Delivery and Service Conditions for Electronic Banking Software and Hardware Products of Commerzbank AG

As at: June 2018, Commerzbank AG Vienna Branch, Austria

1. Software license

1.1. Usage rights/copyrights

Upon payment of the agreed license fee or purchase price, the Customer (account holder who is not a consumer within the meaning of ZaDiG [Payment Services Act] 2018) acquires a non-exclusive right to use the electronic banking software and hardware products of Commerzbank AG ("EB Software Products") specified in the Agreement on Cooperation in the field of Commerzbank Transaction Services in the following countries of the European Union:

Austria, Belgium, Denmark, Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland (provided the United Kingdom of Great Britain and Northern Ireland is a member of the European Union). Licensed use includes complete or partial storage of the licensed programs in non-power driven memories as well as execution of the programs, processing of stored data and creation of further program copies in power-driven memories to the extent this is required for the contractually agreed use. If EB Software Products are used in other countries, the Customer is obliged to check the conformity of the EB Software Products with national and international rules.

The Customer shall take all measures required for use, in particular by obtaining any approvals required and complying with reporting duties. EB Software Products may not be used in countries that restrict the use or the import/export of encryption techniques.

The copyrights for the EB Software Products shall remain with the respective authors. When concluding the Agreement, the Bank shall deliver the most recent version valid on that date. Delivery of EB Software Products may also be made by providing a download to the Customer.

1.2. Scope of use, data backup, network license

The Customer may use the EB Software Products according to the Agreement only on a single data processing system (PC/workstation). The Customer is authorised to create program copies for data backup. Use in a network with several workstations is only permitted if this has been expressly agreed (network license).

If a network license has been agreed, the EB Software Products may only be used for the number of workstations specified in the order form.

1.3. Duplication and distribution ban

It is not permitted to copy programs for the purpose of leasing or selling them or for other reasons. Access to or use of the programs, either in full or in part, by third parties may not be granted for these purposes. The programs may be sold if the Customer completely abandons the right of use, deletes all copies of the software from the Customer's data storage and destroys any backup copies. The Customer shall notify the Bank thereof and also indicate to whom the programs have been sold. In the case of such a sale, the Customer is required to impose the obligations contractually agreed with the Bank on the buyer.

1.4. Use, revision and modification

The modules made available may neither be revised nor used for purposes other than electronic banking with the Bank, except for the cases permitted by law (sections 40d, 40e and 40f UrhG [Copyright Act]). Individual components of a module made available may only be used in conjunction with the relevant main program. The copyright annotations attached to the programs and to the documentation, which indicate the software suppliers' copyrights to the various EB Software Products, may not be removed or altered.

1.5. Duties of care

The Customer shall be obliged to change specified passwords and other variable security measures immediately upon initial installation of the EB Software Products and to keep them secret afterwards. The Customer shall also require employees of the Customer who use the EB Software Products to comply with the conditions of the Agreement.

1.6. Third-party property rights

In the event that property rights to the software are asserted by third parties, the Customer shall inform the Bank immediately and leave the defence against such claims exclusively to the Bank. If a third party asserts personal claims against the Customer, legal steps shall be taken in close coordination with the Bank.

2. Installation/provision of services

2.1. Hardware requirements

The hardware provided by the Customer shall meet the requirements specified in the fact sheet "Technical requirements for electronic banking software products of Commerzbank AG". In the case of discrepancies, the Customer shall inform the Bank of any such discrepancy prior to installation. The Customer shall ensure that the hardware is ready for use and that the technical prerequisites for operation of EB Software Products have been put in place.

2.2. Installation/prerequisites for installation

The Bank shall install the software on the hardware (PC workstation). To this end, the Bank may commission third parties to act as sub-providers. The Customer shall make sure that the necessary prerequisites for installation are met on the Customer's side.

2.3. Provision of services

In addition to the installation of the Software Products, the Bank may also provide additional services required for maintaining the operational readiness of the EB Software Products (provision of services). The Customer shall order such services separately according to the terms and conditions specified in the order form.

2.4. Modifications to existing computer systems

For the purpose of installing or providing services, modifications to the Customer's existing hardware or software may become necessary. The Bank shall explain to the Customer the modifications necessary for installation prior to their implementation. When the Customer agrees to such modifications, the Customer shall assure the Bank that there are no legal obstacles (e.g. restrictions specified by lessors) and that other programs and the hardware itself will not be affected by these modifications and that no liability claims will be asserted against the Bank as a result of any damage that may arise.

