

## DTB GENERAL TERMS & CONDITIONS

The relationship between the Bank and the Customer is governed by the Laws of Kenya, the following general terms and conditions and any further agreement made in writing between the Bank and the Customer. Specific Terms and Conditions apply to specific accounts and products and are available to the Customer upon request.

### 1. Definitions

- (a) "Account" means any type of account held by the Customer with the Bank in accordance with the instructions on the Account Opening Form.
- (b) "Application Form" means the Bank's form completed by the Customer in respect to the opening and operation of an Account
- (c) "ATM" means Automated Teller Machine(s)
- (d) "Authorized Signatory" means the Customer, or any person(s) authorized in writing, to operate the Account in accordance with the Mandate including appointed Attorney(s).
- (e) "Bank" means Diamond Trust Bank Kenya Limited, and its Branches and Subsidiaries as may from time to time be specified by the Bank to the Customer.
- (f) "Banking Day" means a day on which the counters of the Bank are open for the transaction of ordinary business.
- (g) "Bank's Tariff" means the Bank's published schedule of costs and charges payable by the Customer to the Bank for the provision of the Bank's products and services
- (h) "Card" means any card issued by the Bank at the request of the Customer for use in the manner agreed upon between the Bank and the Customer at the time of issuance.
- (i) "Cardholder" means a person to whom the Bank's card has been issued and includes an additional cardholder.
- (j) "Cheque" means the Cheque forms issued by the Bank to the Customer and forming part of the Cheque book.
- (k) "Cheque Book" Means the serially numbered cheques bound together and issued by the Bank to the Customer.
- (l) "Customer" means the holder of an account as specified in the Application Form.
- (m) "Electronic Banking Facility" means all electronically enabled services capable of operation by the Bank.
- (n) "Mandate" means the mode of operation of the Account as specified by the Customer in the Application Form.
- (o) "PIN Code" means the secret PIN known only to the Customer or the Customer's Nominated User(s) for access to the System via an ATM or any other Point of Sale (POS) terminal to give a transaction instruction.
- (p) "Property" includes cash and other moneys-worthy instruments used by the Customer in the conduct of business as held by the Bank.
- (q) "Security" means (including but not limited to) any agreement, mortgage, charge, pledge, lien, guarantee, indemnity, debenture and/or security securing in whole or in part any Debt or Liabilities of the Customer with the Bank.
- (r) "Specific Terms and Conditions" means the terms and conditions that may be published by the Bank from time to time in relation to a specific product and/or service (or otherwise) provided by the Bank.
- (s) "Statement" means the electronic or written record prepared by the Bank from time to time reflecting the number and nature of transactions being made in and out of the Account.
- (t) "System" means the multi-media banking and communications software or equipment enabling the Customer to communicate with the Bank for the purposes of the Electronic Banking Services.
- (u) "Tax" means all taxes levies duties imposts charges withholdings (including without limitation any fiscal, regulatory, statutory, municipal or other tax) together with any penalty, default or additional charges relating to them.
- (v) "Withdrawal Instrument" includes cheques and withdrawal slips, signed and presented by a Customer for the purpose of instructing the Bank to pay cash to them.

### 2. Account Opening and Operational

- (a) The Bank may, upon receipt of the Application Form and supporting documentation required from Customer, open the Account in the name of the Customer as it appears in the Application Form.
- (b) The Bank may require proof of the Customer's name and address and any supporting documents including changes (if any) in order to act on the customer's instructions.
- (c) The address provided by Customer in the Application Form shall be considered the registered address of the Account and all postal communication from the Bank shall be sent to this address. Customer shall notify the Bank in writing on any changes to this address.
- (d) The Bank shall be obliged to maintain the Account subject to the Customer's legal status being satisfactory, compliance to these Terms and Conditions, the Laws of Kenya and any other express or implied terms regulating the conduct of banking business in Kenya.

### 2.1. Authorized Signatures

- (a) Customer shall give to the Bank a specimen of the signature for Customer or any Authorized Signatories or Agents as required. The Bank may require fresh specimen signatures in the event of a change in names of signatories.
- (b) Customer may appoint and notify the Bank of an Agent or an Attorney to operate the Customer's Account.
  - (i) Where an Agent is appointed, the Customer must complete and execute the Bank's Known Agents Introduction Form specifying the Mandate of the Agent to the Bank;
  - (ii) Where an Attorney is appointed, the Customer must complete the Bank's Letter of Authority for Third Parties to operate the Account.
- (c) An Attorney must produce to the Bank a certified copy of the duly registered Power of Attorney document. Unless otherwise agreed, the authorized signatories are entitled to withdraw all or any of the Customer's property or securities held by the Bank from time to time, to open any further account in the Customer's name, and to overdraw

any of the Customer's accounts.

### 3. Accounts

The Bank may at its sole discretion and subject to any regulations (where applicable) and at the Customer's own risk, operate on behalf of such Customer solely or jointly, any of the Accounts capable of being maintained with the Bank.

#### 3.1. Joint Accounts

- (a) The Customer may open the Account jointly in the name of the Customer and any other person or persons.
- (b) Where the mandate in a Joint Account is either/or survivor, each Customer to the Joint Account is authorized to operate the Joint Account individually and it shall be deemed that the instructions given by one Customer to the Joint Account are authorized by the other Customer(s) to the Joint Account.
- (c) Where the mandate in a Joint Account is 'Jointly', each Customer to the Joint Account is only authorized to operate the Joint Account together with all others (or as specified in the mandate).
- (d) Any liability in the Joint Account will be borne jointly and severally by each Customer to the Joint Account.

