

**GENERAL TERMS & CONDITIONS OF REVERSE FACTORING**  
(hereinafter referred to as **General Terms & Conditions** or these **General Terms & Conditions**)

**I. DEFINITIONS AND INTERPRETATION**

- 1.1. These General Terms & Conditions are a constituent part of the Factoring Contract concluded between the Factor and the Buyer. In the event of any contradictions between provisions of these General Terms & Conditions and provisions of the Factoring Contract, provisions of the Factoring Contract shall apply first, then provisions of the General Terms & Conditions, and then enacting provisions of regulations governing contractual relationships. The Factoring Contract and the General Terms & Conditions, as well as all amendments to the Factoring Contract and/or these General Terms & Conditions shall be jointly referred to hereinafter as Contract.
- 1.2. The following definitions used in these General Terms & Conditions shall have the same meaning in the Factoring Contract, unless defined otherwise by provisions of the Factoring Contract:
- 1.3. **Factor** means OTP banka d.d., Split, Domovinskog rata 61, Company Register Number (MBS) 060000531, Personal Identification Number (OIB) 52508873833.
- 1.4. The **Supplier** is a business entity which is the creditor of the factored receivable.
- 1.5. The **Buyer** is a business entity which is the debtor of the factored receivable.
- 1.6. The **Factoring Service Provider** is any person entitled, according to provisions of valid regulations, to provide the factoring service.
- 1.7. The **Party** or **Parties** means a party or parties to the Contract.
- 1.8. **Business entity** is a legal person, craftsman or other natural person running another private business, an entity without legal personality deemed equivalent to a legal entity and other entities without legal personality autonomously entering legal transactions and participating in economic transactions involving commodities and services giving rise to debtor-and-creditor relationships.
- 1.9. **Factoring** is reverse factoring as a legal transaction contracted by the Factor and the Buyer in connection with the settlement of particular factored receivables as receivables of the Buyer's specified Suppliers from the Buyer, where the Factor can, subject to fulfilment of all necessary conditions, guarantees and circumstances, provide to the Buyer the service of financing individual factored receivables before or at maturity of the factored receivable, with transfer of the paid factored receivables from the Buyer's Suppliers to the Factor and with the Buyer's obligation to pay Fees and interest to the Factor, where the Factor can pay, depending on the arrangement, either based on the Buyer's instruction and/or based on the Supplier's request.
- 1.10. **Domestic factoring** is factoring where all entities are residents in terms of the law regulating foreign exchange operations.
- 1.11. **International factoring** is factoring where at least one of the entities is a non-resident in terms of the law regulating foreign exchange operations.
- 1.12. **Recourse factoring** is factoring where the Supplier is responsible to the Factor for the collection of the receivable and such responsibility represents the Supplier's personal obligation towards the Factor.
- 1.13. **Non-recourse factoring** is factoring where the Factor takes the risk of collection of the factored receivable, but exclusively in the event that the Buyer's default is the result of the Buyer's insolvency and/or illiquidity and/or bankruptcy. However, if there is any reason besides any or all of these reasons for the Buyer's default or if such reasons do not exist, but there is any other reason/reasons for the Buyer's default, then the risk of the Buyer's default does not pass to the Factor, but remains with the Supplier and the Supplier's responsibility for the recoverability of the factored receivable represents the Supplier's personal obligation towards the Factor.
- 1.14. **Direct factoring** is factoring where the Factor acts without initially assigning the factored receivable from the Factor to another factoring company.
- 1.15. **Indirect factoring** is factoring where the Factor acts in such way that, immediately after having received the assignment of the factored receivable from the Supplier, the Factor assigns the factored receivable to another factoring company.
- 1.16. **Factored receivables** are the existing and/or future, non-due, complete or partial monetary receivables which result from the delivery of goods and/or provision of services by business entities in the country or abroad and which must meet all conditions defined in the Contract. The maturity of the factored receivable corresponds to the maturity of invoices which are the basis for monetary receivables representing the factored receivable.
- 1.17. **Purchase price of factored receivable** represents the nominal amount of the factored receivable, while the maturity of the purchase price of the factored receivable consists of one or two elements as agreed by the Factoring Contract: the first element being the maturity of the factored receivable and the second element being the Prolonged Financing Period, if any has been agreed.
- 1.18. **Nominal amount of the factored receivable** is the amount indicated in the invoice and/or the sum of amounts indicated in the invoice.

