

COMMERCIAL BANKING

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# FUNDING AND CREAMING

**Terms and Conditions**

April 2016

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**LLOYDS BANK**

# Funding and creaming terms and conditions for incorporation on forms 2260, 2261

September 2013

## 1. Terms and Conditions

- 1.1 These are the terms and conditions that apply to the funding and/or creaming facilities requested by your business and together with the information provided in your Instruction forms your agreement with the Bank ("Agreement").
- 1.2 This Agreement replaces any terms or conditions or other agreements or authorities and instructions that may have applied to the funding and/or creaming facilities on your Accounts.
- 1.3 In the event of any conflict between these terms and conditions for Funding and/or Creaming facilities and your Account terms and conditions the former shall prevail.

## 2. Instructions

- 2.1 The transfer of funds in accordance with the Instruction shall commence as soon as reasonably practicable following receipt by us of this Instruction for Funding and/or Creaming facilities (duly completed to our satisfaction).
- 2.2 You agree that Funding and/or Creaming Instructions will be carried out daily on Business Days.
- 2.3 You may request that we do not carry out any transfer of funds at any time up to the end of the Business Day before the transfer is due to take place. If you wish to stop an instruction, we will use our reasonable endeavours to stop the transaction, or if it cannot be stopped we may subsequently reverse the transfer.
- 2.4 You agree that if the carrying out of any transfer of funds would or does cause either a debit balance on an Account or, if a borrowing limit is agreed on that Account, the debit balance to exceed such borrowing limit, we may, at our sole discretion, implement the Instruction in whole or not at all or (if such transfer of funds has already been made) may reverse such transfer in whole or in part at any time thereafter up to close of banking business on the next Business Day. If we do not carry out an Instruction we will, where reasonably possible, notify you that the transfer was not actioned as soon as possible. Subject to any legal or regulatory requirements which may apply, we will tell you why we refused to act on your Instructions and stopped the transfer of funds. If this has been due to you giving incorrect information we will let you know how to put this right.
- 2.5 You understand that it may not be possible for us to carry out funding instructions in full where there are insufficient available funds on the originating account. In such cases the available Cleared Balance (if any) will be transferred.
- 2.6 You agree that if, after any transfer of funds one or more cheques or other payments previously paid into an account (and forming part of the sum transferred) is/are returned unpaid, recalled or reversed, we may, whether or not we have previously regarded such item(s) as being cleared, debit the amount of the unpaid cheque(s) or other recalled or reversed payment(s) either to that account or to one or more of the accounts to which funds have been transferred, as we think fit.
- 2.7 Transfers of funds made under this Agreement will be shown on the statements we provide or make available for the Account(s). You should check statements regularly. If there is an entry that seems to be wrong you should advise us as soon as possible so that we can sort it out. Delay in notification may make correcting any error difficult. If we need to investigate a transfer between your Accounts you should co-operate with us and the police, if we need to involve them. In addition to checking statements you should notify us as soon as possible by contacting your relationship team if you become aware of a transfer of funds between Accounts which has not been authorised by you.

## 3. Warranties and representations

- 3.1 You warrant and represent that:
  - a. you have all the rights, powers and capacity which are requisite to enable you to enter into this Agreement and to perform your obligations under this Agreement without infringing the provisions of your constitutional documents, the powers conferred in such constitutional documents or the rights of any third party; and
  - b. you are the sole beneficial owner of the Balance on the Accounts and that no trust arrangement, agency arrangement or other beneficial interest exists in relation to such Balances.
- 3.2 You undertake that you will promptly inform us should any representation or warranty contained in this Agreement cease to be true.

## 4. Termination of Instruction and Agreement

- 4.1 If the accounts used for the funding or creaming arrangements are closed this Agreement will automatically come to an end.
- 4.2 We may act upon a written instruction signed by any Authorised Signatory giving not less than seven days' notice to terminate this Agreement.
- 4.3 We may terminate this Agreement by giving two months' notice in writing.
- 4.4 Notwithstanding clauses 4.1 and 4.3, we may terminate this Agreement with immediate effect by notice in writing if:
  - a. any of the Accounts have been closed, blocked or frozen (either pursuant to an injunction or otherwise);
  - b. any of the warranties and representations made in clause 3.1 cease to be true;
  - c. there is the occurrence or existence of a default, event of default or other similar condition or event (however described) by you under one or more agreements with us;
  - d. we reasonably believe that you cannot fulfil your obligations under this Agreement; or
  - e. you materially or repeatedly breach any of your obligations under this Agreement or any other agreement with us.
- 4.5 Termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect any provision which is intended to apply after such termination. The provisions of clauses 8 and 9 shall survive termination of this Agreement.