#### 3.2. Fixed Deposit Accounts

- (a) The Bank may in its sole discretion, accept funds in specified currencies from the Customer to be placed in an interest earning account for a fixed period of time ("Fixed Deposit").
- (b) The Bank may at its sole discretion allow premature withdrawal of fixed deposits. The customer accepts that all such premature withdrawals will be subject to levy of penalties and charges, as the Bank may determine and that these may be subject to change without notice to the Customer.

#### 3.3. Accounts in Foreign Currencies

Subject to any laws and Government exchange regulations:

- (a) The Bank may in its sole discretion and at the Customer's own risk, open and operate the Account in a Foreign Currency.
- (b) At the request of the Customer, the Bank may debit or credit the Account with a currency other than the designated currency of the account and may convert such amounts debited or credited (unless otherwise agreed) at the Bank's prevailing rates.
- (c) Any demand on the Bank for payment from a foreign Currency Account shall be properly met by the Bank issuing a draft or effecting a transfer or making payment in any manner in foreign currency at the discretion of the Bank.

#### 3.3.1 Holdings and credit in foreign currency

Subject to any laws and Government exchange regulations;

- (a) Once a foreign currency deal is confirmed and the Customer has been assigned a deal reference, this will constitute a firm commitment on the part of the Customer to uphold the transaction.
- (b) The Bank will credit the counter-value of the Customer's holdings in foreign currencies to accounts with its correspondents in various countries of origin;
- (c) Such accounts are in the Bank's name but are at the Customer's risk, and the Customer accepts responsibility for ensuing consequences including but not limited to legal, fiscal or other measures affecting the accounts;
- (d) Except in the case of an assignment by the Customer to the Bank, the Customer may dispose of such funds only by means of requests for cheques or transfers in the original currencies at the Bank's option;
- (e) The Bank will convert foreign currency at the exchange rate available on the first working day subject to the Bank's standard charges to be deducted from the Customer's accounts. The timing of debits and credits to the Customer's account will depend on the currencies involved.
- (f) The Bank will accept foreign cheques on terms available upon request. Cheques payable abroad may be negotiated or collected at the Customer's expense. If cheques are returned unpaid, the Bank will debit the Customer's account even if the Bank had advised customer of payment of the cheque. Negotiation and collection of cheques shall be subject to the International Chamber of Commerce Uniform Rules for Collections.
- (g) All credits granted in foreign currencies are also subject to this clause.

#### 3.3.2 The Bank shall have no responsibility to the Customer for:

- (a) Any diminution due to taxes or imposts or depreciation deposited by the Bank in the Bank's name and subject to the Bank's control with such depository(ies) as the Bank may select; or
- (b) The unavailability of such funds if, as a result of any threatened requisition, involuntary, distraint of any character, exercise of military or usurped powers or other cause(s) beyond the Bank's control, the Bank deciding in its sole discretion and acting in good faith to close or suspend or terminate operations in Kenya.

#### 3.4. Minor Accounts

The Bank shall be entitled to act on the Instructions received from the guardian named on the Account Opening Form of a Minor's Account, until the Minor Account holder ceases to be a minor.

#### 3.5. Dormant Accounts

Any Account being subject to Specific Terms and Conditions relating to the Account deemed by the Bank to be inoperative or inactive after a given period of time shall be considered a "Dormant Account" and the Bank may freeze such an Account, require the Customer to confirm the authenticity or validity of the first Instructions or transaction reactivating the Account, suspend the payment of Interest (if any), suspend the issuance of the Statements, or charge a maintenance fee as may be determined by the Bank from time to time.

#### 4. Customer's Instructions

- (a) The Bank shall only be bound to act upon the Customer's original duly executed instructions or documents drawn or accepted in accordance with the Mandate until the Customer shall give due written notice to the contrary.

