

Date last amended: 19 October 2020

## INTRODUCTION

These General Terms and Conditions as set-out herein and Product, Channel and Account Specific Terms and Conditions (“Terms and Conditions”) form part of the Client’s Agreement with the Bank for the use of its Foreign Exchange facilities. The Terms and Conditions set out in this document are applicable to all Foreign Exchange Transactions entered into between the Bank and a Client. The Client must read these Terms and Conditions carefully. It contains important information about the Client’s and the Bank’s legal rights and duties. The Client must communicate with the Bank via one or more of the following portals: the Bank’s website, email [forex@fnb.co.za](mailto:forex@fnb.co.za), telephone 0860 1 FOREX (36739) if the Client does not understand any part of these Terms and Conditions. These Terms and Conditions must be read in conjunction with other terms and conditions that apply to the Client’s banking relationship with the Bank.

### 1. INTERPRETATION

- 1.1. The headnotes to the clauses are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2. Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:
  - 1.2.1. **Authorised Dealer** means for the purposes of these terms and conditions, a person authorised by the SARB to deal in Foreign Currency;
  - 1.2.2. **Authorised Dealer Manual** means the Currency and Exchanges Manual for Authorised Dealers issued by the SARB to Authorised Dealers under the powers delegated by the Minister of Finance. The Authorised Dealer Manual contains the permissions, conditions and limits applicable to transactions in foreign exchange that may be undertaken by Authorised Dealers and/or on behalf of their clients, as well as details of related administrative responsibilities;
  - 1.2.3. **Authorised Person** means the person who is duly authorised to instruct the Bank and includes any person designated by the Client as its authorised representative;
  - 1.2.4. **After Hours** means hours outside of Business Hours;
  - 1.2.5. **Agreement** means the Transaction application form completed by the Client, these Terms and Conditions, the Transaction confirmation and any other documents specifically incorporated herein by reference and/or related to the services and/or products provided by the Bank;
  - 1.2.6. **Bank** means FNB and/or RMB as the context requires;
  - 1.2.7. **Bank’s website** means either FNB website [www.fnb.co.za](http://www.fnb.co.za), the RMB website [www.rmb.co.za](http://www.rmb.co.za) or the RMB Private Bank website [www.rmbprivatebank.co.za](http://www.rmbprivatebank.co.za);
  - 1.2.8. **Balance of payments (BOP) Category Codes** means the codes that identify and categorise in numeric format the nature and purpose of a cross border transaction for SARB reporting purposes;
  - 1.2.9. **Business Day** means any working day as applicable in the country in which a Transaction may be processed;
  - 1.2.10. **Business Hours** means from 07h30 - 17h30 Monday to Thursday and 07h30 - 17h00 Friday, South African time. These hours differ from Currency cut-off times;
  - 1.2.11. **C.F.C Account (Global Business Account)** means the Customer Foreign Currency Account conducted by Resident entities with an Authorised Dealer, under the provisions of the Authorised Dealer Manual or in terms of a specific authority granted by the SARB. Funds standing to the credit of such an account are deemed to be local assets denominated in a Foreign Currency;
  - 1.2.12. **Channels** means one of the ways in which a Client communicates how their Transactions should be processed by the Bank, e.g. online, telephone, in writing, branch, relationship manager or private banker;
  - 1.2.13. **CMA** means the Common Monetary Area, which consists of Lesotho, Namibia, South Africa and Swaziland;
  - 1.2.14. **Client** means a natural or legal entity that enters into a Transaction with the Bank;

- 1.2.15. **Currency cut-off times** means the time of day when processing of the applicable Foreign currency Transactions will cease. Any Transaction where the Trade Date occurs after the relevant currency-cut off time will be processed on the following Business day during Business Hours. Each Foreign currency has its own cut-off time.
- 1.2.16. **Data** means all financial and other information which is transferred between the Parties pursuant to the provision of the services whether in electronic format or hard copy;
- 1.2.17. **Data Subjects** means the Client's customers, employees, agents and any other individuals or entities whose Personal Information or other Data the Client provides to the Bank for purposes of the services;
- 1.2.18. **Discretionary Allowance or Single Discretionary Allowance (SDA)** means the specified amount set by the SARB that a Resident (natural persons) 18 years and older may avail of per calendar year;
- 1.2.19. **Emigrant** means a Resident (natural persons only) who is leaving or has left South Africa to take up permanent residence or has been granted permanent residence in another country outside the CMA;
- 1.2.20. **Emigrant Blocked Account** means the account of an emigrant from the CMA to which exchange control restrictions have been applied;
- 1.2.21. **Exchange Control Regulations** means the Exchange Control Regulations, 1961 as promulgated by Government Notice R.1111 of 1961-12-01, as amended from time to time;
- 1.2.22. **F.C.A Account (Global Account)** means a Foreign Currency Account conducted by Residents (natural persons only) and Non-Residents with Authorised Dealers, in terms of the provisions of the Authorised Dealer Manual or a specific authority granted by the SARB;
- 1.2.23. **FEC** means a forward exchange contract also known as an outright contract;
- 1.2.24. **FNB** means First National Bank a division of FRB;
- 1.2.25. **Foreign Bank Account** means a Foreign Currency bank account conducted by Residents with a bank outside the CMA in terms of the provisions of the Authorised Dealer Manual or a specific authority granted by the SARB;
- 1.2.26. **Foreign Cheque** means a cheque payable in a Foreign Currency;
- 1.2.27. **Foreign Currency** means any currency other than currency that is legal tender in South Africa, but excludes the currencies of Lesotho, Namibia and Swaziland. Foreign Currency is deemed to include bank notes any bill of exchange, letter of credit, money order, postal order, promissory note, Rand to or from a Non-Resident Rand Account, or any other instrument of foreign exchange;
- 1.2.28. **Foreign Investment Allowance** means an annual (calendar year) amount as approved by the SARB that a Resident can invest offshore;
- 1.2.29. **Foreign Nationals** means natural persons from countries outside the CMA who are temporarily resident in South Africa, excluding those on holiday or business visits;
- 1.2.30. **FRB** means FirstRand Bank Limited Reg. No. 1929/001225/06, an Authorised Financial Services and Credit Provider (NCRCP20), a public company with limited liability duly incorporated in accordance with the company laws of South Africa;
- 1.2.31. **Future Dated Payments** means a Transaction with a Value Date not more than 365 (three hundred and sixty-five) days from the date the Transaction is captured by the Client on one of the Bank's electronic channels. All Future Dated Payments will be warehoused by Bank and will only be processed 2 (two) Business Days prior to the Value Date;
- 1.2.32. **Immigrants** means natural persons who immigrated from countries outside the CMA with the firm intention of taking up or having taken up permanent residence in South Africa;
- 1.2.33. **ISDA** means the International Swaps and Derivative Association Inc.;
- 1.2.34. **LIBOR** means the London Inter Bank Offer Rate as published on Reuters as being the ICE Benchmark Administration Limited's (or any other person which takes over the administration of that rate) interest settlement rate;
- 1.2.35. **Limit Order** means a firm instruction from a Client to the Bank to monitor and automatically execute a Spot Transaction when the order level is reached taking into account the Liquidity available. All orders are good till cancelled, expired or executed but can only be left open for a maximum period of 12 (twelve) months. All Limit Orders will be executed on a best effort basis subject to the Liquidity available to the Bank;
- 1.2.36. **Limit Order Fill** means the Client's Limit Order has been executed for the full amount specified by the Limit Order instruction;

