

# Terms and Conditions for Attorneys and Property Managers



## INVESTEC CORPORATE CASH MANAGER

These Corporate Cash Manager Terms and Conditions (“CCM T’s and C’s”) must be read in conjunction with The General Terms of Business for Intermediaries (“General Terms of Business”) entered into or to be entered into between Investec and the Intermediary in respect of the Investec facilities or products and together, they record the respective rights and obligations of the Parties in relation to the conclusion by the Intermediary of Transactions on behalf of its Client/s and/or the distribution of products or facilities to its Client/s.

These terms and conditions record the respective rights and obligations of the intermediary and Investec in relation to the provision and usage of the Corporate Cash Manager system. The intermediary should ensure that he/she/it reads and understands the terms and conditions and that special attention is paid to all terms printed in bold.

In the event of any conflict between these CCM T’s and C’s and the General Terms of Business, the CCM T’s and C’s shall prevail.

### 1. Definitions

All expressions defined in the General Terms of Business shall apply mutatis mutandis hereto. Unless the context indicates otherwise the following expressions have the following meanings:

- 1.1. “account” means a Corporate Cash Manager account opened for an end client, or the intermediary, as the case maybe, on the Corporate Cash Manager system;
- 1.2. “agreement” means these terms and conditions as well as the product rules, all as amended from time to time, including all notices and correspondence that Investec may send to the intermediary;
- 1.3. “Corporate Cash Manager guarantee” means a fully cash-backed guarantee issued by Investec from time to time exclusively in the format required by the Corporate Cash Manager system, and in accordance with the provisions of clause 6 (if applicable);
- 1.4. “Corporate Cash Manager system” means the proprietary banking system owned by Investec, designed to facilitate and manage investments and other related transactions by an intermediary on behalf of its clients from time to time, as more fully described on the website;
- 1.5. “corporate entity” means any entity that is not a natural person;
- 1.6. “end client” means any end client of the intermediary with whom the client has concluded a trust account mandate and for whom an account has been opened or will be opened;
- 1.7. “excluded account” means an account that is not subject to the due diligence and reporting obligations in terms of the IGA and CRS regulations, issued under the Tax Administration Act, 2011;
- 1.8. “Intermediary” means the person or Juristic Entity who concludes Transactions with Investec on behalf of his/her/

its Client/s or who provides financial services or markets and distributes Investec products to its Client/s and who in each case agrees to be bound by this Agreement;

- 1.9. “Legal Practice Act” means the Legal Practice Act, 28 of 2014;
- 1.10. “Property Practitioners Act” means the Property Practitioners Act 22 of 2019;
- 1.11. “trust account” means a trust account opened in terms of the provisions of the Legal Practice Act or the Property Practitioners Act, as the case may be;
- 1.12. “trust account mandate” means a written contract of agency concluded between the end client and the intermediary in accordance with clause 6.

### 2. Relationship between Investec and the intermediary

- 2.1. It is recorded and agreed that:
  - 2.1.1. the intermediary is an attorney or a property manager and wishes to utilise the Corporate Cash Manager system for purposes of opening trust accounts; and
  - 2.1.2. the accounts opened for end clients shall be governed by the applicable provisions in the Legal Practice Act or the Property Practitioners Act, notwithstanding anything to the contrary contained in this agreement.
- 2.2. All accounts and all transactions shall be subject to the agreement as well as Investec’s terms and conditions applicable to cash investment accounts, as amended from time to time, which can be viewed at [www.investec.co.za/ci-t&c](http://www.investec.co.za/ci-t&c). The Intermediary is at all times responsible for reading and understanding the product rules relating to an account.
- 2.3. 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 the Corporate Cash Manager system without giving notice to the Intermediary or its Agent.

### 3. Accounts

- 3.1. With effect from the date on which Investec advises the intermediary that it is able to do so, the intermediary shall be entitled to effect transactions on accounts on behalf of clients strictly in accordance with client mandates and the terms and conditions of this agreement.
- 3.2. Investec will allocate separate accounts for each client.
- 3.3. Investec shall be entitled in its discretion, to define and implement its dormant and zero balance account policy. Investec shall give effect to this policy on not less than 20 business days’ written notice to the intermediary whereby Investec may close affected accounts as defined in the policy.