- (b) Customer may request the Bank to honour and debit to their account all cheques, drafts, bills, promissory notes, acceptances, negotiable instruments and orders drawn accepted or made out to them and carry out any instructions given in connection with their Account notwithstanding that any such debiting or carrying out may cause their Account to be overdrawn or an overdraft to be increased. Where no overdraft has been agreed or the limit of overdraft agreed has been reached, the Bank may nevertheless refuse to carry out any instructions which would result in an overdraft.
- (c) The Customer shall only give Instructions in person, in writing, by any other multi-media banking method subscribed to or where with the prior approval of the Bank, by email, telephone, facsimile or SWIFT in accordance with the Mandate in force at the time of receipt of the Instructions.
- (d) The Bank shall accept and act upon any customer request, even if the request is incomplete or ambiguous if, in its absolute discretion, the Bank believes that it can correct the incomplete or ambiguous information without reference to the Customer being necessary.
- (e) The Bank shall not be obliged to accept or to act upon any request if to do so would require access to, action by, or information from the Branch, or any Bank Subsidiary located in any jurisdiction where it is not a Banking Day at the relevant time or would cause a breach of any existing mandate facility limit or agreement between the Bank, Branch and/or Bank Subsidiary (as applicable) and the Customer. In the event that the Bank does accept or act upon any such request, the Customer shall remain liable therefore.
- (f) The Customer may cancel any Instructions given where the Bank has notified in writing that instructions have not been acted on. Where instructions have been acted on, the Bank may at its sole discretion cancel such instructions and levy a charge for canceling and/or reversing such Instructions.
- (g) Instructions received after Banking Hours or on non-Banking Day, shall be processed by the Bank on the succeeding Banking Day.
- (h) The Bank may refuse to act upon Customer Instructions, if:
- the Instructions are not clear;
  - the Bank believes Instructions did not originate from the Customer;
  - the Bank believes that in carrying out such Instructions, a law, regulation, code or other duty or obligation may be breached.
- 5. Freezing of the Account**
- The Bank may at its sole discretion and at any time refuse to accept Instructions ("Freeze the Account") of the Customer;
- if any regulator or authority in any country whatsoever or wheresoever situated requires the bank to do so, or the bank is otherwise required by the law or pursuant to agreements with any such regulator or authority to do so, or if the bank needs to comply with any requirements associated with any applicable order or sanction of such regulators or authority
  - if the bank suspects a fraud has been or is likely to be committed; or
  - if there is any dispute on the account between the Customer and the Bank or the Customer and any other person; or
  - if the Bank has doubt as to the Mandate; and
  - the Bank will not be under any obligation to institute interpleader proceedings or to take steps for determination of such dispute or doubt.
- 6. Payment of Cash**
- The Bank will only pay cash to the Customer upon the presentation of a Withdrawal Instrument signed in the presence of a teller.
  - Where a Cheque presented by any other party other than the Customer for payment of Cash, the Bank may require confirmation from the authorized signatory before the Bank makes any payment to such party;
  - Where Cash Cheques are presented by employees or other Agents of the Customer, the employee or the Agent will be positively identified before any payment.
  - Where the Authorized Signatory requests the Bank to make any payment under subparagraph (b) and (c) above, the Customer shall indemnify the Bank on a full and unqualified basis in respect of all payments made to the bearer of the Cheque whether or not the money is received by the Customer and whether or not the order for payment originated from the Customer.
- 7. Simultaneous order in excess of funds**
- Where the Bank receives several Instructions from a Customer at approximately the same time the total amount of which exceeds the available balance in the Account, the Bank may at its sole and absolute discretion act upon the Instructions in whatever order or manner it thinks fit.
- 8. Cheque Books**
- Cheque books shall be issued by the Bank at its sole and absolute discretion to a Customer on request subject to the Cheque Book Terms and Conditions set out under this paragraph and on the inside cover of the Cheque Book:
- The Bank may charge a fee for the issuance of the Cheque Book and any other additional Cheque Books issued to the Customer.
  - The Customer shall only issue cheques on (an) active account(s) which the Customer knows has sufficient funds.
  - Bank may refuse to make payment to Customer or any third party on any Cheque not drawn in accordance with terms set out below:
    - the Customer must write, date and sign the Cheque in clear handwriting using legible ink (preferably blue or black) or any other indelible writing material, in the currency of the Account for an available amount;
    - the amount set out on the Cheque must be stated both in words and in figures in a manner as to prevent any fraudulent alteration;
    - the Cheque must be signed, and countersigned where any alteration or amendment is done, by Authorized Signatory in accordance with Mandate;
    - the Customer may request the Bank to make payment of the amount drawn on Cheque, in currency notes and/or coins, by signing across the two vertical lines on the Cheque. Reference to 'opening' the Cheque shall be construed accordingly.
    - the Customer shall at the time of collection of the Cheque Book verify that the number and details of Cheques in the Cheque Books are correct, and the Bank shall not be held liable for any loss or damage (whether consequential or otherwise)
- suffered by the Customer thereafter.
- The Customer shall notify the Bank in writing immediately upon discovering that a Cheque or the Cheque Book has been lost, stolen or misplaced;
- (d) The Bank shall not be liable to the Customer and Customer shall indemnify the Bank against any claims by third party should the Bank make payment against a cheque where the Cheque is presumed to be issued by the Customer but signature, content or written instruction has been forged if:
- the Customer has facilitated such forgery;
  - there has been a previous forgery of Customer's Cheque or note of Instruction that Customer having previously not objected to;
  - the Customer has been negligent or has failed to comply with terms.
  - the forgery has been perpetrated by an employee, servant, agent, contractor or persons known to the Customer.
- (e) The Bank may refuse to honour a Cheque where the date of the Cheque is (i) more than six (6) months old ("Stale Cheque") or (ii) where the date is in the future ("Postdated Cheque").
- (f) The Bank only acts as the Customer's collecting agent and if the Cheque is lost or stolen while in the custody of the Bank even where the Bank has been negligent, the Bank shall not be held liable for any loss or damage (whether consequential or otherwise) suffered by the Customer or any other person.
- (g) The Bank may, upon prior written request by the Customer, stop payment of a Cheque provided the request is received before the Bank has made or is obliged to make payment on the Cheque. The Bank will charge the Customer an administrative fee for stopping payment of a Cheque.
- (h) Upon closure of any account the Customer will return to the Bank any remaining and uncompleted cheques relating to the account.
- 9. Deposit of cheques and other instruments**
- The Bank may accept cheques and other orders for payment from the Customer at the Customer's risk for deposit or collection. Where any Cheque or order is unpaid for any reason whatsoever (including but not limited to physical loss), the Bank may debit the Customer's Account with the amount previously credited in respect of that Cheque or order, together with interest since the date of crediting if the Account thereby is overdrawn.
  - Where cheques, other negotiable instruments or commercial documents are deposited for the credit of the Customer's Account, the amount of such deposits shall be available for withdrawal only when actually collected by the Bank.
  - Notwithstanding the provisions of Section 25 herein any money credited to the Customer in error must be repaid immediately together with applicable interest upon demand.
- 9.1. No duty on Bank to protest**
- The Bank may note and/or protest any dishonoured bills on receipt of instructions to do so in reasonable time from the Customer.
- The Bank will not be liable for any loss or damage suffered by any party if any dishonoured bill is not noted and/or protested.
- 9.2. Payment by Third Parties**
- The Bank may credit the Customer's Account with any amounts paid by third parties. All instruments such as Cheques, Drafts, Bills of Exchange and other negotiable instruments or commercial documents, tendered for collection and credit to the Customer's account are accepted by the Bank subject to the following express terms and conditions:
- Instruments not payable at the Bank are accepted by the Bank only for transmission on behalf of the Customer at the Customer's entire risk and responsibility;
  - Where the instruments are forwarded by the Bank by post or through courier services to other banks or to any Correspondent or Agent or Sub-Agent of the Bank, the Post Office and the courier, as also the Bank or the Correspondent, Agent or Sub-Agent of the Bank will be deemed to be the Customer's own "agent for collection", even though couriers, Banks, correspondents, agents or subagents are of the Bank's choice.
- 10. Standing Orders & Direct Debits**
- The Bank may permit the Customer to use automatic debits or withdrawals (such as Direct Debits or Standing Order Instructions) from the Account unless the Specific Terms and Conditions of the Account provide otherwise. All such transactions will be set up at the Bank's discretion and the Bank reserves the right to honour the Instructions subject to the available balance.
- 11. Facilities**
- The Customer may borrow money from the Bank by way of overdraft, loans, advances or other financial accommodations, whether the said accommodations are secured or not. The Customer irrevocably authorizes the Bank to debit the Customer's Account with any interests, costs and/or charges incurred in connection with any facility advanced to the Customer.
- 12. Electronic Banking Services**
- This agreement becomes effective between the Customer and the Bank at the time of submitting an application to access the Bank's Electronic Banking Services.
  - Electronic Banking Services in this agreement include Internet banking, mobile banking and card services.
  - The Customer may use equipment not limited to a computer, mobile phone, payment card or similar equipment to access the services through the internet, Wireless Application Protocol (WAP), Wireless Internet Gateway (WIG), Short Messaging System (SMS) or similar devices.
  - Services offered under this agreement include but are not limited to view Account balances, view Account details and information, view and download Account statements, transfer funds from Bank Account, carry out payments from Account, issue instructions to the Bank, view status of instructions issued, change access passwords and codes.
  - Customer will be required to subscribe to the services by filling an Application Form and consenting to the prevailing terms and conditions

