

COMMERCIAL BANKING

OPERATING
CONDITIONS
PART I

Last updated July 2018



LLOYDS BANK

Definitions

In this Agreement, the following words have the meaning set out opposite them and include the definitions set out in Part X of the Operating Conditions where any Facility includes Debtor Protection:

“Advance Rate” any percentage to be paid by us on account of the Purchase Price of each Approved Invoice specified in the Commercial Terms as varied in accordance with this Agreement from time to time.

“Advance” the amount paid by us on account of the Purchase Price of each Approved Invoice, in the case of Invoice Discounting and Factoring Clients, calculated by applying the Advance Rate to such Invoice.

“Approved Currency” any currency referred to in the Commercial Terms or any other currency which we may approve from time to time but excluding any currency which we give you notice is removed from this definition.

“Approval Limit” any limit established by us and notified to you from time to time in relation to the maximum value of Invoices owing by some or all of your Customers expressed either as a fixed monetary amount or a percentage of all your Invoices outstanding from time to time.

“Approved Invoice” all or part of any Notified Invoice not classified by us as Disapproved and “Approved” shall be construed accordingly.

“Approved Country” any country referred to in the Commercial Terms or agreed by us from time to time but excluding any country which we give you notice is excluded from this category.

“Assignment” includes an assignment or an assignation, as applicable.

“Associated Business” any person or business which is owned or controlled by:

- i. you or your spouse/civil partner if you are a sole trader; or
- ii. any director, partner, shareholder of your business or spouse or partner of any of them; or
- iii. anyone who controls (or who can take control of) you; or
- iv. anyone you control (or you can take control of); or
- v. any holding company.

“Audit” any inspection of your books of account and/or other records by our employee/s or agent/s either pursuant to the undertakings given in Clause 9.1.9 of Operating conditions Part II or otherwise.

“Availability” the amount of any Invoice Discounting, Factoring or Contingent Liability available to you calculated as set out in condition 4.5 of the Operating Conditions – Part II – Provisions relating to all Clients.

“BACS” the Bankers Automated Clearing System.

“Bank” Either:

- i. Lloyds Bank plc (company number 00002065);
- ii. Lloyds Bank Commercial Finance Limited (company number 00733011); or
- iii. Bank of Scotland plc (company number SC327000) as set out as a party in the main body of the Agreement and in either case its successors or assigns.

“Base Rate” for sterling, the bank rate from time to time of the Bank of England (or any rate at any time replacing that rate), which may be varied (either up or down) by the Bank of England at any time and if in any such case that rate is less than zero, Base Rate shall be deemed to be zero.

“CHAPS” same day payment of cleared funds through the Clearing Houses Automated Payment System.

“Client” at any time, a person to whom a Facility is made available.

“Collection Date” in the case of any Invoice which is: (a) paid in cash: the date of receipt of the cash by us; (b) paid by cheque or other instrument: the date on which funds representing the same are cleared by our bankers for interest; (c) paid by BACS: the date on which funds are credited to our bank account; (d) paid by CHAPS or Faster Payment: the Working Day after the day on which funds are credited to our bank account plus, in any case, any period specified in the Commercial Terms;

“Commercial Terms” the terms set out in the main body of the Agreement (other than the Operating Conditions) as varied, amended, supplemented or replaced from time to time.

“Contingent Instrument” a guarantee, bond or letter of credit issued by us or an Issuer pursuant to any Contingent Liability Facility.

“Contingent Liability Facility” any contingent liability facility provided by us to you pursuant to which we will issue (or arrange for a bank or other financial institution approved by us to issue on your behalf):

- a. guarantees and bonds
- b. letters of credit.

“Contract of Sale” a contract in any form (including a purchase order) for the sale or hire of goods and/or provision of services to a Customer under which an Invoice arises.

“Cost of Funds” The Debit Reference Rate for the relevant Approved Currency from time to time in effect on each day during any charging period for which a relevant determination is to be made. The Debit Reference Rates are available from us on request. If at any time the relevant Debit Reference Rate is less than zero, our Cost of Funds shall be deemed to be zero.

“Counter Indemnity” an indemnity provided by us to an Issuer in their preferred form for all monies, obligations and liabilities incurred under a Contingent Instrument.

