



Dé vastgoedfinancier  
van Nederland

# General terms and conditions

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# General terms and conditions

## I GENERAL

### 1 Definitions

1.1 In these terms and conditions, the terms listed below have the following meaning:

- (a) **expiry date:** the day on which the term ends;
- (b) **instrument:** the accepted credit agreement, the accepted extensions thereof, the instrument of loan or lending, whether or not secured, as well as that of extension, co-debt, guarantee, mortgage, pledge, as well as any other instrument granting security and any document in which additions and/or changes are made to these instruments or to security provided by the debtor;
- (c) **tax:** any tax, excise duty or other charge levied by means of an assessment, or paid on the basis of a tax return (including interest, costs or penalties due in connection with the late payment thereof);
- (d) **construction deposit:** the part of the loan that has not yet paid out to the debtor when the loan is made available and that can be used by the debtor to finance the building, renovation, maintenance, alteration or expansion of the collateral that is to be carried out and that has been approved by the lender;
- (e) **consumer:** a natural person not acting in the exercise of his profession or business;
- (f) **group:** a group as referred to in Section 2:24b Dutch Civil Code;
- (g) **lender:** the party/parties granting the loan;
- (h) **loan:** a monetary loan, credit, credit facility, money lending agreement, credit agreement and any other agreement to make credit available, as well as any modification or renewal thereof. In case a loan consists of multiple loan parts, the term loan should be interpreted to include "each loan part";
- (i) **term:** the agreed period for which the loan was granted;
- (j) **collateral:** all the goods related to security for the lender;
- (k) **debtor:**
  - (i) the person to whom the loan was granted;
  - (ii) the (co-)borrower;
  - (iii) the (jointly and severally) (co-)debtor;
  - (iv) the guarantor;
  - (v) surety; and/or
  - (vi) the provider of security (including the pledge and/or mortgage provider);
- (l) **amount owing:** the amount outstanding in respect of the loan, interest, fees, premiums, fines and costs, the payments made by the lender on behalf of the debtor, as well as any other amount that the debtor owes to the lender for whatever reason at any time; and
- (m) **security:** a right of mortgage, a right of pledge, a guarantee, suretyship or any other form of security.

1.2 In these terms and conditions, the following terms will have the following meanings:

- (a) **guarantee, guarantor:** all corresponding terms:
  - (i) an agreement whereby a person undertakes to the lender to provide a service in the event that the debtor fails to fulfil an obligation to the lender; and
  - (ii) any other guarantee in favour of the lender for, or in connection with, an obligation of the debtor (including a statement as referred to in Section 2:403(1)(f) Dutch Civil Code);
- (b) **leasehold, leasehold conditions, leasehold agreement:** all terms corresponding to perpetual fixed-rent hereditary lease, of sublease, of superficies, of subsuperficies and of usufruct; and

(c) **lease, rent, rental income, lease, letting, lessee:** all corresponding terms in the case of a leasehold or any other use, whether or not based on an agreement.

1.3 Unless otherwise specified, any reference in these terms and conditions to:

- (a) an **Article** will be deemed to be a reference to an article of these terms and conditions;
- (d) **payment and pay** (including other verb forms thereof) will also be deemed to be a reference to repayment and repay;
- (e) a **person** is deemed to be a reference to a natural person, a legal entity, a partnership, a partnership or any other entity (whether incorporated or not); and
- (f) the **debtor**, the **lender** or any other person, will also be deemed to be a reference to his legal successor(s) under universal title and legal successor(s) under particular title accepted by the lender.

1.4 If the word **'including'** is used in these terms and conditions, the following list is not exhaustive.

1.5 Words and definitions in these terms and conditions that indicate the singular will also include the plural and vice versa.

1.6 The titles of the articles in these terms and conditions are included solely for the sake of clarity, but do not serve for the interpretation of these terms and conditions.

### 2 Introductory provisions

2.1 These terms and conditions apply to all existing and future legal relationships between the lender and the debtor, to the extent that the instrument does not deviate therefrom.

2.2 If the debtor applies or declares general terms and conditions to be applicable, the lender explicitly rejects those. Therefore, these will not apply in his legal relationship with the lender.

2.3 These terms and conditions form an integral part of the instrument and all references to the instrument are deemed to include references to these terms and conditions.

2.4 With regard to these terms and conditions and the instrument to which these terms and conditions apply, only Dutch law is applicable and disputes between the lender and the debtor can exclusively be brought before the court in Utrecht, unless legislation or international treaties prescribe otherwise.

2.5 If one or more provisions of the instrument or of these terms and conditions are annulled, nullified or unenforceable, this will not affect the validity or enforceability of the other provisions of the instrument or these terms and conditions.

2.6 If the lender does not (temporarily) exercise a right or authority to which it is entitled by virtue of the law or the instrument, this will not be deemed to be an (implicit) forfeiture or waiver of that right or authority. The rights or powers that the lender has under the instrument are supplementary to the rights and powers that the lender has under the law or otherwise.

2.7 The lender is authorised to use the services of third parties for the risk and account of the debtor in the performance of obligations or powers to which it is entitled, as well as to deposit the debtor's goods with third parties in the name of the lender.

2.8 The lender is authorised to process personal data of the debtor and his representatives, as well as all data relating to the loan and other products and services purchased by the debtor in accordance with the provisions of the lender's privacy statement. The lender's privacy statement (as amended from time to time, the **privacy statement**) can be found at [www.rnhb.nl](http://www.rnhb.nl).

2.9 Without prejudice to the provisions of Article 2.8, as a result of the application of these terms and conditions the debtor agrees that lender may record telephone conversations with the debtor and his representatives in accordance with the provisions of the privacy statement.

