



General Terms and Conditions for account opening

Introduction

These terms and conditions apply to all Genghis Clients and are subject to the Capital Markets Act Cap 485A, NSE Trading Rules and Central Depositories Act No. 4 of 2000 Laws of Kenya as amended from time to time.

Definitions

In this Agreement, the following expressions shall, unless the context otherwise requires, have the meanings hereby assigned to them;

"Branch" a branch or branches of Genghis which may from time to time be specified by Genghis to the Customer;

"Business Day" means any day which is not an official public holiday, Saturday or Sunday and if any such day is not a Business Day, then the next Business Day is immediately succeeding that day;

"CDS" means Central Depository System which is a computer system that facilitates holding of securities in electronic accounts;

"CDSC" means the Central Depository and Settlement Corporation which oversees the management of CDS;

"Channel" means all or any system, medium or channel (including telephone and facsimile), whether internet based or not which may be established by Genghis from time to time to enable our customers access and utilise the services provided by Genghis from time to time;

"CMA" means The Capital Markets Authority which is a statutory agency charged with the prime responsibility of regulating and developing efficient capital markets in Kenya;

"Genghis" means Genghis Capital Limited a limited liability company incorporated under the provisions of the Companies act and licensed as an Investment Bank under the Capital Markets Authority Act having its registered office at Nairobi and care of Post Office Box 9959-00100, Nairobi and includes such Branch or subsidiaries of Genghis as may from time to time be specified by Genghis to the customer;

"Instructions" means, including but not limited to, a request by the Client and or his/her Attorney, directly to NSE, to purchase and or sell various Securities into or from the Investment Account, or to make payments or transfers out of the Investment Account or to provide any ancillary service(s) thereto;

"Log In ID" means a confidential number issued by Genghis to the Client for purposes of identifying the Client when issuing buy or sell orders through the Share Trading Account.

"MSP" any mobile service provider through whom the Client or the Genghis receives the mobile services as notified by the Genghis;

"NSE" means The Nairobi Stock Exchange where exchange of securities issued by publicly quoted companies and the government is done;

"OST Account" means Online Share Trading Account, which shall be the website provided by Genghis for Trading of securities.

"Regulators" means all the regulatory bodies involved in the Capital Markets in Kenya or in any other applicable jurisdiction

1. INTRODUCTION

1.2 In this Agreement:

1.2.1 references to "Genghis" shall include Genghis, its successors and assigns;

1.2.2 references to "the Customer" shall include the Customer, its successors and permitted assigns and references to a "subsidiary" shall mean a subsidiary undertaking within the meaning as in the Companies Act, of the Laws of Kenya;

1.2.3 where "the Customer" is more than one person, references to "the Customer" shall include all and/or any of such persons and the obligations of the Customer shall be joint and several;

1.2.4 words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;

1.2.5 "person" shall include a body of persons, corporate or incorporate;

1.2.6 references to clauses, subclauses and Schedules shall mean clauses, subclauses and Schedules of this Agreement;

1.2.7 The Customer's use of the Service is also governed by the applicable agreement(s) and Genghis' General Terms and Conditions which the Customer has already signed.

2. MOBILE APPLICATION SERVICE AND TRANSACTIONS

2.1 Services and Transactions Offered

Depending on the subscription applied for by the Customer and approved by Genghis, the transactions that a Customer is able to perform may vary. The services and transactions allowed may include but are not limited to the following: –

Obtaining account information like Full statement request, Account summary,

2.2 Customer Subscription

2.3 Limits of Mobile Banking Transactions

2.3.1 The Customer may transfer or effect a payment for any amount as long as the transaction does not cause the balance in the deposit account to be less than zero

2.3.2 The mobile money services shall be governed by the terms and conditions noted herein and shall include all enabling and supporting agreements to the provision of the mobile money service with the mobile service providers that the customer will be privy to at all times.

3. SERVICE CHARGES

3.1 The Customer shall pay or procure the payment of all applicable costs, charges and fees in connection our service in addition to transaction service charges applicable to various transaction types. The costs, charges and fees as currently in force are:

xxxxxxx

Such costs, charges and fees are subject to change by the Genghis from time to time and the most current applicable costs, charges and fees are available from any Branch or the Genghis customer Service. Any failure however by the Genghis to so notify the Customer shall not prejudice in any way howsoever the recovery by the Genghis of such fees and charges from the Customer.

3.2 The Customer, whenever applicable, shall pay any tax chargeable upon any sums payable by the Customer to Genghis and also any other charges or duties levied on the Customer or Genghis by any governmental or statutory body relating to the provision of the Service.

3.3 Genghis is hereby irrevocably authorised from time to time to debit any amounts payable by the Customer under the provisions of subclauses 3.1 and/or 3.2 against any account in any currency maintained by Genghis, the Branch and/or Genghis subsidiaries (as applicable) in the name of the Customer.