- 1.19. **Interest** is the contracted interest charged by the Factor on the advanced part of the purchase price of the factored receivable for the period from advance payment to the contracted due date of payment of the purchase price of the factored receivable, or to any other day/date agreed by the Parties.
- 1.20. **Default interest applicable to Fees and expenses charged by the Factor to the Party** is the maximum rate of statutory default interest at the rate defined by Article 29 (twenty-nine) of the Civil Obligations Act by increase of the discount rate of the Croatian National Bank prevailing on the last day of the half-year preceding the current half-year by 5 (five) percentage points; such default interest shall be variable with regard to the maximum permitted rate applicable to each individual day of default, and shall be calculated and charged (unless explicitly agreed otherwise) for all days of default in the performance of the payment obligation, from the due date of the factored receivable to the date of performance of the obligation, where the calculation of default interest shall be based on the assumption of a year of 365 days.
- 1.21. **Default interest applicable to factored receivables** is the maximum rate of statutory default interest for late payment, consisting of the basic interest rate for late payments at the rate equalling the benchmark rate plus 8 percentage points. Such default interest shall be variable with regard to the maximum permitted rate applicable to each individual day of default, and shall be calculated and charged (unless explicitly agreed otherwise) for all days of default in the performance of the payment obligation, from the due date of the factored receivable to the date of performance of the obligation, where the calculation of default interest shall be based on the assumption of a year of 365 days, all pursuant to the Financial Operations and Pre-Bankruptcy Settlements Act.
- 1.22. **Reference rate** in the calculation of default interest is the basic interest rate for late payment, equalling the average interest rate on the balance of loans granted for periods over one year to non-financial companies, calculated for the reference period preceding the current half-year decreased by 3 percentage points, where such average interest rate for the reference period is determined by the Croatian National Bank according to established methodology and must be published by the Croatian National Bank on 1 January and 1 July in the Official Gazette, all pursuant to the Financial Operations and Pre-Bankruptcy Settlements Act.
- 1.23. **Reference period** in the calculation of default interest includes the six months preceding the month before the last month of the half-year preceding the current half-year, including such month, all pursuant to the Financial Operations and Pre-Bankruptcy Settlements Act.
- 1.24. **Factoring fee** is the fee for providing factoring services, calculated as a percentage of the amount of each invoice.
- 1.25. **Administration fee** is the fee for operations related to the administration and collection of purchased invoices. It is calculated as an absolute amount on each invoice and credit note.
- 1.26. **Advance interest calculation** implies that the Factor, prior to advance payment, calculates and charges interest on the factored receivable to the planned maturity of the factored receivable or, respectively, to the planned date of collection of the factored receivable, deducts the interest from the advance payment and then pays the remaining amount to the Supplier.
- 1.27. **End-of-period interest calculation** implies that the Factor calculates interest monthly during the financing period and charges it at maturity of the factored receivable.
- 1.28. **Monthly interest calculation** implies that interest is calculated by the Factor monthly during the financing period and charged monthly.
- 1.29. **Application processing fee** is the fee for operational activities related to the processing of the application and granting the factoring service (arranging the service, data collection, analysis, service approval etc.). It is calculated once on the amount of the Factoring Contract and for each prolongation.
- 1.30. **Debtor risk assessment fee** is the fee for collecting creditworthiness information for the debtor of the factored receivable and for monitoring debtor risk for the term of the agreement. The fee is calculated in the absolute amount, per debtor, once at the time of execution of the Factoring Contract and once a year for every debtor.
- 1.31. **Fees** are any and all fees, the factoring fee, the administration fee, costs, expenses and other payments and financial obligations as defined by the Contract paid and/or payable to the Factor by the Buyer.
- 1.32. **Member country** is an EU country and signatory to the Contract on the European Economic Area.
- 1.33. **Third country** is a non-member country.
- 1.34. **State** is considered to be any state authority (legislative, executive or judiciary), central, regional and local bodies of state administration, autonomous agencies and bodies and companies in which the state has a majority interest.
- 1.35. **Other member country factoring company** is a legal person with registered office in a member country other than the Republic of Croatia, performing factoring operations in compliance with regulations of such country.
- 1.36. **Foreign factoring company** is a legal person with registered office outside the territory of the Republic of Croatia and any member country, performing factoring operations in compliance with regulations of such third country.
- 1.37. **Foreign import factor** is a legal person with registered seat outside the territory of the Republic of Croatia, performing factoring operations in compliance with regulations of such domicile country and selected by the Factor for cooperation in a particular export factoring contract.

- 1.38. Facility** represents the maximum amount for a particular Supplier or group of Suppliers as agreed by the Buyer and the Factor in the Factoring Contract.
- 1.39. Amendment to the General Terms & Conditions** means any and all modifications to the General Terms & Conditions made by the Factor and any and all supplements to the General Terms & Conditions made by the Factor.
- 1.40. Authorisation of receivables** means any and all valid statements of the Buyer acknowledging the amount and maturity of the Supplier's receivable.
- 1.41. Competent body** is any central or local government and/or authority and/or body of Croatia or any ministry, unit or political subunit thereof, and any other person under direct or indirect control of such government performing executive, legislative, judicial, regulatory or administration functions or one that belongs to the government or to any other governmental body, instrument, agency, competent body or commission or to any independent regulatory competent body in Croatia.
- 1.42. Working day** is every day except Saturday, Sunday, public holiday in the Republic of Croatia and non-working day in the Republic of Croatia.
- 1.43. Prolonged Financing Period** represents an additional period of time starting on the first day after maturity of the factored receivable, during which the Buyer can settle its obligation regarding the factored receivable and during which the Factor shall calculate the regular contracted interest rather than the default interest, and ending on the date defined by the Factoring Contract; to be applicable, such period must be expressly contracted and defined in terms of length by the Factoring Contract;
- 1.44. Benchmark interest rate in the calculation of regular interest rate** (ZIBOR, EURIBOR, USD LIBOR etc.) represents the average rate at which first class banks borrow funds in HRK or EUR or USD etc., depending on the abbreviation indicated, from each other on the Croatian interbank market or in the Eurozone or on the London interbank market, where the abbreviations ZIBOR / EURIBOR / LIBOR etc. also contain an indication of the period underlying the calculation of the benchmark interest rate (e.g. 1M stands for one-month rate, 3M stands for three-month rate, etc.), and these benchmark interest rates prevailing on a particular day shall be calculated by Thomson Reuters information system on business days around 11 (eleven) o'clock, Central European Time. To determine the regular contracted interest rate under the Factoring Contract, the benchmark rate published one business day before the day when the Factor determines the regular interest rate under the Factoring Contract shall apply. If the quotation of a particular benchmark rate for the definition of the regular contracted interest rate (ZIBOR, EURIBOR, USD LIBOR, etc.) by Thomson Reuters is not available for the interest calculation period under the Factoring Contract or if such service ceases to exist, the Factor shall apply the benchmark market interest rate for HRK for the same period of calculation of the regular contracted interest rate available at Thomson Reuters and thus determine the regular contracted interest rate under the Factoring Contract. If not even such interest rate is available, the Factor shall apply the arithmetic mean (rounded to four decimal places) of interest rates for borrowing deposits in HRK for a term corresponding to the interest calculation period under this Factoring Contract quoted to the Factor by three leading commercial banks of the Factor's choice which are active on the Croatian interbank market, and the Factor shall determine the thus defined regular contracted interest rates and inform the Clients thereon within an adequate term and calculate the regular contracted interest amount for the accounting period according to the Factoring Contract;
- 1.45. Benchmark interest rate floor in the calculation of the regular contracted interest rate (Zero Floor clause):** if the calculated benchmark interest rate in the calculation of the regular contracted interest rate is less than 0.00 % (zero percent), then the benchmark interest rate of 0.00 % (zero percent) shall apply for the calculation of the regular contracted interest rate;
- 1.46. ZIBOR** (eng. Zagreb Interbank Offered Rate) is the benchmark interest rate in the calculation of the regular contracted interest rate for the currency Croatian Kuna (HRK) on the Croatian interbank market. ZIBOR is officially calculated based on the calculation of the mean values of interest rates quoted by eight biggest Croatian banks at Thomson Reuters. Information about the ZIBOR and changes thereof are publicly available to all at [www.reuters.hr](http://www.reuters.hr) and [www.hub.hr](http://www.hub.hr);
- 1.47. EURIBOR** (eng. Euro Interbank Offered Rate) is the benchmark interest rate in the calculation of the regular contracted interest rate for the currency Euro (EUR) representing the average rate at which first class banks borrow funds in EUR from each other in the Eurozone. Information on the EURIBOR and movements thereof is publicly available to all at [www.global-rates.com](http://www.global-rates.com) and [www.euribor-ebf.eu](http://www.euribor-ebf.eu).
- 1.48. USD LIBOR** (eng. London Interbank Offered Rate) is the benchmark interest rate in the calculation of the regular contracted interest rate for the currency US Dollar (USD), representing the average rate at which first class banks borrow funds in USD on the London interbank market. Information on the USD LIBOR and movements thereof is publicly available to all at [www.global-rates.com](http://www.global-rates.com) and [www.bbalibor.com](http://www.bbalibor.com).
- 1.49. CHF LIBOR** (eng. London Interbank Offered Rate) is the benchmark interest rate in the calculation of the regular contracted interest rate for the currency Swiss Franc (CHF), representing the average rate at which first class banks borrow funds in CHF on the London interbank market. Information on the CHF LIBOR and movements thereof is publicly available to all at [www.global-rates.com](http://www.global-rates.com) and [www.bbalibor.com](http://www.bbalibor.com).
- 1.50. Factoring Facility** is the maximum amount of credit granted to the Supplier by the Factor and contracted based on Supplier risk assessment considering other risks in factoring unrelated to credit risk, including but not

