the termination, if requested. After termination of the relationship, the individual agreements existing between the Customer and the Bank shall be finalized as soon as possible with due observance of the terms applicable to same. During the finalization, these general terms and conditions and the specific terms and conditions applicable to the individual agreements shall continue to apply.

#### **Article 11 *Evidential value bank records***

With regard to what the Customer owes the Bank or has to claim from the Bank at any time, and with regard to all obligations of the Bank and the Customer towards each other, the financial records of the Bank, as appears from an extract from its books signed by the Bank, shall serve as full evidence, without prejudice to rebuttal evidence. The Bank is not obligated to retain its records longer than the statutory terms for retention.

#### **Article 12 *Special costs***

- 12.1 Any and all costs incurred by the Bank concerning the relationship with the Customer, including stamp duty, costs of cables, telephone, telex, fax, e-mail, and representation, as well as costs of appraisals deemed necessary by the Bank, also in case of (intended) sale, shall be paid by the Customer.
- 12.2 Costs and the interest the Customer owes the Bank shall be billed to the Customer by the Bank at times convenient to the Bank.
- 12.3 The costs of legal assistance, including the non-liquidated costs the Bank reasonably has had to incur concerning a dispute between the Customer and the Bank, shall be fully paid by the Customer.
- 12.4 The costs the Bank has to incur in and out of court if the Bank is involved in proceedings or disputes between the Customer and a third party shall be paid by the Customer.
- 12.5 Without prejudice to the above, all other costs that arise from the relationship with the Customer for the Bank shall be paid by the Customer within the limits of what is reasonable.

#### **Article 13 *Activities and purposes***

Upon the Bank's first request, the Customer shall provide the Bank with information on his activities and objects and on the reasons of (intended) buying of services and/or products from the Bank. The Customer

shall notify the Bank of the origin of the funds deposited or to be deposited with the Bank, negotiable instruments deposited or to be deposited, and objects given or to be given in (open) custody, if requested.

#### **Article 14 *(Video and audio) recordings***

The Bank can make video and audio recordings within the limits of applicable legislation and regulations for purposes such as proper business operations, providing evidence, fighting crime, and quality control. If, in the event that (video and audio) recordings are used by the Bank, the Customer demands from the Bank to comply with a duty to surrender a copy or transcript of a recording, he shall first state the relevant specifics such as the relevant date, time, and location.

#### **Article 15 *Continuity in services***

The Bank's object shall be the adequate functioning of facilities for its services (for instance equipment, software, systems, infrastructure, networks), but it shall not vouch for it that these facilities are continuously active and free from failures. The Bank shall make an effort to avoid interruption/failure within reasonable limits in as far as it is within its control, or otherwise to repair the interruption/failure within a reasonable period of time.

#### **Article 16 *Dutch and/or English language***

The communication between the Bank and the Customer shall be in Dutch and/or English, unless agreed differently in writing. The Bank may require that the Customer has documents written in a different language than Dutch or English translated into another

language approved by the Bank by a person that is qualified to do so in the Bank's opinion to the satisfaction of the Bank, at the Customer's expense. A translator in the language in question sworn in in this country is at any rate authorized to do so.

#### **Article 17 *Death Customer***

- 17.1 The Bank shall be notified of the death of the Customer in writing as soon as possible. As long as the Bank has not been notified of the death of the Customer in this manner, it can (continue to) execute instructions given by him or on his behalf. The Bank can validly (continue to) execute instructions given to it before or briefly after the Bank has been notified of the death of a Customer if it cannot reasonably prevent them from being executed.
- 17.2 After the death of the Customer, the Bank may require that the person(s) alleging to be authorized to perform (legal) acts regarding the Customer's estate submits/-submit to the Bank an attestation of admissibility to the estate in evidence hereof, issued by a civil law notary resident in this country, and/or other documents considered acceptable by the Bank.
- 17.3 Unless explicitly agreed differently in writing, the Bank is authorized, when the Customer has died, to surrender the balance in this account and anything other the Bank might have in its custody for the Customer, by which surrender it is discharged, to the person or persons who are mentioned as heir or executor in a certificate of inheritance issued in the customary form by a civil law notary.

17.4 The Bank is not obligated to provide information again on the acts and transactions performed before the time of death of the Customer.