- 12.6. The Bank reserves the right to approve the subscription and send the Customer the required communication Systems to access services. The Customer will be expected to keep their passwords, access codes and PINs secret at all times.
- 12.7. The Customer will be bound by the prevailing terms and conditions at the time of accessing the Electronic Banking Services
- 12.8. The Bank reserves the right to modify, replace or withdraw any services at any time, for any reason whatsoever.
- 13. Terms and Definitions**
- 13.1. Access code - means Customer password and Username
- 13.2. Card - means any card issued by the Bank at the request of the Customer for use in the manner agreed upon between the Bank and the Customer at the time of issuance.
- 13.3. Communication Systems - means the mediums and device used to access the Electronic Banking Services
- 13.4. Internet banking- means the internet enabled service offered by the Bank.
- 13.5. Mobile banking- means the mobile phone enabled service offered by the Bank.
- 13.6. PIN - means also Password, a personal identification number issued to the Customer to enable them to access their account by authenticating their identity.
- 14. Internet Banking**
- 14.1. Access and Use
- (a) The Customer will be granted access to the internet services upon successful input and upload by the Customer or nominated user of the following log-in information to the Bank's website; - Username, Password, Personal verification question (when prompted)
- (b) Upon successful input of the Customer's passwords, the Bank shall deem this as sufficient proof of the Customer's identity and grant access to the system without making any further checks or verifying actual identity and without incurring any liability to the Customer in relation to the instructions.
- 14.2. Execution of services
- (a) The Bank may subject the Customer to further checks before processing instructions.
- (b) The Customer may use the Internet banking services subject to availability of applicable electronic communication systems, the adherence to the normal working hours and, the capacity of the institutions and systems involved in the execution of the services.
- (c) The Customer must not send to the Bank instructions through the internet that are subject to deadlines. If deadlines are not met, the Customer will indemnify and hold the Bank harmless against any losses or claims as a result.
- 14.3. Customer responsibilities
- The Customer acknowledges the following risks associated with Internet banking and will take precaution to control and mitigate the same:
- (a) The latent risk of a third party secretly obtaining access to the Customer's electronic access device while the same is connected to the internet.
- (b) The risk of viruses spreading to the Customer's electronic access device upon use of the internet, networks or electronic data carriers. Security precautions through the use of Virus scanners (anti-viruses) are strongly recommended.
- (c) Customer risks by using unlicensed software from untrustworthy sources.
- (d) Customer must ensure to log-off from the internet services to end the sessions.
- 15. Mobile Banking**
- 15.1. Access and Use
- (a) The Customer will provide the Bank with one (1) designated mobile phone number to be used to access the Customer's profile
- (b) The Customer will be granted access to the Mobile banking services once the Customer has successfully inputted or uploaded the password provided by the Bank or input of a password created by the Customer.
- (c) Upon successful input of the Customer's passwords, the Bank shall deem this as sufficient proof of the Customer's identity and grant access to the system without making any further checks or verifying actual identity and without incurring any liability to the Customer in relation to the instructions.
- 15.2. Execution of services
- (a) The Bank may subject the Customer to further checks before processing their instructions
- (b) The Customer may use the Mobile banking services subject to availability of applicable electronic communication systems, adherence to the normal working hours and, the capacity of the institutions and systems involved in the execution of the services.
- (c) The Customer must not send to the Bank instructions through the mobile phone that are subject to deadlines. If deadlines are not met, the Customer will indemnify and hold the Bank harmless against any losses or claims as a result.
- (d) The Customer may use the Agent banking services offered by the Bank as per terms outlined at the agent locations. All agent banking transactions must be carried out online and the Bank shall not be responsible for any manual transactions.
- 15.3. Customer responsibilities
- The Customer acknowledges the following risks associated with Mobile banking and will take precaution to control and mitigate the same:
- (a) The latent risk of a third party secretly obtaining access to the Customer's electronic access device while the same is connected to the Mobile banking system.
- (b) The Customer risks by using unlicensed mobile phones and/or numbers from untrustworthy sources.
- (c) The Customer must ensure to log-off from the Mobile banking services to end the sessions.
- 16. Payment Card services**
- 16.1. Access and Use
- (a) Customer will be provided with a debit Card to access the linked Bank Account.
- (b) Customer will use a pin number to withdraw cash from the ATM or any other similar devices or swipe the Card at local and foreign merchant outlets to make purchases. All transactions shall be debited from the Bank Account at such rate of exchange determined by the Bank in its sole discretion.
- (c) Upon successful input of the Customer's PIN, the Bank shall deem this as sufficient proof of the Customer's identity and grant access to the system without making any further checks or verifying actual identity and without incurring any liability to the Customer in relation to the instructions.
- (d) Card is not transferable to a third party for use
- (e) Card remains the property of the Bank and upon cancellation must be surrendered on demand to the Bank.
- (f) Additional cards can be issued on the same account subject to the Account opening Mandate.
- 16.2. Execution of services
- (a) The Bank may deny withdrawals or payments to third parties if the Customer owes the Bank any outstanding amounts.
- (b) Customer will not be allowed to withdraw against uncleared funds
- (c) The Customer may use the Agent banking services offered by the Bank as per terms outlined at the agent locations. All Agent banking transactions must be carried out online and the Bank shall not be responsible for any manual transactions.
- (d) Withdrawals at the Bank's ATMs are subject to daily withdrawal limits. The same may not be subjected on ATMs that are not the Bank's.
- (e) The Customer must notify the Bank immediately if Card is lost or stolen. Any oral notification must be confirmed in writing to the Bank within 7 days from such notification. The Customer will be liable in respect to any transactions carried out prior to issuing the notification.
- (f) The Card is not a cheque guarantee card and the Cardholder shall not represent the Card as such.
- (g) The Bank may at its own discretion act on Cardholder's request for a replacement Card at the Customer's cost.
- 16.3. Customer responsibilities
- (a) A Customer is responsible for destroying PIN mailers on receipt and should avoid placing PIN in easily accessible places to avoid access and use by unauthorized third parties
- (b) Each Cardholder is jointly and severally liable in respect of each transaction undertaken by the use of the Cards.
- (c) The Bank will not be liable in any manner whatsoever in the event of a refusal by any establishment worldwide to accept or honour the Card. The Bank will also not be liable for the quality, effectiveness or merchantability of any goods supplied or services rendered by any establishment.
- 17. General Electronic banking provisions**
- 17.1. Access.
- (a) Customer will be required to register for the services prior to accessing the same.
- (b) The Bank reserves the right to refuse to provide information or accept instructions issued without giving reasons and may suspend the service and insist that the Customer provides identification.
- (c) The Customer shall not create a password using someone else's Bank details.
- 17.2. Execution.
- (a) Customer must check that all data provided in their instructions is complete and accurate before sending to the Bank and any risks of misallocation of funds as a result of wrong information shall be borne by the Customer.
- (b) Customer instructions to the Bank will be subject to the Account Mandate maintained in Bank systems, type of Account and type of instructions issued.
- (c) The Bank may at its absolute discretion only revoke Customer instructions that have not already been executed.
- (d) Confirmation of the Bank on receipt of instructions will not serve as confirmation of execution of the instructions. Customer should not resend instructions without checking their statements or contacting the Bank's Call Centre.
- (e) Customer will not be allowed to effect a transaction that causes the Account balance of the Customer to go below zero or an overdraft facility approved amount or the authorized limits maintained in the system.
- 17.3. Security.
- (a) The Customer must change any one-time passwords sent by the Bank to a password only known to them.
- (b) The Customer should avoid storing access codes in computers and other devices used to access the services. The Customer must report any compromise of their access codes without delay by contacting the Bank's Call Centre or Branches. The Customer must not disclose their access code to any Bank staff for whatever reason.
- (c) The Customer must notify the Bank of any fraud, unauthorised access or other irregularities on their Accounts or Systems.
- (d) Once the Customer notifies the Bank to disable their access codes, the Bank may: -
- (i) Reject any instructions received after that notification;
- (ii) Suspend the processing of all instructions not yet executed;
- (iii) Deactivate the access code without further notice;



