



# Institutional Banking Division

General Terms and Conditions



**1801801**  
**nbk.com**

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## 1. Definitions and Interpretation

### 1.1 Definitions:

In these General Terms and Conditions of Business, the following terms shall have the following meanings:

“**Account**” means all accounts opened by NBK in the name of its Clients and includes all moneys (including any money market placements) or balances thereof, deposited therein, all interest (accrued and accruing) and all related rights.

“**Additional Terms & Conditions**” means the terms and conditions (other than these General Terms) issued by NBK from time to time regulating the obligations of NBK and the Client in relation to certain banking facilities, products and/or banking relationship.

“**Assets**” means any tangible or intangible movable or any non-movable asset or item, including but not limited to, money, goods, currencies, securities, rights under contracts and other rights and instruments conferring rights to receive money or goods or other interests.

“**Business Day**” means any day (other than a Friday or a Saturday) on which banking institutions in Kuwait are open for business.

“**Business Hours**” means 0730 hours to 1530 hours Kuwait time on a Business Day or as may be otherwise determined by NBK from time to time.

“**Client**” means any person or entity in whose respect an Account is opened with NBK, or any person or entity with whom NBK transacts any business (even if such business consists of a series of one-off transactions), and includes its successors in title, its assigns (where permissible) and all officers and employees of the Client.

“**Cut-Off Times**” means the Standard Cut-Off Times which are issued by NBK as may be revised and amended from time to time.

“**Event of Default**” means the occurrence of any of the following events:

- a. the Client becomes insolvent or bankrupt;
- b. the Client becomes unable or admits inability to pay his debts as they fall due or are deemed to be or declared to be unable to pay his debts under applicable law;
- c. the Client suspends or threatens to suspend making payments on any of the debts or, by reason of actual or anticipated financial difficulties, commence negotiations with one or more creditors with a view to rescheduling any indebtedness;
- d. any corporate action, legal proceedings or other procedure or step is taken against the Client in relation to: (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganization (by way of voluntary arrangement, scheme of arrangement or otherwise); or (ii) a composition, compromise, assignment or arrangement with any creditor; or (iii) the appointment of a liquidator, special controller, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of either or both of the Client or any of his guarantors or any of the assets; or
- e. any security interest is enforced over any of the Client’s assets or that of any of the Client’s guarantors;
- f. any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any of the Client’s assets or those of the Client’s guarantor, including without limitation any precautionary or executive garnishee order is issued in connection with moneys or moveable property due or belonging to the Client or any of the Client’s guarantors.

“**Facility**” means any general or special banking facility which might be granted by NBK to the Client from time to time and includes without limitation overdrafts, loans, letters of credit, back-to-back letters of credit, confirmation of letters of credit, discounting, invoice financing, and any other financial service provided by NBK.

“**General Terms**” shall mean these General Terms and Conditions of Business as the same may from time to time be amended.

“**Indebtedness**” means all sums and liabilities owed by the Client to NBK, whether present or future, by way of principal or interest (before or after judgment), actual or contingent, matured or otherwise and whether incurred solely, severally or jointly, as principal or surety and in whatever currency, and together with any interest, commissions, fees, bank charges and any other cost, charges and/ or expenses (including but not limited to legal expenses) on a full indemnity basis incurred by NBK in relation to the Client.

“**Instruction(s)**” means instructions to NBK in (i) writing signed by authorized individuals designated as such by the Client; (ii) SWIFT instructions of the Client; (iii) other such forms of communication as from time to time may be agreed upon by NBK and the Client.

“**Material Adverse Change**” means an event or circumstance which (when taken alone or together with any previous event or circumstance) constitutes or is likely to constitute:

- a. an adverse change in the Client’s business, Assets, prospects, operations, condition (financial or otherwise) or trading position;
- b. an adverse change in the international financial markets;
- c. an adverse change in the political, social or economic situation in the Client’s country of domicile or residence, or in any country where Assets owned by the Client are situated (including any downgrading of that country’s credit rating by an international credit rating agency);
- d. an adverse change in the validity, enforceability of any rights arising from these General Terms; such that the Client might be expected to be unable to fully and punctually perform its obligations under the General Terms, Additional Terms & Conditions, Specific Agreement, financial product and/or under any facility which may be granted to the Client by NBK.

“**NBK**” means National Bank of Kuwait S.A.K., a shareholding company organized and existing under the laws of Kuwait and having its principal place of business at Abdullah Al-Ahmad Street, Sharq, Kuwait City, Kuwait.

“**NBK Mandate**” means the written Instructions given to NBK by the Client for the appointment of NBK as the Client’s banker in the format that NBK might choose from time to time, and setting out, among other information, the Client’s authorized signatory(ies) with respect to the Client’s Account(s), and the limits of such signatory’s(ies’) authority(ies).

“**Specific Agreement**” or “**Master Agreement**” means the agreement signed between the Parties to govern a specific banking relationship, facility and/or financial product offered by NBK to the Client.

“**SWIFT**” means Society for Worldwide Interbank Financial Telecommunication.

“**Tariff of Charges**” means the Standard Tariff of Charges which are issued by NBK as may be revised and amended from time to time.

