

# GENERAL TERMS AND CONDITIONS



The following General Terms and Conditions apply, subject to any further agreement in writing and subject to the laws of Kenya. Specific terms apply to specific account products and services and are available to the customer upon request.

## 1. Interpretation

In these General Terms and Conditions the expression "the customer" shall include all persons, firm, partnership, or corporate body. The expression the Bank shall refer to Family Bank Limited.

## 2. Customer's instructions

The customer requests the Bank to honor and to debit to his account all cheques, drafts, bills, promissory notes, acceptances, negotiation instruments and order drawn, accepted or made out to him, to carry out any instructions he may give in connection with his account notwithstanding instructions that any such debiting or carrying out may cause his account to be overdrawn or any overdraft to be increased. Where no overdraft had been agreed or the limit of the overdraft agreed has been reached, the Bank may nevertheless refuse to carry out any instructions which would result in there being an overdraft greater than that agreed, as the case may be.

## 3. Authorized Signatories

The customer will give the Bank an acceptable specimen signature of every person authorized to operate the account. Unless otherwise agreed, all signatories are entitled to withdraw all or any of the Customer's property or securities held by the Bank from time to time and to overdraw any of the Customer's account provided it is done in accordance with the mandate.

## 4. Set-off

The Bank may notice set off against any account or indebtedness of the customers:

- i. Any other account whether current, loan, saving or any other type
- ii. Anytime or other deposit

The Bank may upon notice to the Customer set off his account against any other account or indebtedness in respect of which the customer is liable notwithstanding that some other person may also be liable in respect thereof.

## 5. Simultaneous order in excess of funds

Where the Bank receives several orders at approximately the same time, the total amount of which exceeds the available assets of or the credit granted to the Customers, the Bank may honour the orders in whatever manner it thinks fits within the limit of the funds available.

## 6. Bank charges and expense interest

The bank is entitled to be paid by the customer and may debit the customer with:

- a) Unless agreed in writing, interest on overdrawn accounts including penalty interest, loan accounts or any other facility granted by the Bank at a rate which may be different for different accounts. The Bank will update the Customer on changes to interest rates by either putting notices in the branches or newspaper that the Bank uses within five working days of the change and / or advise the Customer within thirty days of the change
- b) Advocates and clients costs incurred by Bank in any legal, arbitration or other proceedings arising out of any dealings in respect of the Customer Commission at such rate and at such a time or times as the Bank decides, with discretion to charge different rates for different accounts. In addition, the debits authorized by sub-clauses (a), (b) and (c) of this clause, all other expenses and charges including but not limited to ledger fee, disbursement for cheque books, postage's cables telephone calls, taxes, duties, imposition and expenses incurred in complying with the customer's request.

## 7. Statement deemed approved if not objected to within 30 days

The contents of any statements of account or statement of any other nature which has been sent by the Bank to the Customer, and to which the customer has not objected to within 30 days of receipt thereof, shall be deemed approved by Customer.

## 8. Delay by the Customer in lodging complaints

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

## 9. Payments by Third parties

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

## 10. Deposits of cheques

- a) All cheques or other orders for payment of whatever nature are accepted for deposit or collection at risk of the customer. Where any cheque or order is unpaid for any reason whatsoever (including but not limited to physical loss), the Bank may debit the Customer with the amount previously credited (taking into account any exchange fluctuation where relevant) in respect of that cheque or order, together with interest since the date of crediting if the account thereby is overdrawn.
- b) A duplicate deposit slip duly stamped and signed is a necessary but not sufficient evidence of cash deposit
- c) Notwithstanding the provisions of clause 6 herein any money credited to Customer in error must be repaid immediately.

## 11. No duty on bank to protest

The Bank is not liable for any loss or damage suffered by any part if any dishonoured bill is not noted or protested or both. The Bank will nevertheless endeavor to cause dishonoured bill to be noted or both provided that it receives instructions to do so in reasonable time.

