

These General Conditions of Insurance (GCI) are solely applicable to residential tenancies. They govern the contractual relations between SC, SwissCaution SA (SC), the tenants or guarantors benefiting from the guarantee (the Tenant) and the guaranteed landlords or guarantors (the Landlord) and are subject to the binding provisions of Swiss Federal Law.

Art. 1 Object of the guarantee and exclusions

1. SC, SwissCaution SA undertakes to guarantee the payment of any liability, contracted by the Tenant in relation to the Landlord, resulting from the tenancy agreement specified in the rental guarantee certificate (the Certificate), in an amount up to the guaranteed sum stated in the Certificate, including the capital, interest and costs.
2. The obligations on the part of SC are excluded or limited in the following cases:
 - a. SC does not provide a surety for between a Tenant and a sub-tenant without a written agreement from the Landlord;
 - b. if several Certificates guarantee the same tenancy agreement, only the most recent Certificate shall apply;
 - c. the surety established by SC is provided solely for liabilities of the Tenant which might arise after the Certificate's date of validity (issue date).

Art. 2 Rental guarantee certificate

1. Upon acceptance of the application for the surety and receipt of the fixed registration premium, SC will issue a single original Certificate which it sends to the Landlord or his representative (beneficiary).
2. A copy of the Certificate is sent to the Tenant (policyholder) and constitutes an insurance policy within the meaning of Article 11 of the Swiss Federal Law on Insurance Contracts (LCA). If the content of the insurance policy is not consistent with the agreements reached, the Tenant or the Landlord must ask for it to be corrected within four weeks from receipt of the document, failing which the content shall be deemed to have been accepted.

Art. 3 Co-tenants

1. When the Certificate is drawn up in the name of several tenants, the latter are deemed to be jointly and severally liable so that each of them is irrevocably deemed to have given the others permission to act in his name and for his account and each Tenant may likewise validly instruct SC in any matter concerning the tenancy agreement and the surety (release of the surety, movements of funds, etc).
2. SC may exercise its right of redress against any one of them for the totality of the guarantee (Article 6 below) in accordance with the rules of joint liability.

Art. 4 Start and end of the surety

1. The surety takes effect upon receipt by the Landlord of the original copy of the Certificate.
2. The surety ends under one of the following conditions:
 - a. the Landlord and the Tenant waive the surety in writing by returning the original Certificate, completed and signed, to SC;
 - b. SC has paid the Landlord the amount claimed within the limits of the guarantee, in accordance with Article 5 below;
 - c. if, within 12 months of the expiry of the tenancy, the Landlord has not made a claim against the Tenant within the framework of legal proceedings or proceedings in respect of debts or bankruptcy, the surety provided by SC shall lapse automatically. If the Tenant, by producing evidence that he vacated the premises covered by the guarantee more than one year ago, seeks release of the surety, SC must duly inform the Landlord. If the latter fails to provide evidence within fourteen days that he has taken court action or commenced proceedings against the Tenant within one year of the date on which he vacated the premises covered by the guarantee, the obligation on the part of SC shall lapse automatically;
 - d. in the event of guarantee substitution, in accordance with Article 4 paragraph 4 below.
3. If, after the conclusion of the agreement, the Landlord sells the tenanted premises or he forfeits the property under a compulsory enforcement procedure (action taken in respect of debts or bankruptcy) and the tenancy agreement passes to the purchaser with the ownership of the property, the object of the insurance within the meaning of Article 1 above shall apply to the new Landlord as soon as the tenancy agreement has been transferred. The new Landlord must make himself known to SC within 30 days from the transfer of ownership.
4. The Tenant who wishes to give the Landlord a different rental guarantee that is intended to replace the guarantee under this Agreement (bank guarantee or other surety) shall not be released from his obligations to SC until he has provided the Landlord with a new certificate of surety or a new bank guarantee that replaces the guarantee drawn up by SC and SC with the written agreement of the Landlord, releasing SC from all obligations, together with the original Certificate, duly completed and signed. Administrative costs of CHF 50.- shall be charged to the Tenant.