limited to: quality of delivered products/services, keeping deadlines, ownership relations, fraud, etc., which entitle the Buyer to query and/or deny payments (notwithstanding the Buyer's liquidity and solvency). The Factoring Facility can be granted and contracted either in the absolute amount or with regard to the advance amount for the financing of the factored receivable in such way that the Factoring Facility shall not exceed the amount of the advance percentage for the financing of the Factored Receivables multiplied by the amount of Buyer Factoring Limits granted (for all Buyers) – depending on which of the above options was contracted by the Factoring Contract;

- 1.51. Buyer Factoring Limit** is the maximum amount of Factored Receivables for an individual Buyer as defined by the Factoring Contract and established by the Factor and/or the insurer and/or the International Import Factor based on Buyer analysis and credit risk assessment;
- 1.52. Credit risk** is the threat of the Buyer's default, but only if the Buyer's default is caused by the Buyer's illiquidity and/or the Buyer's insolvency and/or the Buyer's bankruptcy. In the event that a third reason for the Buyer's default exists besides any or all of these reasons or in the event that these reasons do not exist, but there is a third reason/s of the Buyer's default, this shall not be considered credit risk.

## II. FACTORED RECEIVABLES

**2.1.** Receivables that can be subject to factoring are existing and/or future, non-due, whole or partial monetary receivables resulting from the delivery of goods and/or provision of services by business entities in the country or abroad, which:

- 2.1.1** shall meet all conditions defined in the Contact,
- 2.1.2** shall be non-due at the time of execution and 5 (five) working days following the date when the factor receives a duly completed and signed Specification,
- 2.1.3** shall result from regular (commercial) trading business related to the delivery of goods and services,
- 2.1.4** shall result from stable and continuous sale and delivery of goods or performance of services,
- 2.1.5** shall not be based on deliveries not yet completely provided or services not yet completely rendered,
- 2.1.6** shall not be based on delivered/dispached goods and/or provided services for which the Supplier does not hold a proper license and/or generally on goods and/or services in connection with which a law or other regulation has been breached,
- 2.1.7** shall not be based on fictitious and or pro-forma invoices,
- 2.1.8** shall not include receivables from Buyers where the Buyer can put forward set-off claims and/or other counterclaims and/or refund rights,
- 2.1.9** shall not be related to an object subject to retention and/or prolonged retention of ownership title,
- 2.1.10** shall not be issued by Suppliers related to the Buyer in terms of ownership or membership in the same group or Buyers directly or indirectly managed by the Supplier and/or Buyers directly or indirectly managed by the same company that directly or indirectly manages the Supplier,
- 2.1.11** shall not be based on consignment business, commission business, advances or partial payments made.

**2.2.** The maturity of the factored receivable at the time of purchase by the Factor shall not be longer than one year since the date of purchase.

**2.3.** By way of exception from the above restrictions, the maturity of the factored receivable at the time of purchase by the Factor may exceed one year in the event of renewal of export finance based on purchase with discount and without recourse of long-term non-due receivables collateralised by financial instruments (forfeiting) and in events when the State appears as creditor of the factored receivable.

## III. ASSIGNMENT OF RECEIVABLE

**3.1.** The assignment of receivables shall be considered completed when the Factor has performed partial or complete payment of the Supplier's receivable from the Buyer for which factoring has been contracted, by which the receivable has been transferred onto the Factor, while the transfer of future receivables shall produce legal effects when such receivables are created.

**3.2.** Assignment shall encompass the entire receivable/receivables (principal receivables, contracted, non-due and unpaid interest, either contracted or default interest) and all amounts owed, as well as all ancillary and dependent rights and rights to put forward claims related thereto, and neither the Supplier nor the Buyer may after the assignment, without the Factor's explicit consent, in any way reduce or restrict the amount and/or value and/or recoverability of the assigned receivables or pertaining collaterals or any and all ancillary and dependent rights.

**3.3.** By the assignment of the receivable, all contracted collaterals for receivables from the respective delivery of goods/services shall also transfer to the Factor besides ancillary rights, in particular rights arising from issued securities of the Buyer and any other collaterals delivered and/ or made available by the Buyer to the Supplier, regardless of whether such collaterals were contracted or not.

**3.4.** If the Competent Body should adjust and/or modify the interest rate and/or the interest calculation, and this should become effective during the term of validity of these General Terms & Conditions, relationships between the Parties

shall be subject to applicable regulations of the Competent Body and the Factor shall inform the Parties thereof prior to the application of such regulations.

#### **IV. SERVICES OF THE FACTOR - FINANCING**

**4.1.** Financing implies a service where the Factor, subject to the satisfaction of all required conditions, pays to the Supplier an advance in the amount of the percentage of the financed factored receivable as defined by the Factoring Contract. The receivable is financed as soon as the Factor has paid a part of the receivable amount to the Supplier.

