

▶ Corporate Account
General Terms & Conditions

www.cbagroup.com



GENERAL TERMS AND CONDITIONS

The relationship between Commercial Bank of Africa Limited (the "Bank") and the Customer is governed by the Laws of Kenya, except where the following general terms and conditions apply and subject to any further agreement in writing. Specific terms apply to specific accounts and products and are available to the Customer upon request.

1. DEFINITIONS AND INTERPRETATION

In these general terms and conditions, unless the context otherwise requires:

- a. "Banking Day" means a day on which the counters of the Branch and/or the Bank Subsidiary (as applicable) are open for the transaction of ordinary business;
- b. "Branch" means a branch or branches of the Bank which may from time to time be specified from the Bank to the Customer;
- c. "Bank Account" means the Customer's current savings and deposit account(s) and term and call deposit accounts (as the case may be) with the Bank;
- d. "The Customer" means the Customer, its successors and shall further include firms, corporations and other associations or bodies of persons whether or not incorporated and any Government, state or agency of a state howsoever and whatsoever related to the Customer, whether or not any of the foregoing has any separate legal personality. Where the 'Customer' is more than one person, references to the 'Customer' includes all and/or any of such persons and the obligations of the Customer shall be joint and several.
- e. "Customer group" means the Customer and where the Customer is a company, its holding company (if any) and their respective subsidiaries from time to time.
- f. "Deposit account" means any Bank account with a credit balance.
- g. "Nominated User/s" means the representative or representatives of the Customer authorized by the Customer to hold and change the Password/PIN and hence to access the System and Service on behalf of the Customer;
- h. "Password/PIN" means the secret password known only to the Customer or the Customer's Nominated User for the access to the System. The Customer or its nominated user may change the password/PIN at will;
- i. "Request" means a request or instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is, by virtue or subparagraph 15.5 (a), authorized to act;
- j. "Service" means such of the electronic Banking services as the Customer may from time to time subscribe for;
- k. "System" means the electronic Banking and communications software enabling the Customer to communicate with the Bank for the purpose of the Service. The System and Service will for the purpose of this agreement be accessed through the internet via the Bank's website, www.cbagroup.com; or via the Customer's mobile phone
- l. "Subscription" means subscription for the Service by a Customer;
- m. Words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- n. "Person" includes a body of persons, corporate or incorporate;
- o. Words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- p. The Customer shall not assign the benefit of this agreement or any rights arising hereunder without the prior written consent of the Bank.
- q. No waiver by the Bank of any breach by the Customer of any of the terms of this agreement shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer.
- r. This agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. For the avoidance

of doubt, nothing herein shall vary, discharge or in any other way act or prejudice any security granted by the Customer or any third party in favor of the Bank in relation to any obligations of the Customer which may arise if any request from the Customer hereunder is acted upon by the Bank.

- s. All warranties, representations, indemnities, covenants and obligations made or entered into by more than one person are so made or entered into jointly and severally.

2. CUSTOMER'S INSTRUCTIONS

The Customer requests the Bank to honor and to debit to its account all cheques, drafts, bills, promissory notes, acceptances, negotiable instruments and orders to pay drawn or accepted or made out to it, and to carry out any instructions it may give in connection with its account notwithstanding whether any relevant account is in credit or in debit or that any such debiting or carrying out may cause his 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 there being an overdraft or any overdraft greater than that agreed, as the case may be.

3. AUTHORIZED SIGNATORIES

- a. The Customer will give the Bank in an acceptable form the specimen signature of every person authorized to operate the account. The Bank is under no duty to enquire or ascertain into the purpose for which an authorized signatory exercises his powers on behalf of or otherwise for the Customer. The Bank accepts no obligation to any person (including any authorized signatory) other than the Customer who is authorized to operate the account or whose concurrence or signature is necessary for the operation of the account.
- b. The Customer undertakes to maintain the confidentiality of its ID and Password under clause 15 together with all other information and materials of any nature supplied to it by the Bank in relation to this agreement. The Customer shall be fully liable to the Bank for any breach of the provisions of this paragraph.

