

## Terms and Conditions of the web platform for ErsteConfirming

---

**This document (the "Terms and Conditions") sets out the terms and conditions subject to which Erste Group Bank AG, Am Belvedere 1, 1100 Vienna, Austria ("Erste") may (acting on its own behalf or acting on behalf on any member of Bank Group) provide advance payments through its product ErsteConfirming to persons holding receivables against third parties on account of sale of goods or supply of services.**

---

## 1. Definitions and Interpretation

### 1.1 Definitions

In these Terms and Conditions: "**ABGB**" means *Allgemeines Bürgerliches Gesetzbuch* (JGS Nr. 946/1811 as amended from time to time) or any civil code replacing the ABGB; "**Advance Payment**" means, in respect of a Confirmed Value, a payment made by Erste to a Supplier under these Terms and Conditions prior to the respective Maturity Date of the relevant Receivables; "**Applicable Discount**" means the amount calculated applying the Applicable Discount Rate in accordance with clause 6.2; "**Applicable Discount Rate**" means the percentage rate per annum which is the aggregate of the Screen Rate, the Margin, and, if applicable, the brokerage costs, including all fees and Taxes, payable by Erste in the course and/or for the purpose of procuring and/or (re)financing the respective Advance Payment amount in the payment currency (as per the Confirmed Invoice);

"**Bank Group**" means Erste and all of its subsidiaries from time to time as well as all entities that are included in Erste's consolidated financial statements (including all members of the "Haftungsverbund" — a cross-guarantee system of Austrian savings banks ("Sparkassen")), The term Bank Group also includes entities that are directly or indirectly controlled by other members of Bank Group; and a "**member of the Bank Group**" shall be construed accordingly;

"**Base Reference Bank Rate**" means:

(a) in relation to LIBOR, the rate at which Erste could borrow funds in the London interbank market; or

(b) in relation to EURIBOR, the rate at which Erste could borrow funds in the European interbank market;

(c) in relation to ROBOR, the rate at which Erste could borrow funds in the Romanian interbank market; "**Business Day**" means a day (other than Saturday or Sunday) on which banks in Vienna, Austria, and Barcelona, Spain, are open for general commercial business; "**Buyer**" means a company or unincorporated business to which, from time to time, Goods and/or Services are supplied by a Supplier in the ordinary course of the Supplier's business, and which has concluded a Buyer Framework Agreement with Erste; "**Buyer Framework Agreement**" means each and any agreement stipulating the rights and obligations between Erste and a Buyer on the ErsteConfirming scheme;

"**Commercial Dispute**" means any dispute between the Buyer and the Supplier with respect to a Receivable, relating to (i) any defects or shortages in the quality or quantity of Goods and/or Services supplied by the Supplier, (ii) any return of Goods and/or Services, (iii) the validity of deductions taken by the Buyer from the amount of a Receivable or (iv) any failure by the Supplier to comply with the agreement relating to such Receivable;

"**Commission**" means the fees and charges payable by a Supplier pursuant to clause 6.4 of these Terms and Conditions;

"**Confirmed Invoice**" means an Invoice or batch of Invoices (as the context may require) confirmed to Erste by the Buyer pursuant to a Performance Confirmation;

"**Confirmed Value**" means, in relation to a Confirmed Invoice, the full face value amount payable by a Buyer to a Supplier including VAT thereon (where applicable) less:

(a) the amount of any Credit Notes or Debit Notes (whether applicable to that Confirmed Invoice or to any Invoice the subject of a prior Performance Confirmation, provided that the Credit Note or the Debit Note has each time been

submitted to Erste together with the Confirmed Invoice at the latest); and

(b) any trade or other discounts offered by a Supplier (provided that they each time have been submitted to Erste together with the Confirmed Invoice at the latest);

"**Credit Notes**" means any amounts which are:

(a) due from a Supplier to a Buyer by way of set-off against the amount payable by the Buyer in respect of any Invoice; and

(b) issued and notified by the Supplier to the Buyer;

"**Debit Notes**" means any amounts which are:

(a) due from a Supplier to a Buyer by way of set-off against the amount payable by the Buyer in respect of any Invoice; and

(b) issued and notified by the Buyer to the Supplier;

"**DSG 2000**" means Datenschutzgesetz 2000, (BGBl. I Nr. 165/1999 as amended from time to time) or any data protection act replacing the Datenschutzgesetz 2000;