4. EXCLUSION OF LIABILITY

4.1 Genghis will not be responsible or liable for:

4.1.1 Any indirect or consequential losses or economic loss or loss of profit or business incurred by you in connection with the services notwithstanding our awareness of the possibility or likelihood of you incurring the same

4.1.2 Any loss in connection with any unforeseeable acts or omissions or neglect acts on the part of our service providers, contractors, agents or employees;

4.1.3 Any losses arising in connection with us acting upon Instructions sent by you or by reason of us failing or refusing to so act if, acting in good faith, in our opinion there is or are reasonable ground(s) for such failure or refusal (*other than as caused by our gross negligence or wilful default*);

4.1.4 any loss suffered by the Client should the Service be interfered with or be unavailable by reason of (a) any industrial action, (b) the failure of any of the Client's facilities, or (c) any other circumstances whatsoever not reasonably within Genghis's control including, without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

4.1.5 any losses caused as a result of or in connection with any laws or regulations of countries where transactions are settled or cleared where any negotiable instrument or receivable is collected or any exchange control restrictions which are imposed from time to time unless caused by our breach of such laws and regulations;

4.1.6 any losses suffered by you by reason of:

4.1.6.1 the shut-down or delay in the availability of the Mobile Service Provider (*MSP*);

4.1.6.2 Any viruses, Trojan horses, worms, logic software, other bombs or other similar programs or routines (*including hacking*) affecting any Website, Service or System Materials; or

4.1.6.3 Incomplete messaging

4.1.7 any damages or losses arising from unauthorized access to any Service by a third party using the PIN unless we have received prior notification from you in accordance with the User Guides and/or the relevant that no further access to the relevant Service shall be granted to any person using such Client Identification or User Identification or Access code with effect either from receipt of such notification or such later date as may be specified in such notification; or

4.1.8 the consequences of any misuse of any Channel by you, or any use of any Channel by you not related to any of the Services. For the avoidance of doubt, any other limitation of liability contained in any shall be in addition to and shall not derogate from the above.

4.2 Without prejudice to clause 4.1 above, our maximum aggregate liability to you for any claim arising from or in connection with any Service is limited to the aggregate amount of service charges paid by you for the relevant Service in the three months preceding such claim.

4.3 Whilst we will use all reasonable endeavours to ensure that all financial information available through the Services is accurate when initially made available, we shall not be liable for any loss incurred or damage suffered by you by reason or in consequence of your using financial information which is not up to date

4.4 Save as otherwise provided in this Agreement, all terms, conditions and warranties implied by law regarding the quality or fitness for purpose or otherwise of the Services or the System Materials are excluded to the fullest extent permitted by applicable law.

4.5 To be valid any claim that you have against us under the Agreement or otherwise in connection with any Service or any ancillary service must be notified to us within thirty (30) days after you have become aware or should have become aware of the facts on which it is based.

5. INDEMNITY

5.1 The Client shall indemnify and keep Genghis indemnified against (a) any damages and costs payable to Genghis in respect of any claims against Genghis for recompense for loss caused by subclause 4.1.4 where the particular circumstance is within the Client's control; and (b) any loss which may be incurred by Genghis as a consequence of any breach by the Client of the terms of this Agreement

5.2 The Client shall indemnify and keep indemnified Genghis against any demand, claim or action relating to or in connection with the Service, whether directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or wilful misconduct of Genghis or any of its employees.

5.3 The Client shall indemnify and keep indemnified Genghis against the following: –

5.3.1 All demands, claims, actions, losses and damages of whatever nature which may be brought against Genghis or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond Genghis's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by Genghis.

5.3.2 Any loss or damage that may arise from the Client's use, misuse, abuse or possession of any third-party software, including without limitation, any operating system, browser software or any other software packages or programs.

5.3.3 Any unauthorised access to the Client's accounts or any breach of security or any destruction or accessing of the Client's data or any destruction or theft of or damage to any of the Client's equipment.

5.3.4 Any loss or damage occasioned by the failure by the Client to adhere to any terms and conditions applicable to the Service and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction.

5.4 If for any reason other than a reason mentioned in subclause 4.1.4 the Service is interfered with or unavailable, Genghis's sole liability under this Agreement in respect thereof shall be to re-establish the Service as soon as reasonably practicable or, at Genghis's option, to provide to the Client alternative options which need not be electronic facilities.

5.5 Save as provided in subclause 4.1.4, Genghis shall not be liable to the Client for any interference with or unavailability of the Service, howsoever caused.

5.6 Under no circumstances shall Genghis be liable to the Client for any loss of profit or anticipated savings or for any indirect or consequential loss of whatever kind, howsoever caused, arising out of or in connection with the Service.

