

# General Terms of Business of DVB Bank SE for the DVB Bank Settlement Procedure

## for Corporate Clients (Business)



### Definitions

#### Settlement Beneficiary

Provides transport and/or logistics services, operates toll collection systems or collects on own or third-party claims in connection with the above-mentioned services or rents out vehicles and is in a contractual relationship with DVB Bank SE, Platz der Republik 6, 60325 Frankfurt am Main, Germany ("DVB Bank") in order to enable the Settlement Beneficiary's customers to participate in the DVB Bank Settlement Procedure. Settlement Beneficiaries include the companies listed on the website <http://www.logpay.de>.

#### Client

DVB Bank's contracting party following conclusion of the agreement on the participation in the DVB Bank Settlement Procedure. This contracting party is also in a business relationship with the Settlement Beneficiary and utilises transport and/or logistics services or related services of this Settlement Beneficiary, uses toll roads and infrastructure facilities of this Settlement Beneficiary or rents vehicles from this Settlement Beneficiary.

#### Payment Obligations

Any and all payment obligations of the Client vis-à-vis the Settlement Beneficiary from the Client's business relationship with said Settlement Beneficiary, arising from the utilisation of transport and/or logistics services, the use of toll roads and infrastructure facilities or the renting of vehicles by the Client, and settled by DVB Bank as part of the DVB Bank Settlement Procedure.

#### DVB Bank Settlement Procedure

Procedure in which DVB Bank settles the Client's Payment Obligations vis-à-vis the Settlement Beneficiary, thereby releasing the Client from its Payment Obligations and acquiring its own settlement claim ("Settlement Claim") vis-à-vis the Client. DVB Bank usually collects on the Settlement Claim from the Client's account. The designation or the legal form of the Settlement Procedure used (whether as LogPay procedure, direct debit procedure, bank procedure, resale procedure, factoring procedure, credit card procedure or any other designation) is irrelevant. The Settlement Procedure used may be restricted to specific products or services (such as transport-related products and services).

#### Statement of Account

Invoice, statement of account or service itemisation of the Settlement Beneficiary for the utilisation of transport and/or logistics services, the use of toll roads and infrastructure facilities or the renting of vehicles by the Client.

#### 1. Scope of application, amendments and other terms and conditions of business

- 1.1 DVB Bank offers the DVB Bank Settlement Procedures listed on the website <http://www.logpay.de>. These General Terms of Business apply to the business relationship between DVB Bank and the Client in connection with the DVB Bank Settlement Procedure. In addition, the Special Terms of Procedure shall apply, which contain specific provisions for the relevant DVB Bank Settlement Procedure. The Special Terms of Procedure will be agreed with the Client in writing upon the conclusion of the contract for participation in the DVB Bank Settlement Procedure.
- 1.2 Any amendments to these General Terms of Business or to the Special Terms of Procedure shall be proposed to the Client in writing no later than two (2) months prior to the proposed time of their entering into effect. Termination by the Client notwithstanding, the Client's consent shall be deemed to have been given if the Client does object to such amendments prior to the proposed point in time when said amendments are intended to enter into effect. This time limit will be deemed to have been complied with if the Client forwards its notice of rejection to DVB Bank prior to the proposed point in time when the amendments are intended to enter into effect. DVB Bank shall specifically advise the Client of this legal consequence in its proposal. Where amendments to these General Terms of Business or the Special Terms of Procedure are proposed to the Client, the Client can also terminate the DVB Bank Settlement Procedure, free of charge and with immediate effect, prior to the proposed point in time when the amendments are intended to enter into effect. DVB Bank shall specifically advise the Client of this right of termination in its proposal.

#### 2. Participation in DVB Bank Settlement Procedure

- 2.1 The participation in the DVB Bank Settlement Procedure requires a written/electronic confirmation of acceptance by DVB Bank. Upon receipt of this written/electronic confirmation of acceptance, the contract for participation in the DVB Bank Settlement Procedure between DVB Bank and the Client will come into being (agency agreement pursuant to section 675 (1) of the German Civil Code (Bürgerliches Gesetzbuch, "BGB"). DVB Bank shall notify the Client there of without undue delay.
- 2.2 Where a variety of Settlement Procedures are being offered to one and the same Settlement Beneficiary, DVB Bank shall be authorised to switch the Client, at any time, from one Settlement Procedure to another and to issue the required notices and declarations. This shall also apply if a Settlement Procedure is discontinued. Any such switch does not result in any change to the contractual terms and conditions that apply to the relationship between DVB Bank and the Client.

