

# Business Transactional Banking – Investec Business Account

Terms and Conditions



# Terms and conditions

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# Business Transactional Banking

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These terms and conditions and any Quotation or notices issued or to be issued by Investec in terms of the National Credit Act 34 of 2005 (to the extent that it applies) as well as product rules, constitutes the agreement between Investec and the Account holder ("**Agreement**"). They explain Investec's and the Account holder respective rights and obligations. **The Account holder must take time to read and understand the agreement and pay special attention to all text in bold.**

## 1. Definitions

The headings in these terms and conditions are for reference only. Words importing one gender include the other genders; words in the singular include the plural and vice versa; and natural persons include created entities. The following expressions have the following meanings:

- 1.1 "**account**" means the business current account and / or corporate current account, which Investec maintains for the account holder;
- 1.2 "**Account Holder**" means the client;
- 1.3 "**anti-corruption laws**" means any bribery, fraud, kickback, or other similar anti-corruption law or regulation of any relevant country, including but not limited to the Prevention and Combating of Corrupt Activities Act 12 of 2004, the UK Bribery Act, 2010 and the US Foreign Corrupt Practices Act 1977;
- 1.4 "**applicable law**" means any local, provincial, national or international statutes, regulations, regulatory guidelines, ruling or code and judicial, regulatory, industry or administrative interpretations or directives;
- 1.5 "**application**" means the application made to Investec for the account;
- 1.6 "**authorised user**" means a person that has been duly authorised by the account holder to view accounts and payments as well as initiate and approve payments amongst other functionalities as directed by the powers conferred onto such persons by the account holder;
- 1.7 "**business day**" means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.8 "**cash transaction**" means any cash withdrawal or deposit, whether at an ATM, over-the-counter or cash- back provided by a merchant when a purchase is made and any near-cash transaction which does not fall within the definition of "purchase" herein, including without limitation, the purchase of travellers' cheques, a direct debit, any electronic account payment and a transfer of funds in terms of this agreement;
- 1.9 "**client**" means the party to whom the credit facility is granted (if any) and the holder of the account;
- 1.10 "**Common Monetary Area**" means the area consisting of South Africa, Lesotho, Namibia and Swaziland;
- 1.11 "**credit facility**" means the credit agreement entered into between the account holder and Investec (if any), which is maintained in association with the account;
- 1.12 "**credit limit**" means the maximum amount (after deduction of the extra account credit limit) that may be outstanding at any time (including fees, interest and charges) on the account. This amount is made available by Investec to account holder(s) in the aggregate, determined by Investec in accordance with the NCA (if applicable) and notified to the account holder from time to time through whatever medium Investec may deem fit, subject to the clauses herein;
- 1.13 "**e-communication**" means an electronic communication by means of a data message as defined in the ECT Act and includes communications exchanged by means of the website, email and mobile phone (e.g. WAP, WIG, SMS);
- 1.14 "**ECT Act**" means the Electronic Communications and Transactions Act 25 of 2002 (as amended);
- 1.15 "**Investec**" means Investec Bank Limited (Registration Number 1964763/06) and/or any duly appointed agent of Investec;
- 1.16 "**Investec Group**" means Investec Bank plc, Investec plc and Investec Limited together with the holding companies (and other subsidiaries of those holding companies) and any direct or indirect subsidiaries of those three companies and includes Investec;
- 1.17 "**NCA**" means the National Credit Act 34 of 2005 (as amended);
- 1.18 "**Investec Business Online Password**" means the password chosen by the authorised user in respect of the account for access to the website which must be used, together with any other verification mechanism (where applicable), every time the website is accessed;
- 1.19 "**payment**" means the movement of funds on the account, initiated by an authorised user through Investec's digital channels or a manual instruction to Investec;
- 1.20 "**personal information**" means personal information as defined in POPI;
- 1.21 "**POPI**" means the Protection of Personal Information Act 4 of 2013;

- 1.22 **“principal debt”** means the amount deferred in terms of the overdraft facility plus any legal costs; interest and other ancillary fees related to the account;
- 1.23 **“process/processing”** has the same meaning assigned thereto in POPI when referred to in the context of personal information;
- 1.24 **“product rules”** means the specific conditions applicable to the use of an account, product or service offered by Investec;
- 1.25 **“quotation”** means the written quotation, provided by Investec to the account holder in respect of the overdraft facility;
- 1.26 **“Sanctioned Country”** means a country which is subject to Sanctions by a Sanctioning Body;
- 1.27 **“Sanctioned Transaction”** means the use of the account for the purpose of financing directly or indirectly the activities of any person or entity which is on a Sanctions List or for the purpose of financing directly or indirectly the activities of any person in a Sanctioned Country, and/or the contribution or making available of amounts to any person or entity, if the Account holder has actual knowledge, without having made enquiry, that such person or entity intends to use such funds for the purpose of financing the activities of any person or entity which is in a Sanctioned Country and/or is on a Sanction List, in each case to the extent that such financing or provision of funds would be prohibited by Sanctions;
- 1.28 **“Sanctioning Body”** means any one or a combination of the following entities:
- 1.28.1 the Office of Foreign Assets Control of the Department of Treasury of the United States of America;
- 1.28.2 the United Nations Security Council;
- 1.28.3 the European Union or any participating member state of the European Union; and
- 1.28.4 Her Majesty's Treasury of the United Kingdom.
- 1.29 **“Sanction List”** means any of the lists of specially designated national or designated persons or entities (or equivalent) held by a Sanctioning Body, each as amended, supplemented or substituted from time to time and/or any other sanctions lists that Investec may from time to time deem necessary or be required to screen, verify and process transactions against;
- 1.30 **“Sanctions”** means the economic sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by any Sanctioning Body;
- 1.31 **“South Africa”** means the Republic of South Africa;
- 1.32 **“transaction”** means a transaction effected on the account and/or the account number, including, without limiting the generality of the foregoing, a deposit, an account query, a debit order, cash transaction, payment and refund or reversal of payment;
- 1.33 **“verification mechanisms”** means any person validation mechanism, which involve both verification and authentication methods of technical and non-technical means, to identify an authorised user against a set of parameters;
- 1.34 **“website”** means the Investec website being [investec.com](https://investec.com) (including all its constituent web pages) on which Investec provides banking and financial services from time to time, including all pages over which Investec exercises control.