## 5. Amendment of instructions

- 5.1 If you wish to change your funding and/or creaming arrangements, you will need to enter into another Agreement with us whereupon this Agreement shall terminate with effect from the date of the new Agreement which shall replace it and your new Instruction shall take effect as soon as it is processed by us.

## 6. Conflict with other arrangements

- 6.1 This Agreement does not in any way prejudice or affect the instructions to us contained in your bank mandate or authority to operate the Account(s) nor does it in any way prejudice or affect any set-off, guarantee or other security arrangements agreed, whether now or in the future, between us and you.
- 6.2 Save as expressly provided for in this Agreement, all Accounts shall be subject to our standard terms and conditions for the Accounts and the terms of any facility letters entered into between us and you. Where there is any inconsistency between the terms of the Accounts and any facility letters and this Agreement, the terms of this Agreement shall prevail.

## 7. Charges

- 7.1 We reserve the right to impose charges in accordance with the scale of charges provided in Our Charges Brochures and also available on our website at [loydsbank.com/business](http://loydsbank.com/business) as may be varied from time to time in accordance with clause 11. You can also contact your relationship team at any time to get full information on our charges. You agree to pay such charges and authorise us to deduct the charges from your account.
- 7.2 We may change any of our charges at any time. We will tell you in accordance with clause 10 at least two months before the change to the charge takes effect.

## 8. Confidentiality

- 8.1 Both parties agree and undertake that during this Agreement and thereafter each party will keep confidential and will not use for its own purposes or without the prior written consent of the other party, disclose directly or indirectly to any third party any information concerning the business and affairs of the other (including trade secrets and information of commercial value but for the avoidance of doubt not including the fact of this Agreement) which may become known to such party as a result of the performance of this Agreement unless such information:
  - a. is public knowledge other than as a result of a breach of this Clause 8.1 or any other duty of confidentiality;
  - b. has been independently acquired from a third party without restriction on disclosure; or
  - c. is required to be disclosed by reason of law, regulation or for the purposes of litigation by or against either party.
- 8.2 Each party undertakes to the other to take all steps as shall from time to time be necessary to ensure compliance with the provisions of clause 8.1. However, nothing in this Agreement shall prevent us from disclosing information to our sub-contractors or agents for the purposes of fulfilling our obligations under this Agreement.

