



*Rabobank*

# General Banking Conditions 2009



# General Banking Conditions (Version 2009)

This is a translation of the original Dutch text. This translation is furnished for the customer's convenience only. The original Dutch text will be binding and shall prevail in case of any variance between the Dutch Text and the English translation.

These General Conditions were drawn up in consultation between the Netherlands Bankers' Association and the consumers' organisation 'Consumentenbond' within the framework of the Co-ordination Group on Self-regulation Consultation of the Socio-Economic Council (SER) and will become effective on November 1st 2009. No consultations took place on other (product-related) conditions that may be applicable. The Consumentenbond reserves the right to start collective legal action against such conditions.

## 1 Scope

The provisions of these General Banking Conditions shall apply to all existing and future legal relationships between the Bank and the Customer to the extent that it is not otherwise provided in agreements and/or in special conditions. General conditions that a foreign branch of the Bank applies to its legal relationships with the Customer shall prevail above these General Banking Conditions in the event of a conflict between the two. If other general conditions apply or are declared applicable by or on behalf of the Customer, these shall not apply in the legal relationship with the Bank, unless the Bank has agreed to this in writing.

## 2 Duty of care of the Bank and of the Customer

- 1 The Bank shall exercise due care when providing services. In its provision of services, the Bank shall take the Customer's interests into account to the best of its ability. None of the provisions of these General Banking Conditions or of the special conditions used by the Bank shall detract from this principle.
- 2 The Customer shall exercise due care vis-à-vis the Bank and shall take the Bank's interests into account to the best of his ability. The Customer shall enable the Bank to fulfil its statutory and contractual obligations and to render its services correctly. The Customer shall not make improper or illegal use (or allow improper or illegal use to be made) of the services and/or products of the Bank, also including use that conflicts with laws and regulations, serves criminal activities or is damaging to the Bank or to its reputation or to the integrity of the financial system.

## 3 Activities and objectives

The Customer provides information to the Bank, taking into account the applicable privacy laws, at its first request, about the Customer's activities and objectives and about the reason for the (intended) use of the services and/or products of the Bank. Upon request, the Customer informs the Bank as to the origin of the funds and securities deposited with the Bank or that are to be deposited with the Bank and of goods that have been given to the bank to hold in (open) custody.

## 4 Non-public information

In providing its services, the Bank does not have to make use of non-public information, including price-sensitive information.

## 5 The Bank or third parties as the counterparty

- 1 In providing its services, the Bank may make use of third parties and may (partially) outsource activities. The Bank may give goods, documents of title, securities or financial instruments that belong to the Customer, whether or not held in the name of the Bank, to third parties in custody or have these administered by third parties.
- 2 If the Customer gives the Bank an order or an authorisation, the Bank may also do business with itself as a counterparty in order to execute the order or authorisation, and the Bank may also transfer this order or authorisation to a third party.
- 3 The Bank takes the necessary care into account in the selection of third parties. In the event that the Customer has called in or

appointed a third party, the consequences of this choice are for the account of the Customer.

## 6 Risk of dispatches

If the Bank, by order of the Customer, dispatches funds or financial instruments, including securities, to the Customer or to third parties, such dispatch shall be at the Bank's risk. If the Bank, by order of the Customer, dispatches other goods or documents of title to the Customer or to third parties, such dispatch shall be at the Customer's risk.

## 7 Customer data

The Customer and the Customer's representatives are obliged to cooperate with the Bank and to provide information in order to determine and verify their identity, their citizen's (services) identification number, date of birth, civil status, legal capacity and authorisation to act, postnuptial agreement, partnership agreement, legal form, place of residence or place of establishment, and insofar as applicable, the registration number with the chamber of commerce and/or other registers and their VAT number. The Customer must inform the Bank as soon as possible of any changes in this information. The Bank may make copies of documents, which provide evidence of this information, and the Bank may record and file this information. If the Customer is a legal person or form of cooperation, the Customer and its representatives are also obliged, at the Bank's first request, to give the Bank insight into the ownership and control structure of the legal person or the form of cooperation.

## 8 Signature

The Customer and his representatives shall deposit an example of their handwritten signatures at the Bank's first request at the Bank in a manner and/or in a form as determined by the Bank. The example provided by a person is deemed to be the representation of the Customer's current handwritten signature, regardless of the capacity in which the Customer acts vis-à-vis the Bank, until the Bank has been notified of a change.