## 2. Agreement

- 2.1 The Account holder shall not be entitled to cede or assign to any other person any of the Account holder rights or obligations in respect of or arising out of the agreement or the use of the account.
- 2.2 Investec shall be entitled to cede and assign its rights and obligations in respect of or arising out of the agreement or the use of any account without giving notice to the account holder.
- 2.3 The Account holder agrees to use and/or implement any verification mechanisms (where applicable) in accordance with the agreement and/or any other conditions or guidelines which Investec may impose from time to time, subject to the provisions of any applicable law. **The Account holder acknowledges that failure to use and/or implement any verification mechanism may result in unauthorised use of the account (or any other account held in the Investec Group) and losses, for which the Account holder will be liable.**
- 2.4 The Account holder undertakes not to effect transactions in excess of the credit limit and/or the online limit. **Subject to the clauses within this agreement, if the credit limit and/or account credit limit has/have been exceeded or if the account holder has defaulted under the agreement in any manner:**
- 2.4.1 **Investec shall be entitled to refuse to make any payment in respect of any transaction or process a transaction; and**
- 2.4.2 **Investec shall not be liable for any costs incurred or any loss or damage suffered by the account holder in this regard, provided that Investec did not act with gross negligence or fraudulent intent.**
- 2.5 If the agreement is subject to the NCA, the credit limit for the credit facility may be increased in the following instances:
- 2.5.1 temporarily where Investec accepts a transaction which results in the credit limit or extra account credit limit being exceeded or where Investec agrees to raise the credit limit or extra account credit limit in response to a request from the account holder in order to accommodate a particular transaction, on condition that the preceding credit limit or extra account credit limit will again apply within a specified period, or after a specified occurrence has taken place; or

2.5.2 by agreement with the Account holder in response to a written or oral request initiated by the Account holder at any time or with the written consent of the Account holder in response to a written proposal by Investec at any time;

2.5.3 unilaterally and in accordance with the NCA (if applicable), if the account holder at the time of applying for the credit facility or at any later time, in writing has specifically requested the option of having the credit limit automatically increased from time to time.

2.6 If the NCA is applicable to the agreement, the account holder may at any time, by written notice to Investec, require that the credit limit be reduced or stipulate the maximum credit limit that the Account holder will accept.

2.7 **Investec may reduce the credit limit upon notice to the account holder.**

### 3. Account holder's right to terminate

The Account holder may terminate this agreement, at its discretion, by providing Investec 30 (thirty) days' notice of its intention to do so. This agreement will terminate upon 30th day from the date of notice (the "Termination Date"). Upon the Termination Date, the account holder will be liable for:

- 3.1 the unpaid balance on the account as at the date of notice to Investec as at the Termination Date; and
- 3.2 all unpaid interest and all other fees and charges accrued upon the account, due and payable by the Account holder. For the avoidance of doubt, the account will only be closed upon full settlement of the account, with specific relation to clause 3.1 and 3.2.

### 4. Use of the account

- 4.1 The Account holder acknowledges that Investec is obliged to report transactions occurring outside the Common Monetary Area to the South African Reserve Bank. Any transaction in a currency which is not that of the account will be converted into the currency in which the account is denominated, subject to any applicable exchange control regulations, on the date of posting of any such transaction to the account and shall be shown on the account holder statement in South African Rands. **The Account holder acknowledges that there may be a delay before a transaction effected by the Account holder in a foreign country is debited or credited, as the case may be, to the account and the Account holder agrees to bear the foreign exchange risk in respect of any such delay. All transactions effected by the Account holder in a foreign country shall incur a commission fee to be determined by Investec from time to time. The fee will be included in the amount posted to the account in terms of the provisions of this clause.**
- 4.2 Investec, as part of the Investec Group, is obliged to comply with laws and policies relating to international and local anti-money laundering and Sanctions. Investec will therefore screen, verify and process all Account holder – and related information and thereafter monitor