## 9. Limitation of liability

- 9.1 We shall not be liable for any loss, damage, injury, interruption, delay or non-performance arising out of:
- use of the funding and/or creaming arrangements set out in this Agreement:
    - in a way or for a purpose not authorised by us; or
    - in contravention of any law or regulation (in any relevant jurisdiction); or
  - the actions or omissions of any third party; or
  - our failure to act on your instructions where we reasonably believe that by following such instructions it would have violated any law or regulation.
- 9.2 We shall not be liable for:
- any losses not directly associated with the incident that may cause you to claim against us whether or not such losses were reasonably foreseeable; nor
  - any loss of profits, loss of business, loss of goodwill or any form of special damages.
- 9.3 Micro-enterprises
- The provisions of this clause 9.3 shall apply if you are a Micro-enterprise.
- If we fail to execute, or incorrectly execute an Instruction, we will refund the payment to the relevant Account unless the payment was received into the correct account. We will also refund to you any interest and charges directly incurred by you on the Account(s) that would not have been incurred had we executed the transaction correctly.
  - Where you have told us that there has been an unauthorised transfer of funds on the Account(s), we will refund to the Account the amount of the funds transferred and any interest and charges directly incurred on the Account(s) as a result of transfer if the transfer was in fact unauthorised. Beyond this we will have no further liability for an unauthorised transfer of funds.
- 9.4 Non-Micro-enterprises
- Clause 9.3 shall not apply if you are not a Micro-enterprise. Instead this clause 9.4 shall apply and the Payment Services Regulations shall apply only insofar as they are provided for herein.
- If we fail to execute, or incorrectly execute an Instruction to transfer funds between Accounts, we shall be liable to you for any reasonable losses incurred by you but only if they arise directly from our breach of this Agreement or our negligence, and if in the ordinary course of events and with the knowledge we had, we might reasonably have expected such loss to result directly from such breach or negligence. Our liability pursuant to this clause 9.4(a) shall be limited:
    - to the amount (if any) of the Instruction transferring funds between the Accounts to which the breach or negligence occurred; and
    - to the amount of any interest and charges directly incurred by you on the Account(s) as a result of the transfer of funds that would not have been incurred otherwise.Beyond this we shall have no further liability to you for a failure to execute properly or at all.
  - where you have told us that there has been an unauthorised transfer of funds on the Account(s) you shall be liable for such transfer unless we are reasonably satisfied that the transaction was unauthorised. If the transaction was unauthorised we will refund to the Account(s) the amount of the transaction and any interest and charges directly incurred on the Account(s) as a result of the transaction. Beyond this we will have no further liability to you for an unauthorised transaction.
- 9.5 You will be liable for all unauthorised transfers of funds on the Account(s) if you have acted fraudulently.
- 9.6 We will not be bound by any representation or warranty given by an employee or agent of ours in connection with the funding and/or creaming arrangements set out in this Agreement unless it has been confirmed in writing by our relationship manager.
- 9.7 Nothing in this Agreement shall be construed so as to exclude or limit the liability of either party in respect of death or personal injury caused by negligence or in respect of any fraudulent misrepresentation.

- 9.8 You agree to indemnify us against any loss or damage and any claims, actions, proceedings, costs or expenses suffered or incurred by us by reason directly or indirectly of your employees', servants', agents' or representatives' negligence or failure to act in accordance with the terms of this Agreement or of the Bank acting in accordance with the terms of this Agreement.

## 10. Variation

- 10.1 We are entitled to amend any term of this Agreement.
- 10.2 We will notify you in writing at least two months before we make any change to this Agreement. You will be deemed to have accepted any such change if you do not notify us to the contrary before the date any such change comes into effect. However if you choose not to accept any change:
- 10.2.1 you can end this Agreement at any time before the change comes into effect; or
- 10.2.2 our notice of the change shall be deemed to be notice of termination given under clause 4.3 and this Agreement will terminate the day before any change comes into effect.

## 11. Force Majeure and Sanctions

- 11.1 Notwithstanding anything to the contrary in this Agreement, if we are prevented, hindered, or delayed from or in performing any of our obligations under this Agreement due to abnormal and unforeseeable circumstances beyond our control (including any strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, accident, breakdown or other failure of equipment, software or communications network, fire, flood, or other circumstances affecting the supply of goods or services), then we shall not be liable to you or be obliged to perform our obligations under this Agreement to the extent that we are prevented, hindered or delayed in our performance by the abnormal and unforeseeable circumstances beyond our control.
- 11.2 We and/or any member of the Lloyds Banking Group may be subject to sanctions and/or embargoes imposed by the international community including the UK, EU, UN and the USA. We may not accept instructions and may refuse to make any payment or take any action pursuant to an instruction if it would result, or in our reasonable opinion is likely to result, in a breach by us or any member of the Lloyds Banking Group or any of their respective employees of any sanction or embargo whether or not imposed in the UK and we will not be liable for any loss, damage, cost or expense by reason aforesaid. We shall be permitted to disclose to the relevant authorities such information in relation to any instruction and/or payment as may be required.

