

General Conditions governing ABF Manager



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The content of this English version of the General Conditions governing ABF Manager of April 2018 is based on the Dutch *Algemene Voorwaarden voor ABF Manager van januari 2018*. In the event of any conflict or inconsistency between the English version and the Dutch version, the terms of this English version shall prevail.

1. DEFINITIONS

- 1.1 In these General Conditions governing ABF Manager the following terms shall have the meanings set out below:

ABF Manager

Asset Based Finance Manager

Access Provider

a business offering a Borrower services including access to the internet

Authentication Tools

a token provided to the Borrower by Deutsche Bank with a user code, password and/or (initial) PIN code, together allowing access to the Internet Environment;

Borrower

each party to whom/which credit is made available under a Credit Agreement

Contract Documentation

the Credit Agreement, the GCC, these GCABFM, the User Guide, the User Form and all other documents setting out the terms for the provision of credit in the form of an Asset Based Finance facility, as amended from time to time

Credit Agreement

an agreement between one or more Borrowers and, to the extent applicable, one or more other relevant parties, on the one hand, and Deutsche Bank, on the other hand, which governs the extension of credit in the form of an Asset Based Finance facility and to which the GCC apply

GCABFM

these General Conditions governing ABF Manager.

GCC

the General Credit Conditions (corporate clients) of Deutsche Bank of April 2018, as amended from time to time

Instruction

instructions for a transfer to an account number agreed in advance with a Borrower, to be debited from the Borrower's relevant internal account at Deutsche Bank

Internet Environment

the part of the internet environment of Deutsche Bank or another entity within the Deutsche Bank group that is made available in connection with the provision of credit in the form of an Asset Based Finance facility

User

each Borrower itself and, where applicable, one or more natural persons who are allowed by the Borrower to work with ABF Manager in connection with the Internet Environment.

User Form

the Asset Based Finance Manager User Form

User Guide

the Asset Based Finance Manager User Guide

2. INTERPRETATION

- 2.1 Clause 2 (*Interpretation*) of the GCC applies *mutatis mutandis* to these GCABFM.
- 2.2 Unless stated otherwise in a document that is part of the Contract Documentation, a reference in the Contract Documentation to:
- the "User" should be interpreted as including the legal successors under universal title (*rechtsopvolgers onder algemene titel*) and the permitted legal successors under singular title (*toegestane rechtsopvolgers onder bijzondere titel*) of the relevant natural person, legal person or partnership;
 - the "GCABFM" or any other document forming part of the Contract Documentation should be interpreted as a reference to that document as most recently amended, novated, supplemented, extended or restated.
- 2.3 The words used in these GCABFM to describe legal concepts, although in English, refer to Netherlands legal concepts only and the interpretation of those words under the laws of any country other than the Netherlands is to be disregarded.

3. GENERAL

- 3.1 ABF Manager can be used for the exchange of electronic data between parties via the Internet Environment in connection with the Contract Documentation and the performance of obligations thereunder. A Borrower or User can use ABF Manager to give Instructions to Deutsche Bank, via the Internet Environment, regarding the performance of the Credit Agreement.
- 3.2 In accessing and using ABF Manager, the Borrower must act exclusively and strictly with due observance of and in accordance with the conditions set out in the Contract Documentation.
- 3.3 The Borrower may designate Users by means of the User Form furnished by Deutsche Bank for this purpose. If a Borrower wishes to limit the authority granted to certain Users, the Borrower must inform Deutsche Bank of this by means of the User Form.
- 3.4 If multiple Borrowers are parties to the Credit Agreement, by signing the Credit Agreement each Borrower irrevocably and unconditionally authorises each other Borrower to designate Users on its behalf by means of the User Form.
- 3.5 Deutsche Bank shall use its best endeavours to ensure that ABF Manager is continuously available for use without interruptions.
- 3.6 Deutsche Bank shall not be responsible for the availability of the services provided by the Access Provider. All costs of accessing and using the services provided by the Access Provider, as well as telephone and data communications costs in connection with the use of ABF Manager, shall be borne by the Borrower.
- 3.7 Deutsche Bank shall at all times be entitled to refuse Instructions given by the Borrower. Deutsche Bank shall inform the Borrower of the reasons for this if requested, without prejudice to the provisions of clause 3.8 below.
- 3.8 The data and Instructions to be sent to Deutsche Bank must always be submitted exclusively in the form agreed in advance with Deutsche Bank. If data and Instructions are submitted in any other form they will not be accepted or processed, and Deutsche Bank shall be under no obligation to inform the Borrower of this.