**all information, instructions and transactions by and on behalf of the Account holder and the business relationship on a continuous basis. This may result in the prohibition, limitation or delay in the execution of instructions or transactions and even in the suspension of the account and the declining or terminating of any transaction or the business relationship with the Account holder. To the extent permitted, Investec shall advise the account holder of any action it intends to take in terms hereof. The Account holder acknowledges and confirms that the Investec Group, nor its employees, officers, or directors, shall be liable for any direct, indirect or consequential loss, damage, cost or expense whatsoever that may be suffered or incurred by the Account holder as a result of, arising from or relating to any such prohibition, limitation, delay, decline or termination due to the implementation of this clause.**

4.3 The Account holder hereby undertakes and warrants that when using the account:

- 4.3.1 the Account holder will comply with all applicable laws of South Africa and that the account will not be used for any unlawful purposes including, for example, engaging in unlawful gambling via the internet;
- 4.3.2 the Account holder will comply with all applicable anti-corruption laws; and
- 4.3.3 the Account holder will not conclude any transaction with a person on the Sanctions List or a person located in any Sanctioned Country and will ensure that the account are not used for a Sanctioned Transaction.

4.4 **The Account holder undertakes to use the account in a secured environment and acknowledges that any use of the account in a public place or at a device or terminal which is accessible by the public generally, may result in the account holder details being compromised and/or losses for which the Account holder may be held liable.**

### 5. Authority to debit the account

- 5.1 Subject to applicable law, the Account holder shall reimburse Investec for all payments which Investec has made, or is required to make, for and on behalf of the Account holder in respect of any transaction.
- 5.2 **The Account holder acknowledges and agrees that when cash deposits are made at any other bank:**
  - 5.2.1 Investec shall not be liable for errors resulting from incorrect information furnished by the Account holder or on the Account holder's behalf; and
  - 5.2.2 Investec shall be entitled to reverse any amount incorrectly credited to the account.
- 5.3 The Account holder acknowledges and accepts that it can incur an unauthorised debit balance on an account if the account does not have a sufficient credit balance to cover any fees, ancillary costs or debit transactions that Investec may honour on the Account holder's behalf. Furthermore, the Account holder acknowledges

and accepts that Investec shall levy an interest charge, at either a rate of Prime or at a rate of the Account holder's approved overdraft facility (if applicable), on an unauthorised debit balance. The Account holder shall accept indebtedness to Investec upon the occurrence of an unauthorised debit balance on its account and shall not hold Investec liable for debiting the account for fees, ancillary costs and / or honouring debit transactions on the Account holder's behalf (with or without prior authorisation). Moreover, the Account holders accept full responsibility to ensure that a sufficient credit balance is regularly maintained to honour any fees, ancillary costs and / or debit transactions. In the event of an Account holder incurring an unauthorised debit balance, the Account holder will settle the account as soon as possible. Interest on the unauthorised debit balance shall accrue and shall be capitalised on the account until the Account holder has settled the unauthorised debit balance in full.

- 5.4 Notwithstanding anything expressed or implied in the agreement, Investec shall not be liable to the Account holder or to any third party for any claim, loss, damages, cost or expense directly or indirectly resulting from or connected with any cheque that has been deposited into and credited to the account but which has subsequently been dishonoured for whatever reason, whether or not Investec has notified the account holder of such dishonour.

## 6. Repayment and charges

The Account holder must pay, at least, the minimum amount payable, if applicable, as indicated on monthly statements rendered by Investec from time to time, by the due date reflected in such statements.

- 6.1 Where a variable interest rate is charged, the amount of the total interest as well as the amount of the repayments as specified in the Quotation may change if the reference rate changes.
- 6.2 The Account holder shall not be entitled to deduct any amount which Investec may owe to the Account holder from any amount owing or which may become owing by the Account holder to Investec.
- 6.3 Investec shall be entitled to charge transactional fees for all financial services unrelated to the credit facility at the rate agreed. These fees include, without limitation, monthly charges, account dormancy fees, transaction charges and account closure fees. These fees may be amended from time to time upon prior notice to the Account holder. Monthly charges that are due to Investec shall be payable whether or not account is used by the Account holder.
- 6.4 Subject to any applicable law fees, interest, commissions, charges and taxes payable by the Account holder to third parties shall be charged by Investec or paid over to the relevant authorities or third parties by Investec and debited to the account regardless of whether the Account holder has accepted the amount or not.

## 7. Dormant account and unclaimed funds

- 7.1 Investec reserves the right to classify any account as a dormant account, if the account or any facility or service linked to the account, has not been used for a period of 6 months.
- 7.2 When an account is classified as dormant, the Account holder shall not transact on the account, or use the credit facility or service linked to the account, until such time the account is reactivated.
- 7.3 Investec reserves the right to close a dormant account. Investec will also notify the Account holder before Investec closes the dormant account.
- 7.4 The Account holder will remain entitled to unclaimed funds from the closed account, provided that the Account holder is able to provide Investec with proof of identity and entitlement to the funds. Interest is not payable and does not accrue on unclaimed funds.
- 7.5 Monthly fees shall be levied on dormant accounts until the account is closed.