"**Erste**" means Erste Group Bank AG, a credit institution with company register number FN 33209m, registered place of business in Vienna, Austria, and registered address at Am Belvedere 1, 1100 Vienna, Austria;

"**ErsteConfirming**" means a product of Erste, under which Erste may provide Advance Payments to Participating Suppliers on a non-recourse basis;

"**EURIBOR**" means:

(a) the applicable Screen Rate; or

(b) if no Screen Rate is available for a certain interest period, the Base Reference Bank Rate, as of 11.00 am (Vienna time) on the Quotation Day for Euro and for the interest period being equal to the period between the day of the Advance Payment (inclusive) and the Maturity Date (exclusive), or the next longer period. If for whatever reason the relevant rate does not appear on the respective Reuters page, the offered rate for the purpose of setting up the interest rate shall be determined by Erste based on the actual market conditions on the European interbank market. If any such rate is below zero, EURIBOR will be deemed to be zero,

"**Goods**" means any goods which are the subject of a Supplier Contract;

"**Group**" means (i) a Buyer or a Supplier and each of its respective subsidiaries for the time being, and (ii) any company or corporation in respect of which a Buyer or a Supplier can be considered a subsidiary and each of its respective subsidiaries for the time being;

"**Invoice**" means an invoice, in any written form, evidencing the creation of a Receivable;

"**Invoice Data**" means the particulars of an Invoice or batch of Invoices to be contained in a Performance Confirmation and which include the relevant invoice number, currency, Confirmed Value, Maturity Date, any Credit Notes or Debit Notes relating to such Invoice(s) and such other data as Erste and a Buyer may agree from time to time;

"**LIBOR**" means:

(a) the applicable Screen Rate; or

(b) if no Screen Rate is available for a certain interest period, the Base Reference Bank Rate,

(c) as of 11.00 am (London time) on the Quotation Day for the payment currency other than Euro (as per the Confirmed Invoice) and for the interest period being equal to the period between the day of the Advance Payment (inclusive) and the Maturity Date (exclusive), or the next longer period. If for whatever reason the relevant rate does not appear on the respective Reuters page, the offered rate for the purpose of

setting up the interest rate shall be determined by Erste based on the actual market conditions on the European interbank market. If any such rate is below zero, LIBOR will be deemed to be zero.

**"Margin"** means a percentage rate to be agreed on a case-by-case basis and which will be notified to the Participating Supplier through the Web Platform;

**"Maturity Date"** means, in respect of any Invoice, the due date for payment of the Receivable arising under that Invoice;

**"Participation"** means the arrangement of Erste with any other entity by way of participation, syndication or other to provide the funding for Advance Payments or to share the risk of non-payment of the Buyer with Erste;

**"Participating Supplier"**, in respect of a Confirmed Invoice, means a Supplier to which the amounts in the Confirmed Invoice are owed, provided that the Supplier has accepted these Terms and Conditions in connection with (i) the said Confirmed Invoice, (ii) the Receivable(s) to which the Confirmed Invoice relates, or (iii) the Supplier Sale from which the aforementioned Receivable arises (as the case may be);

**"Performance Confirmation"** means a notification of one or more Invoices by a Buyer to Erste incorporating the Invoice Data in respect of the Invoice(s) the subject of such Performance Confirmation and setting out the aggregate Confirmed Value in respect of such Invoices (and "Confirmed" shall be construed accordingly); **"Quotation Day"** means the Business Day that immediately precedes the day of the respective Advance Payment;

**"Receivable"** means any present, future or contingent obligation of a Buyer to make payment (including in respect of any Tax or duty) under the Supplier Contract (whether invoiced or not), if any, in the Buyer Framework Agreement, and, if the context permits, includes part of a Receivable;

**"Reference Index"** means EURIBOR or LIBOR or ROBOR, as applicable from time to time, depending on the payment currency (as per the Confirmed Invoice);

**"ROBOR"** means:

(a) the applicable Screen Rate; or

(b) if no Screen Rate is available for a certain interest period, the Base Reference Bank Rate, as of 11.00 am (Bucharest time) on the Quotation Day for the payment currency RON (as per the Confirmed Invoice) and for a period being equal to the period between the day of the Advance Payment (inclusive) and the Maturity Date (exclusive), or the next longer period. If for whatever reason the relevant rate does not appear on the respective Reuters page, the offered rate for the purpose of setting up the interest rate shall be determined by Erste based on the actual market conditions on the European interbank market. If any such rate is below zero, ROBOR will be deemed to be zero.