**Article 18 *Check of data provided by the bank and instructions executed by the Bank***

18.1 The Customer shall check the confirmations, bank statements, invoices, or other statements or other data sent to him or made available to him in another manner by the Bank as soon as possible upon receipt. If the Bank makes such notifications available to the Customer electronically, the Customer shall check the data as soon as possible after they have been made available to him. The date of dispatch or of making available shall be the date of dispatch or of making available as appears from copies, mailing lists, or otherwise from the records of the Bank. The Customer shall check as soon as possible whether the Bank has executed instructions given by him or on his behalf accurately and completely. If the Customer does not receive notification from the Bank, whereas he knows or should know to expect a notification from the Bank, he shall notify the Bank hereof in writing as soon as possible.

18.2 If the Customer notices an inaccuracy or incompleteness, he shall notify the Bank hereof in writing as soon as possible and take any reasonable measures to prevent (further) loss. If the Bank notices that it has made an error or mistake, it shall correct it as soon as possible. The Bank shall notify the Customer as soon as possible of the error or mistake found.

18.3 The Bank is authorized to correct an error or mistake without the Customer's consent and to reverse a misentry. The Bank is authorized to reverse the crediting of an account of the Customer pursuant to an instruction given by a person without power of disposition or power to act.

18.4 If the Customer requests a copy of data he has already been given by the Bank earlier, the Bank shall give it to the Customer within a reasonable period of time and against payment of the reasonable costs to be incurred by the Bank, unless the Bank no longer has the data or the Bank has a reasonable ground not to comply with the request.

**Article 19 *Approval bank statements***

If the Customer has not disputed the content of the confirmations, bank statements, invoices, other statements or other data the Bank has sent or made available to the Customer within thirteen months after these data have been made available to the Customer by or on behalf of the Bank, the content of these data shall at any rate be considered to have been approved by the Customer, without prejudice to the obligations arising from Article 17 for the Customer. If there are calculation errors in those data, the Bank shall correct them, also after the term of thirteen months has expired.

**Article 20 *Retention obligation/obligation of confidentiality***

20.1 The Customer shall retain and handle means made available to the Customer, such as forms, data carriers, means of communication and security, cards, pin codes, access

codes, and passwords, with due care. The Customer shall handle personal pin codes and access codes and the like with due care and keep them secret from other persons. The Customer shall observe the security regulations issued by the Bank.

- 20.2 If the Customer knows or can reasonably suspect that means made available to him by or on behalf of the Bank have got in the hands of an unauthorized person or they have been or can be misused, or that an unauthorized person knows his pin code(s) and/or access code(s), he shall notify the Bank promptly hereof.

### **Article 21 *Commission, interest and expenses***

- 21.1 The Bank shall charge commission, interest and expenses for its services. The Bank may alter the amount hereof, unless agreed differently in writing. If the amount of this commission, interest and expenses has not been agreed on between the Customer and the Bank in advance, the Bank shall charge its customary commission, interest and expenses.
- 21.2 In its service, the Bank shall notify the Customer as much as reasonably possible of the height of its rates (commission, interest, expenses). The Bank shall see to it that this information is easily obtainable.
- 21.3 The Bank may debit an account of the Customer with the Bank for commission, interest and expenses the Customer owes the Bank without prior notification to the Customer. If an unauthorized overdraft is created in the account due to the debit entry, the Customer shall

supplement the overdraft promptly without notice of default by the Bank being required for this purpose.

### **Article 22 *Crediting reserved***

When an amount (to be) received in favor of the Customer is credited, there is a reservation that the Bank actually, definitively, and unconditionally receives this amount. If this is not fulfilled, the Bank may reverse the credit entry – without prior notification – by debiting the same amount retroactively. If the amount (to be) received by the credit entry has been converted in another currency, the Bank can debit in this different currency at the exchange rate of the time of execution. The Customer shall pay the costs incurred in connection reversing the credit entry.

### **Article 23 *Transfer fiduciary ownership as security***

- 23.1 Of all objects, securities, and negotiable instruments that the Bank, or a third party for the Bank, has or will have in its custody of or for the Customer or owes or will owe him on whatever account, including all claims the Customer has or will have on the Bank on whatever account, the Bank shall obtain a fiduciary ownership right as security for what it has or will have to claim from the Customer, due and payable or subject to condition, on whatever account.
- 23.2 Excluded are only those securities deposited with the Bank exclusively for special purposes, such as conversion, reduction of share capital, transfer, exchange, receipt of dividend, interest, coupon sheets, or dividend coupons.