5.7 Except in respect of death or personal injury caused by the negligence of Genghis, Genghis shall be under no liability whatsoever in respect of any terms of this Agreement or their performance thereof or any transactions effected by Genghis in response to any Request:

5.7.1 In the case of any claim relating to a transaction, within thirty (30) days from the date of the alleged transaction on which such claim is based; and

5.7.2 In all other cases within one (1) year of the date of the alleged action or inaction by Genghis on which such claim is based.

5.8 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

5 AMENDMENTS

Genghis may amend or change this agreement at any time, at all times giving the Client not less than 30 days' notice of the change prior to the effective date of the amendment.

6. TERMINATION

6.1 Notwithstanding anything contained in this agreement, the agreement may be terminated at any time by either party giving the other one calendar months' notice, PROVIDED that in the event of any change in any law or the application thereof, or any other event which, in the judgment of Genghis, would have the effect of prejudicing Genghis should it continue with the rendering of the Service to the Client, Genghis shall be entitled to terminate the agreement at any time without notice to the Client.

6.2 If the Client terminates the agreement, Genghis may continue to make transfer of funds and other transactions that the Client would have previously authorized until such time as Genghis will have had a reasonable opportunity to act on the Client's notice of termination.

6.3 Clauses 7, 7.3, 7.5 and 8 and shall survive termination of this Agreement.

7. GENERAL PROVISIONS

7.1 The Client shall not assign the benefit of this Agreement or any rights arising hereunder without the prior written consent of Genghis.

7.2 No waiver by Genghis of any breach by the Client of any of the terms of this Agreement shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Client.

7.3 The Client acknowledges:

7.3.1 that it has not relied upon any representation, warranty, promise, statement of opinion or other inducement made or given by or on behalf of or purportedly by or on behalf of Genghis in deciding to enter into this Agreement; and that

7.3.2 no person has or has had authority on behalf of Genghis whether before, on or after the signing of this Agreement to make or give any such representation, warranty, promise, statement of opinion or other inducement to the Client or to enter into any collateral or side agreement of any kind with the Client in connection with the Service.

7.4 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way affect or prejudice any security granted by the Client or any third party in favour of Genghis in relation to any obligations of the Client which may arise if any Request from the Client hereunder is acted upon by Genghis.

7.5 Any notice required to be given in writing under this Agreement and/or the schedules or parts of this Agreement shall be sufficiently served if sent by registered post, stamped and properly addressed;

7.5.1 to the Manager of the Branch or of Genghis at the address of the Branch or Genghis if to be served on Genghis; or

7.5.2 to the Client at the address given by the Client, if to be served on the Client and shall be deemed to have been served five working days after posting. A copy of any notice served on a Branch shall also be sent by registered post to Genghis at Genghis's address or such other address as Genghis may notify to the Client from time to time for this purpose. Failure to send such a copy shall not invalidate any notice served on Branch.

8. CONFIDENTIALITY AND DISCLOSURE

8.1 You undertake to maintain the confidentiality of the PIN and any other information and materials of any nature supplied to you by Genghis in relation to the Service. You shall be fully liable to Genghis for any breach of the provisions of this clause by yourself.

8.2 You authorize us to collect, retain and use personal information about you for certain purposes as detailed in such data protection and privacy policies as Genghis may issue from time to time.

8.3 You agree that we are authorised to disclose any necessary information (*including any personal data*) regarding you and the status of your accounts (*including deposit accounts*) with us:

8.3.1 any agent, contractor or third-party provider or service provider or professional adviser who provides administrative, telecommunications, computer, payment, collections, security, clearing, credit reference or checking, or other services or facilities to us in connection with the operation of our business;

8.3.2 any person to whom we are required to make disclosure to under the requirements of any law, regulation or practice;

8.3.3 any financial institution with which you propose to have any dealings, and to use such information in connection with the administration and operation of the Services.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Client acknowledges that the intellectual property rights in the System (and any amendments or enhancements thereto from time to time) and all associated documentation that Genghis provides to the Client through the System or otherwise are vested either in Genghis or in other persons from whom Genghis has a right to use and to sub-license the System and/or the said documentation. The Client shall not infringe any such intellectual property rights.

9.2 The Client shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of Genghis.

10. GOVERNING LAW

10.1 This Agreement shall be governed by and shall be construed according to the Laws of Kenya.

10.2 The parties hereby irrevocably submit to the jurisdiction of the Courts of Kenya, but Genghis shall be at liberty to enforce any judgment in its favour in any jurisdiction where the Client carries on business or has any asset.

ACCEPTANCE

I/we have read and fully understood the terms and conditions governing the use of Mobile Application offered by Genghis Capital Limited and I/We hereby accept them and will abide by them.

_____ This _____ day of _____ 20____
(Name) (Signature)

_____ This _____ day of _____ 20____
(Name)