## 1.2 Construction

In these General Terms, unless the context otherwise requires:

- a. any reference to the singular shall include the plural and vice versa, the use of the masculine pronoun shall include the feminine, the use of the neutral pronoun shall include the masculine or the feminine as the case may be and any reference to any statute, law or regulation having the force of law or any section thereof includes reference to any modification thereto or re-enactment of such statute, law or regulation having the force of Law for the time being in force.
- b. a person shall include any physical person, firm, entity, company, corporation or any other body or association of persons, whether such body or association is corporate or unincorporated, or any two or more of the foregoing.
- c. The headings are used and inserted for convenience only and shall be ignored in the interpretation of these General Terms.

## 2. Scope of and amendments to these General Terms

**2.1** These General Terms govern the business relationship between the Client and NBK and detail NBK’s obligations towards the Client and the Client’s obligations towards NBK.

**2.2** The Client’s agreement with NBK is contained in:

- a. these General Terms as incorporated into all and any contractual or other relationship’s which may arise between NBK and the Client;
- b. the Additional Terms & Conditions (where applicable);
- c. the NBK Mandate, Specific Agreement (where applicable) and/or any application form signed by the Client; and
- d. any other documentation or agreement NBK might require the Client to sign from time to time at NBK’s sole discretion.

**2.3** Additional Terms & Conditions or a Master Agreement may be agreed upon in relation to specific facilities and/or products. Additional Terms & Conditions and/or the Master Agreement generally complement these General Terms and therefore should not be read in isolation but in conjunction with these General Terms. However, where the terms of the Additional Terms & Conditions or the Master Agreement contain deviations or contradictions from the General Terms, the Additional Terms & Conditions or the Master Agreement shall prevail in relation to the specific facility and/or product they regulate. In the event the terms of the Master Agreement contradict with the terms of the Additional Terms & Conditions the terms of the Master Agreement shall prevail.

**2.4** The Additional Terms & Conditions include but are not limited to NBK charges, interest rates, notice periods, minimum or maximum balances and other terms and conditions applicable to individual business relations or to specific products which NBK offers from time to time.

**2.5** NBK reserves the right to amend these General Terms in full or in part at any time at its sole discretion (including any fees and charges) for security, legal, regulatory or market reasons or changes in internationally accepted banking practice or to take into consideration any increase in costs or decrease in NBK’s return or pursuant to the introduction of new products or technology. NBK will endeavor to update the Client with any amendments to the General Terms and to inform the Client in advance. Unless the Client terminates the relationship with NBK prior to the coming into force of the amendments to the General Terms, the Client is deemed to have accepted such amended General Terms which shall become binding upon the Client.

### 3. Instructions to NBK and Bank Documentation

#### General

**3.1** The Client shall make sure that all Instructions to, communications and statements with NBK are given in writing.

**3.2** Unless otherwise defined in these General Terms, Instructions shall be accepted during NBK's Business Hours and are carried into effect within the time required for examination and initiation of processing, as well as in accordance with NBK's relevant banking practices and policies. Where Instructions are received after the close of Business Hours or on a day which is not a Business Day, such Instructions are deemed to have been received on the next Business Day.

**3.3** Where there exist relevant bank forms, as directed and issued by NBK, the Client shall make use of and fill in such forms. NBK may require communications to be made through the use of specific forms issued by it. NBK reserves the right not to execute Instructions if such Instructions are not given on the forms drawn up or approved by NBK.

**3.4** The Client will make sure that all Instructions given to NBK are clear and unambiguous. Instructions that are not clearly worded may lead to queries, which may in turn result in delays. NBK shall not be responsible for any delays in the execution of Instructions where such delays are a direct result of unclear or ambiguous Instructions.

**3.5** All Instructions shall be provided in accordance with the NBK Mandate. NBK shall not be liable for any fraudulent use of the Client's signature by a third party. Should NBK fail to recognize fraudulent use of the Client's signature on Instructions and documents and carries out transactions on the basis of such Instructions and documentation, NBK shall be released from all liability, losses, costs, expenses or damages. .

**3.6** NBK may at any time and for any reason whatsoever, in its absolute discretion and without any liability to NBK, decline to execute any Instruction (including but not limited to any special or urgent Instructions) or Payment Order, notwithstanding that at the time of receipt of such Instructions an employee of the NBK receiving such Instructions may have indicated assent to the same. The Client further declares that NBK shall not be liable for any losses, damages, expenses or lost opportunities incurred by the Client as a result of NBK's declining to execute such Instruction or Payment Order.

**3.7** Debit Instructions will be executed by NBK within a reasonable time and in accordance with NBK's policies from the time of their receipt, whether the Client's Account is in credit or in debit or may become overdrawn as a consequence of such debit but without prejudice to NBK's right to refuse to allow any overdraft or increase in overdraft beyond any specified limit.

**3.8** The Client may require NBK to accept and process payment, transfer and remittance Instructions ("Payment Orders") received from the Client or from a third party bank acting in the Client's name and or on his behalf, provided such Payment Orders are in SWIFT format and the Client has signed NBK's required authorization documents. In consideration for NBK accepting to receive and process Payment Orders sent by the third party bank acting in his name and on his behalf, the Client:

(a) shall indemnify and hold NBK harmless against all actions, liability, losses, expenses and damage which either NBK or the Client shall suffer as a result of processing such Payment Orders, including but not limited to any liability, damage or losses as a result of fraud or unauthorized access or use of the third party bank's system or failure or breakdown in such system; and

(b) authorizes NBK to disclose any information regarding the Client's Accounts held with NBK to the third party bank nominated by the Client.

