

Terms and Conditions

Secured Loans



National Bank

1 Definitions

- a) "The Bank" means National Bank of Kenya Limited and its successors and assigns.
- b) "Borrower" means the applicant(s) specified in the Application and their personal representatives and assigns. Where there is more than one Borrower, their obligations are joint and several.
- c) "Application" means the Customer's account opening and or loan application attached to these conditions and which forms an integral part of the Agreement.
- d) "Conditions" mean these Conditions.
- e) "Repayment Date" means the day corresponding to the date of first disbursement of the Loan or any part of the Loan in each calendar month following the date of such disbursement provided that if there is no such corresponding day for the month in question, the Repayment Date for that month shall be the last day of the month and "Repayment Dates" shall have a corresponding meaning.
- f) "Agreement" means the Borrower's Application, duly approved by the Bank and these conditions as may be amended, supplemented and restated or otherwise notified from time to time.
- g) "Account" means the Customer's current / Transactional / savings account with the Bank.
- h) "Security" means any security required by the Bank offered as a condition for disbursement of the Loan.
- i) "Loan" means the aggregate of the approved Loan Amount and the applicable P/A insurance Premium, or so much thereof as may have been disbursed and from time to time owes by the borrower and includes all the Borrower's obligations.
- j) "P/A Insurance" means such personal accident insurance cover as the Bank may place with an insurer selected by the Bank in respect of such accidental risks affecting the Borrower, as the Bank shall determine.
- k) "P/A Insurance Premium" means the cost to the Bank of any P/A Insurance.
- l) "Statement" means a statement of the Borrower's account showing the debits and credits, and includes a summarized certified account balance signed by a Bank officer
- m) "Determine" means with respect to interest and charges to the loan such rate of interest as the Bank may in its sole discretion decide and/or notify from time to time.
- n) "Approved" means the acceptance by the Bank of the loan applied for or such lesser sum as it may in its sole discretion agree to advance to the Borrower. "Approval" shall have a corresponding meaning.
- o) "Disbursement" means the crediting of the approved loan into the Borrower's account or by any other mode making payment of the principal loan to the Borrower or for his account.
- p) "Notify" means notified in accordance with clause 10 of the conditions.
- q) "Collateral" means all real and personal property which is subject or intended to become subject to security granted to the Bank to secure the Borrower's obligations.
- r) "Obligations" means (a) all loans, advances, debts, liabilities owed by the Borrower, including all interest, fees, expenses, principal, premium (b) any and all sums advanced or payable in order to effect or preserve the collateral or exercising any right under the collateral; (c) in the event of any proceeding for the collection or enforcement of the obligations after an event of default shall have occurred, the expenses of realizing the collateral together with Advocates costs and court fees.

2. Interest

- a) The Borrower will pay interest (as well after as before any demand or judgement or the bankruptcy of the Borrower) on the Loan at the rate per annum determined and notified by the Bank
- b) Interest shall be calculated on daily balances and debited monthly by way of compound interest according to the usual mode of the Bank but without prejudice to the right of the Bank to require payment of such interest when due.
- c) The Bank shall have full power in its sole discretion to change and/or vary the rate of interest from time to time and at such intervals as it may determine such interest shall be secured in the same manner as the loan PROVIDED ALSO AND ALWAYS THAT the Bank shall issue to the borrower a thirty (30) day notice prior to any change in the rate of interest.
- d) The Statement of the Bank as to the amount of interest payable as to the rate of any interest payable pursuant to these Conditions shall be conclusive.
- e) A default penalty interest rate will be solely fixed and/or charged by the Bank on any amount that remains unpaid after its due date.