Art. 5 Payment of the surety to the Landlord

1. Pursuant to Article 257e paragraph 3 of the Swiss Code of Obligations (CO), SC undertakes to pay the Landlord the amount due by the Tenant, within the limits of the sum guaranteed by the Certificate and subject to Article 1 paragraph 2 above, when any one of the following conditions is satisfied:
 - a. upon presentation of the original Certificate, indicating the date of expiry of the tenancy, dated and signed by the Tenant and the Landlord (joint signature);
 - b. upon presentation and surrender of the original notice to pay sent to the Tenant at the request of the Landlord (supporting documents included), provided that it is enforceable and no appeals, even partial, have been lodged, or it is accompanied by a final and enforceable judgment that dismisses the original appeal;
 - c. upon presentation and submission of the original copy of a final and enforceable judgment imposing a fine on the Tenant in respect of a claim relating to the tenancy agreement.
2. When the parties have agreed a place of jurisdiction in Switzerland, in particular at the place where the property is situated, and/or elected domicile in Switzerland for the performance of the agreed services and/or receipt of any notifications, the Landlord must act in the courts or bring proceedings in Switzerland at the agreed place of jurisdiction and will not be able to rely on the provisions of Article 495 of the Swiss Code of Obligations to seek immediate payment of the surety by SC.

Art. 6 Right of redress / subrogation

1. If SC pays a sum to the Landlord in accordance with the rental guarantee, SC is immediately and fully subrogated to the rights of the Landlord and is entitled, by means of a payment notice, to seek reimbursement of any sums it has paid to the Landlord under the agreement, together with administrative costs of CHF 100.-.
The attention of the Tenant is drawn to the fact that any payment made subsequent to the notice of payment shall be addressed to SC alone. If the Landlord has commenced legal proceedings against him in this matter, he must inform SC in writing prior to any settlement.
2. The Tenant expressly declares that he agrees to party substitution, namely that of the Landlord by SC, for the purpose of all court proceedings and compulsory enforcement already pending at the time of subrogation of the rights and that he undertakes to reimburse SC all the sums that SC has paid in connection with the rental guarantee plus costs.

Art. 7 Premiums

1. Upon registration, the Tenant pays SC an initial fixed premium of CHF 231.- (including Swiss Federal stamp duty on insurance premiums), which is valid until 31 December of the current year. This initial fixed premium is payable in full, Irrespective of the date on which the tenancy for which surety is provided begins to run.
2. In the case of refusal by SC of a rental guarantee request, SC will reimburse the entire initial fixed premium upon request by the Tenant.
3. For subsequent years, the Tenant undertakes to pay SC an annual premium, payable each calendar year in advance, equivalent to 5% of the rental guarantee stated in the Certificate, administrative costs of CHF 20.- plus the Swiss Federal tax on insurance premiums.
4. The Tenant is required to pay the premium for the duration of the surety agreement in accordance with the provisions in Article 4 paragraph 2 above. He is obliged, where necessary, to complete the appropriate formalities with the Landlord to enable SC to obtain confirmation of the expiry of the surety.
5. For any amendments made to the Certificate, accepted by SC, after it has been issued, SC will bill the Tenant administrative costs of CHF 50.-.
6. If the surety agreement expires before the end of the calendar year, the Tenant will request the refund of its unexpired annual premium, pro rata temporis, after deduction of administrative costs. However, pursuant to Article 42 paragraph 3 of the Federal Law on Insurance Contracts (LCA), if termination takes place during the calendar year that follows the Certificate's issuing date; the premium for the whole year shall be retained by SC, except if the Tenant establishes a new rental guarantee issued by SC.
7. In the event of non-payment of the annual premium, the defaulting Tenant shall pay the costs of a formal written notice to pay the premium within 14 days. It will then be recovered through the channels of ordinary law without suspension of cover, notwithstanding Article 20 paragraph 3 of the Swiss Federal Law on Insurance Contracts. The costs for summons and pursuance procedures will be added to the premium due.

