

FirstRand Bank Limited  
(acting through its Rand Merchant Bank Division)  
General terms and conditions applicable to money market  
transactions

Version : 26 January 2009



**FIRSTRAND**  
Banking Group

## 1. **INTRODUCTION**

- 1.1. The terms and conditions set out in this document are those applicable to all term and call deposit and loan Transactions between the Bank and its Clients in respect of which these terms and conditions have been incorporated by reference. For the avoidance of doubt, the provision hereof do not override the provisions of any loan agreement or facility letter entered into between the Bank and a Client in relation to a Transaction.
- 1.2. The Bank reserves the right to amend these terms and conditions at any time and such amended terms and conditions will apply to Transactions into which they have been incorporated by reference. Any amended general terms and conditions subsequent to these ones will be identified with reference to their date of publication on the Bank's website.

## 2. **INTERPRETATION**

- 2.1. The headnotes to the clauses are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 2.2. Unless inconsistent with the context, the expressions set forth below shall bear the following meanings in these terms and conditions and in any confirmation in respect of a Transaction:

“Bank”	FirstRand Bank Limited (acting through its Rand Merchant Bank Division)
“Business Day”	any day on which a Transaction may be settled through normal banking channels in the countries in which the principal market for dealing in the currencies which are the subject matter of a Transaction are located
“Call Deposit”	means a deposit made by the Client with the Bank which is repayable on demand and which earns interest at the daily call deposit rate quoted by the Bank, unless otherwise agreed
“Call Loan”	means a loan made by the Bank to the Client which is repayable on demand and which is subject to interest at the daily call loan rate quoted by the Bank, unless otherwise agreed
“Client”	a legal or natural person who has entered into a Transaction with the Bank in respect of which these terms and conditions have been incorporated by reference

“Prime Rate”	the interest rate (percent, per annum, compounded monthly) from time to time published by FirstRand Bank Limited as being its prime overdraft rate, as certified by any manager of that bank whose appointment and designation need not be proved
“Rand”	the legal currency of South Africa
“Term Deposit”	means a deposit made by the Client with the Bank which is repayable on an agreed date and which earns interest at an agreed rate
“Term Loan”	means a loan made by the Bank to the Client which is repayable on an agreed date and which is subject to interest at an agreed rate
“Trade Date”	the date upon which a Transaction is concluded
“Transaction”	a Term Loan or Term Deposit or Call Loan or Call Deposit transaction concluded between the parties

2.3. Unless inconsistent with the context, an expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa and the singular includes the plural and vice versa.

2.4. References to “writing”, “written notice”, “written instructions” and the like shall exclude telefaxes and electronic communications which may be printed, such as telexes and e-mails.

**3. CONCLUSION OF TRANSACTIONS, CONFIRMATIONS AND ACCRUAL OF INTEREST**

3.1. All Transactions must be concluded either telephonically or by means of a Reuters electronic messaging or other registered on-line trading system, which are recorded. Transactions must be entered into before 15h30 on a Business Day for settlement on that Business Day.

- 3.2. A confirmation in respect of each Transaction shall be sent by the Bank to the Client promptly on the Trade Date.
- 3.3. The failure by the Bank to send a confirmation as provided for shall not invalidate the Transaction concerned.
- 3.4. A confirmation which has been sent by the Bank shall constitute prima facie proof of the subject matter of the Transaction concerned unless the Client notifies the Bank in writing (which may be sent by telefax or email) or by telephone, that it disputes the confirmation within 15 minutes of receipt of the confirmation from the Bank.
- 3.5. Any deposit by the Client with the Bank which is not in terms of an agreed Transaction will earn interest at a rate determined by the Bank in its sole discretion.
- 3.6. Interest in respect of:
  - 3.6.1. Term Deposits and Term Loans will accrue daily, and be paid on the maturity date of the deposit or loan; and
  - 3.6.2. Call Deposits and Call Loans will accrue daily and be paid at month end

#### **4. SETTLEMENT OF TRANSACTIONS**

- 4.1. Payments to the Client in terms of a Transaction will be made to the account in the Client's name for the currency concerned specified by the Client in terms of standard settlement instructions provided by the Client to the Bank and accepted by the Bank or, if no such instructions have been provided, to the account in the Client's name specified by the Client when the Transaction is entered into, and recorded in the confirmation, or as otherwise agreed. If no account is so specified, and accepted or recorded, and if no other arrangement has been agreed, the Client will be obliged to advise the Bank in writing of the account in the Client's name to which the payment must be made by no later than 15H30 on the Trade Date of the Transaction, and failure to do so will entitle the Bank:
  - 4.1.1. to cancel the Transaction concerned, and any loss or costs to the Bank arising on such cancellation (as determined by the Bank in accordance with its standard procedures) will be for the account of the Client; or
  - 4.1.2. to take whatever action is required to ensure that settlement of the Transaction takes place (but without obligation on the Bank to do so) which will include, but

not be limited to, payment of Rand to the Client's principal demand deposit account maintained with the Bank (if any).