**4.2.** The fact that the Facility is renewed according to the revolving principle implies that, after a particular receivable ceases to be part of the Facility when settled in the contracted manner and all of the Factor's receivables related to such receivables have been settled, the Buyer may, subject to the satisfaction of all other required conditions, use the non-committed amount of the Facility to finance further factored receivables, however only up to the Facility limit.

#### **V. USING THE FACILITY, MANNER AND CONDITIONS OF DISBURSEMENT**

**5.1.** The factored receivable is financed with interest charged in advance and the Factor may subject to the satisfaction of all required conditions:

**5.1.1.** pay to the Supplier the contracted advance reduced by the interest amount, factoring fee, administration fee and all other costs

or, if so agreed,

**5.1.2.** pay to the Supplier the full non-reduced amount of contracted advance, provided that the Buyer prior to advance disbursement settles the interest amount –factoring fee, administration fee and all other costs – to the Factor on the same day.

**5.2.** The Factor may at its own discretion pay to the Supplier the contracted amounts for each individual receivable or for the sum of receivables.

**5.3.** The Factor shall perform payments to the Supplier's business account specified in the Factoring Contract or in the Specification or as otherwise agreed in writing between the Parties, provided that the Supplier is not subject to a particular proceeding (bankruptcy, pre-bankruptcy, liquidation...) which, in the Factor's judgement, obstructs payments to another account and/or renders such payment risky in any way or, as the case may be, subject to the condition that no provision of any law or regulation obstructs, in the Factor's judgement, payment to another account or, as the case may be, the Supplier is not blocked and/or subject to an interim and/or preliminary measure and/or any other compulsory measure issued by a competent body and/or court which prohibits and/or prevents payment to the account of another entity and/or defining to which account the Factor is obligated to pay the above funds.

**5.4.** After cumulative fulfilment of the conditions that:

**5.4.1.** a Factoring Contract is duly executed and effective between the Parties,

**5.4.2.** the Factor has received a duly completed Specification with required attachments,

**5.4.3.** the Factor has accepted the Specification and receivables therein (the acceptance may be in writing or only the performance of payment based on certain invoices),

**5.4.4.** financing from the Facility is possible as there are currently non-committed (approved and not drawn) funds,

**5.4.5.** there are no circumstances that would render the Specification, at the Factor's sole discretion, inconsistent with the provisions of a contract made by and between the Supplier and the Buyer; a commercial business cooperation contract, a contract on the delivery of goods and/or services and/or another contract based on which the Supplier delivers to the Buyer goods or/services giving rise to the receivables that have been assigned to the Factor,

**5.4.6.** the Factor has no information and/or reasonable doubt as to the validity, authenticity or transferability of receivables (e.g. cases of non-delivery or late delivery of goods/services),

**5.4.7.** all conditions from the contract between the Buyer and Supplier have been satisfied according to the Factor's knowledge,

**5.4.8.** all other required conditions from the Contract have been satisfied,

then the Factor can finance the receivable in accordance with the amount of the approved Facility.

**5.5.** In the event that the Factor is for any reason (excess of the limit approved by the Facility Contract etc.) unable to finance the Supplier's receivable because the prerequisites for this do not exist, it shall forthwith notify the Buyer or the Supplier thereon if payment at the Supplier's request has been agreed. The Buyer and the Supplier agree expressly and without the need for any specific approval that the Factor, in the event described above, charges the factoring fee forthwith upon receipt of the Specification in any way permitted by the Contract.

## VI. IMPORTANT REPRESENTATIONS OF THE BUYER

**6.1.** The Buyer warrants to the Factor that deliveries or services to the Buyer shall be completely performed – precisely as regulated by a sales contract or another contract between the Supplier and the Buyer and that each receivable, including all ancillary rights assumed by the contract, shall exist as described in the data/documents delivered to the Factor and shall be assignable and not encumbered by complaints, right of set-off or retention or other counterclaims by the Buyer or third parties.

**6.2.** The Buyer gives to the Factor under full liability the following representations with regard to the receivables for the entire time from the performed assignment, including also the time of collection of all of the Factor's receivables, as well as the time after collection:

**6.2.1.** that the factored receivable and each created receivable shall exist as a valid, unconditional and undisputed obligation of the Buyer to the Supplier, in the amount and with the maturity as indicated in documents referred to in the Contract, especially in the Specification;

**6.2.2.** that no set-off has been performed for the factored receivable either fully or partly and that such receivables have not been fully or partly assigned to a third party(s),

**6.2.3.** that the Buyer is liable for the existence (authenticity) of entire factored receivable/receivables,

**6.2.4.** that the factored receivable shall be without any legal and/or other obstacles to the realisation thereof, as otherwise the Factor shall have the right of recourse for any kind of factoring (including non-recourse factoring) and the right to collect from the Buyer everything paid by the Factor,

**6.2.5.** that documents referred to in the Contract shall be issued completely and in accordance with contracted terms and conditions between the Supplier and the Buyer and that they shall be drafted and signed by persons (lawfully) authorised for representation and that each expression of will of the Supplier to the Factor shall be made by authorised representatives or persons granted special power of attorney by such authorised representatives for the actions they take towards the Factor,

**6.2.6.** that documents referred to in the Contract, in particular invoices, shall be drafted and issued in accordance with accounting, tax and other compulsory regulations, as well as international accounting standards, and contain all necessary data in connection with a particular account receivable, its amount, base, currency and payment maturity,

**6.2.7.** that documents referred to in the Contract, shall contain a clause/provision about the permissibility of transfer of accounts receivable, the wording of such clause being defined in the Factoring Contract or, respectively, that they shall contain no clause prohibiting assignment, that the assignment is in no case prohibited by any contract, law or otherwise, and that there are no decisions of a court, government and/or administration body prohibiting, preventing and/or complicating the performance of assignment and/or purchase of accounts receivable,

**6.2.8.** that according to the Buyer's best knowledge and considering that the Buyer is obligated to act with increased care and in compliance with professional rules and customs (due care of a prudent businessman), documents referred to in the Contract, i.e. the delivery of goods or services, shall not be subject to contestation by any person,

**6.2.9.** that documents referred to in the Contract shall not contain any deficiencies that would prevent or significantly complicate and/or prolong the collection of receivables, i.e. the fulfilment of the purpose of factoring or collection of the Factor's receivables,

**6.2.10.** that according to the Buyer's best knowledge, and considering that the Buyer is obligated to act with increased care and in compliance with professional rules and customs (due care of a prudent businessman), the Buyer or a third party shall not put forward, i.e. shall have no justified reason to put forward any objections or claims that could affect the existence, amount and/or due date of individual receivables,