2.5. Indemnification

In the event that claims are asserted against the Bank by third parties as a result of such modifications, the Customer shall hold the Bank harmless from and against these claims if the Customer has culpably breached an obligation towards the Bank.

3. Software maintenance

3.1. Scope of services

If software maintenance has been agreed in the order form, the Bank shall provide the following services within the scope of its software maintenance:

- supply of updates, i.e. software adjustments and enhancements
- analysis and remedy of errors in accordance with sections 3.3 and 3.4
- hotline service in accordance with Section 4

3.2. Customer's duty of documentation

Analysis and removal of errors require that the Customer provide information and data that allow the tracking and/or reproduction of errors.

3.3. Error analysis of third-party EB Software Products

When the EB Software Products delivered by the Bank contain errors, the Bank may provide subsequent performance at its own discretion by either correcting the errors or delivering new software. In respect of EB Software Products that the Bank, according to the order form, only distributes as a licensee, the Bank needs the assistance of the supplier who will usually correct errors by releasing updates or correction patches. To this end, the Bank shall inform the supplier/licensor of program errors due to the software itself, and aim to ensure that such errors are removed by the next update. The Customer may be asked to wait for the next update if this is reasonably acceptable for the Customer.

3.4. Error correction for the Bank's EB Software Products

For EB Software Products that are not third-party products, the Bank shall record errors, analyse them and endeavour to find a solution. To this end, the Bank shall offer, at its discretion, temporary error correction options, workarounds or error removal by means of a correction program (patches) or a new version (update). Patches or updates may also be made available by offering the Customer a download via remote data transmission from a website specified by the Bank.

3.5. End of maintenance obligation for previous versions

The Bank's obligation to provide maintenance for previous software versions ends at the latest 12 months after the Bank's notification that a new software version is available. This shall not apply to the Customer's deficiency claims that result from corresponding legal provisions.

4. Hotline service

4.1. Hotline service

The Bank has set up a hotline service that will assist the Customer by telephone or email in the use of EB Software Products. If malfunctions or other problems occur during the use of EB Software Products, the Customer may send inquiries to the Bank via the hotline during specified hours. The Customer may contact the hotline by telephone, fax or email at the specified numbers/email addresses.

4.2. Duty to check and cooperate when contacting the hotline service

Inasmuch as the Bank makes suggestions on how to remedy disruptions or other problems via its hotline service, the Customer shall, prior to their implementation, check the effects that the respective measures may have on other hardware and software components. If necessary, the Customer shall contact the supplier of the respective hardware or software prior to implementation of the envisaged measures.

5. Remote maintenance

When specified in the Agreement on Cooperation in the field of Commerzbank Transaction Services, the Bank may also carry out a respective error analysis or error correction via remote data transmission by establishing a direct communication link to the Customer's computer (e.g. via modem).

As part of remote maintenance, an expert of the Bank may access the Customer's computer via the telecommunication connection and carry out an error analysis. To this end, the Customer shall provide the necessary prerequisites for such access. Particulars in this respect shall be agreed separately.

Inasmuch as the legal provisions do not obligate the Bank to correct deficiencies, the Bank shall not be responsible for the correction of such deficiencies but only for their analysis. Prior to an analysis by remote maintenance, the Customer is obliged to carry out a data backup and to inform the Bank of any possible conflicts with other systems and stored data.

6. Training

If agreed in the Agreement on Cooperation in the field of Commerzbank Transaction Services, the Bank shall provide training measures to instruct the Customer's employees in the use of EB Software Products to the extent specified in the order form. Particulars regarding group size, number of trainers employed

by the Bank, travel costs, expenses and training documentation shall be agreed in the order form.

7. General rules

7.1. Remuneration

Remuneration for the individual services provided by the Bank shall be specified in the Agreement on Cooperation in the field of Commerzbank Transaction Services. Material and forwarding costs (e.g. for updates) as well as on-site services are not included in the software maintenance fee due annually per installation unit.

The Bank shall be entitled to change the annual fee for software maintenance and the hotline service, effective to the end of a month, by giving eight weeks' prior notice in writing. However, such changes shall be permitted no sooner than 12 months after the Agreement is concluded.