4. AUTHENTICATION TOOLS

- 4.1 On signing the Credit Agreement and the User Form or on putting them into operation, Deutsche Bank shall make the Authentication Tools available to a Borrower for the benefit of the User(s). The tokens will be given to the User(s) designated on the User Form unless a Borrower instructs otherwise in writing.
- 4.2 The Authentication Tools are strictly personal and may only be used by the specific person to whom they are issued. Authentication Tools may not be exchanged between Users.
- 4.3 Deutsche Bank grants only a non-exclusive and non-transferable right to use ABF Manager and the Authentication Tools to the Users and not any ownership interest or intellectual property right in the Authentication Tools. Should the use of ABF Manager end, the Borrower shall be under an obligation to ensure that the Authentication Tools are returned to Deutsche Bank at its first request.
- 4.4 If the Borrower fails to comply with a request as referred to in clause 4.3 within a reasonable term to be determined by Deutsche Bank, Deutsche Bank will be entitled to charge an amount of EUR 250 per Authentication Tool.
- 4.5 If the Borrower wishes to revoke an Authentication Tool, it must inform Deutsche Bank of this by way of the User Form. Any such revocation will take effect after Deutsche Bank has confirmed the revocation to the Borrower.
- 4.6 If a token needs to be de-blocked, the de-blocking code shall be sent to the Borrower by post.

5. BORROWER'S AND USER'S DUTY OF CARE AND LIABILITY

- 5.1 The Borrower shall ensure that each User is fully aware of, is bound by and complies with the GCC and the User Guide.
- 5.2 The Borrower and the User(s) shall follow the instructions set out in the User Guide and apply the safeguards prescribed therein for ensuring the secure use of ABF Manager and for protecting the security of, among other things, the Authentication Tools.
- 5.3 The Borrower shall remain responsible under all circumstances for the Authentication Tools and for the acts and omissions of the User(s).
- 5.4 If a User fails to comply with the GCC or the User Guide, each User and each Borrower shall be jointly and severally liable for any resulting damage suffered by Deutsche Bank and the Borrower shall nonetheless continue to be bound by the User's acts.
- 5.5 If:
- a Borrower or a User knows or suspects that the password or the PIN code has become known or will become known to a third party; or
 - the Authentication Tools are lost, mislaid or stolen, the Borrower shall be under an obligation to inform Deutsche Bank of this immediately so that Deutsche Bank can take the necessary measures to protect the Borrower's position. These measures may mean, among other things, that the Borrower no longer has access to the Internet Environment.
- 5.6 The notice referred to in clause 5.5 may be given via the Internet Environment or by telephone, by the Borrower or the User. If notice is given by telephone, this must be confirmed without delay in writing by or on behalf of the Borrower. In this confirmation, the Borrower shall give an account of the facts or suspicions involved.

- 5.7 If the Borrower or Deutsche Bank suspects that a criminal act has been committed with respect to the use of an Authentication Tool, the Borrower shall report this immediately to Deutsche Bank and to the police at Deutsche Bank's request. The Borrower shall provide all cooperation reasonably necessary to clarify the circumstances surrounding an incident.

6. LIABILITY AND INDEMNIFICATION OF DEUTSCHE BANK

- 6.1 Deutsche Bank shall not be liable for losses, judicial or extrajudicial costs (including the costs of legal assistance and court costs), damage, claims or liabilities ("Damage") of any nature whatsoever incurred or suffered by a Borrower, the User(s) or third parties.
- 6.2 The Borrower and the User shall indemnify Deutsche Bank for all Damage suffered and costs incurred by Deutsche Bank, and shall refrain from holding Deutsche Bank liable for Damage that is related to or a result of:
- a failure by a Borrower or User to comply with one or more obligations under the Contract Documentation;
 - any communication between a Borrower or User, on the one hand, and Deutsche Bank, on the other hand, that is attributable to a Borrower according to one or more Authentication Tools, even though a Borrower claims that the communication did not originate from a Borrower or the User;
 - any incorrect or unauthorised use of ABF Manager by a Borrower, the User or third parties that have gained access through the use of one or more Authentication Tools;
 - any use, including misuse, of the Authentication Tools, regardless of whether or not a password or PIN code has subsequently been changed; or
 - any failure of ABF Manager or the Internet Environment to function in time, correctly and/or completely, unless and to the extent that the damage can be attributed to wilful misconduct (*opzet*) or gross negligence (*grove schuld*) on the part of Deutsche Bank.
- Wilful misconduct and gross negligence shall be understood to exclude the performance of maintenance activities or any other circumstances in which Deutsche Bank is, in all reasonableness, required to make ABF Manager unavailable to the Borrower. If Deutsche Bank is liable, this liability shall be limited to the Borrower's direct damage.
- 6.3 The Borrower shall remain responsible and liable for the use or misuse of ABF Manager in the widest sense until Deutsche Bank has had a reasonable opportunity to take measures in response to the notification referred to in clause 5.5 made by or on behalf of the Borrower.
- 6.4 The provisions of this clause shall be without prejudice to other exclusions of Deutsche Bank's liability whether in the Credit Agreement or elsewhere in these conditions.
- 6.5 Deutsche Bank shall not be liable for any incompleteness, mutilation, misunderstandings, delays or any failure to transfer data or Instructions correctly or at all as a result of any failure of data communication lines to function correctly or at all in transactions between the Borrower and Deutsche Bank.