## 8. Statements and payments

- 8.1 Investec shall provide monthly statements to the account holder, which will, amongst others:
- 8.1.1 show all transactions relating to the account;
- 8.1.2 show all interest and other charges debited or credited to the account; and
- 8.1.3 inform the Account holder of the minimum amount which is payable to Investec on or before the due date stated on the statement.
- 8.2 The minimum amount due must be paid to Investec and such amount shall be paid by no later than the due date reflected on the statement. Non-availability of a statement shall not be cause to withhold or reduce any payment due and payable to Investec.
- 8.3 The Account holder may at any time prepay any amount due to Investec.
- 8.4 If the NCA applies to the agreement, Investec shall credit each payment made by the Account holder as of the date of the receipt of the payment as follows:
- 8.4.1 firstly, to satisfy any due or unpaid interest;
- 8.4.2 secondly, to satisfy any due or unpaid fees or charges (if applicable); and
- 8.4.3 thirdly, to reduce the amount of the principal debt.
- 8.5 If the Account holder has not denied liability regarding a debt on the account and/or raised a query regarding the correctness of any statement by delivering written notice to Investec within 30 days of the day indicated on the statement as the date of issue of such statement, the Account holder shall be deemed to have admitted liability to Investec in respect of such debit and/or to have accepted that statement as true and correct, unless the contrary is proved by the Account holder.

8.6 Any record of deposit to the account is subject to verification by Investec and should there be a discrepancy between the Account holder's records and Investec's records, Investec's records shall constitute sufficient proof of the correctness of Investec's contentions and the onus shall be on the Account holder to prove otherwise.

## 9. Interest

9.1 Interest on all amounts due to Investec in respect of the account shall be calculated daily and capitalised monthly in arrears and shall be included in the minimum payment due by the Account holder. Interest shall accrue until such time as the full amount of any transaction or any outstanding balance is paid to Investec by the Account holder.

9.2 The rate of interest charged in respect of transactions shall be determined by Investec (which rate shall not exceed the maximum permissible interest rate prescribed under any applicable law) and shall be notified to the Account holder from time to time. In the event that the rate of interest is linked to a reference rate, Investec shall effect that change within 7 business days.

## 10. Unauthorised use of the account

10.1 The Account holder undertakes to take all reasonable precautions to prevent unauthorised use of the account. These include (without limiting the generality of the foregoing):

- 10.1.1 memorising the verification mechanisms and destroying any physical record of these mechanisms (which includes deleting any Investec Business Online Password or Transactional PIN sent by e-communication) and/or keeping such physical record in a safe location away from any device or terminal;
- 10.1.2 not allowing any other person to use any device or terminal on which any verification mechanism is received or stored, or to use the account number or to by-pass or tamper with any of the verification mechanisms, whether electronically or otherwise;
- 10.1.3 making use of and/or implementing or procuring implementation of any verification mechanism for each transaction and in particular checking and responding immediately to any e-communication sent by Investec concerning any transaction;
- 10.1.4 not using the Account number in an unsecured environment or at a public device or terminal or at a device or terminal which is accessible by the public generally;
- 10.1.5 not opening or responding to any unsolicited e-communication or e-communication relating to the account where the originator is not known to the Account holder and not accessing or using links to websites, web pages or other

internet based content or services not owned, administered or offered by Investec;

- 10.1.6 not divulging any information to any third party which is personal, confidential or proprietary to the Account holder, except as required under any applicable law;
- 10.1.7 immediately reporting the misappropriation of the any device or terminal used by the Account holder for transactions, to Investec and notifying Investec immediately should any device or terminal cease to operate for no apparent reason or in circumstances which may be suspicious;

10.2 **Investec shall not be liable in any way if the Account holder does not take reasonable precautions to prevent unauthorised use of the account. Specifically but without limitation, Investec shall not be liable in any way if the Account holder uses any verification mechanism in a public place or in any other unsecured environment in such a manner that the confidentiality and secrecy of the verification mechanisms is compromised. Similarly, Investec will not be liable in any way if the Account holder does not make use of or does not implement or does not respond to any verification mechanism or if the Account holder stores or records any verification mechanism on a computer, phone or network.**

10.3 If any device or terminal used by the Account holder for transactions, is lost, stolen, misappropriated or if someone other than the Account holder uses the device or terminal and/or the account and/or the account number or has knowledge of the verification mechanisms, the Account holder shall be obliged immediately to notify Investec telephonically on its 24-hour telephone number which appears on the Quotation and on each statement.

**Any delay in providing the notification to Investec shall be presumed to be sufficient proof of negligence on the part of the Account holder and the Account holder shall bear the onus of proving the contrary.**

10.4 **Subject to other provisions within this agreement, the Account holder shall not be liable for any loss due to payments made by Investec in respect of any transaction done, where the Account holder proves that the loss cannot be attributed to the fact that the Account holder intentionally or negligently caused the verification mechanisms to be disclosed to someone else or that the Account holder did not use or implement the verification mechanisms or did not take reasonable precautions to prevent unauthorised use of the account or did not otherwise comply with the agreement.**



## 11. Dispute and claims

- 11.1 **If any transaction is incorrectly queried or disputed by the Account holder, interest will accrue in the normal course in respect of that transaction and Investec shall be entitled to charge a fee.**

## 12. Failure/malfunction of networks and devices

Investec will not be responsible for any failure, malfunction or delay of any networks or electronic or mechanical device or terminal used in the acceptance and processing of transactions and any other use of the account. Investec will not be liable to make good or compensate the Account holder for any damages, losses, claims or expenses resulting, and the Account holder indemnifies Investec accordingly.

## 13. Suspension or cancellation of the account

- 13.1 The account will always remain the property of Investec, and, without Investec losing any right to any claim which it may have against the Account holder, if the Account holder is in default under the agreement (as contemplated in this agreement) or if Investec reasonably suspects that the Account holder has committed fraud or any criminal act, including a Sanctioned Transaction, Investec shall have the right to suspend the account at any time.
- 13.2 Investec may:
- 13.2.1 subject to the relevant clauses, suspend or cancel the credit facility and suspend or close the account at any time if the Account holder is in default under the agreement as contemplated in this agreement; or
  - 13.2.2 close the credit facility by giving written notice to the account holder at least 10 (ten) business days before the credit facility will be closed.
- 13.3 If the account has been suspended or cancelled in terms of the relevant clauses herein,
- 13.3.1 the account may no longer be used for any purpose; and
  - 13.3.2 Investec may notify any merchant or any person who Investec thinks should know of the cancellation without incurring any liability.
- 13.4 Notwithstanding the provisions herein, the agreement shall remain in effect until the account holder has repaid all amounts charged to the account.
- 13.5 The Account holder shall not be entitled to use the account or the account number after it has been cancelled, suspended, closed or revoked.

## 14. Personal Information

- 14.1 The Account holder undertakes to furnish Investec with all information and/or documentation required by Investec in terms of the Financial Intelligence Centre Act 38 of 2001.
- 14.2 **The Account holder acknowledges that Investec may transmit to (a) registered credit bureau(x) information concerning:**
- 14.2.1 **the account holder's application for a credit facility, the agreement and the termination thereof as well as the information about the account;**
  - 14.2.2 **any non-compliance by the account holder with the terms of the agreement.**
- 14.3 The Account holder acknowledges that such credit bureau will provide a credit profile and possibly a credit score on the creditworthiness of the Account holder. The Account holder has the right to contact such credit bureau(x), to have the credit record(s) disclosed and to correct any inaccurate information.
- 14.4 **The Account holder agrees that Investec may:**
- 14.4.1 **make enquiries to confirm and verify any information provided by the Account holder in the application form;**
  - 14.4.2 **seek information from any credit bureau when assessing the Account holder application and at any time during the existence of the account.**
- 14.5 The Account holder acknowledges and expressly consents thereto that Investec may:
- 14.5.1 verify information provided by the Account holder to Investec and generally making whatever enquiries it deems necessary from any source whatsoever;
  - 14.5.2 process the personal information of the Account holder to conclude the agreement and for purposes of maintaining the account, providing services to the Account holder, including any benefits attached to the account and complying with the instructions of the Account holder;
  - 14.5.3 disclose the personal information of the Account holder to entities involved in providing any benefits attached to the account (such as travel insurance or airport lounge access) as well as partners;
  - 14.5.4 disclose the personal information of the Account holder contained in the application form, and any other documentation in relation to any of the Account holder accounts to other entities in the Investec Group, if the Account holder has applied for further accounts, products or services at any other entity within the Investec Group in order for such entities to assess and monitor the Account holder application and in order to comply with "know your customer" legislation in that jurisdiction;

- 14.5.5 process and disclose the Account holder personal information for purposes of the prevention, detection and reporting of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities;
- 14.5.6 process and report on the personal information of the Account holder to comply with an obligation imposed by applicable laws on Investec and any other entity within the Investec Group;
- 14.5.7 provide the Account holder financial information to any person who has agreed to provide security for the indebtedness of the Account holder.
- 14.6 The Account holder has the right to access the Account holder personal information held by Investec. Investec shall grant the Account holder such access during office hours within a reasonable time after receiving a written request for access.
- 14.7 The Account holder agrees to Investec's Data Protection Statement from time to time, which the Account holder can access at [investec.co.za](http://investec.co.za)
- 15.3.2 a composition, compromise, assignment or arrangement with any creditor of the account holder;
- 15.3.3 the appointment of a liquidator (other than in respect of a solvent liquidation of the account holder), receiver, administrative receiver, administrator, compulsory manager, judicial manager, business rescue practitioner or other similar officer in respect of the account holder or any of its assets;
- 15.3.4 enforcement of any security interest over any assets of the account holder or any analogous procedure or step is taken in any jurisdiction. Save that this provision above does not apply to a petition for winding-up presented by a creditor which is frivolous or vexatious or which is being contested in good faith and with due diligence, and, in each case, is discharged, stayed or dismissed within 14 days of commencement;
- 15.3.5 a meeting is proposed or convened by the directors of the account holder, a resolution is proposed or passed, application is made or an order is applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) in respect of the account holder or any analogous procedure or step is taken in any jurisdiction;

## 15. Events of Default

Default in terms of the agreement will occur if the account holder:

- 15.1 fails to pay any amount to Investec under this agreement on the due date at the place and in the currency in which it is expressly payable, unless such failure to pay is caused by administrative or technical error and payment is made within 3 (three) Business Days from its due date; or
- 15.2 has granted against it any final judgment or arbitration award and fail to pay such judgment or award in full within 10 (ten) days of the date of such judgment or award becoming final and no longer subject to appeal, review or rescission; or
- 15.3 commit any act of insolvency as defined in the Insolvency Act, No.24 of 1936 or, in the event of a juristic person, the commission of an act that would be an act of insolvency if committed by a natural person or be sequestrated, placed under judicial management, or liquidated or be wound up, whether provisionally or finally, voluntarily or compulsorily, or effect any compromise with any of its creditors or if any security of whatsoever nature furnished to Investec in connection with this agreement becomes invalid or unenforceable for any reason, or have, any corporate action, legal proceedings or other procedure or step taken in relation to-
  - 15.3.1 the suspension of payments, a moratorium of any indebtedness, liquidation, winding-up, dissolution, administration, judicial management, business rescue or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation of the account holder;
  - 15.4 fails to comply with any of its obligations under this agreement when performance is due (other than an obligation to make any payment under this agreement) and such failure is not remedied within 30 (thirty) days after notice of such failure is given to the account holder; or
  - 15.5 commits any default under one or more agreements or instruments to which the account holder and Investec is a party or a beneficiary, and/or to which the account holder and any of Investec's affiliated companies, is a party or a beneficiary, as the case may be; or
  - 15.6 is deregistered or delisted from the relevant stock exchange/(s); or
  - 15.7 repudiates this agreement or evidences an intention to repudiate this agreement; or
  - 15.8 disposes of other than to a wholly owned subsidiary, the whole or substantially the whole of the business of the account holder or the whole or the greater part of the assets of the account holder or enter into any amalgamation, demerger, merger or corporate reconstruction without the prior written consent of Investec, which consent will not be unreasonably withheld or delayed; or
  - 15.9 being a company, undergoes a change of shareholder/s (whether as a result of the transfer of shares or the allotment of shares or otherwise) so that control of the account holder is vested in persons other than the account holder's controlling shareholder as at the date of signature of this agreement, (provided that this sub-clause shall not apply in the case where the account holder is listed on any recognised stock exchange); or

- 15.10 has made any material incorrect or untrue statement or warranty or representation in connection with this agreement, or its financial affairs or position, in any proposal or credit form or in any information furnished to Investec; or
- 15.11 Any security interest created under this agreement is or becomes unlawful or is not or ceases to be a first ranking security or to be legal, valid, binding and enforceable.

## 16. Credit Review Events

Credit Review Event in terms of the agreement will occur if the account holder:

- 16.1 being a company, undergoes a change in its legally registered name; or
- 16.2 being a close corporation, undergoes a change in its legally registered name; or
- 16.3 at any time after conclusion of this agreement sustains a downgrade of its rating, being its credit rating as assigned by a recognised credit rating agency and/or the risk rating assigned to it by Investec, in accordance with Investec's internal anti-money laundering risk rating policy, which results in the deterioration of the level of credit risk with regard to its obligations under this agreement; or
- 16.4 for whatever reason, suffers a material adverse change which means a change which, (in the opinion of Investec acting in good faith), has or is reasonably likely to have a material adverse effect on-
- 16.4.1 the business, operations, property, condition (financial or otherwise) or prospects of the affected Party; and / or
- 16.4.2 the ability of the Client to perform in a timely manner, its obligations (including payment obligations) under the Agreement; and / or
- 16.4.3 the validity or enforceability of the Agreement, or the rights or remedies of Investec thereunder; or
- 16.5 does, permits to be done or omits to do anything which might prejudice Investec's rights under this Agreement.

## 17. Implications of an Event of Default and Credit Review Events

- 17.1 If an event default in terms of the agreement has occurred, Investec may:
- 17.1.1 give the account holder written notice of such default and may propose that the account holder refer the agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring repayments up to date;
- 17.1.2 commence legal proceedings to enforce the agreement if:
- (i) Investec has given the account holder notice as referred to in clause 17.1.1 above or it has given

notice to terminate any debt review process under the relevant section of the NCA which may then be underway in respect of the agreement; and

(ii) the account holder has been in default under the agreement for at least 20 business days; and

(iii) at least 10 business days have elapsed since Investec delivered the notice contemplated in clause 17.1.1; and

(iv) in the case of a notice in terms of clause 17.1.1, the account holder has not responded to that notice; or responded to the notice by rejecting Investec's proposal;

- 17.1.3 recover collection costs and default administration charges from the account holder.
- 17.2 If default in terms of the agreement has occurred, as contemplated herein, and the agreement is not subject to the NCA, Investec may exercise its rights, as may be permissible in law and without prejudice to any of Investec's other rights, which include any one or more of the following:
- 17.2.1 closing or suspending the account and the credit facility;
- 17.2.2 demanding immediate payment of overdue amounts;
- 17.2.3 terminating the agreement; and
- 17.2.4 enforcing any security furnished in respect of the Agreement.
- 17.3 The Account holder will be liable for all legal costs, as may be permissible in law, in recovering any amount that the Account holder owes Investec.
- 17.4 If a credit review event has occurred, Investec is entitled to take the account holder's account under review. The outcome of the review, subject to the applicability of the NCA, may result in Investec reviewing, revoking or amending the credit facilities in its sole discretion.

