

GENERAL FACTORING CONDITIONS



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APPLICABLE STARTING WITH 16TH OF JULY 2018

This document represents the General Factoring Conditions of Banca Comerciala Romana S.A. and form an integral part of, the Factoring Agreement (as such term is defined below) entered into between the Factor and the Adherent (as such terms are defined below), unless the Factor and the Adherent expressly agree otherwise.

1. Definitions

In this Agreement, unless otherwise stated or otherwise required by the context hereof, the following terms have the following meanings:

“Accepted Debtor” means the Romanian or foreign legal entity, who is a party to a business relationship with the Adherent, debtor of the Receivables assigned to the Factor by the Adherent, previously accepted by the Factor for the purpose of the latter’s development of its commercial relationship with the Adherent through the performance of Factoring Operations, as identified in article 2.4 A from the Factoring Agreement.

“Accepted Invoice” means an Invoice for which the Factor performs Financing Operations or Non-Payment Risk Coverage Operations, assigned by the Adherent together with any and all rights and claims corresponding to that Invoice.

“Adherent” has the meaning assigned to it in the Factoring Agreement.

“Administration Operations” means the service provided by the Factor for the purpose of ensuring the evidence of the Receivables assigned by the Adherent under a Factoring Agreement, their management and the monthly delivery to the Adherent of statements with respect to such Receivables.

“Affiliated Person” means, in connection with any person (a) a Subsidiary of that person, or (b) a company (directly or indirectly) controlling that person, or (c) any other Subsidiary of the company mentioned at letter (b).

“Agreement/GFC” means these General Factoring Conditions, as further amended and supplemented.

“Assignment of Receivables” means the transfer by the Adherent to the Factor of one or more Receivables or a universality of receivables it holds against an Accepted Debtor, as identified in article 2.4.A from the Factoring Agreement, as a result of which the Factor becomes the creditor of such Accepted Debtor.

“Assigned Invoices List” means the document identifying the Invoices in relation with which Factoring Operations are requested, document which is provided by the Adherent in the form and content made available by the Factor.

“Collection Operations” means, without being limited to, the measures initiated by the Factor with respect to the collection of the Receivables assigned by the Adherent under a Factoring Agreement, consisting in telephone calls and notifications addressed to the Accepted Debtor and/or the hiring of a debt recovery company.

“Conditions Precedent” means the documents and evidence mentioned in Appendix 1 (*Conditions Precedent and Subsequent*), Part 1 (*Conditions Precedent*) attached to the Factoring Agreement, in form and substance satisfactory to the Factor. **“Date of the CP’s Fulfilment”** means the date when all the Conditions Precedent were fulfilled in form and substance satisfactory to the Factor, evidenced through the registration by the Factor of the Financing Ceiling and Non-Payment Risk Coverage Ceiling in its records (ceilings which are provided for the performance by the Adherent of Factoring Operations, respectively by registering by the Factor in its records of the amendments to the Factoring Agreement

The Adherent has the right to request the Factor to communicate the Date of CP’s Fulfilment

“Displayed Rate” means:

- a) with respect to EURIBOR, the annual percentage rate determined by the Banking Federation of the European Union for the respective period;
- b) with respect to ROBOR, the annual percentage rate determined by the National Bank of Romania for the respective period;
- c) with respect to LIBOR, the Interest Discount Rate of the British Bankers’ Association for the respective currency and period;

in all cases, as such rate is displayed on the relevant page of the Reuters screen.

“Due Date” means the date when the Accepted Debtor must pay for the assets, services or works received from the Adherent according to the Eligible Contract. If the Due Date is not a business day, the due date shall be considered intervened in the immediately following business day.

“Eligible Contract” means (i) an agreement between the Adherent and an Accepted Debtor and/or (ii) a firm order accepted by Adherent, based on which the Adherent shall provide goods, works or services and the Accepted Debtor shall pay the price agreed within that agreement/order.

“EURIBOR” means, with respect to any financing in EURO, the applicable Displayed Rate. If the applicable Displayed Rate is less than zero, the value of EURIBOR shall be deemed to be zero.

“Event of Default” means any event or circumstance specified as such in article 13 (*Events of Default*) of GFC.

“Extended Non-Payment” means the non-payment of the Invoices for the period between the due date of the Invoice, according to the Eligible Contract and the expiry of the Non-Payment Risk Coverage Period.

“Factor” has the meaning assigned to it in the Factoring Agreement.

“Factoring Agreement” means any agreement or arrangement (as supplemented by these GFC) whereby the Factor makes available one or more factoring products to the Adherent.

“Factoring Fee” means the fee mentioned under article 11 of the GFC.

“Factoring Operations” means the operations performed in accordance with the Factoring Agreement, based on which the Adherent benefits of at least two of the following services: (i) Financing Operations, (ii) Administration Operations, (iii) Non-Payment Risk Coverage Operations and (iv) Collection Operations.

“Finance Document” means the Factoring Agreement, the Accepted Invoices, the Accepted Invoices List, the GFC and any other document designated as a "Finance Document" by the Factor and the Adherent.

“Financing Ceiling” means the maximum limit of the Factor's undertaking to finance the Receivables in relation with which it performs Financing Operations, as provided under article 2.4 A from the Factoring Agreement. This ceiling has a revolving nature, being considered replenished as the Receivables are collected. The Financing Ceiling shall be used and replenished based on the nominal value of the Invoices and not based on the Financing Percentage.

“Financing Fee” means the fee mentioned under article 11 of the GFC.

“Financing Operations” means the service based on which the Factor provides to the Adherent the early payment of the Financing Percentage.

“Financing Percentage” means the percentage from the nominal value (including VAT) of an Accepted Invoice for which Financing Operations are provided by the Factor, as provided under art. 2.4 from the Factoring Agreement.

“Financing Period” means the period of time between the financing date of the Accepted Invoice and the date of its effective collection, irrespective of the due date of the payment obligation or whether the effective collection is made by the Accepted Debtor or by the Adherent, according to this GFC.

