

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



NEDBANK WILL EXPLAIN THE TERMS AND CONDITIONS CONTAINED HEREIN TO YOU IN PLAIN ENGLISH LANGUAGE AND SIMPLE TERMS. SHOULD YOU NOT UNDERSTAND ENGLISH YOU ARE HEREBY INFORMED THAT YOU HAVE THE RIGHT AND OPPORTUNITY TO PROVIDE AN INTERPRETER OF YOUR CHOICE TO ASSIST US IN EXPLAINING THE CONTENT AND SUBSTANCE OF THESE TERMS AND CONDITIONS TO YOU. YOU ARE HEREBY FURTHER AFFORDED WITH THE RIGHT AND OPPORTUNITY TO READ, UNDERSTAND AND NEGOTIATE, IF NECESSARY, THE SUBSTANCE OF THIS AGREEMENT, WITHIN FIVE (5) BUSINESS DAYS FROM DATE OF RECEIPT AND WISH TO EXERCISE THIS RIGHT.

### 1. INTRODUCTION:

- 1.1 These Terms and Conditions (T&C's) in conjunction with the applicable account opening documentation for using any service / account and/or product of Nedbank, shall apply to all the respective services / accounts and/or products the Account Holder may hold with Nedbank. These T&C's should be read in conjunction with any/all other T&C's applicable to specific products and services (including but not limited to for example the Card services; Online / Electronic Banking services; Merchant services; Banking Facilities etc).
- 1.2 These T&C's shall apply to the service / account and/or product (hereinafter together "the Agreement") and no alteration or variation of the Agreement made by the Account Holder shall apply, either at the time the Agreement is concluded or at any time afterwards, unless the alteration or variation in question is expressly agreed to in writing and signed by an authorised representative of Nedbank at the time in question.
- 1.3 The Account Holder hereby agrees to notify Nedbank in writing (or in such other mode(s) and/or methods as agreed to by us from time to time) of any change in your particulars and that you will have no claim against Nedbank in the event of any information provided by you to us being incorrect or outdated.

### 2. INTERPRETATION AND DEFINITIONS:

- 2.1 In this Agreement:
  - 2.1.1 clause headings are for convenience and are not to be used in its interpretation;
  - 2.1.2 unless the context indicates a contrary intention, an expression that denotes
    - 2.1.2.1 any gender includes the other genders;
    - 2.1.2.2 a natural person includes a juristic person and vice versa; and
    - 2.1.2.3 the singular includes the plural and vice versa; and
  - 2.1.3 any number of days will be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next business day.
- 2.2 In this Agreement, unless the context indicates otherwise, the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
  - 2.2.1 "**Agreement**" means this General Terms and Conditions and all account opening documents pertaining to any Nedbank service / **account and/or** product and includes all other Terms and Conditions, including but not limited to the: "Card; Online Banking and Account Terms and Conditions";
  - 2.2.2 "**Account Holder**" means any person using any service / account and/or product of Nedbank and is hereinafter: the "Account Holder"; "you" or "your"
  - 2.2.3 "**Bank of Namibia**" means the juristic person provided for in terms of Article 128 of the Namibian Constitution and established in terms of Section 2 of the Bank of Namibia Act, 2020 (Act No. 1 of 2020), hereinafter: "BON";
  - 2.2.4 "**Nedbank**" means Nedbank Namibia Limited, a public company with limited liability, registered and incorporated in accordance with the applicable laws in Namibia ( the Banking Institutions Act ,1998 (Act 2 of 1998),with registration number 73/04561 and includes the Nedbank Group of Companies, our employees; officials and directors; duly authorised representatives and hereinafter: "Nedbank"; "we"; "us" or "our"; "**Parties**" means Nedbank and the Account Holder and "Party" means, as the context requires, each or any one of them;
  - 2.2.5 "**Person**" means any natural or legal person, partnership, trust, company; joint venture, agency, governmental authority or any other body (whether corporate or unincorporated).

### 3. INTEREST AND OTHER CHARGES

- 3.1 Should your account be eligible for credit interest, Nedbank shall pay interest on any credit balance on your account at a rate, which we determine and notify to you from time to, in which instance the accrued credit interest will be credited to your account monthly in arrears.
- 3.2 You shall be liable to pay interest to Nedbank, calculated at the rate as varied from time to time, on any debit balance on your account(s) resulting from any cause whatsoever.
- 3.3 Interest on all amounts owed to Nedbank may be capitalised each month in arrears and will appear on the monthly statement.
- 3.4 All applicable government levies you must pay in respect of the use of any service / account and/or a product (including a card) will be debited to your account(s) monthly and paid over to the relevant government bodies by us.
- 3.5 Nedbank has the right to debit your account(s) with its standard service and other fees and charges payable from time to time, which will be reflected on the monthly statement. This includes, but is not limited to cash deposit fees; cash withdrawal fees; foreign exchange fees, Electronic Banking fees, any applicable card fees and/or any other charges in respect of the account / product or Nedbank's services rendered in respect of the account / product utilized.
- 3.6 You hereby authorise Nedbank to debit your account(s) with all legal costs incurred in exercising any of Nedbank's rights in terms of this Agreement, including all legal charges as between attorney-and-own-client, tracing fees and collection charges.
- 3.7 You will be liable to pay all legal costs we incur in exercising any of our rights in terms of these terms and conditions of use, including all legal charges as between attorney and client, counsel's fees, tracing fees and collection charges.  
In the event of any default or breach, where you fail to pay any amount(s) due and owing to us, we shall be entitled to, to the extent permitted by the applicable law, charge interest at the maximum applicable rate (as per the Usury Act 73 of 1968, as amended).

