

COMMERCIAL BANKING

**AUTHORITY TO
SWEEP**

Terms and Conditions

April 2016



LLOYDS BANK

Authority to Sweep Terms and Conditions

These are the terms and conditions of an Agreement between the Bank and the Customer named in the Authority to Sweep.

1. Definitions and interpretation

In this Agreement the following words and expressions have the meanings set opposite them unless the context otherwise requires:

“**Account(s)**” means the Control account(s) and/or the Contra account as set out in the Authority to Sweep (or any one of them).

“**Authorised Signatory**” means anyone who is an authorised signatory with unlimited signing powers under the Customer’s bank mandate.

“**Balance**” means the credit or debit balance on the Account at the time the Bank carries out the relevant Transfer. The Balance will be calculated on either a cleared or a ledger basis (as specified in the Authority to Sweep).

“**Bank**” means Lloyds Bank plc.

“**Business Day**” means a day (excluding Saturday and Sunday) on which banks generally are open for business in England unless stipulated otherwise in the Agreement.

“**Euro payment day**” means a day on which TARGET2 is open for settlement of payments in euro.

“**Event of Force Majeure**” means, in relation to either party, any abnormal or unforeseeable circumstances beyond the reasonable control of that party, including (but not limited to) any act of God, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out or trade dispute or labour disturbance, the act or omission of government or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet service provider, war, military operations, illegality or act of terrorism or riot or compliance with a law or governmental order, rule, regulation or direction or failure of equipment, software or communications network(s) (including the SWIFT network) or other circumstances affecting the supply of goods or services.

“**Instruction(s)**” means the instruction(s) set out in the Authority to Sweep to transfer funds between the Contra account and any single Control account, and are the Customer’s authority to the Bank to carry out the Transfers.

“**Micro-enterprise**” means any enterprise, or group of enterprises of which it forms part, which at the time the Customer enters 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).

“**Payment Services Regulations**” means the Payment Services Regulations 2009 (S.I. 2009/208) as amended or replaced from time to time.

“**Sweep Date**” means the Business Day on which a Transfer will be carried out.

“**TARGET2**” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

“**Transfer**” means each transfer of funds to be made on a Sweep Date pursuant to an Instruction. Transfers are carried out either on a Cleared to Cleared Balance basis or on a Ledger to Ledger Balance basis.

“**Value Dating**” means the date on which the Bank calculates interest on funds debited from or credited to Account(s).

2. Instructions

- 2.1 The transfer of funds in accordance with the Instructions shall commence as soon as reasonably practicable following receipt by the Bank of this Agreement (executed in a form satisfactory to the Bank).
- 2.2 The Customer agrees that Transfers will only be carried out on Business Days. In the Authority to Sweep the Customer has made an election regarding what action the Bank will take when a Transfer is scheduled to be carried out on a non-Business Day.
- 2.3 Notwithstanding Clause 2.2, if the Contra account and Control account are euro denominated currency accounts and a Transfer is due to be made on a day that is not a Business Day (“Transfer Due Date”), the Transfer will be made the next Business Day where the Customer has selected the “Next” day option in the Authority to Sweep. If the Transfer Due Date was a Euro payment day then for the purposes of Value Dating the Transfer will be deemed to have taken place on the Euro payment day.
- 2.4 The Customer may request that the Bank does not carry out any Transfer at any time up to the end of the Business Day before the Transfer is due to take place. If the Customer wishes to stop a Transfer after that time, the Bank will use its reasonable endeavours to stop the Transfer.
- 2.5 The Customer agrees that if the carrying out of any Transfer 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, the Bank may, in its sole discretion, implement the Transfer in whole or not at all or (if such Transfer 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 the Bank does not carry out a Transfer it will, where reasonably possible, notify the Customer that regulatory requirements which may apply, the Bank will tell the Customer why it refused to act on the Customer’s Instructions and stopped the Transfer. If

this has been due to the Customer giving incorrect information the Bank will tell the Customer how to put this right.

