

General Business Terms – Debt Collection Services in Germany

ADRIAN Collection Services (hereafter, “ACS”) is a registered debt collection service provider in accordance with § 10 Para. 1 No. 1 RDG, registered in the Legal Service Register of the Upper Regional Court of Frankfurt am Main, File No. 3712/1 – I/3 – 1808/08.

1. Object of the Agreement

1.1 Issuance of the Order

The Customer shall hereby issue to ACS the order to collect the payment claims which have not been settled, are payable and undisputed from the respective debtor which the Customer selects within the borders of the Federal Republic of Germany. The respective orders shall be issued in writing. Special orders shall require a separate agreement.

1.2 Performance Specifications

1.2.1 Performances by the Customer

ACS shall receive all information which is required for the implementation of the payment claims—particularly the master data which the Customer may provide without violating the data protection law guidelines. ACS shall receive a detailed list of payment claims which shall differentiate between main and ancillary payment claims (e.g. payment default interest). Moreover, the Customer shall provide the documents required for the collection (contractual agreement, invoice, warning letter, etc.).

Because, through the commissioning of ACS, exclusively ACS is responsible for the processing of the payment claims, the Customer shall, after the assignment of the individual payment claims, contact the debtors while making reference to ACS. Any correspondence received by the Customer or any other important information—insofar as this is related to the assigned payment claims—shall be promptly forwarded to ACS. Payments from the debtor to the Customer shall be promptly reported to ACS and must be billed as a debt collection service insofar as ACS has already begun the debt collection work. This must then be assumed as soon as a payment claim has been assigned to ACS. The Customer shall be liable for any damages created as the result of the failure to fulfil the notification obligation.

1.2.2 Services Rendered by ADRIAN Collection Services

ACS shall commence its work activities immediately after the receipt of the order and/or receipt of the documents required for the collection of the payment claim subject to the consideration of the Customer’s interests. The master data provided by the Customer shall be manually transferred into ACS’s debt collection software. A verification of the individual payment claim based upon its grounds or its amount (or with the regards the statute of limitations period for it) shall not be made by ACS.

The type and timeframe of the implementation of the order shall remain in ACS’s discretion. ACS shall be entitled, in its own fair discretion, to undertake all measures and precautionary measures that appear purposeful, but is nonetheless not expressly obliged to commission credit agencies and detective agencies to investigate the whereabouts of the debtor, to identify the employer or other sets of circumstances.

ACS shall be entitled, in its own fair discretion, to conduct all negotiations with the debtor. ACS shall be expressly entitled to defer payment claim amounts, to reach agreement with the debtor on instalment payments in an amount which is appropriate based upon the circumstances of the individual case as well as, while exercising due discretion, to suspend the handling of payment claims which appear to be definitively uncollectible. Moreover, the Customer shall also authorise ACS to, subject to the Customer’s approval, grant payment claim reductions in special cases justified by the circumstances of the individual case, e.g. in cases of the immediate settlement and/or debt restructuring of the payment claim.

Within the parameters of judicial debt collection proceedings, ACS shall commence default procedures as well as debt enforcement measures which can affect a realisation of the Customer’s payment claims. Insofar as, this notwithstanding, the debtor’s financial circumstances do not permit a realisation of the claims during this stage of the debt collection, insofar as nothing to the contrary has been agreed, the legally-enforceable payment claims shall be integrated into the portfolio of payment claims to be monitored.

1.2.3 Processing by the Contract Attorney

In the case that an objection and/or appeal is lodged against the default summons/enforcement order, ACS shall, after consultation with the Customer, forward the mandate to an attorney selected by ACS in order to assert the claim in court.

2. Liability

The Customer shall assume the risk of tracking the payment claims owing to a complete or partial lack of documentation and/or insufficient documentation of the validity or lack of validity of the payment claim. The same shall be effective if individual assigned payment claims or portions thereof are asserted against debtors who are minors, not identifiable, deceased or have moved abroad or, upon the assignment thereof, have already become statute-barred or the statute of limitations lapses during the processing of the payment claim.

ACS shall be liable to the Customer in unlimited fashion for damages created through its own intentional wrongdoing. Any more extensive liability upon ACS’s part shall be excluded. This liability exclusion shall be effective both for contractual as well as also for tortious claims against ACS as well as for intentional wrongdoing upon the part of its vicarious agents and legal representatives. However, any claims upon the part of the Customer against ACS owing to mandatory legal liability—particularly in accordance with the Product Liability Act as well as the provision of a warranty—shall remain unaffected.

3. Fee

3.1 Debt Collection Fees

For the processing of a payment claim file, ACS shall charge a debt collection fee based upon the Rechtsvergütungsgesetz [Legal Fee Act] (RVG). The debt collection fee shall be asserted as default damages against the debtor. It shall be calculated based upon the main payment claim being asserted plus the statutory VAT and, where applicable, any costs incurred.