### 4. STATEMENT, PAYMENTS AND DEPOSITS

- 4.1 We may send you a statement via electronic mail or the post, setting out each entry as well as the total debit or credit balance, as the case may be, on your account. You should check that you receive the monthly statements, and if not, inform Nedbank in writing as soon as possible.
- 4.2 It is important that the monthly statements be checked to determine if they are correct. If you wish to dispute any item or entry on any statement, please inform Nedbank within 30 (thirty) days of the date of the statement, recording the dispute to enable

Initial here

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



Nedbank to investigate, obtain the relevant documents pertaining to the disputed entry and make the necessary enquiries. The relevant documents are available for a limited time only.

- 4.3 You hereby consent that we may use any credit balance on your account or on any of your accounts you may have with us at any time to set off any money you owe us for whatever reason, without notifying you thereof. If there remains an outstanding balance after we have set-off, we may demand that you repay us that amount immediately.
- 4.4 If you do not receive a statement, this will not give you the right or be a reason not to pay any amount that is due and payable to us.
- 4.5 Any record of a deposit into your account may be checked and confirmed by us and, if there is a difference between your record and our records, our records will be binding on you unless proven otherwise by you.
- 4.6 If any debit order is presented against your account, and there are insufficient funds available in your account to satisfy the said debit order, you hereby expressly authorise Nedbank to present the debit order for payment from time to time with the amount of monies due under or in terms of the debit order, until the debit order has been successfully completed / executed.
- 4.7 In the event of you having any debt due and owing to Nedbank, payments received from you will be credited to your account and we will apply this money firstly to pay for any legal costs that the Bank may incur in recovering any debt, then any bank related fees, then any other charges we levy on your account, then interest, and finally the principal debt.
- 4.8 You herewith authorize us and consent to the deduction of all governmental / statutory levies due and owing (that include e.g. stamp duties), which levies we need to deduct in terms of legislation.
- 4.9 You may not attach any conditions whatsoever to any payment made to us. If you attach any conditions, we will have the right to accept your payment and exercise our rights in terms of these T&C's of use as if you have not attached any condition.

### 5. USURY ACT

- 5.1 It is recorded that, for the purpose of section 3 of the Usury Act (Act 73 of 1968 as amended), the following information is not known or cannot be determined beforehand, namely:
  - 5.1.1 the cash amount you or anyone on your behalf actually receives;
  - 5.1.2 the nature or amount of other charges;
  - 5.1.3 the amount of the principal debt;
  - 5.1.4 the amount of the interest or other charges in dollars and cents;
  - 5.1.5 the amount of each payment and the date on which each payment must be made.
  - 5.1.6 any fee that must be paid in the case of a money lending transaction, as mentioned in the Usury Act, Act 73 of 1968; but always on the condition that the total amount of interest we receive or which you owe to us does not exceed the maximum annual interest rate permitted in the Usury Act, except where this is allowed by law.

### 6. LIABILITY

- 6.1 Save where we have been grossly negligent or acted in breach of contract, we will not be liable to you for any form of damage (direct or consequential) or loss that you suffer if:
  - 6.1.1 any person gains unauthorised access to your information, card, your account, your PIN or your facility or any information in respect thereof;
  - 6.1.2 incorrect information is given by us in good faith to any person, including any credit bureau;
  - 6.1.3 we process any information incorrectly received;
  - 6.1.4 there is a delay, failure or malfunction of any system, ATM or other device (electronic or manual);
- 6.2 You acknowledge that you will be solely responsible for all the unauthorized acts and transactions, save where we have been grossly negligent or in breach of contract.
- 6.3 You acknowledge that Nedbank shall neither be required to enquire into the authority of any person who uses/has used the passwords/accessed the account, nor shall Nedbank be required to enquire into the validity of any information provided by you to it for purposes of the account; and that once Nedbank has received and implemented an instruction given by you, you shall not be entitled to countermand or amend such instruction but shall be obliged to follow such procedures as may be prescribed by us from time to time.

### 7. CALL-UP

- 7.1 Nedbank shall have the right, if you are in breach of this Agreement or because of another valid reason, and in addition to any other remedy provided for in this Agreement, to call up any overdraft or loan facilities granted to you, notwithstanding the fact that the agreed limit of such overdraft or loan facilities has not been exceeded, by giving you 5 (five) working days' notice thereof, unless the applicable breach and/or valid reason arises from clauses 8, 10, 11 and/or 12 hereof in which event we may act immediately and deliver notice thereof subsequently.

### 8. UNLAWFUL USE OF ACCOUNT / SERVICES / PRODUCTS

- 8.1 As a condition of subscribing to any account/services/products, you warrant to Nedbank that you shall not use the account / product or services for any unlawful purpose which is prohibited, expressly or implicitly, by the terms of this Agreement or by any applicable law or regulation, nor shall you use it in any manner that may be prejudicial to us.
- 8.2 You agree that you shall be obliged to settle any payment obligations to us in accordance with the instructions issued to us and that this shall not entitle you to overdraw any account unless prior arrangements have been made with us, and then only in terms of such arrangement; and that the limits allocated to any of your account will not be exceeded.

### 9. BLOCKING OF ACCOUNT / WITHHOLDING OF FUNDS

- 9.1 Nedbank may, without prior notice to you, block or restrict (and later un-restrict or unblock) and/or withhold any amount in any of your accounts at any time, if required to do so by any relevant authority, law, regulator or other authority, or in order to comply with its internal policies (established in accordance with or to give effect to any applicable law) and/or any applicable order or sanction of an authority

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



### 10. FATCA POLICY

- 10.1 FATCA is an acronym for the United States (US) Foreign Account Tax Compliance Act ("the FATCA Act").
- 10.2 The purpose of FATCA is to prevent US persons from using banks and other financial institutions to avoid taxation from income generated outside of the US.
- 10.3 The FATCA Act and any Rules pertaining thereto forms part of this Agreement and you are hereby bound by the terms and Rules of the FATCA Act. Should there be any conflict or inconsistency between the Act and the Agreement, the contents of the Act shall prevail.
- 10.4 In terms of the FATCA Act you herewith agree to co-operate with us to ensure compliance with the FATCA Act; and
- 10.5 You herewith waive any claim that you may have against us and you herewith indemnify us against any damages, claims, losses or otherwise, as a result of any actions, omissions as a result of adherence to the FATCA Act or Rules.

### 11. ANTI-MONEY LAUNDERING (AML), COUNTERING THE FINANCING OF TERRORISM (CFT) SANCTIONED TRANSACTIONS / EXCHANGE CONTROL

- 11.1 The Financial Intelligence Act, 2012 (Act No 13 of 2012) (the "FIA Act") and all other applicable legislation pertaining to Anti-Money Laundering forms part of this Agreement.
- 11.2 You are hereby bound by the FIA Act and you herewith agree to co-operate with us during the Know Your Client (KYC) process by identifying and ascertaining the your identity and any source of income or transaction and consequently you undertake to furnish us with all documentation and information required in terms of the FIA Act and any other legislative requirements.
- 11.3 You agree not to make any of the finance which Nedbank provides to you available to sanctioned individuals and/or entities or for the purposes of any sanctioned or illegal activity.
- 11.4 To comply with and meet its reporting requirements in terms of all applicable laws and regulations relating to anti-money laundering (AML), countering the financing of terrorism (CFT), sanctioned transactions and exchange control, Nedbank may be:
  - 11.4.1 prohibited from entering into certain foreign exchange transactions unless the conditions of approval by Bank of Namibia ("**BON**") are first complied with; and/or
  - 11.4.2 prohibited from entering or concluding transactions involving certain countries, entities, banks, vessels or individuals; and/or
  - 11.4.3 prohibited from engaging in transactions that are subject to such sanctions (including the clearing of incoming / outgoing cheques drawn on / presented before all sanctioned banks); and/or
  - 11.4.4 compelled to reject such transactions and/or block the related funds, as per sanctions, policies and legislation; and/or
  - 11.4.5 required to report any suspicious transactions to the relevant authorities.
- 11.5 To this end Nedbank or any of its employees shall be entitled to:
  - 11.5.1 restrict your account for non-compliance with any Nedbank policy (established in accordance with or to give effect to the FIA, AML or CFT) or regulatory requirements;
  - 11.5.2 intercept and investigate any payment messages and/or other information or communications sent to or by you and/or on your behalf; and/or
  - 11.5.3 delay, block and/or refuse to make any payment and payment screening, which in turn may cause a delay in the processing of certain information.
- 11.6 Nedbank shall not be liable for any loss arising out of any action taken or any delay or failure to perform its duties or obligations caused in whole or in part by any steps taken above.