## 18. Dispute Resolution

If the agreement is subject to the NCA, the Account holder may resolve a complaint by alternative dispute resolution, file a complaint concerning an alleged contravention of the NCA by Investec with the National Credit regulator or may an application to the National Consumer Tribunal or the Ombudsman for Banking Services and the Consumer Court.

## 19. Default Administration Charges

If the agreement is subject to the NCA and the Account holder defaults on any obligation under the agreement, Investec may levy default administration charges in respect of each letter Investec needs to write to the account holder. Such charges will be equal to that payable in respect of a registered letter of demand in an undefended action in terms of the Magistrates' Court Act together with necessary expenses incurred in delivering the letter.

## 20. Collection Costs

If the agreement is subject to the NCA, Investec will charge in respect of enforcement by Investec of any payment obligation under the agreement, all costs incurred by Investec in collecting (as contemplated in the NCA) any amount due and /or payable, in terms of:

- 20.1 the Supreme Court Act, 1959;
- 20.2 the Magistrates' Court Act, 1944;
- 20.3 the Attorneys Act, 1979;
- 20.4 the Debt Collector's Act, 1998, as the case may be, but excluding any default administration charges contemplated in clause 19 above.

## 21. Debt counsellor

If the account holder experiences difficulty in meeting repayments, Investec invites the Account holder to contact Investec without delay. If the account holder is an individual and the credit facility is subject to the NCA, the account holder has the right to apply to a debt counsellor to be considered for an order to be declared over-indebted in terms of the relevant section of the NCA in accordance with the process set out in that section. The account holder should inform Investec immediately of such application.

## 22. Notices and domicilium

- 22.1 The registered address given by the Account holder on the application form will be the Account holder chosen domicilium citandi et executandi ("**domicilium**") (i.e. the address where at which all notices for purposes of legal process in terms of the agreement may be served on or delivered to the Account holder).
- 22.2 The Account holder may, by written notice to Investec, change his/her/its domicilium to any other physical address in South Africa. Any such change of domicilium will only be effective 14 days after the date on which Investec receives the notice.
- 22.3 Any notice to the Account holder by Investec may be addressed to the Account holder at its chosen domicilium and will be deemed (unless the contrary be proved) to have been received by the Account holder on the 4th day after posting.
- 22.4 Any notice delivered by hand to the Account holder or a responsible person by Investec during ordinary business hours at the Account holder domicilium shall be deemed to have been received on the day of delivery.
- 22.5 All and any notices or communications by the Account holder to Investec must be in writing and sent by prepaid registered post or by hand to Investec's head office at 100 Grayston Drive, Sandown, Sandton.
- 22.6 The Account holder:
  - 22.6.1 understands, acknowledges and agrees that: the operator will treat personal information which comes to its knowledge as a result of such processing as confidential and will not disclose it.

- 22.7 Conflicts of interpretation – To the extent that any provision contained in this clause conflicts with any of the other provisions contained in the agreement ("**Remaining Provisions**"), the relevant provision contained in the Remaining Provisions shall prevail.

## 23. Transmission of information

- 23.1 The Account holder undertakes to sign or execute any documentation as may from time to time be required by Investec arising from any telephonic, internet or mobile banking conducted by the Account holder with Investec. The Account holder consents to Investec taking whatever security precautions it may consider for such purposes, (including the recording of telephone conversations between the Account holder and employees of Investec), with or without use of an automatic tone warning device. Investec's recordings shall be and remain the sole property of Investec and will be accepted by the Account holder as sufficient evidence of the instructions or conversations so recorded. The Account holder agrees that Investec may deliver copies or transcripts of such recordings to any court or regulatory authority. Investec is not required to maintain copies of such recordings and transcripts.
- 23.2 With regard to instructions given or received by electronic medium, the Account holder requests and authorises Investec to rely on and act in accordance with any instruction which may from time to time be, or purport to be, given by the Account holder in its name. In authorising Investec to rely on and act in accordance with any instruction given by electronic medium, the Account holder acknowledges that electronic medium is an inherently unreliable medium of communication and that such unreliability is beyond the control of Investec. The Account holder acknowledges that as a result of such unreliability there may be delays in the transmission and receipt of instructions or other information and that this may result in delays in the execution of instructions sent by electronic medium. The Account holder further acknowledges and agrees that generally it will not be possible to cancel or revise an electronic instruction after it has been given.
- 23.3 Without prejudice to the above, the Account holder agrees that Investec may deem any such instruction purported to be given by the Account holder as authentic, valid and properly executed on the Account holder behalf and that it will be binding on the Account holder notwithstanding that such instruction may have been made without or in excess of authority from the Account holder and/or any error, misunderstanding, fault, forgery or lack of clarity may have been made or contained in the terms of such instruction. Investec shall be entitled to rely on and act in accordance with, instructions received from any person authorised or purportedly authorised to access or use the account, the account number, by virtue of any authority, resolution, mandate or power of attorney ("**authority**") provided by the Account holder or nominee to Investec, unless such authority has been specifically cancelled by the Account holder in writing and Investec has acknowledged such cancellation in writing or otherwise.