#### 3. Services provided by DVB Bank in the Settlement Procedure

- 3.1 DVB Bank shall settle, in the name and for the account of the Client, all of the Client's Payment Obligations vis-à-vis the Settlement Beneficiary, based on the latter's Statements of Account. More specifically, DVB Bank also settles those Client Payment Obligations that exceed the maximum settlement amount specified in No. 6 hereof, unless DVB Bank has informed the Client in writing that it will refuse to settle any such amounts. The notice of refusal to settle will only enter into effect upon its receipt, in writing, by the Client. The settlement of the Client's Payment Obligations has the effect of discharging the Client's obligations vis-à-vis the Settlement Beneficiary.
- 3.2 In relation to the Settlement Beneficiary, DVB Bank is obligated to assume the default risk arising from the Client's Payment Obligations up to the maximum settlement amount set for the DVB Bank Settlement Procedure in No. 6 hereof.
- 3.3 Moreover, DVB Bank offers the Client additional financing and billing services. The use of any such services requires the conclusion of a separate agreement between DVB Bank and the Client.

#### 4. DVB Bank's Settlement Claim against the Client

- 4.1 Every Payment Obligation to be settled by DVB Bank in the name and for the account of the Client vis-à-vis the Settlement Beneficiary will give rise to a Settlement Claim on the part of DVB Bank vis-à-vis the Client (claim for an advance payment pursuant to section 669 BGB). In the execution of the specific order, the amount of the Settlement Claim corresponds to the payment to be made by DVB Bank to the Settlement Beneficiary as per No. 9.1 sentence 3 of these General Terms of Business.
- 4.2 DVB Bank's right to request payment of additional fees, charges and expenses pursuant to No. 8 hereof shall remain unaffected.

#### 5. Billing control and complaints

- 5.1 The Client shall check any and all Statements of Account from the Settlement Beneficiary for completeness and accuracy upon their receipt without undue delay.
- 5.2 Complaints regarding Statements of Account from the Settlement Beneficiary or any objections (Einwendungen) or defences (Einreden) must be resolved directly between the Client and the Settlement Beneficiary. DVB Bank shall support the Client to the greatest extent possible.
- 5.3 Any complaints or objections or defences raised by the Client in relation to the relevant Settlement Beneficiary shall not affect DVB Bank's Settlement Claim vis-à-vis the Client.

#### 6. Determination of the maximum settlement amount for the DVB Bank Settlement Procedure

- 6.1 Upon request of the Client and/or the Settlement Beneficiary, DVB Bank will determine the maximum settlement amount for the DVB Bank Settlement Procedure. The maximum settlement amount depends on the total sum of the Client's Payment Obligations to be expected during any given accounting period. The accounting period is set forth in the Special Terms of Procedure for the DVB Bank Settlement Procedure.
- 6.2 DVB Bank is entitled to unilaterally modify the maximum settlement amount if the Client's Payment Obligations permanently exceed, or fall short of, the maximum settlement amount (divergence). A divergence exists if the maximum settlement amount has either been exceeded, or fallen short of, on the periodic accounting dates. The periodic accounting date is either based on an agreement with the Client or set forth in the Special Terms of Procedure for the DVB Bank Settlement Procedure. When fixing a new maximum settlement amount, DVB Bank shall take into consideration the Client's legitimate interests (e.g. seasonal fluctuations in Payment Obligations).
- 6.3 DVB Bank shall notify the Client in writing of any maximum settlement amount fixed and, where applicable, any changes thereto. The maximum settlement amount so fixed and any changes thereto will enter into effect in relation to the Client upon receipt of a written notification by the Settlement Beneficiary. DVB Bank shall notify the Client thereof without undue delay.
- 6.4 To the extent that regular advance payments have been agreed with the Client (e.g. as part of the Autoload process or a similar process involving prepayments), this will constitute an advance entitlement of DVB Bank within the meaning of section 669 BGB. The amount of the advance to be paid by the Client shall correspond to the maximum settlement amount applicable at the time, unless otherwise agreed with the Client. Once the receivables incurred by the Settlement Beneficiary have reached an amount that equates to at least 80% of the unused advances, DVB Bank is entitled to request early payment of the next advance payment and collect said payment from the Client. Any excess advance payments made may be offset against the subsequent claim for an advance payment. DVB Bank SE shall be entitled to offset, at any time, any excess advance payments made with any other claims it may have.