### 12. SANCTIONS

- 12.1 We are entitled to refuse to do business (or de-risk) with (from) any person or entity who is deemed to engage in any undesirable conduct or who is involved in any alleged undesirable conduct due to but not limited to any of the following:
  - 12.1.1 Any anti-terrorism; anti-corruption, bribery or any anti-money laundering requirements or legislation;
  - 12.1.2 Engagement in any criminal activity (whether perceived or not); fraud or any other form of undesirable conduct in terms of our Policies (established in accordance with or to give effect to any applicable law);
  - 12.1.3 Any transactional engagements in breach of any local or applicable international legislation or regulations;
  - 12.1.4 Any person or associated person who appears on a sanction list;
  - 12.1.5 Any other form of conduct that creates a risk to us and is deemed to be undesirable;
- 12.2 The above applies to any associated person, including but not limited to directors, shareholders, business associates and partners, signatories and any other related persons, including but not limited to e.g. family members and/or persons acting on behalf of you or your business entity.
- 12.3 We are obligated by law and in terms of our Policies to do sanction screening and you hereby undertake to provide us with the required information and documentation. Failure or refusal to provide us with the required information and documentation will result in our refusal to engage in a Banking relationship with you.
- 12.4 In addition to the above we have the right to monitor any account, transaction, instruction, business relationship or any other form of relationship in relation to your banking business.
- 12.5 We have the right to refuse to engage in any banking relationship and we have the right to cancel or terminate any banking relationship; account; transaction or facility within 30 days' notice or less in warranted circumstances.
- 12.6 We have the right in our sole discretion to refuse to execute or place any transaction on hold or to refuse any transaction or instruction if deemed to be undesirable or in contravention of any law or regulation.
- 12.7 We will not be liable for any direct, indirect or consequential loss, damages, costs or any other expenses arising from the implementation of this clause.

### 13. NAMPAY (EFT (PAYMENTS) AND DEBIT ORDER RULES)

- 13.1 The Bank of Namibia issued a Payment System Directive (PSD7), in accordance with which an enhanced electronic fund transfer system has been implemented. The "new" Namibian national electronic fund transfer "EFT" system is called NamPay, following a decision taken by the Bank of Namibia (BON), the Payment Association of Namibia (PAN) in partnership with the banking institutions and suppliers, a new enhanced EFT system is being introduced into the Namibian financial sector. This system will comprise of three new payment streams. They are enhanced debit orders (EnDO), enhanced credit payments (EnCR) and near-real-time credit payment (NRTC) that will transform electronic fund transfers in Namibia.
- 13.2 Rules applicable to Debit Orders:
  - 13.2.1 In light of the legislative developments you are informed that debit orders will no longer be deducted from your account(s) in a specific, predetermined prioritised order. NamPay will assign a random sequences to debit orders

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



submitted for collection in the national payment system. This means that your debit orders will be deducted from your bank account in a different order every month.

- 13.2.2 Debit orders will be presented (being an attempt by the Bank to collect the debit order against your account) for collection against your account three times during the day (at 06:00, 10:00 and 15:00 on weekdays and at 06:00 and 10:00 on Saturdays). Should the first (or any) attempt to collect funds from your account(s) be successful, the debit order is not presented for collection again. If there are insufficient funds in the account at the times that the debit order is presented, the debit order will not be successful, irrespective of the end of day balance on account.
- 13.2.3 Debit orders which are not honoured on the due date, due to insufficient funds in your account will incur a fee which will only be charged once. The unpaid fee charged for unsuccessful debit orders is 1.5 % (percent) of the debit order amount, with a minimum of N\$ 39 and maximum of N\$200 as per the Bank of Namibia regulation. Please visit the Nedbank Namibia website for pricing or any updates to the pricing.
- 13.2.4 To avoid incurring fees due to an unsuccessful debit order that is a result of there being insufficient funds in the account, you should ensure that there are sufficient funds in your account, by 14:30 (2:30pm) on weekdays and 9:30 (9:30am) on Saturdays.
- 13.2.5 It is important to note that the debit order amount which is not successful due to insufficient funds available in the account, will not reflect on a customer statement, however the statement will indicate the fee amount charged for an unsuccessful debit order.
- 13.2.6 In the event that a debit order is unsuccessful on the debit order mandate date, collectors may then choose to activate Credit Tracking. This is the continuous checking of available funds on your account over consecutive days. Credit Tracking can be done continuously for up to 14 days. Credit Tracking only stops once funds are added to the account within the 14 days, or once the 14 day Credit Tracking period has lapsed. Credit Tracking will not exceed 14 days. Fees will not be charged for Credit Tracking.
- 13.3 Rules applicable to (ENHANCED PAYMENTS (EnCR) and/or NEAR REAL TIME PAYMENTS (NRTC)
- 13.3.1 Payments made to beneficiaries at local banks by Nedbank customers through the Nedbank online banking or mobile app will operate over enhanced credit payments ("EnCR") service. EnCR payments are processed between banks as received between 04:00 and daily cut off time of 14:00 on weekdays and 09:00 on Saturdays. Due to more frequent settlements between domestic banks during the day, EnCR payments will reflect on the customer's account on the same day. Payments made after 14:00 will only reflect on the beneficiaries account the next day depending on the day that the transaction is effected. Payments made using the near real-time credit (NRTC) payment stream have cut-off times of 16:00 on weekdays and 11:00 on Saturdays. and will reflect within one minute (60 seconds) on the customer account. Please note that there are related fees applicable to this service, please visit the Nedbank Namibia website for pricing.
- 13.4 Once payment to a third party or a transfer transaction (a transfer between your linked accounts) has been processed, a confirmation reflecting that the payment or transfer has been processed will be available to you.
- 13.5 You hereby consent and agree to be irrecoverably bound by all legislative requirements pertaining to the Nampay and clearing rules as these rules and legislative development are binding on you.

