



# Terms and Conditions for Commerzbank Live Confirm

(as of 1 Jan. 2017)

These terms and conditions (the “Terms and Conditions”) are applicable to the use of Commerzbank Live Confirm (hereinafter referred to as “Live Confirm”), an internet-based system for electronic trade confirmations concerning all types of trades, especially interest rate derivatives and other financial instruments, as well as spot trades in precious metals and currencies (together referred to as “Trades”). For ease of use, and in order to speed up the settlement processes, the customer wishes to obtain confirmations of Trades electronically, and to be able to counter-confirm in the same manner. The Bank will establish the Live Confirm application on Commerzbank’s Corporate Banking Portal, at the URL [www.commerzbank.de/corporatebanking](http://www.commerzbank.de/corporatebanking) (the “Live Confirm Website”).

## 1. Subject Matter of the Agreement

1.1 The Parties agree that confirmation and counter-confirmation of Trades shall occur electronically, following activation by the Bank. The conclusion of Trades will be confirmed to the customer electronically by way of posting the required details on the Live Confirm Website. The necessary counter-confirmation will be transmitted from the customer to the Bank electronically via the Live Confirm Website, as set out in section 2 of these Terms and Conditions.

1.2 The electronic confirmation and counter-confirmation of Trades via the Live Confirm Website are in addition to the existing channels of communication between the Bank and the customer. If a German Master Agreement for Financial Derivatives Transactions (Deutscher Rahmenvertrag für Finanztermingeschäfte), an ISDA Master Agreement, or other such Master Agreement exists between the Bank and the customer under which Trades can be entered into (hereinafter referred to as a “Master Agreement”), the electronic entry of the details with respect to the Trades on the Live Confirm Website shall serve as confirmation in the sense given in the respective applicable Master Agreement.

## 2. Obligations of the Customer

2.1 The customer informs the Bank via the application form, at its own discretion and at its own risk, of the persons who are authorised to view the confirmations placed into Live Confirm, and to approve the counter-confirmations of Trades for and on behalf of the customer (hereinafter referred to as “Users”).

2.2 The customer affirms that the Users identified on the application form are duly authorised to issue legally binding confirmations vis-à-vis the Bank, via Commerzbank Live Confirm.

2.3 Access to the Live Confirm Website is protected by access codes (as set out in section 2.4 of these Terms and Conditions). The access codes are restricted to the particular Users named as such by the customer. **The customer is bound by all [counter-]confirmations which are made by any User via his/her access code.**

2.4 In order to access the Corporate Banking Portal, the User must have been activated and be in possession of the relevant access data. Additionally, the Bank allocates access data for Live Confirm to the User nominated by the customer, which consists of a generic password. Users are required to exchange this generic password for an individual (secret) one. The customer is responsible for, and will monitor the following:

- Users shall individually and immediately amend the generic password allocated by the Bank, following receipt, and shall only use their own secret password (identifier code);
- Users shall be required to keep the generic password, their identifier code as well as the access code to the Corporate Banking Portal confidential at all times, and to guard this information carefully;
- no other person other than the respective authorised User obtains knowledge of the identifier code;
- the identifier code is not stored on electronic media (for example, on a hard drive);
- Users adhere to the Live Confirm Terms and Conditions at all times.

If there is any suspicion relating to a particular User that unauthorised persons have access to the Live Confirm Website; have gained knowledge of a User’s access code or identifier code; or that an improper use has occurred, the customer will inform the Bank without delay.

Prior to receipt of the access code, the customer will require a written undertaking from each User to adhere to these Terms and Conditions. The customer will inform the Bank without delay of the departure of a User from the company.

2.5 The customer shall be required to maintain appropriate data backup measures for its own systems and to always undertake the necessary precautionary measures – given the current state of technology – against viruses and other malware (such as trojans).

2.6 The customer shall be obliged to regularly enquire as to the current state of the confirmations of Trades following execution, confirmation or objection thereto on the Live Confirm Website, and to inform itself with respect to any

updates. The customer shall therefore regularly, and at the latest on the bank business day following a trade, check the Live Confirm Website and examine the confirmations entered therein by the Bank as to their correctness and completeness.

If the details in the confirmation are correct and complete, the customer will immediately counter-confirm the Bank's confirmation via the Live Confirm Website. The steps required for the counter-confirmation are described in more detail in the respective current Live Confirm Online Help (the "Live Confirm Online Help"). The Live Confirm Online Help is uploaded to the Live Confirm Website, and can be printed out from there. Incomplete or incorrect details in the confirmation are to be reported by the customer immediately, giving the exact reason for the objection.

2.7 The customer shall acquaint itself with the Live Confirm Online Help and inform itself with respect to possible amendments or supplements.

2.8 If a customer objects to a confirmation, and the Bank enters an amended confirmation into the "Updated Confirmations" section, the customer shall, at the latest on the bank business day following the entry, check the completeness and correctness of the Updated Confirmation and, in the case that it is complete and correct, shall counter-confirm it. If this is not the case, the customer shall immediately lodge an objection.

2.9 If the User presses the "Confirm" button despite wishing to object to the confirmation entered by the Bank, this action must be reported immediately, in writing, to the Bank's Call Centre (cf. section 5.3 of these Terms and Conditions).

### 3. Retention Duration

The customer is able to print confirmations or save them on its own hardware in a reproducible format. Two years after the completion of a Trade, the Bank will remove the confirmation from the Live Confirm Website.

### 4. Rights of Use to Live Confirm

4.1 The customer is permitted to use the Live Confirm Website and its contents for the intended purpose described therein for the limited period of the duration of this Agreement. Usage rights to the contents are only granted to the extent necessary for the use of Live Confirm, in accordance with the provisions of these Terms and Conditions.

4.2 The customer undertakes only to use the Live Confirm Website and its contents for its own purposes. In particular, the customer is not permitted to copy the contents, to provide third-party access thereto, to embed the contents into other products or processes, or to decipher the source code. References to the rights of the Bank or third parties must not be removed or concealed. The customer shall not use the brand name, the domain name or other identifying characteristics of the Bank or third parties without prior approval.

4.3 These Terms and Conditions do not provide the customer with irrevocable, exclusive or transferable rights of use.

4.4 In order to operate Live Confirm, the Bank may use equipment and systems, in particular servers, of third-party service providers, within the framework of commissioned data processing (Auftragsdatenverarbeitung). In this context, data may be outsourced to such service providers. The Bank carefully selects such service providers and obliges them to comply with the legal provisions relating to data protection as well as the safeguarding of banking secrecy.

### 5. Access to Live Confirm

5.1 Access by the customer to the Live Confirm Website occurs via the World Wide Web. The customer is required to fulfil the necessary technical requirements for access to and use of Live Confirm at its own cost and responsibility. The Bank is not required to place hardware or software at the disposal of the customer.

5.2 The Bank may amend or supplement the functionality of Live Confirm at any time, subject to a reasonable notice period; for example, when introducing new versions of Live Confirm, or in order to fulfil regulatory requirements. The customer will be given adequate prior notice of amendments and additions (for example, via e-mail) and these will also be published on Live Confirm. Any such amendments shall be deemed to have been accepted if the customer does not object in writing to the Bank. Any objection must be forwarded to the Bank within six (6) weeks after notification of the amendments is published on the Live Confirm Website. The Bank shall inform the customer accordingly.

5.3 The Bank intends to make Live Confirm available within the usual business hours on every bank business day in Frankfurt/Main, Germany. In the case of technical problems with respect to Live Confirm, or queries about the use of and functionality of Live Confirm, the customer will contact the Live Confirm Call Centre, as described in more detail in the Live Confirm Online Help.

### 6. Liability of the Bank

6.1 Live Confirm is not a closed network operated by the Bank for the transmission of data, but rather an internet-based system for the simplified confirmation and counter-confirmation of Trades. The Bank has no influence upon the internet. Delays and erroneous routing cannot be excluded.

6.2 The Bank undertakes no guarantee that Live Confirm, its contents or functions will work without interruption. In particular, planned or unplanned maintenance work can cause lengthy downtimes. The customer confirms by way of signature that it is aware of this risk and that it has made other arrangements in case Live Confirm is not available.

The Bank does not accept responsibility for the results which the customer achieves for itself or a third party via the use of Live Confirm, neither for the information provided by third parties, which is contained on or accessible via this website.

In particular, this is applicable to data which is supplied by third-party banks and which applies to transactions which are not entered into with Commerzbank AG. **The customer uses Live Confirm at its own risk.** In the case of disruptions to access to Live Confirm, the Bank shall attempt to inform the customer thereof. In the case of an access interruption of more than one day, the confirmation of transactions will occur as per the conventional confirmation procedure (by fax or post).

6.3 The Bank shall only be liable for damages and losses in connection with Live Confirm to the extent that a claim of gross or intentional negligence can be made. In any case, liability is limited to those damages that are typical and reasonably foreseeable at the time of entering into the Agreement and does not include indirect or follow-on damages.

The customer indemnifies the Bank from claims of third parties which arise from:

- use of the system contrary to the provisions of this Agreement;
- disruption of the system at the customer's end; or
- access of unauthorised parties using the customer's access data.

## 7. Applicable Law

This Agreement shall be governed and construed by the laws of the Federal Republic of Germany. The non-exclusive place of jurisdiction for all disputes in connection with this Agreement shall be Frankfurt/Main, Germany.

## 8. Multi-bank Support

To the extent that the customer has agreed upon the "multi-bank support" option with the Bank, it allows the Bank to accept, process and save electronic FX trading confirmations from other banks ("third-party Banks") using the SWIFT MT 300 Standard and, upon the customer's initiative, to counter-confirm or refuse said confirmations. The Bank shall not be liable for the correctness of the contents of the terms and conditions of third-party Banks. The customer is required to remedy any inaccuracies concerning the completeness or correctness of such confirmations directly with the third-party Bank concerned. The customer shall independently execute a counter-confirmation.

## 9. Termination

Either party may terminate this Agreement by giving 30 days' notice following receipt of the relevant communication. The right to terminate at any time for good cause without giving notice shall remain unaffected. This Agreement terminates without notice, and without the need for any further notification, if the customer no longer has access authorisation for the Commerzbank Corporate Banking Portal. Furthermore, this Agreement terminates following the relevant notification if due to legislative or regulatory requirements, a termination cannot be avoided or in general for good cause at the discretion of the Bank (in accordance with section 315 of the German Civil Code), and in particular for use contrary to these Terms and Conditions, or in the case of disruptions relevant to system security at the customer's end.

Following effective termination, the Bank can immediately delete the existing transaction confirmations after the expiry of the legally mandated retention periods.

## 10. Cost

The customer will be billed those fees for the use of Live Confirm which were communicated on the application form, as well as via other means. The Bank will notify the customer of any amendments to these fees in good time, but at least two (2) months before the amendments enter into force. In the case of an increase in fees, the customer has the right, up until the point in time at which the increase becomes effective, to terminate this Agreement without notice.

## 11. Miscellaneous

11.1 The Bank's General Terms and Conditions (Allgemeine Geschäftsbedingungen) shall apply on a supplementary basis to these Terms and Conditions.

11.2 The customer may only assign or transfer the rights arising from this Agreement without the prior written consent of the Bank if these are not contested, or if they have been determined to be legally binding.

11.3 If one of the provisions of these Terms and Conditions should be or become invalid or should it become clear that this Agreement contains a gap which must be filled, then a provision should be inserted which has a meaning and purpose which, within the context of the legal possibilities, comes as close as possible to that which the Parties desired or would have desired, had they given thought to that point.

## 12. Permission to Record Telephone Conversations

Commerzbank AG hereby states that any incoming or outgoing telephone calls made to it/from it or any other company of the Commerzbank Group may be recorded without any additional prior notice - in particular, to fulfil regulatory requirements.

By entering into this Agreement, the customer expressly agrees to the recording and storing of the relevant data. The customer shall inform Users of the possibility of a recording and, insofar as this is legally required, shall obtain their consent thereto. If, in a specific case, the customer or a User does not agree to such recording, it will notify the other party to the call of this fact - without delay - at the beginning of the telephone call.