#### 7. Suspension of any or all DVB Bank Settlement Procedures

- 7.1 DVB Bank has the right to suspend any or all DVB Bank Settlement Procedures of the Client with immediate effect vis-à-vis the relevant Settlement Beneficiaries if the maximum settlement amount has been exceeded (No. 6 above) or in the event of a dishonoured direct debit, default in payment, revocation of direct debit authority or a direct debit order of the Client, lapsing loan security or credit insurance or other disruptions of the relationship of trust (e.g. concerns regarding a suspension of payment) within any DVB Bank Settlement Procedure. In any such cases, DVB Bank has the right to effect immediate suspension, but shall take into consideration the Client's legitimate interests when exercising this right. Where the Client is subject to a block, DVB Bank is entitled to switch the Client from one Settlement Procedure to another.
- 7.2 During the suspension of one or more DVB Bank Settlement Procedures, DVB Bank may continue to settle the Client's Payment Obligations arising vis-à-vis the relevant Settlement Beneficiary or Beneficiaries pursuant to No. 3.1 hereof, unless DVB Bank has informed the Client in writing that it will refuse settlement. The notice of refusal to settle will only enter into effect upon its receipt, in writing, by the Client. In derogation of No. 3.2 hereof, DVB Bank is under no obligation vis-à-vis the relevant Settlement Beneficiary or Beneficiaries to assume the default risk with regard to the Client's Payment Obligations that arise during the period of suspension.
- 7.3 The suspension of the DVB Bank Settlement Procedure(s) will enter into effect in relation to the Client upon receipt of a written suspension notice by the relevant Settlement Beneficiary or Beneficiaries. DVB Bank shall notify the Client of any such suspension without undue delay.
- 7.4 The right of termination at any time for good cause with immediate effect as per No. 17 hereof shall remain unaffected hereby.
- 7.5 Where the maximum settlement amount (No. 6 above) has been exceeded or in the event of a suspension, DVB Bank shall be entitled to immediately bill any Settlement Claims incurred, but not yet collected on, vis-à-vis the Client pursuant to No. 4.1 hereof and request their early payment. The right to assert further claims for damages is hereby not excluded. The Client's legitimate interests shall be taken into consideration.
- 7.6 DVB Bank has the right, at any time, to re-admit the Client to one or more DVB Bank Settlement Procedure(s) and to lift the suspension of the DVB Bank Settlement Procedure(s).

#### 8. Fees, charges and expenses

- 8.1 DVB Bank is entitled to charge an annual system fee of € 19.80. This annual system fee will be waived if the Client generates annual minimum sales of € 2,500 per calendar year via one or more DVB Bank Settlement Procedures. The calculation basis for the minimum sales is the sum of Settlement Claims paid up until the end of November of each calendar year.
- 8.2 DVB Bank is entitled to charge the Client a processing fee of € 15.00 for each payment reminder if the Client fails to meet its payment obligations vis-à-vis DVB Bank. Where direct debits from the Client's account have been dishonoured, DVB Bank is also entitled to demand reimbursement of any third-party fees paid.
- 8.3 DVB Bank is entitled to charge the Client for expenses incurred whenever DVB Bank is acting on behalf of the Client or in its presumed interest (in particular expenses for international payments, long-distance calls, postage) or when security is furnished, administered, released or realised (in particular notary fees, storage fees, costs for the guarding of assets serving as security).
- 8.4 DVB Bank is entitled to request from the Client, at its reasonable discretion, a further appropriate fee in line with standard banking practice for any services within the meaning of No. 3.3 hereof as well as any other additional services, unless the parties have agreed otherwise.
- 8.5 As a general rule, DVB Bank will not issue separate invoices for the fees, charges and expenses specified in Nos. 8.1 to 8.4 of these General Terms of Business.