- 1.2.37. **Liquidity** means the availability of pricing and the depth of pricing available in the market to execute the Limit Order (i.e. the size of the transaction at each price level);
- 1.2.38. **Margin** means a sales margin added to the wholesale rate;
- 1.2.39. **Net Asset Value** means the excess of a party's assets over its liabilities, as determined from its most recent financial statements provided that if a party's liabilities exceed its assets, its net asset value will be deemed to be zero;
- 1.2.40. **Nominated Bank Account** means the bank account selected by the Client, into which the Bank shall pay all monies due to the Client and from which the Bank may debit any amounts owed by the Client;
- 1.2.41. **Non-Resident** means a person (i.e. either a natural person or a legal entity or both as the context indicates) whose normal place of residence, domicile or registration is outside the CMA;
- 1.2.42. **Non-Resident Area** means all countries other than those included in the CMA;
- 1.2.43. **Non-Resident Account** means the account of a Non-Resident conducted in the books of an Authorised Dealer;
- 1.2.44. **Party or Parties** means either the Bank or the Client, or both, as the context indicates;
- 1.2.45. **Passenger Ticket** means a ticket issued in respect of travel arrangements, inclusive of electronically issued tickets (e tickets);
- 1.2.46. **Personal Information** means personal information as referred to in the *Protection of Personal Information Act, 2013*;
- 1.2.47. **Prime Rate** means the interest rate (percent, per annum, compounded monthly) published by the Bank from time to time as being its prime lending rate;
- 1.2.48. **Product, Channel and Account Specific Terms and Conditions** means the terms and conditions governing the respective Channels, accounts and products;
- 1.2.49. **Rand/ZAR** means the monetary unit of South Africa as defined in Section 15 of the South African Reserve Bank Act, 90 of 1989;
- 1.2.50. **Rate of exchange** means the rate at which the Bank buys or sells Foreign currency. This rate is determined by the global currency market;
- 1.2.51. **Resident** means any person (i.e. a natural person or a legal entity or both as the context indicates) who has taken up permanent residence, is domiciled or registered in South Africa. For the purpose of the Authorised Dealer Manual, this excludes any approved offshore investments held by Residents outside the CMA. However, such entities are still subject to exchange control rules and regulations;
- 1.2.52. **Resident Account** means the account of a Resident including that of a CMA resident;
- 1.2.53. **Resident Temporarily Abroad** means any Resident who has departed from South Africa to any country outside the CMA, with no intention of taking up permanent residence in another country, but excluding those Residents who are abroad on holiday or business travel;
- 1.2.54. **RMB** means Rand Merchant Bank a division of FRB;
- 1.2.55. **SARB** means the Financial Surveillance Department of the South African Reserve Bank, responsible for the administration of exchange control in terms of the delegation from the South African Treasury;
- 1.2.56. **SARS** means the South African Revenue Service;
- 1.2.57. **Slippage** means the difference between the stipulated rate of a Limit Order and the rate at which the Limit Order is transacted. Once a limit order is triggered it stays active until filled. This will be at prices available given the Liquidity at the time until the Limit Order is executed in full. Our principle of first in first filled, order size and time of day plays a major role in determining available Liquidity;
- 1.2.58. **South Africa** means the Republic of South Africa;
- 1.2.59. **Spot Rate** means the rate is booked and the Transaction is settled within 2 (two) Business Days;
- 1.2.60. **Spot Deal** means a Transaction where the Value Date is 2 (two) Business Days after the instruction date;
- 1.2.61. **SWIFT** means Society for Worldwide Interbank Financial Telecommunications, an electronic communications platform across which banks effect cross border payments;
- 1.2.62. **Settlement Date** means the agreed maturity date of a Transaction provided always that settlement must always occur on a Business Day within the prevailing cut off times for the currency that is the subject of the applicable Transaction;
- 1.2.63. **Trade Date** means a date upon which a Transaction is concluded;

- 1.2.64. **Transaction** means a currency transaction concluded between the Parties and comprising of either a spot, pre-spot, forward or swap transaction;
- 1.2.65. **Value Date** means the agreed date of settlement of a Transaction;

## 2. GENERAL

- 2.1. The Bank is an Authorised Dealer.
- 2.2. The Terms and Conditions and the Transaction confirmation form part of the Client's Agreement with the Bank.
- 2.3. **All Transactions are processed during Business hours subject to the relevant Currency cut-off time. Transactions concluded on electronic platforms outside of Business hours will only be processed during Business hours.**
- 2.4. The Bank reserves the right to amend these Terms and Conditions from time to time. A copy of the latest Terms and Conditions is available on the Bank's website or can be obtained from an FNB branch. The Client is required to read these Terms and Conditions prior to entering into a Transaction.
- 2.5. The head notes to the clauses are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 2.6. Unless inconsistent with the context, an expression which denotes any gender includes the other gender, a natural person includes a legal entity and the singular includes the plural and vice versa.
- 2.7. References to writing, written notice, written instructions and the like shall include telefax and email.
- 2.8. No indulgence given to either Party shall constitute a waiver of any of either Party's rights.
- 2.9. The Client may not cede and/or assign its rights and/or obligations in terms of any Transaction to any third party without written notification to the Bank.
- 2.10. Defined terms used in a sentence will generally have the initial letter capitalised.
- 2.11. Terms printed in **BOLD** place a strict obligation on you and should therefore be carefully read and understood.
- 2.12. If any provision of these Terms and Conditions including these disclaimers and limitations shall be unlawful or unenforceable then such provision shall fall away and shall not affect the validity and enforceability of the remaining terms or any of the Client's statutory rights which cannot be excluded by these Terms and Conditions.
- 2.13. If the inward payment presented by the Bank does not belong to the Client, it is the Client's responsibility to inform the Bank as soon as is reasonably possible that the money should be returned. Failure to advise the Bank within a reasonable time could result in fraud charges being instituted against the Client by the Bank.
- 2.13.1. If the inward payment is recalled or cancelled for whatever reason by the remitting bank on the instructions of the sender, the Bank will take whatever action is necessary to process that request including freezing the relevant funds and/or your Bank account/s and doing all such things as provided in the relevant Account Terms and Conditions and any applicable legislation;
- 2.13.2. The Bank will endeavour to process recall/cancellation requests as quickly as possible however this process is entirely dependent on the remitting bank and any other parties involved including the sender of the funds and any law enforcement agencies that may be involved in the recall/cancellation requests. **The relevant funds and/or your Bank account/s will remain frozen during this period until the recall/cancellation request has been finalised;**
- 2.13.3. The Bank will not be held liable for any damages, losses, legal actions and costs the Client may incur as a result of the Client failing to truthfully declare that the monies are not that of the Client.
- 2.13.4. The Bank reserves the right to debit the account into which the monies were incorrectly or erroneously paid with the full amount including any interest or exchange rate fluctuation losses incurred. In the event the Bank is unable to debit the account with the outstanding amount the Client will remain liable to repay the Bank the full amount including any interest or exchange rate losses.
- 2.14. The provision of Foreign Currency involves special risks which may affect the value of an order placed by virtue of fluctuation in exchange rate as a result of changes in financial markets. These changes are outside of the control of the Bank.
- 2.15. Please note that Foreign Currency availability may be subject to monetary limits (in respect of the value and quantity of the Transaction processed), Currency cut-off times, currency exchange restrictions and anti-money laundering regulations.
- 2.16. Each Transaction shall be subject to and conditional upon compliance with the Terms and Conditions and any relevant laws, including, without derogating from the generality of the foregoing, the Exchange Control Regulations, the Protection of Constitutional Democracy against Terrorism and Related Activities Act 33 of 2004, and any rulings, laws, rules, regulations

and directives of any competent authority in force at the time of entering into any Transaction with the Bank or which may come into force thereafter but be applicable to any Transaction already entered into.