23.3 Aforementioned fiduciary ownership right of the Bank shall be created each time when the Bank, or a third party for the Bank, obtains these objects, securities, and negotiable instruments in its custody or when these claims arise. The Bank is not authorized to sell the objects, securities and negotiable instruments surrendered to it in fiduciary ownership, unless it has a due and payable claim on the Customer. Furthermore, the Bank shall not proceed to selling before the Customer is in default.

23.4 If the Customer wants to dispose of part of the objects, securities, and negotiable instruments surrendered by him in fiduciary ownership, the Bank is obligated to give this part of these objects, securities, and negotiable instruments back to the Customer, provided that what remains for the Bank is sufficient cover for what the Bank has or will have to claim from the Customer.

## **Article 24 *Pledge***

24.1 By the fact that these general terms and conditions become applicable, the Customer:

- a) has undertaken to pledge the following goods, including the ancillary rights belonging thereto, to the Bank as security for all the bank has or will have to claim from him at any time on whatever account:
  - i. all (monetary) claims the Customer, on whatever account, has or will have on the Bank;
  - ii. all objects, negotiable instruments, securities and other financial instruments the Bank, or a third party for the Bank, has or will have in its custody of or for the Customer on whatever account;
  - iii. all shares in collective deposits the bank has or will have in its custody;

- iv. all goods that (will) replace the goods under i, ii, or iii;

- b) in as far as possible by law, has pledged the goods referred to under a to the Bank;

- c) has given the Bank irrevocable authorization, with the right of substitution, to pledge these goods to itself on behalf of the Customer, if necessary repeatedly, and to do anything that is useful for the pledge.

24.2 The Customer shall vouch for it that he is authorized to make the pledge and that the goods in question are (will be) free from rights and claims of others than the Bank.

24.3 The Bank shall release the pledged goods, if the Customer wants to dispose of same, if the value of the remaining pledged goods provides sufficient cover for all it has or will have to claim from the Customer on whatever account. The Bank shall not proceed to sale of the pledge goods until it has a due and payable claim on the Customer and the Customer fails to comply with same. The Bank shall not sell more of the pledged goods than necessary for the payment of the Customer's debt. After the Bank has used its power to sell, it shall notify the Customer hereof in writing as soon as possible.

## **Article 25 *Setoff***

The Bank can always set off what it has to claim from the Customer whether or not due and payable or subject to condition against counterclaims of the Customer on the Bank, whether or not due and payable, irrespec-

tive of the currency of the claims and counterclaims. If the Bank's claim on the Customer or the Customer's counterclaim on the Bank is not due and payable as yet, the Bank shall not use its power of setoff – if the Bank's claim and the Customer's claim are in the same currency – unless the counterclaim is attached or recovery is sought from it in another manner, a restricted right is created on it, the Customer transfers his counterclaim by singular title, the Customer is declared bankrupt or is granted a suspension of payments, or any other insolvency regulation or statutory debt adjustment becomes applicable to the Customer. Claims in foreign currency shall be set off at the exchange rate of the date of setoff. If possible prior to the setoff, the Bank shall notify the Customer hereof.

## **Article 26 *Securities***

26.1 By the fact that these general terms and conditions become applicable, the Customer has undertaken towards the Bank to provide (additional) security for all existing and all future claims of the Bank on the Customer, on whatever account, at the Bank's first request, to the satisfaction of the Bank. It always shall be so much, and for this purpose replaced and/or supplemented by the Customer, if necessary, to the satisfaction of the Bank, that the Bank, given the risk profile of the Customer, the coverage value of the securities and other factors, if any, relevant to the Bank, continuously has and will have sufficient security. At the Customer's request, the Bank shall state the reason of this provision of security, or the replacement or supplement hereof. The amount of the security requested shall be in reasonable proportion to the Customer's obligations.

- 26.2 Pledge and mortgage rights of the Bank, in the event that another bank continues the relationship of the Bank with the Customer in whole or in part as its legal successor by universal title, shall also serve in favor of this other bank as if it were the Bank itself.
- 26.3 The Bank can terminate its pledge or mortgage rights at any time, in whole or in part, by termination.
- 26.4 Creation of a (new) security in favor of the Bank shall not serve to replace or release (existing) securities.
- 26.5 If these general terms and conditions are used towards the Customer to amend, supplement, and/or replace previous general terms and conditions, all securities, rights to securities, and powers of setoff existing on account of these previous general terms and conditions shall remain in full force in addition to the similar rights and powers on account of these general terms and conditions.

