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# GENERAL TERMS AND CONDITIONS OF INSURANCE

Rental guarantee for **commercial leases**

## Client Information pursuant to the Insurance Contract Act (LCA)

The insurer is Firstcaution SA («Firstcaution»), a public limited company under Swiss law, located at Avenue Edouard-Rod 4, CH-1260 Nyon. Firstcaution is a FINMA-approved insurance company.

The insurance contract is governed by Swiss law. The foundations of the contract are formed by the application for registration, client information, the General Insurance terms and Conditions, and the copy of the rent guarantee certificate («Certificate»), which serves as the insurance policy in accordance with Article 11 of the Federal Law on the Insurance Contract (LCA). Other rights and obligations are defined by the LCA.

## Personal Data Processing

Information collected on individuals who are part of the insurance contract is processed electronically by FirstCaution and is essential for handling the application (including solvency checks), executing the contract, debt collection, marketing purposes, and statistical analyses.

This information and personal data are also retained for security purposes, to comply with legal and regulatory obligations. They will be kept as long as necessary for the execution of the insurance contract and any potentially applicable warranties thereafter.

Access to personal data is strictly limited to authorized Firstcaution employees. Information collected may be communicated to third parties contractually linked to the company for the execution of outsourced tasks.

The processing of personal data is conducted in accordance with the Swiss Data Protection Act, effective as of September 1, 2023. Individual clients have the right to access, rectify, erase, and port data concerning them, as well as the right to object to processing for legitimate reasons, which they can exercise by email via [info@firstcaution.ch](mailto:info@firstcaution.ch), attaching valid proof of identity.

More information is available in our privacy statement on our website or upon request from FirstCaution.

## General Insurance Terms and Conditions

These General Insurance Terms and Conditions (GTC) apply exclusively to commercial leases. They govern the contractual relationships between Firstcaution, the guaranteed tenants (the «Tenant»), any guarantors (the «Guarantor»), and the guaranteed landlords or their representatives (the «Landlord»). Mandatory provisions of federal law are reserved.

### Art. 1 Scope and Contracting Parties

1.1 Firstcaution undertakes to guarantee the payment of any debt arising from the lease contract mentioned in the rent guarantee certificate (the «Certificate») that the Tenant has incurred towards the Landlord, up to the amount of the guarantee indicated in the Certificate, including principal, interest, and costs. Only a Certificate issued by Firstcaution and directly addressed to the beneficiary/Landlord or his representative is valid.

1.2 Firstcaution's obligations are excluded or limited in the following cases:

- A. Except with written agreement of the Landlord communicated to Firstcaution, Firstcaution does not issue a rent guarantee for a lease between a Tenant and a Subtenant.
- B. In case there are multiple Certificates guaranteeing the same lease, only the most recent Certificate is valid.
- C. The rent guarantee is provided only for debts of the Tenant arising after the start date of the guarantee mentioned in the Certificate.
- D. In the case of a furnished property lease, debts of the Tenant or Subtenant arising from damages to the beneficiary/Landlord related to furniture or inventory are not covered by Firstcaution.

1.3 The request for a rent guarantee consists at a minimum of the registration application form, a copy of the lease, and a valid identity document of the Tenant(s) and possibly the Guarantor(s). Firstcaution reserves the right to request additional documents, guarantors, or deposits. An application transmitted online is considered legitimate without signature, and in this case, the GTC is made available before validation and deemed accepted upon validation and transmission of the application form by the Tenant.

### Art. 2 Rent Guarantee Certificate

2.1 Upon acceptance of the rent guarantee request, Firstcaution issues a single original Certificate that is sent to the Landlord. A copy of the Certificate serving as the insurance policy in accordance with Article 11 of the Federal Law on the Insurance Contract (LCA) is sent to the Tenant(s).

2.2 If the content of the insurance policy does not match the agreements made, the Tenant or Landlord must request in writing a correction within four weeks from the receipt of the Certificate; otherwise, the content is considered accepted.