- 2.6 The Customer agrees that if, after any Transfer 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, the Bank may, whether or not the Bank had 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 the Bank thinks fit.
- 2.7 Where the Customer has specified more than one Control account, the carrying out of other Transfers relating to other Instructions within the Authority to Sweep shall be unaffected by the failure of a single Transfer on any Sweep Date.
- 2.8 Transfers made under this Agreement will be shown on the statements the Bank provides or makes available for the Account(s). The Customer should check statements regularly. If there is an entry that seems to be wrong the Customer should tell the Bank as soon as possible so that the Bank can sort it out. Delay in notification may make correcting any error difficult. If the Bank needs to investigate a Transfer the Customer should co-operate with the Bank and the police, if the Bank needs to involve them. In addition to checking statements the Customer should notify the Bank as soon as possible by contacting the Customer’s relationship team if the Customer becomes aware of a Transfer which has not been authorised by the Customer.

3. Warranties and representations

- 3.1 The Customer warrants and represents that:
 - a. it has all the rights, powers and capacity which are requisite to enable it to enter into this Agreement and to perform its obligations under this Agreement without infringing the provisions of its constitutional documents, the powers conferred in such constitutional documents or the rights of any third party; and
 - b. it is 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 The Customer undertakes that it will promptly inform the Bank should any representation or warranty contained in this Agreement cease to be true.

4. Termination and suspension

- 4.1 If the Contra account or all of the Control accounts are closed this Agreement will automatically come to an end.
- 4.2 The Bank may act upon a written instruction signed by any Authorised Signatory giving not less than seven days’ notice to terminate this Agreement.
- 4.3 The Bank may terminate this Agreement by giving two months’ notice in writing.
- 4.4 Notwithstanding Clauses 4.1 and 4.3, the Bank 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) in respect of the Customer under one or more agreements with the Bank;
 - d. the Bank reasonably believes that the Customer cannot fulfil its obligations under this Agreement; or
 - e. the Customer materially or repeatedly breaches any of its obligations under this Agreement.
- 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 9 and 10 shall survive termination of this Agreement.
- 4.6 Notwithstanding Clauses 4.1 and 4.3, the Bank may suspend the sweeping arrangements made pursuant to this Agreement or remove or suspend an Account from the Authority to Sweep with immediate effect if any of the circumstances in Clause 4.4(a) to (e) occurs. If the Bank does either suspend the sweeping arrangements or removes or suspends an Account from the Authority to Sweep, the Bank will inform the Customer of such fact as soon as possible unless the law prevents the Bank from doing so or the Bank reasonably believes it would undermine its security measures. Where the Bank has suspended either the sweeping arrangements or an Account it will cease such suspension as soon as practicable after the reasons for such suspension cease to exist.

5. Amendment of Instructions

- 5.1 The Customer agrees that the Bank will delete or suspend an Account from this Authority to Sweep on 15 days’ written notice from any Authorised Signatory.