“Currency Facility” a Facility where we have agreed to pay for your Currency Invoices owing by a UK Customer.

“Currency Invoice” any Invoice payable in an Approved Currency (other than Sterling).

“Current Account” the account described in condition 4 of the Operating Conditions – Part II – Provisions relating to all Clients.

“Customer” a person under a Contract of Sale obliged to pay you the Invoice and, where the context so permits, a prospective Customer.

“Debit Balance” any debit balance on the Current Account.

“Debtor Protection” the debtor protection described in Operating Conditions – Part X – Debtor Protection Conditions and provided by us in accordance with this Agreement.

“Delivered” in relation to Goods:

- i. physical delivery to (or to the order of) a Customer;
- ii. the Customer taking the risk in the Goods;
- iii. performance of the Contract of Sale;

in relation to services: completed and **“Deliver”** and **“Delivery”** are to be construed accordingly.

“Disapproved Invoice” all or part of any Invoice classified by us as disapproved in accordance with condition 2 of the Operating Conditions – Part II – Provisions relating to all Clients and ‘Disapproved’ is to be construed accordingly.

“Domestic Invoice” an Invoice payable in Sterling arising from a Contract of Sale performed in UK, the invoice for which is addressed to a location in the UK.

“DPA” the Data Protection Act 1998 or any similar or replacement legislation relating to the processing of personal data.

“EEA” European Economic Area.

“Export Facility” a Facility pursuant to which we have agreed to purchase your Export Invoices.

“Export Invoice” an Invoice which is:

- i. addressed to a Customer in an Approved Country; and
- ii. expressed either in an Approved Currency or Sterling.

“Facility” means any or all (as the context requires) of an Invoice Discounting Facility, Factoring Facility, Export and/or Currency Facility, Contingent Liability Facility, or Debtor Protection Facility made available by us to you from time to time under the terms of this Agreement.

“Factoring Client” at any time, a Client to whom a Factoring Facility is made available.

“Factoring Facility” a Facility provided on the terms of this Agreement where the applicable Operating Conditions include Parts I, II and IV.

“Faster Payment” same day transmission of cleared funds as arranged by the payer with their bankers and accepted by the payee’s bankers.

“Fees and Charges” all those fees and charges to which we are entitled for providing any Facility (and any VAT thereon).

“Goods” any goods the subject of a Contract of Sale.

“Group” Lloyds Banking Group plc and all its associated companies. For these purposes “associated companies” includes Lloyds Banking Group plc and any subsidiary, affiliate, and related company or other firm directly or indirectly controlled from time to time by the Lloyds Banking Group plc.

“Guarantor” means any person who provides a guarantee or indemnity to us in respect of your Obligations under this Agreement

“Insolvency” or **“Insolvent”** in relation to a company, partnership or limited liability partnership:

- i. the presentation of a petition to wind it up;
- ii. the passing of a resolution to wind it up or the giving of notice by any person convening a meeting of creditors for the purpose of considering the same;
- iii. the appointment of or the making of an application to court to appoint, an administrator to it;
- iv. its members, directors or creditors resolving to effect any of the above;
- v. the giving of notice by any person to us of an intention to appoint an administrator, interim manager or liquidator to it;

in relation to a company: the taking of any steps towards or the coming into force of a moratorium under Section IA of the Insolvency Act 1986;

in relation to an individual or a partnership established in Scotland:

- i. the issue of a petition (whether by the individual or his creditors) or a debtor's application for the bankruptcy of that individual (and where that individual is in partnership with others the partnership will be treated as Insolvent on the issue of such a petition);
- ii. granting a trust deed for the benefit of his creditors;

in relation to a company, limited liability partnership, partnership or individual:

- i. the holder of any Security Interest exercising or enforcing his rights, whether by taking possession of or appointing an administrative or other receiver, to any of its or his undertaking, assets or property or otherwise; or
- ii. suffering commercial rent arrears recovery, sequestration for rent, diligence, attachment, seizure, execution, sequestration or other legal process upon any assets;
- iii. being subject to an injunction or interdict (interim or permanent) preventing or restricting dealings with its income or assets;
- iv. giving notice of the intended suspension of payment of debts
- v. the directors, members or any individual (as appropriate) taking any steps towards filing (or in Scotland, lodging) with the Court any documents or statements or making an application for a moratorium in connection with a voluntary arrangement under the Insolvency Act 1986;
- vi. the taking of any steps towards implementing a proposal for a voluntary arrangement under the Insolvency Act 1986;
- vii. commencing negotiations with one or more creditors for the general readjustment or rescheduling of all or part of its indebtedness;
- viii. making a general assignment or assignation for the benefit of, or composition with, its creditors;
- ix. ceasing or threatening to cease to carry on business;
- x. allowing any judgment, decree, order or award of any court or tribunal for payment of money to remain unsatisfied for 7 days or more;
- xi. being insolvent within the terms of Section 123 Insolvency Act 1986 or, in our reasonable opinion, being unable to pay its debts as they fall due; or
- xii. receipt by it of a statutory demand,

in relation to a Scottish partnership: the appointment of a judicial factor.

"Interpolated Screen Rate" in relation to LIBOR, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from calculating on a straight line basis the position between:

- a. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the interest period agreed by us; and
- b. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the interest period agreed by us.

"Invoice" any present, future or contingent obligation (including any tax or duty) of a Customer to make payment under a Contract of Sale (whether invoiced or not) and, where the context permits, includes part of an Invoice.

"Invoice Discounting Client" at any time, a Client to whom an Invoice Discounting Facility is made available.

"Invoice Discounting Facility" a Facility provided on the terms of this Agreement where the applicable Operating Conditions include Parts I to IV.

"Issuer" a bank or other financial institution approved by us which issues a Contingent Instrument on your behalf.

"Liability" any actions, awards, costs, claims, damages, losses (including, without limitation, any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities suffered and/or incurred by you.

"LIBOR" in relation to each interest period agreed by us:

- a. the applicable Screen Rate; or
- b. (if no Screen Rate is available for the Approved Currency for the interest period agreed by us) the Interpolated Screen Rate; or

if:

- i. no Screen Rate is available for the Approved Currency for the interest period agreed by us, and;
- ii. it is not possible to calculate an Interpolated Screen Rate,

the rate notified to you by us (which you must keep confidential) as soon as practicable and in any event before interest is due to be paid in respect of the interest period agreed by us, to be that which expresses as a percentage rate per annum the cost to us of funding the applicable amount, from whatever source we may reasonably select.

"Minimum Fee" any minimum or fixed fee (replacing or supplementing the Service Fee) specified in the Commercial Terms.

"Minimum Term" the shortest period for which this Agreement must endure specified in the Commercial Terms.

“Net Value” in relation to any Invoice, the amount actually received by us in settlement or discharge of the Invoice after taking into account all deductions, discounts and set-offs.

“Non-Notifiable Invoices” those Invoices described as non-notifiable in the Operating Conditions – Part II and specified as Additional Non-Notifiable Invoices in the Commercial Terms.

“Notice Period” the period of notice to be served to terminate this Agreement specified in the Commercial Terms.

“Notification” your notification to us in the format we specify of the amount of Invoices and other matters referred to in conditions 9.1.6 and 9.1.7 of the Operating Conditions – Part II – Provisions relating to all Clients. “Notified” and “Notify” are to be construed accordingly.

“Notified Value” the full amount of each Invoice given in a Notification (including any applicable tax or duty) and before any discount for prompt payment or otherwise.

“Obligations” all your obligations owed to us and all Liabilities suffered or incurred by you under or pursuant to this Agreement.

“Operating Conditions” the terms and conditions on which we will provide a Facility and/or Debtor Protection to you incorporated in the Agreement, appearing on the Website, as amended, varied, supplemented or replaced from time to time.

“Payee Bank” the bank and the account in the name of your business detailed in the Commercial Terms or such other bank and account in the name of your business that you give to us notice of in writing on at least two Working Days notice to which we will make all payments to you.

“Personal Data” personal data relating to a living individual as defined under the DPA.

“Purchase Price” the amount payable by us for each Invoice together with its Related Rights.

“Refactoring Charge” any fee charged to Factoring Clients in respect of Invoices still unpaid after an agreed period of months.