**"Sanctions"** means any economic, financial or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury, the U.S. Department of State, any other authority, department or agency of the U.S. government, the United Nations Security Council and/or the European Union and/or any other member state of the European Union and/or any other relevant sanctions authority.

**"Screen Rate"** means

(a) in relation to LIBOR, the British Bankers' Association Interest Settlement Rate (or any other rate that replaces it) for the relevant currency and period;

(b) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union (or any other rate that replaces it) for the relevant period, and

(c) in relation to ROBOR, the percentage rate per annum determined by the National Bank of Romania for the relevant period displayed on the appropriate page of the Reuters screen (or any other page or service that replaces them);

**"Security Interest"** means any mortgage, charge, pledge, trust, assignment by way of security, hypothecation, lien or other encumbrance, or any other arrangement for the purpose of or having a similar effect to creating security or any title retention rights, in each case other than as arising under these Terms and Conditions;

**"Services"** means any services which are the subject of the Supplier Contract;

**"Supplier"** means any company or unincorporated business which, from time to time, supplies Goods and/or Services to a Buyer in the ordinary course of the Supplier's business;

**"Supplier Contract"** a contract in any form (including a purchase order for the sale of Goods and/or the supply of Services) between the Buyer and a Supplier, pursuant to which (a) Receivable(s) arises;

**"Tax"** or **"Taxes"** means all forms of taxation, withholdings, duties, imposts, imposed, assessed or enforced by any local, municipal, governmental, state, federal or other body or authority in the Supplier's country or elsewhere, irrespective of the person against or to whom the same are directly or primarily chargeable, in all cases being in the nature of taxation, and any interest, penalty, surcharge or fine in connection therewith; and

**"Tax Deduction"** means a deduction or withholding for or on account of Tax from a payment or liability of the Supplier related to these Terms and Conditions.

**"Terms and Conditions"** means these Terms and Conditions.

**"Web Platform"** means a platform used by Erste for the purpose of online implementation and operation of ErsteConfirming.

## 1.2 Interpretation

(a) Any reference in these Terms and Conditions to:

(i) these **"Terms and Conditions"** or any other document referred to in these Terms and Conditions, shall be construed to include these **"Terms and Conditions"** and such other document, as the same may be varied, replaced, novated, acceded to or supplemented from time to time;

(ii) a **"clause"** shall, subject to any contra-indication, be construed as a reference to a clause of these Terms and Conditions;

(iii) **"Erste"** shall (unless the context requires otherwise) be construed as a reference to Erste Group Bank AG or as a reference to any member of Bank Group and in such case Erste Group Bank AG acts on behalf of such member of Bank Group;

(iv) **"Erste"**, a **"Buyer"** and a **"Supplier"** shall (unless the context requires otherwise) be construed so as to include any subsequent lawful successors and permitted assigns of such persons in accordance with their respective interests;

(v) **"Euro"** or **"EUR"** means the lawful currency of Austria for the time being; **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment

or repayment of money, whether present or future, actual or contingent;

(vi) a "**person**" should be construed as a reference to any person, firm, company, corporation, government, state or agency of the state, or any association or partnership (whether or not having separate legal personality) or any two or more of the foregoing;

(vii) "**redemption**" is a reference to acquisition by a third party of a receivable pursuant to § 1422 and § 1423 of ABGB (and "**redeem**" shall be construed accordingly);

(viii) "**Romanian New Leu**" or "**RON**" means the lawful currency of Romania for the time being; and

(ix) "**VAT**" shall be construed as a reference to any value added tax, sales tax or any similar Tax in any jurisdiction including any similar Tax that may be imposed in place thereof from time to time.

(b) Any reference to a provision of law is a reference to that provision as extended, applied, amended or reenacted and includes any subordinate legislation.

(c) The headings in these Terms and Conditions do not affect their interpretation.

(d) Words denoting the singular only shall include the plural and vice versa.

(e) References to any statute, law, decree or regulation shall be deemed references to such statute, law, decree, or regulation, as re-enacted, amended, extended or replaced from time to time.

(f) Any waiver given by Erste shall unless otherwise specified only apply to the specific occurrence of the specific event referred to in such waiver.

