

# TERMS & CONDITIONS FOR CROSS-BORDER LOW VALUE NAD TRANSACTIONS ACROSS THE COMMON MONETARY AREA



Date last amended: July 2024

## INTRODUCTION

These terms and conditions together with any Product, Channel, Account Specific terms and conditions and any other documentation as advised by the Bank from time-to-time form part of the Client's Agreement with the Bank for the use of any of its services for cross-border transactions across the common monetary area. The Client must read these Terms and Conditions carefully. It contains important information about the Client's and the Bank's legal rights and duties. The Client must communicate with the Bank via one or more of the following portals: the Bank's website, email [cmarandpayments@fnbnamibia.com.na](mailto:cmarandpayments@fnbnamibia.com.na), telephone +264 61 299 8733, if the Client does not understand any part of these terms and conditions.

## 1. INTERPRETATION

- 1.1. The headnotes to the clauses are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2. Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:
  - 1.2.1. **Authorised Dealer** means person authorised by the BON to deal in foreign currency;
  - 1.2.2. **Authorised Person** means the person who is duly authorised to instruct the Bank and includes any person designated by the Client as its authorised representative;
  - 1.2.3. **Agreement** means the payment instruction completed by the Client, these terms and conditions, the Transaction confirmation and any other documents specifically incorporated herein by reference and/or related to the services and/or products provided by the Bank;
  - 1.2.4. **Bank** means FNB and/or RMB as the context requires;
  - 1.2.5. **Bank's website** means either FNB website [www.fnbnamibia.com.na](http://www.fnbnamibia.com.na) or the RMB website [www.rmb.com.na](http://www.rmb.com.na);
  - 1.2.6. **Balance of payments (BOP) Category Codes** means the codes that identify and categorise in numeric format the nature and purpose of a cross border transaction for BON reporting purposes;
  - 1.2.7. **BON** means the means the Bank of Namibia inclusive of the National Payment System, Exchange Control and Virtual Asset Supervision Department, responsible for the administration of exchange control;
  - 1.2.8. **Business Day** means any working day as applicable in the country in which a Transaction may be processed;

- 1.2.9. **Channels** means one of the ways in which a Client communicates how their Transactions should be processed by the Bank, e.g. online, telephone, in writing, branch, relationship manager or private banker;
- 1.2.10. **Client** means a natural or legal entity that enters into a Transaction with the Bank;
- 1.2.11. **CMA** means the Common Monetary Area, which consists of Lesotho, Namibia, South Africa and Eswatini
- 1.2.12. **Data** means all financial and other information which is transferred between the Parties pursuant to the provision of the services whether in electronic format or hard copy;
- 1.2.13. **Data Subjects** means the Client's, the Client's customers, employees, agents and any other individuals or entities whose Personal Information or other Data the Client provides to the Bank for purposes of the services;
- 1.2.14. **Exchange Control Regulations** means the Exchange Control Regulations, 1961 as promulgated by Government Notice R.1112 of 1961-12-01, as amended from time to time;
- 1.2.15. **FNB** means First National Bank of Namibia Limited Reg. No. 2002/0180, an authorised financial institution, a public company with limited liability duly incorporated in accordance with the company laws of Namibia;
- 1.2.16. **Namibia** means the Republic of Namibia;
- 1.2.17. **Namibia Dollar or NAD** means the monetary unit of Namibia as defined in Section 37 of the Bank of Namibia Act, 1 of 2020;
- 1.2.18. **NAMRA** means the Namibia Revenue Agency;
- 1.2.19. **Nominated Bank Account** means the bank account selected by the Client, into which the Bank shall pay all monies due to the Client and from which the Bank may debit any amounts owed by the Client;
- 1.2.20. **Party or Parties** means either the Bank or the Client, or both, as the context indicates;
- 1.2.21. **Personal Information** means personal information as referred to in applicable legislation;
- 1.2.22. **Product, Channel and Account Specific Terms and Conditions** means the terms and conditions governing the respective Channels, accounts and products;
- 1.2.23. **RMB** means RMB Namibia a division of FNB;
- 1.2.24. **SWIFT** means Society for Worldwide Interbank Financial Telecommunications, an electronic communications platform across which banks effect cross border payments
- 1.2.25. **Transactions Cleared on an Immediate Basis (TCIB)** means a cross-border low value payment scheme that enables cross-border payments across the Common Monetary Area
- 1.2.26. **Transaction** means a cross-border low value NAD (NAD 25,000.00 and less) payment across the CMA.

## 2. GENERAL

- 2.1. The Bank is an Authorised Dealer.
- 2.2. The terms and conditions and the Transaction confirmation form part of the Client's Agreement with the Bank.