**6.2.11.** that the data to be delivered by the Buyer to the Factor, shall be true and complete,

**6.2.12.** that, if any new information should appear and/or already existing facts and/or circumstances become known later, which could affect the Factor's rights and/or obligations from the Contract and/or in connection with any obligation, and in particular on the Factor's decision on assuming the purchase obligation, the Buyer shall forthwith and without undue delay notify the Factor thereof in writing, as otherwise it shall bear every responsibility for any lost profit or pecuniary or non-pecuniary loss that has resulted and/or could result directly or indirectly therefrom for the Factor,

**6.2.13.** that the Buyer shall bear full liability for the collectability of any receivable and any payment by the Factor based on and/or related to the Contract,

**6.2.14.** that it shall refrain from activities which may threaten the environment, natural sources, human health and safety, or which would represent non-compliance with statutory regulations from the domain of environment protection and similar domains. The Buyer also confirms that no procedure has been instigated against it for violation of environmental regulations.

**6.2.15.** take out adequate insurance of its tangible (fixed) assets and stock from usual perils;

**6.2.16.** permit, at the Factor's request, inspection of its business premises, plants, production and work processes and inform the Factor of its short-term and long-term plans.

**6.3.** In the event that, notwithstanding the fulfilment of conditions from the Contract, it should later become obvious that the Buyer has not owed to the Buyer or that a representation was or has subsequently become incomplete in full or in part, the Factor may desist from providing the contracted service for such receivable/receivables and the Buyer shall, at the Factor's first written call and without delay, return any financed amount for the same receivable/receivables, including default interest calculated on such amount from the day of any payment performed to the day of repayment of the paid amount to the Factor.

**6.4.** The Factor shall always reserve the right – without prejudicing the above mentioned right of settlement or desistance from providing the contracted service for a particular receivable/receivables – of defining for the Buyer an adequate deadline to correct the established deficiencies, after the expiry of which it shall again decide on the acceptance, continuation or desistance from providing the contracted service for such receivable/receivables.

**6.5.** The Buyer represents to the Factor under full liability with regard to the Buyer itself:

**6.5.1.** that the Buyer – as a company, i.e. legal entity, is validly registered in a court register or another register and authorised to perform a registered business activity, including the export of goods or services,

**6.5.2.** that the performance of obligations from the Contract is not subject to any restrictions by its competent (corporate) bodies and that the performance of assumed obligations is not contrary to valid regulations and other obligations of the Buyer created in any way,

**6.5.3.** that there are no circumstances in its business environment known to or foreseeable by the Buyer, that could have a materially adverse effect on the business and adversely affect its ability to perform its obligations from the Contract, in particular that the Buyer's account is not frozen and there are no circumstances based on which an account freeze could be expected to occur shortly and that no bankruptcy or pre-bankruptcy or liquidation proceeding has been instigated or is in the process of being instigated against the Buyer,

**6.5.4.** that there are no disputes, executions, administrative or any other proceedings that could have a significant material or other adverse effect on its business operations and adversely affect its ability to perform its obligations from the Contract,

**6.5.5.** that none of its present assets or income is subject to encumbrances and/or attachments and/or blockades, interim and/or preliminary measures – except the ones delivered to the Factor in writing.

## **VII. IMPORTANT COMMITMENTS OF THE BUYER**

**7.1.** For the term of duration of the Contract, the Buyer undertakes to:

**7.1.1.** regularly create/prepare and deliver to the Factor basic financial statements promptly upon the Factor's request: balance sheet, profit & loss statement, cash flow report, report on changes in equity and notes to financial statements – all within deadlines defined by valid accounting regulations and in compliance with prescribed reporting standards, as well as other accounting/bookkeeping data and documents that the Factor may request from time to time in its own right or according to central bank regulations;

**7.1.2.** notify the Factor in writing on any intended change of corporate name, registered office or delivery address and change of any personal data and the change of any personal data of the Buyer, data of guarantors and co-borrowers and data required for creditworthiness assessment of the Buyer and the guarantors and the co-borrower and any other data according to the Factor's request, where such notice shall take effect from the date when the Factor receives such notice;

**7.1.3.** inform the Factor about intended status changes of the company (merger, acquisition, demerger or transformation), as well as about the existence of reasons for bankruptcy and any intended or initiated liquidation of the company;

**7.1.4.** inform the Factor in advance about the occurrence of circumstances which could cause default on the obligations undertaken and inform the Factor about all actions contemplated or taken to eliminate the consequences of such circumstances;

**7.1.5.** inform the Factor about any significant sale or encumbrance of tangible (fixed) assets or income or any execution instigated over such assets;

**7.1.6.** take out adequate insurance of its tangible (fixed) assets and stock from usual perils;

**7.1.7.** take and continue to take all required actions to ensure that the assignment of the contracted receivables to the Factor is legally valid and easy to prove,

**7.1.8.** submit to the Factor for individual receivables a valid and completely filled-in Specification using the Factor's template form (which the Factor is authorised to change always and at any time) which is a constituent part of these General Terms & Conditions,

**7.1.9.** forthwith and without delay, simultaneously with the transfer of documents on the existence of the receivable or exceptionally subsequently, but not later than 8 (eight) days following the delivery of the Specification and always significantly before the due date of the transferred receivable, inform the factor about the existence of all means of payment/collaterals for the factored receivable that the Supplier holds, receives subsequently or gets possession of in another legally valid manner, and transfer such means of payment/collaterals to the Factor forthwith and without delay according to the form pursuant to the valid regulation for the respective collateral/means of payment and the form according to any contract between the Supplier and a third party or, respectively, take measures that such collaterals are transferred by the Supplier to the Factor,