## 12. Repayment of overdrawn accounts

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

## 13. Lien

- a) When the customer is indebted to the Bank, the Bank has a general lien over all the property of the Customer in the Bank's possessions, including, but not limited to cash, goods, securities or valuable deposited for the safe custody or as security, cheques presented for repayment, bills and any other property movable or immovable charged to secure repayment of any money whether or not that money has been repaid, and also over all property over which by the general law the bank has lien.
- b) Where the Customer is indebted in circumstances giving the Bank a right of set off all securities as set out in paragraph (a) hereof are held as securities for the debt.
- c) The Bank may at any time give the Customer notice in writing that if an accrued debts is not paid within a stated period being not less than 14



- days after receipt of the Customer of the notice take necessary steps to realize sufficient of the customer's asset to discharge the debt.
- d) If the debt is not discharged within the time allowed, the bank may realize sufficient of the customer's assets to discharge the debt, and the Customer constitutes the Bank his attorney for the purpose of conducting the sale, giving title to the asset sold and all other necessary matters. Any sum remaining after such a transaction will be held for the customer subject to these Terms and Conditions.
- e) The bank is under no obligation in respect of any sale under sub- clause (d) Other than for malafides
- f) Funds in foreign currencies which are subject to the Bank's lien may be set off against debts or realization. The Bank accepts no liability for any loss caused by the exchanged fluctuations.
- g) Deposits including those held in foreign currencies and for a given period of time may be set off against debts notwithstanding that the time period of the deposits have not expired.

#### 14. Variation and termination of relationship

The Bank may at any time upon notice to the Customer, terminate or vary its business relationship with the Customer, and in particular but without prejudice to the generality of the foregoing the Bank may cancel credit which it has granted and require the payment of the outstanding debts resulting there from within such time as the Bank may determine. The Bank may at any time freeze any account of the Customer if and so long as there is any dispute or the Bank has doubts for any reason (whether or not well founded) as the person or persons entitled to operate the same without any obligation to institute interpleading proceedings or take any step of its own initiative for the determination of such dispute or doubt.

#### 15. Cheque Books

- a) The Cheque books are issued subject to look after the use any cheque form with the utmost care.
- b) The customer further agrees to ensure:
- That all completed cheque forms are kept in safe custody at all times
  - That the Bank is formed immediately upon discovery by the Customer that any cheque book or any cheque form has been stolen, lost or mislaid.
  - That any person preparing the cheques is authorized to do so.
  - That any cheque is prepared and signed in ink or other indelible writing materials.
  - That the amount of any cheque is written as nearer as possible to the left side of the form to prevent any unauthorized addition of letter or figures.
  - That any cheque and any alteration is signed by authorized signatory.
  - That no uncompleted cheque is given to a stranger or any other person when the customer does not have reasonable ground for believing him to be untrustworthy.
- c) The customer is advised that:
- Where possible any completed cheque should be crossed with two distinct lines in order to make the cheque negotiable only through the bank and
  - If it is known with which Bank the beneficiary of a cheque keeps his account then the name of the bank should be added to the crossing in order to make the cheque negotiable only through that particular bank.
- d) Cheques are drawn on the Bank's form in the manner specified
- On the receipt of a written notice from the customer to stop a payment of cheque, the Bank will record the notice.
  - Upon closure of any account the Customer will return to the Bank any remaining uncompleted cheque forms relating to the account.

#### 16. Drawing of Cash

Customers should draw cheques in the form and manner specifically by the Bank in these Terms and Conditions.