- 2.10 The lender is at all times entitled to transfer its rights or obligations under the instrument and, to the extent necessary, the debtor grants his irrevocable and unconditional consent and cooperation thereto in advance.
- 2.11 If the debtor qualifies as a consumer in a certain legal relationship with the lender, section V of these terms and conditions will apply to that legal relationship between the debtor and the lender.
- 2.12 The debtor and the lender hereby agree that, if the lender transfers (part of) its claim(s) to a third party (irrespective of whether this is done by assignment or contract takeover), an ancillary part of the security established for this claim(s) is also transferred to this third party in proportion to (the transferred part of) this claim(s). The provisions of the previous sentence do not constitute a third-party clause within the meaning of Section 6:253 Dutch Civil Code.
- 2.13 The lender is entitled to make changes and additions to these terms and conditions. Amendments and additions will be binding on the debtor as from 30 days after these have been provided to the debtor.
- 3 The debtor**
- 3.1 If the same performance is due to the lender by two or more debtors, they are jointly and severally liable. When a debtor's debt to the lender passes to two or more legal successors of the debtor, they will be jointly and severally liable.
- 3.2 By applying these terms and conditions, the debtor waives his right to claim that the lender first enforces any security provided by any other person (as referred to in Section 3:234 Dutch Civil Code) and that the lender must pay the costs referred to in Section 3:233(2) Dutch Civil Code to the debtor.
- 3.3 By applying these terms and conditions, the debtor waives his right to invoke the suspension or termination of his liability pursuant to Section 6:139 Dutch Civil Code, of its rights and defences pursuant to Sections 6:9, 6:154, 7:852, 7:853 and 7:855 Dutch Civil Code and any other right or defence a surety, jointly and severally debtor or guarantor has by law.
- 3.4 By applying these terms and conditions, the debtor agrees that he will not subrogate the rights of the lender.
- 3.5 By signing the instrument, a debtor agrees with the lender to grant and grants (where relevant in advance) to the lender on his rights of recourse and rights acquired by way of subrogation (without prejudice to Article 3.4) (the **recourse and subrogation claims**) a right of pledge as security for the amount owing by the (other) debtor(s) for whose debts security has been provided to the lender (the **primary debtor(s)**) to the lender under all present and future legal relationships between the primary debtor(s) and the lender. By signing the instrument, the primary debtor(s) confirm(s) to have been notified of the pledge. If the primary debtor is not a party to the instrument in question, the lender also has the authority to accept, on behalf of the primary debtor, notification of the right of pledge, as evidenced by the signing by the lender of the instrument in question. The debtor subordinates its recourse and subrogation claims to any claims of the lender towards the primary debtor(s) and will without permission of the lender not exercise any right in connection with the recourse and subrogation claims until all claims of the lender towards the primary debtor(s) have been fully discharged.
- 3.6 The debtor remains bound until the amount owing to which he has committed himself to the lender has been fully and irrevocably paid, even if the term is extended, the terms of the loan are changed, a suspension of payment is granted, any right is waived, including a waiver of the lender's right of action against another person, any right is terminated and/or an agreement is reached in any form whatsoever, to which the lender is expressly authorised without the cooperation or consent of the debtor being required.
- 3.7 As a result of the application of these terms and conditions, each debtor has irrevocably authorised each other debtor to make, on behalf of the principal, all statements, including notifications and requests to disburse the loan, to the lender and to accept all statements made by the lender on behalf of the principal. The authorisation referred to in Article 3.7 is irrevocable.
- 3.8 If there are several debtors and consequences (whether legal or otherwise) are attached to the occurrence of a circumstance concerning the debtor, this circumstance will also apply if it occurs only with regard to one of the debtors.
- 3.9 Waiver for no payment, waiver for consideration or postponement of payment, as well as an offer to that effect made or granted by the lender to one of the debtors, only concerns that debtor.
- 3.10 The debtor can only rely on statements made by the lender, including communications, if these have been made without reservation and in writing.
- 3.11 The debtor will at all times:
- comply with all laws and regulations applicable to him; and
  - refrain from actions or statements that lead or may lead to damage to the reputation of the lender and the debtor will, if necessary, take reasonable measures to prevent (possible) damage to the reputation of the lender from occurring.
- 3.12 By applying these terms and conditions, the debtor who is a legal entity gives the lender the authority to request the Enterprise Chamber of the Amsterdam Court of Appeal to conduct an investigation within the meaning of Section 2:345 Dutch Civil Code.
- 3.13 The rights or obligations of the debtor under the instrument are not transferable or pledgeable, except to or by the lender. This clause has effect under property law within the meaning of Section 3:83(2) Dutch Civil Code.
- 3.14 To the extent permitted by law, the debtor waives any right he may have at any time to:
- terminate the instrument pursuant to Section 6:265 Dutch Civil Code;
  - suspend his obligations under the instrument pursuant to Sections 6:52, 6:262 or 6:263 Dutch Civil Code or on any other grounds; and
  - annul the instrument pursuant to Section 6:228 Dutch Civil Code or on any other ground.
- 4 Authorisations**
- 4.1 An authority not directly derived from the law and vested in the lender includes the authority of the lender to perform the relevant legal acts on behalf of the debtor both amicably and in court, to register these legal acts with the competent authority, to submit disputes to arbitration or binding advice, to enter into settlement agreements, to collect claims in and out of court and to grant discharge, all at the risk and expense of the debtor. The authorisation referred to in Article 4.1 is irrevocable.
- 4.2 The granting of an authority to the lender takes place under indemnification of the lender by the debtor for any liability and damage that could result from the use of that authority and entails the obligation, unless the lender determines otherwise, that the debtor revokes such authority previously granted to a party other than the lender.
- 4.3 The lender can, even if it is the authorised representative of the principal, always act as the principal's counterparty and can furthermore grant all the authority to which it is entitled to another party.
- 4.4 The lender is not liable for damage resulting from the use or non-use of its authority, unless the damage is the result of an intentional act or omission or gross negligence on the part of the lender.
- 4.5 The use by the lender of any authority leaves its other powers unaffected.
- 5 Notification and transmission of documents**
- 5.1 Unless the lender has explicitly designated a different address, orders, statements and communications to the lender, regardless of the office of the lender for which they are intended, will be addressed exclusively to the lender's address as stated in the trade register at the time of sending.

- 5.2 The debtor will ensure that orders, statements and communications to the lender are clear and contain the correct data.
- 5.3 The lender will execute transfer orders on the basis of the account number specified by the debtor. The lender is not obliged to verify the correctness of the data stated in the order.
- 5.4 Forms will be completed in full by the debtor. Other data carriers or means of communication approved by the lender will be used by the debtor in accordance with the lender's instructions.
- 5.5 The lender is not obliged to carry out orders if such orders have not been given using data carriers or means of communication determined or approved by the lender.
- 5.6 The lender may require that communications be made in a specific form.
- 5.7 The debtor will notify the lender in writing of any change that may reasonably be of interest to the lender with regard to the loan, including any change in his address, actual place of residence or legal status, as well as any change in the collateral, the rent roll, the amount of the rent, the state of ownership or the insurance thereof. The notification of a change in the rent roll or amount of the rent must be accompanied by an updated rent specification.
- 5.8 The debtor will at all times submit to the lender such documents and other evidence as the lender deems necessary in order to establish that the lender complies with its obligations to conduct customer due diligence or similar obligations arising from applicable laws or regulations.
- 5.9 If the debtor is a legal entity, it will notify the lender in writing of:
- an amendment to its articles of association, its rules or its agreement, its dissolution, merger or division, which notification will be given no later than one month before coming into effect (and of all the foregoing in respect of its depository (if any)); and
  - a change in the composition of its board,
- which notification will be given no later than 14 days before coming into effect.
- 5.10 If the debtor is a legal entity with a capital divided into registered shares, he will notify the lender in writing of any direct or indirect change in his shareholders, limited beneficiaries or depository receipt holders or in their rights, whereby notification will be given no later than 14 days before coming into effect.
- 5.11 If the debtor is (i) a partnership, he will notify the lender in writing of (a) any change of its partnership agreement or its dissolution, which notification will be given no later than one month before the same coming into effect or (b) any change of his partners or composition of the board of the general partner or depository, which notification will be given no later than 14 days before the same coming into effect (and, to the extent not known in advance, within 14 days after the date the debtor is aware thereof) or (ii) a cooperation (*coöperatie*) or association (*vereniging*), he will notify the lender in writing of any change of his members or their rights, which notification will be given no later than 14 days before the same coming into effect (and, to the extent not known in advance, within 14 days after the date the debtor is aware thereof).
- 5.12 If a debtor grants or has granted a representative authority to someone, he will notify the lender in writing of the granting, change or withdrawal of that authority, even if it has been entered in the public registers, in the absence of which such granting, change or withdrawal cannot be invoked against the lender.
- 5.13 The debtor will send to the lender within 14 days of a request to that effect from the lender:
- all documents relating to the collateral and the debtor that the lender deems necessary;
  - if the debtor is a legal entity with registered capital, the names and addresses of the shareholders, limited beneficiaries and depository receipt holders, stating the rights of each of them;
  - in the case of a partnership, the names and addresses of the partners, indicating the rights of each of them; and
- in the case of a cooperation or an association, the names and addresses of the members, indicating the rights of each of them.
- 5.14 The debtor who is a legal entity or to whom Title 9 of Book 2 Dutch Civil Code applies will submit his annual accounts to the lender annually within six months after the end of his financial year or immediately after they have been completed earlier, which annual accounts, if an external auditor was involved in their preparation, will be accompanied by an unqualified opinion. A debtor other than the one referred to in the previous sentence will, if the lender so wishes, place himself under audit at his own expense to the satisfaction of the lender and will submit his balance sheet and profit and loss account, together with explanatory notes and a report on the audit conducted, to the lender as soon as these have been issued.
- 5.15 The debtor will, at the first request of the lender, make available to the lender and/or the third party or parties designated by the lender all information requested by the lender regarding his business or profession and to give the lender and/or such third party or parties the opportunity to check his complete records.