- 7.1.10.** forthwith and without delay settle any due receivable of the Factor from the Buyer and settle every interest as well as default interest running for all days of default of any monetary receivable, from the due date of any and all of the Factor's receivables to the date when such obligation is duly and completely settled including all associated receivables and expenses,
- 7.1.11.** deliver to the Factor permanently the originals or certified copies of the following documents:
- 7.1.11.1.** Specification containing the exact and precise list of individual receivables, signed and certified by the Buyer, by which the Buyer unconditionally confirms that the listed accounts receivable:
    - 7.1.11.1.1.** have not been settled in full or in part,
    - 7.1.11.1.2.** have not been already transferred to third parties,
    - 7.1.11.1.3.** have not fallen due,
    - 7.1.11.1.4.** have not been subject to set-off and shall not be set-off either fully or partly
    - 7.1.11.1.5.** have no contractual and/or statutory obstacles to being assigned,
    - 7.1.11.1.6.** are at the time of signing the Specification and at the time of delivery of the Specification to the Factor, not subject to any objections put forward in connection with material and legal faults of the delivered goods/services, or, any other claims (complaints);
  - 7.1.11.2.** invoices and other adequate documents (dispatch notes, delivery notes, etc.), issued by the Supplier or to the Buyer, to evidence the existence of the account receivable, its amount and due date;
  - 7.1.11.3.** international bill of lading or CMR or any other document acceptable to the Factor to confirm beyond doubt that the Supplier has delivered and the Buyer has received the goods based on which the Supplier has a receivable from the Buyer;
  - 7.1.11.4.** valid commercial contract on business cooperation or contract on the delivery of goods and/or services and/or other contract concluded between the Supplier and the Buyer (including contracts concluded by issuance and acceptance of an order or by offer and acceptance of offer), based on which the Supplier delivers to the Buyer goods and/or services resulting in receivables subject to the Contract, such contract not being in conflict with provisions of the Contract;
  - 7.1.11.5.** as necessary, other documents, data and evidence which the Factor is by reference to provisions of the Contract entitled to demand, as well as documents and data the Factor considers in its sole discretion necessary for the realisation of an individual contract.
- 7.2.** In the event of procedures of acquisition, merger, demerger, restructuring or any other procedure based on a legal act or secondary legislation being performed over the Buyer, the Buyer shall ensure that all of its general legal successors established after any of the above procedures:
- 7.2.1.** are liable, as co-debtors and personal debtor to the Factor, for all of the Buyer's obligations resulting from the Contract and any annexes thereto,
  - 7.2.2.** deliver to the Factor new collaterals of the Factor's choice to secure all of the Factor's receivables under the Contract and any annexes thereto in the event that delivery of collaterals has been agreed earlier (before the implementation of such procedures).
- 7.3.** If one or several new companies are established and such companies take over only a part of the Buyer's assets and/or liabilities and/or equity and/or business activities, the Buyer, which shall continue to be an active legal entity in such case, shall ensure that the newly established company or companies:
- 7.3.1.** settle unlimitedly, as co-debtors and personal debtors to the Factor, and validly every due liability of the Factor arising from the Contract and any annexes thereto;
  - 7.3.2.** deliver to the Factor collaterals of the Factor's choice to secure all of the Factor's receivables under the Contract and any annexes thereto in the event that delivery of collaterals has been agreed earlier (before the implementation of such procedures).

## VIII. COLLATERALS

- 8.1.** To secure the settlement of all of the Factor's receivables under and related to the Contract, increased by any appurtenances thereto, as well as any collateralisation expenses, collection and/or collateralisation procedure expenses concerning the Factor's receivables and expenses of any other court procedure and for the purpose of collateralisation of receivables and/or expenses that may arise from future contracts, annexes and agreements, the Buyer shall forthwith and without delay deliver/assign to the Factor the collaterals defined by the Factoring Contract, as well as any collaterals that the Supplier has received or has the right and/or possibility to obtain from the Buyer, the guarantor, the co-debtor and a third party directly or indirectly liable either to the Supplier or to the Buyer on any other basis for a particular receivable(s), and any collaterals which are customary for a particular transaction.
- 8.2.** If any collateral should, for any reason, completely or partly cease to be legally valid and binding for the Buyer and/or guarantor and/or co-debtor and/or third party and/or the assets of any or all of the aforesaid persons, or should in the Factor's opinion cease to provide sufficient security for the obligations under the Contract, or is completely or partly disposed of, then the Buyer and the guarantor and the co-debtor and the mentioned third party are obligated, at any time – until full settlement of the Factor's receivables, to obtain and deliver to the Factor forthwith and without delay any additional collateral as requested by the Factor, and execute any additional contracts and/or other documents requested by the Factor, especially the ones required for the legal validity of each and any collateral.



**8.3.** In the event that a guarantor and/or co-debtor relationship and/or third-party obligation on another basis has been agreed, then the Buyer's obligations from the first and second paragraph of this article shall equally refer both to the guarantor and the co-debtor and the third party.

**8.4.** The guarantors guarantee jointly, severally and unlimitedly to the Factor for the performance of all of the Buyer's obligations arising from and related to the Contract.

**8.5.** The co-debtor and/or the otherwise obligated third party shall be liable to the Factor jointly, severally and unlimitedly with the Buyer for the fulfilment of all of the Buyer's obligations under and related to the Contract.

**8.6.** The Buyer, guarantor, co-debtor and the otherwise obligated third party irrevocably authorise the Factor to specify in the bill of exchange, debenture bond and any other received collaterals the amounts of due receivables, as well as any other required elements, including also the "non-protest" clause with regard to the bill of exchange, to domicile them at will and take any other required actions and submit the collaterals for collection in any order, as well as to take any other receivable collection and/or collateralisation actions.

**8.7.** The Factor shall be authorised to use the Buyer's collaterals as security for due and timely performance of all obligations based on this Agreement or any other contractual and/or non-contractual relationship between the Factor and the Buyer, notwithstanding the date when the contractual or non-contractual relationship was established.

**8.8.** The Factor shall be authorised to use the co-borrower's collaterals as security for due and timely performance of all obligations based on this Agreement or any other contractual and/or non-contractual relationship between the Factor and the co-borrower, notwithstanding the date when the contractual or non-contractual relationship was established.

**8.9.** The Factor shall be authorised to use the guarantor's collaterals as security for due and timely performance of all obligations based on this Agreement or any other contractual and/or extra-contractual relationship between the Factor and the guarantor, notwithstanding the date when the contractual or non-contractual relationship was established.

**8.10.** The Factor shall be authorised to use the collaterals of the otherwise obligated third party as security for due and timely performance of all obligations based on this Agreement or any other contractual and/or non-contractual relationship between the Factor and the third party, notwithstanding the date when the contractual and/or non-contractual relationship was established.

**8.11.** The Factor shall be entitled to keep and use all collaterals also in the event that the Factoring Contract and/or Agreement cease to be effective on any basis (expiry, termination, cancellation or other reasons), for the purpose of collection of and/or security for all of the Factor's receivables.

