



Terms and Conditions for Payments by Direct Debit under the SEPA Business-to-Business (B2B) Direct Debit Scheme

Payments which the customer who is not a consumer¹ makes to payees (creditors) by SEPA business-to-business (B2B) direct debit through his/her account with the Bank shall be subject to the following terms and conditions.

1. General

1.1 Definition

A direct debit is a payment transaction initiated by the payee and debited to the customer's account where the amount of the payment is specified by the payee.

1.2 Charges

Charges and any changes in these shall be governed by No. 12, paragraphs 2–6 of the General Business Conditions (»Allgemeine Geschäftsbedingungen«).

2. SEPA business-to-business (B2B) direct debit

2.1 General

2.1.1 Main characteristics of the SEPA B2B direct debit scheme

The SEPA B2B direct debit scheme may only be used by customers who are not consumers. It enables the customer to make payments in euros to the payee through the Bank within the Single Euro Payments Area (SEPA). SEPA comprises the countries and territories listed in the Annex. For the execution of payments by SEPA B2B direct debit

- the payee and the payee's payment service provider must use the SEPA B2B direct debit scheme,
- the customer must give the SEPA B2B direct debit mandate to the creditor before the payment transaction and
- the customer must confirm to the Bank that the SEPA B2B direct debit mandate has been given.

The payee initiates the respective payment transaction by presenting the direct debits to the Bank through his/her payment service provider. If a payment which has been made on the basis of a SEPA B2B direct debit is authorised, the customer shall not be entitled to claim a refund of the amount debited to his/her account from the Bank.

2.1.2 Unique identifiers

The customer must use the IBAN² notified to him/her, plus for cross-border payments outside the European Economic Area (EEA)³ the BIC⁴ of the Bank, as his/her unique identifier vis-à-vis the payee, since the Bank is entitled to execute the payment by SEPA B2B direct debit solely on the basis of the unique identifier provided to it. The Bank and the intermediary institutions involved will execute the payment to the payee using the IBAN, plus for cross-border payments outside the EEA the BIC indicated by the payee in the direct debit data set as the customer's unique identifier.

2.1.3 Transmission of direct debit data

When SEPA B2B direct debits are used, the direct debit data may also be forwarded through the message transmission system of the Society for Worldwide Interbank Financial Telecommunications (SWIFT), which is based in Belgium and has operating centres in the European Union, Switzerland and the United States.

2.2 SEPA B2B direct debit mandate

2.2.1 Giving the SEPA B2B direct debit mandate

The customer shall give a SEPA B2B direct debit mandate to the payee. With it, the customer authorises the Bank to pay SEPA B2B direct debits drawn by the payee. The mandate must be given in writing or in the manner agreed with the Bank. This authorisation also includes the express consent that the payment service providers involved in direct debit and any intermediary bodies that may be involved in direct debit

can access, process, transmit and store the personal data of the customer necessary for the execution of the direct debit.

The SEPA B2B direct debit mandate must contain the following statements by the customer:

- a statement authorising the payee to collect payments from the customer's account by SEPA B2B direct debit, and
- a statement instructing the Bank to pay the SEPA B2B direct debits drawn by the payee on the customer's account.

The SEPA B2B direct debit mandate must contain the following details (authorisation data):

- identification of the payee,
- creditor identifier,
- indication of whether the mandate is for a one-off payment or for recurrent payments,
- name of the customer,
- name of the customer's Bank, and
- customer's unique identifier (see Section 2.1.2).

The direct debit mandate may contain additional details supplementing the authorisation data.

2.2.2 Confirmation of giving a SEPA B2B direct debit mandate

The customer must confirm the authorisation under Section 2.2.1 to the Bank without delay by sending the Bank the following data contained in the SEPA B2B direct debit mandate given to the payee:

- identification of the payee,
- creditor identifier,
- mandate reference,
- indication of whether the mandate is for a one-off payment or for recurrent payments, and
- date on which the mandate was signed.

For this purpose, the customer may also send the Bank a copy of the SEPA B2B direct debit mandate. The customer must notify the Bank without delay and, if possible, in writing of any changes to or cancellation of the SEPA B2B direct debit mandate given to the payee.

2.2.3 Revocation of the SEPA B2B direct debit mandate

The SEPA B2B direct debit mandate may be revoked by the customer by means of a statement to this effect to the Bank. Revocation shall take effect from the Banking business day, as stated in the »List of Prices and Services« (»Preis- und Leistungsverzeichnis«), following the day on which notice of revocation is received. Notice of revocation should, if possible, be given in writing and to the account-keeping branch of the Bank. It should, in addition, be given to the payee. Revocation of the SEPA B2B direct debit mandate shall not cover SEPA B2B direct debits already debited to the customer's account. In their case, Section 2.2.4, paragraphs 2 and 3 shall apply.