“Related Rights”

- i. all your rights under a Contract of Sale (including your right to damages);
- ii. all (negotiable and non negotiable) instruments, security, bonds, guarantees and indemnities relating to an Invoice;
- iii. all documents, ledgers, databases and computer files (including operating systems) recording or evidencing performance of a Contract of Sale or Invoices;
- iv. all Goods returned to or repossessed by you or rejected by a Customer and all documents of title to such Goods;

- v. the benefit of any credit insurance in respect of an Invoice;
- vi. any time sheets or proofs of delivery.

“Remittance” means the making of or receipt of a payment whether by cash, cheque, credit transfer or any other payment method.

“Repurchase Price” for any Invoice repurchased by you it will be its Notified Value plus all relevant Fees and Charges less all sums received in or towards discharge of the Invoice and where we require you to repurchase all of your Invoices, then, for administrative convenience, it will be the Debit Balance on the Current Account after we have debited all Fees and Charges and any other monies and liabilities actually, contingently or prospectively owing by you to us.

“Returned Goods” any goods relating to an Invoice which are returned to you by a Customer.

“Reserve” any reserve applied by us to your Availability in such amount as we may determine from time to time.

“Review Limit” any maximum Availability permitted to you which, until further notice from us, is the amount shown in the Commercial Terms.

“Sanctioned Entity” a person or entity that is:

- i. listed on, or owned or controlled by a person listed on any sanctions list;
- ii. located in, incorporated under the laws of, or owned or controlled by, or acting on behalf of, a person located in or organised under the laws of a country or territory that is the target of country-wide Sanctions; or

otherwise a target of Sanctions.

“Sanctions” any economic sanctions laws, regulations, embargoes or restrictive measures imposed by, administered, enacted or enforced from time to time by the international community including:

- i. the United States of America;
- ii. the United Nations;
- iii. the European Union;
- iv. the United Kingdom;
- v. the respective governmental institutions and agencies of any of the foregoing, including, without limitation, OFAC, the United States Department of State and Her Majesty’s Treasury (together, the “Sanctions Authorities”).

“Scottish Invoice”

- i. an Invoice arising from a Contract of Sale which is governed by the laws of Scotland; or

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- ii. an Invoice arising from a Contract of Sale which is not governed by the Laws of Scotland but where the Invoice is addressed to a Customer located in Scotland.

“Screen Rate” the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the Approved Currency for the interest period agreed by us displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Bank may specify another page or service displaying the relevant rate after consultation with you.

“Security”

- i. the Security Interests granted in our favour that secure your Obligations under this Agreement; and
- ii. any guarantee, suretyship or similar undertaking given in support of your Obligations to us under this Agreement,

whether generally or specifically.

“Security Interest” any mortgage, standard security, charge, pledge, trust, assignment or assignation by way of security, hypothecation, lien, right of set-off, trust or flawed asset arrangements or any other arrangement for the purpose of or having a similar effect to creating security or any title retention rights, whether or not conditional.

“Sensitive Personal Data” sensitive Personal Data relating to a living individual as defined under the DPA.

“Service Fee” the fee, referred to in the Commercial Terms, charged for the provision of our services to you calculated, unless otherwise agreed, as provided in condition 6.2 of the Operating Conditions – Part II – Provisions relating to all Clients.

“Start Date” the later of:

- a. the date of this Agreement; and
- b. the date on which we confirm that you have satisfied any conditions precedent specified by us.

“Sterling” Sterling (GBP) or the currency of the United Kingdom.

“Termination Event” any of the events set out in condition 10 of the Operating Conditions – Part II – Provisions relating to all Clients.

“Trust Account” any bank account into which Remittances from Customers in respect of Invoices are required to be paid which is unencumbered and declared in trust for us and on which we are the only authorised signatory.

“United Kingdom”/“UK” the United Kingdom of Great Britain and Northern Ireland and the Isle of Man and the Channel Islands.

“Under Utilisation Fee” any fee referred to in the Commercial Terms calculated in the manner set out in condition 5.4 of the Operating Conditions – Part III – Provisions relating to Invoice Discounting Clients only.

“We” or “Us” the Bank and our transferees and assignees.

“Website” lloydsbank.com/invoice-finance-online referred to as IFO and, in any case, includes any additional or alternative domain name by which we may communicate with each other over the internet from time to time. The terms under which they are provided are shown on the Websites.

“Working Day” a day when the Bank is open for all normal business in England and Wales.



LLOYDS BANK

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