- a) The Bank will pay cash to customer where the cheque is signed in the presence of the teller by an authorized signatory or by authorized signatories. Where cash cheque is presented not by the Customer or from a representative of the Customer before it makes payment. Where cash cheques are presented by the employees or other known agents of the Customer the following steps will be taken:
- The employee or the agent will be identified before hand in a manner acceptable to the Bank.
  - A limit on such drawings will be agreed in writing with the Bank and until such limit is agreed, no drawings will be allowed under this paragraph.
- b) Where the Customer requests that payments be made under paragraph (a) the Customer indemnifies the Bank in respect of all payments made to the presenter of the cheque whether or not the money was received by the Customer and whether or not the order for payment was in fact the order of the Customer.
- c) The Bank shall not be liable in any way to the Customer for having honoured even negligently any cheques the signature or content of which has been forged if:
- The Customer has facilitated such forgery either by failure to comply with any of the conditions contained in clause 16 hereof or by negligence in any other way; or
  - There has been a previous forgery of any cheque of the customer having not objected to the first statement of account which debited such cheque as provided by clauses 6 hereof or
  - An employee, servant, agent contractor or persons known to the Customer perpetrated the forgery.

#### 17. Validity of Documents

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

#### 18. Holdings and Credit in Foreign Currency

Subject to all Laws and Government Regulations applicable

- a) The Bank will credit the counter value for the Customer's holdings foreign currencies to accounts with its correspondences in various countries of origins.
- b) Such accounts are in the Bank's name, but any items belonging to the Customer are at the Customer's risk, and the Customer accepts responsibility for any ensuing consequences, including but not limited to consequences of legal, fiscal or other measures affecting the accounts. Except in the case of an assignment by the Customer to the Bank, the Customer may dispose of such funds only by means of request for cheques or any transfers in the original currencies at the Bank's option;
- c) All credits granted in foreign currencies are also subject to this clause.

#### 19. Accounts in Foreign Currency

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

#### 20. Communications

- a) All notices, statements, letters and other communications from the Bank may be sent to the last address given by the Customer, and the date on the Bank's copy of any such communication is taken to be the date of such dispatch in the absence of proof of the contrary.
- b) Any written communication from the Bank to the Customer including but not limited to any notice given pursuant to this Term and Conditions shall be sufficient to prove that the letter containing the communication was properly stamped and addressed.
- c) The Customer has no claim on the Bank for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other



irregularities due to transmission of any communication whether to or from the Customer, the Bank or any third party, by delivery, post, fax, telephone, telex or any other means of communication.

d) Notice/communications will be deemed to have been received five (5) days from the date of posting.

## 21. Marginal Notes

Marginal notes contained in these General Terms and Conditions are for information purposes only and are not conclusive as to the contents of the clause they relate to. by the bank system' that the allows users to initiate or authorize certain transactions

## Mobile and e-banking

These terms and conditions together with the application made by the Customer and as accepted by Family Bank shall form the contract between the Customer and Family Bank, and shall be further subject to such terms as Family Bank may agree with the other service providers, aiding Family Bank in providing the Facility. These terms and conditions shall be in addition to and not in derogation of the terms and conditions governing and related to Family Bank Mobile Banking, electronic products and the Account and/or any other product/services provided by Family Bank and its Affiliates. By registering for the Facility, for the first time (and every time thereafter), the Customer acknowledges and accepts (and reaffirms his acknowledgment and acceptance of) these terms and conditions, to the fullest extent possible.

## Definitions

**Mobile Banking:** is a personal financial information management service that allows you to access your Family Bank Account information or the performance of transactions over the phone through the bank's secure system.

**Account** shall mean any account at the bank which has been registered for use via the mobile banking service.  
**Customer** shall mean the natural person or legal entity acquiring services from the Bank.

**Bank:** shall mean Family Bank Limited or any successors or assigns.

**E-products:** the products rendered by the Bank to the Customer and acquired by the Customer from the Bank, whether or not through the internet, using, among others, fax and e-mail.

**Facility** shall mean Mobile Banking facility provided to the customers.

**System** shall mean the mobile banking and communications software enabling the customer to communicate with the bank.

**Request:** a request or instruction received by the bank from the customer to communicate with the bank for the purposes of the service. The system service will for the purpose of this agreement be accessed through the mobile phone.