## **Article 27 *Immediately due and payable***

If the Customer fails to meet any obligation towards the Bank, the Bank can make its claims on the Customer immediately due and payable by termination, unless this is not justified given the minor significance of the default. Such termination shall be effected in writing, stating the reason.

## **Article 28 *Taxes and charges***

Any and all taxes, charges, and the like – by whatever name and levied by whomever – related to the relationship between the Customer and the Bank shall be paid by the Customer, unless agreed differently in writing or a mandatory statutory provision prescribes differently.

### **Article 29 *Form of notifications to the Bank***

Notifications to the Bank shall take place in writing, unless another communication method has explicitly been agreed with the Bank.

### **Article 30 *Incidents and calamities***

If during (the execution of) an agreement between the Bank and the Customer an incident or calamity is imminent, presents itself, or has presented itself, the Customer shall do or omit anything the Bank reasonably deems necessary in this regard at the Bank's request.

### **Article 31 *Contract takeover***

By the fact that these general terms and conditions become applicable, the Customer has given his cooperation in advance, in the event of transfer (in part) of the Bank's business, that his legal relationship with the Bank within the framework of this transfer (in part) passes to a third party (in part).

### **Article 32 *Partial invalidity or voidability***

Should any provision in these general terms and conditions be invalid or voidable, this shall not render another provision hereof invalid or voidable (in part). Should any provision in these general terms and conditions be invalid or voidable, it shall be replaced with a valid provision that most resembles the purpose of the invalid or voidable provision.

### **Article 33 *Liability of the Bank***

The Bank shall be liable if failure to meet an obligation towards the Customer is attributable to it or is its responsibility by law, legal act or according to public opinion, without prejudice to provisions elsewhere in these general terms and conditions.

In as far as it not already originates from the law the Bank shall at any rate not be liable if failure of the Bank is the result of:

- international conflicts;
- violent or armed actions or serious threat of such actions;
- measures of any national, foreign, or international government;
- measures of a supervisory organization;
- boycott actions;
- industrial action with third parties or among its own staff;
- capacity problems with and/or failures in the power supply, in communications connections, or in equipment or software of the Bank or of third parties.

If a circumstance as referred to in the previous paragraph presents itself, in order to limit the adverse effects hereof for the Customer, the Bank shall take those measures that can reasonably be required from it.

## **II. Special Section – Securities**

### **Article 34 *Administration securities***

- 34.1 Stock exchange orders shall be numbered consecutively by the Bank, except if there are different instructions. Before the Bank can execute a share option order, the Customer shall sign an option agreement first. Securities and other stocks of the Customer that are held by third parties in the name of the Bank in favor of the Customer shall remain there for the Customer's account and risk. The Bank is entitled at all times, in order to meet its obligation to surrender these stocks to the Customer, to suffice by instructing the third party to make these stocks available to the Customer, or to transfer its rights in this regard towards the third party to the Customer.
- 34.2 The securities and other stocks deposited with third parties in the name of the Bank in favor of the Customer shall constitute part of the total stocks deposited with third parties in the general account of the Bank; the Customer shall share in all risks attached thereto in proportion and per stock fund.
- 34.3 The Bank is entitled to engage third parties for the execution of the instruction given to the Bank by the Customer. The Bank is also authorized to cause securities and other stocks of the Customer in the name of the Bank in favor of the Customer to be in the custody of third parties. The Bank is also entitled to give these third parties coverage for the Customer's account and risk.

### **Article 35 *Defects in securities***

The Bank shall not be liable for the defects in negotiable instruments held or to be held by it for the Customer, nor for the correctness of their contents.

### **Article 36 *Accountable for numbers of securities***

- 36.1 The Customer's securities given in custody to third parties by the Bank pursuant to the provisions in these general terms and conditions shall constitute part of the total securities deposited with those third parties in one of the general securities deposits in the name of the Bank. The Bank is not obligated to let the numbers of these securities be established for each Customer individually, with the exception of securities to which special rights are or can be attached for certain numbers.
- 36.2 Unless explicitly agreed in writing that it will do so, the Bank shall not be accountable for numbers of securities to Customers, with the exception of those that may be drawn by lots.

### **Article 37 *Administration of securities deposits***

With regard to the securities entrusted to the Bank by the Customer for this purpose, the Bank shall charge itself with the work belonging to the administration of the securities deposit of the Customer. This work shall encompass inter alia the collection of interest, repayments and dividends, to exercise pre-emptive rights or convert same into cash, to obtain new coupon or dividend sheets, to perform conversion acts and to deposit securities for meetings. If securities of the Customer



have been given to third parties in custody by the Bank pursuant to the provisions in these general terms and conditions, these third parties are charged with the work attached to the administration of these securities, without prejudice to the Bank's obligation to pay the Customer the amounts it receives from these third parties for interest, repayment, dividend, or on any other account in favor of the Customer.