3. Approval, Effectiveness of the Loan, and Repayment Instalments

- a) The Bank may approve the full loan applied for, or a lesser sum, or decline the application in its sole discretion without giving any reasons. Such decision of the Bank may be by endorsement to that effect in the relevant part of the Application, or by a separate letter, and in either case it shall be effective to bind the parties without any further act by the Borrower.
- b) The loan and these conditions shall become effective and the Borrowers obligations to the Bank shall commence immediately upon the Bank disbursing the approved amount by crediting the Borrower's Account or otherwise by applying the principal loan proceeds for the Borrower's account.
- c) The Borrower will repay the Loan in terms of the Bank's approval or as specified and notified by the Bank by letter or otherwise together with the interest by the number of equal (or substantially equal) Monthly Repayment Instalments in cleared funds on the Repayment Dates.
- d) Upon expiry of each Interest Period, the Bank will, upon determination of the rate of interest payable for any subsequent Interest Period in accordance with Condition 2 (b), recalculate the amount if each subsequent Monthly Repayment Instalment so as to amortize the balance of the loan and the amount of interest payable for that Interest Period and that prospectively payable for any subsequent Interest Periods over the remaining Monthly Instalments.
- e) The Statement of the Bank notified to the Borrower of the amount of each monthly Repayment Instalment payable pursuant to this Condition shall in the absence of manifest error be conclusive.
- f) Time for payment of each Monthly Repayment Instalment is of essence.
- g) All payments shall be in Kenya Shillings in cleared funds during the normal banking hours. If any sum falls due for payment on a day which is not a day on which the Bank is open for business in Nairobi it shall be made on the immediately preceding day on which the Bank is

open for business in Nairobi.

- 3A. Security: The Bank may, upon approval of the loan, accept the security offered and/or require other or additional collateral to be effectively provided and perfected as a condition precedent to disbursements. Provided that, notwithstanding any disbursement made at the discretion of the Bank before perfection of such security, the condition to perfect the security shall remain valid and binding.
- 3B. The Security is to be a continuing security for the payment of the loan notwithstanding any intermediate payments or settlement of accounts, or your being declared bankrupt Borrower, as the case may be, or any change in your status or ownership for the payment of all sums including interest, fees, commission, costs, charges and expenses and the satisfaction of all liabilities, present or future, absolute or contingent for which you are now or may at any time hereafter be liable to the Bank and is to be in addition to and without prejudice to any other security which the Bank may now or subsequently hold in respect of such liabilities.
- 3C. In the event that there is a conflict between the provisions of these terms and conditions and the Security, documents the provisions contained in the Security documents will prevail.
- 3D. The Borrower shall pay the ground rent, rates, taxes, service charge and any other applicable charges and will at all times during continuance of the facility within the first quarter of the year and provide the Bank with evidence of payment by way of receipts. In the event of nonpayment on your part, the Bank shall pay the same in order to safeguard its rights to the security. Any such charges and incidentals thereto shall be debited to your account.
- 3E. The signature and delivery of the loan application by the applicant is deemed conclusive evidence of the applicant's agreement to be bound by the terms of the loan as to the amount of the loan and interest as approved and determined by the Bank
- 3F. The bank has the sole discretion to present the securities for registration, provided that if such security being unregistered shall remain valid and binding as between the bank and the customer.

4. Disclosure of information

- 4.1 The Bank reserves the right to obtain and solicit without notice to the Borrower Information regarding the credit worthiness of the Borrower from any Credit Reference Bureau.
- 4.2 The Borrower hereby consents to the right of the Bank to exchange with any other financial institution or Credit Reference Bureau or disclose to any financial institution or credit reference bureau or organization information regarding the credit worthiness of the Borrower or the Borrower's compliance or non compliance with the terms of any facility granted to the Borrower by the Bank.