4. SET-OFF

- a. The Bank may, without notice, set off against any account indebtedness of the Customer:
 - i) Any other account whether current, loan, savings or any other type:
 - ii) Any time or other deposit
- b. The Bank may, upon notice to the Customer, set off its account against any other account or indebtedness in respect of which the Customer is liable, notwithstanding that some other person may also be liable in respect thereof.

5. SIMULTANEOUS ORDER IN EXCESS OF FUNDS

Where the Bank receives several orders at approximately the same time the total amount of which exceeds the available assets of or the credit granted to the Customer, the Bank may honor the orders in whatever manner it thinks fit within the limits of the funds available.

6. BANK CHARGES AND EXPENSE INTEREST

Bank is entitled to be paid by the Customer and may debit the Customer (without reference to the Customer) with:

- a. Interest
Unless otherwise agreed in writing, interest on overdrawn accounts including additional interest, loan accounts or any other facility granted by the Bank, at a rate which may be different for different accounts. The Bank need not notify the Customer of any change in the rate of interest

charged.

b. Legal charges

Advocate and client costs incurred by the Bank in obtaining legal advice in connection with the Customers accounts and dealings with the Bank or incurred by the Bank in any legal arbitration or other proceedings arising out of any dealings in respect of the Customer.

c. Commission

Commission at such rates and at such time or times as the Bank decides, with discretion to charge different rates for different accounts.

d. Other Charges and Expenses

In addition to the debits authorized by sub-clauses (a), (b) and (c) of this Clause, all other fees, expenses and charges including but not limited to ledger fees, disbursements for cheque books, postages, cables, telephone calls, communication costs, taxes, duties, impositions and expenses incurred in complying for the Customers requests.

e. Interest Set Up Cost

The Customer shall pay to the Bank an initial set up fee and a monthly subscription fee for the Service in addition to transaction charges applicable to various transaction types as advised by the Bank from time to time. The Bank may in its sole discretion revise these charges and fees after giving the Customer fourteen (14) days notice of such revision.

7. STATEMENTS DEEMED APPROVED IF NOT OBJECTED TO WITHIN 28 DAYS

The contents of any statements of account or statement of any other nature which has been sent by the Bank to the Customer, and to which the Customer has not objected within twenty eight (28) days of receipt thereof, shall be deemed approved by the Customer, and shall not thereafter be challenged by the Customer on any grounds whatsoever, whether loss of mandate, forged or inadequate signature or endorsement of cheques, forged alteration thereof or otherwise.

8. DELAY BY CUSTOMER IN LODGING COMPLAINTS

The Bank is not responsible for any matter unless the Customer has made a written complaint to the Bank as soon as reasonable possible.

9. PAYMENTS BY THIRD PARTIES

The Bank may credit the Customer with amounts paid by third parties.

10. DEPOSIT OF CHEQUES

- a. All cheques or other orders for payment of whatsoever nature are accepted for deposit or collection at the risk of the Customer. Where any cheque or order is unpaid for any reason whatsoever (including but not limited to physical loss), the Bank may debit the Customer with the amount previously credited (taking into account any exchange fluctuation where relevant) in respect of that cheque or order, together with interest since the date of crediting if the account thereby is overdrawn.
- b. Before making any withdrawal, the Customer must allow a sufficient time to elapse after making any deposit (even of cash) in order to enable the Bank to carry out the necessary book keeping operations to credit the account. For the purposes of this sub-section sufficient time shall be deemed to be one complete business day in relation to deposits of cleared funds, and four (4) clear working days in relation to deposit of cheques and Bankers drafts.
- c. Notwithstanding the provisions of clause 9 herein, any money credited to the Customer in error must be repaid immediately together with applicable interest upon demand.

11. NO DUTY ON BANK TO PROTEST

The Bank is not liable for any loss or damage suffered by any party if any dishonored bill is not noted or protested or both. The Bank will nevertheless

endeavor to cause dishonored bills to be noted or protested or both, provided that it receives instructions to do so in reasonable time.

12. REPAYMENT OF OVERDRAWN ACCOUNTS

The Bank is entitled to demand the immediate repayment with interest of any account that is overdrawn.