2.2.4 Rejection of individual SEPA B2B direct debits

(1) The customer may separately instruct the Bank not to pay certain SEPA B2B direct debits drawn by the payee. This instruction must be received by the Bank no later than the end of the Banking business day, as stated in the »List of Prices and Services«, before the due date indicated in the direct debit data set. This instruction should, if possible, be given in writing and to the account-keeping branch of the Bank. It should, in addition, be given to the payee.

(2) A SEPA B2B direct debit entry on the debit date may only be rejected on this date if the customer and the Bank have agreed thereupon. The agreement shall become effective if the Bank manages to finally recover the direct debit amount. For handling such a revocation by the customer, the Bank shall levy the charge set out in the »List of Prices and Services«.

(3) The SEPA B2B direct debit may no longer be rejected by the customer after the date on which the debit entry is made.

1 Under Section 13 of the German Civil Code (Bürgerliches Gesetzbuch – BGB), a consumer means any natural person who enters into a legal transaction for a purpose that is outside their trade, business or profession.

2 IBAN - International Bank Account Number.

3 For the member countries, see Appendix.

4 BIC - Bank Identifier Code.

2.3 Collection of the SEPA B2B direct debit by the payee under the SEPA B2B direct debit mandate

(1) The SEPA B2B direct debit mandate given by the customer shall remain with the payee. The payee shall enter the authorisation data and any additional details in the data set for collection of SEPA B2B direct debits. The respective direct debit amount shall be specified by the payee.

(2) The payee shall send the data set for collection of the SEPA B2B direct debit to the Bank (payer Bank) electronically through his/her payment service provider. This data set shall also represent the customer's instruction to the Bank in the SEPA B2B direct debit mandate to pay the respective SEPA B2B direct debit (see Section 2.2.1, sentences 2 and 4). For delivery of this instruction, the Bank shall waive the form agreed for giving the SEPA B2B direct debit mandate (see Section 2.2.1, sentences 3 and 5).

2.4 Payment transaction based on the SEPA B2B direct debit

2.4.1 Debiting the direct debit amount to the customer's account

(1) On receipt of SEPA B2B direct debits drawn by the payee, the amount specified by the payee shall be debited to the customer's account on the due date indicated in the direct debit data set. If the due date is not a bank working day as stated in the »List of Prices and Services«, the account shall be debited on the next bank working day.

(2) The customer's account shall not be debited or a debit entry shall be cancelled no later than the third bank working day⁵ after it was made if

- the Bank has received no confirmation from the customer pursuant to Section 2.2.2,
- the Bank has received notice of revocation of the SEPA B2B direct debit mandate pursuant to Section 2.2.3,
- the Bank has received notice of rejection of the customer's direct debit pursuant to Section 2.2.4,
- the customer does not have a sufficient credit balance on the account or sufficient credit for payment of the direct debit (lack of funds); the Bank shall not pay partial amounts,
- the payer's IBAN indicated in the direct debit data set cannot be assigned to any account held by the customer with the Bank, or
- the direct debit cannot be processed by the Bank because the direct dataset:
 - does not contain a creditor identifier or contains one which is evidently wrong to the Bank,
 - does not contain a mandate reference,
 - does not indicate the date on which the mandate was given, or
 - does not indicate the due date.

2.4.2 Payment of SEPA B2B direct debits

SEPA B2B direct debits are paid if the debit entry in the customer's account has not been cancelled later than the third bank working day after it was made.

2.4.3 Notification of non-execution or cancellation of the debit entry or refusal of payment

The Bank shall inform the customer without delay, and no later than the time agreed in Section 2.4.4, of non-execution or cancellation of the debit entry (see Section 2.4.1, paragraph 2) or refusal to pay a SEPA B2B direct debit (see Section 2.4.2). This may be done also through the agreed account information channel. The Bank shall, if possible, state the reasons and indicate ways in which errors that led to the non-execution, cancellation or refusal can be rectified.

For a justified refusal to pay an authorised SEPA B2B direct debit due to a lack of funds (see Section 2.4.1, paragraph 2, fourth bullet point), the Bank shall levy the charge set out in the »List of Prices and Services«.

2.4.4 Execution of the payment

(1) The Bank shall be obligated to ensure that the amount debited by it to the customer's account on the basis of the SEPA B2B direct debit presented by the payee is received by the payee's payment service provider within the execution period indicated in the »List of Prices and Services« at the latest.

(2) The execution period shall commence on the due date indicated in the direct debit data set. If this date is not a Banking business day as set out in the »List of Prices and Services«, the execution period shall commence on the following Banking business day.

(3) The Bank shall inform the customer of the execution of the payment through the agreed account information channel and at the agreed frequency.

