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GENERAL TERMS AND CONDITIONS OF INSURANCE

Rental guarantee for
commercial leases

Customer information according to the Federal Insurance Contract Act (LCA)

The insurer is Firstcaution SA (Firstcaution), a public limited company incorporated under Swiss law with its registered office at Avenue Edouard-Rod 4, CH-1260 Nyon. Firstcaution is an insurance company licensed by FINMA.

The insurance contract is governed by Swiss law. The basis of the contract is the application for registration, the customer information, the General Terms and Conditions of Insurance and the copy of the rental guarantee certificate (Certificate), which is equivalent to an insurance policy within the meaning of Article 11 of the Federal Insurance Contract Act (LCA). Other rights and obligations are defined by the LCA.

Processing of personal data

The information collected on the natural persons who are parties to the insurance contract is subject to computer processing by the company FirstCaution, and is essential for the processing of the application (including credit check), the execution of the contract, and the collection of debts, for marketing purposes and for statistical analyses.

This information and personal data are also kept for security purposes, in order to comply with legal and regulatory obligations. They will be kept for as long as necessary for the performance of the insurance contract and any guarantees that may be applicable at the end of this insurance contract.

Access to personal data will be strictly limited to Firstcaution employees authorized to process the request. The information collected may be communicated to third parties linked to the company by contract for the performance of subcontracted tasks.

The processing of personal data is carried out in accordance with the Swiss data protection law in force as of 1 September 2023. The Client, who is a natural person, has the right to access, rectify, delete and transfer data concerning him/her, as well as the right to object to processing for legitimate reasons, rights that he/she can exercise by email via info@firstcaution.ch, by attaching a valid proof of identity.

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

General terms and conditions of insurance

These General Terms and Conditions of Insurance (GTCl) apply exclusively to leases for commercial use. They govern the contractual relationship between Firstcaution, the tenants guaranteed (the Tenant), any guarantors (the Guarantor) and the guaranteed lessors or their representatives (the Lessor). The mandatory provisions of the federal law remain in force.

Art. 1 Scope and purpose

- 1.1 Firstcaution undertakes to guarantee the payment of any debt arising from the lease agreement referred to in the rental guarantee certificate (the Certificate) that the Tenant has contracted with the Lessor, up to the amount of the guarantee indicated in the Certificate, in principal, interest and costs.
- 1.2 Firstcaution's obligations are excluded or limited in the following cases:
- A. Unless the Lessor has given the written consent of the Lessor to Firstcaution, Firstcaution does not issue a rental guarantee for a lease between a Tenant and a Sub-Tenant
 - B. In the event of the existence of several Certificates guaranteeing the same lease, only the most recent Certificate is authentic.
 - C. The rental guarantee is only provided for the Tenant's debts that arise after the start date of the guarantee mentioned in the Certificate.
- 1.3 The application for a rental guarantee consists of at least 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. A request submitted online is considered lawful without a signature and in this case, the GTCl are made available before validation and deemed accepted when the application form is validated and submitted by the Tenant.

Art. 2 Rental Guarantee Certificate

- 2.1 Upon acceptance of the rental guarantee request, Firstcaution issues a single original Certificate which is sent to the Lessor. A copy of the certificate as an insurance policy within the meaning of Article 11 of the Federal Insurance Contract Act (LCA) is sent to the Tenant(s).
- 2.2 If the content of the insurance policy does not correspond to the agreements made, the Tenant or the Lessor must request in writing that it be rectified within four weeks of 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 drawn up in the name of several Tenants, they are deemed to be jointly and severally bound, so that each of them is irrevocably deemed to have given power of attorney to the others to act in his name and on his behalf and, likewise, each of the Tenants may validly instruct Firstcaution in any matter related to the lease and the rental guarantee (release of the guarantee, movement of funds, etc.).
- 3.2 In the presence of one or more Guarantors on the Certificate, the Guarantor(s) personally undertakes to be jointly and severally liable for the exercise of Firstcaution's right of appeal.
- 3.3 Firstcaution may address either of the parties mentioned in Art. 3.1 and 3.2 above in the exercise of its right of appeal and for the entire guarantee and premiums due, interest and costs arising therefrom, in accordance with the rules of solidarity.

Art. 4 Start and end of the rental guarantee

- 4.1 The rental guarantee takes effect from the start date of the bond, mentioned in the Certificate.
- 4.2 The rental guarantee ends if one of the following conditions applies:
- A. In the event of a written and signed agreement between the Tenant and the Lessor given to Firstcaution;
 - B. When Firstcaution has paid the Lessor the amount claimed, up to the amount of the rental guarantee set out in the Certificate pursuant to art. 5 below.
 - C. If, within 12 months of the end of the lease agreement, the Lessor has not asserted any claims against the Te-

nant in the context of legal proceedings or debt proceedings or bankruptcy, the rental guarantee of Firstcaution shall be terminated by operation of law. In the event of proceedings initiated by the Lessor, the Lessor is obliged to inform Firstcaution within 12 months of the date of termination of the lease at the latest.

It is the responsibility of the Tenant who requests the release of the rental guarantee to provide Firstcaution with proof that he or she has vacated the premises subject to the guarantee for more than 12 months. Upon receipt, Firstcaution must inform the Lessor; if the latter does not provide written proof within 14 days that it has taken legal action for payment or initiated legal proceedings against the Tenant within one year of the date of termination of the lease of the premises subject to the guarantee, Firstcaution's commitment shall be terminated by operation of law;

- 4.3 D. In the event of a warranty substitution pursuant to Art. 4.6. If, after the Certificate has been issued, the Lessor disposes of the leased property or if it is taken away from him in the course of enforcement proceedings (debt collection or bankruptcy) and the lease agreement is transferred to the purchaser together with ownership of the property, the object of the insurance within the meaning of Art. 1 above benefits the new Lessor as soon as the lease is transferred. All new Landlords must notify Firstcaution in writing within 30 days of the transfer of ownership.
- 4.4 In the event of a change to the lease affecting the rental guarantee, the Tenant must ask Firstcaution to amend the Certificate accordingly within 30 days of receipt of the deed amending the initial lease.
- 4.5 In the event of a transfer of the lease to a new Tenant, the rental guarantee established by Firstcaution ends. The new beneficiary of the rented property may not under any circumstances rely on the rental guarantee that had been made by the Tenant. The new beneficiary of the rented property can make a new application to Firstcaution.
- 4.6 A Tenant who wishes to provide the Lessor with another rental guarantee in lieu of the one established by Firstcaution will only be released from his obligations towards Firstcaution after having given the Lessor a new certificate of rental guarantee or a new bank guarantee in place of the rental guarantee issued by Firstcaution and to Firstcaution the written agreement of the Lessor releasing Firstcaution from any obligation.

Art. 5 Payment of the amount of the rental guarantee in favor of the Lessor

- 5.1 Firstcaution, in accordance with Art. 257e para. 3 CO, undertakes to pay to the Lessor, for lease contracts whether or not subject to the framework contract for rental leases in Suisse Romande, in a single instalment, the amount due by the Tenant, within the limit of the amount guaranteed in the Certificate, when one of the following conditions is met:
- A. Upon presentation of an agreement between the lessor and the tenant equivalent to an acknowledgment of debt, specifying the date of termination of the lease and the amount claimed by the Lessor and bearing the mandatory double signature of the Tenant and the Lessor.
 - B. Upon presentation and delivery of a final and enforceable judgment pronouncing a pecuniary order against the Tenant, relating to a claim relating to the lease contract.
 - C. Upon presentation and delivery of the order to pay notified to the Tenant at the request of the Lessor, provided that it is enforceable and free of any opposition, even partial, or accompanied by a judgment of release of the final and enforceable objection.
- 5.2 The Lessor may not rely on the provisions of Article 495 CO to immediately request payment of the rental guarantee from Firstcaution. He must take legal action or bring proceedings in Switzerland at the agreed place of jurisdiction.

Art. 6 Right of Appeal/Subrogation

- 6.1 In the event that Firstcaution pays an amount to the Lessor under the rental guarantee, Firstcaution shall immediately and fully subrogate to the rights of the Lessor and may claim from the Tenant(s) or Guarantor(s), by notice of payment, the reimbursement of any amount paid by it to the Lessor

pursuant to the Agreement.

Any payment made after the payment notice must be addressed to Firstcaution exclusively.

In the event that the Lessor takes legal action in this regard, the Tenant must inform Firstcaution in writing before any payment is made.

6.2 In the event of non-payment on the first complaint, a reminder fee of CHF 30 will be charged in addition, plus interest, administrative costs of collection by legal means of CHF 200 in accordance with Art. 106 CO and debt collection fees will be added in case of non-payment after reminder. The sums due shall be recovered by all appropriate legal means.

6.3 The Tenant(s) and the Guarantor(s) expressly declare that they consent to the substitution of the party, i.e. the Lessor by FirstCaution, in any legal and enforcement proceedings already pending at the time of the subrogation of rights and they undertake to reimburse Firstcaution for all amounts paid by it under the rental guarantee, plus interest and costs.

Art. 7 Premiums

7.1 At the time of registration, the Tenant undertakes to pay an insurance premium corresponding to between 5% and 10% of the guaranteed amount listed in the Certificate each year, depending on the amount of the guarantee and the risk parameters, management fee of CHF 20.- and stamp duty in addition.

7.2 The premium for the current year at the time of registration is calculated on a pro-rata basis, covering the period between the start date of the guarantee mentioned in the Certificate and 31 December, plus federal stamp and registration fees (registration fees for guarantee below CHF 15,000.-: CHF 100.-, guarantee above CHF 15,000.-): 1% of the deposit amount rounded up to CHF 10.00, maximum CHF 500). This premium must be paid in advance. Firstcaution may require the Tenant who joins between 1 October and 31 December to pay a premium covering the period until 31 December of the following year.

7.3 If Firstcaution refuses a request for a rental guarantee, Firstcaution will reimburse the entire premium paid by the Tenant.

7.4 Annual premiums for subsequent years are payable per calendar year in advance, with payment to be made no later than 31 December preceding the year in which the premium is due. The minimum annual premium may not be less than CHF 100, plus a management fee of CHF 20 and a federal stamp.

7.5 The Tenant is obliged to pay the premium as long as the rental guarantee issued by Firstcaution has not expired in accordance with the provisions of Art. 4.2 above. It is up to him, if necessary, to complete the necessary formalities with the Lessor so that Firstcaution obtains confirmation of the end of the rental guarantee.

7.6 In the event of non-payment of the premium, the Tenant in default is reminded in writing and at his own expense (reminder fee of CHF 30.-), to pay the premium within 10 days. If payment is not made within the time limit set by the reminder, the sums due will be recovered according to all appropriate legal remedies, administrative costs of recovery by legal means in accordance with Art. 106 CO of CHF 100.- and the costs of debt collection proceedings in addition, without suspension of coverage, in derogation from Art. 20 para. 3 LCA.

7.7 If the rental guarantee insurance contract ends before the end of the calendar year, Firstcaution will reimburse the Tenant, upon written request from the Tenant within one month of the end date of the lease, the part of the annual premium paid for the current year, covering the period «end date of the rental guarantee – 31 December» minus an administrative fee of CHF 20.

However, pursuant to Art. 42 para. 3 of the Federal Insurance Contract Act (LCA), if the cancellation takes place during the calendar year following the conclusion of the rental guarantee insurance contract, the premium for the entire year remains with Firstcaution, unless the Tenant provides a new rental guarantee issued by Firstcaution. The premium also remains vested in Firstcaution when it is used to pay the Lessor in place of the Tenant.

Art. 8 Rental guarantee with deposit

8.1 In the event that the Tenant pays part of the amount of his rental guarantee into a deposit account specifically created for this purpose with Firstcaution, the premium is calculated solely on the basis of the guaranteed part (Guarantee amount – deposit amount). The Certificate issued states the total amount of the rental guarantee requested by the Lessor.

Art. 9 Responsibility

9.1 The liability of Firstcaution and its employees is excluded for any damage arising from the performance, non-performance or improper performance of this contract, subject to gross negligence or willful misconduct within the meaning of Art. 100 para. 1 CO. Firstcaution is expressly excluded from liability for any damage resulting from the information it provides to the Lessor or to a third party.

Art. 10 Final provisions

10.1 Firstcaution reserves the right to change these GTCI, including the premium rate, at any time upon 30 days' written notice. The Tenant may then terminate the rental guarantee insurance contract without notice, provided that the Lessor is provided with an equivalent guarantee allowing the return of the Rental Guarantee Certificate to Firstcaution in accordance with art. 4.6 above. If the changes are not terminated within 30 days, they will be deemed to have been accepted.

Any change in the rights and/or obligations of the Lessor must be communicated to the Lessor or to the agency representing the Lessor for acceptance.

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

Art. 11 For

The relationship between Firstcaution, the Tenant(s), the Guarantor(s) and the Lessor is subject to Swiss law, to the exclusion of all provisions of private international law. All disputes that may arise in connection with this Agreement, including its validity, execution and interpretation, shall be exclusively subject to the jurisdiction of the competent courts of the registered office of Firstcaution. However, Firstcaution reserves the right to bring an action at the domicile/registered office of the Tenant(s), Guarantor(s), or the Lessor or before any other competent court, both in Switzerland and abroad. In this eventuality, Swiss law will also apply to the exclusion of all provisions of private international law.

The French version of the General Terms and Conditions of Insurance is authoritative.

CONTACT

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