13. EXPRESS AUTHORITY

- a. The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's account(s) to other Banks, financial institutions, credit card companies, or credit finance bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Bank.
- b. The Bank may from time to time release (without notifying the Customer) any information relating to any of the Customers accounts to any statutory authority, including the Kenya Revenue Authority, which has the legal power to demand for such information.
- c. The Customer acknowledges that any information released by the Bank under this clause may be used by the recipient to assess applications for credit by the Customer or by related parties, for debt tracing and for fraud prevention purposes. The Customer also acknowledges that such information being released to the recipients may affect the Customers ability to maintain existing facilities with lenders or credit card companies. The Customer shall have no claim whatsoever against the Bank for any loss, damage, fees or expenses suffered or incurred by it in relation to the release of any information by the Bank under this clause.

14. LIEN

- a. When the Customer is indebted to the Bank, the Bank has a general lien over all property of the Customer in the Banks possession, including, but not limited to, cash, goods, securities or valuables deposited for safe custody or as security, cheques presented for repayment, bills and any other property movable or immovable charged to secure payment of any money whether or not that money has been repaid, and also over all property over which by the general law the Bank has a lien.
- b. Where the Customer is indebted in circumstances giving the Bank a right of set off, all securities as set out in paragraph (a) hereof are held as security for the debt.
- c. Whereas the repayments for any debt may be accepted from the Customer at any branch, the same shall for purposes of this agreement be deemed payable at the head office of the Bank in Nairobi.
- d. The Bank may at any time give the Customer notice in writing that if an accrued debt is not paid within a stated period being not less than fourteen (14) days after the receipt of the Customer of the notice then the Bank may without further notice realize sufficient relief of the Customer's assets to discharge the debt.
- e. If the debt is not discharged within the time allowed, the Bank may realize sufficient relief of the Customers assets to discharge the debt, and the Customer constitutes the Bank its 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 and conditions.
- f. The Bank is under no obligation in respect of any sale under sub clause (e) other than malafides.
- g. Funds in foreign currencies which are subject to the Banks lien may be set off against debts or realized at the rate of exchange current at the date of set-off or realization. The Bank accepts no liability for any loss caused by

exchange fluctuations.

- h. Deposits including those held in foreign currencies and for a given period of time may be set off against debts notwithstanding that the time period of the deposit has not expired.

15. PROVISION OF INTERNET BANKING SERVICES

15.1 As part of this agreement the Bank may provide certain banking services electronically via the internet to the Customer subject to the terms and conditions set out in this clause

15.2 Subscriptions by Customer

- a. In consideration of the Customer paying to the Bank the fees and charges set out in paragraph 6 above, the Bank shall provide to the Customer certain electronic banking services subject to and in accordance with these terms and conditions.
- b. The Customer will subscribe for the Bank's electronic banking services by completing a subscription form provided by the Bank specifying in such subscription form the electronic banking services that the Customer intends to use. The Subscription shall be subject to the Bank's approval.
- c. Once the Bank has approved the Subscription and the Customer has been maintained as an authorized user of the Service, the Customer will provide to the System a unique identification (ID) and a Password known only to the Customer, and then only shall the Customer be afforded use of the Service. The ID and Password will form a unique link to each specific Customer's access profile(s).
- d. Further additional electronic banking services may be provided to the Customer by the Bank, provided the Customer completes a subscription form in respect of such additional services and the Bank reserves the right to modify, replace or withdraw any Service at any time, for any reason whatsoever, without prior notice to the Customer.
- e. The Customer's subscription for and use of the Service shall be subject to these terms and conditions and any current, savings, term, call and overdraft accounts agreements between the Bank and the Customer and the Bank's General Terms and Conditions signed by the Customer.

15.3 The services related to the Customer's profile(s)

- a. The Bank will maintain the website, www.cbagroup.com, (hereinafter referred to as the "site"), to provide the Customer with information about the Bank services and products, including the internet banking service, and to facilitate communication with the Bank. The use of the site for purposes of the service by the Customer constitutes agreement to all such terms and conditions contained in the whole of this agreement.
- b. Upon entering into this agreement the Customer will provide to the system a unique identification (or ID) and a secret password known only to the Customer, and then only shall the Customer be afforded use of the service. The ID and password will form a unique link to each specific Customer's access profile(s).
- c. Further services and profiles may be added from time to time by the Bank and the Bank reserves the right to modify, replace or withdraw any service and/or profile at any time, for any reason whatsoever, without prior notice to the Customer.