## II THE LOAN

### 6 Term of the loan and extension

- 6.1 The lender is not obliged to make the loan or the part of it not yet drawn down available to the debtor if:
- a condition or reservation made by the lender for the making available of the loan is not, in the lender's opinion, fulfilled, is not fulfilled satisfactorily or is only partially fulfilled; or
  - an event or circumstance as referred to in Article 13.1 occurs or threatens to occur.
- 6.2 The amount outstanding under the loan on the expiry date must then be repaid, unless the term is extended together with any unpaid interest and any other amount payable in connection with that loan (including default interest due (if any) pursuant to Article 9.7).
- 6.3 If the lender is prepared to extend the term, it will submit a written proposal to that effect. The debtor is not entitled to an extension.

### 7 Repayments and compensation

- 7.1 The instrument specifies whether a loan must be repaid periodically. The amounts and payment dates of the instalments are specified in the instrument.
- 7.2 A portion of the loan that has been repaid may not be taken up again.
- 7.3 Full or partial early repayment of the loan before the expiry date is always permitted subject to the following provisions of Article 7.
- 7.4 In case of early repayment, announced by the debtor or as a result of a claim, the debtor will (in case of an announced early repayment on the announced repayment date and in case of a claim by the lender on its first request) pay:
- the amount of the early repayment;
  - the compensation for early repayment referred to in Article 7; and
  - the interest on the amount of the early repayment, calculated up to that date.
- 7.5 If the loan is subject to a fixed rate of interest, the compensation is determined as follows:
- First, the lender determines whether the comparison rate is lower than the current interest rate applicable to the loan. The **comparison rate** is the rate from the lender's offer for a period equal to the remaining part of the current fixed-interest period (and, if not included in the offer, the highest adjacent rate) and based on the LTV category applicable at the date the loan is made available or the loan is extended. If the comparison rate is equal to or higher than the current applicable interest rate, no compensation is due.

- (b) The lender then calculates the missed interest over the remainder of the current fixed rate period (based on the comparison rate and the current applicable interest rate). This takes into account periodic repayments that are due during the remaining part of the current fixed-interest period.
- (c) Finally, the lender determines the compensation on the present value of the missed interest (using the comparison rate as the rate for calculating the present value).
- 7.6 If the loan is subject to a variable interest rate, the compensation is determined as follows:
- (a) First, the lender calculates the missed interest rate over the remaining part of the term (on the basis of the current applicable variable rate and the variable rate set by the lender for the remaining part of the term).
- (b) The lender then determines the compensation on the present value of the missed interest rate (where the rate used by the lender to calculate the present value is a rate based on rates charged by capital market participants or other financiers where the lender raises capital).
- 7.7 No compensation is due if the debtor is a natural person and early redemption takes place within 6 months of the debtor's death. No compensation is due if redemption takes place on the expiry date or in the month prior to the expiry date.
- 7.8 The debtor can only redeem early if the date of redemption is notified to the lender in writing at least one month in advance. A written notification by the debtor of an early redemption is irrevocable and the lender is entitled to the early redemption if the debtor does not comply with the previous notification.
- 8 Payments**
- 8.1 All payments will be made in current Dutch currency, without any deduction, discount, setoff, cost calculation or condition, by payment or transfer to a bank account in the name of the lender, or in another manner to be determined by the lender.
- 8.2 Payment will only be deemed to have taken place if and as soon as the amount has irrevocably and unconditionally come under the control of the lender.
- 8.3 Any right of setoff against the lender is excluded, but the lender is at all times entitled to set off what it may claim from the debtor, whether or not due or payable or subject to conditions, against counterclaims of the debtor on the lender, whether or not they are due and payable, regardless of the currency in which these claims are denominated. Claims in foreign currency are settled at the exchange rate on the day of settlement.
- 8.4 All amounts payable by the debtor to the lender in connection with the instrument will be calculated and paid without tax deduction, unless such tax deduction is required by law, in which case the amount to be paid will be increased in such a way that, after that tax deduction, the amount to be received by the lender will be equal to the amount that the lender would have received if that tax deduction had not been required.
- 8.5 If a payment expires on a day that is not a business day, the payment will instead expire on the next business day in the same calendar month or, in the absence thereof, on the last business day of the calendar month concerned. For the purposes of Article 8.5, a business day is any day except Saturday, Sunday, a generally recognised holiday in the Netherlands or a day on which banks in the Netherlands are closed for interbank traffic.
- 9 Interest expenses**
- 9.1 Interest accrues from day to day and in the calculation the year is set at 360 days and the month at 30 days. Interest will be calculated with due observance of the provisions of Article 9 below and otherwise with due observance of an interest calculation method and value dating regulation to be determined by the lender.
- 9.2 Interest will be calculated from the date on which the loan is made available up to and including the date on which the amount owing has been repaid in full to the lender.
- 9.3 The instrument will specify whether the loan is subject to a fixed or a variable interest rate. The payment dates of the interest payments are specified in the instrument.
- 9.4 If the loan is subject to a fixed rate and the fixed rate period ends before the expiry date, the lender will make an offer before the end of the fixed rate period for one or more new fixed rate periods from its then current offer of fixed rates. In doing so, the lender will comply with the minimum statutory period. The debtor will report a choice for the new fixed-interest period within the term as set out in the offer. If the debtor makes no choice or makes a choice too late, the lender will choose the new fixed-interest period. The lender will choose the most recently applicable fixed-interest period. If the lender no longer offers the last applicable fixed-interest period, the lender will choose the fixed-interest period from the current offer that is the least higher than the last applicable fixed-interest period.
- 9.5 In the case of variable interest rates, the interest rate consists of (a) a reference rate specified in the instrument (e.g. EURIBOR) and (b) one or more markups. If a reference rate is negative, it is always set at nil. If the reference rate is not published on a day on which the interest rate for an interest payment period is to be set, the reference rate is the last published rate. The lender shall use EURIBOR as the benchmark for the interest rate it charges to the borrowers. Due to changes in regulations around benchmarks and developments in the market, EURIBOR may eventually no longer be available, representative, appropriate, or may no longer be permitted to be used in connection with the loan by virtue of regulations. In such a situation, or if the lender foresees this situation in the near future, the lender may designate an alternative benchmark. The lender will then make such changes to the loan or mortgage as it deems necessary or desirable to accommodate the alternative benchmark. The lender will inform the borrowers of any (proposed) designation of an alternative benchmark and the consequences thereof within a reasonable term. The lender shall endeavour to limit any differences between EURIBOR and the alternative benchmark. The lender will rely on instructions or recommendations from central banks, regulators, other relevant authorities and/or market practice. It is possible that due to the transition to an alternative benchmark and the developments of that alternative benchmark, interest costs may increase or decrease.
- 9.6 The markups referred to in Article 9.5 consist of the following components: markup in connection with capital costs and developments on the capital market, individual risk premium, ongoing service extension costs and a profit premium. These components are all variable and can be changed by the lender at any time. If the variable interest rate changes as a result of a change in one or more of these components of the markup, the debtor will be notified of this in writing no later than four weeks before the change. If the variable interest rate changes because only the reference rate changes, the debtor will not be notified.
- 9.7 If an amount is not received by the lender on an agreed payment date (including an expiry date), penalty interest will be due on the unpaid amount. The penalty interest will be payable in addition to the agreed interest. The penalty interest is payable monthly in arrears on the first day of the month. If penalty interest is not paid, penalty interest will also be due. The interest rate of the penalty interest is equal to the statutory interest (or statutory commercial interest if the debtor in question is not a consumer).
- 9.8 If the costs incurred by the lender in connection with the loan (including a reduction in the profit margin on the loan) increase as a result of the introduction or amendment of laws or regulations or as a result of developments in the money and capital markets, the lender is entitled to pass on these increased costs to the debtor by amending the interest rate.
- 10 Determination of debt, allocation of payments and annual statement**
- 10.1 With regard to the amount owing, the debtor is bound by the statement provided by the lender in accordance with its books with the right of the debtor, after payment to or recovery by the lender, to reclaim any amount that he may prove not to owe.
- 10.2 All monies received by the creditor, for whatever reason, from, on behalf of or for the account of the debtor, will - irrespective of the description of the payment - be used for payment in deduction of the amounts which the lender can, whether or not following a demand, claim from the debtor in the sequence and up to such amounts as the lender may determine, on the understanding, however, that the lender may first use these monies to make payments to which the lender is authorised by virtue of the agreement with the debtor.