- 2.17.** The onus is on the Client to ensure that all Transactions comply with relevant laws, both local and international and monetary limits.
- 2.18.** The Bank shall have no liability whatsoever in relation to any demands, claims, actions, losses, costs and damages of whatever nature the Client may suffer as a result of the Client's failure to comply with the Terms and Conditions and any related local and international rules, laws and regulations.
- 2.19.** The Bank may request the Client to provide additional information/documentation as required in terms of the Exchange Control Regulations and/or other pieces of legislation.
- 2.20.** Failure by the Client to provide the Bank with the requested documentation and information on time will result in:
- 2.20.1. The Transaction being cancelled, with all costs debited to the Client's account; and/or
- 2.20.2. A delay in processing the Client's Transaction until such time that all outstanding documentation/information has been received by the Bank. The Bank cannot be held liable for any loss incurred by the Client as a result of a delay in processing the Transaction. An administration fee will be levied and should any exchange rate loss occur the Client will be held liable for the loss.
- 2.21.** Any delay on the Client's part in providing information and documentary evidence of the Client's underlying commitment in order to obtain exchange control approval by the Settlement Date will, without exception, prevent a settlement and could result in possible costs to the Client's account and/or the Client's payment not being effected timeously, in which case the Bank will not be liable for these costs or for the Client's payment not being effected timeously.
- 2.22.** The Client is responsible for ensuring that all information supplied to the Bank is complete, correct and accurate. The Bank will not be held responsible for incorrect information supplied by the Client in respect of any Transactions.
- 2.22.1. **The Client is solely responsible for ensuring that the beneficiary account details and account numbers are correct.**
- 2.22.2. As provided for in 6.1.2 below, SWIFT processes Transactions with reference to the account number only; and
- 2.22.3. the Bank may not be able to assist in recalling or cancelling transactions processed into the incorrect account without the relevant accountholder's consent which consent must be freely given by the relevant accountholder.
- 2.23.** No Transaction will be processed unless the required application form has been fully completed and submitted and all requested information and/or documentation has been received by the Bank.
- 2.24.** The Bank may from time to time be obliged to disclose information relating to a Transaction to SARS, SARB, the Financial Intelligence Centre (FIC), local and international counterparty banks for purposes of such Client complying with its rules, regulations or other legitimate duties and by entering into the Transaction with the Bank, the Client furthermore agrees and grants consent to the Bank to make such disclosure.
- 2.25.** By undertaking a Transaction, the Client hereby consents that FRB may process (collect, use or otherwise deal with) his/her information (including processing outside of the borders of South Africa), which was voluntarily provided, for the purposes of providing services and products and requirements of the law. The Client hereby confirms that they have read and understood these General Terms and Conditions and specifically the portion relating to the processing of his/her personal information. The Client also confirms that the information provided to FRB is true, correct and current; including information about his/her residency and citizenship for local and international tax purposes, and that he/she will inform FRB if it changes. The Privacy Policy can be located on the Bank's website for more information on our privacy practices.
- 2.26.** These Terms and Conditions have been drafted with reference to the guidelines set out in the Global Foreign Exchange Code as published by the Bank of International Settlements.

### **3. EXCHANGE CONTROL REGULATIONS**

#### **3.1. General**

- 3.1.1. Foreign Currency bought by the Client may only be used for the purposes for which it has been made available.
- 3.1.2. The Client is not allowed to apply for the same Foreign Currency Transaction with another Authorised Dealer.
- 3.1.3. Foreign Currency purchased for travel purposes may not be bought more than 60 (sixty) days prior to the Client's date of departure.

- 3.1.4. Any unused Foreign Currency purchased for travel purposes must be sold to an Authorised Dealer within 30 (thirty) days of the Client's return to South Africa.
- 3.1.5. The Client is responsible for adhering to the exchange control limits as set by the SARB.
- 3.1.6. The Client is limited to having in its possession a maximum of R25, 000.00 cash in Rand when travelling outside the CMA.
- 3.1.7. Foreign Currency can only be bought by Residents of South Africa. Residents of other CMA countries may not use this service.
- 3.1.8. The Bank must report all cross-border Transactions to the SARB.
- 3.1.9. Outwards payments may in certain circumstances require supporting documents as outlined in the Authorised Dealer Manual before the transaction can be processed. The Client must contact the Foreign Exchange Advisory Team on 0860 1 FOREX should the Client require any further information in this regard.

### 3.2. **Single Discretionary Allowance (SDA)**

- 3.2.1. ***The SDA is available to be used for any legal purpose abroad as outlined in the Authorised Dealer Manual.***

## 4. EXCHANGE RATE QUOTATIONS AND ACCEPTANCE

- 4.1. The rate of exchange offered by the Bank for any Transaction is influenced by factors such as Channel used, Client profile, Transaction currency and amount, date and time the Transaction is initiated and prevailing market conditions.
- 4.2. By accepting a quote from the Bank, the Client agrees to purchase or sell the Foreign Currency at the rate quoted by the Bank and accepted by the Client and will be settled for the specified Value Date.
- 4.3. When carrying out certain Transactions through certain Channels the Client may be provided with an indicative quote which may reflect information regarding the Transaction the Client wishes to undertake.
- 4.4. **The indicative quote - the Client is provided with merely an indication of the possible rate the Client may qualify for. The Bank does not guarantee that this is the rate the Client will receive when a formal application is made and the Bank cannot be bound to the information provided in an indicative quote.**
- 4.5. The indicative quote is merely a tool to assist the Client when planning foreign exchange Transactions.
- 4.6. **UNLESS THE BANK CONFIRMS YOUR ACCEPTANCE OF A RATE OF EXCHANGE, YOU DO NOT HAVE A RATE OF EXCHANGE AND CANNOT RELY ON THE QUOTED RATE AS THE AGREED RATE OF EXCHANGE.**
- 4.7. The Bank shall under no circumstances be liable for any loss, damages, demands, claims or penalties incurred as a result of the Client's reliance on the information provided in the indicative quote.
- 4.8. When transacting on one of the Banks electronic channels, any indicative quote that is provided will only be displayed for a limited duration, with the result that the applicable rate displayed will also only be valid for the duration that the quote is displayed. Different rates may display with each enquiry and is based on a number of factors.
- 4.9. Should a Transaction in respect of Foreign Currency be entered into by a Client using any of the Bank's electronic banking Channels and the rate at which such Transaction was entered into was off-market at the time of conclusion of the Transaction, and the Bank is of the view that the off-market rate of the Transaction was as a result of a malfunction of the electronic Channel, the Bank will be entitled to reverse or amend the Transaction, as appropriate, to reflect the rate that should have applied at the time the Transaction was initiated by the Client. The Bank will accordingly notify the Client thereof and if the Transaction has already settled, the Bank will pay to the Client, or require payment from the Client, as the case may be, of the amount required to reflect the rate at which the Transaction should have been entered into.
- 4.10. Any discrepancies contained in the Transaction confirmation must be advised to the Bank in writing during Business Hours on the Trade Date referred to in the Transaction email confirmation. The Client's failure to revert to the Bank prior to the aforementioned time period will constitute the Client's agreement to the content of the Transaction email confirmation and the Terms and Conditions contained herein.

## 5. FEES AND CHARGES

- 5.1. A Margin on exchange rates, fees, charges and or commissions will be levied on all Transactions. Margins, commissions and charges are specific to the type of Transaction concluded.
- 5.2. All Transaction costs, fees and charges will be credited and debited from and to the Client's Nominated Bank Account, unless otherwise advised by the Client. It will be displayed on the Client's Nominated Bank Account transaction history and/or by a

confirmation provided by the Bank. Fee explanations, related fees, charges and penalty fees for the use of the service can be found in the pricing guide available at any FNB branch, on the Bank's website or the Client's preferred Channel.

5.2.1. If no account is specified, the Client will be obliged to advise the Bank in writing of the bank account into which payment must be made by no later than the Value Date. Failure to advise the Bank of the Client's bank account within the aforementioned timelines will entitle the Bank to:

5.2.1.1. cancel the Transaction concerned, and the Client will be liable for any loss arising as a result thereof;

5.2.1.2. take whatever action is required to ensure that settlement of the Transaction takes place (but without any obligation on the Bank to do so) which will include debiting any such amounts from any account held in the Client's name with the Bank.

5.2.2. The foregoing provisions shall not prejudice any rights the Bank may have as a result of the Client's failure to pay amounts due to the Bank.

5.3. The Bank is irrevocably authorised by the Client to debit any account held in the Client's name with the Bank and/or the Client's Nominated Bank Account, with:

5.3.1. any amount incorrectly credited to the Nominated Bank Account;

5.3.2. any amount overpaid to the Client;

5.3.3. any amount paid in error;

5.3.4. fees and charges in respect of the relevant Transaction and/or any other out of pocket expenses including VAT or similar tax which the Bank incurs in connection with maintaining and forcing the Bank's rights in respect of any Transaction;

5.3.5. any legal fees associated with the recovery of any and all sums from the Client;

5.3.6. Interest on outstanding amounts. Interest will be charged as provided in the terms and conditions that govern the Client's Nominated Bank Account. Interest is calculated from the date on which the Client should have made payment to the Bank up to and including the date on which the Client actually pays the Bank the overdue amount.

5.4. The Bank has the right where the Client is in default of any Transaction and/or where an amount was overpaid to the Client or paid in error to the Client to immediately:

5.4.1. place any of the Client's funds (credits) on hold; or

5.4.2. debit any account held in the Client's name with the Bank and/or the Client's Nominated Bank Account with the amount in question; or

5.4.3. freeze or close the Client's account; or

5.4.4. set-off any outstanding amounts that are due and payable against funds (credits) available in the Client's accounts held with the Bank, in accordance with the set-off provision.

5.5. The authorisations granted to the Bank above shall not preclude the Bank from any other remedy available to it whether in terms of these Terms and Conditions, any other terms and conditions governing the Bank/Client relationship or by law.

## 6. SWIFT

6.1. All Transactions are processed over the SWIFT network according to the following rules:

6.1.1. SWIFT processes Transactions according to the beneficiary account number provided in the SWIFT Transaction message **ONLY** and can only verify that the account number provided is a valid account number.

6.1.2. **SWIFT does NOT verify the beneficiary account name with the beneficiary account number.**

6.1.3. In the event of a conflict between a Nominated account provided to the Bank and a beneficiary account stated in a SWIFT Transaction message, Settlement of the Transaction will be to the beneficiary account as provided in the SWIFT Transaction message.

6.1.4. The processing of SWIFT Transactions takes approximately 2 (two) Business Days.

6.1.5. In the event of a Transaction being cancelled or recalled, the Bank cannot guarantee that same will be successful despite the recall or cancellation instruction being received within the 2 (two) Business Days period referred to in 6.1.4.

## 7. DEALING AND DERIVATIVES

### 7.1. Dealing

7.1.1. Dealing involves the buying and selling of Foreign Currency.

#### 7.1.2. Pre-spot, Spot, Forward (outright):

- 7.1.2.1. All foreign exchange dealing is governed by Exchange Control Regulations and it is the Client's responsibility to ensure that they act in accordance with the Exchange Control Regulations and Authorised Dealer Manual before entering into a Transaction;
- 7.1.2.2. Foreign exchange is quoted on a bid and offer rate based on the specified Settlement Date;
- 7.1.2.3. General Market practice is to establish deals for value of a Spot Deal;
- 7.1.2.4. The Bank endeavours to process Transactions sooner than a Spot Deal, i.e. processing a Transaction on the same day or the next Business Day, this is dependent on the type of Transaction, time of day and currencies involved;
- 7.1.2.5. Future Dated Payments will be processed 2 (two) Business Days prior to the Value Date at which time all required supporting documentation will be vetted and the Spot Deal will be booked and processed without any confirmation required by the Client;
- 7.1.2.6. Qualifying Clients are able to deal in FEC and derivative instruments provided that the Client has a pre-settlement credit line with the Bank and has met the Exchange Control Regulation requirements required to deal in FEC and derivative instruments;
- 7.1.2.7. In terms of the Authorised Dealers Manual, a FEC may be sold to Residents subject to the FEC being required to cover a firm and ascertainable foreign exchange commitment, due to a Non-Resident arising from a Transaction that is either permissible in terms of the Exchange Control Regulations, or in respect of which a specific authority has been granted by the SARB;
- 7.1.2.8. A FEC that is shorter than 12 (twelve) months (when originally entered into), does not require supporting documents at time of establishment, however, at the time of pay away, supporting documentation must be provided. These contracts may be actively managed by entering and exiting the foreign exchange market to manage possible losses arising from adverse movements in foreign exchange rates;
- 7.1.2.9. A FEC that is longer than 12 (twelve) months requires documents to be presented to the Bank within a period of 14 days of conclusion of the Transaction;
- 7.1.2.10. A firm and ascertainable foreign exchange commitment can only be confirmed by furnishing one or more of the following documents to an Authorised Dealer: purchase order; pro forma invoice; copy of letter of credit; order confirmation and/or original invoice;
- 7.1.2.11. It should be noted that the documents referred to above must be presented to the Client's preferred Channel, within the prescribed period after the establishment of the FEC. Any delay on your part in providing documentary evidence of your underlying commitment in order to obtain exchange control approval by the Settlement Date will, without exception, prevent a settlement and could result in possible costs for your account and/or settlement of your Transaction not being effected timeously;
- 7.1.2.12. Applications for drawing under the FEC must be advised to the Bank 2 (two) Business Days in advance, and due to Exchange Control Regulations, a FEC cannot fall past its due date;
- 7.1.2.13. The Bank is obligated to cancel any and all Transactions not settled by the Settlement Date and the Client shall be liable for any costs incurred by the Bank as a result thereof.

#### 7.2. Foreign Exchange Derivatives

- 7.2.1. Derivative transactions are governed by the definitions and provisions contained in the 1998 Foreign Exchange and Currency Option Transaction Definitions (as amended from time to time), as published by ISDA, the Emerging Markets Traders Association, and the Foreign Exchange Committee. In the event of any inconsistencies between those definitions and the confirmation provided by the Bank, the terms of the confirmation will prevail.
- 7.2.1.1. Each Party will be deemed to represent to the other Party on the date on which it enters into a Transaction that (absent a written agreement between the Parties that expressly imposes affirmative obligations to the contrary for that Transaction):
  - 7.2.1.1.1. Non-Reliance. It is acting for its own independent decision to enter into a Transaction and as to whether the Transaction is appropriate or proper based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Party as investment advice or a recommendation to enter into a Transaction. It being understood that



information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into a Transaction. No communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of a Transaction.

- 7.2.1.1.2. Assessment and Understanding. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of a Transaction. It is also capable of assuming, and assumes, the risks of a Transaction.

### **7.3. Notice Regarding Foreign Exchange Option Contracts**

- 7.3.1. The Parties agree to make the following amendments to any option contracts which are entered into by and between you and the Bank as follows:
- 7.3.1.1. The Client may instruct the Bank to extend option contracts and any extension will be subject to credit approval granted by the Bank's applicable credit committee and the rollover of any option contract will also be subject to maturity restrictions as imposed by the Bank's credit committee;
- 7.3.1.2. the Bank will not extend, restructure or enter into an option contract where the option strike price is more than 10% (ten percent) differential from the prevailing spot exchange rate, without the necessary cash flows being exchanged to bring it back within the required 10%(ten percent) differential from the prevailing spot exchange rate limit;
- 7.3.1.3. the Bank will not execute new option contracts or roll existing option contracts with you where the mark-to-market valuation is greater than the available pre-settlement credit line, unless suitable collateral is placed or pledged;
- 7.3.1.4. The option contract products available are limited to the Bank's approved products as communicated in the facility letter concluded between you and the Bank. The products the Bank makes available to a Client may be amended from time to time at the sole discretion of the Bank;
- 7.3.1.5. The outright purchase of option contracts by a Client is permitted.
- 7.3.2. Currency option contract products are available to a Client at the sole discretion of the Bank and the Bank may at any time review its decision to make option contract products available to a Client.
- 7.3.3. A Client needs to be pre-approved in order to be able to trade currency option contract products.
- 7.3.4. Any negative mark to market on a Client's option contract will negatively affect the limit available on a Client's pre-settlement facility.

### **7.4. Cancellations, Partial Payments, Early Draw-downs and Extension of Transactions**

- 7.4.1. In the event of the Client wanting to:
- 7.4.1.1. cancel a Transaction in whole or in part;
- 7.4.1.2. effect partial settlement of a Transaction;
- 7.4.1.3. make an early drawdown; and/or
- 7.4.1.4. extend the Value Date of a Transaction;
- 7.4.2. The Client must instruct the Bank, at least 2 (two) Business Days prior to the Value Date or the proposed earlier Value Date of the Transaction, as the case may be, to effect such variation.
- 7.4.3. Such instructions shall be by way of the Client's preferred Channel of communication with the Bank.
- 7.4.4. In the event of any loss or profit arising as a result of a request to vary the initial Transaction instructions as contemplated above and as determined by the Bank in accordance with its standard procedures, such loss will be for the Client's account and will be payable at the time of such variation, and/or on the originally agreed Value Date of the Transaction. The Client authorises the Bank to debit the Client's Nominated Bank Account, or any account held in the Client's name with the Bank, with the amount of the loss incurred due to the variation contemplated above.
- 7.4.5. The Bank will not be responsible for any costs, claims, damages and loss incurred as a result of a reversal and/or cancellation of a Transaction. The Client authorises the Bank to debit any fees and costs incurred from the Nominated Bank Account or any other account held in the Client's name with the Bank.

### **7.5. After Hours Dealing**

- 7.5.1. The Bank will in its sole and absolute discretion make After Hours dealing available, subject to the following provisions:
- 7.5.2. A limited number of currencies will be available for After Hours dealing and the availability of these currencies are subject to change without notice; and
- 7.5.3. The Bank does not guarantee the availability of exchange rates and the Liquidity thereof.

## 7.6. Limit Orders

### 7.6.1. General

- 7.6.1.1. Limit Orders is the buying and selling of Foreign Currency at a specified rate, through Spot Deals which must remain valid for a maximum period of 12 (twelve) months of an order being placed and are executed by the Bank on a best efforts basis.
- 7.6.1.2. Limit Orders are triggered at levels before being filled at available Liquidity. The Bank uses widely accepted market rates as well as that of major banks to determine trigger levels. A Client needs to take Margin into account when placing orders.
- 7.6.1.3. The Bank may prevent the placing of orders too close to prevailing Spot Rates.
- 7.6.1.4. In the event of large market moves past the agreed order price, the Limit Order will take place at the specified price depending on the direction of market rate movements and depending on Liquidity at said level. If there is no Liquidity at the order price then the order will execute at the next available price and Slippage could apply:
  - 7.6.1.4.1. On a Limit Order Fill, the resulting Transaction becomes binding and a settlement will take place on Value Date.
  - 7.6.1.4.2. The Client may make multiple amendments; however, the Client will be responsible for the cost incurred in respect of each amendment.

### 7.6.2. Cancellations of Limit Orders

- 7.6.2.1. In the event of the Client wanting to cancel a Limit Order application:
  - 7.6.2.1.1. It shall instruct the Bank prior to the Limit Order expiry date. Such instruction shall be by telephone or in writing or through the Client's preferred Channel.
  - 7.6.2.1.2. If the Limit Order has been executed and the deal has been booked the Client shall be liable for any loss or profit arising from the cancellation of the deal booked. The profit/loss will be for the account of the Client and will be payable at the time of such variation, or on the originally agreed Value Date for the Transaction, as determined by the Bank.

## 7.7. Deal Confirmation

- 7.7.1. The deal acceptance on self-service channels will serve as confirmation of a deal.
- 7.7.2. Deals executed by the Bank on behalf of a Client, i.e. by the dealing desk:
  - 7.7.2.1. All Transactions that are concluded between the Bank and the Client telephonically these calls are recorded. A confirmation in respect of each Transaction shall be made by the Bank to the Client promptly on the Trade Date;
  - 7.7.2.2. **The Bank does not provide confirmations in respect of Spot Deals unless the Client requests same.**
  - 7.7.2.3. A confirmation of a Transaction will be provided by the Bank to the Client. **A confirmation will be provided in the form of a PDF document, any confirmation provided in the CSV format is for the sole use of automation so that the confirmation can be imported into a Client's computer system for editing;**
  - 7.7.2.4. Written confirmation of the Spot Transaction resulting from a Limit Order Fill will be communicated to the Client by electronic mail in the form of a PDF document;
  - 7.7.2.5. The failure by the Bank to provide a confirmation as stated shall not invalidate the Transaction concerned;
  - 7.7.2.6. A confirmation which has been provided by the Bank shall constitute *prima facie* proof of the subject matter of the Transaction concerned unless the Client notifies the Bank in writing (which may be sent by telefax or email) or by telephone, that it disputes the confirmation as soon as possible but not later than the Business Day following receipt of such confirmation;
  - 7.7.2.7. All Derivative Transactions will either be executed under the ISDA Master Agreement terms and conditions where applicable or a long form confirmation.

## **7.8. Settlement of Transactions**

- 7.8.1. The Authorised Dealer Manual as well as the Exchange Control Regulations determines the conditions or prerequisites under which settlement of Transactions will take place. This *inter alia* requires documentary proof for substantiating the reason for payment.
- 7.8.2. Formal Standing Settlement Instructions: The Bank allows a Client to put in place a formal standing settlement instruction (SSI). A SSI for inward payments is where the Client has agreed for the Bank to process the inward SWIFT payment according to set rules without the Bank contacting the Client; and a SSI for outward payments is where the Client has a regular defined payment which the Client has authorised the Bank to make on the Client's behalf without subsequent intervention by the Client.
  - 7.8.2.1. In the event of a conflict between the account number provided in the SSI and the account number provided in the SWIFT message, the Transaction WILL settle to the account number stated in the SWIFT message.
- 7.8.3. Payments to the Client in terms of a Transaction will be made to the account specified by the Client in terms of the settlement instructions provided by the Client to the Bank and accepted by the Bank or, if no such instructions have been provided, to the account specified by the Client when the Transaction is entered into, and recorded in the confirmation, or as otherwise agreed. If no account is so specified, and accepted or recorded, and if no other arrangement has been agreed, the Client will be obliged to advise the Bank in writing of the account to which the payment must be made by no later than 2 (two) Business Days prior to the Settlement Date, and failure to do so will entitle the Bank:
  - 7.8.3.1. to cancel the Transaction concerned, and any loss or profit arising on such cancellation (as determined by the Bank in accordance with its standard procedures) will be for the account of the Client; or
  - 7.8.3.2. to take whatever action is required to ensure that settlement of the Transaction takes place (but without any obligation on the Bank to do so) which will include, but not be limited to, payment of Rand to the Client's Nominated Bank Account maintained with the Bank (if any).
  - 7.8.3.3. It's the Client's responsibility to ensure that adequate funds or limits are available for settlement of any Transaction.
  - 7.8.3.4. The foregoing shall not prejudice any rights which the Bank may have as a result of the Client's failure to pay amounts due to the Bank.

## **8. COLLECTION OF FOREIGN CURRENCY FROM THE BANK**

- 8.1. For collection at the Client's chosen FNB branch, the Bank requires the following documentation:
- 8.2. Identity Document (ID) of the person collecting the Foreign Currency:
  - 8.2.1. On collection of the Client's Foreign Currency, the Client will be required to complete and sign a confirmation of the Transaction, as provided by the relevant FNB Branch;
  - 8.2.2. RMB offers the Client the service of collection of the order of Foreign Currency by an authorised third party (if required or requested), in which case the necessary documentation must be made available by the authorised third party at the time of collection.
- 8.3. Collection at FNB branches can be done between 09h00 to 15h30 on Mondays to Fridays and 08h30 to 11h00 on Saturdays.

## **9. DELIVERY OF FOREIGN CURRENCY TO THE CLIENT**

- 9.1. The Bank also offers the service of delivery of a Client's Foreign Currency directly to the Client's business premises.
- 9.2. The Bank will co-ordinate delivery arrangements directly with the Client and advise its appointed delivery agent to carry out the delivery.
- 9.3. The delivery agent employed by the Bank to deliver a Client's Foreign Currency to the Client will contact the Client to confirm the delivery after receiving the delivery order from RMB and will advise the Client of the documentation required at the time of delivery of the Foreign Currency.
- 9.4. In the event that the Client or authorised third party is unable to produce a valid ID, passport or driver's license, the delivery agent will not hand-over the Foreign Currency to the Client or authorised third party, and shall advise the Client or authorised third party of the documentation that is outstanding. An appointment for the delivery will be rescheduled.

- 9.5. Once the Client receives the Foreign Currency (notes or cash passport or both), the Client shall sign an acknowledgement of receipt.
- 9.6. The onus is on the Client to verify the contents of the delivery.
- 9.7. By endorsing with a signature on the proof of delivery notice and all accompanying documentation, the Client certifies that the correct amount of Foreign Currency was delivered and indemnifies the Bank and the delivery agent from any and all discrepancies not noted at the time the Foreign Currency is received and counted in the presence of the delivery agent.
- 9.8. The Client reserves the right to decline to verify the Foreign Currency in the presence of the delivery agent and should the Client elect to decline to verify the Foreign Currency delivered any shortfall in the Foreign Currency delivered alleged by the Client will be for the Client's account and the Client indemnifies and holds the Bank harmless for any loss suffered as a result of any shortfall.

## 10. RECORDING

- 10.1. It is the Banks practice to record all telephone conversations with regard to Transactions. The Bank may use the recording of and/or a transcript thereof in any disputes.
- 10.2. Notwithstanding clause 9.1, the Bank has no obligation to the Client to:
  - 10.2.1. retain its practice of recording telephone conversations;
  - 10.2.2. retain such recordings for any period of time;
  - 10.2.3. make such recordings available to a Client; or
  - 10.2.4. to ensure that its recording equipment is in a working condition and any failure to have a recording for any of the reasons (or any other reason) will not give rise to an adverse inference against the Bank.

## 11. AUTHORISED PERSONS

- 11.1. If the Client provides to the Bank a list of persons who are authorised to provide, instructions, notices, requests or to acknowledge confirmations, including any third party service providers (e.g. Bloomberg, 360T etc), the Bank reserves the right to rely on such, instructions, requests, notices or acknowledgements which the Bank believes are given or made by any person who is or who is believed by the Bank to be a person who is authorised or entitled under the said list to give or make such, instructions, notices, requests or confirmations on the Client's behalf, provided that in doing so the Bank acts in good faith. The Bank shall not be required to enquire as to the authority or entitlement of any such person to give such, instructions, notices, requests or confirmations.
- 11.2. If the Client does not provide a list of the type contemplated in clause 10.1 to the Bank, the Bank is entitled to assume that any, instruction, notice, request or confirmation (whether in writing or not and however communicated to the Bank) has been properly authorised by the Client if they are given or purported to be given by an individual or person who is or purports to be and is reasonably believed by the Bank to be a director or employee of the Client, or the Client's authorised agent.

## 12. WARRANTIES

- 12.1. The Client warrants to the Bank that each Transaction shall accord with approvals or permissions granted to the Client by the SARB and that the Client shall not be in contravention of any of the rules, laws, regulations or directives in respect of any Transaction.
- 12.2. The Bank warrants that it is an Authorised Dealer.
- 12.3. In the event of the warranties made by the Client not being and remaining true and correct while any Transaction remains outstanding, the Bank will be entitled to take such action as it considers necessary to ensure that it is in or becomes in compliance with its obligations as an Authorised Dealer, which will include, but not be limited to, terminating any non-compliant Transactions in accordance with then current Exchange Control Regulations. The foregoing is without prejudice to any other rights which the Bank may have as a result of such incorrect warranty being given.
- 12.4. The Client warrants that:
  - 12.4.1. the Transactions entered into are required to cover a firm and ascertained Foreign Currency receipt or commitment (as the case may be) and that the period for which such Transactions are entered into will not extend beyond the date upon which such receipt, or commitment (as the case may be), is due.

- 12.4.2. the Authorised Person is duly authorised and has the contractual capacity to sign to enter into a Transaction. If it is found that contractual capacity does not exist, the Transaction may be cancelled, and the Client will be held liable for any losses incurred in this regard. The Bank will not be responsible for any costs, claims, damages and incidental loss incurred as a result of the cancellation of the Transaction.
- 12.4.3. to the best of the Client's knowledge, the Transaction does not contravene any local or international law, statute, rule or regulation.
- 12.4.4. the Client has read these Terms and Conditions and knows and understands the contents hereof and agrees to be bound by these Terms and Conditions.
- 12.4.5. the information furnished and documentation presented in support of this application are in all respects true and correct.
- 12.4.6. the Client will inform the Bank if any of this information changes.
- 12.4.7. the currency applied for will only be used for the specific purpose stated herein.
- 12.4.8. the Client has not applied for the same Transaction with another Authorised Dealer.
- 12.4.9. no other Foreign Currency cover exists for the obligations covered by the Transaction(s) entered into.
- 12.4.10. each Transaction shall accord with approvals or permissions granted to the Client by the SARB and that the Client shall not be in contravention of any of the rules, laws, regulations or directives applicable for the period of the Transaction.
- 12.4.11. the Client warrants that the Client's taxes are up to date. The Client will provide the Bank with the Client's original and valid tax clearance certificate when so requested or required.
- 12.4.12. the Client will not use the SDA to disguise transfers for other purposes and agrees that the gift and loan portion may only be sent to Non-Resident individuals and Residents Temporarily Abroad.
- 12.4.13. the Client has been informed that limits may be applicable to certain Transactions and the Client acknowledges that these limits will not be exceeded at the conclusion of the relevant Transaction.
- 12.4.14. the Client is aware of the fees and the Terms and Conditions that apply to the Transaction in question. and
- 12.4.15. the Client understands that information about fees and Terms and Conditions are available in the pricing guide as published on the Bank's website or from any FNB branch.

### **13. LIMITATION ON THE BANKS LIABILITY**

- 13.1.** The Bank shall make every effort to process a Transaction placed via the various Channels without any delay. However, the Client understands that delays can sometimes occur due to technical problems or matters out of the Banks control.
- 13.2.** The Bank uses reasonable care and skill in providing the products to facilitate the dealing in Foreign Currency to a Client; however, the Bank does not warrant that access to these products shall be continuous and/or error free.
- 13.3.** The Bank will not be liable to the Client or any other person for any loss or damage the Client suffers because of any one or more of the following:
  - 13.3.1. if the Bank is unable to perform any of its obligations to the Client due to the failure of any technical systems or for any other reason beyond the Bank's reasonable control including amongst other things, war, terrorism, government action, natural disaster and industrial dispute;
  - 13.3.2. for any damage to the Client's computer equipment as a result of using the website or Channels to deal in Foreign Currency; and/or
  - 13.3.3. for any claims and/or damages (including, without limitation, indirect or consequential loss, loss of profit and whether in contract or in delict) suffered by the Client or incurred from the Client's use or delay or inability to use the website or Channels to deal in Foreign Currency, however caused.
- 13.4.** The Bank's maximum liability to the Client in respect of each use of the Channels to deal in Foreign Currency shall be to refund the purchase price of the Client's order. Any delay on the Client's part in providing documentary evidence of the Client's underlying commitment in order to obtain exchange control approval by the Settlement Date will, without exception, prevent a settlement and could result in possible costs to the Client's account and/or the Client's payment not being effected timeously, in which case the Bank will not be liable for these costs or for the Client's payment not being effected timeously.

## **14. INDEMNITY**

- 14.1.** The Client specifically indemnifies the Bank against and holds it harmless from all demands, claims, actions, losses, costs and damages of whatever nature that may be brought against the Bank or that the Bank or the Client may suffer or incur arising from any unauthorised or unlawful access to the Client's accounts or data or any loss, destruction or theft of or damage to any of the Client's or the Banks data or equipment.
- 14.2.** The Client indemnifies the Bank against and holds it harmless from: any penalties or fines that apply to the Transaction or are incurred as a result of the Transaction; any claim, cost, loss, damage or actual expenses it suffers or incurs because of an act, omission and/or the Client's non-compliance.
- 14.3.** The Client understands and confirms that the Transaction may be delayed, blocked and/or cancelled for reasons that are outside of the Bank's control and the Client indemnifies the Bank against and holds it harmless from all demands, claims, actions, losses, costs and damages of whatever nature that may be brought against the Bank as a result thereof. This includes reasons such as the local or international laws or policies that apply to the Transaction.
- 14.4.** The Client indemnifies the Bank and holds it harmless from all demands, claims, actions, losses, costs and damages of whatever nature that may be brought against the Bank for any loss or damage that the Client may sustain as a result of any omissions, errors or delays in transmission, or for misinterpretation of instructions on receipt, or for any loss or damage from whatever cause, including failure to identify properly the person mentioned in the message.
- 14.4.1. The Client will hold the Bank harmless for such loss or damage, unless such loss or damage was caused by the Bank's intentional conduct or gross negligence.
- 14.4.2. The Client will furthermore hold the Bank harmless for non-receipt of funds by any recipient hereunder, where the transmission is delayed, blocked or cancelled due to inter alia: sanctions and restrictions being imposed; the instruction is incomplete, ambiguous (confusing) or contains errors.
- 14.4.3. The Client warrants that the Client is aware that the enforcement or transgression of local and foreign legislation, regulations and/or policies (including without limitation those dealing with money laundering, terrorist related activities and sanctions) in relation to a Transaction may cause the Client or third parties loss or damage and the Client hereby indemnifies and holds the Bank harmless against any claim, demand, penalty or action against the Bank that the Client or any other party may have against the Bank as a result of such enforcement or transgression.
- 14.4.4. The Bank shall under no circumstances be liable for any loss, damages, demands, claims or penalties incurred as a result of such enforcement or transgression. Any profit/loss arising from such enforcement or transgression will be for the Client's own account.
- 14.5.** The Bank shall make every effort to process orders placed via the various channels available without any delay. However, the Client understands that delays can sometimes occur due to applicable local or international laws or policies that apply to the Transaction; technical problems and/or matters out of the Bank's control and hereby holds it harmless from all demands, claims, actions, losses, costs and damages of whatever nature that may be brought against the Bank as a result thereof.

## **15. NOTICES OR DOMICILE AND COMMUNICATIONS**

- 15.1.** All notices, demands or communications intended for the Bank shall be made or given to the Bank as follows:
- 15.2.** Foreign Exchange Product House, 2nd Floor, 4 First Place, Bank City, Corner Simmonds and Pritchard Streets, Johannesburg, 2001.
- 15.3.** The Client will be deemed to have elected either its registered address or its most recent physical address (as well as its most recent telefax number) advised to the Bank, at the option of the Bank, as its address for notices etc. and as its domicilium.
- 15.4.** Any Party shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a post box number, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.
- 15.5.** A notice sent by one Party to the other shall be deemed to have been received on the same day, if delivered by hand or sent by telefax and on the fifth day after posting, if sent by prepaid registered post.
- 15.6.** Notwithstanding anything to the contrary contained herein a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

## 16. BREACH

### 16.1. Should:

- 16.1.1. either Party fail, for any reason whatsoever, to make payment due by it under any Transaction, within 2 (two) Business Days after notice of that non-payment has been given to it by the other Party; or
- 16.1.2. either Party breach any other provision of a Transaction and fail to remedy such breach within 7 (seven) days after receipt of a notice from the other Party requiring it to do so; or
- 16.1.3. either party be placed under provisional or final sequestration or liquidation or business rescue, or be unable to pay its debts as they fall due, or attempt to compromise with its creditors, or enter into an arrangement, compromise or a composition with or for the benefit of its creditors, or commit an act of insolvency, as defined in the Insolvency Act, 1936; or
- 16.1.4. either Party fail to pay any amount(s) due to any other person(s) whomsoever and from whatsoever cause in an amount(s) in aggregate in excess of 3% (three percent) of the defaulting Party's Net Asset Value and, as a result of such failure the other person(s) become(s) entitled to demand payment of an amount(s) that was/were otherwise not yet due; or
- 16.1.5. should the Client be in breach of any agreement between it and the Bank, and the Bank becomes entitled to exercise its right to accelerate payments due or claim damages under such other agreement, or to cancel such other agreement as a result of such breach;

then, in any of the aforesaid events, the other Party shall, without prejudice to any rights which may thereupon be available to it in terms hereof (which include, without limitation, the right to demand specific performance, the right to cancel any or all Transactions and the right to claim damages) and/or any other agreement between the Parties or at law, be entitled to stipulate an early termination date with regard to all Transactions then in existence, by written notice to the defaulting Party.

### 16.2. Upon the occurrence of an early termination date all then existing Transactions will terminate and the amount payable will be:

- 16.2.1. The net of the settlement amounts in respect of each terminated Transaction (the settlement amount being the amount determined by the non-defaulting Party in good faith on the basis of at least two quotations obtained from financial institutions active in the foreign exchange market in Johannesburg as being the Rand amount that such financial institution would either pay to, or charge, the non-defaulting party to assume the rights and obligations of the defaulting Party under the relevant Transaction on the early termination date had the Transaction not terminated). If an amount would be payable by the non-defaulting Party to such financial institutions, such amount will be a positive amount and if an amount would be payable to the non-defaulting Party by such financial institutions, such amount will be a negative amount; plus
- 16.2.2. all amounts in respect of terminated Transactions (other than those taken into account in clause 15.2.1) owed by the defaulting Party to the non-defaulting Party (which, if not denominated in Rand will be converted to Rand at the rate at which the non-defaulting Party could, in good faith, purchase Rand with the Foreign Currency concerned); less
- 16.2.3. all amounts in respect of terminated Transactions (other than those taken into account in clause 15.2.1) owed by the non-defaulting Party to the defaulting Party (which, if not denominated in Rand will be converted to Rand at the rate at which the non-defaulting Party could, in good faith, purchase Rand with the Foreign Currency concerned).

### 16.3. Should the amount determined, on the basis of clause 15.2, be a positive amount, such amount will be payable by the defaulting Party to the non-defaulting Party and if the amount is a negative amount, the absolute value thereof will be payable by the non-defaulting Party to the defaulting Party.

### 16.4. The amount determined pursuant to clause 15.3 will be payable as of the early termination date.

### 16.5. Notwithstanding anything to the contrary contained herein or any other agreement between the Parties (whenever entered into), it is agreed that, in the event the Client:

- 16.5.1. being in breach of the terms of this or any other agreement between the Parties; or
- 16.5.2. being sequestered or put into liquidation, placed under business rescue or being wound up, whether provisionally or finally or being placed under curatorship the Bank will not be obliged to pay any amounts or to perform any obligations due to the Client until all amounts owed and all performances due by the Client and any affiliates of the Client to the Bank and its affiliates, have been paid in full or fully performed.

### 16.6. For purposes of 15.5, affiliate, in relation to a Party, means any subsidiary of such Party, any holding company of such Party or any other subsidiary of such holding company, as those terms are defined in the Companies Act, 2008.

## **17. CERTIFICATION OF INDEBTEDNESS**

A certificate signed by any manager of the Bank (whose appointment and designation need not be proved) as to any indebtedness of the Client in terms of any Transaction/s or as to any other fact, shall be prima facie evidence of the Client's indebtedness to the Bank, or of such other fact, for the purpose of any application or action, judgement or order, or for any other purpose whatsoever.

## **18. JURISDICTION AND GOVERNING LAW**

- 18.1.** These Terms and Conditions will be governed, construed and take effect in all respects in accordance with the laws of South Africa.
- 18.2.** The Client agrees that the Bank may bring legal proceedings against the Client relating to these Terms and Conditions in any Magistrates Court that has the authority to hear and decide on the case (this authority is called jurisdiction). The Client agrees to the jurisdiction of the Magistrates Court even if the amount claimed from the Client is more than the Magistrates Court limit. This does not prevent the Bank from bringing legal proceedings in a High Court that has jurisdiction, at the discretion of the Bank.

## **19. CONSENT TO DISCLOSURE OF INFORMATION**

- 19.1.** By making use of the Bank's Foreign Currency dealing products, the Client consents to the Bank providing information about: these Terms and Conditions; the Client's breach of the Terms and Conditions; fraudulent activities to which the Client is a Party to; the Client's application for Foreign Currency; and/or the Bank's termination of the Transaction.
- 19.2.** This consent extends to any credit bureaux, the Financial Intelligence Centre, SARB, SARS; different divisions within FRB; fraud prevention schemes established by the Bank; and/or other banks. The Bank will only disclose the abovementioned information when it is necessary to preserve the rights and interests of the Bank, other banks, the financial industry or the public in general.

## **20. HOW WE USE YOUR INFORMATION/DATA PROTECTION**

You can refer to our Privacy Policy located on the Bank's website for more information on our privacy practices.