#### 9. Due date of Settlement Claims, fees, charges and expenses / invoicing

- 9.1 The due date for any Settlement Claims under No. 4.1 hereof is subject to the Special Terms of Procedure for the DVB Bank Settlement Procedure. The Settlement Beneficiary will bill the Client for the Payment Obligations incurred by the Client. The Settlement Beneficiary's Statement of Account shall form the basis for DVB Bank's Settlement Claim vis-à-vis the Client and shall at the same time serve as DVB Bank's invoice for its Settlement Claim. Other than this, DVB Bank will not issue any other invoice for its Settlement Claim.
- 9.2 The annual system fee pursuant to No. 8.1 hereof is due and payable in December of each calendar year.
- 9.3 Any fees, charges and expenses pursuant to Nos. 8.2 to 8.4 of these General Terms of Business fall due immediately.

#### 10. Terms of Payment

- 10.1 In order to meet the Client's payment obligations incurred in connection with the DVB Bank Settlement Procedure as per Nos. 4, 8 and 10.3 of these General Terms of Business, the Client hereby authorises DVB Bank to collect on its payment obligations vis-à-vis DVB Bank from a business account nominated by the Client that is operated within Germany. The Client, or a third party nominated by the parties by mutual consent, shall grant DVB Bank a direct debit authority and shall instruct its bank to accept the relevant direct debit orders from DVB Bank. DVB Bank will collect on the Client's payment obligations vis-à-vis DVB Bank under Nos. 7.5, 9 and 10.3 of these General Terms of Business. The Client shall procure that the collection on its payment obligations on the due date is ensured. DVB Bank must be notified of any changes to banking details without delay.
  - 10.2 Where sales are generated in a foreign currency, any receivables denominated in that currency will be converted into and billed in euros. The conversion into euros shall be based on the prices quoted by the European Central Bank and published on Reuters Page ECB 37. The conversion will be effected at the price that prevails on the relevant due date pursuant to Nos. 7.5, 9 and 10.3 of these General Terms of Business.
  - 10.3 Where the Client is in default of payment, DVB Bank is entitled to charge default interest. The right to assert further claims for damages is hereby not excluded. DVB Bank will determine the amount of default interest at its reasonable discretion (section 315 BGB). Every six (6) calendar months, the Client will receive a periodic balance statement of the interest charged. Default interest is payable immediately upon receipt of the periodic balance statement.
  - 10.4 DVB Bank will maintain one or more current accounts for the Client. Any payments from the Client to DVB Bank will be applied to the Client's oldest debt first.
  - 10.5 The Client must raise any objections to the accuracy or completeness of a periodic balance statement within six (6) weeks of its receipt; where the Client raises its objections in writing, the dispatch of such objection within the six-week period shall suffice to comply with this time limit. Where an objection has not been raised within said time limit, this will be deemed to be approval of the periodic balance statement. DVB Bank shall specifically advise the Client of this legal consequence upon issuance of the periodic balance statement. The Client may request a correction of the periodic balance statement even after expiry of the time limit; in this case, however, the Client must prove that its account had been incorrectly debited or that a credit entry it was entitled to had not been made.
  - 10.6 Prior to issuing periodic balance statements, DVB Bank is entitled to reverse erroneous credit entries (due to an incorrect account number for example) in the current accounts by making a debit entry, provided that DVB Bank is entitled to repayment from the Client (reversal booking). In such cases, the Client cannot object to the debit entry on the grounds that it has already disposed of the erroneous credit entry amount.
  - 10.7 Where an erroneous credit entry only comes to the attention of DVB Bank after the periodic balance statement and DVB Bank is entitled to repayment by the Client, DVB Bank will debit the Client's account with the corresponding amount (corrective booking). Where the Client objects to any such corrective bookings, DVB Bank shall recredit the relevant amount to the account and assert its repayment claim separately.
  - 10.8 DVB Bank shall notify the Client of any reversal or corrective bookings without undue delay. With regard to the calculation of interest, DVB Bank will effect any such bookings with retrospective effect from the day on which the erroneous booking was made.
  - 10.9 For the participation in the SEPA direct debit scheme, all relevant bank data (e.g. BIC and IBAN) have to be submitted and have to be entered into the form provided therefore (SEPA Direct Debit Mandate). In case the customer runs a business, it is hereby agreed that the period of time in which the notification has to be submitted is at least one (1) day before the payment becomes due. In case the customer is a private person, it is hereby agreed that the period of time in which the notification has to be submitted is at least two (2) days before the payment becomes due. For the first debit to be executed, the time period for private persons is at least five (5) days. The submission may be done electronically (e.g. by email or by delivery of electronic invoices) or in any other suitable manner. The time periods mentioned before are not applicable if the payment becomes due with immediate effect (e.g. termination, blockage, exceeding of credit limits).
- #### 11. Assignments, events of default, objections (Einwendungen) or defences (Einreden), reversals and offsets
- 11.1 Any claims of the Client vis-à-vis DVB Bank under or in connection with the DVB Bank Settlement Procedure may only be assigned with DVB Bank's written consent. DVB Bank may only refuse such consent for good cause. The assignment of any refund claims of the Client from prepayments (e.g. via the Prepaid procedure) to third parties is precluded at all times.
  - 11.2 In the event of default on the part of the Settlement Beneficiary, the Client shall resolve any such issues with the Settlement Beneficiary. Any default on the part of the Settlement Beneficiary has no effect on the Client's payment obligations vis-à-vis DVB Bank. Likewise, any objections or defences raised by the Client in relation to the relevant Settlement Beneficiary shall not affect the Client's payment obligations vis-à-vis