### Art. 3 Plurality of Tenants or Presence of a Guarantor

3.1 When the Certificate is issued in the names of several Tenants, they are considered to be jointly and severally bound, so that each is irrevocably deemed to have authorized the others to act in his name and on his behalf, and similarly, each of the Tenants can validly instruct Firstcaution on any matter related to the lease and the rent guarantee (release of the guarantee, fund movements, etc.).

3.2 In the presence of one or more Guarantors on the Certificate, the Guarantor(s) personally undertake(s) to jointly respond to the exercise of Firstcaution's right of recourse.

3.3 Firstcaution may address either of the parties mentioned in articles 3.1 and 3.2 above in the exercise of its right of recourse and for the entirety of the guarantee and due premiums, interest, and costs, according to the rules of solidarity.

### Art. 4 Commencement and Termination of the Rent Guarantee

4.1 The rent guarantee takes effect from the start date of the guarantee mentioned in the Certificate.

4.2 The rent guarantee ends upon the occurrence of any of the following conditions:

- A. In case of a written and signed agreement by the Tenant and Landlord submitted to Firstcaution;
- B. When Firstcaution has paid the Landlord the claimed amount, up to the limit of the rent guarantee amount

recorded in the Certificate in accordance with Art. 5 below.

C. If, within 12 months following the end of the lease contract, the Landlord has not made any claims against the Tenant in a legal proceeding or a debt enforcement or bankruptcy procedure, the rent guarantee from Firstcaution automatically terminates. In the case of a procedure initiated by the Landlord, he is required to inform Firstcaution no later than 12 months following the lease termination date. It is incumbent upon the Tenant requesting the release of the rent guarantee to provide Firstcaution with proof that he has vacated the premises subject to the guarantee for more than 12 months. Upon receipt, Firstcaution must inform the Landlord; if he does not provide written proof within 14 days that he has initiated legal action for payment or initiated enforcement against the Tenant within the year following the lease termination date of the premises subject to the guarantee, Firstcaution's commitment automatically terminates;

4.3 D. In case of replacement of the guarantee according to Art. 4.6. If, after the issuance of the Certificate, the Landlord alienates the leased property or if it is removed from him in the context of a forced execution procedure (debt enforcement or bankruptcy) and the lease contract is transferred to the purchaser with the property, the object of the insurance as per Art. 1 above benefits the new Landlord from the transfer of the lease. Any new Landlord must notify Firstcaution in writing within 30 days following the property transfer.

4.4 In case of a modification of the lease impacting the rent guarantee, the Tenant must request Firstcaution to accordingly modify the Certificate within a period of 30 days upon receipt of the deed modifying the initial lease.

4.5 In case of transfer of the lease to a new Tenant, the rent guarantee established by Firstcaution ends. The successor of the leased object cannot in any case claim the guarantee that had been made by the Tenant. The successor can make a new request to Firstcaution.

4.6 The Tenant wishing to provide the Landlord with another rent guarantee in replacement of that established by Firstcaution will be released from his obligations towards Firstcaution only after having delivered to the Landlord a new caution insurance certificate or a new bank guarantee in replacement of the rent guarantee established by Firstcaution and to Firstcaution the written agreement of the Landlord releasing Firstcaution from any obligation.

### Art. 5 Payment of the Rent Guarantee Amount in Favor of the Landlord

5.1 Firstcaution, in accordance with Art. 257e para. 3 of the CO, undertakes to pay the Landlord, in a single payment the amount due by the Tenant, within the limits of the amount guaranteed in the Certificate, when one of the following conditions is met:

A. Upon presentation of an agreement between the landlord and tenant constituting acknowledgment of debt, specifying the termination date of the lease and the amount claimed by the Landlord and bearing the mandatory dual signature of the Tenant and Landlord;

B. Upon presentation and delivery of a final and enforceable judgment pronouncing a pecuniary condemnation against the Tenant, relating to a claim under the lease contract;

C. Upon presentation and delivery of the payment order notified to the Tenant at the request of the Landlord, provided it is enforceable and free of any objection, even partial, or accompanied by a final and enforceable judgment lifting the opposition.

5.2 The Landlord may not invoke the provisions of Article 495 CO to demand immediate payment of the rent guarantee from Firstcaution. He must take legal action or pursue enforcement in Switzerland at the agreed venue.

## **Art. 6 Right of Recourse/Subrogation**

- 6.1** In the event that Firstcaution pays an amount to the Landlord under the rent guarantee, Firstcaution is immediately and fully subrogated to the rights of the Landlord, under Art. 507 CO, and may claim from the Tenant(s) or Guarantor(s) on the certificate or policy, by payment notice, the reimbursement of any amount paid by it to the Landlord under the Contract. Any subsequent payment following the payment notice must be addressed exclusively to Firstcaution.
- 6.2** In case of non-payment on first claim, for each reminder, additional fees of at least CHF 20.- may be charged, to which interest, administrative fees for legal recovery of CHF 200.- according to Art. 106 CO, and pursuit costs will be added in case of non-payment after reminder. The due amounts will be recovered using all useful legal means. Furthermore, in the event of non-payment, the amount due (including reminder costs) may be entrusted to our external collection agency, which will apply a processing fee payable in accordance with [www.fairpay.ch](http://www.fairpay.ch). The policyholder is obliged not only to pay the invoiced amount, but also to reimburse all costs (particularly collection fees) incurred as a result of late payment.
- 6.3** The Tenant and Guarantor(s) expressly declare their consent to the substitution of the party, namely the Landlord by Firstcaution, in any judicial and enforcement procedure already pending at the time of the subrogation of rights, and undertake to reimburse Firstcaution all amounts paid by it under the rent guarantee, including interest and costs.

## **Art. 7 Premiums**

- 7.1** Upon registration, the Tenant undertakes to pay Firstcaution an insurance premium each year corresponding to between 5% and 10% of the caution amount recorded in the Certificate, depending on the amount of caution and risk parameters, management fees of CHF 20.- and stamp tax in addition.
- 7.2** The premium for the current year at the time of registration is calculated pro rata, covering the period between the start date of the guarantee mentioned in the Certificate and December 31, federal stamp tax and registration fees in addition (registration fees for caution below CHF 15,000.-: CHF 100.-, caution greater than CHF 15,000.-: 1% of the caution amount rounded to CHF 10.00, maximum CHF 500). This premium is payable in advance. Firstcaution may require the Tenant who subscribes between October 1 and December 31 to pay a premium covering the period running until December 31 of the following year.
- 7.3** In the event of a refusal by Firstcaution of a rent guarantee request, Firstcaution refunds the entire premium paid by the Tenant.
- 7.4** Annual premiums for subsequent years are payable by calendar year in advance, payment must occur no later than December 31 preceding the year relevant to the due premium. The minimum annual premium cannot be less than CHF 100.-, management fees of CHF 20.- and federal stamp tax in addition.
- 7.5** The Tenant is liable for the payment of the premium as long as the rent guarantee established by Firstcaution has not ended according to the provisions of Art. 4.2 above. It is his responsibility, where applicable, to carry out the necessary formalities with the Landlord so that Firstcaution obtains confirmation of the end of the rent guarantee.
- 7.6** In case of non-payment of the premium, the Tenant in default is reminded. For each reminder, additional fees of at least CHF 20.- may be charged. If payment is not made within the deadline set by the reminder, the due amounts will be recovered using all useful legal means, administrative fees for legal recovery according to Art 106 CO of CHF 200.- and pursuit procedure fees in addition, without suspension of coverage, in derogation of Art. 20 para. 3 LCA. Furthermore, in the event of non-payment, the amount due (including reminder costs) may be entrusted to our external collection agency, which will apply a processing fee payable in accordance with [www.fairpay.ch](http://www.fairpay.ch). The policyholder is obliged not only to pay the invoiced amount, but also to reimburse all costs (particularly collection fees) incurred as a result of late payment.
- 7.7** If the caution insurance contract ends before the end of the calendar year, Firstcaution reimburses the Tenant, upon

written request from him within one month following the lease termination date, the pro-rated share of the annual premium paid for the current year, covering the period «date of end of the rent guarantee – December 31» deducting administrative fees of CHF 20.-. However, under Art. 42 para. 3 of the Federal Law on the Insurance Contract (LCA), if the termination occurs during the year following the conclusion of the caution insurance contract, the premium for the current insurance period remains acquired by Firstcaution unless the Tenant provides a new rent guarantee issued by Firstcaution.

## **Art. 8 Rent Guarantee with Deposit**

- 8.1** In the case where the Tenant deposits a part of the amount of his rent guarantee into a deposit account specifically created for this purpose with Firstcaution, the premium is calculated only on the basis of the guaranteed part (guarantee amount – deposit amount). The issued Certificate states the total amount of the rent guarantee requested by the Landlord. All payments made under deposits must be made in Swiss francs (CHF), and associated bank fees should be supported by the Tenant.
- 8.2** The Tenant may request partial or complete reimbursement of the deposited amount (in increments of CHF 100.-) to the extent that he meets, according to Firstcaution, the required solvency conditions. This results in an increase in the premium that must be settled before partial or complete reimbursement of the deposit. The Tenant can submit only one request per year.
- 8.3** The first two changes to the deposit amount (reimbursement request) are charged at CHF 40.-. Additional deposit payments are free but must be announced to Firstcaution. For all subsequent reimbursement requests, the Tenant owes Firstcaution the sum of CHF 100.-
- 8.4** Depending on the change made, a reimbursement or an additional payment request is required compared to the already calculated and paid premium.
- 8.5** After termination of the lease, of which the Tenant must immediately inform Firstcaution in writing (see Art. 10.1), respectively, in the case of fixed-term lease agreements, upon their expiry, no further changes to the deposit amount are possible.
- 8.6** Firstcaution is authorized to offset its claims against the Tenant with the deposit amount. The deposit amount is neither remunerated nor invested.
- 8.7** After the termination of the insurance contract according to Art. 4, Firstcaution pays the remaining deposit amount to the Tenant into a bank account specified by him.

## **Art. 9 Responsibility**

- 9.1** The responsibility of Firstcaution and its employees is excluded for any damage resulting from the execution, non-execution, or poor execution of this contract, except in cases of gross negligence or intentional misconduct as per Art. 100 para. 1 CO. The liability of Firstcaution is expressly excluded for any damage resulting from the information it communicates to the Landlord or a third party about the Tenant.

**Art. 10 Final Provisions**

**10.1** Firstcaution reserves the right to modify these GTC at any time, including the premium rate, subject to a written notice of 30 days. The Tenant may then terminate the caution insurance contract without notice, subject to providing the Landlord with an equivalent guarantee allowing the restitution of the Caution/Guarantee Certificate to Firstcaution in accordance with Art. 4.6 above. If no termination occurs within 30 days, the modifications are deemed to have been accepted. Any modification concerning the rights and/or obligations of the Landlord must be communicated to him or the agency representing him for acceptance.

**10.2** Firstcaution reserves the right to refuse any request for a rent guarantee made to it, at its sole discretion and without obligation to provide reasons.

**Art. 11 Jurisdiction**

The relationships between Firstcaution, the Tenant(s), the Guarantor(s), and the Landlord are subject to Swiss law, excluding any provisions of private international law. All disputes that may arise under this contract, including its validity, execution, and interpretation are exclusively within the competence of the courts at the registered office of Firstcaution. However, Firstcaution reserves the right to take legal action at the domicile/headquarters of the Tenant(s), Guarantor(s), or Landlord or before any other competent court, both in Switzerland and abroad. In this event, Swiss law will also apply, excluding any provisions of private international law.

The French version of the GTC prevails.

# CONTACT

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