## 9 Authorisation and power of representation

- 1 The Customer may grant a third party a power of attorney to do business with the bank on his behalf. The authorised representative is not authorised to transfer the power of attorney granted to him to a third party. The Customer is liable vis-à-vis the Bank for the fulfilment of obligations, which have been entered into by the authorised representative. The Bank can demand that an authorisation is granted in a specific manner and/or in a specific form and/or according to a specific procedure. The Bank is not obliged to (continue) to do business with an authorised representative.
- 2 If the authorisation of a representative of the Customer is revoked or a change occurs with regard to the authorisation, the Customer is obliged, notwithstanding the registration in public registers or the publication thereof, to notify the Bank as soon as possible of this revocation or change. The Bank may (continue to) legally execute orders that have been given to the Bank by a representative before or shortly after the Bank has received notification of the revocation if the Bank could not reasonably prevent the execution.
- 3 The General Banking Conditions and all other provisions, rules and limitations that apply between the Customer and the Bank also apply to the representative in connection with the execution of his representation. The Customer is responsible for the compliance with the above by his representative and shall ensure that the Customer and the representative keep each other fully informed about everything that is important for them or could be important for them as Customer and representative.

## 10 Personal data

The Bank may process personal data of the Customer and the Customer's representatives, as well as data regarding the products and services purchased by the Customer, taking into account the applicable laws and regulations and the codes of conduct that apply to the Bank and the Bank may exchange this data within the group to which the Bank belongs in connection with customer relationship management, to prevent and combat criminal activities and for

commercial purposes. Personal data can also be exchanged with third parties that that Bank makes use of in its business operations or in providing its banking services. This can entail, inter alia, in connection with payments, the passing on of personal data to third parties in countries that do not have the same level of protection as in the Netherlands. Personal data can be the subject of an investigation by authorised national authorities of the countries where such data is located in connection with the processing of the data both during and after the processing.

#### 11 (Video and audio) recordings

The Bank may, within the boundaries of the applicable laws and regulations, make (audio and video) recordings for the purpose of sound business operations, providing evidence, combating criminal activities and monitoring quality. If the Customer requires the Bank to comply with an obligation to issue a copy or transcription of a recording, the Customer must first provide the relevant specifications such as the relevant date, time and location.

#### 12 Continuity in the providing of services

The Bank aims to ensure the adequate functioning of its facilities for the provision of its services (for example, equipment, programmes, systems, infrastructure, networks); however, the Bank does not guarantee that these facilities will always be running correctly without interruption. The Bank aims to avoid interruptions / malfunctioning, insofar as this lies within its sphere of influence, within reasonable bounds or to remedy the interruption / malfunctioning within a reasonable time.

#### 13 The Death of a Customer

- 1 The Bank must be notified of the death of a customer in writing as soon as possible. As long as the Bank has not been notified of the death of a customer in this manner, the Bank may (continue) to execute the orders received from or on behalf of the Customer. The Bank may (continue to) legally execute orders that have been given to the Bank before or shortly after the Bank has received notification of the death of a Customer if the Bank could not reasonably prevent the execution.
- 2 After the death of the Customer, the Bank can demand that the person/persons who claims/claim to be authorised to perform (legal) acts with regard to the Customer's estate submits/submit an attestation of admissibility to the estate, issued by a Dutch notary, and/or documents that the Bank deems to be acceptable as proof thereof.
- 3 The Bank is not obliged to provide information again regarding actions and transactions that have been carried out before the time of the death of the Customer.

#### 14 Name and address of the Customer

- 1 The Customer informs the Bank to which address the documents and/or information that are intended for the Customer can be sent. The Customer notifies the Bank as soon as possible in writing of a change of name and address. If the Customer's address is not known or is no longer known at the Bank due to the Customer's fault, the Bank can attempt to find out the address of the Customer without being obliged to do so. The costs of such an investigation are for the Customer's account. The Customer, whose address is not known at the Bank, is deemed to have his postal address at the address where the Bank is located, unless agreed otherwise.
- 2 If a product or service of the Bank is purchased by two or several persons, the Bank shall send the documents and/or information to the address, which that person has provided to the Bank. If the persons do not agree or do no longer agree on this, the Bank may make the choice itself to which address of these persons it will send the documents and/or information.