5. Covenants

- The Borrower covenants with the Bank that, from the date of executing this terms and conditions until all moneys owing to the Bank under this Agreement have been paid in full:
- a. The Borrower will not, without the prior written consent of the Bank, permit any Security Interest by the Borrower to subsist, arise or be created or extended over all or any part of the Borrower's undertaking, property, assets or revenues to secure any present or future Borrowing of the Borrower or any person, unless such Security Interest is at the same time extended equally and rateably to all moneys owing by the Borrower under this Agreement or all such moneys are secured in such manner as shall be acceptable to the Bank;
 - b. The Borrower will perform and observe the covenants agreements and conditions contained in or implied by the grant conveyance transfer assignment lease or other title under which the Property is held or is to be held by the Borrower;
 - c. Obtain, comply with and promptly renew and maintain all consents, licenses, approvals, rights, powers, privileges, and authorizations (if any) required under any applicable law or regulation to ensure the legality, validity and enforceability of this Letter and the Security;
 - d. Comply with and observe at all times all the covenants, agreements, stipulations and conditions contained in this Letter, in the Security or in any other security created by the Borrower in favour of the Bank or in any letter or correspondence exchanged between the Borrower and the Bank and not without the prior consent of the Bank in writing vary or waive any of the terms thereof;
 - e. Notify the Bank of any event which is or may, with the giving of notice or the lapse of time or both, constitute an Event of Default;
 - f. Advise the Bank of the occurrence of any event by virtue of which any indebtedness of the Borrower (other than the Borrower's indebtedness under this terms and conditions) is capable of being declared due and payable prior to its stated maturity or which might prevent the Borrower from fulfilling the Borrower's obligations hereunder or under the Security.

6. Representation and Warranties

The Borrower represents and warrants to the Bank as follows:

- a. The obligations expressed as being assumed by the Borrower under these terms and conditions constitute valid, legal and binding obligations of the Borrower enforceable against the Borrower;
- b. Neither the execution and delivery of the form of acceptance endorsed on these terms and conditions by the Borrower nor the performance or observance of any of its obligations under these terms and conditions will conflict with, or result in any breach of, any law, statute, regulation, indenture, mortgage, trust deed, agreement or other instrument, arrangement, obligation or duty by which the Borrower is bound;
- c. There exists no overriding interest or Encumbrance or other security interest whatsoever over the whole or any part of the Property;
- d. No litigation or administrative or arbitration proceeding before or of any court, governmental authority or arbitrator is presently taking place, pending or (to the best of the knowledge, information and belief of the Borrower) threatened against the Property;
- e. That the statements made by the Borrower on the application form and or any questionnaire are accurate and truthful.

7. Implied terms

Implied covenants under the Second and Third Schedule to the Chattels Transfer Act Chapter 28 of the Laws of Kenya shall be deemed to apply to the Chattels Mortgage where the same is used as a form of security for an advance. They are but not limited to:

- (i) That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned; and that they are free and clear from encumbrances other than those herein mentioned.

- (ii) That the grantor will, at his own cost, do and execute all such acts deeds, matters and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee may from time to time be reasonably required.
- (iii) That the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the time herein mentioned, without any deduction whatever.
- (iv) That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making them respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.
- (v) That the grantor will not, at any time while any moneys remain owing on his security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on this security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situated.
- (vi) That the grantor will at all times, while any moneys remain owing on this security, keep and maintain all and singular the chattel hereby assigned in the same good order and condition in which they are at the date hereof; and, if any of them are damaged or destroyed, or cease to exist, will repair the damage, or replace the chattels so destroyed or ceasing to exist with other chattels of the same nature; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

8. Application of Payment Proceeds

- a. All payments received by the Bank in respect of the Loan shall be credited only when the payment shall have been received in cleared funds. Any payments otherwise credited by the Bank in respect of the Loan shall be subject to receipt of cleared funds and in default shall not be deemed credited until receipt of cleared funds.
- b. All payments received in respect of the Loan shall be applied in or towards first, cost and expenses payable by the Borrower under these Conditions; secondly, the amount of interest for the current Interest Period; and thirdly, the Loan.