**3.9** The mere fact that an Account will be overdrawn does not imply any obligation on NBK's part to inform the Client before processing the Payment Order or any Instruction. In such case, barring specific written agreement to the contrary, NBK shall be entitled to the repayment of such overdrawn sum plus interest at NBK's cost of funding plus a penalty rate of five per cent (5%) per annum. The Client undertakes to pay such amounts on demand.

**3.10** NBK shall not be under any obligation to process any Payment Order or Instruction in any of the following cases:

- a. the balance in the Client's Account is not sufficient to cover the amount of the Payment Order or Instruction plus related costs and expenses;
- b. there exists a garnishment or other court order in relation to the Client's funds;
- c. there exists reasonable suspicion about the source or use of funds in terms of the applicable legislation enacted to prevent money laundering and terrorism financing;
- d. there exist other similar and comparable circumstances;
- e. Instructions lack the necessary mandatory information on transfers of funds, as may come into effect from time to time;
- f. Instructions are not clear or are incomplete.

**3.11** Additional Terms & Conditions governing Payment Orders and Instructions may be issued by NBK from time to time and the Client will be notified accordingly.

### **Instructions and Payment Order Indemnity**

**3.12** In consideration of NBK accepting and acting upon Instructions received from, or that in NBK's sole opinion are purporting to be received from the Client, or any third party authorized by the Client, the Client (and any joint account holder) irrevocably agree:

- a. To fully indemnify NBK in respect of all actions, claims, damages, proceedings, costs and expenses, including legal expenses, suffered or incurred by NBK as a consequence, direct or otherwise, of NBK acting on such Instructions;
- b. Not to make any claims or take any action or proceedings against NBK or its employees in respect of such Instructions; and,
- c. To authorize NBK to settle execute, amend or reject any Instructions or Payment Orders without the Client's express authority.

### **Evidential force of Bank records**

#### **Examination of Bank Documents**

**3.13** In the event that NBK discovers it has made a mistake in any confirmation, statement of Account, note or other statement, NBK shall notify the Client as soon as reasonably practicable.

**3.14** The Client is required to examine all confirmations, statements of account, notes and other statements immediately upon receipt. In case of any inaccuracy or incompleteness, the Client is obliged to notify NBK immediately and in any case by no later than thirty (30) days from receipt of such bank documents. In all such cases, following verification, NBK shall rectify the mistakes.

**3.15** If NBK does not receive any objections within thirty (30) days of receipt or deemed receipt of the relevant documents, then the Client shall be deemed to have accepted the contents of such documents and NBK shall be entitled to act accordingly.

**3.16** Notwithstanding the provisions of Clause 3.14 above, NBK shall be entitled to rectify any arithmetical errors, data input or system errors at any time, and in this respect the Client shall indemnify NBK on demand for any losses NBK suffers as a result of such errors. Such indemnity shall survive the termination of NBK's and the Client's relationship.

#### **Retention of Documents**

**3.17** NBK shall be entitled to destroy all records, correspondence and other documents NBK may have relating to the Client (other than documents of title or other documents relevant to proving title to physical goods of any kind) upon satisfying any record-keeping obligations which NBK may have in terms of any applicable legislation.

## **4. Bank Secrecy**

**4.1** NBK is bound, in accordance with the laws of Kuwait, to observe secrecy and confidentiality with regards to certain information which the Client provides to NBK.

**4.2** However, the Client hereby authorizes NBK to disclose confidential information about the Client in so far as the divulgence of such confidential information is:

- a. required in terms of any provision of law in any jurisdiction, in particular at the request or upon the order of any supervisory authority;
- b. required in terms of an order of a court of law, supervisory or regulatory authority investigating a criminal offence (including money laundering or terrorism financing) or a breach of duty;
- c. required for any proceedings by NBK against the Client for recovery of sums due to it in terms of the business relationship or for defending itself against any claim with regard to services provided to the Client in connection with which the confidential information has been obtained by NBK;
- d. otherwise permitted by the Client, including when the Client requires NBK to provide a reference or a status report to a third party or by any applicable law.

**4.3** In accordance with the provisions of Kuwaiti law, by accepting that these General Terms regulate NBK's and the Client's relationship, the Client consents to NBK's disclosure of confidential information acquired during the course of NBK's relationship with the Client in the following circumstances:

- a. to any of NBK professional advisers (including but not limited to financial, legal and other advisers as might be engaged from time to time ), or to any actual or potential assignee or transferee of NBK's rights against the Client, or to any person who may otherwise enter into contractual relations with NBK in relation to the business relationship with the Client;
- b. when the information is required to be disclosed or is requested in the course of a due diligence exercise;
- c. when the information is required in the normal course of business with institutions or other persons who are normally bound by similar obligations of confidentiality.

**4.4** Unless otherwise provided by this Clause 4, the obligation of confidentiality shall survive the termination of the relationship between NBK and the Client.