#### 14. CREDIT BUREAU INFORMATION

- 14.1 You consent to Nedbank periodically checking and reporting your credit status with any registered credit bureau or credit reference agency. By doing so you consent to us disclosing such information as may be necessary or required to check and/or to report in terms of the applicable laws, and in this regard:
- 14.1.1 you confirm that we may transmit to all relevant credit bureaus data about the application for, opening and termination of an account by you, as well as your conduct of such account;
- 14.1.2 you acknowledge that information on non-compliance with the terms and conditions of this Agreement is transferred to such credit bureaus;
- 14.1.3 the credit bureaus provide credit profiles and possibly credit scores on your credit worthiness, subject to the credit record;
- 14.1.4 you have the right to have the credit record disclosed and to correct inaccurate information by contacting the credit bureaus directly.
- 14.2 Nedbank may search, update or place my records at credit reference bureaus and government agencies in order to verify my identity, assess my ability to obtain credit or to provide collateral of any kind, including guarantees or suretyships, and may, on request from another credit provider with whom I have applied for credit, provide my personal information, including my credit reference data, to such credit provider and also make any enquiries that it deems necessary to confirm my details for marketing purposes and to assess my creditworthiness design and offer financial services or related products which may be of interest to me and undertake its credit validation models.
- 14.3 Nedbank may use my personal information for debt enforcement, including but not limited to recovery, collection, repayment, surrender, enforcement and cession of debts.

#### 15. CONFIDENTIAL INFORMATION

- 15.1 You authorise us to check and confirm any information on your Nedbank application form for any account, product or service and to make any enquiries we deem necessary.
- 15.2 You acknowledge that Nedbank is bound by the client-banker confidentiality principle and hereby waive such right in favour of Nedbank and consent to Nedbank disclosing such confidential information to other companies in the Nedbank Group for marketing cross-selling and other related purposes.
- 15.3 Notwithstanding anything contained herein to the contrary, Confidential Information shall exclude any information or data which:
- 15.3.1 lawfully becomes part of the public domain by way of publication or otherwise;
- 15.3.2 was in the knowledge of the recipient prior to the commencement of the business relationship of the parties or legally comes into the knowledge of the recipient from another source;
- 15.3.3 is pursuant to an order of court or otherwise required by operation of law, only to the extent so disclosed and only in the specific instance and under specific circumstances in which it is obliged to be disclosed.

#### 16. PRIVACY CONSENT

- 16.1 You provide your consent to Nedbank to process your personal information, including fingerprints, biometric personal identification details, photographs and identity verification, for purposes of providing financial services and for detecting and preventing fraud and money laundering, and to send your personal information to third parties in order to provide a service to you, and also to send such



# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



information to foreign countries, when necessary, by electronic or other means for processing. You understand that such countries may not have specific data privacy laws and that where that is the case, Nedbank will enter into appropriate confidentiality agreements with the service providers in the foreign countries.

16.2 Nedbank may undertake identity and fraud prevention checks and share information with relevant Namibian and South African Fraud Prevention Services.

### 17. WAIVER AND INDEMNITY

You understand, confirm and acknowledge that:

- 17.1 authorizing Nedbank to act upon telephonic, fax, short message service ("sms") and/or email instructions, or to correspond with you via sms and / or email, may not be the safest or most prudent way of managing your account as a result of the inherent shortcomings in relation to each of these methods;
- 17.2 aside from asking questions relating to personal information, it is not possible for Nedbank to confirm the identity of any person providing instructions telephonically and that, should this personal information fall into the hands of a third party, it may be used for the purposes of committing fraudulent transactions;
- 17.3 instructions sent by fax or e-mail can very easily be tampered with, intercepted, fraudulently abused by outsiders, be the cause of delay in carrying out instructions contained therein, be mislaid or not be properly legible and it may furthermore not be possible to verify any signature that has been faxed;
- 17.4 Nedbank cannot confirm that any instruction sent by email has indeed been sent by you and that the risk of email facilities being fraudulently abused by unauthorised persons cannot be excluded;
- 17.5 correspondence sent to you via sms and / or email may be intercepted and fraudulently abused by outsiders with access to your mobile phone;
- 17.6 by instructing and authorising Nedbank to accept telephone, fax, sms and/or email instructions, and to correspond with you via e-mail correspondence or sms, you may be exposing yourself to risk, including but not limited to the aforementioned.