**Article 38 *Bank's authority to buy and sell securities and the like***

The Bank is authorized to execute all instructions to buy and sell foreign stocks, securities, coupons and negotiable instruments, and to deposit or withdraw funds against collateral of securities at its discretion, with itself or third parties as the other party.

### **III. Special Section – Accountholders**

#### **Article 39 *Bank account***

- 39.1 Apart from the general section, the general terms and conditions included here under special section III shall also apply to all agreements between the Bank and the Customer with regard to accounts of the Customer with the Bank.
- 39.2 With regard to an account opened with the Bank it shall not be accountable to or communicate anything to anyone except the one in whose name the account has been opened, without prejudice to the cases provided for by law.
- 39.3 The Customer shall agree to storage in databanks of any information related to the Customer that is required or desired for a proper execution of his instructions. The Bank shall not be liable for any consequence arising from unlawful use of aforementioned databanks by third parties, including staff of the Bank.

#### **Article 40 *Joint and several and full liability in the event of several accountholders***

- 40.1 If more than one person can dispose of an account with the Bank, acts related to this account shall be attributed to all persons authorized for this purpose and be binding to all of them. All aforementioned authorized persons shall be jointly and severally and fully liable towards the Bank for any acts related to the account.
- 40.2 If an account has been opened in the name of a (gene-

ral) partnership not being a corporation, each of the partners is fully entitled towards the Bank to dispose of the account, and all partners shall be jointly and severally liable for acts of one or more of them with the Bank for the entire amount, unless and only in as far as agreed differently with the Bank in writing in advance.

- 40.3 If an account is opened in the name of a committee or any other group of persons that are an association without full corporate personality, those who can dispose of the account according to the signature card shall be jointly and severally liable for the entire amount. With written consent of the Bank, they can be replaced by others, but they shall remain liable in that case for the obligations towards the Bank that should exist during their replacement or arise directly from acts dating back to before the time of the replacement.

#### **Article 41 *Title of account***

- 41.1 The titles of the accounts shall be in accordance with the wishes the Customer has expressed on this point, unless the Bank objects to it.
- 41.2 The Bank is authorized, subject to notification to the Customer, to divide his account into various accounts and to determine the titles of these accounts if the Bank deems it desirable.
- 41.3 If the Customer holds more than one cash account with the Bank, these accounts shall be treated as if they were of different persons, without prejudice to the Bank's authority to consider these accounts to be one account when the Bank sees fit – irrespective of

the currency in which and the terms subject to which they are kept – and to set off the balances against each other. This setoff shall always take place at the value on the date of the setoff.

#### **Article 42 *Exchange differences***

With regard to an account in foreign currency that shows an overdraft, an exchange loss, if any, shall be paid by the Customer in this sense that, in the event of a decrease in the selling rate of the currency in question determined by the Central Bank of Curaçao and St. Maarten, the Bank is authorized to charge the exchange loss that has arisen on account of this decrease at the time desired by it to the Customer's account.

#### **Article 43 *Use of means of communication***

- 43.1 The Customer shall bear the full risk of misunderstanding, mutilation, delay or improper transmission of instructions and notifications from the Customer to the Bank when using mail, cable, telex, telephone, fax, e-mail or any other means of communication in the transactions between the Customer and the Bank and between the Bank and third parties. Without prejudice to the above, the Bank is entitled not to proceed to execution of instructions it has received that seem unclear to it until the Bank has received confirmation or clarification of these instructions.
- 43.2 The Bank shall be free in the choice of the means of communication it uses. All mailings to or by the Bank from or to the Customer or third parties in favor of the Customer shall take place for the Customer's account and risk.

- 43.3 The Customer is obligated in the transactions with the Bank to handle the use of internet, fax, e-mail, mail, or other means of communications with due care and safely.

#### **Article 44 *Interest***

The percentage of the interest owed by or payable to the Customer shall be determined by the Bank and may be changed by it from time to time without the Customer being able to object to it.

#### **Article 45 *Unauthorized overdraft***

If the Customer's account shows an overdraft not authorized by the Bank or the loan is in arrears, and the Customer does not settle this overdraft or arrears within the term set for this purpose by the Bank, the Bank is authorized to report the Customer to a credit registration agency and to charge the accountholder debit interest in conformity with Article 44.