- 10.3 If the debtor is sent an annual statement by or on behalf of the lender, the debtor will, if requested, return it within 14 days, signed for approval, or contest the correctness of the balance in writing within this period, stating the reason.
- 10.4 If the debtor has not contested in writing to the lender the contents of the confirmations, account statements, invoices, other statements or other data of the lender sent or made available to him by or on behalf of the lender within 13 months of such data being made available to the debtor by or on behalf of the lender, the contents of such data will in any case, and without prejudice to the debtor's obligations under Article 10, be deemed to have been approved by the debtor. If, in the opinion of the lender, these data contain miscalculations, the lender will correct them, even after the period of 13 months has expired.

## 11 Building regulations

- 11.1 If the loan is (partly) granted to finance the building, alteration or expansion of the collateral or maintenance of the collateral, the debtor will, upon request, immediately provide or transfer to the lender the relevant plans, drawings and other documents, including drawings, specifications or technical descriptions already made or in the process of being made, budgets, rights from agreements concluded with architects, constructors, (sub)contractors and/or suppliers, permits and documents or letters in respect of which government support has been applied for or promised in any form, or which may be relevant thereto. In case there are or may be changes to the aforementioned, the debtor is obliged to immediately notify the lender thereof in writing.
- 11.2 The lender is authorised, at the expense of the debtor, to make direct payments to the (sub)contractor(s), manufacturer(s), architect(s), installer(s) and/or supplier(s) and, if the amount owing is due and payable, is also authorised to carry out work (or have work carried out) at the expense of the debtor and to purchase what is necessary for this purpose. The lender has no obligation to make payments from the construction deposit without underlying invoices.
- 11.3 If there are several debtors, each of them will be entitled to request payment from the construction deposit from the lender.
- 11.4 The lender will at all times be entitled to have the progress or completion of the construction/conversion work checked at the debtor's expense by an expert to be appointed by the lender.
- 11.5 A construction deposit is no longer available for drawdown from the moment less than EUR 5,000 is available in the construction deposit or the day that is 4 months after the last drawdown from the construction deposit. When (part of) the construction deposit is no longer available for drawdown, the related unpaid portion of the loan will expire and the remaining (part of) the construction deposit will be applied as an early repayment.
- 11.6 The lender may impose conditions on drawdowns from the construction deposit, both in the instrument and at any time thereafter. A condition may be that payment is made directly to the contractor. The lender has no obligation to make payments from the construction deposit in case the underlying invoices have been paid with cash.
- 11.7 The provisions of the previous paragraphs of Article 11 will apply mutatis mutandis if the loan has been (partly) granted to finance the purchase (of parts) of other collateral.

## 12 Charges to be borne by the debtor

- 12.1 For the account of the debtor are:
- (a) the costs of all that is necessary for the conclusion and maintenance of the loan and the security agreed for the lender, including the costs of the instrument, valuation, transcripts and executory copy, the costs of registration, the costs of establishment, renewal, improvement, addition, notification, renunciation, termination or cancellation of security and the costs of the documents required by the lender as well as handling costs for making changes to the instrument (whether or not requested by the debtor);
- (b) the costs of compliance with an agreement entered into or any order by the competent authorities regarding the collateral and the costs associated with the termination or annulment of any agreement entered into in respect of the collateral, which is contrary to what has been agreed between the debtor and the lender;

- (c) all other costs to which that which has been agreed between the debtor and the lender may give rise at any time, or which may arise at any time from the relationship between the lender and the debtor, including the costs of receipt, collection, reminder, notice of default, notice of termination, demand, service and evacuation and those of all judicial and extrajudicial acts and (legal) assistance which the lender deems necessary to enforce and exercise its rights, or in which the lender becomes involved by virtue of proceedings or disputes between the debtor and a third party;
- (d) all costs that the lender otherwise incurs for the exercise and preservation of its rights, all in the broadest sense of the word, including the costs as referred to in Article 2.7, the costs of insurance as referred to in Article 16, the costs incurred in the context of the management and taking possession of collateral and those in the event of a sale by foreclosure;
- (e) the cost of a land registry survey, division or boundary instruction for the collateral; and
- (f) all taxes or other charges that may ever be levied, under whatever name, on the loan, on the amount owing or on the collateral.
- 12.2 The lender will be entitled, as soon as it so desires, to pay the costs referred to in Article 12.1, to the extent that they have been established, for the account of the debtor. On request, the debtor will pay to the lender without delay all the amounts referred to in Article 12.

## 13 Due and payable

- 13.1 Without prejudice to the other rights of the lender, the amount owing will be immediately due and payable without any notice of default or notice of termination being required if:

### Non-payment

- (a) the amount owing or any amount due by virtue of, or in connection with, the instrument is not paid on the agreed date or within the period set by the lender;

### Non-fulfilment

- (b) the debtor fails to fulfil any obligation to the lender;
- (c) a statement made by or on behalf of the debtor or information provided to the lender is or appears to be incorrect or incomplete or if circumstances relevant to the lender have been concealed or in case the debtor does not comply with applicable laws or regulations;

### Cross-default

- (d) a debt of the debtor is not paid, is claimed early or becomes repayable early;

### Insolvency, death

- (e) the debtor is declared bankrupt, is granted a (provisional) suspension of payments, makes a request to that effect, requests application of the debt restructuring scheme or otherwise loses or threatens to lose all or part of the free disposal or management of his assets;
- (f) the debtor dies, is presumably declared deceased, or is absent without having put matters relating to the management of his assets in order to the satisfaction of the lender;

### Changes with regard to the debtor

- (g) the debtor is a legal person, loses its legal personality or converts to another legal form, is declared null and void or is dissolved, merges, ceases to exist as a result of a demerger or loses all or part of its assets or that its articles of association or regulations are amended, or that the debtor notifies an intention to do so;



- (h) the debtor is:
  - (i) a partnership, partners join or leave (including by way of succession), the partnership is dissolved, or the partnership agreement changes, including the acquisition or abandonment of legal personality or the conversion into another legal form; or
  - (ii) an association or cooperative, members join or leave (including by way of succession);
- (i) changes occur to the management of the debtor or one or more managers becomes subject to a civil law director disqualification (*bestuursverbod*);
- (j) the debtor is a legal entity whose capital is divided into registered shares:
  - (i) changes occur to the composition of its shareholders (or the proportion in which these shareholders hold shares);
  - (ii) changes occur to the composition of the shareholders in a legal entity with a capital divided into registered shares that is directly or indirectly the shareholder of the debtor (or the proportion in which these shareholders hold shares); or
  - (iii) the voting right on one or more of the shares referred to in paragraph (i) or (ii) above is transferred conditionally or unconditionally from the shareholder concerned to a party other than the lender, or the debtor notifies an intention to do so;
- (k) the debtor is an alliance of unrelated parties that does not qualify as a partnership, this alliance is changed, terminated or terminated;

#### Change to profession or company

- (l) any authority, permit or registration necessary for the performance of the debtor's profession or business ends or is restricted, cancelled or withdrawn;
- (m) the nature of the profession or business performed by the debtor is, in the opinion of the lender, substantially altered;

#### End of authorisation

- (n) an authority granted by the debtor to the lender changes or ends;

#### Changes with regard to relevant third parties

- (o) any of the events or circumstances referred to in paragraphs (d), (e), (f) or (z) of Article 13.1 arise in respect of:
  - (i) if the debtor is a legal entity or partnership, a legal entity or partnership with which the debtor in a group is affiliated; and
  - (ii) if the debtor is a natural person, his spouse or registered partner;

#### Impairment of instrument

- (p) there is total or partial nullity, voidability or cancellation of the instrument or, if the instrument is a guarantee instrument or suretyship, it is cancelled by the guarantor or surety;

#### Damage to reputation of lender

- (q) the lender considers the continuation of the business relationship with the debtor to be socially detrimental to the lender or, in its opinion, damage to the lender's reputation has arisen, arises or may arise or the lender is on the basis of applicable laws or regulations not or no longer allowed to conduct business with a debtor or a supervisory authority with jurisdiction issues an instruction or a request to the lender not to do so, or the continuation of the relationship with a debtor conflicts with the lender's code of conduct (including the suspicion of or the actual paying of invoices with cash, money laundering, financing of terrorism, fraud and crime);

#### Non-recoverability

- (r) in the lender's opinion, a well-founded fear that the amount owing will not be recoverable is imminent or that circumstances may otherwise arise which make it unreasonable for the lender to be required to continue the loan on the agreed terms and conditions;

#### Impairment of security

- (s) the provided security is void or voidable or does not have the required rank, a statement as referred to in Section 2:403(1) (f) Dutch Civil Code filed with regard to the debtor is revoked, a right of retention as referred to in Sections 3:290 et seq. Dutch Civil Code is exercised or any action is taken that may result in a right of retention with regard to the collateral, promised security has not been made available on time or has lapsed prematurely, or the debtor's diminished creditworthiness, such as, for instance, a negative equity capital, gives cause to do so in the lender's opinion;

#### Non-payment of charges

- (t) charges, taxes, levies, operating costs, contributions or premiums from insurance policies covered by the instrument are not paid in time;
- (u) a debtor makes a notification under Section 36(2) Collection of State Taxes Act 1990 or Section 60 Social Insurance (Funding) Act;

#### Changes in relation to collateral

- (v) a (re)valuation evidences that the value of the collateral is less than the outstanding amount for which the collateral serves as security;
- (w) a public law use or any defect in ownership or other titles (including those of a legal predecessor) or the existence of an agreement, limited right or defect in respect of the collateral which, in the opinion of the lender, could adversely affect the value of the collateral or of its rights;
- (x) a change occurs to the legal or economic entitlement to the collateral, including disposal, distribution, allocation, hire-purchase, contribution and membership of a matrimonial or other community of property;
- (y) any limited right with respect to the collateral arises or is extinguished or the use of the collateral is changed, or a business, occupation or other permit with regard to the collateral is changed, withdrawn or expires;
- (z) execution of the collateral is announced or the collateral is attached;
- (aa) execution of an asset of the debtor is announced or an asset of the debtor is attached;
- (bb) the collateral is damaged, destroyed or demolished or, in the opinion of the lender, has serious defects or is depreciated, as well as if any circumstance arises which, in the opinion of the lender, gives rise to well-founded suspicion that the amount owing cannot be recovered, or cannot be fully recovered from the proceeds of the collateral;
- (cc) the collateral is empty, unused or used contrary to its existing public use or the lease, as well as if it has been squatted or otherwise put into use by third parties without right or title;
- (dd) the rent, the amount owing by the former lessee or the compensation for claiming of the collateral is reduced, the rent is paid in cash, the substitution of a third party for a lessee for any reason and the attachment of the rental income or rights arising from leases;
- (ee) in the event of a mortgage on the leasehold, the leasehold ends, the leasehold conditions change, the ground rent changes, the leasehold is renounced, cancelled, terminated or declared expired, or in the opinion of the lender this threatens to occur, the obligations arising from the leasehold are not complied with punctually, as well as in the event that the leaseholder then acquires full ownership of the leasehold property, without providing the lender with a right of mortgage of equal rank on the full ownership;
- (ff) in the case of collateral consisting of an apartment right or membership of an association or cooperative, a decision or order to amend the division, the regulations or the articles of association, to terminate a division or to dissolve the association or cooperative is taken or given, the apartment owner, the member of an association or cooperative or the user of a private space does



not comply with or violates regulations or provisions, as well as in the case of a circumstance with regard to the relevant registered property or building that in these terms and conditions is described as a ground for calling in;

- (gg) in case of collateral consisting of a pledge in respect of rights and claims that are derived from a life, accident or disability insurance agreement, the emergency regulations or the bankruptcy of the insurer in question is pronounced;
- (hh) the lessee is authorised by the competent authority to change the structure or form of the collateral;
- (ii) any contribution promised by the government in respect of the collateral lapses;
- (jj) legal or arbitration are being or may be initiated in relation to the collateral which, in the opinion of the lender, will or may have a material adverse effect on the lender;
- (kk) a competent authority issues a notice or takes a decision which, in the lender's opinion, makes it more difficult to sell the collateral by private or public auction, reduces or is likely to reduce the value of the collateral, removes or is likely to remove the collateral directly or indirectly from the debtor's control, or adversely affects the lender's rights in any other way, including notices or decisions concerning a declaration of unfitness for habitation, soil remediation, claims, prohibition of construction, conversion or reconstruction, instruction to expropriate, entry in a monuments and historic buildings register, the creation of a statutory preferential right of purchase, including the establishment of a preferential right by virtue of the Municipalities (Preferential Rights) Act, inclusion in a land consolidation, or a change of public law zoning;

#### Construction loan

- (ll) in case of a loan as referred to in Article 11.1:
    - (i) the execution of the work or the purchase does not take place in accordance with the plans, drawings, specifications or technical descriptions made known to the lender, or construction and/or payment schedules agreed with the debtor, or does not take place in accordance with the building permit granted for that purpose or is otherwise in conflict with applicable laws or regulations;
    - (ii) changes occur to the plans, drawings, specifications, descriptions or diagrams referred to in paragraph (i) above without the prior consent of the lender;
    - (iii) in the opinion of the lender, the execution of the work or the purchase for any reason whatsoever is not progressing or is not progressing satisfactorily;
    - (iv) the authorisations required for the execution of the work or the purchase are not granted or are changed or withdrawn;
    - (v) one of the events or circumstances referred to in paragraphs (e), (f), (g), (h), (j), (l) or (q) of Article 13.1 occurs in respect of a contractor involved in the execution of the work or a supplier involved in the purchase; or
    - (vi) a contractor or supplier involved in the execution of the work or the purchase invokes a right of retention in relation to the collateral, the lender may not (or no longer) do business with a debtor on the basis of legislation or regulations or a competent regulator instructs or requests the lender not to do so or the continuation of the relationship with the debtor is contrary to a ground in the policy of the lender for sound business operations (including the suspicion of or the actual paying of invoices with cash, money laundering, financing of terrorism, fraud and crime).
- 13.2 In the event of a claim, the lender may demand that the amount owing to it be paid immediately.

### III THE COLLATERAL

#### 14 Maintenance of the collateral, payment of charges, defence against claims, instructions and notices.

- 14.1 The collateral will be kept in good condition to the satisfaction of the lender and any damage will be repaired expeditiously. The nature, purpose, use, layout and form of the collateral may not be changed without the prior consent of the lender, nor may any reduction in value be caused, tolerated or permitted. If the lender deems it necessary, inter alia if an event or circumstance as referred to in Article 13.1 occurs or threatens to occur, the debtor will have the collateral (re)valued at his own expense by an appraiser to be appointed by the borrower.
  - 14.2 The collateral may not be unified, split, allocated, divided (including into apartment rights) or encumbered with any right, including a right of pledge or mortgage other than in favour of the lender, or with a right of retention, or encumbered with any charge or qualitative obligation, it may not be stripped of any prevailing easements or other rights, nor may the nature of its use be changed.
  - 14.3 No existing or future claims of any kind relating to the collateral will be established, agreed, bought off or received without the prior consent of the lender.
  - 14.4 Goods that have (become) part of the collateral at or after the granting of a pledge or mortgage right, have become part of the collateral by confusion or accession also extend to collateral (as referred to in Section 3:266 Dutch Civil Code) and may not be removed.
  - 14.5 The debtor will pay all charges and taxes relating to the collateral before or on the due date and submit the proof of payment to the lender as soon as it so requests.
  - 14.6 The lender is authorised to pay the charges and taxes referred to in Article 14.5 on behalf of the debtor, if the debtor is in default.
  - 14.7 Without prejudice to its other rights, the lender will be authorised to do, undo or destroy, at the debtor's expense, all that which has been omitted or done in violation of the above provisions in Article 14.
  - 14.8 The lender will be entitled to put forward a defence and use legal remedies against claims, instructions, notices and suchlike in relation to the collateral provided or instituted against the debtor pursuant to any statutory regulation.
  - 14.9 In case a (re)valuation evidences that the value of the collateral is less than the outstanding amount for which the collateral serves as security, then the lender may request one or more additional repayments. The lender may also during the period for which there is insufficient collateral increase the interest rate with a risk-margin applied by the lender for such situations.
- #### 15 Letting of the collateral
- 15.1 Without the prior consent of the lender, the collateral may not be leased or otherwise used by the debtor in full or in part, the debtor may not tolerate any use by third parties, the debtor may not terminate, end, renew, amend or renew any leases, the debtor may not allow the substitution of a lessee by a third party for any reason whatsoever, the debtor may not waive or dispose of rental income or rights arising from leases, the debtor may not assign or pledge rent and rights referred to above to any party other than the lender, no options may be granted by the debtor, no advance payment of rent or other fees may be demanded or received by the debtor for more than three months, and no postponement of payment may be granted by the debtor. Anything that has taken place contrary to this can be annulled by the lender. The lender has the right to terminate existing leases relating to the collateral. The exercise of this authority is without prejudice to the other powers granted to the lender.
  - 15.2 Instruments, draft instruments and documentary evidence of the lease will be submitted to the lender on its request.

15.3 A permission given by the lender for a legal act referred to in Article 15.1 is only granted if the lender is the highest ranked pledgee of the rights in question and in the event of attachment of such a right, the lender has the right to revoke its permission with retroactive effect. If this right is exercised, the lender will not be obliged to undo the performance already received by it, without prejudice to the right to receive the performance that the lessee owes to the debtor.

## 16 Insurance of the collateral

16.1 The debtor will insure the collateral at his own expense and keep it insured against all damage as a result of fire, lightning strike, storm, explosion, flood, outflowing water, against all damage caused by aircraft and that referred to in Section 7:951 Dutch Civil Code and furthermore against all other damage and risks as the lender deems necessary (including the risks of terrorism and environmental liability), whereby buildings, structures and systems are insured according to the reinstatement value and other goods up to an amount deemed sufficient by the lender. If applicable, the debtor will also take out insurance against loss of rent for a minimum period determined by the lender.

16.2 In the event of construction, conversion, demolition or other work, the collateral will be insured on the basis of Construction All Risks (CAR) during the period of such work.

16.3 Insurance will be taken out with an insurer having the appropriate licences and which is to the satisfaction of the lender and under terms approved by the lender. If, for whatever reason, an insurer is no longer acceptable to the lender, the debtor will, at the first request of the lender, take out the insurance with an insurer that is acceptable to the lender.

16.4 The debtor will clearly inform the insurer of the lender's interest in the insurance and facilitate that a note to that effect is made on the proof of the insurance.

16.5 If one or more of the aforementioned obligations are not fulfilled within a period set by the lender, the lender will be entitled to take out insurance at the expense of the debtor.