- 23.4 The Account holder acknowledges that information transmitted by electronic medium is susceptible to monitoring and interception. The Account holder is therefore discouraged from transmitting to Investec any information which may be confidential, proprietary or secret. **The Account holder shall bear all risk of transmitting such information in this manner and under no circumstances will Investec be liable for any loss, harm or damage suffered by the Account holder as a result thereof. Investec reserves the right to request independent verification of any information transmitted by electronic medium and the Account holder consents to such verification from whatsoever source should Investec deem it necessary.**
- 23.5 Investec requests that no unsolicited confidential or proprietary information be sent to Investec. Any such unsolicited information or material sent to Investec shall be deemed not to be confidential, unless otherwise agreed in writing by Investec. Notwithstanding the foregoing and subject to the agreement, Investec will not send or forward any personal Account holder information to any party, unless obliged to do so by law. The Account holder attention is drawn to the fact that any e-mail sent by Investec to the Account holder will not be encrypted and Investec is not liable for any loss suffered by the Account holder resulting from any e-mail Investec sends to the Account holder, unless the loss is caused by Investec's gross negligence or fraud.

## 24. Jurisdiction

In terms of section 45 of the Magistrates' Court Act 32 of 1944, the Account holder consents and submits for purposes of Investec taking legal steps to enforce any of its rights in terms of the agreement) to the jurisdiction of any Magistrate's Court notwithstanding the amount involved. This does not prevent Investec from bringing legal proceedings in a High Court that has jurisdiction.

## 25. Severability

The parties agree that the setting aside or suspension of any provision contained in the agreement shall not render the agreement void but such provision shall be severed from the agreement or altered by a court or tribunal of competent jurisdiction (if it is reasonable to do so having regard to the agreement as a whole).

## 26. Deposit Insurance

This product will be considered a Qualifying Product if held by a Qualifying Depositor, as defined in the Deposit Insurance Regulations issued by the Minister in terms of the Financial Sector Regulation Act 9 of 2017. Deposits made herein by a Qualifying Depositor will be covered by the Corporation for Deposit Insurance up to the limit of cover specified in the Deposit Insurance Regulations from time to time.

## 27. General

- 27.1 A certificate signed by any manager of Investec specifying the amount owing by the Account holder to Investec and further stating that such amount is due, owing and payable by the Account holder to Investec, shall be sufficient (prima facie) proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.
- 27.2 Notwithstanding anything to the contrary in the agreement, Investec shall be entitled to amend the terms and conditions from time to time by giving the account holder reasonable prior notice of any such change.
- 27.3 The notice referred to in clause 26.2 shall give the account holder an opportunity to terminate the agreement in accordance with the provisions of clause 3 before the new terms and conditions apply. If the account holder continues to use the account after the new terms and conditions begin to apply, the amended terms and conditions will apply to the account.
- 27.4 No amendment or consensual cancellation of the agreement by the Account holder and no settlement of any dispute arising under the agreement and no extension of time, waiver or relaxation or suspension of any of the terms and conditions of the agreement or any estoppel against Investec shall be binding on Investec, unless recorded in a written document signed by Investec and the Account holder. Any such extension, waiver, relaxation, suspension or estoppel which is so given or made shall be strictly construed as relating only to the matter in respect whereof it was made or given.
- 27.5 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in the agreement. The Account holder shall immediately inform Investec of any change of name, status or other details provided by the Account holder, in particular if he or she has applied for debt review, is under an administration order, business rescue proceedings, liquidation, sequestration or any other form of insolvency (whether provisional or final) or is about to or has emigrated. Investec shall be entitled but not obliged to refuse to act on instructions given by the Account holder using a different name or in circumstances where Investec is aware of any change in detail or status, until Investec is provided with the necessary documentary proof to its satisfaction.
- 27.6 The Account holder warrants that all information given to Investec by the Account holder, whether in terms of any application form, authority or payment instruction or via any service provided by Investec, or otherwise, shall be accurate and correct and shall constitute sufficient proof of the facts contained therein. **Investec shall be entitled to rely on any such information given as contemplated in this clause and shall not be liable howsoever in the event that it relies on or uses such information.**

- 27.7 The agreement is confined to the use of the account. Any access to and use of any other product or service provided or offered by Investec or the Investec Group through whatever medium of access available (including without limitation Investec's Business Online Banking and Mobile Banking services) is subject to and governed by whatever terms and conditions apply to such products, services and access media ("**ancillary conditions**"). The Account holder acknowledges that in order to access and use such other products and services, the Account holder shall be obliged to comply with the ancillary conditions. Investec shall be entitled, but not obliged, to refuse to process any transaction or to act on any instructions given by the Account holder until the Account holder has complied with the ancillary conditions. **Investec shall not be liable for any loss suffered or expense incurred by the Account holder as a result of any such refusal.**
- 27.8 The existence of a link or reference from the website to any other website, web pages or other content or service does not constitute Investec's recommendation or approval thereof.
- 27.9 For the purposes of the agreement no electronic signature or advanced electronic signature, as defined in the ECT Act, shall constitute a signature.