“Grace Period” means, notwithstanding article 8.1 of the GFC, the period designated as such in article 2.4 A of the Factoring Agreement during which the Factor exercises its right to amicably recover the due Receivables for which Financing Operations are provided.

“Invoice” means the fiscal document covering a payment request for delivered merchandises or works or for services effectively provided.

“Financed Value of the Invoices” has the meaning assigned to it in article 11.1, letter (b) (ii) of the present Agreement.

“Insolvency Event” means any of the following events related to a legal entity:

- a) the relevant legal entity is dissolved (other than as result of a merger); or
- b) it becomes insolvent, or it is unable to pay its debts, or it does not pay or admits in writing its inability to pay its due debts; or
- c) a procedure aiming to obtain the insolvency, judicial reorganization or dissolution and/or liquidation has been initiated against it; or
- d) it has a resolution passed for its dissolution, judicial reorganization, official management, winding-up or liquidation (other than as result of a merger); or
- e) the value of its assets is lower than the value of its liabilities (taking into account its contingent and prospective liabilities).

“Justifying Documents” means the documents designated as such in article 2.4.B of the Factoring Agreement.

“LIBOR” means, with respect to any financing in US dollars, the applicable Displayed Rate. If the applicable Displayed Rate is less than zero, the value of LIBOR shall be deemed to be zero.

“Litigation” means any judicial action, challenge, objection, claim, including a refusal to pay etc. made by the Accepted Debtor or by the Adherent or by any third party, having as scope or affecting in any other way a Receivable assigned to the Factor, irrespective of whether or not a procedure is initiated in front of the judicial or arbitral courts, or in front of any authority having jurisdictional attributions.

“Material Adverse Effect” means any present or future event or circumstance (or series of such events or circumstances), including any hardship events or any fortuitous event, or an event having the nature of force majeure which, in the Factor’s reasonable opinion, could have a material adverse effect on:

- a) the business, operations, performance, property, condition (financial or otherwise) of the Adherent;
- b) the ability of the Adherent to duly perform its obligations under the Finance Documents it is a party to, including the sudden deterioration of the economic-financial situation of the Adherent (which might concern, without being limited to: losses, overdue payments to creditors, banks or other institutions, suspension of payments, the occurrence of an Insolvency Event or of a force majeure event, etc.);
- c) the validity or enforceability of any rights or remedies of the Factor under the Finance Documents, or the effectiveness or ranking thereof or remedies of the Factor under the Finance Documents.

“Non-financed Percentage” means the percentage resulted from the difference between 100% and the Financing Percentage.

“Non-Payment Risk Coverage Ceiling” means the maximum limit of the Factor’s undertaking to cover the non-payment risk corresponding to the Receivables in relation with which it performs Non-Payment Risk Coverage Operations, as provided under article 2.4 A from the Factoring Agreement. This ceiling has a revolving nature, being considered replenished as the Receivables are collected. The Non-Payment Risk Coverage Ceiling shall be used and replenished based on the nominal value of the Accepted Invoices and not based on the non-payment risk coverage percentage.

“Non-Payment Risk Coverage Operations” means the coverage service against the non-payment risk presented by an Accepted Debtor in an Insolvency Event and/or in the case of Extended Non-Payment of the Accepted Invoices, within the limits and as part of a Non-Payment Risk Coverage Ceiling, as mentioned by article 2.4 A from the Factoring Agreement.

“Non-Payment Risk Coverage Period” means the period designated as such in article 2.4 A of the Factoring Agreement. In the next day of that period, the Factor shall pay, at the Adherent’s request, the Accepted Invoices in relation with which it offers Non-Payment Risk Coverage Operations, according to the coverage ratio established in article 2.4 A of the Factoring Agreement.

“Reassignment” means the transaction based on which the Factor transfers to the Adherent the Receivables initially assigned by the Adherent to the Factor.

“Reassignment Term” means the term provided under article 2.4 A of the Factoring Agreement, at the expiry of which the uncollected Receivables in relation with which no Non-Payment Risk Coverage Operations or Financing Operations have been provided, may be reassigned to the Adherent.

“Receivable” means the right of seller of goods / provider of services / provider of works to receive an amount of money due by the buyer of the assets / beneficiary of the services or of the works, right which is evidenced through an unpaid Invoice.

“Reduced Value” has the meaning assigned to it in article 8.5 of the present Agreement.

“ROBOR” means, with respect to any financing in RON, the applicable Displayed Rate. If the applicable Displayed Rate is less than zero, the value of ROBOR shall be deemed to be zero.

“Subsidiary” means in relation to any entity, an entity:

- a) which is controlled, directly or indirectly, by the first mentioned entity; or
- b) where more than half of the issued share capital of which is owned, directly or indirectly, by the first mentioned entity; or
- c) which is the Subsidiary of another Subsidiary of the first mentioned entity,

“Universality of Receivable” means all present and future receivable rights of the Adherent against the Accepted Debtor together with all their accessories arising from all agreements, invoices, firm orders accepted by the Adherent and any other justifying documents, together with all their appendixes and all their presents and future amendments as well as any other receivables arising from renewals and replacements thereof or agreements similar thereto.

“Quotation Day” means, in relation to any period for which an interest rate is to be determined, in case of the amounts in RON, EUR, USD, 1 (one) business day prior to the first day of that period.

2. Scope of the Factoring Operations

- 2.1. At the signing date of the Factoring Agreement with respect to an Accepted Debtor, the Adherent assigns to the Factor, based on the provisions of Articles 1566 and the following of the Civil Code, all the present and future receivables owned by the Adherent against the Accepted Debtor, resulting from the respective Eligible Contract, while the Factor shall provide to the Adherent the Factoring Operations with respect to these receivables, within the approved limits and the terms specified in the Factoring Agreement.
- 2.2. In order for the Adherent to be able to request the Factor to provide the Factoring Operations, the respective Receivables must originate from business activities, and to have attached the proof of notification of or the acceptance of the Accepted Debtor with respect to the transfer of the ownership over the Receivable, having the form and substance required by the Factor.
- 2.3. For the purpose of performing the Factoring Operations, the Adherent shall open with a unit of Banca Comerciala Romana S.A. bank accounts in the currency / currencies of the Factoring Operations.