## **5. Personal Data**

**5.1** The Client authorizes NBK to store and process its data, including personal data as per its own policies and any applicable laws of Kuwait, to the extent that this is necessary for the appropriate conduct of NBK's business relations and conforms to the applicable statutory provisions. NBK only records information which serves to fulfill NBK's duties and NBK does this solely within the scope of the service provided to the Client. The Client authorizes NBK to collect, process and store data relating to the Client from other banks and other professionals.

**5.2** The Client hereby authorizes NBK to process personal data:

- a. for purposes concerning direct marketing to inform the Client about other products and services supplied by NBK,
- b. to issue statements and provide NBK products and services to the Client;
- c. for internal assessment and analysis;
- d. for the detection and prevention of fraud, any other criminal activity (including money laundering and terrorism financing); and
- e. for any credit management purpose.

**5.3** The Client's personal data may be disclosed to or exchanged with NBK's subsidiaries, branches, associates and agents, including third parties contracted by NBK for the furtherance of its products (including but not limited to, the issuance of credit, debit and/or payment Cards, processing of statements and the handling of bulk mail).

**5.4** Whilst NBK may periodically request the Client to re-confirm its information and personal data, the Client shall inform NBK immediately if such information is no longer correct and needs to be updated.

## **6. Use of the Services of Third Parties**

**6.1** Save as otherwise provided herein NBK shall, be at liberty to use the services of third parties in executing the Client's orders and in performing other agreements with the Client and also to place the Client's goods and documents of title in the custody of third parties in the name of NBK.



**6.2** In executing orders for the purchase and sale of Assets as defined herein, in particular currencies and documents of title, NBK shall be entitled, at NBK's option, to deal with third parties.

## **7. Liability of NBK**

**7.1** NBK will not be liable for:

- a. any shortcomings, losses or damage caused by force majeure, riots, wars and natural occurrences or other occurrences beyond NBK's control, including measures taken by any government or the monetary and regulatory authorities of any jurisdiction, strikes or labor disturbances among NBK staff or the staff of third parties whose services are used by NBK, boycotts, power failures, communication equipment failures, breakdown of NBK communication links or of third parties whose services are used by NBK; or
- b. any shortcomings or losses arising from the acts or omissions of any third party whose services NBK uses for the performance, in full or in part, of NBK's obligations in accordance with the Client's Instructions;
- c. any losses arising out of delays, loss in transit, mutilation or other errors arising in the transmission of any messages, or delivery of letters or documents.

**7.2** Should any circumstances as referred to in the preceding paragraph occur, NBK may, but shall not be obliged to take such measures as may be reasonably required in order to mitigate the resulting adverse effects for the Client.

**7.3** NBK shall be under no liability whatsoever in respect of any advice which NBK may give or any views which NBK may express to the Client, irrespective of whether the said advice or views are expressed at the Client's request or not.

## **8. Client's Duties**

**8.1** The Client is considered to be the absolute owner and beneficiary of the Account, but always subject to the terms of any security rights granted to NBK.

**8.2** If the Client is contracting with NBK not as a principal but as an agent, nominee, trustee or under any other fiduciary arrangement, the Client undertakes to inform NBK accordingly.

**8.3** The Client hereby undertakes to cooperate with NBK and supply all information and documentation which NBK may require in connection with NBK's compliance obligations, in particular, the Client's identification obligations (Know Your Customer obligations) and record-keeping procedures in terms of any applicable law, regulation, anti-money laundering and anti-terrorist financing legislation.

**8.4** The Client is obliged to inform NBK immediately of any change in his circumstances, in particular changes in its ultimate individual shareholders, changes in its directors and changes relating to its business and source of its relevant funds or Assets, including any intention of liquidation and voluntary creditor arrangements.

**8.5** NBK is entitled to suspend the execution of any Instructions or Payment Orders received from the Client or even to terminate the relationship with the Client in case of any breach of the latter's obligations in terms of these General Terms, Additional Terms & Conditions and any Master Agreement.

**8.6** The Client is obliged to comply with laws and regulations which relate to know your customer (KYC), the prevention of money laundering and the financing of, amongst other things, named terrorists, specially designated nationals and sanctioned persons.

## **9. Legal and Beneficial Ownership of Assets**

**9.1** The Client must not place into any of its Accounts any funds or Assets belonging to third parties without the prior written consent of NBK. If the Client wishes to do so, the Client must advise NBK, in advance, of any such funds or Assets which are to be remitted to NBK or received by it in the Client's name or Account.

**9.2** Without prejudice to the right of NBK to refuse to receive such funds or Assets, in the case provided for by this Clause 9, the Client is obliged to advise NBK of the full details of the beneficial owner of the funds or Assets and to supply NBK with all evidence as to the identity of the beneficial owner and the reason(s) for such deposit, together with documentary evidence of the underlying transaction, if applicable, as NBK may require.

**9.3** The Client hereby warrants and undertakes that it will contract as a principal and not as an agent or a trustee, unless otherwise agreed.