- DVB Bank.
- 11.3 In the event of unjust enrichment on the part of the Settlement Beneficiary, the Client shall resolve any such issues with the Settlement Beneficiary. The Client must not involve DVB Bank in any reversal of unjust enrichment.
- 11.4 The Client may only offset its own claims against DVB Bank's claims or exercise a right of retention if the Client's claims against DVB Bank are either undisputed or have been finally determined by non-appealable court decision.
- 12. Provision and enhancement of security**
- 12.1 For its claims against the Client under or in connection with the DVB Bank Settlement Procedure, DVB Bank may request the provision or enhancement of security in line with standard banking practice. DVB Bank may also request the provision of security in line with standard banking practice to collateralise conditional or future claims against the Client. Where the Client has assumed liability for the debts of another client of DVB Bank (as a guarantor for example), DVB Bank will only acquire an entitlement to the provision or enhancement of security with regard to the debt resulting from the assumption of liability once this debt has fallen due.
- 12.2 Where, at the time its claims against the Client arose, DVB Bank had initially abstained from requesting the provision or enhancement of security, in whole or in part, DVB Bank may nevertheless request security at a later stage. This requires that circumstances arise or become known that warrant an increased risk assessment of the claims against the Client. This may be the case in particular if:
- the Client's financial situation has deteriorated or is likely to deteriorate;
  - existing security loses value or is likely to lose value; or
  - the Client has breached its payment obligations vis-à-vis DVB Bank. This is particularly the case in the event of the Client's default in payment and/or dishonoured direct debits.
- DVB Bank shall have no entitlement to security if the parties have expressly agreed in writing that the Client is not required to provide security or is only required to provide individually specified security.
- 12.3 DVB Bank shall give the Client sufficient time for the provision or enhancement of security. Where DVB Bank intends to exercise its right to terminate any or all DVB Settlement Procedures with immediate effect in accordance with No. 17.2 hereof, because the Client has failed to comply with its obligation to furnish or enhance security within the prescribed time limit, DVB Bank shall advise the Client of this legal consequence in writing beforehand.
- 12.4 In order to secure claims which should be invoiced or which should become due after blockage or termination, all collateral provided by the customer (e.g. bank guarantees, bank sureties or deposits) may be retained for a retention period of six (6) months. If not all claims are invoiced even a longer retention period is allowed.
- 13. Agreement of a lien in favour of DVB Bank**
- 13.1 The Client and DVB Bank agree that DVB Bank will acquire a lien over the securities and chattels that are in, or will come into, the possession of DVB Bank or LogPay Financial Services GmbH as the enterprise acting on behalf of DVB Bank pursuant to No. 19.3 hereof. Furthermore, DVB Bank will also acquire a lien over the claim that the Client may or will have against DVB Bank under or in connection with the DVB Bank Settlement Procedure(s) (account balances for example).
- 13.2 Any such lien shall serve as security for all existing, future and conditional claims DVB Bank (including all its branches in Germany and abroad) may have vis-à-vis the Client under or in connection with the DVB Bank Settlement Procedure. Where the Client has assumed liability for the debts of another client of DVB Bank (as a guarantor for example), the lien will only secure the debt resulting from the assumption of liability once this debt has fallen due.
- 13.3 Where monies or other assets come under the control of DVB Bank or LogPay Financial Services GmbH as the enterprise acting on behalf of DVB Bank pursuant to No. 19.3 hereof, subject to the proviso that any such monies or assets may only be used for a specific purpose (such as cash payment to honour a bill), DVB Bank's lien will not extend to any such monies or assets. The same shall apply to any profit-participation certificates issued by DVB Bank itself, the Client's claims against DVB Bank from subordinated liabilities and to securities held in DVB Bank's safe custody abroad on behalf of the Client.