3. Acceptance and notification of the Accepted Debtor

- 3.1 The Adherent shall present to the Factor for its acceptance the list of Accepted Debtors to whom it has issued the Invoices in relation with which it requests Factoring Operations, together with copies of the Eligible Contracts based upon which such Invoices have been originated, as well as with any other information or documents that it owns related to the business relationship with the respective Accepted Debtor, including the overdue amounts, the late payments or the current or past litigations with the latter. Moreover, at the Factor's request, the Adherent shall provide the Factor with any other documents or information in connection with the respective Invoices.
- 3.2 After analysing this information, the Factor shall communicate to the Adherent the list of Accepted Debtors and the Financing Ceilings and the Non-Payment Risk Coverage Ceilings established in this respect.
- 3.3 As of the date of the Factoring Agreement, the Adherent shall provide to the Factor, for the purpose of the Factoring Operations, all the Invoices subsequently issued against the Accepted Debtor based on the relevant Eligible Contract.
- 3.4 Notwithstanding any provision to the contrary in the Factoring Agreement, the Factor is entitled, during the entire duration of the Factoring Agreement, at any moment, without any justification or prior formality, to decrease, suspend or cancel the Financing Ceiling and the Non-Payment Risk Coverage Ceiling and/or to terminate the Factoring Agreement. The exercise of these rights of the Factor shall not be in any way subject to the occurrence of an Event of Default. Subsequently, the Factor shall notify the Adherent on the measure taken according to this article, on the same calendar day when it takes such measure. The Adherent shall have 15 (fifteen) calendar days as of the notification date to reimburse any amounts it may owe to the Factor.
- 3.5 In case the Financing Ceiling and the Non-Payment Risk Coverage Ceiling are decreased, suspended or cancelled, any payment made by the Accepted Debtor or any discounts made by the latter with respect to the relevant Receivables could be allocated by the Factor with priority for discharging the financed Receivables from the respective Ceiling. At the same time, any subsequent collection of the respective Receivables shall not replenish the relevant Ceiling.
- 3.6 In case the Factor decides to withdraw its approval with respect to the Accepted Debtor, the Adherent's obligation to carry the Factoring Operations through the Factor shall continue until the Factor no longer has any risks with respect to that Accepted Debtor or with respect to the Adherent.
- 3.7 The Factor is authorized, at any moment, to verify with the Accepted Debtor the existence and the extent of the Receivables presented by the Adherent to the Factor.
- 3.8 On the date when the Factoring Agreement and/or when a new Eligible Contract with respect to a certain Accepted Debtor is accepted, the Adherent shall notify the Accepted Debtor, in compliance with the form and content provided by Appendix 2 (Template of the *Notification of the Assignment of Receivables*) of the Factoring Agreement, or in any other form agreed by the Parties, with respect to the assignment to the Factor of the Receivables against the relevant Accepted Debtor.
- 3.9 The Factor reserves the right to notify each Accepted Debtor with respect to the due date and the payment of the Receivables corresponding to the assigned Invoices.

The Factor shall register in its favour with the corresponding publicity registers, according to the legal provisions, the Assignment of Receivables corresponding to the Agreement granting a first priority rank to those Receivables.

4. Rejection / refusal to finance the Invoices

- 4.1 In order for the Adherent to be able to file a financing request, the Receivables in relation with which Financing Operations are requested, must cumulatively meet the following conditions, in the form and substance accepted by the Factor:
- a) must represent commercial obligations of the Accepted Debtor arising from firm sales, service provision or delivery of works or effective merchandises towards a person other than an Affiliated Person;
 - b) must not represent:
 - (i) sales on consignment or deposit, on barter or, in general, any sale under a condition precedent or subsequent;
 - (ii) funds transfer for other purposes, such as, but without being limited to, dividend payments, loan reimbursements, setoffs, arbitral charges, brokerage incomes or costs, disputed receivables;
 - (iii) payments in advance, cash on delivery, cash on sale, sales or deliveries by companies under special management, or subject to reorganization, or to the bankruptcy or arrangement procedure.
 - c) the Due Date has not expired;
 - d) have not already been assigned or encumbered in any way in favour of a third party and are freely and unrestrictedly assignable;
 - e) are accompanied by the Justifying Documents provided under article 2.4 B of the Factoring Agreement.
- 4.2 The Factor may refuse to finance the Receivables presented by the Adherent for Financing Operations on the grounds of the following situations, but without limiting to :
- a) the failure to meet any of the conditions provided under article 4.1 above;
 - b) the nonconformity of the provided documents with the clauses of the Eligible Contract;
 - c) the Adherent's failure to perform accordingly its obligations under the Eligible Contract (including, but without being limited to: the quantitatively and qualitatively inadequate delivery, the assortment nonconformity, the packaging conditions, the used means of transport, the INCOTERMS conditions etc.);
 - d) the occurrence of a Material Adverse Effect;
 - e) the occurrence of Litigations;
 - f) the existence of unrecovered amounts due by the Adherent to the Factor;
 - g) the exceeding or the expiry of the availability of the Financing Ceiling;
 - h) during the prior notice period in case of unilateral termination or of termination of the Factoring Agreement;
 - i) the impossibility of the Factor to contact the Accepted Debtor;
 - j) in the Factor's opinion, the financing of the Receivables represents or could represent a reputational risk for the Factor.
- 4.3 In case the Financing Ceiling established for the Accepted Debtor is exceeded, as of that moment the Adherent guarantees to the Factor the reimbursement of any Receivable financed over that Ceiling,— in case such Receivable is not paid on the Due Date, irrespective of the state of use of that Ceiling on the Due Date.
- 4.4 No Financing Operations shall be performed with respect to the Invoices sent for financing which exceed the Financing Ceiling established for the relevant Accepted Debtor, but only Administration Operations and Collection Operations, subject to the observance of the GFC's and Factoring Agreement's terms. These Invoices shall be financed in the order of their issuance, only to the extent of the Ceiling's release and only if at the date when the Ceiling is released their Due Date has not expired.