(g) The meaning of the general words introduced by the word "**other**" is not to be limited by any reference to any preceding word indicating a particular class of acts, matters or things.

## **2. Object of these Terms and Conditions**

**2.1** It is understood that each Buyer has concluded respective Supplier Contracts with different Suppliers. Furthermore, each Buyer has entered into a respective Buyer Framework Agreement with Erste.

**2.2** It is further understood that Erste, through ErsteConfirming, provides a platform for Advance Payments in respect of certain Invoices of those Suppliers which have accepted these Terms and Conditions.

**2.3** Erste makes use of the Web Platform for the purposes of online implementation and operation of ErsteConfirming.

**2.4** If Erste acts in respect of these Terms and Conditions and Advance Payments on behalf of a member of the Bank Group it will notify the Supplier accordingly.

## **3. Qualification for ErsteConfirming and Representations of the Supplier**

**3.1** In order to qualify for ErsteConfirming, a Supplier first needs to register for this service through the Web Platform, by which registration the Supplier accepts these Terms and Conditions.

**3.2** ErsteConfirming may only be applied to a Confirmed Invoice, subject to its selection by the relevant Supplier pursuant to clause 4.

**3.3** The Supplier represents and warrants for the duration of the participation in Erste Confirming, that: (i) the Supplier is a corporation, duly incorporated, validly existing and in good standing under the law of its jurisdiction of incorporation; (ii) the obligations of the Supplier to be assumed by it under this Terms and Conditions are legal, valid, binding and enforceable obligations against it; (iii) the Supplier and/or

representatives of the Supplier accepting this Terms and Conditions have the unrestricted power and authority to enter into, perform and deliver these Terms and Conditions and that the execution of these Terms and Conditions and the exercise by the Supplier of its rights and performance of its obligations hereunder do not conflict with any other obligations, transactions or any laws and regulations applicable to the Supplier, and (iv) all licenses, approvals, authorizations, registrations and consents which are necessary in connection with the performance of the Supplier's business related to Erste Confirming have been obtained, are in full force and effect and not rescinded.

**3.4** The Supplier further represents and warrants that (i) it is the sole owner of the Receivables subject to an Advance Payment; (ii) it can freely dispose of the Receivables; and (iii) the Receivables are not subject to any Security Interest, Commercial Dispute, third party right or counterclaims suitable for set-off.

## **4. Selection and payment of Supplier Invoices**

**4.1** Upon registration for ErsteConfirming and at any time subsequent to that, each Supplier may view a list of its Confirmed Invoices including certain details thereof (Invoice number, Invoice amount, Confirmed Value, Maturity Date).

**4.2** The Supplier may at any time select the applicability of these Terms and Conditions to its Confirmed Invoices to be "**Automatic**". In the event of such selection, each time Erste receives payment instructions from a Buyer regarding an Invoice issued by the respective Supplier, the respective Supplier thereafter automatically offers to Erste to perform an Advance Payment and authorizes Erste to automatically pay the applicable Confirmed Value, without any need for further communication. An "Automatic" selection may be revoked at any time and with immediate effect by the Supplier solely in respect of the Confirmed Invoices which are uploaded onto the Web Platform after Erste received such revocation.

**4.3** In addition, each Supplier may select the applicability of these Terms and Conditions to its Confirmed Invoices to be only upon "**Individual Request**". In the event of such a selection, each time Erste receives payment instructions from a Buyer in relation to an Invoice issued by the respective Supplier, it will inform the respective Supplier of that Invoice so that the respective Supplier might determine whether it is in its interest to receive an Advance Payment. Such Individual Request cannot be revoked.

**4.4** Every communication between Supplier and Erste with respect to clauses 4.2 and 4.3 is performed through the Web Platform.

## **5. Operation of ErsteConfirming**

**5.1** Any and all Advance Payments of Confirmed Invoices made are effected by way of redemption only and, accordingly, any notification to a Buyer is declarative.

**5.2** Each Supplier acknowledges that Advance Payments by Erste are generally not Intended to discharge any Receivable under the Confirmed Invoices but rather to redeem such Receivables and that this clause is to be construed as a redemption statement as per section 1422 of ABGB.