- 2.3. All Transactions are processed and released and/or settled on the same day it was initiated subject to several factors including but not limited to successful compliance due diligence and the availability of the system.
- 2.4. The Bank reserves the right to amend these terms and conditions from time to time. A copy of the latest terms and conditions is available on the Bank's website. The Client is required to read these terms and conditions prior to entering into a Transaction.
- 2.5. Unless inconsistent with the context, an expression which denotes any gender includes the other gender, a natural person includes a legal entity and the singular includes the plural and vice versa.
- 2.6. References to writing, written notice, written instructions and the like shall include email.
- 2.7. No indulgence given to either Party shall constitute a waiver of any of either Party's rights.
- 2.8. The Client may not cede and/or assign its rights and/or obligations in terms of any Transaction to any third party without written notification to the Bank.
- 2.9. Defined terms used in a sentence will generally have the initial letter capitalised.
- 2.10. Terms printed in **BOLD** place a strict obligation on you and should therefore be carefully read and understood.
- 2.11. If any provision of these terms and conditions including these disclaimers and limitations shall be unlawful or unenforceable then such provision shall fall away and shall not affect the validity and enforceability of the remaining terms or any of the Client's statutory rights which cannot be excluded by these terms and conditions.
- 2.12. If the inward payment presented by the Bank does not belong to the Client, it is the Client's responsibility to inform the Bank as soon as is reasonably possible that the money should be returned. Failure to advise the Bank within a reasonable time could result in fraud charges being instituted against the Client by the Bank.
- 2.13. Please note that the Transaction is subject to monetary limits in respect of the value of the Transaction processed and cannot exceed an amount of NAD 25,000.00 (Twenty-Five Thousand Namibia Dollars).
- 2.14. All future dated transactions will be processed via SWIFT in which case, the Foreign Exchange Terms and Conditions will apply.
- 2.15. Where a Client has selected more than one BoP category code, the transaction will be processed via SWIFT.
- 2.16. Each Transaction shall be subject to and conditional upon compliance with these terms and conditions and any relevant laws, including, without derogating from the generality of the foregoing, the Exchange Control Regulations, the Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014, and any rulings, laws, rules, regulations and directives of any competent authority in force at the time of entering into any Transaction with the Bank or which may come into force thereafter but be applicable to any Transaction already entered into. **The onus is on the Client to ensure that all Transactions comply with relevant laws, both local and international.**
- 2.17. The Bank shall have no liability whatsoever in relation to any demands, claims, actions, losses, costs and damages of whatever nature the Client may suffer as a result of the Client's failure to comply with these terms and conditions and any related local and international rules, laws and regulations.
- 2.18. The Bank must report all cross-border Transactions to the BON.

- 2.19. The Bank may request the Client to provide additional information/documentation as required in terms of legislation.
- 2.20. The Client is responsible for ensuring that all information supplied to the Bank is complete, correct and accurate. The Bank will not be held responsible for incorrect information supplied by the Client in respect of any Transactions.
- 2.20.1. **The Client is solely responsible for ensuring that the beneficiary account details, and account numbers are correct.**
- 2.20.2. **Take note: that once a Transaction has been effected it is final. It cannot be reversed. If you ask the Bank to pay someone using this service and it turns out that person has defrauded you or has not met their obligations to you, the Bank cannot be held responsible and cannot reverse the payment. The Bank cannot be legally responsible (liable) to you or any other person for any loss or damage you suffer because you used the service. The Bank may not be able to assist in recalling transactions processed without the relevant accountholder's consent which consent must be freely given by the relevant accountholder.**
- 2.21. No Transaction will be processed unless all the requisite information has been submitted to and received by the Bank.
- 2.22. The Bank may from time to time be obliged to disclose information relating to a Transaction to NAMRA, BON, the Financial Intelligence Centre (FIC), local and international counterparty banks for purposes of such counterparty complying with its rules, regulations or other legitimate duties and by entering into the Transaction with the Bank, the Client furthermore agrees and grants consent to the Bank to make such disclosure.
- 2.23. By undertaking a Transaction, the Client hereby consents that FNB may process (collect, use or otherwise deal with) their information (including processing outside of the borders of Namibia), which was voluntarily provided, for the purposes of providing services and products and requirements of the law. The Client hereby confirms that they have read and understood these terms and conditions and specifically the portion relating to the processing of their Personal Information. The Client also confirms that the information provided to FNB is true, correct and current; including information about their residency and citizenship for local and international tax purposes, and that they will inform FNB if it changes. The Privacy Policy can be located on the Bank's website for more information on our privacy practices.