**8.12.** After the Factor's receivables from the Party have ceased to exist, the Factor shall return the collaterals within 60 (sixty) days since the date of receipt of the written request, except if there is any statutory obligation and/or any obligation based on other regulation and/or contract and/or decision of a competent court and/or body related to the collateral.

## **IX. COLLECTION/SETTLEMENT OF THE FACTOR'S RECEIVABLES**

**9.1.** To collect its own due receivables and/or secure its own due and/or non-due receivables based on the Contract and/or other legal business between the Parties and/or receivables arising from non-contractual relationship, the Factor shall be always and at any time, without announcement or any further approval by the Parties and regardless of whether the Contract is still in force, authorised:

**9.1.1.** to seize, without initiating a court or other procedure, all required funds in all accounts of the Parties, guarantors and co-borrowers – be it domestic or foreign means of payment – and transfer them to the Factor's business account or perform direct settlement by transferring the funds from the Party's account to the Factor's account,

**9.1.2.** to withhold or deny to the other Party the amount required by the Factor, in the event that the Factor is obligated to pay to the other Party any amount on any basis, and settle and/or secure the Factor's receivable in the same amount, on which the Factor shall inform the other Party in writing, no later than 3 business days since the day when the Factor settled or secured its own receivable.

**9.1.3.** to take all actions it considers necessary, initiate all court and out-of-court proceedings and dispose of all collaterals.

**9.2.** The Factor shall be authorised and may at any time assign/transfer/sell all or any of its receivables from the Contract or contracts connected therewith, as well as (all or any) associated collaterals to third parties, regardless of any court proceeding or other forced collection proceeding being instigated or pending.

The Party may partly or completely assign its rights and/or receivables from the Factor to a third party only with the Factor's written consent.

**9.3.** In the event of partial collection/settlement or partial payment of due receivables to the Factor, the Factor shall be entitled to autonomously determine the order of settlement of its receivables.

**9.4.** None of the Factor's rights shall be subject to restrictions defined by provisions of the law regulating contractual relationships with regard to the Supplier's and Buyer's liability for the recoverability of the assigned receivables.

The Party may set off its receivables from the Factor with the Factor's receivables from the Party only with the Factor's written consent.

## X. NOTIFICATIONS AND DELIVERY OF LETTERS

**10.1.** All and any communication between the Parties shall be valid only if made in writing, sent and received by the other Party, and can be addressed to the other Party in the following way: a) directly to the other Party provided that the other Party confirms by signature to have received the letter with indicated date of receipt, b) delivered by registered mail to the address of the other Party, c) delivered by way of a public notary and d) in the event of delivery to the Supplier and/or Buyer – delivered to the fax number indicated in the Factoring Contract or to the Supplier's and/or Buyer's e-mail address indicated in the Factoring Contract, or to the Supplier's and/or Buyer's fax number or e-mail address not indicated in the Factoring Contract but subsequently delivered/made available to the Factor by the Supplier and/or Buyer.

**10.2.** The Supplier and the Buyer expressly agree that every letter sent to them by registered mail, to the address indicated in the Factoring Contract or to another address visible in the court register on the date of dispatch of the mail, but returned undelivered for any reason shall be considered validly delivered on the date of dispatch of the registered mail, which shall also apply to the co-borrower, the guarantor and the otherwise obligated third party.

## XI. SEVERABILITY AND DATA DISCLOSURE

**11.1** If any provision of the Contract or contracts related thereto should become null and void or invalid under the law, the Parties establish that such nullity shall not affect the validity of the remaining provisions of the Contract or contracts related thereto. The invalid provision shall be replaced by a valid one, taking into account the expectations of the Parties and the purpose of this legal business.

**11.2.** The Parties agree that all disputes arising from the Contract or from legal business in connection with the Contract, including disputes regarding the issues of its valid origination, breach or termination, as well as the legal effects resulting therefrom, shall be as a matter of principle settled amicably (which however shall not obligate the Parties to commence any institutionalised attempt at arbitration and/or mediation), but they are always and at any time authorised to initiate a dispute with the materially competent court in Zagreb and the law of the Republic of Croatia shall be the applicable law.

**11.3.** Data in this contractual relationship, as well as personal data of the Parties and their authorised representatives, may be disclosed or made available or given to third parties only by agreement of the Parties. By way of exception, the Parties agree that data regarding this contractual relationship, as well as personal data of the Parties and their authorised representatives, may be used with the Factor or within the Factor's group or financial or mixed holding (of banks and other legal persons) to which the Factor belongs. The above data shall be also delivered to competent courts or government bodies authorised to demand such data according to valid regulations.

**11.4.** All Parties except the Factor waive the right to initiate any court or out-of-court proceeding and/or put forward any claims for compensation of any damage resulting from the use of the above data or delivery thereof to the entities indicated in the above paragraph of this article.

## XII. AGREEMENT TERMINATION

**12.1.** The Parties agree that in the event of occurrence of extraordinary circumstances, including but not limited to:

**12.1.1.** significant disruptions on the banking services market or interbank market (e.g. unavailability of sources of funds) and/or;

**12.1.2.** measure(s) of the Croatian National Bank and/or the European Central Bank restricting the ability to provide banking services or imposing additional obligations to banks in the sense of increased regulatory capital, reserves, etc., or freezing the non-committed funds, and/or;

**12.1.3.** circumstances indicative of increased banking risk, and/or;

**12.1.4.** circumstances indicative of disruptions of general economic terms and conditions of business operations, the Factor shall be permanently authorised, without defining any term of performance, term of notice or any other term, with immediate effect on the date of dispatch of the written notice in any of the ways defined in Article 10 of these General Terms & Conditions, to take either one or several or all of the following actions:

1. to deny to the Buyer the use non-drawn parts of the Facility partly or completely and/or;
2. to alter the amount and term of use of the remaining non-drawn part of the Facility and/or;
3. to determine that the remaining non-drawn part of the Facility is to be used in a precisely defined period and/or;
4. to unilaterally terminate and/or cancel the Contract.