- (e) The Customer shall at their own expense maintain in safe and operating order their hardware, software, phone, fax and other communication systems at their own expense.  
The Customer shall obtain third party services, licenses and consents required where necessary at their own expense to access or use the System.
- (f) necessary at their own expense to access or use the System.

#### 17.4. Fees

- (a) Prevailing fees and charges will apply to the services
- (b) The Bank shall be entitled and authorized to debit the Customer's Account with any fees applicable to transactions effected as a result of the Customer's instructions.

#### 18. Interest

- (a) Interest shall only be payable on the credit balance in an interest earning Account and shall be calculated at such rate as the Bank may determine from time to time. Interest (if any) will be paid and credited to the Account as specified in the Terms and Conditions relating to the Account.
- (b) Interest payable shall be gross and any tax payable by the Bank from the interest shall be debited from the Customer's Account.
- (c) The Bank will charge additional Interest at the Bank's prevailing rates where the Customer has failed to make payment of any amount due to the Bank.

#### 19. Right of Lien

- (a) When the Customer is indebted to the Bank, the Bank shall have a general lien over all Property of the Customer in the Bank's possession charged to secure payment of any money whether or not that money has been repaid.
- (b) Where Customer is indebted in circumstances giving the Bank a right of set off, all securities as set out in Section 19 (a) hereof are held as security for the debt.
- (c) The Bank will give the Customer notice in writing that if an accrued debt is not paid within a stipulated period of time, the Bank may, without further notice to the Customer, realize sufficient relief of the Customer's Property under lien to discharge the debt and the Customer constitutes the Bank as their Attorney for the purpose of conducting the sale, giving title to the assets sold and all other necessary matters. Any sum remaining after such a transaction will be held for the Customer subject to these Terms.
- (d) The Bank is under no obligation in respect of any sale under Section 19(c) other than for that done in bad faith ("mala fides").