- 14. Limitation of the entitlement to security and obligation to release**
- 14.1 DVB Bank may assert its entitlement to the provision or enhancement of security until such time as the realisable value of all security corresponds to the total amount of all claims under the DVB Bank Settlement Procedure (cover limit).
- 14.2 Where the realisable value of all security combined exceeds the cover limit, not just temporarily, DVB Bank shall, upon the Client's request, release security at its own choice in an amount corresponding to the amount exceeding the cover limit; when selecting the security to be released, DVB Bank shall take into consideration the legitimate interests of the Client and any third-party security provider who has furnished security for the Client's liabilities. In this context, DVB Bank is also obligated to execute Client orders for the assets that are subject to the lien (e.g. sale of securities, payments from savings accounts).
- 14.3 Where a valuation measure other than the realisable value or another cover limit or another threshold for the release of security has been agreed in writing for any particular security, any such measure, limit or threshold shall apply.
- 15. Realisation of security**
- In the realisation of security, DVB Bank may choose between several assets furnished as security. When realising security and selecting the security to be realised, DVB Bank shall take into consideration the legitimate interests of the Client and any third-party security provider who has furnished security for the Client's liabilities.
- 16. Client's disclosure obligation and duty to cooperate**
- 16.1 Under the German Banking Act (Kreditwesengesetz), the Client shall keep DVB Bank informed of its business developments on a regular and timely basis. More specifically, the Client is obligated to forward its financial statements to DVB Bank within nine (9) months following the end of any financial year. DVB Bank is entitled to request further documents, as necessary.
- 16.2 The Client undertakes to notify DVB Bank of any changes of name or address and of the extinguishment or variation of any power of attorney granted to DVB Bank (authorisations in particular). This duty to notify shall also apply if such power of attorney has been entered into a public register (e.g. the commercial register) and its extinguishment or variation will also be entered into such register.
- 16.3 The Client shall check any and all account statements, Statements of Account, notices and other communications from DVB Bank for completeness and accuracy upon their receipt without undue delay and to also raise any objections without undue delay.
- 17. Termination**
- 17.1 Any DVB Bank Settlement Procedure may be terminated by either party by the giving of one (1) month's written notice prior to the end of any one accounting period, without stating reasons. The right to terminate at any time for good cause shall remain unaffected hereby.
- 17.2 DVB Bank may terminate any or all DVB Bank Settlement Procedures for good cause without giving notice if the continuation of the DVB Bank Settlement Procedure(s) cannot be reasonably expected of DVB Bank, taking into consideration the other party's legitimate interests. Good cause on the part of DVB Bank is shown in particular if:
- a material adverse change occurs in the Client's financial situation or the value of any security, or is likely to arise, or credit insurance has lapsed or is likely to lapse, thereby jeopardising the performance of any payment obligations vis-à-vis DVB Bank, even when realising the security furnished for this purpose;
  - the Client fails to comply with its obligation to provide or enhance security in accordance with No. 12 hereof or any other agreement within an appropriate time limit set by DVB Bank;
  - a direct debit has been dishonoured for lack of funds or the direct debit authority and/or the direct debitor have been revoked; or
  - the Client has given incorrect information regarding its financial situation and this information has been of material significance for DVB Bank's loan decision or other decisions relating to transactions that are subject to considerable risk on the part of DVB Bank.