## 12. General Provisions

- 12.1 Any notice to be given under this Agreement shall, unless provided otherwise in this Agreement, be written, sent by post (and deemed received two Business Days after posting) or delivered by hand (and deemed received at time of receipt). The address for any such notice for the Bank will be your relationship manager at the Bank, the address for any such notice for you will be the address you have given us for correspondence. Either party may change the address for communication by giving seven days' notice in writing to the other party.
- 12.2 The language of this Agreement is English and all communications and notices between the parties shall be in English.
- 12.3 We shall have the right to assign, or otherwise transfer our rights under this Agreement in whole or in part. You may not assign or otherwise transfer any of your rights or obligations under this Agreement.
- 12.4 You acknowledge that the Bank may sub-contract any one or more of its activities under this Agreement to any one or more of the Bank's sub-contractors.
- 12.5 The failure of either party to enforce (or delay in enforcing) any term of this Agreement shall not be regarded as a waiver of such rights and shall not prevent either party from subsequently enforcing such rights that it has under this Agreement.
- 12.6 Nothing in this Agreement confers or is intended to confer a benefit enforceable by a person who is not a party to it and such a person shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 12.7 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed and construed in accordance with the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including any dispute relating to any non-contractual obligation arising out of or in connection with this Agreement).

### 13. Defined Terms

“**Account(s)**” mean the accounts as set out in the Instruction requesting the funding and/or creaming facility.

“**Authorised Signatory**” means anyone who is an authorised signatory with unlimited signing powers under the terms of the mandate given by the Business to the Bank.

“**Balance**” means the credit or debit balance on the Account at the time the Bank carries out the relevant Instruction for funding and/or creaming. The Balance will be calculated on a cleared balance basis.

“**Business Day**” means 9am to 5pm Mondays to Fridays other than public and bank holidays in England and Wales, unless transacting through one of our branches which opens for shorter hours or we notify you of different times for the processing of payments to and from your account.

“**Charges Brochure**” means any brochure or leaflet of ours that sets out the charges, including where appropriate, international as well as UK charges that apply to your Accounts.

“**Cleared Balance**” means the actual balance that the transfer will take place on and will be based on the cleared balance of the account.

“**Instruction(s)**” mean the request to transfer funds between the originating and receiving accounts for the funding and/or creaming facility.

“**Lloyds Banking Group**” includes Lloyds Bank plc and a number of other companies using brands including Lloyds Bank, Halifax and Bank of Scotland and their associated companies.

“**Micro-enterprise**” means any enterprise, or group of enterprises of which it forms part, which at the time you enter into this Agreement, employs fewer than 10 persons and whose annual turnover and/or balance sheet total does not exceed EUR2 million (or its equivalent).

“**Payments Service Regulations**” means the Payments Service Regulation 2009 (SI 2009/209), as may be amended or replaced from time to time.

“**We/us/our/Bank**” means Lloyds Bank plc.

“**you/your**” means the Business named in the Instruction for funding and creaming facilities.

### 14. Help and Information

If you have any queries about the funding and creaming arrangements or require a copy of this Agreement please contact your relationship team. These terms and conditions can also be found on our website at [lloydsbank.com/business](https://lloydsbank.com/business)

We aim to provide the highest level of customer service possible. However if you do experience a problem we will always seek to resolve this as quickly and efficiently as possible. A copy of our “How to voice your concerns” leaflet can be obtained in branch or by contacting your relationship team.

### Our service promise

We aim to provide the highest level of customer service possible. However, if you experience a problem, we will always seek to resolve this as quickly and efficiently as possible. If something has gone wrong please bring this to the attention of any member of staff. The complaint procedures are also published on our website [lloydsbank.com/business/contactus](https://lloydsbank.com/business/contactus)

## Find out more

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 Go to [lloydsbank.com/business](https://lloydsbank.com/business)

 Visit your local branch

Please contact us if you'd like this information in an alternative format such as Braille, large print or audio.

If you have a hearing or speech impairment you can use Text Relay (previously Typetalk) or if you would prefer to use a Textphone, please feel free to call us on 0345 601 6909 (lines open 7am-8pm Monday to Friday and 9am-2pm Saturdays).

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### Important Information

Your call may be monitored or recorded in case we need to check we have carried out your instructions correctly and to help improve our quality of service.

Lloyds Bank plc. Registered Office: 25 Gresham Street, London EC2V 7HN. Registered in England and Wales No. 2065. Telephone: 020 7626 1500.

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

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We adhere to the Standards of Lending Practice which are monitored and enforced by the LSB: [www.lendingstandardsboard.org.uk](http://www.lendingstandardsboard.org.uk)

Lloyds Bank plc is covered by the Financial Services Compensation Scheme and the Financial Ombudsman Service. (Please note that due to the schemes' eligibility criteria not all Lloyds Bank Commercial customers will be covered by these schemes.)