16.6 If the collateral consists of an apartment right or a membership of an association or cooperative and the person who by virtue of the regulations or the articles of association is obliged to insure does not or not fully arrange for insurance in accordance with the provisions of Article 16.1, the debtor will take out such (additional) insurance with regard to the collateral so that his interests are covered in accordance with the standards of Article 16.1.

16.7 Copies of proof of insurance will be made available to the lender at its request and within the time limit set by the lender. If the lender has made such a request, the debtor will, when renewing the insurance, make copies of the proof of the new insurance available to the lender before the effective date.

16.8 The premiums of the insurances referred to in Article 16 will have been paid before or on the relevant due date, in the absence of which the lender is authorised to pay on behalf of the debtor. If the lender so requires, the debtor will submit the receipts to the lender.

16.9 In the event of damage to the collateral, the debtor will inform the lender of this as soon as possible.

## IV THE SECURITY

### 17 Security general

17.1 By applying these terms and conditions, the debtor has undertaken towards the lender to provide (additional) security for all existing and all future claims of the lender on the debtor, for whatever reason, at the first request of the lender, to the lender's satisfaction. This will always be such that, in view of the debtor's risk profile, the collateral value of the security and any other factors relevant to the lender, the lender has and will have sufficient security on an ongoing basis, and if necessary will be replaced and/or supplemented by the debtor to the lender's satisfaction.

17.2 In the event of non-payment of the amount owing or in the event of failure to comply with any other obligation towards the lender, the default will be deemed to have occurred by the mere expiry of the term set for that payment or by the mere fact of that failure, without notice of default or any other formality being required.

17.3 If the lender takes recourse against part of the collateral, this does not affect the rights of the lender with regard to the remaining collateral.

17.4 In the event of the creation of a right of pledge and/or mortgage, the application of these terms and conditions will also imply the granting to the lender of the authority to extinguish that limited right by notice of termination in whole or in part in respect of all or any part of the pledge and/or all or any part of the security claims for which that limited right has been established.

17.5 The debtor will provide the lender with all information, data and documents that the lender deems necessary to be able to exercise its security, or to have such information, data and documents drawn up at the lender's first request. The debtor will do this at his own expense and within the term and in accordance with the form and content requirements set by the lender.

### 18 Rights of pledge: establishment

18.1 By applying these terms and conditions, the debtor has undertaken towards the lender to pledge the following goods to the lender, including the associated ancillary rights:

- (a) all (monetary) claims that the debtor has or acquires on the lender, for whatever reason;
- (b) all movable property of or for the debtor over which the creditor or a third party has or acquires custody, for any reason whatsoever;
- (c) all claims that the debtor has or acquires in respect of or in connection with the collateral, pursuant to any title or against anyone; and
- (d) all goods that replace the goods named in paragraphs (a) to (c) above.

#### The claims mentioned include all claims:

- (a) by virtue of leases (including claims for payment of service costs, as well as those due to cancellation, termination, renewal, modification or extension of such leases) and guarantees or deposits given or provided in connection therewith;
- (b) on the basis of a government claim or demand with respect to the collateral under any law or regulation;
- (c) due to damage or destruction of the collateral;
- (d) which the debtor may invoke in the event of measures, acts or omissions that prevent or limit the use of the collateral;
- (e) which the debtor can assert in the event of a claim by or against him for termination of the agreement by which he obtained the pledge or a claim for performance or damages in connection with such an agreement;
- (f) by virtue of agreements already concluded or to be concluded in the future whereby the debtor disposes of all or part of the pledge (including those regarding receipt of the consideration and receipt of a penalty or compensation (for damages) in the event that the acquiring party fails to fulfil his obligations pursuant to such an agreement);
- (g) which the leaseholder may assert against the landowner or which the landowner may assert against the leaseholder, including the ground rent;
- (h) as a result of land consolidation, expropriation, designation as a concession area, planning blight and compensation for loss resulting from administrative acts;
- (i) which can be derived from state aid, subsidies, guarantees and other facilities;
- (j) which the apartment owner or member of an association or cooperative may assert against the association or cooperative in question, even in the event of termination of membership or liquidation of that association or cooperative;

- (k) which the shareholder has in respect of a public limited company or private limited company, even in the event of the dissolution of that legal person; and
- (l) which a partner has in respect of a partnership, including in the event of the dissolution of that partnership and which a member has against a cooperative or an association, including in the event of the dissolution of that cooperative or association.
- 19.2 The application of these terms and conditions also authorises the lender to pledge the claims referred to in Article 18.1 to itself.
- 19 Rights of pledge: provisions**
- 19.1 A right of pledge on behalf of the creditor is subject to the following provisions, among others, irrespective of whether this right of pledge exists by operation of law or has been established on behalf of the creditor and without prejudice to any other right to which the creditor is entitled as mortgagee or pledgee or otherwise.
- General**
- 19.2 The right of pledge serves as security for everything that the lender has or may at any time have to claim from the debtor on account of loans granted and/or yet to be granted, whether or not in current or future sureties, sureties entered into or guarantees issued by the lender for, or in connection with, the fulfilment of an obligation that the debtor has or will acquire towards another person (including another person within the group to which the lender belongs), or for any other reason whatsoever.
- 19.3 As soon as it considers this necessary, the lender is authorised at all times to disclose a right of pledge and the resulting authority at the expense of the debtor to anyone who, in the opinion of the lender, is concerned.
- 19.4 The debtor may not alienate, let or establish a pledge on the pledged collateral for the benefit of a third party without the prior consent of the lender and may not otherwise dispose of such collateral.
- 19.5 If and to the extent required in connection with the transfer (including pledging) to the lender, or to a third party to be designated by the lender, of rights pursuant to any document (including a permit), the lender is authorised to change the name of the addressee of the document.
- 19.6 The debtor will provide the lender, at its first request, with all the information, particulars and documents that the creditor considers necessary to be able to exercise its rights of pledge.
- Right of pledge on movable property**
- 19.7 The debtor holding movable property belonging to the collateral will keep, use, manage and maintain this movable property as a diligent debtor and carry out all necessary repairs, all at the expense of the debtor and to the satisfaction of the lender. The lender will be entitled, at the debtor's expense, to carry out all such repairs or maintenance work on the pledged movable property as it deems desirable.
- 19.8 Any movable property belonging to the collateral that becomes unusable or is destroyed will be replaced by the debtor at his own expense and to the satisfaction of the lender by new movable property. The debtor will notify the lender in writing of the replacement within fourteen days. This notification will contain a specification of the new movable property.
- 19.9 The debtor will at all times grant the lender or a person to be appointed by the lender access to all places where the pledged movable property is located, so that it can ascertain that the movable property that has been pledged to the lender is used, managed and maintained properly.
- Right of pledge on claims**
- 19.10 A right of pledge on a claim also includes a right of pledge on any ancillary rights and dependent rights associated with that claim and grants the lender the authority to exercise any rights of pledge, mortgage and suretyship attached to that claim, ancillary rights and dependent rights.
- 19.11 After notification of the pledge, only the lender will be entitled to demand performance of the claim in and out of court, to accept payment thereof and to grant discharge therefor, so that the debtor will refrain from exercising these rights other than at the written request of the lender.
- 19.12 With respect to the pledged claims, the lender is also entitled at its own discretion and at the debtor's expense:
- to come to arrangements, enter into settlement agreements and to perform other legal acts;
  - to resign in or apply legal remedies against decisions rendered;
  - to receive a performance other than the original amount owing; and
  - to continue to do everything that the lender deems necessary, including the determination of the pledged claim and the filing of this in the estate of the debtor thereof in the event of bankruptcy, suspension of payments, debt rescheduling arrangement, or amicable or judicial settlement.
- 19.13 If the lender does not make use of the authority granted to it in Article 19.12 to come to arrangements for the claim or to determine the claim, the arrangement with anyone who is obliged to pay will be subject to the prior approval of the lender.
- The lender is authorised to inform the debtor of the claim thereof. After receipt of the compensation, the lender will decide to what extent it serves:
- as payment to be deducted from the amount owing;
  - for rebuilding or repair in a manner to be determined by it;
  - for the purchase of replacement goods; and/or
  - as security for the payment of the amount owing.
- Right of pledge on (life) insurance**
- 19.14 Without prejudice to the above provisions in Article 19 as regards pledges in respect of rights and claims that are derived from an agreement of life, accident or occupational disability insurance, the following also applies to pledges in respect of rights and claims:
- the insurance will be maintained unchanged, the premium will be paid by the debtor on the due date and the proof of payment will be made available to the lender for inspection at its request;
  - the lender is entitled to pay overdue premium with possible late interest and other costs for the account of the debtor;
  - the lender is authorised to designate itself as the first beneficiary before the beneficiaries already designated; to the extent that the cooperation of the debtor is required for this purpose, the debtor will cooperate and the lender is authorised to provide such cooperation on behalf of the debtor;
  - if the debtor is in default of payment of the amount owing, the lender is entitled to terminate the insurance against payment of the surrender value to the debtor by giving notice (and the lender is entitled to deduct the surrender value in full or in part from, or to set it off against, the amount owing);
  - without the prior consent of the lender, the debtor cannot exercise any rights under the insurance; and
  - the lender is authorised to notify or request the insurer of the pledge, its designation as primary beneficiary and to note this on the policy, also on behalf of the debtor.
- Right of pledge on a membership or economic participation**
- 19.15 If a membership of an association or cooperative or the economic participation of a partner in a partnership has been pledged to the lender, the following also applies:
- the member or partner is entitled to exercise all rights arising from the membership or from the economic participation, provided that the exercise of the voting right attached to the membership or economic participation in respect of decisions requiring a larger majority than a simple majority and/or the presence of more than half of the members or partners in the decision-making process requires the prior consent of the lender; and