5. Invoice Financing

- 5.1 For the purpose of financing the Receivables, the Adherent shall deliver to the Factor the financing request in form satisfactory to the Factor.

- 5.2 The Receivables shall be financed by the early payment by the Factor of the Financing Percentage, and within the limits of the approved Financing Ceiling. For the duration of the Agreement, the Factor reserves the right to modify the Financing Percentage in case the effectively collected amount of the financed Receivables is different from their nominal value. The Factor shall communicate its decision in writing to the Adherent and such decision shall become effective as of the date when the Factor sends the communication to the Adherent.
- 5.3 Upon collection of the financed Receivables, the Factor shall make available to the Adherent an amount equal to the value resulted from the application of the Non-financed Percentage to the amount effectively collected of the Accepted Invoice, including when the Factor has partially collected the financed Receivable, less the amounts due to the Factor by the Adherent, without any request of the Adherent being necessary in this respect.
- 5.4 The Factor shall not be held liable for the possible damages caused to the Adherent as result of its refusal to finance certain Receivables, or of its decision on the Reassignment of Receivables.

6. Non-Payment Risk Coverage

- 6.1 The Factor performs Non-Payment Risk Coverage Operations with respect to the Accepted Invoices, in accordance with article 4.2 above, and within the limits of the Non-Payment Risk Coverage Ceiling.
- 6.2 For the Accepted Invoices that are subject to the Non-Payment Risk Coverage Operations, the Factor shall pay to the Adherent the amounts due to the latter by the Accepted Debtor under an Accepted Invoice, in an Insolvency Event of the Accepted Debtor or in the event of an Extended Non-Payment.
- 6.3 No Non-Payment Risk Coverage Operations shall be performed with respect to the Invoices sent for being covered which exceed the Non-Payment Risk Coverage Ceiling established for the relevant Accepted Debtor, but only Administration Operations and Collection Operations, subject to the observance of the GFC's and Factoring Agreement's terms. These Invoices shall be financed in the order of their issuance, only to the extent of the Ceiling's release and only if at the date when the Ceiling is released their Due Date has not expired.
- 6.4 In case the Adherent benefits of coverage against the non-payment risk, it owes a Financing Fee corresponding to the financed amounts, from the Due Date and until the end of the Non-Payment Risk Coverage Period, according to Clause 11 (*Fees and costs*), article 11.1, letter (b).

7. Administration and Collection of the Receivables

- 7.1 The Factor ensures the evidence and the management of the Receivables and monitors the collection on the Due Date of all the assigned Receivables (either financed or not, either covered or not against the non-payment risk).
- 7.2 The Factor shall process the collections only after the relevant elements are identified, respectively: the Adherent, the Accepted Debtor, the paid Invoice. In this respect, the Adherent agrees that the Factor shall be entitled to request and to receive from the Accepted Debtor the details of the payments made by it. Moreover, if the Adherent holds such information, it shall provide them to the Factor without delay.
- 7.3 The Factor shall allocate the collected amounts in the order in which the payment of the Receivables has been made by the Accepted Debtor and not as per the chronological order of the owed Receivables. By exception from this provision, in case of the unpaid Receivables which are under the recourse situations mentioned by the below article 8 or in case the Accepted Debtor does not mention which receivables are paid, the Factor shall allocate the collected amounts as per the chronological order of the owed Receivables.
- 7.4 After collecting the assigned Receivables, resulting from Invoices which were not financed by the Factor, it shall credit the Adherent's current account with the amounts collected and not previously financed, less the amount owed by the Adherent to the Factor. In case the Factor collects the amount of certain Receivables reassigned to the Adherent based on the Factoring Agreement and fully recovered from the Adherent, the Factor shall transfer that amount in the Adherent's current account.
- 7.5 In case the payment is delayed after the Due Date, the Factor shall initiate the specific Collection Operations. In this case, the Adherent undertakes to cooperate with the Factor, including by providing the Factor with all the necessary assistance and information and documents capable of facilitating its Collection Operations.
- 7.6 The means to apply these Collection Operations is unilaterally established by the Factor. All the expenses generated by the Collection Operations are fully borne by the Adherent, irrespective of whether the relevant Receivables have been recovered or not.
- 7.7 In case of impossibility to collect the Receivables that are not subject to Non-Payment Risk Coverage Operations, they can be reassigned by the Factor to the Adherent until the expiry of the Reassignment Term and the Factor shall not be obliged to monitor their collection.

- 7.8 While performing the Collection Operations, the Factor shall have full authority with respect to the Receivables and especially the right to negotiate these Receivables, irrespective of whether they have been financed or covered totally or partially against the non-payment risk.
- 7.9 At the Adherent's request or on its own initiative the Factor may notify the Accepted Debtor, , with respect to the termination of the Factoring Agreement and therefore with respect to the termination of its obligation to pay in the Factor's account, but only if all the related assigned Receivables have been paid in full and there are no amounts owed by the Adherent to the Factor.