Art. 8 Liability

SC and its employees assume no liability for any loss resulting from the performance, non-performance or inadequate performance of the present agreement, subject to gross negligence or fraud within the meaning of Article 100 paragraph 1 of the Swiss Law of Obligations. Liability on the part of SC is expressly excluded for any loss resulting from the information that it provides to the Landlord or to a third party about the Tenant.

Art. 9 Final provisions

1. SC reserves the right to amend these General Terms and Conditions of Insurance at any time, by giving 30 days written notice before the end of the calendar year. The Tenant is then entitled to terminate the agreement in full with effect from the end of the current calendar year. The notice of termination is valid if it reaches SC no later than on the final day of the current calendar year and satisfies the conditions of Article 4 paragraph 4 above. If the agreement is not terminated before the end of the current calendar year, the Tenant shall be deemed to have accepted the new general terms and conditions.
2. SC reserves the right to verify the solvency of Tenants and to decline, where appropriate, the application for a surety made to it, at its sole discretion and without any obligation to state reasons. SC shall process the data supplied by Tenants in strict compliance with the Federal Law on Data Protection (LPD). It may make use of such data and transmit them to third parties within the limits of the law; in particular, SC may use such data to determine the premium, assess the insurance risk, compile statistics, and conduct marketing campaigns.

Art. 10 Applicable law and place of jurisdiction

Relations between SC, the Tenant and the Landlord shall be governed by Swiss law. Any disputes which may arise under this agreement between SC, the Tenant and the Landlord, performance and interpretation, shall be referred to the competent courts at the place where SC has its registered office, subject to an appeal to the Supreme Court in the cases for which provision is made in law. SC nevertheless reserves the right, to bring proceedings at the domicile / registered office of the Tenant or Landlord or in any other competent court, in Switzerland or abroad. In that case, Swiss law shall likewise apply.

Reminder of cantonal legislation

(Geneva) – Law protecting the guarantees provided by tenants (LGPT)

Form of guarantee (Article 1 LGFL):

1. Any guarantee in cash or securities provided in favour of a Landlord by a Tenant or by a third party shall be constituted in the form of a blocked deposit at the State Deposit Bank or at a banking establishment that is recognised as a deposit agency within the meaning of Article 633, paragraph 3 of the Swiss Code of Obligations.
2. Provision of a single surety is, however, permitted for residential tenancies at the request of the tenant. The tenant may rely on paragraph 1 at all times.
3. The tenant is at liberty to choose the banking establishment.

Withdrawal (Article 4 LGFL):

1. Withdrawal of all or part of the sums or assets deposited by way of guarantee requires the joint signature of the landlord and tenant or a court order.
2. If the tenant declines to give his consent, the landlord may seek payment to him of all or part of the sums or securities deposited by way of a guarantee upon presentation of an enforceable default summons or an enforceable judgment imposing a fine on the tenant in respect of a claim relating to the tenancy agreement.
3. These provisions apply analogously to the surety.

Release of the guarantee (Article 5 LGFL):

If no legal action is taken by the landlord against the tenant within one year commencing from the date on which the tenant vacated the premises covered by the guarantee, the latter shall be released automatically. The owner of the cash or securities is entitled to take possession of them again.

(Vaud)–Law on the guarantees in respect of tenancy agreements and rental payments (LGBL)

Compulsory guarantee deposit (Article 1 LGBL):

In the case of residential tenancies, a single surety is solely admissible at the express request of the tenant. The latter may replace the surety at any time with a guarantee for the same amount in cash or in securities; paragraphs 1 and 2 apply.

Withdrawals and income (Article 3 LGBL):

Withdrawal of all or part of the sums or securities deposited by way of guarantee requires the joint signature of the landlord and tenant or a court order. The income accruing on the deposit may be collected by the tenant with his sole signature. If the landlord takes no legal action against the tenant within one year from the date on which the tenant vacated the premises covered by the guarantee, the deposit shall be released automatically. The owner of the cash or securities is entitled to take possession of them again.