#### 17.7 Now therefore:

- 17.7.1 you hereby indemnify Nedbank against and waive any rights in connection with any demand, claim, action, losses and damages of whatsoever nature which may be brought against Nedbank or which you may suffer or incur, whether directly or indirectly relating to or in connection with your account, whether directly or indirectly, and whether or not arising from any telephonic, fax, sms and/or email instruction given, or sms and / or email received, unless the matter is as a result of gross negligence or wilful misconduct on the part of Nedbank or any of its employees or person acting for or controlled by Nedbank, in which case the matter shall be dealt with on its legal merits;
- 17.7.2 you undertake that should any claim or action be made or instituted against Nedbank as a result of such gross negligence or wilful misconduct, any claim shall be limited to direct damages and that no indirect, special or consequential damages shall be claimed;
- 17.7.3 you furthermore specifically indemnify Nedbank and hold it harmless from all demands, claims, actions, losses and damage of whatever nature in relation to:
  - 17.7.3.1 infringements of confidentiality arising from the use of the telephone, fax, sms and/or email to convey instructions to Nedbank;
  - 17.7.3.2 infringement of confidentiality arising from the correspondence that you received from Nedbank via sms and / or email;
  - 17.7.3.3 Nedbank not acting on any instruction; or arising from or out of the - the malfunction, failure or unavailability of any hardware, software or equipment, the loss or destruction of any data, power failures, corruption of storage media, interruption or distortion of communication links or storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond Nedbank's control;
  - 17.7.3.4 damage arising from the reliance of any person on incorrect, illegible, incomplete or inaccurate information or dates contained in any instructions received by - Nedbank;
  - 17.7.3.5 damage arising from the sending of false, fraudulent or altered instructions to Nedbank by telephone, fax, sms and/or email; damage caused by Nedbank's delay to act immediately upon any instruction sent to Nedbank by telephone, fax, sms and/or email;
  - 17.7.3.6 the use, misuse, abuse or possession of any third party software, including without limitation, any operating system software, browser software or any other software packages or programs;
  - 17.7.3.7 any unauthorized access to your account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your equipment;
  - 17.7.3.8 your failure to adhere to any of the terms and conditions applicable to the services and/or your account; and/or
  - 17.7.3.9 the supplying of incorrect information, or by the failure or unavailability of third party facilities or systems, or the inability of a third party to process a transaction.

### 18. CERTIFICATE AND OTHER DOCUMENTARY EVIDENCE OF INDEBTEDNESS

18.1 If any one of our managers, whose status or appointment need not be proved, signs a certificate stating:

- 18.1.1 that you are indebted to Nedbank as well as the amount of this debt, which includes the capital and interest and any other amounts or charges;
  - 18.1.2 the fact that the amount of this debt is owed and must be paid to Nedbank;
  - 18.1.3 any details of any transaction, whether with a card, via electronic banking or otherwise;
  - 18.1.4 any other matter regarding your account;
- this will be *prima facie* (sufficient) proof that the content of the certificate is correct. This certificate may be used for any purpose, which includes, but is not limited to, obtaining a judgement or any other order or relief against you.

18.2 Whenever Nedbank takes any legal steps against you, we will have the right to use microfilm and/or copies of any other relevant records as *prima facie* proof that you are indebted to us.

### 19. SEVERABILITY

19.1 Every provision (including this clause) of this Agreement is deemed to be separate and severable, and should any provision be found to be defective or unenforceable for any reason, that provision will be severed from the remaining provisions and the validity of the remaining provisions will continue to be of full force and effect.

Initial here

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



### 20. FURTHER INFORMATION

20.1 You agree to furnish Nedbank, on request, with such information and/or documents as may be required from time to time in respect of yourself, your spouse and/or any surety, guarantor or other person who has provided security in respect of your indebtedness to Nedbank.

### 21. CESSION

21.1 You hereby consent to Nedbank ceding, assigning and/or transferring all or any of its rights, title and interest in and to this Agreement, any account and/or services provided to you, as well as any other security of whatsoever nature held by Nedbank in respect of your indebtedness to Nedbank, to and in favour of any third party/-ies. This includes the right to delegate any obligation in terms of this Agreement and/or the security or other security, subject to your prior consent being obtained.

21.2 You are not be entitled to cede any rights, title and interest in and to this Agreement nor to validly cede any claim which you may have in respect of any credit balance appearing on any one of your account to any other third party without obtaining Nedbank's prior written consent.

### 22. WITHHOLDING TAX

22.1 Amounts in your account (including any interest earned) may be subject to withholding tax in accordance with the applicable laws.

### 23. SET-OFF

23.1 You hereby authorize Nedbank to combine/set-off against each other all the balances of your account(s) without prior notice for the purposes of determining whether there are sufficient funds to meet any withdrawal instruction given by you to Nedbank.

23.2 In this regard you pledge and cede all your claims to any credit balance on the account held with Nedbank, from time to time hereafter owed or indebted to you by Nedbank, whether such indebtedness be incurred in respect of your current account or arising from any other cause whatsoever.

23.3 Nedbank may in its sole discretion disregard any withdrawal instruction made by you on any of the accounts conducted by you with Nedbank, or in any other manner, if the combined balance of the accounts at the time of the withdrawal instruction being given is not sufficient for the amount of the withdrawal instruction so given. You agree that Nedbank may at any time refuse to execute any instruction to transfer funds from one of the accounts to any of the other and/or to appropriate incoming funds to any specific one of the accounts.