9. Prepayment

The Borrower may prepay the whole or any part of the Loan subject to any payment being applied in the order specified in Condition 7 and subject also to the condition that, if any prepayment is not made at the end of an Interest Period, the Borrower shall not be entitled to any reduction in the amount of interest payable for that Interest Period and the Borrower shall, upon prepayment, pay to the Bank the whole of the interest payable for that Interest Period less any interest already paid.

9. Costs and Expenses

- a) The Borrower shall reimburse the Bank forthwith upon demand for all costs, (including all stamp duties and legal expenses) on a full indemnity basis incurred in connection with the perfection of the Security.
- b) The Borrower shall indemnify the Bank forthwith upon demand for any costs incurred by the Bank in taking any steps to obtain payment of moneys due under this Agreement including cost of enforcement of any security held and including costs of advocates on an advocate and own client basis.
- c) If a demand is made by the Bank under paragraph (a) or (b) above and the Borrower does not make the payment within seven days of the date of such demand, the Bank shall have the right to apply all related costs to the Borrower's Account accordingly and the Borrower hereby so confirms.
- d) On or before the date of execution of this Agreement the Borrower will be required to deposit an appropriate amount of money in the Account for the purpose of meeting preliminary expenses like valuation and search fees.

10. Set Off

The Bank may at any time and without notice set off any amounts under this Agreement against any sums owing by the Bank to the Borrower (whether jointly or severally) and otherwise combine and consolidate the accounts of the Borrower with the Bank. The customer shall indemnify the bank against all losses, claims, damages, costs, expenses and any detriment of whatsoever kind or nature consequent on or attributable to the Bank's exercise of the right of set off.

11. Event of Default

The Bank shall not be obliged to advance the Loan or, where the Loan has been advanced, may demand immediate payment of all amounts owed under this Agreement, in the event that:

- a) The Borrower fails to pay any sum payable hereunder on its due date for payment.
- b) The Borrower fails to perform and observe any obligations under the Agreement conditions.
- c) The Bank has reason to believe that the Borrower or any of them is, or are likely to become insolvent or have otherwise committed an act of bankruptcy.

12. Guarantee

- (a) The guarantor shall jointly and severally pay and satisfy to the bank on demand all sums of money which are now or at any time after this date shall be owing to the Bank anywhere on any account whatsoever whether from the customer solely or from the customer jointly with any other person(s) or from any firm in which the customer may be a partner including the amount of notes or bills discounted or paid and other loans credits or advances made to or for the accommodation of either the customer solely or jointly or any such firm as aforesaid or for any moneys for which either the customer solely or jointly or any such firm as aforesaid or for moneys or other facilities guaranteed by the bank for and on behalf and at the request of the customer solely or jointly or any such firm or in any other way whatsoever together with in all cases aforesaid all interest (at such rate or rates as may from time to time be charged or payable by the customer under the arrangements from time to time in force between the customer and the Bank) discount and other banker's charges including legal charges as between advocate and client occasioned by or incident to this or any other security held by or offered to the bank for the same indebtedness or by or to the enforcement of any such security .

- (b) The amount of the Guarantor's liability under the guarantee and indemnity shall be limited to:

- (i) The Principal Sum.
- (ii) all interest (so far as separately identifiable) accrued due to the bank from the customer at any time before the date of demand upon the guarantor or the discontinuance by any means of the guarantee and indemnity
- (iii) Interest on I and ii as from the due date until payment thereof (whether before or after the judgement obtained) at the rate currently charged by the bank to the customer on the due date
- (iv) All costs, commission charges expenses and the like accrued due to the bank from the customer on the due date arising after the due date
- (v) all further legal charges as aforesaid arising after the due date.

13. Additional Provisions

- 1. No indulgence by the Bank in respect of any of its rights hereunder will operate as a waiver of its said rights.
- 2. No amendment or variation of this Agreement shall be valid or effective unless it be in

writing and signed by the necessary parties except that, as specified in Conditions 2 and 3 above, the Bank may determine the rate of interest payable in each subsequent Interest Period and adjust the amount of each Monthly Repayment Installment.