7. EVIDENCE

- 7.1 The Authentication Tools shall be valid as a means of identification for ABF Manager.
- 7.2 Deutsche Bank shall be authorised to process or act upon all communications between a Borrower or User, on the one hand, and Deutsche Bank, on the other hand, such as Instructions and forms received by Deutsche Bank via the Internet Environment and recognised by it as originating from a Borrower according to one or more Authentication Tools. Deutsche Bank shall not be required to first enquire with the Borrower as to the accuracy of the authority, origin, content or otherwise, and the communication shall be binding on the Borrower.
- 7.3 Instructions shall be deemed to have been received by Deutsche Bank on the date and at the time that the Instructions reached the Internet Environment.

8. CONTACT PERSON AT DEUTSCHE BANK

- 8.1 The Borrower can submit any questions relating to the implementation and use of ABF Manager by telephone or e-mail to the contact person at Deutsche Bank. The contact person will be reachable at times to be announced to the Borrower.
- 8.2 Deutsche Bank shall at all times be entitled to impose charges for making the contact person available. Costs connected with telephone calls and e-mails to the contact person shall always be borne by the Borrower.
- 8.3 Deutsche Bank shall at all times be entitled to change the times at which the contact person is reachable for questions or services as described in clause 8.1. Such changes may be made without notice. Deutsche Bank shall ensure that during times when the contact person is not reachable, a message via his telephone will state the times at which he will be reachable.
- 8.4 It can happen that the contact person gives advice without being aware or made aware by the Borrower of all relevant information or all relevant circumstances regarding the question submitted. Deutsche Bank shall therefore bear no liability for loss arising in connection with such advice.
- 8.5 If the Credit Agreement is terminated and the Borrower cannot gain access to the Internet Environment, the contact person will no longer be available to the Borrower.

9. AMENDMENT OF GCABFM

- 9.1 Deutsche Bank may amend or supplement the GCABFM. Deutsche Bank shall notify each Borrower (whether directly or through the Principal Borrower (as defined in the GCC) pursuant to either clause 7 of the GCC or via the power of attorney referred to in clause 26 of the GCC), either in writing or electronically, of any amendment or addition at least thirty (30) calendar days prior to the intended effective date. If Deutsche Bank does not receive a written objection from a Borrower against the amendment or addition before the specified effective date, that Borrower shall be deemed to have accepted the amendment or addition, and the new version of the GCABFM, as amended or supplemented, shall be binding on that Borrower. If a Borrower objects in writing and on reasonable grounds to the applicability of the new version of the GCABFM, the earlier version of the GCABFM shall remain binding on that Borrower, but Deutsche Bank shall be entitled to cancel the Credit on reasonable notice and rescind (*ontbinden*) the Credit Agreement.
- 9.2 Deutsche Bank may unilaterally amend these GCABFM with immediate effect if (i) the basis for the amendment is an instruction issued by one of Deutsche Bank's regulators, an amendment to a law or regulation, or a decision by a court, complaints committee or disputes committee or (ii) if it would be unreasonable to expect Deutsche Bank to leave the facilities unchanged.

10. AMENDMENT OF USER GUIDE

Deutsche Bank may unilaterally amend the User Guide at any time. The new version shall enter into effect at the time it is published on Deutsche Bank's website.

11. ABRIDGED REFERENCE

The GCABFM shall be referred to in any agreement between a Borrower and Deutsche Bank or any of its group companies as the "General Conditions governing ABF Manager of April two thousand and eighteen" and/or the "General Conditions governing ABF Manager".

12. DURATION AND TERMINATION OF ABF MANAGER

- 12.1 The use of ABF Manager shall commence after the receipt of the Authentication Tools, after the administrative activation of ABF Manager and after Deutsche Bank has given the Borrower or User access to ABF Manager.
- 12.2 Apart from the circumstances that can lead to termination of the use of ABF Manager as set out elsewhere in these GCABFM, which stand alone, the use of ABF Manager may be terminated at any time by either party in writing and giving at least one month's notice. The use of ABF Manager shall terminate, without any notification to that effect being required, in any event if the Credit Agreement terminates, for whatever reason.
- 12.3 In the event of termination of the Credit Agreement, Deutsche Bank shall be under no obligation to repay subscription monies already paid for the remaining period during which the Borrower will no longer use or be able to use ABF Manager.

13. APPLICABLE LAW; DISPUTES

- 13.1 Unless expressly stated otherwise, these GCABFM and any non-contractual obligations relating to these GCABFM shall be governed by and construed in accordance with Dutch law.
- 13.2 All disputes between Deutsche Bank and a Borrower relating to these GCABFM shall be submitted to the competent court in Amsterdam. Deutsche Bank may nevertheless choose to submit a dispute to another competent court in the Netherlands or elsewhere.