In this event, the Customer shall be entitled to terminate the Agreement by giving six weeks' notice in writing before the commencement date of the fee increase.

7.2. Termination arrangements for software maintenance, hotline service and remote maintenance

The agreement on software maintenance, hotline service and remote maintenance is concluded for an indefinite period of time and shall be effective from the date of installation, or, if the Bank does not carry out such work, from the date of signature of the respective agreement. This agreement may be terminated with effect to the end of a month by giving six months' prior notice, but only upon expiry of the first year of the Agreement.

Either party shall be entitled to an extraordinary right of termination for good cause. In particular, the Bank shall be entitled to terminate this agreement without a notice period if the Customer defaults on the payment of fees and this default has not been remedied within the additional two-week payment period granted by the Bank. Notice of termination shall be given in writing.

7.3. Warranty

A warranty period of 12 months for EB Software Products shall start upon the Bank's delivery of the data carrier or, in the case of installation, upon acceptance of installation.

In the case of deficiencies, the Customer may request subsequent performance by the Bank free of charge, unless the Customer him/herself is responsible for such deficiencies. If the Bank does not remedy the reported deficiencies within a reasonable period of time after receipt of the notice requesting subsequent performance, the Customer may either request a price reduction or rescind the Agreement.

Within the scope of the present warranty, the Customer shall not be entitled to commission third parties with error analysis or correction under the software maintenance agreement and to invoice the costs resulting therefrom.

In addition to the aforementioned rights, the Customer shall be entitled to terminate the software maintenance agreement if the Bank fails in performing its obligations resulting therefrom within a reasonable time period and despite written request. In this case, the portion of the annual fee relating to the time period after the termination shall be refunded.

7.4. Hardware components

To the extent that the Customer has also acquired hardware components (e.g. chip card reader, chip card or signature card and signature stick) from the Bank, the Customer shall be entitled to demand subsequent performance for material defects, which may be remedied at the Bank's discretion either by subsequent correction or new delivery, for a period of one year from the date of delivery of the respective hardware. The Customer may rescind the agreement if the subsequent performance has not been carried out or is found to be unacceptable by the Customer. In all other respects, the statutory provisions shall be applicable.

7.5. Bank's liability

The Bank shall not be liable for damages resulting from breaches of the Agreement unless it has caused the damage, which is not a personal injury, wilfully or by gross negligence, or unless it has violated obligations essential to the Agreement on which the Customer may especially rely (cardinal obligations). The Bank is not liable for losses or other damage, including consequential damage, where this is caused by actions or omissions of the Customer that are not in accordance with the user manual, or is caused or facilitated by the Customer's failure to comply with reasonable security measures, provided the Bank did not cause such losses or damage by gross negligence or wrongful intent.

The Bank shall only be liable for damage caused by modified or revised versions of the provided EB Software Products if the Bank is to blame and the Customer can prove that the damage would also have been caused if the unmodified basic version had been used.

The Bank shall only be responsible for the recovery of destroyed data if it has caused such destruction wilfully or by gross negligence, and provided that the Customer has also ensured that such data may be reconstructed at a reasonable expense from material kept in machine-readable form.

7.6. Austrian law; waiver of sections 9, 10 ECG and the discretionary provisions of ZaDiG 2018

The entire Agreement shall be subject to Austrian law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The provisions of the Articles 9 and 10 of the ECG (E-Commerce Act) are hereby waived.

The following provisions of the Austrian Payment Services Act (ZaDiG) 2018 do not form an integral part of the contract for the Customer: the provisions of the third main section of ZaDiG 2018 as well as sections 33-54 [information requirements], Section 56 (1) [prohibition against charging fees for the fulfilment of information requirements or for corrective and safeguarding measures], Section 58 (3) [withdrawal of authorisation], Section 66 (1) and (3) [proof of authentication and execution of payment transactions], Section 68 (2),(5) and (6) [liability for unauthorised payment transactions], Section 70 (1) and (3) [refunds for a payment transaction initiated by the payee] and Section 80 [payment service providers' liability for non-execution, defective or late execution of payment transactions]. In Section 68 (1) ZaDiG 2018, the words "up to the amount of EUR 50" shall not apply to entrepreneurs.