- 5.2 The Customer agrees that the Bank will amend any Instruction or accept the addition of additional Instructions to this Authority to Sweep on 15 days' written notice from any Authorised Signatory, provided that, in the case of additional Instructions, any new Instruction shall have similar characteristics (for example, sweep type, frequency) to the other Instructions within the sweep arrangements set out in this Agreement.
- 5.3 Subject to Clauses 5.1 and 5.2 if the Customer wishes to change the nature of the sweeping arrangements, the Customer must enter into another Agreement with the Bank for such arrangements whereupon this Agreement shall terminate with effect from the date of the new agreement.
- 5.4 Subject to Clause 4.6, the Bank may delete a Control account from the sweep arrangements set out in this Agreement by giving two months' notice in writing.
- 6. Conflict with other arrangements**
- 6.1 This Agreement does not in any way prejudice or affect the instructions to the Bank contained in the Customer's 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 the Bank and the Customer.
- 6.2 Save as expressly provided for in this Agreement, all Accounts shall be subject to the Bank's standard terms and conditions for the Accounts and the terms of any facility letters entered into between the Bank and the Customer. 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 The Customer agrees to pay to the Bank the Charges as set out in the Authority to Sweep. The Bank will invoice the Customer for the Charges at the frequency agreed in the Authority to Sweep and the Customer authorises the Bank to debit the Charges shown on the invoice from the account identified in Section 4 on the Authority to Sweep. The Bank will debit the said account between not less than 15 days and not more than 21 days after the invoice date.
- 7.2 If the Charges are not paid by the due dates, the Bank will be entitled to charge interest on the amount still outstanding. (This right applies after – as well as up to – the date of any formal demand or court judgment.) The interest rate will be 8% per annum. Any interest that is unpaid will be compounded once a month.
- 7.3 The Bank may change its Charges at any time by giving the Customer notice in accordance with condition 12.1.
- 7.4 To avoid any doubt, the word 'Charges' as used in this Agreement only applies to the Bank's charges to the Customer for providing the sweep arrangements set out in this Agreement.
- 8. Tax**
- 8.1 The Charges do not include:
- VAT; or
 - any other taxes or duties payable in connection with this Authority to Sweep or the sweeping operations (except those that are attributable to the Bank's profits).
- 8.2 The Customer will be responsible for paying any applicable taxes and duties at the applicable rate.
- 9. Confidentiality**
- 9.1 The Bank and the Customer 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:
- is public knowledge other than as a result of a breach of this Clause 9.1 or any other duty of confidentiality;
 - has been independently acquired from a third party without restriction on disclosure; or
 - is required to be disclosed by reason of law, regulation or for the purposes of litigation by or against either party.
- 9.2 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 9.1. However, nothing in this Agreement shall prevent the Bank from disclosing information to its sub-contractors or agents for the purposes of the Bank fulfilling its obligations under this Agreement.
- 10. Limitation of liability**
- 10.1 The Bank shall not be liable for any loss, damage, injury, interruption, delay or non-performance arising out of:
- use of the sweep arrangements set out in this Agreement:
 - in a way or for a purpose not authorised by the Bank; or
 - in contravention of any law or regulation (in any relevant jurisdiction); or
 - the actions or omissions of any third party; or
 - the failure of the Bank to act on the instructions of a Customer where the Bank reasonably believed that by following such instructions it would have violated any law or regulation.
- 10.2 The Bank will not be liable for:
- any losses not directly associated with the incident that may cause the Customer to claim against it 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.
- 10.3 The provisions of this Clause 10.3 shall apply if the Customer is a Micro-enterprise.
- If the Bank fails to execute, or incorrectly executes a Transfer the Bank will refund the payment to the relevant Account unless the payment was received into the correct Account. The Bank will also refund to the Customer any interest and charges directly incurred by the Customer on the Account(s) that would not have been incurred had the Bank executed the transaction correctly.
 - If the Customer has told the Bank that there has been an unauthorised Transfer on the Account(s), the Bank will refund to the Account the amount of the Transfer and any interest and charges directly incurred on the Account(s) as a result of the Transfer if the Transfer was in fact unauthorised. Beyond this the Bank will have no further liability for an unauthorised Transfer.
- 10.4 Clause 10.3 shall not apply if the Customer is not a Micro-enterprise. Instead this Clause 10.4 shall apply, and the Payment Services Regulations shall apply only insofar as they are provided for herein.
- If the Bank fails to execute, or incorrectly executes a Transfer, the Bank shall be liable to the Customer for any reasonable losses incurred by the Customer but only if they arise directly from the Bank's breach of this Agreement or the Bank's negligence, and if in the ordinary course of events and with the knowledge the Bank had, the Bank might reasonably have expected such loss to result directly from such breach or negligence. The Bank's liability pursuant to this Clause 10.4.(a) shall be limited:
 - to the amount of the relevant Transfer pursuant to which the Bank's breach or negligence occurred; and
 - to the amount of any interest and charges directly incurred by the Customer on the relevant Account that would not have been incurred otherwise.
 Beyond this the Bank shall have no further liability to the Customer for a failure properly to execute or at all.
 - If the Customer has told the Bank that there has been an unauthorised Transfer on the Account(s) the Customer will be liable for such Transfer unless the Bank is reasonably satisfied that the Transfer was unauthorised. If the Transfer was unauthorised the Bank will refund to the Account(s) the amount of the Transfer and any interest and charges directly incurred on the Account(s) as a result of the Transfer. Beyond this the Bank will have no further liability to the Customer for an unauthorised Transfer.
- 10.5 The Customer will be liable for all unauthorised Transfers on the Account(s) if the Customer has acted fraudulently.
- 10.6 The Bank will not be bound by any representation or warranty given by an employee or agent of the Bank in connection with the sweep arrangements set out in this Agreement unless it has been confirmed in writing by your relationship manager.
- 10.7 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.
- 10.8 The Customer hereby agrees to indemnify the Bank against any loss or damage and any claims, actions, proceedings, costs or expenses suffered or incurred by the Bank by reason directly or indirectly of the Customer's 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.
- 11. Event of Force Majeure**
- 11.1 Neither party shall be liable for any breach of its obligations under this Agreement resulting from an Event of Force Majeure.
- 11.2 Each party agrees to notify the other as soon as reasonably practicable upon becoming aware of an Event of Force Majeure to which Clause 11.1 applies, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 11.3 If any Event of Force Majeure subsists for a period of 30 days or more,