## 10. Change in Legal Status of Client

In the event that the Client is placed into liquidation, bankruptcy or administration or any other analogous process wherein a liquidator, curator or trustee or similar officer is appointed and in whom legal authority and representation is vested, to the exclusion of the person's the Client may have nominated in the NBK Mandate, NBK shall be entitled to receive such evidence, including legal opinions at the Client's cost, as NBK may require to establish the proper entitlement and authority of the person claiming power to give NBK Instructions or Payment Orders and NBK shall not be bound to act upon such Instructions or Payment Orders until such time as NBK is satisfied of such authority.

## 11. Applicable Law and Jurisdiction

**11.1** The General Terms shall be governed by and construed in accordance with the laws of Kuwait. The Client hereby agrees that Kuwaiti Courts have jurisdiction to settle any disputes in connection with these General Terms, and accordingly submit to the exclusive jurisdiction of such Courts.

**11.2** Nothing in these General Terms shall limit NBK's right to bring proceedings against the Client in any other Court of competent jurisdiction or concurrently in more than one jurisdiction. The Client understands and acknowledges that this clause is exclusively for the benefit of NBK.

## 12. Representations

**12.1** In NBK's business relationship with the Client, NBK relies on the representations made to NBK by the Client or by third parties at the Client's request, in particular relating to:

- a. the Client's identity,
- b. the Client's business activities, financial assets and situation,
- c. the Client's credentials,
- d. the Client's legal powers and authority, and
- e. the ownership and source of the Client's funds or Assets entrusted to NBK and any such other matter relevant to particular facilities as stated in specific agreements.

**12.2** The Client shall comply with all applicable laws and regulations, including but not limited to any applicable international conventions and resolutions of the Security Council of the United Nations, applicable know your customer legislation, legislation on anti-money laundering and anti-terrorist financing and any orders issued by the relevant regulatory authorities in so far as NBK's services are involved.

**12.3** In the event that any representation appears to NBK to be incomplete or incorrect, NBK shall be entitled to suspend all and any Instructions of the Client, and, unless satisfactory information and/or evidence is brought to the attention of NBK within a reasonable time, NBK shall be entitled to terminate its relationship with the Client.

## 13. Notices

**13.1** Unless otherwise agreed, NBK shall send all communications and notices to the address indicated by the Client in the NBK Mandate, Master Agreement or as otherwise advised by the Client in any other bank documentation.

**13.2** Each notice or other communication hereunder will be deemed effective:

- a. if delivered by hand or sent by overnight courier, on the day it is delivered; or
- b. In the event that notice or communication is delivered on a day that is not a Business Day or the notice or communication is received after the close of business on a Business Day, the notice or communication will be deemed delivered on the next Business Day.

## 14. Statements

NBK shall, unless otherwise stated, or as required by the type of Account, issue Account balance statements at the end of each calendar year, and all interest and bank charges that have arisen since the last Account balance statement shall be settled accordance with NBK's policies.

## **15. Reversal and Correction of Entries by NBK**

### **Manifest error**

**15.1** In the case of manifest error, NBK may reverse wrongful credit entries on Accounts. The Client will be duly notified in cases where NBK reverses any entries.

### **Debit interest**

**15.2** If the Client's Account has a debit balance following correction, the Client shall owe NBK debit interest as set out in the Tariff of Charges.

## **16. Uncleared Effects**

### **Funds**

**16.1** Funds received by NBK on the Client's behalf, shall be credited to the Client's specified Account as soon as reasonably practicable after receipt of cleared funds in the relevant currency.

**16.2** If NBK receives cleared funds in a currency different than the currency of the Client's designated Account, NBK shall convert the amounts received into the currency of the Client's designated Account in accordance with Clause 18 and credit the Client's Account with such funds.

**16.3** Without prejudice to the preceding paragraphs, all credit entries are made subject to the condition that if NBK still has to receive the counter value for such entry, such counter value is received by NBK in full and in a timely manner. Failing this, NBK shall be entitled to reverse the credit entry to the extent necessary, irrespective of whether an Account balance statement has been issued.

**16.4** In any event, until such time as cleared funds in the relevant currency are actually received, NBK shall be entitled to suspend any Instructions in relation to any payment to be debited from the Client's Account.

## **17. Appropriation of Payments**

NBK is entitled to decide against which of the several due claims, and to what extent incoming payments received from or to the Client's Account, which are insufficient for the settlement of all claims, will be charged. NBK is entitled to appropriate payments NBK receives from the Client or for the Client's Account at NBK's sole discretion. Unless NBK determines otherwise, payments shall be appropriated in the following order:

- a. First towards any costs, expenses or disbursements which NBK may incur on the Client's behalf;
- b. Secondly towards any accrued interests, fees and commissions due but unpaid;
- c. Thirdly towards the principal; and
- d. In case of several debts, NBK shall apply payments first towards unsecured debts and then to secured debts.

## **18. Foreign Accounts and Currency Transactions**

**18.1** In the event NBK receives funds in a different currency than that denominating the Client's Account, then prior to paying or crediting the Client's Account with such sums NBK shall convert them at NBK's then-prevalent exchange rates on the relevant day. Subject to any manifest error, the foreign exchange conversions shall be binding and may not be disputed. Furthermore NBK reserves the right to recover any expenses which NBK may incur in hedging the Client's foreign exchange risk.