### 24. SUSPENSION AND CLOSURE OF ACCOUNT

24.1 If your account remains inactive or dormant for a period exceeding 90 (ninety) days Nedbank may after 30 (thirty) working days written notice, close the account and refund any credit balance thereon.

24.2 Nedbank may also elect to suspend your account when you are in default under the Agreement, or close your account by giving written notice of termination to you of at least 30 (thirty) business days before your account is to be closed.

24.3 Despite the suspension or closure of your account, any liability which you may have in respect of this Agreement or any Facility and/or any Credit provided in respect of your account or facility, will not be affected by the above action, and this Agreement will remain in force to the extent necessary until you have paid all amounts lawfully due by you.

24.4 We may close, restrict, decrease or suspend access to your Account and any facility if we in any way suspect or have established that your Account or facility is being used negligently or for illegal activities, or if it is to comply with a law. The closure, restriction, decrease or suspension will become effective on delivery of written notice to you.

### 25. BREACH

25.1 Should you breach any term or fail to perform any of your obligations in terms of this Agreement or any other agreement between you and Nedbank, Nedbank shall be entitled, upon 5 (five) working days' notice or in the event of a breach of clauses 8, 10, 11 and/or 12 immediately with notice to follow, to cancel this Agreement and withdraw the services and/or the services in respect of your account, without prejudice to its rights to recover any amounts due to it in terms of this Agreement and/or any loss or damage suffered by Nedbank as a consequence of the breach by you of any term of this Agreement or the cancellation of this Agreement or the withdrawal of the services.

### 26. TERMINATION

26.1 Notwithstanding anything contained above, the Agreement may be terminated at any time by either us or you on having given 30 (thirty) days' written notice, except that in the event of any change in any law or the application thereof, which would have the effect of prejudicing us should we continue with the rendering of any service to you, we will be entitled to terminate the agreement on 5 (five) working days written notice to you.

26.2 We may, subject to applicable law and required period of notice, terminate the account/services and your right to the account/services at any time and for any reason, including without limitation if we, in our reasonable judgment, believe you are/have engaged in conduct or activities that violate this Agreement and/or our rights, or if you provided us with misleading or false information.

26.3 We will have the right, subject to the required period of notice, to close your account, cancel any credit facility and demand that you repay us the full amount outstanding on your account and immediately give back the card and the additional card, if applicable, to us. We do not have to give you any reason for the above. Any liability which you or the holder of the additional card, if applicable, may have in respect of these terms and conditions of use and any credit granted to you previously will not be affected by the above action.

26.4 The full amount you owe us will immediately become due and payable if we close your account; and/or we cancel your credit facility; and/or we demand that you give the card back to us; and/or you breach any of these terms and conditions of use; and/or your estate is provisionally or finally placed under curatorship or sequestrated; and/or you die.

26.5 You hereby agree that we may inform any merchant or other person that we have closed your account and/or have cancelled the services / your credit facility, and you will not have any claim against us because we have given this information.

26.6 Any termination of your account and/or credit facility and/or the card and/or the services will not affect your liability to us in respect of the use of the card/account/services and this Agreement before that termination or before we receive back the card, whichever happens last.

### 27. AMENDMENTS TO TERMS AND CONDITIONS

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



- 27.1 You confirm and agree that we may, at our sole discretion, amend these terms and conditions at any time by furnishing you with notice of any amendments by way of statement messages or any other means of communication we may deem necessary.
- 27.2 Such a notice of any amendments to these terms and conditions, will be binding from the date of receipt thereof and the notice will be deemed to have been received on the seventh (7th) day after the date on which it was delivered in terms of clause 27 herein.
- 27.3 If you disagree with any amendments to the terms and conditions, you will have the right to immediately cancel the Agreement before the terms and conditions become operational ('operational date').
- 27.4 You acknowledge and agree that, if you decide not to cancel the Agreement before the operational date of the amendments to the terms and conditions, the terms and conditions will be binding on you. If you decide to use the Card Facility after the operational date of the amendments, it would be deemed that you have accepted the amendments to the terms and conditions of use and they will be binding on you.
- 27.5 If we change or replace the terms and conditions of use, this will not mean that the change or replacement is a novation of this agreement or of any of your previous obligations to us.
- 27.6 The Terms and conditions will be published on the Nedbank website and any should any conflict arise between versions the version on the Website will take precedence.

### 28. GENERAL

- 28.1 These terms and conditions govern the relationship between you and Nedbank in respect of the account/services/product. Should there, however, be a conflict between the provisions hereof and the provisions of any Agreement relating to a specific account/service used by you, then the provisions of that agreement will take precedence, but only insofar as they conflict with the provisions hereof.
- 28.2 You acknowledge that your use of the services provided by Nedbank shall not vary any aspect of the bank-client relationship between you and Nedbank and you agree that the utilisation of any account/service shall be subject to the completion, signature and submission to Nedbank of the relevant application form(s) and any other documents/agreements required by Nedbank from time to time.
- 28.3 If we allow you any latitude or extension of time, this is not and must not be understood as a novation or waiver of our rights in respect of these terms and conditions of use, and will also not be, or be the cause of, an estoppel against us.
- 28.4 No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose, unless it is expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 28.5 This Agreement may be executed in counterparts, each of which shall be deemed an original, which read and taken together shall constitute one and the same instrument.
- 28.6 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