- 3.4. The intermediary undertakes to take all reasonable precautions to prevent unauthorised use of the account. These include (without limiting the generality of the foregoing):
- 3.4.1. memorising the verification mechanisms and destroying any physical record of these mechanisms (which includes deleting any Online Banking Password or Transactional PIN sent by e-communication) and/or keeping such physical record in a safe location away from any device or terminal;
  - 3.4.2. not allowing any unauthorised person to use the platform or any device 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;
  - 3.4.3. 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;
  - 3.4.4. not using the platform or 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;
  - 3.4.5. not opening or responding to any unsolicited e-communication or e-communication relating to the platform or account where the originator is not known to the Client or its Agent and not accessing or using links to websites, web pages or other internet based content or services not owned, administered or offered by Investec;
  - 3.4.6. not divulging any information to any third party which is personal, confidential or proprietary to the Client, except as required under any applicable law;
  - 3.4.7. immediately reporting the misappropriation of any device or terminal used by the Agent 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.
- 3.5. The intermediary undertakes not to effect any unauthorised or irregular transactions on behalf of the Client on the Corporate Cash Manager platform. In doing so:
- 3.5.1. Investec shall be entitled to refuse to effect and/or make any payment in respect of any transaction or process; and
  - 3.5.2. Investec shall not be liable for any costs incurred or any loss or damage suffered by the Client in this regard, provided that Investec did not act with gross negligence or fraudulent intent.

#### 4. Regulatory compliance

- 4.1. Where Investec advises the intermediary that an account is an excluded account, or where the Corporate Cash Manager system allows the intermediary to make this determination, the Tax Related Information Form is not

required to be completed. Investec will from time to time advise the intermediary which account types are excluded accounts and may in its sole discretion revoke such determination. The intermediary undertakes to obtain and retain all documents and information used to support the determination that the account is an excluded account and acknowledges that Investec may be required to request this information and/or copies of such documentation for verification or reporting purposes. Where Investec has revoked its determination that an account is an excluded account, Investec will notify the intermediary and the intermediary undertakes to obtain a current, completed and signed Tax Related Information Form within 30 days from such notification. Where the intermediary becomes aware that an account no longer meets the criteria for an excluded account, the intermediary must notify Investec forthwith.

- 4.2. The intermediary shall further ensure that, in compliance with Protection of Personal Information Act, 2013 ("POPIA"), they take note of Investec's data protection statement on the website [www.investec.com/en\\_za/legal/data-protection-statement.html](http://www.investec.com/en_za/legal/data-protection-statement.html)
- 4.3. The Intermediary will comply with applicable law, including without limitation, the Financial Intelligence Centre Act, 2001, Prevention and Combating of Corrupt Activities Act, 2004, United Kingdom Bribery Act 2010, United States Foreign Corrupt Practice Act 1998, Prevention of Organised Crime Act, 1998, the Promotion of Constitutional Democracy Against Terrorism and Related Activities Act, 2004, Foreign Account Tax Compliance Act and all regulations published thereunder ("FATCA"), the intergovernmental Agreement that the South African and United States governments have concluded to improve international tax compliance and to implement FATCA, and the Exchange Control Regulations as applicable, each as amended from time to time.
- 4.4. Investec has entered into a banking arrangement with the Legal Practitioners Fidelity Fund in terms of sections 63(1)(g) of the Legal Practice Act, and may facilitate the sweep and payment of interest accrued on section 86 trust accounts in terms of our Automatic Monthly Transfer System. The intermediary however acknowledges that the obligation and responsibility to ensure that funds are swept and paid over to the fund on a monthly basis remains theirs and failure by them to do so will result in the intermediary being guilty of misconduct in terms of Rule 54.14.16.5.

#### 5. Corporate Cash Manager guarantee

- 5.1. If the intermediary is an attorney, they may advise Investec that they wish to make use of functionality provided by the Corporate Cash Manager system to issue Corporate Cash Manager guarantees on behalf of end clients. Once Investec advises the intermediary in writing that their request is approved, the provisions of this clause 5 shall apply.
- 5.2. The provisions of this clause 5 shall survive the termination of the agreement as long as there are outstanding obligations of Investec under a Corporate Cash Manager guarantee.
- 5.3. The intermediary shall, in addition to the functionality described in clause 5.1, also be entitled to request Investec

from time to time, to issue Corporate Cash Manager guarantee on behalf of end clients.

- 5.4. The intermediary agrees that Investec shall only issue Corporate Cash Manager guarantee directly from the Corporate Cash Manager system, provided that.
  - 5.4.1. in respect of immovable property related matters, the end client or his nominee is the purchaser of immovable property and is obliged, in terms of a valid agreement, to provide a guarantee to the seller of the immovable property or his nominee, to secure the payment of the whole or part of the purchase
  - 5.4.2. the information required in clause 5.5 below has been received by Investec, including such other information as Investec in its sole discretion requests;
  - 5.4.3. Investec is satisfied that there are sufficient cleared funds standing to the credit of the applicable account; and
  - 5.4.4. Investec is satisfied that the funds in the applicable account have been duly encumbered.
- 5.5. The client shall be obliged to provide the following information to Investec to facilitate the issuing of a Corporate Cash Manager guarantee:
  - 5.5.1. the identity of the seller/registered owner of the immovable property;
  - 5.5.2. the identity of the purchaser/end client;
  - 5.5.3. the description of the immovable property;
  - 5.5.4. a description of any other matters to be registered simultaneously with the transfer of the immovable property;
  - 5.5.5. the payee of the Corporate Cash Manager guarantee;
  - 5.5.6. the payee's account details;
  - 5.5.7. the amount of the Corporate Cash Manager guarantee;
  - 5.5.8. whether the Corporate Cash Manager guarantee is a 'plus' or 'minus' guarantee and the rate of interest applicable and the method of calculation thereof; and
  - 5.5.9. any other conditions for payment of the Corporate Cash Manager guarantee.
- 5.6. The intermediary acknowledges that Corporate Cash Manager guarantees are only payable by means of interbank transfer to the account stipulated therein and upon due fulfilment of all conditions of the Corporate Cash Manager guarantee. The client further acknowledges that the transferring attorney or such other person as may be stipulated in the relevant Corporate Cash Manager guarantee is required to notify Investec of the registration of transfer of the immovable property and the fulfilment of all other conditions by no later than 12h00 on the date of such registration, failing which payment under the Corporate Cash Manager guarantee shall occur the next business day. It shall nevertheless at all times be the responsibility of the client to ensure that all the conditions of the Corporate Cash Manager guarantee have been met before Investec is obliged to effect payment under the Corporate Cash Manager guarantee. In the event of Investec not being notified timeously of the fulfilment of the conditions of the Corporate Cash Manager guarantee, the client shall be liable to Investec and/or the end client for any additional interest payable to the payee of the Corporate Cash Manager guarantee, from date on which payment was due until the date on which payment is made to the payee, both days inclusive.
- 5.7. Notwithstanding anything to the contrary contained in this agreement, Investec shall be entitled, on written notice to the client, to decline to issue a Corporate Cash Manager guarantee if:
  - 5.7.1. any of the information provided to Investec in terms of clause 5.5 is incorrect or insufficient;
  - 5.7.2. Investec is of the reasonable opinion that it would be likely to suffer any harm, loss or damages (whether financial or reputational) if the Corporate Cash Manager guarantee was issued.
- 5.8. The intermediary acknowledges and agrees that, notwithstanding anything to the contrary contained in this agreement, Investec shall be entitled:
  - 5.8.1. in its sole discretion, to withdraw any Corporate Cash Manager guarantee after date of issue on written notice to the client without giving any reasons therefore and without incurring any liability, except to the extent that any loss or damages were occasioned by the fraud or gross negligence of an employee of Investec. Investec undertakes, to the extent permitted under applicable law, to provide reasons for such withdrawal upon request from the client;
  - 5.8.2. to enter into any discussions, negotiations or arrangements with the payee of the Corporate Cash Manager guarantee of any nature whatsoever (without derogating in any manner from Investec's obligation to make payment in accordance with the terms of a Corporate Cash Manager guarantee).
- 5.9. The intermediary warrants that the end client has provided the client with the necessary authority and instruction (contained in the trust account mandate, or otherwise) to: each as amended from time to time.
  - 5.9.1. arrange for the issue of the relevant Corporate Cash Manager guarantee and to utilise the funds standing to the credit of the relevant account, in order to enable Investec to effect payment under the Corporate Cash Manager guarantee ("Guaranteed Funds");
  - 5.9.2. cede and pledge to Investec on the basis as set out in clause 5.10, all of the end client and/or the client's rights to the Guaranteed Funds as security for the obligations in terms of clause 5.10 and to provide Investec with an irrevocable power of attorney as if in its own cause (in rem suam) as contemplated in clause 5.11.
- 5.10. The intermediary hereby undertakes to transfer and/or make available the Guaranteed Funds as security for this obligation, the client hereby irrevocably and unconditionally cedes and pledges in securitatem debiti to Investec all of the intermediary and the end client's present and future rights, title and interest in and to the Guaranteed Funds ("Security Cession") which Security Cession shall continue for as long as there are any outstanding obligations of Investec under a Cash Manager guarantee.