**5.3** In relation to each redeemed Receivable Erste (i) shall make the Advance Payment to the Supplier in the amount of the Confirmed Value, and (ii) shall automatically set off the Applicable Discount and the Commission (if any) which are due and payable by the Supplier to Erste according to Clause 6, and

(iii) shall by making the Advance Payment upon redemption acquire each Receivable in the full face value of the Confirmed Invoice.

**5.4** The Supplier further agrees that Austrian law shall govern the rights of Erste against the Buyer which Erste is deemed to have upon settlement of a Buyer's payment obligation under the respective Supplier Contract through the redemption of Receivable according to this Terms and Conditions. In this respect, the Supplier agrees that, to the extent applicable and possible, every Supplier Contract shall be deemed amended to provide for Austrian law as its governing law (excluding its conflict of laws rules), and no further action shall be required by any of the Parties in this regard. This clause may be relied upon by the Buyer in accordance with section Austrian law (881 (2) of ABGB *Contract in the benefit of the third Party*).

**5.5** Each Supplier acknowledges and agrees that Erste may freely dispose (by way of assignment, redemption or otherwise) with any Receivable under the Confirmed Invoices or to create any Security Interest over the Receivable, to a third party, under any law it may deem relevant. The Supplier further explicitly consents to a Syndication of these Terms and Conditions and the Buyer Framework Agreement.

**5.6** Erste shall never be obliged to effect Advance Payments to a Supplier. This particularly applies if there have been changes to the solvency of the respective Buyer or the respective Supplier or to any other factors that were taken into consideration when issuing these Terms and Conditions and, in particular, in any of the following scenarios: 1) If the respective Buyer or the respective Supplier shall fail to fulfill any of their respective obligations agreed with Erste already due and payable, or should be in default in respect of any payment to any other creditor; 2) If any of them is not meeting the payment requirements in respect of their Tax contributions or of their social security contributions or if their operating results should give losses or they should be in a state of negative shareholders' equity; 3) If any of them is sanctioned or has an embargo on their respective assets, these are fraudulently disposed of or liquidated; 4) If any of them is facing dissolution to be evidenced by an application for dissolution; 5) If any of them files for voluntary bankruptcy or the application for their required bankruptcy is accepted for processing, 6) If the present partners or stockholders of the company of the respective Buyer or the respective Supplier should for any reason, title, business or act transmit their participation or if they should lose control of company organs of administration, or if, by virtue of contract, or in any other way, a third party or third parties should be able to directly or indirectly determine the management and policy of the said company or the composition of the majority of its board of administration; 7) If Security Interests should be constituted or extended on, or in respect of, the Goods, the Services, or the Buyers or Suppliers equity to secure any present or future obligations and/or 8) in case of any fraudulent act of the Supplier.

**5.7** The amount to be received by the Supplier shall be credited to a bank account which the respective Supplier has notified in the Invoice.

## **6. Applicable Discount and Commission**

**6.1** The Participating Supplier shall pay to Erste the Applicable Discount and the Commission (if any). The liquid amount each time to be received by a Participating Supplier

shall be calculated by Erste and shall be equal to the Confirmed Value less the Applicable Discount and the Commission (if any).

**6.2** The Applicable Discount will be calculated on the basis of a year of 360 days and the actual number of days elapsed beginning with the respective date of the Advance Payment (inclusive of that date) and ending with the respective Maturity Date (exclusive of that date) and — to the extent applicable — including VAT.

**6.3** It is understood that each Participating Supplier has the appropriate means to, from time to time, acquaint itself with the Reference Index and, consequently, the Applicable Discount.

**6.4** Pursuant to clause 6.1, a Commission — to the extent applicable — including VAT shall be payable to Erste. Such a Commission shall be determined on a case-by-case basis and will be notified to the Supplier on the web platform.

**6.5** All amounts payable or owed under these Terms and Conditions by the Supplier to Erste shall be deemed to be exclusive of any VAT. If VAT is chargeable, the Supplier shall pay or owe to Erste an amount equal to the amount of VAT and shall indemnify Erste (e.g. in case Erste has to make such amount subject to VAT).

**6.6** If under these Terms and Conditions, any kind of Tax together with any interest and penalties thereon on net income received or receivable is imposed on Erste or a Tax Deduction at source is required by law to be made in respect of any Applicable Discount or Commission to be done the Supplier shall be obliged to pay any such Taxes together with any interest and penalties thereon and make such Tax Deduction. On request of Erste the Supplier shall provide Erste with documents and other evidence satisfactory to Erste proving that the Tax has been paid. Erste specifies form, interval and term of the Tax documentation.

**6.7** The Supplier shall pay and, within 3 Business Days of demand and regardless of its culpability (verschuldensunabhängig), indemnify Erste against any cost, loss or liability that Erste incurs in relation to any Tax Deduction or Taxes being payable in relation to Advance Payment or Confirmed Invoice and not paid or reimbursed by the Supplier.

**6.8** All sums payable or owed by the Supplier under these Terms and Conditions shall be free and clear of all deductions unless the deduction or withholding is required by law in which event the Supplier shall pay or owe such additional amount as shall be required to ensure that the net amount received under these Terms and Conditions will equal the full amount which would have been received had no such deduction or withholding been required to be made.

**6.9** If any tax authority brings into charge to Tax any sum paid or owed under these Terms and Conditions, the Supplier shall pay or owe such additional amount as shall be required to ensure that the total amount paid, less the Tax chargeable on such amount, is equal to the amount that would otherwise be payable or owed under these Terms and Conditions.

## **7. Data protection and banking secrecy**

**7.1** Erste and/or any party to a Participation may process information about each Supplier (name, commercial register data, bank account details, data on financial condition and creditworthiness obtained from the Supplier or any member of the Bank Group, data on its payment obligations and counterparties under Contracts of Sale), including information regarding the

financial condition, business and operations of any member of the Group) for the purpose of (i) the implementation of these Terms and Conditions and the transactions contemplated herein and/or (ii) the entering into and the operation of a Participation.

**7.2** Erste and/or any party to Participation may use third parties to process the abovementioned information and provide the abovementioned services, including by operating a web platform and a call center, on its behalf.

**7.3** Erste may disclose (but in terms of confidentiality) to any party to a Participation and any member of the Bank Group information regarding the financial condition, creditworthiness, business and operations of the Supplier for the purpose of assessing, entering or conducting the transactions contemplated herein, the Participation or any other transaction or business with the Buyer, the Supplier or other members of their respective Groups.

**7.4** Each Supplier hereby consents (for itself and on behalf of all other members of the Group) that Erste and/or parties to a Participation receives from Erste or any member of the Bank Group (in terms of confidentiality) information relating to the financial condition, creditworthiness, business and operations of the Supplier or the Supplier Group for the purpose of the implementation of these Terms and Conditions, the Participation and the transactions contemplated herein.

**7.5** In the event that Erste transfers all or any of its rights or obligations under these Terms and Conditions to a third party, each Supplier consents to Erste disclosing to such third party all information made available to Erste under or in connection with this document.

**7.6** Each Supplier takes note that its consent to the clauses 7.3 to 7.5 (Data protection and banking secrecy) can be revoked at any time by contacting Erste.

**7.7** This clause 7 shall serve as an express waiver of the Austrian banking secrecy in accordance with § 38(2) no. 5 of the Austrian Banking Act (*Bankwesengesetz*).

## **8. United States Suppliers**

**8.1** This Section 8 (in addition to the other articles of these Terms and Conditions) shall apply only to Suppliers incorporated in the United States of America ("US Suppliers").

**8.2** It is the intention of each US Supplier and Erste that each purchase in way of redemption of a Receivable shall constitute and be treated as a true sale by such US Supplier to Erste of such Receivable that is absolute and irrevocable, that provides Erste with the full benefits of ownership and, for the avoidance of doubt, conveys ownership of full legal title to (and not solely a beneficial interest in) such Receivable. To that end, Erste intends to carry its interest in each Receivable as a financial asset on its books and records and Erste may resell its interest in a Receivable in its discretion.

**8.3** If, despite the intention of each US Supplier and Erste, any redemption of a Receivable is deemed to be a financing arrangement involving the extension of credit by Erste to such US Supplier, or if for any reason ownership of any Receivable is not vested in Erste, the payment of the Advance Payment of such Receivable by Erste to such US Supplier shall be deemed to be the incurrance of an obligation by such US Supplier in favor of Erste (in the

amount of such Receivable and other amounts due to Erste hereunder), secured by a first priority perfected security interest in such Receivable. Accordingly, against the possibility that any purchase of a Receivable is not treated as a true sale, or if for any reason ownership of any Receivable is not vested in Erste, such US Supplier hereby grants, pledges and assigns to Erste, a present continuing perfected first priority security interest in such Receivable to secure all of such US Supplier's obligations to Erste under these Terms and Conditions.