8. Recourse

- 8.1 The Factor has the right of recourse against the Adherent and it is entitled to request from the Adherent the immediate reimbursement of the amounts paid for the Receivables assigned and financed and/or covered against the against the non-payment risk, even according to the granted approvals, in the following situations:
- a) financial connections pre-existed or have been established between the Adherent and the Accepted Debtor after the acceptance of the Invoice by the Factor, but before its collection, other than the ones reflected by the assigned Receivable, such as shareholding connections, clearings and/or mutual discounts, they became Affiliated Persons and any other such connections, if these would entitle the Debtor to oppose to the payment;
 - b) the Receivable to be collected is neither certain and liquid, nor enforceable on the date declared by the Adherent;
 - c) the Adherent has provided the Factor with inaccurate or obviously incomplete information with respect to the assigned Receivables or the Accepted Debtor, rendering difficult or impossible the collection of the Receivable or determining an increase of the collection expenses or causing losses to the Factor, which would not have occurred under the conditions of a correct and complete information;
 - d) the Adherent does not provide the Factor with the documents it needs, in the form and on the required term, in order for the Factor to exercise its rights against the Accepted Debtor;
 - e) the payment of the Receivables which are subject to Factoring Operations has been made directly to the Adherent, who did not return the corresponding amounts to the Factor, according to article 9.3 and 9.4 of the GFC;
 - f) the failure to pay the Receivable is caused by a force majeure event or by a fortuitous event;
 - g) the Adherent has breached the Romanian or foreign laws and regulations applicable with respect to the assigned Receivables;
 - h) if in connection with the assigned Receivables the criminal investigation authorities are pursuing an investigation activity;
 - i) if the assigned Receivables are subject to a restrain measure taken by the competent body, such as a confiscation or a seizure;
 - j) if the Assignment in favour of the Factor is or becomes effectively or legally inoperative;
 - k) the Adherent has changed the payment or the delivery conditions of the Eligible Contract without notifying the Factor;
 - l) the Accepted Debtor invokes the setoff against the Adherent for the Receivables assigned to the Factor;
 - m) at the moment when the Receivable was assigned, the Adherent knew that an Insolvency Event has occurred with respect to the Accepted Debtor;
 - n) if, upon the occurrence of an Insolvency Event against the Accepted Debtor, the registration of the Receivable with the list of creditors is not allowed for reasons other than the Factor's own negligence;
 - o) any situations of fraud or forgery related to the assigned Receivables;
 - p) in the case of Receivables financed over the Financing Ceilings;
 - q) the application of commercial discount to the value of the Accepted Invoices, respectively returns (*in Romanian: stornare*) of the Accepted Invoices, as detailed by the below articles 8.5 and 8.5.
 - r) the Assigned Invoices List was signed by a person other than a legal or conventional representative of the Adherent.

- 8.2 For the situations listed at the above article 8.1, the Factor could exercise its recourse right as soon as they occurred. For any other situation which could generate a dispute on the Receivable, the Factor shall exercise its recourse right only at the expiration Term for settling Litigations. For the Invoices in relation with which the Factor exercised its right of recourse against the Adherent, the Adherent shall reimburse to the Factor all the amounts of money that the latter has paid to the Adherent in connection with that Invoice, together with all the accrued fees, or with any other amounts payable by the Adherent to the Factor, without the Adherent being allowed to invoke any withholding, setoff or other exception .

For the avoidance of any doubt, regarding the existence of any Litigations, the Factor has a recourse right against the Adherent and it is entitled to request to the Adherent to immediately reimburse the amounts paid for the Receivables assigned and financed and covered for non-payment risk even within the approval, if they are not solved in favour of the Adherent within the period mentioned under article 2.4 A of the Factoring Agreement and in case of export factoring, if a Litigation occurs between the Accepted Debtor and the Adherent, after the moment the Factor's Non-Payment Risk Coverage entered into force, but in a maximum term equal with the double Term for settling the Litigations mentioned in article 2.4 A from the Factoring Agreement.

- 8.3 For all the situations when the Adherent owes amounts of money to the Factor, as result of the Factor's exercise of its right of recourse against the Adherent, irrespective of their nature, the Factor shall act for the recovery of these amounts from the Adherent's current accounts or deposit accounts denominated in lei/foreign currency and opened with the Factor, and for this purpose the Adherent is hereby irrevocably and unconditionally authorizing the Factor to debit any of its current accounts or deposit accounts denominated in lei or in foreign currency, even before the expiry of their term, in order to fully recover the amounts due by the Adherent to the Factor based on the Factoring Agreement. In case an account denominated in a foreign currency is debited, the applied exchange rate is the one used by the Factor on the debiting day. The Receivables in relation with which the Factor exercised its right to recourse shall be reassigned to the Adherent after the full recovery of the amounts due by the Adherent to the Factor. In the case of Receivables for which payment instruments (bills of exchange / cheques / promissory notes) have been endorsed (Rom. *girate*) or issued in favour of the Factor and have not been yet remitted for payment, these instruments shall be endorsed in favour of the Adherent upon their reassignment.
- 8.5. If, after the occurrence of the Financing Operation of an Accepted Invoice, but until the collection of that Accepted Invoice, a commercial discount of the Accepted Debtor to the Adherent has occurred, such that the value of that Accepted Invoice is reduced (the "**Reduced Value**"), but without decreasing under the Financed Value of the Invoices, the provisions of the above article 5.3 are applicable. If the Reduced Value is lower than the Financed Value of the Invoices, for difference between these, the Factor has a recourse right against the Adherent, as per the above articles 8.1 and 8.2.
- 8.6 If, after the occurrence of the Financing Operation of an Accepted Invoice, but until the collection of that Accepted Invoice by the Factor, a return (*in Romanian: stornare*) of the Accepted Invoice has occurred, for the entire value of the financed Accepted Invoice, the Factor has a recourse right against the Adherent, as per the above article 8.1 and 8.2.

9. Evidence of the Factoring Operations

- 9.1 The evidence of the Factoring Operations is entirely the Factor's responsibility.
- 9.2 For appropriate evidence, the parties agree that the Factor is entitled to open the records and accounts it deems necessary and to organize the recording means that are sufficient for reaching the scope of the Factoring Operation. The Factor shall issue for the Adherent on a regular basis or whenever it is required statements of account and satisfactory explanations with respect to the account operations and the amounts existing in these accounts.
- 9.3 Based on the contractual deeds between the Adherent and the Accepted Debtor, the Adherent must ensure that all the payments due by the Accepted Debtor are made in the account indicated by the Factor. If however, against the afore-mentioned provisions, the Debtor pays in another account, the Adherent shall promptly reimburse these amounts to the Factor.
- 9.4 The reimbursement shall be made the latest on the immediately following business day, in full and without any withholding from the amount/s, irrespective of the title of such withholding or debit of the amounts.