15.4 Customer's Facilities and Customer's Responsibilities

- a. The Customer shall at its own expense provide and maintain in safe and efficient operating order such hardware, software and other facilities (including access to any public telecommunications systems), and any communications network ("the Facilities") necessary for the purpose of accessing the system and the service.
- b. The Customer shall be responsible for ensuring proper performance of the Facilities including any losses or delays that may be caused by the Facilities. The Bank shall neither be responsible for any errors or

failures caused by any malfunction of the Customer Facilities, and nor shall the Bank be responsible for any computer virus or related problems that may be associated with the use of the system, the service and the Facilities .

- c. The Customer shall be responsible for charges due to the internet and the Bank shall not be responsible for losses or delays caused by any such service provider.
- d. The Customer shall obtain all licenses and consents necessary to have access to and use of the system and shall ensure that all persons it allows to have access to the system shall comply with all laws and regulations applicable to the use of the system and follow all instructions, procedures and terms contained in this agreement and any document provided by the Bank concerning the use of the system and the service.
- e. The Customer shall prevent any unauthorized access to or use of the system and service by way of keeping its ID and Password a secret at all times. The Customers shall ensure that its ID and Password do not become known or come into possession of any unauthorized person.
- f. The Customer shall take all reasonable precautions to detect any unauthorized use of the system and service. To that end, the Customer shall ensure that all communications from the Bank are examined and checked by and on behalf of the Customer as soon as practicable after receipt by the Customer in such a way that any unauthorized use of and access to the system will be detected.
- g. The Customer shall immediately inform the Bank by telephone with a written confirmation sent the same day in the event that:
 - i. The Customer has reason to believe that any password used by the Customer to gain access to the service and to communicate with the Bank is or may be known to any person not authorized to know the same and/or has been compromised; and/or
 - ii. The Customer has reason to believe that unauthorized use of the service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- h. The Customer shall not send or attempt to send any request to the Bank through the system if the Customer has reason to believe that for any reason such request may not be received by the Bank or may not be received accurately and intelligibly.
 - i. The Customer shall at all times follow the security procedures notified to the Customer by the Bank from time to time or such other procedures as may be applicable to the service from time to time and specifically those that may be contained in the Bank's internet website. The Customer acknowledges that any failure on the part of the Customer to follow the recommended security procedures may result in a breach of the Customer's profile confidentiality and may lead to unauthorized transactions in accounts linked to the Customer's service description with the Bank. In particular, the Customer shall ensure that the service is not used or requests are not performed by anyone rather than a person authorized to do so.
- j. The Customer shall not at any time operate or use the service in any manner that may be prejudicial to the Bank.
- k. The Customer understands and accepts that it may link a business account or an account requiring multiple signatures to the Customer's profile on this service only if the Customer has submitted to the Bank an original written standing mandate to the effect that the Bank is authorized to process transactions not exceeding a certain specified amount, and it will be the responsibility of the Customer to ensure that no unauthorized persons have access to these accounts.
- l. The Bank shall be entitled and authorized to debit the Customers accounts with the amounts of the transactions effected via the service

as well as debit the Customer's account with the amount of any fees applicable to the service from time to time.

15.5 Irrevocable authority of the Bank

- a. The Bank is irrevocably authorized by the Customer to act on all requests received by the Bank from the Customer (or purportedly from the Customer) through the system and to hold the Customer liable thereof, notwithstanding that any such requests are not authorized by the Customer or are not in accordance with any existing mandates given by the Customer. If the Customer requests the Bank to cancel any transaction or instruction after a request has been received by the Bank from the Customer, the Bank may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- b. The Bank shall be entitled to accept and to act upon any request, even if that request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, the Bank believes that it can correct the incomplete or ambiguous information in the request without reference to the Customer being necessary.
- c. The Bank shall not be obliged to accept or to act upon request if to do so would require access to, action by, or information from the branch, or any subsidiary or the Bank located in any jurisdiction where it is not a Banking day at the relevant time when such access, action or information is required or would cause a breach of any existing mandate facility limit or agreement between the Bank, the branch and/or any subsidiary of the Bank (as applicable) and the Customer. In the event that the Bank does not accept or act upon any such request, the Customer shall remain liable thereof.
- d. In the event of any conflict between any terms of any request from the Customer and the terms of this agreement, the terms of this agreement shall prevail.