- 5.11. The intermediary hereby provides Investec with an irrevocably power of attorney as if in its own cause (in rem suam) and irrevocably authorises Investec pursuant to the undertaking referred to in clause 5.10 and the Security Cession to appropriate the Guaranteed Funds solely for the purposes of fulfilment of Investec's obligations under the Corporate Cash Manager guarantee.
- 5.12. If the intermediary is required to arrange a Corporate Cash Manager guarantee, in respect of which interest is payable, the client shall ensure that there are sufficient funds standing to the credit of the relevant account to meet payment of the Guaranteed Funds and the interest. If Investec is not satisfied that there are sufficient funds in the account, Investec shall be entitled in its sole discretion to limit the total amount payable under the Corporate Cash Manager guarantee, to the amount standing to the credit of the relevant account, notwithstanding the client's instructions to the contrary. Investec will at no time be liable for any shortfall under a Corporate Cash Manager guarantee.

## 6. Trust account mandates

The intermediary shall not be permitted to utilise the Corporate Cash Manager system for any transactions unless it has concluded a trust account mandate with its end client which, in addition to all such other provisions as may be usual or customary to mandates of this nature, confirms that the client is authorised to invest the end client's money in terms of the relevant provisions of the Legal Practice Act or the Property Practitioners Act, as the case may be, utilising the Corporate Cash Manager System.

## 7. Transaction requirements

- 7.1. In effecting any transaction, the intermediary undertakes to comply with:
- 7.1.1. this agreement; and
  - 7.1.2. the terms and conditions referred to in clause 3.5.

## 8. Suspension and withholding

- 8.1. Investec shall be entitled in its discretion, to suspend the opening of any new accounts and/or to withdraw or limit access to any Investec product and/or service used by the intermediary, on not less than 20 business days' written notice to the intermediary.

## 9. Refusal

- 9.1. Investec is not obliged to make available to all investment accounts, products, facilities or services offered generally by Investec. Availability of or access to any such investment account, product, facility or service is at the sole discretion of Investec. You acknowledge and agree that Investec is entitled in its sole discretion from time to time to replace, substitute or withdraw any investment account, product, facility or service.

## 10. Duration, termination and breach

- 10.1. On cancellation of the agreement for reasons other than those set out in clauses 20.3.1 to 20.3.3 of the General Terms of Business, Investec agrees to facilitate the transfer of funds out of the Corporate Cash Manager system in accordance with the reasonable instructions of the intermediary, without prejudice to any rights it may have in law and subject to the provisions of any applicable law and/or any applicable product rules.

## 11. Interest and charges

- 11.1. The intermediary agrees that Investec determines and amends the interest rate applicable to accounts in accordance with the product rules.
- 11.2. In the event of any dispute as to the interest rate applicable to any account or any other amount levied in terms of the agreement, the intermediary agrees that a certificate signed by any authorised signatory of Investec (whose authority it shall not be necessary to prove) shall constitute sufficient (prima facie) proof thereof for all purposes in connection with the agreement.

## 12. Conflicts of interpretation

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

## 13. Jurisdiction

- 13.1. The agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. The intermediary and/or its Agent hereby consents and submits for the purposes of Investec taking legal steps to enforce any of its rights in terms of the agreement to the jurisdiction of the High Court of South Africa notwithstanding the amount involved. This does not prevent Investec from bringing legal proceedings in a lesser or higher competent court in which it may have jurisdiction.

## 14. Severability

- 14.1. 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).