10. Collateral

- 10.1. In order to secure the fulfilment of its liabilities under the GFC and the Factoring Agreement, the Adherent creates, at the signing date of the Factoring Agreement, in favour of the Factor a movable mortgage over the bank accounts mentioned under article 2.4 B from the Factoring Agreement and over the moneys standing to the credit of such bank accounts, bank accounts over which the Factor has control as provided under article 2410 of the Civil Code.
- 10.2. The breach by the Adherent of its obligations under the GFC and the Factoring Agreement entitles the Factor to debit the mortgaged bank accounts of the Adherent with the amount outstanding herein and to set-off totally or partially, as the case may be, the account credit balance with the mortgaged amount. For this purpose, the Factor shall debit the balance of the account and shall perform first the set-off of accounts having the same currency as the owed amounts and, to the extent that they are not sufficient, shall debit the balance of and set-off the other accounts. Therefore, the Adherent authorizes the Factor to perform in the name and on its account, within the limit of any amount owed under the GFC and the Factoring Agreement, any foreign exchange transaction and sign the bid order on the foreign exchange market for converting the proceeds resulted from the enforcement of the movable mortgage into the currency of this Factoring Agreement at the Factor's exchange rate, if the currency of the Factoring Agreement is other than the currency of the bank accounts.
- 10.3. The movable mortgage constituted according to article 10.1 shall be in force until the full payment of the amounts owed by the Adherent under and in relation to the GFC and the Factoring Agreement, plus any relevant interest, costs and fees, including any expenses incurred for the recovery of all amounts due and the legal costs, including the enforcement costs.
- 10.4. The Adherent undertakes to bear all the costs related to the publicity formalities corresponding to the Assignment of Receivables and the creation of collaterals with the Electronic Archive for Movable Security.
- 10.5. In addition to the movable mortgage created in accordance with article 10.1 above, in case of Receivables secured by promissory notes, the Adherent shall endorse (Rom. *gira*) these promissory notes in favour of the Factor, in compliance with the provisions of Law no. 58/1934, as subsequently amended and with the provisions of this Agreement. The promissory notes shall have the mention "without protest".

11. Fees and costs

- 11.1. As consideration for its services, the Factor is entitled to receive from the Adherent the following fees, as provided under article 2.4 B of the Factoring Agreement:
- a) The Factoring Fee is:
- (i) calculated as a flat percentage applied to the nominal value of the Invoices assigned by the Adherent to the Factor, plus a fixed amount owed for each assigned Invoice, and
 - (ii) is payable at the date of the assignment of the Invoices, by directly debiting the Adherent's accounts opened with the Factor.
- b) The Financing Fee is:
- (i) due by the Adherent for the entire Financing Period, and
 - (ii) Is calculated as follows:
 - 1. for the period between the financing date of the Accepted Invoices and the Due Date (exclusively): as an annual percentage applied to the nominal value of the Accepted Invoices (including VAT) multiplied by the Financing Percentage (further on referred to as the "**Financed Value of the Invoice**"), calculated for the number of days between the financing date of the Accepted Invoices by the Factor and the Due Date. The fee is payable at the moment when the Financing Operations are provided, by withholding it from the amounts due to the Adherent; in case an Accepted Invoice is financed by the Factor and it is collected by it before its Due Date, the Factor will return to the Adherent the Financing Fee calculated for the period remained until the Due Date of the financed Accepted Invoice;

2. for the period between the Due Date of the Accepted Invoices and the last day of Grace Period (exclusively): as an annual percentage applicable at the uncollected value from the Financed Value of the Accepted Invoice, calculated for the number of days between the Due Date of the Accepted Invoice and the last day of the month or the last day of the Grace Period or the date when the Accepted Invoices are collected, whichever comes first. The fee is payable on the last day of the month or the last day of the Grace Period or on the date when the Accepted Invoices are collected. The fee is collected by the Factor by directly debiting the Adherent's accounts opened with the Factor;
3. for the period between the last day of Grace Period and the last day of Non Payment Risk Coverage Period or the date when the Accepted Invoices are collected: as an annual percentage applicable at the uncollected value from the Financed Value of the Accepted Invoice, calculated for the number of days between the last day of the Grace Period and the last day of the month or the first day of the Non Payment Risk Coverage Period or the date when the Accepted Invoices are collected, whichever comes first. The fee is payable on the last day of the month or the last day of the Non Payment Risk Coverage Period or on the date when the Accepted Invoices are collected. The fee is collected by the Factor by directly debiting the Adherent's accounts opened with the Factor.
4. for the unpaid Receivables which are under recourse cases provided under article 8 of the GFC, the Financing Fee is: (i) calculated as an annual percentage applied to the uncollected Financed Value of the Invoices for the number of days between the date when the right to recourse is exercised by the Factor (this being the moment this fee is exigible) and the date when the Receivables are collected; and (ii) payable by directly debiting the Adherent's accounts opened with the Factor.

For the avoidance of any doubt, the term "annual", from article 11.1, letter (b) regarding the Financing Term is considering a term of 360 days.

- c) A fee for granting/extending/increasing the Financing Ceiling and the Non-Payment Risk Coverage Ceiling is
 - (i) calculated as a flat percentage applied to the Financing Ceiling and the Non-Payment Risk Coverage Ceiling which has been granted/extended/increased by the Factor and
 - (ii) payable on the date when the Conditions Precedent are fulfilled, by directly debiting the Adherent's accounts opened with the Factor.
- d) Debtor analysis fee is:
 - (i) a fixed amount calculated for each Accepted Debtor; and
 - (ii) is payable on the date when the Conditions Precedent are fulfilled, by directly debiting the Adherent's accounts opened with the Factor

VAT is applicable to all the Factoring Operations, as stipulated by the applicable legal provisions, on the date of their collection by the Factor.

11.2. In addition to the fees due to the Factor, the Adherent bears the taxes, duties (if any) and any other costs caused by the Factoring Operations executed based on the Agreement and the Factoring Agreement at the date of their performance, including the usual costs for executing payments/collections, taxes, fees, stamps and cost in connection with the recovering of the due amounts, court costs and as well as the expenses caused by the registration of the Assignment of Receivables and of any other guarantee in connection with the Factoring Agreement, with the Electronic Archive for Movable Security. These fees are calculated according to the specifications of third parties and are collected once or periodically, depending on the fee type and specifications of third parties.

11.3 The current ROBOR/EURIBOR/LIBOR quotation applicable for the present GFC shall be calculated according to ROBOR/EURIBOR/LIBOR. The value of ROBOR/EURIBOR/LIBOR at 1(one) month/3 (three) months/6 (six) months used for the calculation of each Financing Fee for each Financing Operation is the quotation/rate of ROBOR/EURIBOR/LIBOR at 1(one) month/3 (three) months/6 (six) months from the Quotation Day for that period.

Starting with the first day of the Grace Period and until the collection of the Accepted Invoice, the quotation mentioned above shall be changed every 1 (one)/3 (three)/6 (six) months, on the corresponding date of the first day of the Grace Period, using the quotation from the Quotation Day of that period.

Only for the calculation of the Financing Fee in case of the unpaid Receivables which enter under the recourse situations mentioned by article 8 from the present GFC, the quotation mentioned above shall be changed every 1 (one)/3 (three)/6 (six) month(s), on the day when the Financing Ceiling was granted, using the quotation from the Quotation Day of that period. Thus, starting with the day the Factor exercises its recourse right, the Financing Fee of those unpaid Receivables shall be calculated using a new quotation, the quotation of the period where the recourse has occurred.

12. Representations, warranties and commitments

12.1. For each day until the effects of the Factoring Agreement are terminated and until all the Adherent's obligations towards the Factor under the Factoring Agreement end, the Adherent represents and warrants to the Factor the following:

- a) it is the sole owner of the Receivables subject to the Factoring Agreement and these Receivables have not been previously transferred / assigned (either by sale or as a guarantee);
- b) it is entitled to assign these Receivables and until the date of the Assignment no cause for discharging the Receivables has occurred;
- c) there is no Litigation pending;
- d) it is a legal entity functioning according to the applicable legislation and it has the right and full ability to own its assets, to carry out its activity as it is currently carried out and to enter into this Agreement and the Factoring Agreement;
- e) the Finance Documents have been signed by the Adherent's representatives, duly authorized in this respect and after obtaining all the necessary approvals from its management bodies and they constitute legal, valid and binding obligations of the Adherent;
- f) the execution, delivery and performance of the Agreement and Factoring Agreement does not breach any of provision of (i) its articles of incorporation or internal regulations of the Adherent; (ii) any agreement or deed the Adherent is a party to; (iii) any law, order, title, ordinance, decree, decision of any court of law, administrative agency or governmental authority;
- g) no Insolvency Event has occurred with respect to the Adherent;
- h) all the information provided or to be provided to the Factor during the duration of the Agreement and of the Factoring Agreement are accurate and complete;
- i) the financial statements provided to the Factor have been prepared according to the accounting principles, standards and practices generally accepted in Romania;
- j) there has not been any significant negative change in its business or financial condition, as of the date when the financial statements are stated to have been prepared; and
- k) it has legally fulfilled all its obligations based on the Eligible Contracts.

12.2. The Adherent irrevocably and unconditionally undertakes:

- a) to immediately inform the Factor on any payment received directly from the Accepted Debtor in connection with the Receivables assigned to the Factor;
- b) that any Invoice shall mention its assignment to the Factor and that it shall notify the Accepted Debtor in writing on the assignment of the Receivables it has against the latter, under the terms and conditions of the Agreement and of the Factoring Agreement;
- c) to make available to the Factor, as soon as requested, all the required documents and information, in the form they have been requested;
- d) to take all measures for the amicable settlement of any Litigation that might occur between it, the Accepted Debtor and/or the Factor;
- e) to take all necessary measures in order to preserve the Factor's rights over the Receivables assigned under the Factoring Agreement and to ensure their payment by the Accepted Debtor;
- f) to make available to the Factor:
 - i. details on any Litigation pending or threatening against it and which, if adversely determined, might have a Material Adverse Effect, as soon as becoming aware of such details;
 - ii. immediately upon the Factor's request, any other information on its financial status, its business and operations (including, but without being limited to, the list of supplies and inventory assets.
- g) to fully observe all the applicable laws, if their inobservance might have a Material Adverse Effect;

- h) to immediately notify the Factor with respect to all the facts and circumstances that it suspects or it became aware of and which might have a Material Adverse Effect;
- i) not to allow the subsistence of any guarantee, lien, privilege or any other similar rights over the assigned Receivables or the Accepted Invoices;
- j) not to enter into any merger, amalgamation, demerger or corporate restructuring without informing the Factor; and
- k) not to make any amendments to its agreements and covenants with the Accepted Debtors, without the Factor's written notification in maximum five business days from the signing date of such amendments.

13. Events of Default

13.1 Each of the events and situations mentioned in this article is an Event of Default :

- a) the Adherent fails to pay when due any amount it owes based on the Finance Documents it is a party to, at the place and in the currency established for payment;
- b) any representation made or deemed to be made by the Adherent under the Finance Documents or in any other document provided by or on behalf of the Adherent based on or in connection with any Finance Document is or proves to have been inaccurate or misleading in any material respect when made or deemed to be made.
- c) the Adherent does not comply with any provision of the Finance Documents (other than those referred to in article 13.1 letters (a) and (b) above).
- d) any fact and circumstance which, on the Creditor's reasonable opinion, might have a Material Adverse Effect;
- e) any Finance Document is not, or the Adherent denounces or claims it not to be binding or enforceable against it;
- f) the Adherent is concentrating its sales on a single debtor or on a reduced number of debtors.

13.2 At any moment after the occurrence of an Event of Default, without any notice and without any prior formality or intervention of any court, the Factor shall be entitled:

- a) to cancel the Financing Ceiling and the Non-Payment Risk Coverage Ceiling, at which moment such ceiling shall be immediately cancelled and no subsequent Invoice shall be financed or covered against the non-payment risk by the Factor;
- b) to suspend the performance of any Factoring Operations in its relationship with the Adherent;

14. Change of the Factor

14.1. The Factor shall be entitled:

- a) to assign any of its rights under the GFC and Factoring Agreement; or
- b) to transfer (by novation or other means) any of its rights and obligations under the Agreement and Factoring Agreement towards a third party.