### 3. FEES AND CHARGES

- 3.1. Fees and/or charges will be levied on all Transactions. Fees and/or charges are specific to the type of Transaction concluded.
- 3.2. All Transaction costs, fees and charges will be credited to and debited from the Client's Nominated Bank Account, unless otherwise advised by the Client. It will be displayed on the Client's Nominated Bank Account transaction history and/or by a confirmation provided by the Bank. Fee explanations, related fees, charges and penalty fees for the use of the service can be found in the pricing guide available at any FNB branch, on the Bank's website or the Client's preferred Channel.
- 3.3. Subject to applicable legislation, the Bank is irrevocably authorised by the Client to debit any account held in the Client's name with the Bank and/or the Client's Nominated Bank Account, with:
- 3.3.1. any amount incorrectly credited to the Nominated Bank Account;

- 3.3.2. any amount overpaid to the Client;
  - 3.3.3. any amount paid in error;
  - 3.3.4. fees and charges in respect of the relevant Transaction and/or any other out of pocket expenses which the Bank incurs in connection with maintaining and enforcing the Bank's rights in respect of any Transaction;
  - 3.3.5. any legal fees associated with the recovery of any and all sums from the Client;
  - 3.3.6. Interest on outstanding amounts. Interest will be charged as provided in the terms and conditions that govern the Client's Nominated Bank Account. Interest is calculated from the date on which the Client should have made payment to the Bank up to and including the date on which the Client actually pays the Bank the overdue amount.
- 3.4. Subject to applicable legislation, the Bank has the right where the Client is in default of any Transaction and/or where an amount was overpaid to the Client or paid in error to the Client to immediately:
- 3.4.1. place any of the Client's funds (credits) on hold; or
  - 3.4.2. debit any account held in the Client's name with the Bank and/or the Client's Nominated Bank Account with the amount in question; or
  - 3.4.3. freeze or close the Client's account; or
  - 3.4.4. set-off any outstanding amounts that are due and payable against funds (credits) available in the Client's accounts held with the Bank, in accordance with the set-off provision.
- 3.5. The authorisations granted to the Bank above shall not preclude the Bank from any other remedy available to it whether in terms of these terms and conditions or any other terms and conditions governing the Bank/Client relationship or by law.

#### **4. RECORDING**

- 4.1. It is the Bank's practice to record all telephone conversations with regard to Transactions. The Bank may use the recording of and/or a transcript thereof in any disputes.
- 4.2. Notwithstanding clause 4.1, the Bank has no obligation to the Client to:
  - 4.2.1. retain its practice of recording telephone conversations;
  - 4.2.2. retain such recordings for any period of time;
  - 4.2.3. make such recordings available to a Client; or
  - 4.2.4. to ensure that its recording equipment is in a working condition and any failure to have a recording for any of the reasons (or any other reason) will not give rise to an adverse inference against the Bank.

#### **5. AUTHORISED PERSONS**

- 5.1. If the Client provides to the Bank a list of persons who are authorised to provide, instructions, notices, requests or to acknowledge confirmations the Bank reserves the right to rely on such instructions, requests, notices or acknowledgements which the Bank believes are given or made by any person who is or who is believed by the Bank to be a person who is authorised or entitled under the said list to give or make such, instructions, notices, requests or confirmations on the Client's behalf, provided that in doing so the Bank acts in good faith. The Bank shall not be required to enquire as to the authority or entitlement of any such person to give such, instructions, notices, requests or confirmations.

- 5.2. If the Client does not provide a list of the type contemplated in clause 5.1 to the Bank, the Bank is entitled to assume that any, instruction, notice, request or confirmation (whether in writing or not and however communicated to the Bank) has been properly authorised by the Client if they are given or purported to be given by an individual or person who is or purports to be and is reasonably believed by the Bank to be a director or employee of the Client, or the Client's authorised agent.

## 6. WARRANTIES

- 6.1. The Client warrants to the Bank that each Transaction shall accord with and not be in contravention of any of the rules, laws, regulations, or directives in respect of any Transaction.
- 6.2. The Bank warrants that it is an Authorised Dealer.
- 6.3. In the event of the warranties made by the Client not being and remaining true and correct while any Transaction remains outstanding, the Bank will be entitled to take such action as it considers necessary to ensure that it is in or becomes in compliance with its obligations as an Authorised Dealer. The foregoing is without prejudice to any other rights which the Bank may have as a result of such incorrect warranty being given.
- 6.4. The Client warrants that:
- 6.4.1. the Authorised Person is duly authorised and has the contractual capacity to sign and/or to enter into a Transaction.
  - 6.4.2. to the best of the Client's knowledge, the Transaction does not contravene any local or international law, statute, rule or regulation.
  - 6.4.3. the Client has read these terms and conditions and knows and understands the contents hereof and agrees to be bound by these terms and conditions.
  - 6.4.4. the information furnished and documentation presented (where applicable) in support of the Transaction are in all respects true and correct.
  - 6.4.5. the Client will inform the Bank if any of this information changes.
  - 6.4.6. the Client is aware of the fees that apply to the Transaction in question.
  - 6.4.7. the Client understands that information about fees is available in the pricing guide as published on the Bank's website or from any FNB branch.