- 17.3 Where good cause on the part of DVB Bank relates to the breach of a contractual duty, termination shall only be permitted following the expiry of a period set to remedy such violation without said violation having been remedied or following an unsuccessful warning, unless such period or warning is not required due to the particular circumstances of such breach (section 323 (2) and (3) BGB).
- 17.4 Moreover, DVB Bank may terminate individual DVB Bank Settlement Procedures for good cause without giving notice if the underlying contractual relationship between DVB Bank and the Settlement Beneficiary has ended.
- 17.5 In the event of termination with immediate effect, DVB Bank shall give the Client sufficient time to wind up, unless immediate finalisation is necessary.
- 18. Bank's duty of secrecy and status report**
- 18.1 DVB Bank is obligated to keep as confidential all Client-related facts and assessments it becomes aware of (bank's duty of secrecy). DVB Bank may only disclose information regarding the Client if statutory provisions so require or the Client has consented to such disclosure or DVB is authorised to issue a status report. Furthermore, the disclosure of information to LogPay Financial Services GmbH in accordance with No.19.3 hereof shall also be permitted.
- 18.2 Status reports contain general statements and comments on the Client's financial situation, its creditworthiness and solvency; they do not, however, contain details as to account, savings account or securities account balances or other assets entrusted to DVB Bank or details regarding the drawings on loans.
- 18.3 DVB Bank is authorised to issue status reports on legal entities as well as businesses entered in the commercial register and other entrepreneurs, provided that any enquiry relates to their business activities. However, DVB Bank will not provide any status report if the Client has instructed DVB Bank to the contrary. DVB Bank will only issue status reports on other entities, retail customers and associations in particular, if these have granted their consent for this purpose, either in general or on a case-by-case basis. A bank report will only be issued if the party requesting such report has credibly substantiated a legitimate interest in the data collected information and there is no reason to assume that disclosure would conflict with protectable interests of the Client.
- 18.4 DVB Bank will only provide status reports to its own clients and to other banks for their purposes or the purposes of their customers.
- 19. Personal data and data protection / involvement of third parties**
- 19.1 The Client is obligated to provide DVB Bank, on request, with personal data for collection, storage, amendment and onward transmission, provided that this is necessary to protect the legitimate interests of DVB Bank and, more specifically, the performance of the business relationship and the obligations under the German Motorway Toll Act (Autobahntollgesetz) with regard to heavy goods vehicles as well as comparable regulations in other countries, and there is no reason to assume that the protectable interest of the Client outweighs the legitimate interest in processing or using such data. The Client is hereby advised that any data collected in connection with the business relationship will be stored by both DVB Bank and third parties in accordance with No. 19.3 hereof.
- 19.2 Prior to the transmission of any personal data, the Client shall endeavour to obtain the consent of the data subject in accordance with the statutory provisions (such as section 4a of the German Data Protection Act (Bundesdatenschutzgesetz) and shall notify the data subject in compliance with any such provisions (e.g. section 33 of the German Data Protection Act).
- 19.3 The Client shall grant DVB Bank the right to use suitable third parties (such as LogPay Financial Services GmbH, Schwalbacher Strasse 72, 65760 Eschborn, Germany) in the performance of its obligations (the settlement of payments in particular) and to transmit the data required in this context to any such third parties in compliance with data protection provisions, whilst safeguarding the Client's business secrets. DVB Bank shall not disclose any such data to third parties without the express prior consent of the Client. This shall not apply to the disclosure of data to LogPay Financial Services GmbH. Furthermore, DVB Bank is entitled to assume obligations for the financing of its business operations and to assign its claims from the business relationship between itself and the Client to the relevant trading partners.