**8.4** To the extent that any US Supplier is organized in or conducting business in any state of the United States, such US Supplier irrevocably authorizes Erste and its counsel (or their respective designees) to prepare and file from time to time (including prior to the purchase of any Receivables hereunder) one or more financing statements under the applicable Uniform Commercial Code in the United States and continuation statements and amendments thereto or other related instruments (and any other documents and filings having a similar purpose) covering the applicable Receivables as Erste or such designee may determine is necessary or advisable to perfect and maintain Erste's ownership and security interests in such Receivables.

**8.5** Without limiting any other provision and notwithstanding any provision to the contrary in this Terms and Conditions, each US Supplier acknowledges and consents to the provisions of clause 8.3 by which Erste is irrevocably authorized to effect a filing naming such US Supplier under the Uniform Commercial Code (described in such clause 8.3) when Erste determines in its discretion that such filing is necessary or appropriate.

## **9. Sanctions**

(a) The Supplier shall not (and shall procure that no other member of its Group will):

(i) knowingly engage in any transaction that violates any Sanctions

(ii) engage in any transaction that it has reasonable cause to believe violates or may violate any Sanctions.

(b) The Supplier shall ensure that any Confirmed Invoice does not refer for payment or is made for any goods and services which are subject to any kind of sanctions laws and regulations depending on the jurisdiction of incorporation or business of the Buyer or its client (which may prohibit Erste from providing its services under these Terms and Conditions of any relevant sanctions authority, as well as other restrictions).

## **10. Miscellaneous**

**10.1** These Terms and Conditions come into effect upon registration by a Supplier for ErsteConfirming.

**10.2** Erste shall set off any matured obligation owed to it by a Supplier in respect of a Receivable against any obligation, whether or not matured, owed by Erste to the Supplier.

**10.3** Erste shall not be liable for any losses, damages, costs, expenses, actions, claims, demands and liabilities suffered or incurred by or made against a Supplier under or in connection with these Terms and Conditions.

**10.4** Any communication in connection with these Terms and Conditions shall be made through Web Platform.

**10.5** These Terms and Conditions may be terminated if one of the parties gives to the other notice of termination. Such termination shall not relieve a Supplier of its obligations hereunder regarding the Confirmed Invoices in respect of

which a selection pursuant to clause 4.2 or a request as per clause 4.3 could not be revoked.

**10.6 Amendment of the Terms and Conditions**

(a) Erste will propose changes to these Terms and Conditions to the Supplier no later than one month prior to the proposed changes shall enter into effect.

(b) Erste shall notify the Supplier or publish (on its web site or on other publicly accessible place):

(i) a comparison of the provisions of the Terms and Conditions affected by the change; and

(ii) the complete version of the new Terms and Conditions.

(c) The Supplier's consent to the changes to Terms and Conditions shall be deemed given, unless Erste receives a written objection from the Supplier prior to the time of proposed effectiveness of the changes to Terms and Conditions. Erste shall point this out to the Supplier in the change proposal.

**10.7** Erste may assign or transfer any of its rights or obligations under these Terms and Conditions without prior consent of the Supplier. A Supplier may not assign or transfer its rights and/or obligations under these Terms and Conditions to any other person without prior consent of Erste.

**10.8** If any term of these Terms and Conditions is, or becomes, illegal, invalid or enforceable in any jurisdiction that shall not affect:

(a) the legality, validity or enforceability in that jurisdiction of any other term of these Terms and Conditions; or

(b) the legality, validity or enforceability in other jurisdictions of that term of these Terms and Conditions.

**10.9 These Terms and Conditions and any non-contractual obligations arising out of them or in connection therewith shall be governed by Austrian law (excluding its conflict of laws rules).**

**10.10 Any and all disputes relating to, arising from, or concerning these Terms and Conditions and performance thereunder or termination thereof shall be resolved solely and exclusively in the competent courts for commercial matters for the first district of Vienna. The parties hereto hereby consent to the personal jurisdiction of such courts and waive any and all defenses respecting inconvenient forum or similar doctrines. The parties further consent to the service of process respecting such disputes by mail, postage prepaid, directed to the address designated by the Supplier to Erste from time to time or, in the absence of such designation, the address commonly understood to be a principal place of business of the Supplier.**