#### 20. Right of set-off

All operations between the Bank and the Customer shall be considered and treated as a single integral and indivisible account, and the Bank shall (without prejudice to the generality of the foregoing) have the right (but not the obligation) to close and set-off any account in the name of the Customer against any such Account or in that of any establishment of which the Customer is sole proprietor or vice versa.

#### 21. Banker's Power of Attorney

- (a) The Customer hereby irrevocably appoints the Bank, its agents and successors in title as the Customer's Attorney in the event of the Bank exercising its right of Set-off to transfer, amalgamate or combine the Customer's Account with any other account.
- (b) The Customer acknowledges and agrees that the Bank as the Customer's sole Attorney in relation to all the Customer's Property held by the Bank under lien may fully exercise its powers to deal with any of the Property held by the Bank under lien.

#### 22. Communications

- 22.1. Any written communication from the Bank to the Customer, including but not limited to bills of lading, delivery orders, consignment documents, receipts, warrants and insurance policies shall be deemed to have been received by the Customer;

- (a) if delivered personally at the date and time of delivery; If
- (b) sent by post, the 5<sup>th</sup> day from the date of posting;
- (c) If sent by airmail, on the 8<sup>th</sup> day from the date of posting; If
- (d) sent by Telex, when the proper answerback is received;
- (e) If sent by email, when there is no 'sender error' received by the Bank;
- (f) If sent by SWIFT, when the acknowledged SWIFT message is received

- 22.2. Any notice, letter or communications addressed to the Bank shall be in writing or where with the prior approval of the Bank, by email, telephone, facsimile, SWIFT and/or such other means as approved and shall be addressed to the Branch Manager (where Account has been opened).

#### 22.3. Complaints

- (i) All complaints by the Customer to the Bank shall either be in writing, by email, facsimile, SWIFT and/or such other means as the Bank may approve and shall be addressed to the Branch Manager where the Account is domiciled. Where the Customer has made a complaint by telephone, the Customer must immediately thereafter express the complaint in writing.
- (ii) The Bank shall not be responsible to address any Customer complaints unless the Customer makes a written complaint to the Bank as soon as reasonably possible and in any event, within twenty-eight (28) days from the date of occurrence of the event or transaction complained of.

#### 23. Statements of Account

- (a) The Bank shall provide the Customer with a Statement on regular basis covering all transactions made in the Account for the period in question. The Bank may at the request of the Customer provide the Customer with additional Statements on the Account covering any period the Customer may desire, subject to the Customer paying to the Bank any prescribed fee and/or charges on the additional Statements.
- (b) The contents of any Statement availed to the Customer and is not objected to by the Customer and/or its agents within twenty-eight (28) days from the date of posting shall be deemed to be correct in all material respects and shall not be challenged by the Customer under any circumstances.
- (c) All Electronic Banking activities performed by the Customer once allowed access into the System will be logged until the Customer ends a session. The Bank shall maintain copies of all requests received from the Customer in applicable multi-media form. In addition, any hard copies of documentation prepared by the Bank in the process of effecting a transaction as per the Customer's requests will be maintained. The Bank's copy records shall be conclusive evidence of the fact of receipt or non-receipt of a

request and of the contents of such request are prima facie proof that a transaction or payment was made with the Customer's authority.

- (d) The Bank shall not be liable for any damage resulting from losses, delays, misunderstandings, duplications, or any other irregularities due to transmission of any communication whether to or from the Customer, the Bank or any third party, by telephone, delivery, post, facsimile, e-mail, telegraph, SWIFT or any other means of communication.

#### 24. Tariff of Charges

- (a) The Bank is entitled to be paid by the Customer and may debit the Account with the following:

- (i) all initial set up fees and/or monthly subscription fees for any Services provided in addition to transaction charges as advised by the Bank from time to time. The Bank may in its sole discretion revise these charges and fees and may also in its sole discretion waive the initial set up fees and/or the monthly subscription fees or a portion thereof.
- (ii) all expenses incurred by the Bank in acting upon the instructions of and for the benefit of the Customer;
- (iii) any tax chargeable upon any sums payable and any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of any Service provided by the Bank.
- (iv) any interest (including default interest (if any) on any Account which is overdrawn or in excess of the Bank's approved limit, on any loan or credit facility granted by the Bank to the Customer from time to time, at a per annum rate to be determined by the Bank at its own discretion in accordance with the Bank's usual mode for determining the interest and such interest and default interest (if any) shall be calculated on daily balances and charged to the Account in accordance with the Bank's usual practice;
- (v) any legal and/or professional fees and all other fees, costs and expenses incurred by the Bank in obtaining any legal, professional and/or other technical advice in connection with the Account or in connection with the investigation, review of any information provided by the Customer or in the preparation, negotiation and perfection of any documents relating to any of the Customer's credit facilities and/or any other dealings with the Bank and/or on the advice of its legal advisers to compromise or settle any claim arising out of the actions of the Agent and/or the Appointed Attorney in relation to the operation of the Account;
- (vi) all processing, agency, commitment or arrangement fees or commission or any other charges at such rates, at such times and in such manner as the Bank may at its sole discretion determine from time to time in accordance with the Tariff;
- (b) The Customer shall indemnify the Bank forthwith upon demand for any of the Costs incurred by the Bank in taking any steps to obtain repayment of the Account.
- (c) The Customer hereby acknowledges and agrees that the default interest payable by the Customer (if any) to the Bank represent a reasonable pre-estimate of the loss to be suffered by the Bank in funding the default of the Customer.