**18.2** The Client's indebtedness shall be repaid in the currency in which it arises or has been granted. If any payments are received by NBK in connection therewith in another currency, NBK shall be entitled to convert the same into the indebtedness currency and to credit such payment against the indebtedness. The Client shall indemnify NBK on demand in respect of any losses which arise or amounts which otherwise remain outstanding as a consequence of the conversion of such currency received into the indebtedness currency.

## **19. Payment Orders**

**19.1** In the absence of any specific Instructions to the contrary, Payment Orders will be processed in the currency of the country in which payment is to be made or in any freely negotiable international currency at NBK's discretion.

**19.2** Unless otherwise instructed by the Client, all charges incurred outside Kuwait are for the account of the beneficiary.

**19.3** NBK reserves the right to draw the Payment Order on a different bank from that specified by the remitting Client where operational circumstances so require.

**19.4** All Payment Orders will be dispatched entirely at the Client's own risk.

**19.5** NBK has discretion to send the Payment Order by SWIFT or by any other method as determined by NBK from time to time. NBK accepts no responsibility for any loss, delay, error, omission or mutilation which may occur in the transmission of any Payment Order or for its misinterpretation when received.

**19.6** Applications for same day value are subject to cut-off times related to the geographical location of the destination as determined by NBK.

**19.7** Due to regulatory requirements in certain countries, when transmitting funds overseas, NBK may be required to include, in addition to the remitting Client's name, details such as the remitting Client's Account number, address, and purpose of the transfer. Omission of requested details may result in processing delays at the beneficiary bank or return of funds.

**19.8** In the case of Payment Orders which are to be routed via the United States of America for credit to a beneficiary's account inside or outside the United States of America, the Client is warned that funds may become attached under prevailing US sanctions, laws or regulations. Remittance of funds will therefore be made at the sole responsibility of the Client.

**19.9** NBK reserves the right to debit the Client's Account with any penalty fee claimed by foreign banks due to non-STP (Straight Through Processing) for payment orders lacking the required data or incorrect format of the IBAN / SWIFT Codes / Local Clearing Bank Codes, etc.

**19.10** NBK is obliged to comply with laws, regulations and requests of public and regulatory authorities in various jurisdictions which relate to the prevention of money laundering and the financing of, amongst other things, named terrorists, specially designated nationals and sanctioned persons. This may require that NBK intercept and investigate any Instruction, Payment Order, payment messages and other information or communications sent to or by the Client or on the Client's behalf via NBK's systems.

**19.11** The adoption of the procedures above shall not be construed to imply any warranty whatsoever on NBK's part towards the Client. In this respect, NBK shall not be liable for any losses or damages suffered by the Client on account of any Payment Order or Instruction.

## **20. Interest**

### **Payment of interest**

**20.1** Funds held with NBK shall NOT bear interest in the Client's favor, unless these are expressly directed for credit to an interest bearing Account. In the event that interest is agreed upon, the said interest shall be credited to the Client's Account at such times as would have been agreed, but at least once a year. Unless expressly provided by law, NBK shall be at liberty to agree with the Client the level of applicable interest. The interest rates will also be detailed in the applicable interest rate quotation.

**20.2** NBK may be bound by legislation to provide for automatic exchange of information regarding interest payments to the competent authorities in Kuwait or in other jurisdictions that may be legitimately entitled to such information. However, the onus of proof as to whether such authorities are legitimately entitled to such information shall not lie with NBK. The Client hereby authorizes NBK to disclose all information which NBK may be bound to provide.

**20.3** Payments of interest may also be subject to the deduction of withholding of tax therefrom, in terms of any applicable legislation.

### **Debiting of interest**

**20.4** NBK shall be entitled to change interest rates in accordance with this Clause 20 of the General Terms unless otherwise agreed in writing.

**20.5** NBK shall debit interest calculated on daily debit balances to the Client's Account immediately when due.

**20.6** When making any interest payment to NBK, and the Client is obliged to withhold any tax therefrom, the Client shall immediately make such additional payment to NBK so as to ensure that NBK receives the full sum due.

## **21. Bank Charges, Commissions and Fees**

**21.1** In the absence of a written agreement providing otherwise, the rates/amount of interest, fees and charges for the services NBK customarily provides to the Client shall be those given in the relevant Tariff of Charges.

**21.2** In the event that NBK provides services for which the fees are not listed in the Tariff of Charges, NBK shall charge rates, amount of interest and fees as determined by NBK in its sole discretion.

**21.3** All expenses which NBK may incur when acting upon the Client's Instructions or Payment Orders or in transacting the Client's business (e.g. long-distance calls and postage) as well as expenses incurred in connection with the evaluation, release or realization of any collateral provided by the Client (including maintenance costs, insurance, legal and notarial fees and court expenses) shall be borne by the Client. NBK reserves the right to claim those expenses or recover them by directly debiting them from the Client's Account.

**21.4** NBK is authorized to debit the Client's Account the equivalent of all such fees, charges, and expenses without the need to obtain the Client's prior consent.

**21.5** NBK may in appropriate circumstances require such fees, charges and expenses to be paid in advance. Such advance payments shall not be refundable in the event that the particular business relationship fails to develop or is terminated.