- (b) the lender is entitled to collect all assets to which membership or economic participation entitles or will entitle, including profits and insurance distributions, restitution of operating expenses and advances, as well as the balance of the liquidation after the dissolution of the association, cooperative or partnership.

## 20 Summary execution: mortgage right

- 20.1 If the debtor is in default of payment of the amount owing, the lender will, without prejudice to its right to recover the amount owing in any other way, be entitled to execute the mortgaged collateral in the manner described in Section 3:268 Dutch Civil Code, either in its entirety or in parts, in such lots and in such a way and under such terms and conditions, including opting for a performance subject to turnover tax, as the lender deems advisable.
- 20.2 In the event of execution of the mortgaged collateral in parts, the lender will be entitled to perform all acts that it deems advisable in this respect, including the division into apartment rights, the issue in leasehold of (part of) the collateral, the establishment of easements, other limited rights or personal rights and qualitative and non-qualitative obligations, and the drawing up, execution and signing of the instruments and other documents required.
- 20.3 If the debtor pursuant to a sale as referred to in Article 20.1 forfeits a penalty or has to pay compensation (for damages) pursuant to a provision included in his abstract of title or any other title, he will not hold the lender liable for the damage he suffers as a result and he will indemnify the lender against the damage that it would incur if the lender were required to pay the penalty or compensation (for damages) in question.

## 21 Summary execution: right of pledge

- 21.1 If the debtor is in default of payment of the amount owing, the lender will, without prejudice to its right to recover the amount owing in any other way, be entitled to execute the pledged collateral in the manner described in Section 3:250 Dutch Civil Code, either in its entirety or in parts, and in such a way and under such conditions and provisions as the lender deems advisable.
- 21.2 The debtor will not be entitled to request the court in preliminary relief proceedings to determine that the collateral will be sold in a manner that deviates from Section 3:250 Dutch Civil Code.
- 21.3 The lender is not obliged to communicate the intention to sell and the sale after it has taken place to the debtor, a pledger, the holder of a limited right or attaching party.
- 21.4 The debtor will cooperate fully with the sale and to this end, among other things, in the case of pledged collateral goods or bearer instruments, make these available to the lender at the place indicated by the lender.
- 21.5 In the event of non-compliance with these obligations, the lender will be entitled to gain access to the goods and to take possession of them, or give them in custody to a third party, if necessary with the aid of the strong arm of the law, regardless of where the goods are located.
- 21.6 The lender is entitled to execute the goods referred to in Section 3:254 Dutch Civil Code together with the mortgaged collateral in accordance with the rules governing mortgages.

## 22 BKR

The lender is a member of the Credit Registration Office (BKR) in Tiel. After disbursement of the loan, the lender will report the loan to the BKR. Pursuant to the rules applicable to the BKR the lender is required register certain events/circumstances with the BKR, such as for instance increasing payment arrears.

## V CONSUMERS

### 23 Applicability

- 23.1 If the instrument states that the lender treats a debtor as a consumer, section V applies to the loan(s) covered by that instrument. It is possible that the debtor, in connection with another loan, acts towards the creditor as a non-consumer and may also be treated by the creditor as a non-consumer.
- 23.2 In the event of any inconsistency between the various provisions, the following hierarchy will apply:
  - (a) the instrument;
  - (b) the specific conditions set out in section V;
  - (c) the other sections of these terms and conditions.
- 23.3 Articles 3.14 and 13.1(c) do not apply to loans to consumers. The authorisations referred to in Articles 3.7 and 4.1 are not irrevocable.
- 23.4 Article 3.3 is not applicable to consumers to the extent that the waivers set out therein cannot be requested from a consumer.

### 24 Annual percentage rate of charge

- 24.1 The annual percentage rate of charge and the total amount to be paid for the loan are determined on the basis of the following points:
  - (a) the loan has the term as agreed;
  - (b) all payments are made on time;
  - (c) there is no additional repayment on the loan; and
  - (d) the monthly amounts remain the same throughout the term.
- 24.2 The annual percentage rate of charge is therefore equal to the interest rate.

### 25 Due and payable

- 25.1 Instead of Article 13.1(c), without prejudice to the other rights of the lender, the amount owing is immediately due and payable without any notice of default or notice of termination being required, if a statement made by or on behalf of the debtor or information provided to the lender in connection with the assessment of his creditworthiness or for the conclusion of the credit agreement is incorrect or incomplete, and the debtor has deliberately withheld or misrepresented this information.
- 25.2 When executing the mortgaged collateral, the lender will comply with the provisions of Section 7:128a Dutch Civil Code.



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