#### 25. Accounting and Transmission Errors

- (a) The Bank reserves the right without any prior notice to the Customer, to debit any amounts credited by the Bank to the Account in error and/or reverse any entry made to the Account in error. The Bank does not accept any responsibility for the consequences of such reversals.
- (b) Any amount credited by the Bank to the Account in error and utilized by the Customer must be repaid to the Bank together with the applicable interest within seven days of demand by the Bank. After the demand period, the default interest rate is applicable on such amounts credited in error.
- (c) The instructions made by the Bank shall be at the Customer's expense and neither the Bank, its correspondent banks nor any of their employees shall be held liable for any mutilation, corruption, duplication, erasure, omission through any cables, airlines, courier services, electronic, telephonic, or facsimile systems howsoever occurring.

#### Confidentiality and Disclosure

- 26.1 The Bank may not without the Customer's prior consent, disclose any information about the Customer or any other person relating to the Account, to any other third party other than in the following circumstances:

- (a) To any regulator or tax authority where necessary to establish any tax liabilities in any jurisdiction pursuant to orders, agreements with regulators or authorities or otherwise;
- (b) To any court, tribunal or authority (including an authority investigating an offence) having jurisdiction over the customer or the bank;
- (c) To any financial institution with which the customer has or may have any dealings for the purpose of conducting credit checks including in the form of bank references;
- (d) To any credit reference bureau or credit reference agency, rating agency, insure or insurance broker;
- (e) To the banks professional advisers, service providers or independent contractors, or agents of such parties, such as debt collection agencies, data processing firms and or correspondent banks, who are under a duty of confidentiality;
- (f) to the banks agents, associates or subsidiary companies for the purpose of lending and/or with the aim of developing new products and improving services and benefits to its customers with the understanding that information will be kept confidential;
- (g) To anyone to whom the bank may transfer its rights to under this agreement;
- (h) To anyone where the bank is legally or contractually compelled to or it is in the public's interest to disclose such information, whether they are located in or outside Kenya

- 26.2 the customer hereby expressly consents to the recipients of the information disclosed by the bank, using and transferring the information where it is necessary to monitor the banks compliance with the law, agreements with any regulators or any authority.

- 26.3 The customer hereby expressly waives all rights to make claims or complaints under any law imposing a duty of confidentiality on the bank following any of the disclosures authorized herein by the customer.

## 27. Assignment or Transfer

- (a) The Bank may without requiring the consent of the Customer, assign and/or transfer all or any of its rights, benefits and obligations under these Terms and Conditions to any person at any time.
- (b) The Customer shall not be entitled without the Bank's prior written consent to assign and/or transfer all or any of its rights, benefits and obligations under these Terms and Conditions to any person at any time.

## 28. Variation of Relationship & Closure of the Account

- (a) The Customer may close the Account subject to the settlement of any payment of any outstanding liabilities due to the Bank.
- (b) The Bank may at any time, upon giving notice to the Customer, terminate or vary its business relationship with the Customer but without prejudice to the generality of the foregoing the Bank may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine.
- (c) If the Customer terminates the subscription to Electronic Banking, the Bank may continue to make electronic bill payments, transfer of funds and other transactions that the Customer would have previously authorized until such time as the Bank will have had a reasonable opportunity to act on the Customer's notice of termination.
- (d) The Bank shall not be held liable for loss or damage (whether consequential or otherwise) suffered by the Customer as a result of the Account being closed or the terms of the relationship between the Bank and the Customer being varied and it shall be the responsibility of the Customer to notify others regarding such termination or variation.

## 29. Intellectual Property Rights

- (a) The Customer acknowledges that the intellectual property rights of the Bank's System (and any amendments or enhancements thereto from time to time) and all associated documentation that the Bank provides to the Customer through the System or otherwise are vested either in the Bank or in other persons from whom the Bank has a right to use and to sub-license the System and/or the said documentation. The Customer shall not infringe any such intellectual property rights.
- (b) The Customer shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of the Bank.

## 30. Indemnity

The Customer hereby agrees to indemnify the Bank, on a full and unqualified basis, for any loss or damage suffered by the Bank or any other person that the Bank has had any dealings arising as a result of:

- (a) all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank in connection with or arising from circumstance within the Customer's control and the consequences of any breach by the Customer of any term or condition hereof.
- (b) any demands, claims, actions, losses, damages or costs unless such arose as a direct consequence of the gross negligence or willful misconduct of the Bank or any of its employees.
- (c) The Customer shall indemnify and keep indemnified the Bank against the following: -
  - (i) All demands, claims, actions, losses and damages of whatever nature brought against the Bank arising from the Bank's reliance on any incorrect, illegible, incomplete or inaccurate information or data contained in any request received and acted upon by the Bank.
  - (ii) Any loss or damage that may arise from the Customer's use, misuse, abuse or possession of any third-party software.
  - (iii) Any actions and transactions by such Customer's Agents that may result in damage or loss to the Bank.
  - (iv) Any unauthorized access to the Customer's accounts or any breach of security or any destruction or accessing of the Customer's data or any destruction or theft of or damage to any of the Customer's equipment.
  - (v) Any loss or damage occasioned by the failure of the Customer to adhere to any terms and conditions applicable to the service and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third-party facilities or systems or the inability of a third party to process a transaction.
- (d) any transaction or activity either as a result of the instructions or otherwise being deemed to be found or suspected as being an illegal, fraudulent or suspicious transaction or activity;
- (e) any costs (including any Taxes, legal or statutory fees (billed on a client basis) incurred by the Bank (or any other person on the Bank's behalf) in connection with expenses as stated under, but not limited to Section 24 herein.