- 3. A certificate under the hand of a manager of the Bank whose office need not be proved shall constitute prima facie proof of any amount owing in terms of this Agreement for any purpose and at any time.
- 4. Reference to the masculine gender shall include a reference to the female gender and vice versa. Reference to the singular shall include reference to plural and vice versa.
- 5. The Borrower acknowledges that no representations or inducements to enter this Agreement have been made whether orally or otherwise other than those specifically referred to herein.
- 6. Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Agreement or any security provided for or on your behalf you shall not in any way be affected or impaired thereby.

14. Notices and Place of Payment

Any notice to be given to the Borrower in connection with the Agreement shall be in writing and may be delivered to the Borrower or any one of them personally in which event it shall be deemed to have been duly given at the time of receipt or may be given by prepaid registered post to the Borrower's postal address specified in the Application or such other postal address as may be notified by the Borrower to the Bank. Any such notice shall be deemed to have been duly given on the seventh day following the date of posting. Proof of posting by a receipt or certificate of posting of a registered letter addressed to the Borrower at the address in the Application, or such other address as the Borrower may notify shall be conclusive proof that the said notice has been duly posted notwithstanding non-receipt of such notice by the Borrower. Any notice to be given to the Bank shall be in writing and shall be delivered to, at the Branch of the Bank or at such other address as may be notified by the Bank.

15. Assignment:

You may not assign or transfer any or all of its rights or obligations under this letter of offer.

The Bank may at any time transfer all or any part of its rights and/or of its obligations under this letter of offer. All references in this letter of offer to 'Bank' include any other person with which the Bank merges or consolidates and will be read as if such entity formed by the merger or amalgamation had been a party to this letter of offer in place of the Bank.

16. Change in circumstances.

If any change in applicable law or regulation or in the application or interpretation thereof by any government authority charged with the administration thereof shall make it impracticable or unlawful for the Bank to maintain or give effect to its obligations under this Agreement, the Bank shall give you notice in writing of such event and the Bank's obligation to make the Facility available shall be cancelled and you shall within 7 days of receipt of such notice repay to the Bank the Facilities and accrued interest thereon to the date of repayment.

17. Currency indemnity

If any sum due from you hereunder or under any order or judgment given or made in relation hereto has to be converted from the currency (the "first currency") in which the same is payable hereunder or under such order or judgment into another currency (the "second currency") for the purpose of (a) making or filing a claim or proof against the Borrower, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation hereto, you shall indemnify and hold harmless the Bank from and against any loss suffered as a result of any difference between (x) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (y) the rate of exchange at which the Bank may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction in whole or in part, of any such order, judgment, claim or proof. Any amount due from you under this clause shall be due as a separate debt and shall not be affected by judgment being obtained for any other sums due hereunder but it shall be secured, and the Bank shall have all rights in relation to it, as if it formed part of the Facilities. The term "rate of exchange" includes any premium or costs of exchange in connection with the purchase of the first currency with the second currency.

18. P/A Insurance

- a. The Bank may in its sole discretion take out P/A Insurance in respect of the Borrower.
- b. The Borrower shall reimburse the Bank the P/A Insurance Premium, the amount of which will be advanced and form part of the Loan.
- c. The Bank will on written request from the Borrower or any of them provide particulars of the P/A Insurance.
- d. The Borrower will forthwith notify the Bank of any event, which may give rise to a claim under the P/A Insurance.
- e. All proceeds received by the Bank in respect of any claim made under the P/A Insurance, will be applied by the Bank in repayment of the Loan. Any surplus after such application will be paid to the account.

19. Governing Law

These terms and conditions be governed and construed in accordance with Kenyan law.

20. Counter-parts

This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument

I _____
of P. O. Box No _____ hereby confirm that I have read the above terms and conditions and hereby signify my acceptance of the terms and conditions.

Signature: _____

ID No: _____

Date: _____

Witness _____ Date _____

In the presence of: _____

(Bank Official)