#### 15 Dutch language

The communication between the Bank and the Customer takes place in Dutch, unless agreed otherwise in writing. The Bank can demand that the Customer has documents, which are in a language other than Dutch, translated into Dutch or into another language that the Bank agrees to at the Customer's costs by a person who is qualified

to translate these documents in the opinion of the Bank. A translator who is a sworn translator in the language in question is qualified in any case.

#### 16 Use of means of communication

The Customer is obliged to make safe use of Internet, fax, e-mail, post or other means of communication in the Customer's communication with the Bank.

#### 17 Information and orders

- 1 The Customer shall ensure that the Bank shall receive all information, which the Bank requires or which the Customer can reasonably understand that this information is necessary for the correct provision of services by the Bank. The Customer shall ensure that statements, such as orders and notifications to the Bank or to a third party appointed by the Bank are clear and comprehensive and contain the correct information. The Customer complies with the instructions and regulations issued by the Bank.
- 2 The Customer makes use of data carriers or means of communication approved or specified by the Bank for its communication with the Bank or with a third party designated by the bank. The Customer makes use of this taking into consideration the Bank's instructions and regulations.
- 3 The Bank may postpone the execution or refuse to execute orders if these have not been submitted correctly. In special circumstances, the Bank may refuse to execute orders given by or on behalf of the Customer or the Bank may refuse to provide the requested service.

#### 18 Evidential force of the Bank's records and record keeping period

An abstract from the Bank's records serves as prima facie evidence vis-à-vis the Customer, subject to rebuttal evidence produced by the Customer. The Bank is not required to keep its records for a period longer than the statutory record keeping period.

#### 19 Checking the information provided by the Bank and orders executed by the Bank

- 1 The Customer must check the confirmations, bank statements, invoices, other specifications or other information that the Bank sends to the Customer or makes available to the Customer as soon as possible after receiving this. If the Bank makes such communications available to the Customer electronically, the Customer must check the information as soon as possible after this has been made available to the Customer. The date of dispatch or the date of making the information available is the date of dispatch or the date of making the information available as is apparent from copies, distribution lists or otherwise from the Bank's records. The Customer must check as soon as possible whether the bank has executed orders given by the Customer or on behalf of the Customer correctly and completely. If the Customer does not receive a notification from the Bank, whereas the Customer knows or should know that he could expect a notification from the Bank, the Customer must inform the Bank of this as soon as possible in writing.
- 2 If the Customer notices a mistake or an omission, he must inform the Bank as soon as possible and take all reasonable measures to prevent (further) damage. If the Bank detects that it has made a mistake or an error, the Bank shall remedy this as soon as possible. The Bank informs the Customer about the detected mistake or error as soon as possible.
- 3 The Bank is authorised to remedy a mistake or error without the Customer's consent and to reverse an incorrect entry. The Bank is authorised to reverse the crediting of an account of the Customer as a result of an order given by an unauthorised person or a person without legal capability to act.
- 4 If the Customer requests a copy of information that has already been provided to him by the Bank, the Bank shall provide this to the Customer within a reasonable period and the Bank shall receive a reimbursement for the reasonable costs incurred by the Bank, unless the Bank no longer has this information or the request is unreasonable.

**20 Approval of bank documents**

If the Customer has not contested the contents of confirmations, statements of accounts, invoices, other specifications or other information sent or made available to the Customer by the Bank in writing within thirteen months after such documents have been made available to the Customer by or on behalf of the Bank, the contents of such documents shall, in any case and notwithstanding the Customer's obligation pursuant to Article 19, be deemed to have been approved by the Customer. If such documents contain any arithmetical errors, the Bank shall remedy these errors, also after the expiry of the period of thirteen months.

**21 Obligation to retain records and confidentiality obligation**

- 1 The Customer must store and treat with care the items made available to the Customer such as forms, data carriers, means of communication, security measures, cards, personal and access codes and passwords. The Customer must treat personal pin codes and access codes and such with due care and keep these confidential for other persons. The Customer adheres to the security regulations issued by the Bank.
- 2 If the Customer knows or can reasonably suspect that items that the Bank has made available to the Customer have come into unauthorised hands or that abuse is being made or can be made or that an unauthorised person knows his pin code and/or access code, he must immediately notify the Bank of this.