**MBS** - shall be the acronym for Mobile Banking service

**Branch:** a branch or branches of the bank which may from time to time be specified by the bank to the customer.

## Terms & Conditions

1. The Customer shall apply to the Bank for MBS& E-Products (and/or for any changes to the options available under the facility) by application through forms as prescribed by the Bank from time to time for the use of the facility by visiting his/her branch or such other medium(s) as the Bank may from time to time specify. Customer shall inter-alia provide a Mobile Number which is not already used for MBS provided by the Bank.
2. The Bank will from time to time determine or specify at its discretion the scope and features of the MBS & e-Banking Products and are entitled to modify, expand or reduce the same at any time upon notice to the customer.
3. Customer's application for MBS& Electronic Banking shall be accepted only after authentication of the customer through any mode of verification as may be stipulated by the Bank from time to time as may be decided at the discretion of the Bank.
4. Customer, by making a request for transaction from his mobile phone in the format prescribed by the Bank, irrevocably and unconditionally authorizes the Bank to access all its accounts linked to MBS for effecting the transaction and also share the information regarding his accounts with the services provider or any third party as may be required for effecting the transaction.
5. The Bank shall endeavor to carry out the instructions promptly, however it shall not be responsible for the delay in carrying out the instructions due to any reason whatsoever including but not limited to failure of operational system, failure at mobile operator end or due to any requirement of law.
6. The e-Banking Products and MBS may, without prior notice be terminated, be suspended or terminated by the bank for any reason whatsoever, including and without limitation to, invalid data, closure of related account(s), breakdown, maintenance, modification, expansion and/or enhancement work caused or initiated by the telecommunications Company(s) concerned in relation to their network or by any service provider in respect of the SMS banking. The Bank will not assume any liability or responsibility for any such suspension or termination. The e-Banking Products may be terminated at any time by notice from the customer. to any such termination shall be effective within (4) days of receipt of the termination notice by the bank.
7. Customer should know that request for transactions, once made through his mobile are non retractable as these are processed instantaneously and on a real time basis. Therefore customer should take sufficient care while making a request for the transaction from his mobile.
8. Customer shall be solely responsible for accuracy and authenticity of the request made by him/her for information/transaction. The Bank shall not be liable for consequences arising out of erroneous information provided by the customer.
9. If the customer suspects that there is an error in the information provided to him/her by the Bank, he/she shall advise the Bank as soon as possible. The Bank shall endeavor to correct the error wherever possible on a best effort basis. The bank shall however not be liable for any inadvertent error which results in providing incorrect information to him.
10. The customer is solely responsible for protecting his PIN and mobile phone. Family Bank shall not be liable for unauthorized use of PIN or mobile phone of the customer. All requests emanating out of customer's mobile with correct PIN shall be treated as genuine request and shall be acted upon by the Bank as such whether or not actually initiated by the customer.
11. It shall be the Bank's endeavor to maintain the secrecy and confidentiality of customer's accounts to the best of its abilities. The Bank however shall not be liable if the customer's accounts are compromised on account of breach of secrecy, denial of service or on account of hacking/other



technological failures.

12. If a customer changes his/her mobile number, he should visit his branch and update such change for MBS in the form prescribed by the Bank for this purpose. Once his request is accepted, his MBS shall be de-activated.
13. The customer shall promptly notify the bank of any changes to information provided to the bank related to or for the purposes of the e-Banking Products & MBS including change of email address or the details of the customer's designated mobile phone number and the telecommunications company providing or servicing it. In addition, the customer shall promptly inform the bank of any loss or theft of their Mobile phone. The bank shall not be liable for any loss or claim resulting from the relaying of any information pursuant to the e-Banking Products to the designated mobile phone number prior to receipt of any notification of loss or theft.
14. The Bank may send messages to the customers regarding products/services of the Bank, or any other promotional message that the Bank may consider from time to time.
15. Customer can request for termination of his MBS by visiting his branch and submit his request in the form prescribed the Bank for this purpose. Customer can also send an SMS in the format prescribed for this purpose.
16. It shall be the Bank's endeavor to give a reasonable notice for withdrawal or termination of MBS, but the Bank may at its discretion withdraw temporarily or terminate the MBS either wholly or partially anytime without giving prior notice to the customer. MBS may be suspended for any maintenance or repair work, any emergency or security reasons without proper notice and the Bank shall not be liable for denial of MBS.
17. The Bank may at its discretion change terms and conditions as mentioned here any time as it deems fit.
18. Any dispute or difference arising out of or in connection with MBS shall be subject to exclusive jurisdiction of the in Kenya
19. Any notice from the bank to the customer maybe made in such manner and by such means of communication as the bank shall deem fit, including and without limitation to, use of direct mailing material, advertisement, branch display, electronic communications such as e-mail or via the e-Banking Products. Any notice from you to us shall be in writing at the following address Family Bank Limited, P.O Box 74145-00200 Nairobi Kenya