**12.2.** The Factor may, without initiating a legal or any other proceeding, unilaterally **cancel** the Contract and related contracts in writing, and/or suspend the provision of one, several or all contracted services, on any day of the month, with immediate effect so that the Contract and/or contracts related thereto shall be cancelled at the time of dispatch of the written notice of cancellation in any of the ways defined in Article 10 of these General Terms & Conditions, without defining any term of notice, term of performance or similar, unless the effect is explicitly regulated otherwise in the written cancellation, in the event that:

- 12.2.1.** the Buyer should have failed/is failing to duly meet any obligation from the Contract, and in particular if the Buyer should have failed to pay any due receivable of the Factor in the manner defined by the Contract and/or
- 12.2.2.** it is established that – at approval the Contract and/or later – the Buyer has withheld, provided or presented false or unreliable (business) information relevant for the execution and maintenance of the Contract and/or has provided contracted collaterals with deficiencies preventing or restricting the use of such collaterals, and/or
- 12.2.3.** the Buyer fails to provide and/or confirm and/or ensure and/or recall, either by forbearance or tacitly, the contracted guarantees and/or collaterals and/or is late in performing such obligation, and/or
- 12.2.4.** the Buyer fails to provide basic, additional or alternative collaterals for the Factor's receivables as defined in the Contract,
- 12.2.5.** the relationship between the Buyer and the Factor is deemed by the Factor to have significantly changed, i.e. to be disrupted even if all of the Buyer's obligations to the Factor are fulfilled as required by the Contract at such time,
- 12.2.6.** the Buyer expresses an objection or objections to amendments to the General Terms & Conditions and such objection or objections are deemed unsubstantiated and/or cannot and/or are refused to be accepted by the Factor,
- 12.2.7.** the Buyer fails to notify the Factor on any change of its (personal) data,
- 12.2.8.** the Buyer ceases to have its registered office in the territory of the Republic of Croatia or terminates operations in the territory of the Republic of Croatia,
- 12.2.9.** other circumstances occur on the side of the Buyer which could, in the Factor's judgement, significantly affect the Buyer's ability to properly fulfil its obligations and/or the utilisation and/or value of contracted collaterals for receivables, including but not limited to circumstances such as:
- 12.2.9.1.** occurrence/threat of protracted inability to pay and/or account freeze and/or the occurrence of any other situation indicative of the impossibility to maintain the Contract or a commercial contract between the Buyer and the Supplier,
- 12.2.9.2.** third-party claims asserted regarding the assigned receivables,
- 12.2.9.3.** impending or actual pre-bankruptcy, bankruptcy, liquidation, over-indebtedness,
- 12.2.9.4.** temporary or partial cessation of business activity,
- 12.2.9.5.** cancellation or restriction of a right, asset, authorisation, approval, privilege, license, etc.
- 12.2.9.6.** large-scale forced collection to the detriment of the Buyer, through a court proceeding or an out-of-court proceeding – if this could, according to the Factor's free and discretionary judgement, have or cause adverse effects on the ability to duly fulfil obligations and maintain the Contract.
- 12.3.** If the agreement provides for a guarantor and/or co-borrower and/or otherwise obligated third party, then the reasons and circumstances from the above paragraph of this article relative to the Buyer shall equally apply to the guarantor and the co-borrower and the third party.
- 12.4.** Both the Factor and the Buyer have the right to cancel the Contract without the need for any explanation, on any day of the month, by written notice of cancellation with a term of notice defined in their own right, which shall however not be less than eight days since the date of receipt of the notice of cancellation by the other Party or, as the case may be, since the date when the notice of cancellation is considered received.
- 12.5.** The Factor may, without instigating a court proceeding or any other proceeding, unilaterally **cancel** the Contract and contracts related thereto in writing, on any day of the month, with immediate effect so that the Contract and/or contracts related thereto shall be cancelled at the time of dispatch of the written notice of cancellation in any of the ways defined in Article 10 of these General Terms & Conditions, without defining any subsequent term of performance or similar, unless the effect is not explicitly regulated otherwise in the written cancellation, in any case of the Buyer's default on contractual regulations as well as in any case regulated by the law or other valid regulations.
- 12.6.** In the event of Agreement termination, the Buyer shall also settle all expenses in connection with the Contract termination as well as expenses related to the collection of the Factor's receivables, including in-court and out-of-court costs and expenses, dun letters, insurance costs, costs of financing incurred by the Factor because of concluding and/or terminating the Contract, as well as any other costs incurred in the course of the contractual relationship in connection with the Contract, including indemnification for the loss suffered by the Factor. In the event of Agreement termination, the Buyer shall, due to the fact that reasons for Agreement termination occurred on its side, lose all and any rights it would have if the Contract had stayed in force until the expiry of its contracted duration.
- 12.7.** In the event that the Contract ceases to be effective on any basis (expiry, cancellation, termination or any other cause), it shall continue to be effective in the segment regulating and securing any and all of the Factor's receivables based on the Contract, including the loss incurred, until full settlement of all of the Factor's receivables with all associated and ancillary receivables, expenses and interest.

### **XIII. PERSONAL DATA PROCESSING INFORMATION**

**13.1.** The principles and the rules of personal data processing are contained in and regulated by the Personal Data Protection Policy of the Factor, which is available at the web site [www.otpbanka.hr](http://www.otpbanka.hr), and in all the branches of the Factor, at request of the data subject.

**13.2.** In addition, more detailed data collection information, as well as information about the data collected in ways other than directly from the data subject, can be found at the Internet site of the Factor, and in all of its branches.

### **XIV. EFFECTIVE DATE, SCOPE OF APPLICATION, AMENDMENTS TO THE GENERAL TERMS & CONDITIONS**

**14.1.** These General Terms & Conditions shall enter into force and shall apply as of 14.09.2019.

**14.2.** After having been adopted, these General Terms & Conditions shall be available in the Factor's offices and on the Factor's web site.

**14.3.** In case of any change in legal regulations during the term of validity of these General Terms & Conditions, the valid regulations shall apply until harmonisation of these General Terms & Conditions with such legal changes.

**14.4.** The Party shall be considered to acknowledge and agree with the amendments to these General Terms & Conditions if the Party delivers no written objections to such amendments to the Factor within 15 (fifteen) days since the day of publication of the amendments to the General Terms & Conditions on the Factor's website. In the event of objections to the amendments to the General Terms & Conditions, the Factor reserves the right to terminate the Contract according to the article of these General Terms & Conditions regulating the cessation of the Contract. Amendments that are exclusively in favour of Parties other than the Factor can be applied without delay.

**14.5** The General Terms & Conditions dated 01.12.2018. shall be repealed as at the date of entry into force of these General Terms & Conditions.