15.6 Limits of Internet Banking Transactions

- a. The Customer may transfer or effect a payment for any amount subject to the provision on sub paragraph 15.4 (j) of this agreement, as long as the transaction does not cause the balance in the deposit account to be less than zero unless the Customer has either an overdraft facility for the affected deposit account or a term deposit account pledged with the Bank to cover excesses that may arise in the affected deposit account from time to time in which case the two accounts are linked in the system for that purpose.
- b. If the Customer has an overdraft facility or a term deposit account linked to the payment deposit account, the transfers and/or electronic bill payments using the service should not exceed the approved overdraft facility or the pledged term deposit amount.

15.7 Records of Transactions and Customer Rights to this Information

- a. All 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 electronic form. In addition, any hard copies of documentation prepared by the Bank in the process of selecting a transaction as per the Customer requests will be maintained. As between the Customer and the Bank, the Banks copy records shall be conclusive evidence of the fact of receipt or non-receipt of a request and of the contents of such request.
- b. The Customer will be entitled to a monthly statement covering all the service transactions. The Customer will also get a reference number upon successful completion of each transfer or electronic bill payment, except for recurring or standing requests for payments/transfers. A copy of any documentation including the monthly statements provided to the Customer by the Bank which indicates that a transaction was effected through the service shall be conclusive evidence of such a transaction.

15.8. Exclusion of Liability

15.8.1 Circumstances not within the Bank's control

The Bank shall not be responsible for any loss suffered by the Customer should the service be interfered with or be unavailable by reason of (a) any industrial action, (b) the failure of the Customer's facilities, or (c) any other circumstances whatsoever not reasonably within the Banks control including, without limitation, force majeure or error, interruption, delay or non-availability of the system, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

15.8.2 Electronic Bill Payments and transfer of Funds

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 act on a request in time or at all in the following circumstances (as the case may be):-

- a. If the Customer does not have enough funds in the deposit account;
- b. If the payment or transfer would over the Customer's overdraft facility limit;
- c. 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.
- d. If the system or the Customer's facilities were not working properly;
- e. If circumstances beyond the Bank's control including those specified in sub paragraph 15.8.1 prevent the Bank from making a payment or transfer.
- f. If the money in the Customer's account is subject to legal process or other encumbrance restricting the payment or transfer;
- g. If the Customer does not give proper or complete instructions for the payment or transfer or the Customer does not follow the procedures in this or other applicable agreement with the Bank for requesting payment or transfer;
- h. If the Bank has reason to believe that the Customer or someone else is using the service for fraudulent or illegal purposes.
- i. 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;
- j. If the payment or transfer request is in contradiction with other existing account agreements with the Customer.

15.8.3. 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.

15.8.4. If for any reason other than a reason mentioned in subparagraph 15.8.1, the service is interfered with or unavailable, the Banks sole liability under this agreement in respect thereof shall be to re-establish the service as soon as reasonably practicable or, at the Banks option, to provide to the Customer alternative Banking facilities which need not be electronic facilities.

15.8.5. Save as provided in subparagraph 15.8.4, the Bank shall not be liable to the Customer for any interference with or unavailability of the service, howsoever caused.

15.8.6. 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 even where the possibility of such loss or damage is notified to the Bank.

15.8.7. All warranties and obligations implied by the law are hereby excluded to the fullest extent permitted by the law.

16. GENERAL PROVISIONS

- 16.1 The Customer shall not assign any benefit or any rights arising hereunder without the prior written consent on confirmation from the Bank.
- 16.2 No waiver by the Bank of any breach by the Customer of any of the terms and conditions hereof shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer.
- 16.3 The Customer acknowledges:
- That it has not relied any representation, warranty, promises, statement or opinion or other inducement made or given by or on behalf of or purportedly by or on behalf of the Bank in deciding to; and that
 - No person has or has authority on behalf of the Bank whether before, on or after the subscription to make or give any such representation, warranty, promise, statement or opinion or other inducement to the Customer or to enter into any collateral or side agreement of any kind with the Customer in connection with the Service.
- 16.4 The terms and conditions hereof supersede all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way out or prejudice any security granted by the Customer or any third party in favour of the Bank in relation to any obligations of the Customer which may arise if any Request from the Customer hereunder is acted upon by the Bank.
- 16.5 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions of these terms and conditions.
- 16.6 Any notice required to be given in writing under these terms and conditions shall be sufficiently served if sent by registered post, stamped and properly addressed;
- To the Manager of the Branch or of the Bank at the address of the Branch or the Bank set out in Part II of the Schedule, if to be served on the Bank; or
 - To the Customer at the address given for the Customer Part I of the Schedule to this Agreement, if to be served on the Customer and shall be deemed to have been served five Banking days after posting.

17. CONFIDENTIALITY AND DISCLOSURE

- 17.1 The Customer undertakes to maintain strict confidentiality of its ID and Password/PIN and any other information and materials of any nature supplied to it by the Bank in relation to the Service. The Customer agrees to notify its agents, employees and/or sub-contractors of the provisions of this paragraph and to impose this confidentiality requirement on its agents, employees and/or sub-contractors entering into separate agreements, if necessary. The Customer shall be fully liable to the Bank for any breach of the provisions of this paragraph by itself, its employees, agents and/or sub-contractors.
- 17.2 The Customer hereby agrees that, if necessary for the provision of the Service, the Bank may disclose information about the Customer to any member of the Bank Group or the Customer Group.
- 17.3 The Customer also hereby agrees that the Bank may disclose information about the Customer to third parties' in the following circumstances:-
- Where such disclosure is necessary in order for the Bank to act on a request.
 - In order to comply with any law regulation or court order. If the Bank has to obey an order for information from an authorized government body, the Bank shall, to the extent required by law, notify the Customer

before giving out the information.

- Disclosure to the Bank's agents, sub-contractors, auditors, attorneys and other professional service providers to the extent required in the normal course of their duties.
- Disclosure to a licensed credit reference agency the services of whom the Bank may be subscribed to.
- If it involves a claim by or against the Bank in respect of an item deposited or drawn against the Customer's account.
- If the Customer authorizes the disclosure.

17.4 FOREIGN ACCOUNT TAX COMPLIANCE ACT

- The Customer hereby expressly acknowledges and agrees that pursuant to the Foreign Account Tax Compliance Act (FATCA) enacted under the Laws of the United States of America (US), the Bank is or may be required for US citizens or residents to disclose and report certain information concerning his/her/their/its account to the relevant authorities including but not limited to the US Internal Revenue Service ("US Authorities"). Additionally FATCA may require the Bank to deduct, withhold and remit such taxes or monies to the US Authorities as may be directed by them from time to time
- The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's account(s) to the US Authorities and to deduct, withhold and remit such monies or taxes as may be directed by the US Authorities to enable the Bank to fulfil its obligations under FATCA and other enabling US statutes.
- The Customer hereby irrevocably releases and fully discharges CBA, its directors, officers, employees, servants and agents and related parties from any and all claims, liabilities, damages, loss or expense arising from CBA disclosing and reporting any such information concerning the Customer's account (s) to the US Authorities and/or deducting, withholding and remitting any monies to the US Authorities.

18. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that the intellectual property rights in the system (and any amendments 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. 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.

19. INDEMNITY

In consideration of the Bank complying with the Customer's instructions in relation to any of his accounts with the Bank or the service, the Customer undertakes to indemnify the Bank and hold it harmless against any loss, charge, damage, expense, fee or claim which the Bank suffers or incurs or sustains thereby and the Customer absolves the Bank from all liability for loss or damage which the Customer may sustain from the Bank acting on the Customer's instructions or request or in accordance with terms and conditions. The indemnity shall also cover the following:

- All demands, claims, actions, losses and damages of whatever nature may be brought against the Bank or which it may suffer or incur arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's

control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any request received by the Bank.

- b. Any loss or damage that may arise from the Customer's use, misuse abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.
- c. Any authorized access to the Customer's accounts or any breach of security or any destruction or theft of or damage to any of the Customer's equipment.
- d. Any loss or damage occasioned by the failure by 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 or any loss which may be incurred by the Bank as a consequence of any breach by the Customer of the terms of this agreement.
- e. Any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss caused by (a), (b) and/or (c) of subparagraph 15.8.1 where the particular circumstance is within the Customer's control.

20. VARIATION AND TERMINATION OF RELATIONSHIP

- 20.1. The Bank may at any time, upon notice to the Customer, terminate or vary its business relationship with the Customer and in particular 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, save that for the purposes of paragraph 15 of this agreement, the Internet Banking Service provided by the Bank to the Customer may be terminated at any time by the Bank giving the Customer one calendar month's notice, PROVIDED that in the event of any change in any law or the application thereof, or any other event which, in the judgment of the Bank, would have the effect of prejudicing the Bank should it continue with the rendering of the Internet Banking Service to the Customer, the Bank shall be entitled to terminate the agreement at any time without notice to the Customer.
- 20.2. The Bank may at any time freeze any account of the Customer if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt.

21. CHEQUE BOOKS

Cheque books are issued subject to the following conditions:-

- a. The Customer agrees to look after and use any cheque book and any cheque form with the utmost care.
- b. The Customer further agrees to ensure:-
 - i) That all uncompleted cheque forms are kept in safe custody at all times;
 - ii) That the Bank is informed immediately upon discovery by the Customer that any cheque book or any cheque form has been stolen, lost or mislaid;
 - iii) That any person preparing the cheque is authorized to do so;
 - iv) That any cheque is prepared and signed in ink or other inedible writing materials;
 - v) That the amount of any cheque is written as near as possible to the

left side of the form to prevent any addition of unauthorized letters or figures;

- vi) That any cheque and any alteration is signed by an authorized signatory;
- vii) That no uncompleted cheque is given to any stranger or other person when the Customer does not have reasonable grounds believing him to be trustworthy.
- c. The Customer is advised that;
 - i) Where possible any uncompleted cheque should be crossed with two distinct lines in order to make the cheque negotiable only through a Bank: and
 - ii) If it is known with which Bank the beneficiary of a cheque keeps his account then the name of the Bank should be added to the crossing in order to make the cheque negotiable only through that particular Bank.
- d. On the receipt of a written notice by the Customer to stop payment of a cheque, the Bank will record the notice.
- e. Upon closure of any account the Customer will return to the Bank any remaining uncompleted cheque forms relating to the account.

22. DRAWING OF CASH

The Bank may refuse payment of any cheque not drawn on the Bank's cheque form in the manner specified by the Bank in these terms and conditions.

- a. The Bank will pay cash to the Customer where the cheque is signed in the presence of the teller, by an authorized signatory(ies).
- b. Where a cash cheque is presented not by the Customer but by a third party, the Bank may require confirmation from the Customer or from a representative of the Customer before it makes payment. Where cash cheques are presented by employees or other known agents of the Customer the following steps will be taken;
 - i) The employee or agent will be identified beforehand in a manner acceptable to the Bank.
 - ii) A limit on such drawings will be agreed in writing with the Bank, and until such limit is agreed no drawings will be allowed under this paragraph.
- c. Where the Customer requests that payments be made under paragraph (b) the Customer indemnifies the Bank in respect of all payments made to the presenter of the cheque whether or not the money was received by the Customer and whether or not the order for payment was in fact the order of the Customer.
- 22.1. The Bank shall not be liable in any way to the Customer for having honored, even negligently, any cheque the signature or the content of which has been forged or any payment instruction from the Customer or his authorized signatory, which instruction was given fraudulently if;
 - a. The Customer has facilitated such forgery either by failure to comply with any of the conditions contained in clause 19 hereof or by negligence in any other way; or
 - b. There has been a previous forgery of any cheque of the Customer without the Customer having objected to the first statement of accounts which debited such cheque as provided by clause 7 hereof or
 - c. The forgery has been perpetrated by an employee, servant, agent, contractor, authorized signatory or persons known to the Customer.
- 22.2. The Bank may redebit unpaid bills of exchange, cheques and similar instruments which it has discounted or credited. Until settlement of any debit balance created by any such redebit, the Bank may also claim against any party to the negotiable instrument under the applicable law. In no case is the Bank committed to protest within the prescribed time for non payment or to exercise possible rights of recourse.