**21.6** NBK may, in NBK's sole discretion, debit interest, charges and other costs incurred by the Client from a separate Account or Accounts which NBK is authorized to open in the Client's name for the said purposes.

## **22. Change in Interest and Fees**

NBK may, at NBK's sole discretion, change the interest rate and the fees for services usually applicable to NBK's relationship with the Client and as stipulated in NBK's relevant Tariff of Charges or facility letter or letter of offer. NBK will notify the Client of such changes and the Client has the right to terminate the business relationship.

## **23. Costs and General Indemnity**

**23.1** The Client shall bear all costs, fees and expenses of legal assistance which NBK may incur in connection with the preparation of any agreements, including security agreements. Any costs for enforcement of security or judgments against the Client shall also be borne by the Client.

**23.2** Any costs, fees and expenses which NBK may have to incur in or out of court, or before a decision-making panel on account of any and all disputes between NBK and the Client, or between NBK and a third party, shall also be for the Client's account and the Client shall counter-indemnify NBK on demand in respect thereof. NBK may also request adequate security to this purpose.

**23.3** Without prejudice to the above provisions, all other costs which NBK's relationship may give rise to, shall be borne by the Client.

**23.4** The Client shall indemnify NBK on demand against all losses, actions, claims, expenses, demands and liabilities of whatever nature, made or incurred against or by NBK, for anything done or omitted in the exercise or purported exercise of any rights or powers of NBK, arising under or pursuant to these General Terms, Additional Terms & Conditions, a Master Agreement or any agreement or security entered into between the Client and NBK, and not already otherwise covered by an undertaking under these General Terms.

**23.5** Where a sum is to be paid to NBK for account of the Client, NBK shall not be obliged to make the same available to Client until NBK has been able to establish to its satisfaction that it has actually received the sum, but if it does render payment and it proves that NBK had not actually received such sum, then Client shall on request of NBK refund the same to NBK together with an amount, as reasonably determined by NBK, sufficient to indemnify NBK against any cost or loss NBK may have suffered or incurred by reason of NBK having paid out such amount prior to NBK having received such sum.

## **24. Security**

**24.1** NBK may request the provision of adequate security (including but not limited to cash collateral and margins) for all claims arising from NBK's banking business relationship with the Client, and for all charges, commissions and out-of-pocket expenses.

**24.2** Where NBK has refrained wholly or in part from requesting the provision of security, NBK may later request such security from the Client for any reason whatsoever.

**24.3** If the security the Client has provided NBK with in accordance with this clause becomes, in NBK's opinion, inadequate at any time, the Client is obliged to supplement or replace such security upon NBK's demand in writing. The Client shall provide NBK with such security immediately upon demand.

**24.4** The Client is obliged, at NBK request to execute all such documents, acknowledgements or agreements and to do all such acts as may be necessary for purposes of registering, completing, perfecting or otherwise correcting, modifying or updating any agreement or security which the Client may have provided NBK in consideration for the granting of facilities or in connection with the assignment or enforcement of any such agreement or security, or otherwise as may be necessary or appropriate from time to time in the context of this relationship.

## **25. Release of Security**

**25.1** Any discharge from payment or release of any security or the giving of any receipts for payments and any other acts which extinguishes the payment obligation towards NBK, shall always be made by NBK conditionally and on the assumption of the validity, finality and effectiveness of the payment or other act of performance and in accordance with NBK's policies and procedures.

**25.2** Should the payment or act of performance be, for any reason, declared invalid and/or reversed, or there is a threat that this may occur, any discharge or release shall be deemed not to have been made and corresponding liabilities shall remain outstanding and shall remain secured thereby.

**25.3** The Client undertakes upon NBK's written demand to execute such documents and/or other deeds or acts as may be necessary to re-establish the security with the pre-existing priority in so far as it has been formally released.

## **26. Right of Retention**

**26.1** In addition to any other rights to which NBK may be entitled to NBK shall also be entitled to retain and not repay any amount whatsoever which may at any time be owing by NBK to the Client, or any monies whatsoever which NBK may at any time hold in the Client's Account (whether on current or deposit Account), unless and until the Client's indebtedness shall have been discharged in full. If any indebtedness is not discharged in full when due, NBK shall be entitled to the extent of such indebtedness as remains undischarged, to appropriate any amount so owing to the Client from any money so held for the Client's account in or towards the discharge of such indebtedness.

**26.2** Any amounts retained by NBK standing from time to time to the credit of the Client's Account with NBK shall be available to the Client on the earlier of the date (i) on which NBK determines that all indebtedness has been unconditionally discharged, (ii) the date when NBK determines that no other indebtedness is capable of arising, or (iii) the date on which any indebtedness becomes due and payable by the Client to NBK. Proportionate availability of funds shall take place where NBK in its sole discretion determines that the indebtedness does not exceed the amount of the relevant deposits retained by NBK.

## **27. Netting and Set-Off**

**27.1** Without prejudice to Clauses 25.1 and 25.2, the Client hereby expressly waives his right to prohibit NBK from exercising its right to set-off any balances in the Account against any obligations the Client may have towards NBK.