- 19.4 DVB Bank or third parties retained by it (No. 19.3 above) is/are entitled to request at any time, in the name of the Client or in their own name, accounting documents, toll statements, individual trip logs and other receipts from the Client or directly from the Settlement Beneficiary in order to be able, for example, to verify the accuracy of receivables billed to the Client. However, DVB Bank is under no obligation to do so.
- 20. Deposit insurance scheme**
- DVB Bank is a member of the deposit insurance scheme of the Federal Association of German Cooperative Banks (Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V.). DVB Bank is entitled to provide the deposit insurance scheme or one of its representatives with any and all information and documents required for the above purposes.
- 21. DVB Bank's liability; Client's contributory negligence**
- 21.1 With regard to the performance of its obligations, DVB Bank shall be vicariously liable for any fault on the part of its employees or third parties whom DVB Bank uses in the performance of its obligations. To the extent that the Special Terms of Procedure for the relevant DVB Bank Settlement Procedure or other agreements contain differing provisions, those provisions will prevail. Where the Client has contributed to the occurrence of loss or damage through negligent conduct (e.g. by breaching its duties to cooperate set forth herein), the extent to which DVB Bank and the Client are liable shall be determined on the basis of the principles of contributory negligence.
- 21.2 Where the contents of an order are such that DVB Bank or LogPay Financial Services GmbH would usually entrust a third party with its further execution, DVB Bank will perform said order by passing it on to such third party in its own name (order passed on to third party). This applies, for example, to obtaining status reports from other credit institutions or to the custody and administration of securities in other countries. In any such cases, DVB Bank's liability shall be limited to careful selection.
- 21.3 DVB Bank shall not be liable for any loss or damage incurred as a consequence of force majeure, riot, acts of war, natural disasters or other events for which it is not responsible (e.g. strikes, lockouts, disruption of communications, actions by governmental authorities both in Germany and abroad).
- 22. Miscellaneous**
- 22.1 If any provision of these General Terms of Business or the Special Terms of Procedure for the relevant DVB Bank Settlement Procedure is found to be invalid or unenforceable, in whole or in part, this shall not affect the validity of the remaining terms and provisions hereof and thereof. The invalid or unenforceable provisions will be replaced with a provision that is in accordance with the statutory rules Solten einzelne Klauseln dieser Allgemeinen Geschäftsbedingungen und/oder der Besonderen Verfahrensbedingungen des jeweiligen DVB Bank Ausgleichsverfahrens ganz oder teilweise unwirksam oder nicht durchführbar sein, so berührt dies die Gültigkeit dieser Allgemeinen Geschäftsbedingungen und/oder der Besonderen Verfahrensbedingungen im Übrigen nicht. An die Stelle der unwirksamen oder undurchführbaren Klausel tritt eine solche, die den gesetzlichen Vorschriften entspricht.
- 22.2 These General Terms of Business are governed exclusively by German law without regard to German conflict of laws provisions or the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 22.3 The exclusive place of jurisdiction for all disputes arising in connection with the business relationship (also after its termination) is Frankfurt am Main, unless another court has exclusive jurisdiction by operation of law.
- 22.4 Written form within the meaning of these General Terms of Business requires a duly signed original document. Signed documents sent via telefax or computer fax shall suffice. .
- 18. Bank's duty of secrecy and status report**
- 18.1 DVB Bank is obligated to keep as confidential all Client-related facts and assessments it becomes aware of (bank's duty of secrecy). DVB Bank may only disclose information regarding the Client if statutory provisions so require or the Client has consented to such disclosure or DVB is authorised to issue a status report. Furthermore, the disclosure of information to LogPay Financial Services GmbH in accordance with