**22 Commission, interest and fees**

- 1 The Bank charges commissions, interest and fees for its services. The Bank may change the amount thereof, unless agreed otherwise in writing. If the amounts of these commissions, interest and fees have not been agreed in advance between the Customer and the Bank, the Bank shall charge its usual commissions, interest and fees.
- 2 When providing its services, the Bank informs the Customer to the extent reasonably possible about the amount of its charges (commissions, interest, fees). The Bank ensures that the information about these charges can easily be obtained.
- 3 The Bank may deduct the commissions, interest and fees owed by the Customer from an account that the Customer holds with the Bank without notifying the Customer in advance. If an unauthorised debit balance arises on the account due to the deduction, the Customer must immediately clear the debit balance without the Bank being required to give notice of default.

**23 Conditional credit entries**

Each credit entry of an amount received or to be received in favour of the Customer is made subject to the proviso that the Bank actually receives this amount definitely and unconditionally. If this condition has not been satisfied, the Bank may reverse the credit entry – without prior notification – by debiting the same amount with retrospective effect. If the amount received or to be received was converted into another currency when crediting the account, the bank may make the debit entry in the other currency at an exchange rate at the time of execution. Costs in connection with the reversal are for the Customer's account.

**24 Lien**

- 1 As a result of these General Banking Conditions becoming applicable, the Customer:
  - a undertakes to pledge the following goods including the related ancillary rights to the Bank as security for all that which the Customer may owe or come to owe the Bank at any given moment:
    - i all (cash) receivables that the Bank owes to the Customer on any account whatsoever;
    - ii all goods, documents of title, securities and other financial instruments that the Bank or a third party on behalf of the Bank, on any account whatsoever, holds or obtains of or for the Customer;
    - iii all securities in collective depositories that the Bank holds in custody or acquires;
    - iv all goods that (shall) take the place of the goods under i, ii, or iii;

- b insofar as legally possible, the Customer pledges the goods referred to in sub a to the Bank;
- c grants the Bank an irrevocable authorisation, with the right of substitution, to pledge these goods to itself in the name of the Customer, if necessary repetitively, and to do everything that serves the pledge.

- 2 The Customer guarantees that he is authorised to make the pledge and that the goods in question are or will be free of rights and claims of other parties than the bank.
- 3 The Bank shall release the pledged goods, if the Customer wishes to have these goods in his possession, if the value of the then remaining pledged goods provides sufficient cover for all that the Customer, on any account whatsoever, owes or may come to owe to the Bank. The Bank may only seize and execute the pledged goods if the Customer's debt to the Bank has become due and payable and the Customer is in default. The Bank shall not seize and execute more of the pledged goods than necessary for the payment of the debt that the Customer owes to the Bank. After the Bank has exercised its seize and execution right, it shall notify the Customer of this in writing as soon as possible.

**25 Right of set-off**

The Bank shall at all times be entitled to set off all and any debts receivable by the Bank from the Customer, whether or not due and payable and whether or not contingent, against any debts owed by the Bank to the Customer, whether due and payable or not, regardless of the currency in which such debts are denominated. If, however the Customer's debt to the Bank or the Bank's debt to the Customer is not yet due and payable - and provided that the Customer's debt and the Bank's debt are expressed in the same currency - the Bank shall not exercise its right of set-off except in the event of an attachment being levied upon the Bank's debt to the Customer or recovery being sought from such debt in any other way, or in the event that a restricted right is created thereon or the Customer assigns the Bank's debt to a third party by singular title, or the Customer is declared bankrupt, or has entered into a moratorium of payments or another insolvency regulation or statutory debt repayment arrangement applies to the Customer. Debts expressed in a foreign currency shall be set off at the exchange rate on the day of set-off. If possible, the Bank shall inform the Customer in advance that it intends to exercise its right of set-off.