- 20.1.** The Bank will process (collect, use, store or otherwise deal with) the Client's Personal Information for the purposes of providing the services. The Personal Information will be processed in accordance with the Bank's privacy policy which may be accessed on the Bank's website and the requirements of applicable law.
- 20.2.** The Client must be authorised to provide any Data, including Personal Information, of Data Subjects to the Bank. In doing so, the Client indemnifies the Bank against any losses, damages or costs suffered by or claims made against the Bank as a result of the Client not having the required authorisation.
- 20.3.** The Client warrants that all Data, including Personal Information, provided to the Bank is accurate, complete and correct and undertakes to notify the Bank should this Data change in any way.
- 20.4.** The Bank will secure the integrity and confidentiality of such Personal Information by taking appropriate, reasonable technical safeguards against any loss or unauthorised destruction of, damage or unlawful access to, or unauthorised use of such Personal Information.
- 20.5.** Neither Party will be responsible for the security of Data during transmission via public telecommunications facilities or services, provided that where security protocols are specified, these have been adhered to.

## **21. EBUCKS REWARD PROGRAMME**

- 21.1.** Foreign Exchange Product House is an earn-partner of the eBucks Rewards Programme, which allows the Client to earn eBucks on qualifying Transactions.
- 21.2.** The Bank may, at its discretion, include or exclude any qualifying Transactions from taking part in the programme. eBucks earned on qualifying Transactions are subject to standard eBucks Reward earn rules. For more information, please consult the eBucks website.



- 21.3.** These Terms and Conditions must also be read in conjunction with the terms and conditions published on the eBucks website. In the event of a conflict between these Terms and Conditions and the terms and conditions published on the eBucks website, the terms and conditions on the eBucks website will prevail insofar as the eBucks programme is concerned.

## **22. PRODUCT SPECIFIC TERMS AND CONDITIONS**

The Product Specific Terms and Conditions have to be read in conjunction with the General Terms and Conditions detailed above.

### **22.1. Paypal**

- 22.1.1. A copy of the PayPal Terms and Conditions is available on the Bank's website.

### **22.2. MoneyGram**

- 22.2.1. A copy of the MoneyGram Terms and Conditions is available on the Bank's website.

### **22.3. Multi-currency Cash Passport™**

- 22.3.1. By accepting the quote, the Client agrees to purchase the Foreign Currency at the exchange rate quoted at the time of the Client's application.
- 22.3.2. The Client's Nominated Bank Account will be debited prior to the Client receiving the Client's Foreign Currency.
- 22.3.2.1. Please note that documentation is required before the Transaction can be processed in order to comply with Exchange Control Regulations. The Client should contact the Bank at the Foreign Exchange Advisory Team on 0860 1 FOREX should the Client require any further information in this regard. Documents can be supplied via email, uploaded Online or handed over in Branch.
- 22.3.3. This service is only available to Residents and Foreign Nationals including holders of temporary resident permits and work permits. Residents of other CMA countries may not use this service.
- 22.3.4. Card Transaction charges may vary according to location and service provider. Travellers must consult the Cash Passport user guide that is supplied with the card.
- 22.3.5. Daily withdrawal limits and fees may vary in different countries and with different ATM service providers.
- 22.3.6. A copy of the full Cash Passport Terms and Conditions is available on the Cash Passport website.

### **22.4. Foreign Cheques**

- 22.4.1. Collection of Foreign Cheques:
- 22.4.1.1. Foreign Cheques presented to the Bank will be sent back to the foreign drawee bank for clearance on a collection basis.
- 22.4.1.2. Foreign Cheques may be returned by drawee banks at any time after the date of deposit, due to any of the following reasons:
- 22.4.1.2.1. forged, fraudulent alteration of the cheque, signature or endorsement or missing endorsement;
- 22.4.1.2.2. any other forged, false, fraudulent or missing information on the back of the cheque, which has been accepted or printed by the collecting bank or any other party; or
- 22.4.1.2.3. any alteration on the back of the Foreign Cheque.
- 22.4.2. The Client, with full knowledge of the risks associated with the acceptance of a Foreign Cheque, authorises the Bank to collect Foreign Cheques for deposit into the Client's Nominated Bank Account.
- 22.4.3. The Client undertakes to indemnify and hold the Bank harmless against all and any damages and losses sustained by the Bank at any time and expenses incurred by the Bank as a result of the Bank carrying out the Client's instructions to collect the Foreign Cheque and the Client hereby waives any claim the Client may have against the Bank and indemnifies the Bank in respect of any loss or damage, of whatsoever nature, which the Bank may suffer as a result of collecting the Foreign Cheque, as aforesaid, unless as a result of the Bank's gross negligence.

## **23. CHANNELS**

The Channel Specific Terms and Conditions have to be read in conjunction with the Terms and Conditions detailed above.

### **23.1. Online**

#### *23.1.1. General*

- 23.1.1.1. The Bank will provide the Client with the ability to deal, purchase and sell Foreign Currency online, via the Bank's online banking platform, provided that the Client has a Transactional account with the Bank and the Client is registered to use the online banking platform.

- 23.1.1.2. The online banking platform is only available for the currencies listed from time to time on the Bank's website.
- 23.1.1.3. The exchange rates quoted by the Bank are updated as market conditions prescribe.
- 23.1.1.4. By accepting the online quote, the Client agrees to purchase the Foreign Currency at the exchange rate quoted at the time of the Client's application.
- 23.1.1.5. None of the information provided in connection with the online service constitutes financial advice, nor should it be construed as financial advice. The Bank shall not be liable for any investment or other decisions made on the basis of the information provided or relied upon.

## **23.2. Telephone**

- 23.2.1. Foreign Currency can be purchased and sold via the telephone banking channel.

## **23.3. Branch**

- 23.3.1. Foreign Currency can be purchased and sold via the Branch channel. A list of branches that provide this service is available on the FNB website.

## **24. ACCOUNTS**

The Account Specific Terms and Conditions have to be read in conjunction with the Terms and Conditions detailed above.

### **24.1. Resident (natural person) Global Account**

- 24.1.1. Qualifying criteria for the opening of a Global Account

- 24.1.1.1. The Client must have an existing South African cheque account with the Bank.
- 24.1.1.2. The Client must be a Resident.
- 24.1.1.3. The Client must be at least 18 (eighteen) years old.
- 24.1.1.4. The Client must be a taxpayer in good standing with SARS.

- 24.1.2. When the Client funds the Client's Global Account from the Client's cheque account held with the Bank, the following documents are required, but not limited to:

- 24.1.2.1. If using the Client's Foreign Investment Allowance:

- 24.1.2.1.1. Original tax clearance certificate in respect of Foreign Investment Allowance; and
- 24.1.2.1.2. a certified copy of the Client's identity document.

- 24.1.2.2. If using the Client's Single Discretionary Allowance for investment purposes:

- 24.1.2.2.1. a certified copy of the Client's identity document;
- 24.1.2.2.2. the Client's Tax number.

- 24.1.2.3. If the Client instructs the Bank to conclude all incoming transfers at the Spot Rate the Bank will not provide the Client with a quote for the incoming transfers. The Bank will conclude ALL incoming transfers at the Spot Rate for that day and will credit the Bank's linked Global Account.

- 24.1.2.4. When the Client withdraws cash from the Client's Global Account and the Client requires payment in a currency other than that of the Client's Global Account, conversion will take place at the exchange rate quoted by the Bank at the time of withdrawal.

- 24.1.2.5. The Client will enjoy the benefit and take the risk of any profits or losses caused by changes in the exchange rate.

### **24.2. Resident Entity Global Account/CFC Account**

- 24.2.1.1. The Currency and Exchanges Manual contains strict criteria that have to be fulfilled in order to avail of this type of account. The account is only available for very specific types of businesses and or transactions.

- 24.2.1.2. Funding of the account must be in accordance with the purpose for which the account was approved and any Transactions that deviate from the purpose for which the account was opened will be invalid and will have to be unwound. Any loss occasioned from unwinding the offending Transaction will be for the Client's account.

- 24.2.1.3. **It is the Client's responsibility to ensure that it at all times conducts this account in accordance with the provisions of the Authorised Dealer Manual.**