#### **Article 46 *Credit immediately due and payable***

- 46.1 Each credit shall be immediately due and payable, also if a repayment interest and/or notice period has been agreed on or a certain due date has been determined,
- a. if the Customer does not strictly observe the terms under which the credit has been granted;
  - b. if the Customer is declared bankrupt, applies for suspension of payments, or if the Customer's goods or funds are attached;
  - c. if the Customer is a legal entity, in the event of liquidation or dissolution, and if the Customer is a natu-

ral person, at the time of his death or placement under guardianship;

- d. if one of the circumstances referred to under b or c presents itself with regard to a guarantor of the Customer;
- e. if it appears that the Customer has provided incorrect or incomplete data to obtain, increase, or extend a credit granted/to be granted by the Bank.

46.2 The Customer is obligated to pay all that is due to the Bank upon the Bank's first request to this effect.

## **IV. Special Section – ATM card**

### **Article 47 *Scope of application***

Special section IV shall apply to Customers of the Bank using an ATM card; the following shall be understood by:

#### ***Definitions:***

**ATM:** the money machines placed on various locations with the assistance of which one can use money machine facilities with an ATM card issued by the Bank for this purpose.

**Accountholder:** the Customer who has one or more accounts with the Bank and who has been issued the ATM card.

**ATM card:** the ATM card issued by the Bank.

**PIN code:** the personal identification number.

### **Article 48 *Ownership ATM card***

The ATM card shall remain property of the Bank at all times. The ATM card is strictly personal and shall not be transferred. The accountholder shall be fully liable for the use of the ATM card and shall be jointly and severally liable for each claim arising from the use and misuse of the ATM card.

### **Article 49 *Use ATM card***

In order to use the ATM, the accountholder shall enter

a PIN code determined by the accountholder and exclusively known to the accountholder. ID for the ATM shall be the PIN code together with the ATM card. Consequently, the accountholder is responsible for the correct use of the ATM card and PIN code. Each transaction for which the PIN code has been used shall consequently be considered to have taken place with consent of the accountholder, unless the accountholder proves the contrary. If the accountholder writes down the PIN code, he shall see to it that the PIN code and ATM card are kept separate from each other.

The ATM card can only be used to perform transactions related to the accounts the accountholder has with the Bank.

### **Article 50 *Authorization to debit the Customer's account***

In connection with transactions performed with the ATM card, the accountholder shall authorize the Bank to debit the money spent to the checking account and/or savings accounts of the accountholder and to credit deposits received to the checking account, savings accounts, account of a supplier or a third-party account.

### **Article 51 *Balance ATM system***

The balance stated to the accountholder by the ATM shall be the balance of the transactions in the account

processed in the ATM system until that time. This statement shall only be informative and the accountholder shall not derive any rights from it.

#### **Article 52 *Maximum amount***

The use of the ATM card is limited to a maximum amount per day determined in advance by the Bank, and this subject to the condition that the balance in the account so allows at the time of use. The Bank may impose additional provisions or restrictions for the use of the ATM card if the Bank deems it necessary in order to prevent any misuse hereof.

#### **Article 53 *Unauthorized overdraft***

If the use of the ATM card – despite the provisions in Article 51 – leads to an overdraft or excess of the permitted limit on the account not authorized by the Bank, the accountholder shall deposit the amount withdrawn in excess immediately back into the account at the first request of the Bank. The Bank is authorized to charge interest on the amount withdrawn in excess at the interest rate then applicable.

#### **Article 54 *Deposits ATM***

In connection with the possibility to make deposits in the checking account and/or savings account, the Customer can make deposits by using the envelope provided by the ATM for this purpose. All deposits are subject to a final inspection by two staff members of the Bank.

The accountholder is obligated to enclose a signed specification of the content in each envelope. The Bank itself shall also make a specification of the content established by it, which shall be binding for the Customer, without prejudice to the Customer's right to provide rebuttal evidence. If the accountholder fails to dispute the specification made by the Bank as appears from the bank statement within one month after the date on which he is considered to have reasonably received this statement, the specification shall be considered to have been approved by the Customer and the Bank's specification shall be binding to the Customer, without prejudice to the Customer's right to provide rebuttal evidence.

#### **Article 55 *Payment instructions***

In connection with the possibility to give the Bank payment instructions, the Customer shall enclose the transfer instruction in the envelope provided for this purpose by the Bank for the ATM payment instructions.