- 4.2. In the event of the Client not giving timeous valid instructions to the Bank to debit a particular Rand account with amounts due by the Client to the Bank in respect of any Transaction, the Bank will be entitled, but not obliged, to debit any such amounts to the Client's principal demand deposit account maintained with the Bank (if any). The foregoing shall not prejudice any rights which the Bank may have as a result of the Client's failure to pay amounts due to the Bank.
- 4.3. If any deposit has been ceded as security by the Client to any other party ("the cessionary"), repayment thereof will not be made without the written consent of the cessionary, and the Client will be solely responsible for obtaining such consent.
- 4.4. Cessions to third parties may only be made by the Client with the prior written consent of the Bank.

## **5. EARLY REDEMPTIONS OR REPAYMENTS OF TERM TRANSACTIONS**

- 5.1. In the event of the Client wanting to:
  - 5.1.1. repay a Term Loan prior to the agreed repayment date; or
  - 5.1.2. obtain repayment of a Term Deposit prior to the agreed repayment date

it will, subject to clause 5.2, be entitled to do so by giving written notice to the Bank, and in the case of the Client wanting early repayment of a Term Deposit, such notice must be received two Business Days prior to the required repayment date.

- 5.2. The Bank reserves the right to impose an early termination penalty. Should the Bank and the Client not reach agreement on the penalty fee required by the Bank, the Client will not be entitled to repay the Term Loan or obtain repayment of the Term Deposits before the originally agreed date.
- 5.3. Amounts payable by the Client to the Bank in terms of clause 5.2 are payable on demand and the Bank will have the right to set off such amounts against amounts payable by the Bank to the Client or to debit such amounts to the Client's demand deposit account with the Bank.

## **6. DISPUTE RESOLUTION**

- 6.1. If the Client disputes the contents of a confirmation in terms of clause 3.4 then the parties shall forthwith meet or have a telephone discussion to attempt to resolve such dispute and endeavour jointly to agree upon their respective indebtedness to each other thereunder. Where the parties either fail to meet or have the discussion forthwith, or they fail to resolve the dispute by the close of business on the Business Day after receipt by the Bank of the dispute notice under clause 3.4, the Bank will, unless the parties agree otherwise in writing or by telefax, terminate the disputed Transaction by no later than close of business on the same Business Day. In such event the loan or the deposit (if the deposit had been made or the loan had been advanced) will be repayable forthwith and will be subject to or earn interest at the market related overnight call or deposit rate stipulated by the Bank.
- 6.2. Either party shall be entitled to refer an unresolved dispute contemplated in clause 6.1 for resolution by an arbitrator selected by agreement between the parties or, failing agreement, an impartial arbitrator appointed by the chief executive for the time being of The Banking Council South Africa. Such arbitration shall be held in accordance with the provisions of the Arbitration Act, 1965, save that it shall be informal and the arbitrator shall have full and free discretion to determine the procedure to be adopted. The decision of the arbitrator in any such arbitration proceedings shall be final and binding on each of the parties, will be carried into effect and may, at the instance of either party, be made an order of court.

## **7. RECORDING**

- 7.1. It is the Bank's practice to record all telephone conversations with the Bank's dealing room with regard to Transactions. The Bank may use the recording of and/or a transcript thereof in any disputes.
- 7.2. Notwithstanding 7.1, the Bank has no obligation to the Client to:
- 7.2.1. retain its practice of recording telephone conversations;
  - 7.2.2. retain such recordings for any period of time; or
  - 7.2.3. to ensure that its recording equipment is in a working condition
- and any failure to have a recording for any of the aforementioned reasons (or any other reason) will not give rise to an adverse inference against the Bank.

## **8. CESSION**

- 8.1. As security for any amount owed by the Client to the Bank in respect of loans contemplated in these Terms and Conditions, or from any other cause whatsoever, the Client hereby cedes, in security, to the Bank its rights to repayment of any deposits made by it with the Bank.
- 8.2. Notwithstanding the provisions of clause 8.1, the Client will be entitled to obtain repayment of deposits from time to time until such time as an event of default or potential event of default, as envisaged in clause 9 has occurred, or the Bank has given written notice to the Client, whereupon the Client shall only be entitled to obtain repayment of deposits if the Bank agrees thereto.

## **9. BREACH**

- 9.1. Should:
- 9.1.1. either party fail, for any reason whatsoever, to make a repayment due by it under any Transaction, within two Business Days after notice of that non-payment has been given to it by the other party; or
- 9.1.2. either party breach any other provision of a Transaction and fail to remedy such breach within, five Business Days after receipt of a notice from the other party requiring it to do so; or
- 9.1.3. either party be placed under provisional or final sequestration or liquidation, provisional or final 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
- 9.1.4. either party fail to pay any amount(s) due to any other person(s) whomsoever and from whatsoever cause in an amount(s) in aggregate in excess of 3% of the defaulting party's net asset value and, as a result of such failure the other person(s) become(s) entitled to demand payment of an amount(s) that was/were otherwise not yet due; or
- 9.1.5. 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 demand immediate repayment of all amounts owed to it by the other party and to tender repayment of all amounts owed by it to the other party, by written notice to the defaulting party.

9.2. The non defaulting party will be entitled to require any amounts owed by it to the defaulting party to be set off against any amounts owed by the defaulting party to it.

9.3. Nothing in this clause will detract from RMB's cession set out in clause 8, and it will be entitled to withhold payment of amounts deposited with it until all amounts owed to it have been repaid, and/or apply the proceeds of amounts deposited with it to settle amounts due to it.

9.4. Notwithstanding anything to the contrary contained herein or any other agreement between the parties (whenever entered into), it is agreed that, in the event of the Client:

10.5.1 being in breach of the terms of this or any other agreement between the parties; or

10.5.2 being sequestrated or put into liquidation, placed under judicial management or being wound up, whether provisionally or finally or being placed under curatorship

the Bank will not be obliged to pay any amounts or to perform any obligations due to the Client until all amounts owed and all performances due by the Client and any affiliates of the Client to the Bank and its affiliates, have been paid in full or fully performed.

9.5. For purposes of 9.4, affiliate, in relation to a party, means any subsidiary of such party, any holding company of such party or any other subsidiary of such holding company, as those terms are defined in the Companies Act, 1973.

## 10. **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, judgment or order, or for any other purpose whatsoever.

## **11. AUTHORISED PERSONS**

- 11.1. 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 Clients 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. The onus is on the Client to notify the Bank of any changes to the authorized list of persons at least one day before said person/s can provide instructions, notices, requests or to acknowledge confirmations with the Bank.
- 11.2. If the Client does not provide a list of the type contemplated in 11.1 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.

## **12. WARRANTIES**

- 12.1. Each Transaction shall be subject to and conditional upon compliance with any relevant law, including, without derogating from the generality of the foregoing, the South African Exchange Control Regulations, the Protection of Constitutional Democracy against Terrorism and Related Activities Act (33 of 2004) and any rulings, laws, rules, regulations and directives of any competent authority in force at the time of entering into any transaction or which may come into force thereafter but be applicable to any transaction already entered into.
- 12.2. The Client warrants to the Bank, if applicable, that each Transaction shall accord with approvals or permissions granted to the Client by the South African Reserve Bank and that the Client shall not be in contravention of any of the rules, laws, regulations or directives referred to in 12.1 in respect of any transaction.

12.3. 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, if applicable 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, which will include, but not be limited to, terminating any non-compliant Transactions in accordance with then current exchange control rulings. The foregoing is without prejudice to any other rights which the Bank may have as a result of such incorrect warranty being given.

### 13. **INDEMNITY**

The Client will indemnify the Bank against any losses or damages arising from claims by any third party, and waives any claims which it may have against the Bank from whatsoever cause arising, including but not limited to errors or delays in transmission of communications or payments, misinterpretation of communication on receipt, or failure to identify properly the person or persons mentioned in any communication, unless such loss or damage was caused by the Bank's wilful default or negligence.

### 14. **NOTICES**

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

**THE BANK:**        Rand Merchant Bank  
                          1 Merchant Place  
                          Cnr Fredman Drive & Rivonia Road  
                          Sandton  
                          2196  
                          Telefax: (011) 269 9230

14.2. The Client will be deemed to have elected either its registered address or its most recent physical address (as well as its most recent telefax number) advised to the Bank, at the option of the Bank, as its address for notices etc. and as its domicilium.

14.3. 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.

- 14.4. A notice sent by one party to the other shall be deemed to have been received on the same day, if delivered by hand or sent by telefax and on the fifth day after posting, if sent by prepaid registered post.
- 14.5. 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.

**15. GENERAL**

- 15.1. These terms and conditions and the confirmations of Transactions into which these terms and conditions are incorporated by reference set out the entire agreement and understanding between the parties in connection with the subject matter. No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein or in any other document recording the Transaction.
- 15.2. No indulgence which either of the parties (“the grantor”) may grant to the other of them (“the grantee”) shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee which might have arisen in the past or which might arise in the future.
- 15.3. Save as otherwise agreed to and provided for in writing between the parties, the Client shall not be entitled to cede or assign its rights or obligations in terms of any Transaction to any third party without the consent of the Bank.

**16. LAW TO APPLY**

All Transactions shall be governed and construed in all respects in accordance with the laws of the Republic of South Africa as constituted from time to time.

**17. JURISDICTION**

Subject to the provisions of 6, the parties consent to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa in respect of any dispute arising from a Transaction.