If, by virtue of bills of exchange, cheques or other instruments drawn on foreign countries, recourse has been exercised against the Bank within the prescribed time in these countries, the loss or damage eventually resulting therefrom will be borne by the holder of the account who remitted the instruments to the Bank.

23. VALIDITY OF DOCUMENTS

The Bank is not responsible for the authenticity, validity, regularity or value of documents including but not limited to the bills of lading, delivery order, consignment documents, receipts, warrants and insurance policies.

24. HOLDINGS AND CREDIT IN FOREIGN CURRENCY

Subject to all laws and Government regulations applicable:-

- a. 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;
- b. Such accounts are in the Bank's name but are at the Customer's risk, and the Customer accepts responsibility for any ensuing consequences including but not limited to consequences of legal, fiscal or other measures affecting the account;
- c. 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;
- d. All credits granted in foreign currencies are also subject to this clause.

25. ACCOUNTS IN FOREIGN CURRENCY

Subject to all laws and government Regulations, where an account is in foreign currency any demand on the Bank for payment from such an account is properly met by the Bank issuing draft or effecting a transfer or making payment in any manner in foreign currency at the discretion of the Bank.

26. APPLICATION TO ALL ACCOUNTS

These Terms and Conditions shall apply to each and every account now or subsequently opened in the name of the Customer.

27. COMMUNICATION

- a. All notices, statements, letters and other communications from the Bank may be sent to the last address given by the Customer, and the date on the Bank's copy of any such communication is taken to be the date of such dispatch in the absence of proof to the contrary.
- b. Any written communication from the Bank to the Customer including but not limited to any notices given pursuant to these terms and conditions shall be deemed to have been received by the Customer, if delivered then at the date and time of delivery, and if sent by post it shall be sufficient to prove that the letter containing the communication was properly stamped and addressed.
- c. The Customer has no claim on the Bank for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the Customer, the Bank or any third party, by delivery, post, e-mail, fax, telegraph, telephone, telex or any other means of communication.

28. MARGINAL NOTES

Marginal notes and headings contained on these General Terms and Conditions are for information purposes only and are not conclusive as to the contents of the clauses they relate to.

29. AMENDMENTS

Any addition or alteration to these General Terms and Conditions may be made from time to time by the Bank and of which notice has been given to the Customer shall be binding upon the Customer as fully as if the same were contained in these Terms and Conditions.

30. GOVERNING LAW

- a. These Terms and conditions shall be governed by and shall be construed according to the Laws of Kenya.
- b. The Bank and Customer hereby submit to the non-exclusive jurisdiction of the Courts of Kenya and the Bank shall be at liberty to enforce a judgment anywhere in any jurisdiction where the Customer carries on business or has any asset.

TO COMMERCIAL BANK OF AFRICA LIMITED

I/We have read the conditions necessary to run and open an account with the Commercial Bank of Africa Limited (CBA). I/We agree that this account shall be solely at the discretion of CBA and hereby agree to indemnify CBA at my/our cost against any loss or claim arising out of the account being closed by CBA without notice due to unsatisfactory performance. I/We confirm that the information given on this form is true and accept that the operations of the account will be subject to the General Terms and Conditions, which we have read and understood.

DIRECTORS / AUTHORIZED SIGNATURE(S)

1.	_____ Signed	_____ Name
	_____ Date	
2.	_____ Signed	_____ Name
	_____ Date	
3.	_____ Signed	_____ Name
	_____ Date	

Affix company seal (Where applicable)