**27.2** In addition to the rights conferred by law unto NBK, NBK has the right to set-off all and any amounts due to the Client (whether solely or jointly with any other persons, and calculated as detailed in Clause 27.3) against any amount(s) payable (whether or not matured, contingent or invoiced) by NBK to the Client (irrespective of the currency of the obligations), under any agreement(s) between NBK and the Client (which for the purposes of this clause shall constitute one agreement), including but not limited to any balances in the Account.

**27.3** For the purposes of the foregoing:

- a. NBK shall be entitled at his sole discretion (before as well as after demand) to combine or consolidate all monies now or hereafter standing to the Client's credit on any account with NBK or any of its branches and in any currency;
- b. Upon the occurrence of an Event of Default or Material Adverse Change all obligations shall be accelerated, and all amounts due from the Client to NBK shall be immediately due and payable;
- c. if the obligations are in different currencies, all obligations may be converted by NBK in any other currency at NBK's then-prevailing rate on the relevant day; and,
- d. if any obligation by NBK or the Client is un-liquidated or unascertained, NBK shall estimate the value of such obligation in a commercially reasonable manner and in good faith and then net that against positive balances standing to the Client's Account

**27.4** Upon the occurrence of an Event of Default or Material Adverse Change, without the need of an authorization and/or confirmation from the competent court, NBK has a right to accelerate all obligations, and accordingly all amounts the Client owes NBK, shall be immediately due and payable.

NBK shall have the right to automatically deduct from the Client's Account all expenses related to maintaining the Account, plus commissions as well as any amounts credited to said Account by error.

All of the Client's Accounts with NBK, or any of its branches, subsidiaries or affiliates inside or outside Kuwait opened at present or in the future, shall be deemed securing each other, notwithstanding their nature, names or currencies; and NBK shall have the right to record in the debit side of any such Accounts any amount due to NBK from the Client to settle the debited balance of the other Accounts. NBK shall also have the right to consolidate and unify any of the Client's Accounts into one account and to effect set-off between them, and to transfer from one Account to another, in order to settle NBK's claims, without requiring the Client's prior consent. Furthermore, all the Client's deposits in terms of cash, commercial papers and securities, precious metals and others shall be deemed pledged in NBK's favor to secure the fulfillment of all the Client's obligations towards NBK.

## **28. Assignments**

The Client is not entitled to assign any of his rights in respect of any contract entered into between the Client and NBK without NBK's prior written consent.

## **29. No Waiver**

No failure on NBK's part to exercise, or delay in exercising any of NBK's rights, powers or privileges under these General Terms shall operate as a waiver of any of NBK rights, powers or privileges, nor shall a single or partial exercise preclude any other or further exercise.

## **30. Invalidity**

If any of the provisions of these General Terms, or of any agreement between NBK and the Client, shall be invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.

## **31. Termination**

### **Termination of relationship**

**31.1** In addition to termination in case of an Event of Default or Material Adverse Change as defined at Clause 1, NBK and the Client may at any time by means of a written communication and without the need of any period of notice, terminate the entire business relationship or individual business relations for which neither a duration nor a termination regulation to the contrary has been agreed. Such termination shall be without prejudice to any rights accruing hereunder prior to the termination.

**31.2** On termination NBK shall be discharged from any liability NBK may have entered into on the Client's behalf, and the Client accepts to release NBK from such obligations and to provide any collateral for such obligations where required for the release of NBK's obligations.

## **Closing of Accounts**

**31.3** NBK shall have the right, at any time, to close any Account without the need to stating any reasons and the Client shall be obliged, upon being notified, thereof, to deliver to NBK any cheque books as well as credit cards and the ATM cards and the likes, and shall be obliged to pay the debited balance and all amounts becoming due and interests thereon. In all events, interest shall be charged, after closing the Account and calculated as determined by NBK.

## **32. Client's Tax**

The Client hereby consents for NBK or any of its subsidiaries, branches or affiliates to share the Client's account and/or customer information with NBK (Kuwait) and with domestic and overseas tax authorities (including such authorities': U.S. withholding agents) where necessary to establish The Client's tax liability in any jurisdiction. Where required by domestic and overseas regulators and/or tax authorities (including under the Foreign Account Tax Compliance Act "FATCA"), the Client hereby consents and agrees that NBK may withhold from The Client's account(s) such amounts as may be required according to applicable law, regulations and directives, or pass The Client's withholding information to other counterparties in other overseas tax jurisdictions.

The Client agrees and undertakes to notify NBK within 30 calendar days if there is any change in any information which the Client have provided to NBK. The Client further agrees that, should any information provided herein or by the Client to NBK at any time be inaccurate or incomplete, NBK shall at its sole discretion be entitled to terminate its relationship with the Client and to close any accounts the Client have therewith.

In case of any material change in the circumstances affecting the Client's foreign tax or FATCA status, the Client will notify such changes to NBK and submit the required documentation in relation thereto within 30 days of such a change in circumstances occurring.

The Client confirms that under no circumstances shall NBK, its directors, officers, employees or contractors be liable for any direct, indirect, incidental, special, punitive or consequential damages that may result in any way from its reliance on the information the Client have provided and from its undertaking any actions described herein.

The Client confirms providing Self Certification willingly based on which NBK will ascertain the Client's foreign tax and/or FATCA status.

Note: For more information on U.S. withholding agent and other FATCA terminology please visit <http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA>