

A Establishment and basis of debt collection mandates

AKTIVA Gesellschaft für Kreditorenschutz und Factoring mbH (AKTIVA) acts as a legal service provider on behalf of its clients (Party) in the collection of non-titled claims (e.g. unpaid invoices) and titled claims (e.g. enforcement notices) against debtors (Counterparty) who are domiciled or have their place of business in Germany and abroad. AKTIVA must combine non-titled or titled claims against the same Counterparty, which together result in the principal claim. AKTIVA accepts orders by sending an order confirmation to the Party after reviewing the submitted documents and the Party has granted a general power of attorney.

Should AKTIVA accept the collection of non-titled claims and the Counterparty has its residence or place of business in Germany (domestic debt collection), the Party may choose one of three different service packages after prior consultation with AKTIVA: *BASIC*, *CLASSIC* or *DYNAMIC*. In the event that the Party does not make a selection, it is agreed that the *BASIC* package shall apply to principal claims up to EUR 150 and that the *CLASSIC* package shall apply to principal claims of more than EUR 150.

The *BASIC* package includes all typical out-of-court debt collection activities such as checking and collecting all data relevant to successful debt collection, general research (address and legal form etc.), reminder letters, correspondence with the Counterparty or their legal representatives, deadline monitoring, processing of deferral requests, instalment payment agreements and settlement offers, telephone contact with the Counterparty as required and appropriate, all accounting activities, in particular the collection, settlement and forwarding of third-party monies to the Party as well as the subcontracting of AKTIVA's retained law firms for the preparation and dispatch of legal reminders to the Counterparty.

The *CLASSIC* and *DYNAMIC* packages additionally include legal activities such as special research and obtaining information from various AKTIVA debt collection partners, an AKTIVA *debtor check*, which is used as a basis for making decisions on possible court action, applications for the issuance and service of judicial dunning and enforcement notices as well as various measures of compulsory enforcement against the income and assets of the Counterparty, depending on the circumstances.

Should AKTIVA accept the collection of non-titled claims and the Counterparty has its residence or place of business abroad (foreign collection), the scope of AKTIVA services shall be as set out in the *BASIC* package. As a rule, the same services shall be provided additionally by a local AKTIVA debt collection partner in that country. International debt collection is hence limited to out-of-court activities.

An exception shall take effect if the Counterparty has its residence or place of business in Austria. AKTIVA has retained law firms in Austria that enable the exercise of claims in court. The Party may therefore select from the same three packages that apply to domestic debt collection.

It is of no consequence whether the Counterparty has its residence or place of business in Germany or abroad if AKTIVA accepts the collection of enforceable claims that have already been titled (titled debt collection) AKTIVA services shall generally correspond to the *CLASSIC* and *DYNAMIC* packages in these cases.

B Ancillary claims, costs and remunerations

B1 The Party shall assign to AKTIVA as part of its remuneration the default interest to be claimed from the Counterparty.

B2 After an order is accepted by the sending of the order confirmation and during further processing of the debt collection mandate, the Party incurs costs, in particular **fees** according to the Legal Services Act (RDG) and, if applicable, additional **expenses** for necessary research, judicial measures and/or the subcontracting of third parties.

B3 **Fees, expenses and default interest** together produce the ancillary claim and are invoiced to the Counterparty together with the principal claim as the total claim. AKTIVA shall defer the payment of all **fees** and **expenses** by the Counterparty until further notice, which shall be offset against payments or performances by the Counterparty as follows:

B4 Should the Counterparty fail to make any payments, the Party will not incur any costs for titled collection, international collection (excluding Austria) and domestic collection in the *BASIC* and *DYNAMIC* packages. If the Party has selected the *CLASSIC* package, it shall incur no more than a lump sum as set out in the valid cost list if an application for the issue and service of the court order for payment has been filed.

B5 Where the Party or AKTIVA receives payments from the Counterparty and/or subcontracted third parties on the collection of titled claims, such payments shall first be offset against AKTIVA's expenses. The Party shall be entitled to 50% of all payments exceeding this amount, even if the original principal claim is then exceeded.

B6 Where the Party or AKTIVA receives payments from the Counterparty and/or subcontracted third parties in international collection (not including Austria), these payments shall first be offset against AKTIVA's expenses. If the Counterparty's residence or place of business is within Europe, the Party shall be entitled to 85% of any payments exceeding this amount, up to a maximum of 85% of the principal claim. If the Counterparty's residence or place of business is outside Europe, the Party shall be entitled to 75% of any payments exceeding this amount, up to a maximum of 75% of the principal claim.

B7 Where the Party or AKTIVA receive payments from the Counterparty and/or subcontracted third parties in domestic collection (*BASIC*), these payments shall first be offset against AKTIVA's expenses. Payments exceeding this amount shall be due to the Party on a pro rata basis, i.e. in the ratio of the principal claim to the ancillary claim (excluding expenses), but not more than 100% of the principal claim.

B8 Where the Party or AKTIVA receive payments from the Counterparty and/or subcontracted third parties in domestic collection (*CLASSIC*), these payments shall first be offset against AKTIVA's expenses. Payments exceeding this amount shall be due to the Party on a pro rata basis, i.e. in the ratio of the principal claim to the ancillary claim (excluding expenses), but not more than 100% of the principal claim.

B9 Where the Party or AKTIVA receives payments from the Counterparty and/or subcontracted third parties in domestic collection (*DYNAMIC*), these payments shall first be offset against AKTIVA's expenses. Payments exceeding this amount shall be due to the Party on a pro rata basis, but no more than the share of the principal claim according to the valid cost list.

C Rights, obligations and liability

AKTIVA is obliged to ensure prompt settlement of all monies due to the Party and to transfer them to the Party without delay. Where AKTIVA has claims against the Party, the Party shall grant to AKTIVA a lien on current credit balances from the Party's other collection mandates.

The Party's claims that are designated for collection must be justified. The Party must notify AKTIVA of contested points and objections of the Counterparty that are known at the time that the order is placed. AKTIVA may refuse debt collection orders within a period of ten working days after receipt of the order, but in these cases shall notify the Party without delay that it does not intend to accept the debt collection order. The Party shall be liable for possible claims for damages by the Counterparty and for the fees and expenses incurred by AKTIVA and/or subcontracted third parties if an unjustified or even 'fictitious' claim is assigned (refer to B2).

The claims intended for collection should not be time-barred, as the Counterparty might otherwise raise the defence of limitation. Processing of these claims is still possible, however, but the mandate should be restricted to out-of-court measures in these cases. AKTIVA shall not be liable if a claim becomes time-barred, unless the claim became time-barred due to intent or gross negligence on the part of AKTIVA.

The measures deemed necessary for the collection of claims shall be selected at the discretion of AKTIVA. In particular, AKTIVA may, at its own discretion and with due consideration of all economically relevant facts, accept or reject offers of the Counterparty for deferrals, settlements as well as instalments and partial payments. AKTIVA shall, however, notify the Party, as a rule, of offers made by the Counterparty if less than 75% of the principal claim would be realised or if full realisation of the principal claim would take longer than two years. AKTIVA will take the Party's objections into account in these cases. Where the Party cancels a current debt collection order on its own initiative without the agreement of AKTIVA, it shall be liable for the fees and expenses of AKTIVA and/or subcontracted third parties (refer to B2).

AKTIVA is responsible for the subcontracting of third parties. AKTIVA or subcontracted third parties shall notify the Party of all important facts and measures. Additional notifications shall be made on request or if certain instructions issued by the Party take effect.

In return, the Party shall notify AKTIVA without delay if the Counterparty establishes contact or has made payments/performances. AKTIVA shall treat the return of goods and the receipt by the Party of other performances from the Counterparty as a form of payment and shall issue a credit note on the total claim, if necessary after consulting with the Party. AKTIVA must also take into account all direct payments made by the Counterparty to the Party. In regard to settlements and mutual claims, it is irrelevant whether the Counterparty makes payments or provides performances to the Party or AKTIVA. The Party shall be liable for costs incurred due to late payment or performance notification.

The Party may only grant a (partial) waiver to the Counterparty in regard to the principal claim if it notifies AKTIVA of this circumstance, which must also be treated as a credit note and hence as a payment. However, the Party shall be liable for the part of the ancillary claim (refer to B3) for which it has granted a waiver to the Counterparty, unless the waiver was declared with the consent of AKTIVA.

AKTIVA, its legal representatives, employees and commissioned third parties shall only be liable for intentional and grossly negligent acts. Mutual claims must be exercised within three months after termination of the debt collection mandate.

D Data protection

All documents and information necessary for the provision of legal services by AKTIVA shall be stored in a digital form. The Party consents to the storage and transfer by AKTIVA of personal data that is necessary for the designated purpose of fulfilling the debt collection mandate. Such personal data shall be stored and transferred in compliance with all legal regulations, in particular the EU General Data Protection Regulation (GDPR).

E Miscellaneous

The Party shall decide on which action to take if legal proceedings are pending due to opposition or objection by the Counterparty after the initiation of the judicial dunning procedure. AKTIVA shall discontinue the processing if no legal action is to be taken or if the Party wishes to commission the services of its own legal representatives. The Party shall incur costs as set out in Clause B4 in these cases.

Where the Party decides that a law firm retained by AKTIVA should conduct legal proceedings, the latter shall invoice the Party for an advance on costs and fees. A statement of claim shall be prepared and submitted once the Party has settled this invoice and a lawyer has performed a cursory review of the factual and legal situation. Ongoing support shall then be provided jointly by the law firm retained by AKTIVA and AKTIVA.

Should the Party wish the surrender of a title, AKTIVA may demand *pari passu* payment of the statutory fees and expenses of AKTIVA and/or subcontracted third parties, because these claims pass to the Party upon surrender of the title.

Deviating provisions, special conditions, further agreements between AKTIVA and the Party and other services offered by AKTIVA may require additional agreements. They must be in writing in order to be effective. Verbal collateral agreements are invalid. The contractual relationship between AKTIVA and the Party shall be governed by the law of the Federal Republic of Germany. The place of performance and jurisdiction shall be Solingen, provided the Party satisfies the definition of a merchant according to the German Commercial Code (HGB).

The invalidity of any agreements entered into in the foregoing shall not affect the validity of the other agreements. The invalid agreement shall be replaced with a valid agreement that most closely resembles the economic intentions of the invalid agreement.

These Terms and Conditions replace the version dated 30 December 2002.