#### **Article 56 *Blocking of ATM card***

The Bank shall reserve the right to block the use of the ATM card effective immediately with or without reasons, to prohibit the use of the ATM card by the accountholder, and to make the decision to not extend the agreement anymore. In that case, the ATM card shall become invalid and the accountholder is obligated to return the ATM card to the Bank, immediately

after he can reasonably be considered to have been notified hereof. The Bank is entitled to take back the ATM card at all times, and within seventy-two (72) hours after it has been taken back, the Bank shall notify the accountholder in writing or by telephone of the reasons hereof.

**Article 57 *Return and taking back of ATM card***

The accountholder shall return the ATM card promptly to the Bank in the following cases:

- at the Bank's first request;
- if the ATM card has been damaged or does not work properly;
- if the accountholder suspects that third parties know the PIN code;
- if the accountholder is declared bankrupt, has applied for suspension of payments, or has lost the power to dispose of the accountholder's capital in any other manner;
- if the accountholder closes the checking account as well as the savings account with the Bank.

The ATM shall automatically take back the ATM card:

- if the wrong PIN code is entered three times in a row;
- if the Bank has blocked the use of the ATM card for whatever reason;
- if the Customer leaves the ATM card in the money machine for more than 30 seconds after the completion of the last transaction.

**Article 58 *ATM taking back money***

The ATM shall automatically take back the money issued if the Customer does not take the money issued from the machine within thirty (30) seconds. In this case the Customer shall promptly contact the Bank.

**Article 59 *Death or placement under guardianship Accountholder***

In the event of death or placement under guardianship of the accountholder, the ATM card shall become invalid and it shall promptly be returned to the Bank.

**Article 60 *Theft or loss ATM card***

In the event of theft or loss of the ATM card, the accountholder shall promptly notify the Bank hereof. If this notification takes place by telephone, the accountholder has to confirm it in writing within twenty-four hours after this notification.

The accountholder is obligated to report the theft or loss of the ATM card to the police at the Bank's request. The accountholder is also obligated to assist the police and the Bank in an investigation related to the report of the theft or loss of the ATM card.

**Article 61 *Having a checking account***

As long as this agreement is in effect, the accountholder shall have at least one checking account with the Bank. If all accounts of the accountholder are closed,

the rights/privileges attached to the ATM of the Bank shall be terminated effective immediately and the accountholder shall promptly return the ATM card to the Bank.

**Article 62 *Joint and several liability  
accountholder***

The accountholder shall be jointly and severally liable towards the Bank for all transactions in connection with and for the use of the ATM facilities of the Bank, unless and in as far as the accountholder has explicitly agreed differently with the Bank in writing. The general terms and conditions of the Bank shall also apply to all transactions between the accountholder and the Bank. In the event of any conflict between the general terms and conditions of the Bank and these ATM terms and conditions, the ATM terms and conditions shall prevail.



## **V. Special Section – Online Banking**

### **Article 63 *Creation OBO pass agreement***

These general terms and conditions shall apply to the legal relationship between the Customer/accountholder and the Bank with regard to the use of Orco Bank Online (“OBO”). The agreement between the Bank and the Customer shall be created at the time the Bank accepts the Customer’s application for the use of online banking services by OBO. By applying for the OBO pass, the Customer agrees to the applicability of these general terms and conditions.

### **Article 64 *Secret access codes Customer***

- 64.1 The secret access codes of the Customer shall be the key to the Customer’s account when the Customer uses OBO. The secret access codes of the Customer are valuable and shall be kept secret at all times.
- 64.2 This shall apply to all secret access codes such as the SVC (Secret Verification Code), the Customer ID, and the unique 4-digit PIN (Personal Identification Number) of the Customer.
- 64.3 The Customer undertakes to notify the helpdesk of the Bank during business hours, promptly and without any delay, by telephone and immediately thereafter in writ-

ing, if the Customer suspects that an unauthorized person has knowledge of or access to one of the secret access codes of the Customer.

### **Article 65 *Instructions***

- 65.1 For all instructions given by OBO the Customer shall use the combination of the unique 4-digit PIN and the numeric password the OBO pass generates. The Customer shall be responsible for all instructions the Bank is given by OBO, irrespective of whether these instructions come from the Customer or from another person and with or without knowledge or consent of the Customer. The Customer shall agree to it that the Bank can assume the authenticity of instructions given by OBO and that the Bank may rely on these instructions without conducting any investigation into the authority or identity of the sender of these instructions.
- 65.2 The Customer shall consequently vouch for the accuracy of the instructions given by the Customer by OBO. The Bank is entitled to execute any instruction received by OBO.
- 65.3 The Customer shall notify the Bank promptly by telephone and immediately thereafter in writing if the Customer notices an unauthorized transaction from an account or unauthorized use of the service.