14.2 The Adherent's approval shall not be necessary and therefore it shall not be requested by the Factor:

- a) in case any of the Factor's rights under the GFC and Factoring Agreement are assigned towards any third party; or
- b) in case of transfer by novation or by other means of any rights and obligations of the Factor under the Agreement and Factoring Agreement, towards an Affiliated Person or a third party.

Moreover, the Adherent's approval with respect to any such transfer shall be considered granted and, for the avoidance of any doubt, no other formality shall be necessary in this respect.

14.3 The Adherent agrees for the Factor to disclose and to make available (and it shall be deemed as having a legitimate interest to disclose or to make available) to any of its Affiliates and/or to any third party:

- a) to (or through) whom the Factor assigns or transfers (or might assign or transfer) all or any of its rights and obligations under the GFC and/or the Factoring Agreement and/or the other Finance Documents; and/or
- b) with (or through) whom the Factor enters into (or might enter into) any sub-participation agreements in relation to, or any other transactions under which payments are to be made in connection with the GFC and Factoring Agreement or to the extent that the information has to be disclosed according to any applicable laws or regulations; and/or

- c) to any third party, in case of occurrence of an Event of Default,

any information and documents about this Agreement and Factoring Agreement with respect to the Adherent (including, but without being limited to any information and documents related to the Adherent's business, assets, transactions, current financial status and financial perspective and business relationships, as well as any other documents considered as "banking secrecy", according to article 111 and the following of the Emergency Ordinance no. 99/2006 on the credit institutions and the capital's adequacy, as subsequently amended), to the extent necessary for protecting, preserving or exercising any rights of the Factor under or in connection with this Agreement and Factoring Agreement.

- 14.4 The Adherent may not assign or transfer any of its rights and obligations under the Agreement and the Factoring Agreement.

15. Applicable law and jurisdiction

- 15.1 The GFC, the Factoring Agreement and any other documents issued based on or in connection with it are governed by Romanian law.
- 15.2. The competent courts of Romania from the Factor's headquarters shall have exclusive jurisdiction to settle any dispute arising from or in connection with this Agreement and the Factoring Agreement, including a dispute related to the non-contractual obligations arising from or in connection with this Agreement and the Factoring Agreement, or a dispute related to the existence, validity or termination of this Agreement or the Factoring Agreement or the consequences of their nullity.

16. Non-applicability of Force Majeure

In relation to its payment obligations under this Agreement and the Factoring Agreement, the Adherent agrees not to invoke:

- a) any event qualified under Romanian law as an external, unforeseeable, absolutely invincible and inevitable event (*force majeure*) or as an unforeseeable and unavoidable event (*fortuitous event*);
- b) any exceptional event qualified under Romanian law as causing the fulfilment of any or all of that Debtor's obligations based on any Finance Document to become excessively onerous (*hardship*); or
- c) any event which is beyond its control or does not depend of its own fault in relation to the failure to perform any obligation binding on it under any Finance Document.

17. Unilateral termination

The parties are entitled to unilaterally terminate the Factoring Agreement as follows:

- a) the Adherent may unilaterally terminate the Agreement subject to a 30 (*thirty*) calendar days prior notice;
- b) the Factor may unilaterally terminate the Factoring Agreement according to the provisions of the article 3.4 above.

18. Confidentiality

- 18.1 Except for the necessity of registering the Assignment of Receivables and the guarantees of the Factoring Agreement with the Electronic Archive for Movable Security and for the provisions of article 14.3 above, the parties shall keep confidential all the articles of the Factoring Agreement and all the information obtain under it, even after the termination of this Agreement and Factoring Agreement, and they shall not disclose to the third parties, without the prior written approval of the other party, the content, terms and conditions of the Factoring Agreement and of its ancillary documents, except for the cases expressly provided by law or by this Agreement or Factoring Agreement.
- 18.2 In case of the confidentiality obligation is breached, the prejudiced party is entitled to request from the other party compensation for the damage suffered as result of its breach of this article.

19. Miscellaneous

- 19.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents shall only be effective:
- a) if by way of fax, when received in legible form, certified by a confirmation of receipt;
 - b) if by way of email, only when actually received (or made available) in readable form, provided that if it is received after 17:00 o'clock, such email shall become effective against the Factor on the following business day; or

- c) if by way of registered letter, when it has been left at the relevant address or 5 (*five*) business days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under article 7 (*Notices. Addresses*) of the Factoring Agreement, if addressed to that department or officer and, in case of any Factor, if a particular person or address is specified as part of its address details provided under article 7 (*Notices. Addresses*) of the Factoring Agreement, if addressed to that person or address.

- 19.2 The Parties expressly agree that the documents made or concluded under the Financing Documents (including, but not limited to the financing requests) and delivered to the other party by way of fax or email in accordance with the above article 19.1 have the same probative force as an original. For the avoidance of any doubt, this article represents a convention on evidence in accordance with Article 256 of the Civil Procedure Code.
- 19.3 Notwithstanding the previous mentions, this Agreement terminates only at the date when the Factor has no risk on any Accepted Debtor and/or Adherent as a consequence of the Factoring Operations provided by the Factor and all the Adherent's obligations towards the Factor under this Agreement are ceased.
- 19.4 Entirety of the Agreement and Invalidity.** This Agreement represents the parties' will to be bound by all its clauses, containing all the agreements between the parties with respect to the aspects referred to by it, and no other prior covenant in connection with the GFC exists at this time. If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, neither (a) the legality, validity or enforceability of the remaining provisions, nor (b) the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be affected in any way.
- 19.5 No waiver.** No failure to exercise, or any delay of a party in exercising any right under this Agreement shall operate as a waiver of that right. The single or partial exercise of such right shall not affect the further exercise or the exercise of that right or of any other right.

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