## 7. LIMITATION ON THE BANKS LIABILITY

- 7.1. The Bank shall make every effort to process a Transaction placed via the various Channels without any delay. However, the Client understands that delays can sometimes occur due to technical problems or matters out of the Banks control.
- 7.2. The Bank uses reasonable care and skill in providing the products to facilitate cross-border payments to a Client; however, the Bank does not warrant that access to these products shall be continuous and/or error free.
- 7.3. The Bank will not be liable to the Client or any other person for any loss or damage the Client suffers because of any one or more of the following:
- 7.3.1. if the Bank is unable to perform any of its obligations to the Client due to the failure of any technical systems or for any other reason beyond the Bank's reasonable control including amongst other things, war, terrorism, government action, natural disaster, total blackout and industrial dispute;

- 7.3.2. for any damage to the Client's computer equipment as a result of using the website or Channels to initiate a cross-border payment; and/or
  - 7.3.3. for any claims and/or damages (including, without limitation, indirect or consequential loss, loss of profit and whether in contract or in delict) suffered by the Client or incurred from the Client's use or delay or inability to use the website or Channels to deal in cross-border transactions, however caused.
- 7.4. In the event that the Bank is found to be liable, the Bank's maximum liability to the Client in respect of each use of the Channels to deal in cross-border transactions shall be to refund the purchase price of the Client's order.

## 8. INDEMNITY

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

## 9. NOTICES OR DOMICILE AND COMMUNICATIONS

9.1. All notices, demands or communications intended for the Bank shall be made or given to the Bank as follows:

**RMB Namibia, 1<sup>st</sup> Floor, @Parkside, 130 Independence Avenue, Windhoek, Namibia.**

- 9.2. The Client will be deemed to have elected either its registered address or its most recent physical address (as well as its most recent email address) advised to the Bank, at the option of the Bank, as its address for notices etc. and as its domicilium.
- 9.3. Any Party shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a post box number, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.
- 9.4. A notice sent by one Party to the other shall be deemed to have been received on the same day, if delivered by hand and on the fourth day after posting, if sent by prepaid registered post.
- 9.5. Notwithstanding anything to the contrary contained herein a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

## 10. BREACH

10.1. Should:

- 10.1.1. either Party fail, for any reason whatsoever, to make payment due by it under any Transaction, within 2 (two) Business Days after notice of that non-payment has been given to it by the other Party; or
- 10.1.2. either Party breach any other provision of a Transaction and fail to remedy such breach within 7 (seven) days after receipt of a notice from the other Party requiring it to do so; or
- 10.1.3. either Party be placed under provisional or final sequestration or liquidation or judicial management, or be unable to pay its debts as they fall due, or attempt to compromise with its creditors, or enter into an arrangement, compromise or a composition with or for the benefit of its creditors, or commit an act of insolvency, as defined in the Insolvency Act, 1936; or
- 10.1.4. should the Client be in breach of any agreement between it and the Bank, and the Bank becomes entitled to exercise its right to accelerate payments due or claim damages under such other agreement, or to cancel such other agreement as a result of such breach;

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

## 11. CERTIFICATION OF INDEBTEDNESS

A certificate signed by any manager of the Bank (whose appointment and designation need not be proved) as to any indebtedness of the Client in terms of any Transaction/s or as to any other fact, shall be prima facie evidence of the



Client's indebtedness to the Bank, or of such other fact, for the purpose of any application or action, judgement or order, or for any other purpose whatsoever.

## **12. JURISDICTION AND GOVERNING LAW**

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

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

- 13.1. By making use of this service, the Client consents to the Bank providing information about: these terms and conditions; the Client's breach of the terms and conditions; fraudulent activities to which the Client is a party to; the Client's payment instruction; and/or the Bank's termination of the Transaction.
- 13.2. This consent extends to any credit bureaux, the Financial Intelligence Centre, BON, NAMRA; different divisions within FNB; fraud prevention schemes established by the Bank; and/or other banks. The Bank will only disclose the abovementioned information when it is necessary to preserve the rights and interests of the Bank, other banks, the financial industry or the public in general.

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

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

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

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

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

## **16. CHANNELS**

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