2.5 Preclusion of entitlement to a refund for an authorised payment

If a payment which has been made on the basis of a SEPA B2B direct debit is authorised, the customer shall not be entitled to claim a refund of the amount debited to his/her account from the Bank; any claims pursuant to Section 675x of the German Civil Code (»Bürgerliches Gesetzbuch – BGB«) shall be precluded. The customer's entitlement to a refund for non-execution or incorrect execution of an authorised payment shall be determined by Section 2.6.2.

2.6 Customer's entitlement to a refund and compensation

2.6.1 Refund for an unauthorised payment

If a payment is not authorised by the customer, the Bank shall have no claim against the customer for reimbursement of its expenses. It shall be obligated to refund the amount debited to the customer's account to the customer and to restore the balance of this account to what it would have been without debiting for the unauthorised payment. This obligation must be fulfilled no later than the end of the business day in accordance with the »List of Prices and Services« (»Preis- und Leistungsverzeichnis«), which follows the day on which the Bank was notified that the payment is unauthorised or has otherwise been notified to the Bank. If the Bank has informed a competent authority in writing of justified grounds for suspecting any fraudulent conduct on the part of the Customer, the Bank shall examine and fulfil its obligation under sentence 2 without delay if the suspicion of fraud is not confirmed.

2.6.2 Compensation due to neglect of duty

If an authorised payment is not executed or not executed correctly or delayed, or if a payment is unauthorised, the customer may request the Bank, in addition to any claims for restitution pursuant to section 667 and sections 812 et seq. of the German Civil Code (»Bürgerliches Gesetzbuch – BGB«) to provide compensation for any loss or damage incurred as a result in accordance with the following rules.

- The Bank is responsible for its own neglect of duty. If the customer has contributed to the occurrence of any loss or damage through culpable conduct, the principles of contributory negligence shall determine the extent to which the Bank and the customer must bear the loss or damage.
- The Bank shall not be liable for the fault of the intermediaries. In such cases, the Bank's liability shall be limited to the careful selection and instruction of the first intermediary body.
- The Bank's liability for any loss or damage shall be limited to the amount of the direct debit plus charges and interest charged by the Bank. Where consequential loss or damage is involved, liability shall, in addition, be limited to a maximum of €12,500 per direct debit. These limitations on liability shall not apply to deliberate intent or gross negligence by the Bank or to risks which the Bank has assumed on an exceptional basis or to unauthorised payments.

Any claims pursuant to Section 675y of the German Civil Code shall be precluded.

2.6.3 Preclusion of liability and objection

(1) Any liability by the Bank under Section 2.6.2 shall be precluded in the following cases:

- if the Bank proves to the customer that the full amount of the payment reached the payee's payment service provider in due time, or
 - if the payment was executed in conformity with the incorrect unique identifier of the payee provided by the payee. In this case, the customer may, however, request the Bank to make reasonable efforts to recover the amount of the payment. If it is not possible to recover the payment amount in accordance with sentence 2 of this subsection, the Bank shall be obliged to provide the customer with all available information upon written request so that the customer can assert a claim for reimbursement of the payment amount. For the activities referred to in sentences 2 and 3 of this sub-clause, the Bank shall levy the charge for recovery set out in the »List of Prices and Services«.
- (2) Any claims by the customer under Sections 2.6.1 and 2.6.2 and any objections by the customer against the Bank as a result of non-execution or incorrect execution of payments or as a result of unauthorised payments shall be precluded if the customer fails to inform the Bank thereof within a period of 13 months at the latest after being debited for an unauthorised or incorrectly executed payment. This period shall start to run only once the Bank has informed the customer about the debit entry for the payment through the agreed account

⁵ Bank working days are all working days except Saturdays and 24 and 31 December.

information channel no later than one month after the debit entry was made; otherwise the date on which the customer is informed shall determine when the period commences. The customer may assert claims for compensation resulting from fault-based liability of the Bank under Section 2.6.2 also after expiry of the period referred to in sentence 1 if he/she was prevented, through no fault of his/her own, from adhering to this period.

(3) Any claims by the customer shall be precluded if the circumstances substantiating a claim

- are based upon an abnormal and unforeseeable event beyond the control of the Bank and whose consequences could not have been avoided even by exercising due diligence or
- were brought about by the Bank as a result of a statutory obligation.

Appendix: List of SEPA countries and territories

Countries belonging to the European Economic Area (EEA)

Member states of the European Union: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France (including French Guiana, Guadeloupe, Martinique, Mayotte, Réunion), Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland.

Further countries: Iceland, Liechtenstein, Norway.

Other countries and territories

Monaco, St. Pierre & Miquelon, Switzerland, San Marino plus Guernsey, Jersey and Isle of Man.



BERENBERG

PARTNERSHIP SINCE 1590