### **Article 66 *Termination***

- 66.1 The Bank can suspend or cancel the Customer’s access

to OBO at any time and notify the Customer hereof. If the Customer does not use OBO for a period of six (6) months, the Bank can cancel the Customer's access to OBO and notify the Customer hereof as soon as possible. The Bank shall not accept any responsibility for any loss the Customer may suffer because the Customer's access to the service has been suspended or cancelled.

66.2 The Customer can cancel the use of OBO at any time by notifying the Bank hereof in writing. The Customer shall remain responsible for all transactions performed with regard to the Customer's account until the access to the service has been cancelled.

### **Article 67 *Restriction of liability***

If and in as far as the Bank meets its obligation to exercise due care and competence in providing its services, the Bank shall not be liable towards the Customer and not accept any responsibility for any loss, damage, costs or expenses, directly or indirectly, consequential loss and other loss presenting themselves in connection with one or more of the following circumstances:

1. the Customer's use of OBO; or
2. unauthorized use of the Customer's PIN; or
3. a failure in a system or in a telecommunications link; or
4. a violation, error or defect in the design or technology of the service or a delay or error in the access to the service, or failure to gain access to the service or loss of access to the service; or

5. a delay or non-compliance of the Bank on account of matters beyond its reasonable control (force majeure). The Bank shall not be a party to and shall not be liable and/or responsible for concluding, amending, or terminating agreements, or performing (legal) acts between the Customer on the one hand and a third party on the other.

### **Article 68 *Authorize a third party***

The Customer shall accept full responsibility and shall not hold the Bank liable for any loss or unauthorized use of the OBO pass on account of the fact that a third party picks up the OBO pass/PIN/SVC of the Customer with an authorization granted by the Customer or on account of authorization to the Bank to send the Customer's OBO pass/PIN/SVC by foreign courier as agreed on in the authorization letter or indemnity letter the Customer has signed.

### **Article 69 *Payment for replacement OBO pass***

The Customer shall be billed a fee for the replacement of the OBO pass in the event that the OBO pass is lost, stolen, or damaged. In all other cases of replacement, the Bank reserves the right to bill the Customer a fee.

## **VI. Applicable law and competent court**

### **Article 70** *Applicable law*

Exclusively the laws in effect in the place of domicile of the Bank shall apply to the relationship between the Bank and the Customer. For the purposes of this provision, the place of domicile of the Bank shall be considered to be the office or branch office of the Bank where the Customer has his account.

### **Article 71** *Competent court in the event of disputes*

Disputes between the Customer and the Bank, also those disputes that are only considered to be a dispute by one of the two parties, shall be tried by the court in Curaçao, Bonaire, Saba, Statia, or St. Maarten that is competent pursuant to locally applicable law, with the exclusion of other courts, unless the Bank is plaintiff and would prefer a different competent court.

## **VII. Amendments and supplements to the general terms and conditions**

### **Article 72 *Amendments and supplements to the general terms and conditions***

- 72.1 Deviating from or supplementing these general terms and conditions shall only be possible if this has been recorded by the Bank in writing.
- 72.2 The Bank is entitled to amend the content of these general terms and conditions with due observance of the following. Amendments shall be considered to have been accepted by the Customer if he has not made his objections to same known to the Bank, in writing and substantiated, within 4 weeks after he has been notified of the amendments. Amendments and supplements to these general terms and conditions shall also bind the Customer one month after they have been filed by the Bank with the office of the clerk of the Court of First Instance and/or with the office of the Trade Register kept by the Chamber of Commerce and Industry.
- 72.3 The text of these general terms and conditions and the amendments the Bank might make to same shall be open for inspection at all times at the Bank's offices or have been filed with the office of the Trade Register kept by the Chamber of Commerce and Industry or with the office of the clerk of the Court of First Instance. At the Customer's first request, the Bank shall

send him the prevailing text of the general terms and conditions free of charge by return mail.

- 72.4 Copies of the general terms and conditions can be obtained at all times at the offices of the Bank or can be consulted at the Bank's website: [www.orcobank.com](http://www.orcobank.com).