### 29. WHOLE AGREEMENT

- 29.1 These Terms and Conditions, as may be amended by us from time to time, together with any account opening documentation and/or any other documentation concluded with regard to a Nedbank service/product Agreement constitutes the whole of the agreement between you and Nedbank relating to the account/services/product.
- 29.2 Any such amendment shall not amount to a novation of this Agreement or of any of your previous / existing obligations to Nedbank.
- 29.3 It remains your responsibility to keep yourself informed of the terms and conditions via the website, or you may request a hard copy of the terms and conditions at your nearest Nedbank branch.

### 30. WARRANTY

- 30.1 You declare and warrant that all information provided in the application form(s) or account opening document(s) and any information to be given in the future and information to be contained in each instruction processed electronically through any of the services performed by Nedbank, is and will be correct in all respects.
- 30.2 You record that you shall be obliged to inform us of any change in the information provided by you and that you will have no claims against Nedbank in the event of any information provided by you to Nedbank being incorrect.

### 31. NO REPRESENTATION

The parties agree that no other terms or conditions, whether oral or written and whether express or implied, apply.

### 32. JURISDICTION

- 32.1 You hereby agree and give your consent that a magistrate's court will have jurisdiction in respect of any legal steps and proceedings we take against you or connected with this Agreement, even if the matter in dispute or amount claimed exceeds the jurisdiction of the Magistrate's Court.
- 32.2 Nedbank shall nevertheless be entitled, at its sole discretion, to institute all or any proceedings against you connected with this Agreement and/or the account/services in any division of the High Court of Namibia.
- 32.3 You hereby agree to pay all costs on the scale as between an attorney-and-own client (including collection commission and any other sundry charges) in the event of Nedbank being obliged to institute action against you for recovery of any debt or damages arising out of the operation of the account/services or this Agreement.

### 33. GOVERNING LAW

This Agreement and the relationship between you and Nedbank shall be governed by and construed and interpreted in accordance with the applicable laws of the Republic of Namibia, notwithstanding the fact that any instruction emanated from outside the borders of Namibia.

### 34. WAIVER

- 34.1 No waiver by Nedbank of any term or condition of this Agreement shall be binding or effectual unless contained in writing and signed by Nedbank, and any such waiver will be effective only in the specific instance and for the purpose given.
- 34.2 No failure or delay on the part of Nedbank in exercising any right, power or privilege will operate as a waiver thereof, nor will any single/partial exercise of any right, power or privilege preclude any exercise thereof or the exercise of any other right, power or

# NEDBANK NAMIBIA LIMITED

## GENERAL TERMS AND CONDITIONS



privilege. Should Nedbank thus allow you any latitude or extension of time, it is not and should not be understood as a novation or waiver of its rights in respect of this Agreement, and it will also not be, or be the cause of, an estoppel against Nedbank.

### 35. DOMICILIUM AND NOTICES

35.1 The physical addresses given by you on your Account application will always be the address you have chosen where summonses, legal documents and notices may be served on you ('domicilium'). The postal; fax or e-mail addresses given by you on your Account application will be the addresses to which we will send all other notices, correspondence, Card Account statements and documents addressed to you.

35.2 You may change your addresses to any other addresses in Namibia if a written notice thereof is sent to us. If you change your domicilium, this change will be effective only 14 (fourteen) days after receipt of notice of the change of domicilium

35.3 Either party to this Agreement may change its address for the purposes of this clause by delivering to the other party a written notice of the new address by hand or registered mail.

35.4 A notice, order or other document that must be served on either party to this Agreement will have been properly served when it has been either delivered to a particular party to that party's last known address.

35.5 You may send any legal notices to the Legal Department, Nedbank Namibia Limited, Nedbank Campus, Freedom Plaza, Erf 8764, Corner of Fidel Castro & Reverend Michael Scott Street, P.O. Box 1 Windhoek, Namibia., for the attention of LEGAL SERVICES

35.6 All notices or communications sent to us must be in writing and sent by prepaid registered post.

35.7 Unless the contrary is proven, any legal notice:

35.7.1 if by way of e-mail or fax sent to the e-mail address or fax number provided for, will be deemed to have been received on the first business day following the date of transmission provided that the fax is received in legible form and the e-mail has been accompanied by a delivery and/or read receipt;

35.7.2 if sent by ordinary mail in a correctly addressed envelope to the other party's chosen address will be considered as having been received on the 7th (seventh) day after posting; or

35.7.3 if delivered by hand, to the physical address provided for above be deemed to have been received at the time of delivery; and

35.7.4 if by way of courier service to the to address provided for above, be deemed to have been received on the seventh (7th) business day following the date of such sending,

35.7.5 Any document actually received by a party will be adequate written notice or communication to that party, even though it was not sent to or delivered at the chosen address.

---

**Client signature**

---

Initial here