**26 Collateral**

- 1 As a result of the General Banking Conditions becoming applicable, the Customer has undertaken vis-à-vis the Bank to provide (additional) collateral for all existing and future amounts that the Customer owes to the Bank, on any account whatsoever, at the first request of the Bank and to the Bank's satisfaction. This collateral must be such, and if necessary must be replaced and/or supplemented by the Customer to the Bank's satisfaction, that the Bank, taking into account the Customer's risk profile, the cover value of the security and any other factors relevant to the Bank, continually has sufficient collateral. At the Customer's request, the Bank shall inform the Customer of the reason of the demand for collateral, or the replacement or supplement thereof. The amount of the required collateral must reasonably be in proportion to the Customer's obligations.
- 2 Pledge and mortgage rights of the Bank also serve, in the event that another banking institution, as its legal successor under general title, continues the banking relationship with the Customer, partially or in full, in favour of the other banking institution as if this was the Bank itself.
- 3 The Bank can terminate its pledge or mortgage rights at any moment, partially or fully by giving notice of termination.
- 4 Establishing a (new) security right in favour of the Bank does not serve to replace or release (existing) security rights.
- 5 If the General Banking Conditions are used vis-à-vis the Customer to amend, supplement and/or replace previous General (Banking) Conditions, all by virtue of earlier general (banking) conditions existing collateral, security rights and set-off rights remain in full force in addition to the rights and powers by virtue of these General Banking Conditions.

**27 Immediately due and payable**

If the Customer is in default with regard to the fulfilment of any obligation to the Bank, the Bank may make the amount due by the Customer immediately due and payable by giving notice, unless this is not justified in view of the minor importance of the default. Such a notice of termination must be made in writing and state the grounds for termination.

**28 Special costs**

- 1 If the Bank becomes involved in a seizure, dispute or proceedings between the Customer and a third party, then the Customer shall fully reimburse the costs incurred by the Bank resulting there from (for example the costs of legal assistance).
- 2 All other special costs incurred by the Bank following from the relationship with the Customer are for the Customer's account insofar as this is reasonable.

**29 Taxation and levies**

All taxation, levies and such – under whatever name and levied by whomever - that concern the relationship between the Customer and the Bank are for the account of the Customer, unless agreed in writing otherwise or a provision of imperative law specifies differently.

**30 The form of notifications**

Notifications to the Bank must be made in writing, unless a different manner of communication has explicitly been agreed with the Bank.

**31 Incidents and disasters**

If (in the execution of) an agreement between the Bank and the Customer an incident or disaster threatens to occur, occurs or has occurred, the Customer must, at the Bank's request, do or refrain from doing everything what the Bank reasonably considers necessary in connection therewith.

**32 Partial nullity or annulability**

Should a provision in these General Banking Conditions be invalid or annulable, then this does not imply that another provision of these Conditions is (partially) invalid or annulable. If a provision in these General Banking Conditions should be invalid or annulable, it will be replaced by a valid provision that is as close as possible to the import of the invalid or annulable provision.

**33 Applicable law**

The relations between the Customer and the Bank shall be governed by the laws of the Netherlands, unless imperative law prescribes otherwise.

**34 Complaints and disputes**

- 1 If the Customer is not satisfied with the services provided by the Bank, the Customer must first turn to the Bank taking into account the Bank's procedure for this.
- 2 Disputes between the Customer and Bank shall only be brought before the competent Netherlands Court, except in the case of imperative law and the following:
  - a The Customer can also submit a dispute to the authorised dispute and complaint committees.
  - b The Bank can also submit a dispute to the foreign court that is competent for the Customer.

**35 Termination of the relationship**

Both the Customer and the Bank may terminate the relationship between the Customer and the Bank in writing completely or partially. If the relationship is terminated by the Bank, the Bank shall, upon request, inform the Customer of the reason for such termination. After notice of termination of the relationship has been given, the existing individual agreements between the Customer and Bank shall be settled as soon as possible taking into account the applicable time periods. During the settlement, these General Banking Conditions and the specific conditions that apply to the individual agreements remain applicable.

**36 Transfer of contracts**

As a result of these General Banking Conditions becoming applicable, the Customer has, in the event of a (partial) transfer of the business operations of the bank, agreed to cooperate in advance that the Customer's legal relationship with bank in connection with the (partial) transfer shall (partially) be transferred to a third party.

**37 Amendment of and additions to the General Banking Conditions**

Amendments of and additions to these General Banking Conditions shall not take effect until after the representative Dutch consumers' and employers' organisations have been consulted about such amendments and additions and also about the manner in which the Customer shall be informed of the amendments and additions. The amendments and additions shall be filed at the Registrar's Office of the District Court of Amsterdam. These amendments and additions will not take effect until sixty days after the date of filing.

A copy of these General Banking Conditions has been filed by the Netherlands Bankers' Association at the Registrar's office of the District Court of Amsterdam under number 61/2009 on 27 July 2009.