## 31. Exclusion Liability

- (a) Where the Customer has requested, and the Bank has agreed to act upon any Customer instructions, whether in written form or through electronic communication, the Customer hereby acknowledges and agrees that:
  - (i) such communications sent by use of telephone, electronic mail and facsimile format are not secure and communications sent by use of electronic communication and their attachments (if any) which may contain privileged and confidential information intended solely for the use of the Customer may by error be received by a non-intended recipient;
  - (ii) the Bank shall not be responsible for verifying the identity of the recipient of any e-mail and facsimile and shall not be responsible if any communications sent by electronic communication intended for the Customer are received by a non-intended recipient; and
  - (iii) the Bank shall not be responsible for ensuring the delivery or reconfirming the receipt of any communications to or from the Customer and the Customer hereby acknowledges that any review, dissemination, distribution, printing, or copying of any communication by any other party is outside the control of the Bank who shall also not be liable should such communications be sent out to the wrong person;
  - (iv) the Bank shall not be responsible for any losses caused as a result of or in connection with any laws or regulations of countries where transactions are settled or cleared and/or any exchange control restrictions or other governmental regulations (for example anti- money laundering regulations) which are imposed from time to time unless caused by the Bank's breach of such laws and regulations;

- (b) The Bank shall not be responsible for any losses suffered by the Customer by reason of:
  - (i) The shut-down or delay in the availability of a Customer's mobile service provider, internet service provider or other third-party provider
  - (ii) Any viruses, trojan horses, worms, logic software, other bombs or other similar programs or routines (including hacking) affecting any website, electronic channels or the Customer's own facilities
  - (iii) Incomplete messaging or sending of instructions
- (c) The Bank will not be liable for any losses or damage suffered by the Customer as a result of delay, failure and/or refusal by the Bank to action a request in time or at all in any one or more of the following circumstances (as the case may be):
  - (i) If the Customer does not have enough funds in the Account;
  - (ii) If the payment or transfer would result in the Customer's approved overdraft facility limit being exceeded;
  - (iii) If the Customer does not authorize a bill payment in good enough time for the payment to be made and properly credited by the payee (the Customer's counter-party) by the time it is due;
  - (iv) If the System or the Customer's facilities were not working properly;
  - (v) If the money in the Customer's Account is subject to legal process court order or other encumbrance restricting the payment or transfer;
  - (vi) If the Customer does not give proper or complete instructions or the Customer does not follow the procedures applicable in requesting a payment or a transfer;
  - (vii) If the Bank has reason to believe that the Customer or someone else is using the service for fraudulent or illegal purposes;
  - (viii) If a payment or a transfer request would consist of money deposited in a form or by a method that has not yet made the money available for withdrawal;
  - (ix) If the payment or transfer request is in contradiction or conflict with other existing account agreements with the Customer.
- (d) If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage suffered by the Customer as a result of such failure on the part of the payee.
- (e) The Bank shall not be liable to the Customer for any loss or damage (whether consequential or otherwise) in respect of:
  - (i) any payment made on any Withdrawal Instrument to the Customer, any Authorized Signatory, any Agent or any other third party.
  - (ii) the validity, authenticity, regularity or value of documents including but not limited to bills of lading, consignment notes, receipts, warrants, insurance policies, delivery orders or any documents relating to the Securities.
- (f) Circumstances not within the Bank's reasonable Control.
- (g) The Bank shall not be responsible or liable for any loss suffered by the Customer should the Service be interfered with or be unavailable by reason of:
  - (i) any industrial action;
  - (ii) the failure of any of the Customer's facilities; or
  - (iii) any other circumstances including, without limitation, or error, interruption, delay or non-availability of the System, equipment failure, loss of power and failure of any public or private telecommunications system.
  - (iv) "Force Majeure" including but not limited to fire, strike, insurrection or riot, floods, embargo, theft or burglary, communication failure, inordinate delays in transmission of communication or transportation, terrorism, war or the requirements of any civil or military authority.
- (h) Under no circumstances shall the Bank be liable to the Customer for any loss of profit or anticipated savings or for any indirect or consequential loss of whatever kind, howsoever caused, arising out of or in connection with the Service.

## 32. Variation and Amendment

- (a) The Bank may vary and amend these Terms and Conditions at any time upon issuance of a 30-day notice subject to the requirements of any statute in addition to publishing Specific Terms and Conditions in relation to any new products and/or services (or otherwise) that may be offered by the Bank.
  - (b) Notification of any such variation and/or amendment shall be given to the Customer either in writing or by publication thereof of by such means as the Bank may select. Any variation and/or amendment so effected shall be binding on the Customer.
- (c) Any additional and/or updated instructions on use of the Bank's Electronic Banking Services can be found on the Bank's website [www.dtbAfrica.com](http://www.dtbAfrica.com)

## 33. Severability of Terms

Each of the provisions of these Terms and Conditions is severable and distinct from the others and, if at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired

## 34. Indulgences

No indulgence by the Bank in respect of any of its rights hereunder shall operate as a waiver of the Bank's rights nor shall it constitute a novation thereof.

## 35. Governing Law & Jurisdiction

The Application Form, these Terms Conditions and any other documents required to be executed by the Customer in connection with the Account, shall be governed by and construed in accordance with the laws of the Republic of Kenya and the Customer submits to the non-exclusive jurisdiction of the Kenya courts.

## 36. Intention to Be Bound & Independent Legal Advice

- (a) The Customer, the signatories and any Agent (and every other person connected to the Account) has executed these Terms and Conditions with the intention to be legally bound by the contents herein.
- (b) The Customer hereby agrees and confirms that they have read and understood these Terms and Conditions and have sought and obtained independent legal and financial advice regarding the legal, tax, financial or other implication arising under these Terms and Conditions.

Name:

Signature:

Date:

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2. \_\_\_\_\_

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