#### Disclaimer of Liability

- 1) Family Bank is in no way liable for any error or omission in the services provided by any Mobile or any third party service provider (whether appointed by Family Bank in that behalf or otherwise) to the customer, which may affect the Facility.
- 2) Family Bank does not warrant the confidentiality or security of the messages whether personal or otherwise transmitted through the Facility. Family Bank makes no warranty or representation of any kind in relation to the system and the network or their function or performance or for any loss or damage whenever and howsoever suffered or incurred by the customer or by any person resulting from or in connection with the Facility.
- 3) Family Bank shall under no circumstance be held liable to the customer if the Facility is not available or there is any delay in the carrying out of the instructions for any reasons whatsoever including but not limited to natural calamities, legal restraints, faults in the telecommunication network or network failure, or any other reason beyond the control of Family Bank. Without limitation to the other provisions of these Terms and Conditions, Family Bank, its employees, agent or contractors, shall not be liable for and in respect of any loss or damage whether direct, indirect or consequential, including but not limited to loss of revenue, profit, business, contracts, anticipated savings or goodwill, loss of use or value of any equipment including software, whether foreseeable or not, suffered by the Customer or any person howsoever arising from or relating to any delay, interruption, suspension, resolution or error of Family Bank in receiving and processing the request and in formulating and returning responses or any failure, delay, interruption, suspension, restriction, or error in transmission of any information or message to and from the telecommunication equipment of the Customer and the network of any Mobile service provider and Family Bank's system or any breakdown, interruption, suspension or failure of the telecommunication equipment of the customer, Family Bank's system or the network of any cellular service provider and/or any third party who provides such services as is necessary to provide the Facility. Illegal or improper use of the Facility by the Authorized User or any other person shall render the customer and the Authorized User liable for payment of financial charges as decided by Family Bank and / or will result in suspension of the Facility to the Customer.
- 4) Notwithstanding anything to the contrary stated herein, Family Bank shall not be involved in or in any way be liable to the customer for any dispute between the Customer and a cellular services provider or any third party service provider (whether appointed by Family Bank in that behalf or otherwise)

#### Indemnity

1. In consideration of Family Bank providing the Facility, the Customer agrees to indemnify and keep Family Bank safe and harmless from and against all actions, claims, demands, proceedings, loss, damages, costs, charges and expenses whatsoever which Family Bank may at any time incur, sustain, suffer or be put to as a consequence of or arising out in good faith for acting on or omitting or refusing to act on any instructions given by use of the Facility.
2. The Customer holds Family Bank / its Affiliates, harmless against any loss incurred by the Customer due to failure in the network of the mobile service provider. The Customer agrees to indemnify and hold Family Bank harmless for any losses occurring as a result of the Customer permitting persons to use the Facility through any means.

#### To Family Bank Limited

I/We accept all the above General Terms and Conditions and agree to be binding to me/us.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Name \_\_\_\_\_ Signature \_\_\_\_\_

Name \_\_\_\_\_ Signature \_\_\_\_\_

Name \_\_\_\_\_ Signature \_\_\_\_\_

Name \_\_\_\_\_ Signature \_\_\_\_\_