3.2 Success-Based Commission and Cost Reimbursement

3.2.1 Success-Based Commission

The success-based commission (SC) shall be charged in accordance with the respectively-valid conditions at the point in time when the order is issued plus the statutory VAT. The SC may not be asserted against the debtor as default damages. If, after ACS has been commissioned, the debtor settles the payment claim in some other art and manner, e.g. by way of an offsetting, allocation or the like, ACS shall likewise be entitled to an SC from the corresponding counter value. Through the payment of the SC, all payment claims for out-of-court work efforts upon the part of ACS shall be considered to have been covered. If, upon the Customer's request, the collection of a payment claim is prematurely ended or ACS must prematurely end the implementation of the processing of a payment claim owing to reasons for which the Customer is responsible, ACS shall receive, in addition to the agreed reimbursement of expenditures, a lump-sum compensatory fee of 39.00 € plus the statutory VAT as compensation for the lost profits.

3.2.2 Cost Reimbursement

Within the parameters of the judicial debt collection proceedings, ACS shall charge the fees for the required enforcement through a default summons/enforcement order in accordance with RVG.

Insofar as the costs incurred by ACS (cash outlays as well as default costs for commercial dunning measures) have not been able to be realised from the debtor, the Customer shall assume these costs. Cash outlays shall be considered to be only those costs and fees which are incurred in conjunction with investigations to determine the whereabouts and financial assets of the debtor, inquiries submitted to Trade Offices, Commercial Registers and the like as well as costs for compulsory debt enforcement proceedings (billing in accordance with RVG). These costs shall be charged to the Customer. In the case of the realisation of such outlays through payments made by the debtors, the debited amounts shall be credited again. ACS shall endeavour to keep cash outlays as minimal as possible. In the case of the litigation proceedings—in the case of the lodging of the objection and/or the appeal against the default summons/enforcement order, the applicable, expended and/or incurred costs and fees (for courts, bailiffs, opposing parties and third-party attorneys including the attorneys' fees) in accordance with RVG shall likewise be billed in their full scope to the Customer (individual specific-case invoicing).

3.3 Invoicing

The invoicing by ACS shall be done monthly. The accounting for the incoming payments shall be respectively done after the receipt of the payment for a full month subject to the retention of the amounts owed to ACS (e.g. success-based commission). ACS shall in principle do the crediting and/or offsetting of the incoming payments in accordance with the guidelines in § 367 Para. 1 BGB [Civil Code] unless the statutory guidelines (e.g. § 497 Para. 3 BGB) mandatorily prescribe another or a special accounting method.

4. Confidentiality, Data Protection

All orders shall be integrated by ACS into its data processing. The Customer is hereby informed that ACS shall, within the parameters of the designated purpose of the order relationship, process all data in accordance with the Bundesdatenschutzgesetz [Data Protection Act]. ACS shall fulfil particularly the requirements of §§ 28 ff. BDSG. The information and data regarding the individual debtors that are compiled by ACS during the course of the processing shall become its property.

5. Duration/Discontinuation of the Processing

ACS shall undertake the processing of the individual payment claims for an indeterminate period of time. The respective order shall in principle end upon the settlement in full or in the case of the partial settlement/fruitlessness of all out-of-court and court debt collection measures offered and/or agreed with the Customer through the definitive discontinuation of the processing of the affected files. ACS shall endeavour to ensure that each payment claim including ancillary payment claims are settled by the debtor to the greatest extent possible.

ACS shall be entitled, at any time, to discontinue the processing of a payment claim and abandon the order.

6. Right to Withhold Services

If the Customer is in arrears with payments, ACS shall be entitled to make the rendering of any additional services contingent on advance payments or the provision of security. In this regard, the Customer waives its right to the assertion of a right of retention from previous or other transactions from the on-going business relationship.

7. Document Retention Timeframe

ACS shall be entitled to destroy any files and file sections as well as documents provided that are no longer needed—with the exception of the legal instrument—three months after the completion of the order unless the Customer insists that the documents be returned. Any deviations from this provision must be separately agreed.

8. Written Form Clause

No oral agreements have been concluded between the Customer and ACS. Any amendments of or supplements to this Agreement must be in writing. Any deviating agreements from this Agreement that are required in the individual case must likewise be separately fixed in writing. Moreover, the written form requirement may be abolished only via written agreement.

9. Severability Clause

In the case that a provision of this Agreement should be or become invalid or unenforceable or the Agreement should not contain a provision that is required in and of itself, then this shall not affect the validity of the provisions as a whole.

In order to replace the invalid provision or in order to eliminate a gap/an omission, that legally-permissible provision shall be agreed which most closely corresponds to the commercial intent of the invalid provision which the parties to this Agreement would have wanted if they had known about the invalidity of the affected provision or the gap/omission.

10. Place of Performance and Legal Venue

The place of performance shall be ACS's commercial residence and the legal venue shall be Hanau.