the party which is not the focus of the Event of Force Majeure may, by giving written notice to the other party, terminate this Agreement with immediate effect.

12. General provisions

- 12.1 The Bank will notify the Customer in writing at least two months before it makes any change to this Agreement. The Customer will be deemed to have accepted any such change if the Customer does not notify the Bank to the contrary before the date any such change comes into effect. However if the Customer does not accept any change:
- the Customer can end this Agreement at any time before the change comes into effect; or
 - the Bank's notice of the change will 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.
- 12.2 If the Customer is an unincorporated body of two or more people:
- each person is jointly and severally liable for all of the undertakings and liabilities set down in this Agreement; and
 - when this Agreement refers to 'the Customer,' these words mean any one or more of those persons.
- 12.3 If the Customer is (in each case as appropriate) i) a partnership, ii) a trust, or iii) a club or society (either a "Club") this Agreement will be with the partnership, trust or Club and a) the partners, b) the trustees, or c) the committee members as individuals and will continue to be effective and fully in force and will continue to bind each of the partners, trustees or committee members (as such partners, trustees or committee members and as individuals) who comprise the Customer from time to time, even if there is a change in the name, style or constitution of the partnership, trust or Club because:
- an existing partner, trustee or committee member dies, retires or is expelled from the partnership, trust or Club; or
 - one or more new partners, trustees or committee members joins the partnership, trust or Club; or
 - of any merger, reconstruction, or amalgamation of the partnership, trust or Club, or substitution of the partnership, trust or Club by a successor partnership, trust or Club; or
 - of a dissolution of the partnership, trust or Club; or
 - any other change in the partnership, trust or Club.
- The Customer undertakes to procure that any persons becoming partners, trustees or committee members in the partnership, trust or Club after the date of this Agreement shall be bound by this Authority to Sweep and it shall be enforceable against them.
- 12.4 The Customer acknowledges 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 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). Where the Bank is the receiving party, the address for any such notice will be the Customer's relationship manager at the Bank, and where the Customer is the receiving party, the correspondence address held by the Bank for the Contra account.
- 12.7 The language of this Agreement is English and all communications and notices between us shall be in English.
- 12.8 If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement that shall remain in full force and effect.
- 12.9 This Agreement may not be assigned by the Customer. The Bank shall have the right to assign, transfer or novate this Agreement to any third party on providing the Customer with 30 days' notice.
- 12.10 This Agreement shall not give any third party any enforceable right of action or benefit and the Contracts (Rights of Third Parties) Act 1999 is therefore hereby excluded.
- 12.11 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).

Help and information

If you have any queries about the sweeping 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

Our service promise

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. The complaint procedures are also published on our website lloydsbank.com/business/contactus

Find out more

 [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).

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.

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LLOYDS BANK

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