

# **General Terms and Conditions of Opening and Maintaining Bank Accounts with HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce**

**Commercial and Global Banking**

with the effect from 15 December 2019

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## 1. GENERAL PROVISIONS AND DEFINITIONS

These General Terms and Conditions of Opening and Maintaining Bank Accounts with HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce (hereinafter referred to as the General Terms and Conditions) set forth the principles and procedures of opening, maintaining and closing by HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce of bank accounts for businesses which concluded a bank account agreement with HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce.

The capitalised terms used in these General Terms and Conditions shall have the following meaning or the meaning specified in the Agreement.

- **Account Information Service Provider** shall mean payment services supplier, other than the Bank, who provides the Client with access to information on Account and related payment transactions.
- **Additional Restrictions** shall mean the information published by the Bank on its website regarding possible restrictions, in addition to situations provided for in clause 5.23, on Instructions placed by Clients of the Bank, which the Bank has the right to refuse to execute.
- **Bank of England Base Rate (BoE Base Rate)** means the interest rate set by the Bank of England or its successor to administer the BoE Base Rate, as listed on the relevant Bank of England website or, if the agreed website is replaced or the service ceases to be available, another equivalent party or service stating the appropriate interest rate specified by the Bank in agreement with the Customer.
- **Banking Law** shall mean the Banking Law of 29 August 1997 (consolidated text in: Journal of Laws of 2018, item 2187, as amended) with the relevant secondary legislation.
- **Business Day** shall mean each and any day except for Saturdays, Sundays and other public holidays in Poland, on which the Bank is open for business.
- **Card** shall mean the „Specimen Signature Form” containing personal data, the specimen signatures of the persons entitled to place Instructions relating to the Account, including but not limited to: application for Account confirmation, balance confirmation, transaction confirmation, Bank statement and Bank opinion, other non-standard confirmations concerning cooperation between Bank and Customer as well as setting up and modification of the password, referred to in Clause 9.9 of the Agreement.
- **Consent of the Tax Office Head** shall mean the consent granted by the head of the tax office at the request of a taxpayer in the form of a decision to transfer funds accumulated in the VAT Account to the bank account indicated by the taxpayer.
- **Convertible Currencies** shall mean the foreign currencies specified in the announcement of the President of the National Bank of Poland of 29 November 2018 (M.P. 2018 item 121) regarding the announcement of a list of convertible currencies or in other legal instrument which will replace it.
- **Debit Balance** shall mean the negative balance of funds in the Account.
- **Direct Debit** shall mean payment instruction consisting in debiting the payer’s account with a particular amount, as a result of a payment instruction by the Recipient on the basis of consent granted to the Recipient by the Payer.
- **EDF (ECB Deposit Facility Rate)** the interest rate set by the European Central Bank or its successor for the administration of the EDF rate as stated on the relevant European Central Bank website or, if the agreed website is replaced or the service is no longer available, another equivalent website or a service stating the appropriate interest rate specified by the Bank in consultation with the Customer.
- **Electronic Banking Channels** shall mean the following electronic banking systems of the Bank: HSBCnet, other electronic means of access to the Account made available to the Client by the Bank pursuant to a separate agreement.
- **Entity related to the Client** shall mean the Client and its subsidiaries and holding companies within the meaning of the Accounting Act of September 29th, 1994 (uniform text: Journal of Laws of 2018, item 395, as amended). Group means HSBC Holdings plc, and/or any of, its affiliates, subsidiaries, associated entities and any of their branches and offices, which current list is available in the most actual Annual Report published by HSBC Holdings plc at <https://www.hsbc.com/investors/results-and-announcements/annual-report>. List of most important HSBC Group entities is available on the official HSBC’s website: <https://www.business.hsbc.pl/pl-pl/pl/generic/download-centre>; “**any member of the HSBC Group**” has the same meaning.
- **Internal transfer order** shall mean transfer carried out between accounts maintained by HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce.
- **Instruction** shall mean an instruction of the Client the execution of which by the Bank causes a change concerning the Client’s Account with the Bank, including a Payment Instruction.
- **LIBOR** shall mean the London Interbank Offered Rate determined by ICE Benchmark Administration Limited or another entity being its successor with regard to the administration of the LIBOR rate, announced on the appropriate screen of the Thomson Reuters service or, if the agreed screen is replaced or service ceases to be available, another equivalent screen or service announcing the appropriate interest rate specified by the Bank after consultation with the Client.
- **Mid-point of Target Federal Funds Range (MFFR / MTFF)** means the average of the range between the lower and upper interest rates set by The Federal Reserve System or its successor to administer the Target Federal Funds Range, as set out on the relevant website. [federalreserve.gov](http://federalreserve.gov) or, if the agreed party is replaced or the service is no longer available, another equivalent party or service stating the applicable interest rate determined by the Bank in agreement with the Customer.
- **Member States** shall mean Member States of the European Union or the European Free Trade Association (EFTA) parties to the Agreement on the European Economic Area (EEA).
- **Payment Instruction** shall mean any Instruction specified in Clause 7.2. of the General Terms and Conditions.
- **PLN** shall mean the currency of the Republic of Poland, Polish zloty.
- **Payment Initiation Service Provider** shall mean payment services supplier, other than the Bank, who provides the Client with services of the initiation of the payment transactions from the Account on the request of the Client



## 1. GENERAL PROVISIONS AND DEFINITIONS

- **Payment Services Act** means the Act of 19 August 2011 on payment services (i.e. Journal of Laws of 2017, item 2003, as amended)
- **Priority Account** shall mean the settlement account indicated by the Client as the priority account in relation to each of the VAT Accounts opened by the Bank. Should the Client fail to indicate the Priority Account, the Bank shall, at its discretion, determine the Priority Account.
- **Recipient** shall mean the intended recipient of funds as specified in the Payment Instruction.
- **Reference Rate of Narodowy Bank Polski** shall mean interest rate as announced by the Monetary Policy Council determining profitability of monetary bonds issued by Narodowy Bank Polski for basic activities within open market operations or if the rate is no longer available, another equivalent interest rate specified by the Bank in consultation with the Customer
- **Sanctions** shall mean international sanctions or restriction measures applied on the basis of the resolution of the United Nations Security Council (UNSC Resolution), European Union legislation, anti-terrorist legislation or legally binding orders imposed by governments or regional authorities.

## **2. CONCLUDING THE AGREEMENT**

- 2.1.** The Bank shall open and maintain an Account on the basis of the Agreement and the General Terms and Conditions.
- 2.2.** In order to conclude the Agreement, the Client shall submit a duly completed account opening form and the Card, the up-to-date version of its incorporation documents, a valid extract from the Register of Entrepreneurs issued within the last three months (or other relevant register) and the documents listing the persons authorised to make declarations of will on behalf of and for the Client as regards its proprietary rights and obligations. The Bank shall have the right to request the Client to provide other documents which the Bank deems necessary to conclude or execute the Agreement, perform a risk assessment required by legal regulations or best market practices, as well as to meet the regulatory requirements of the Bank. The identity of persons shall be determined by the Bank's employee on the basis of ID documents produced by those persons.
- 2.3.** At the request of the Bank the Client shall notify the Bank of bank accounts opened with other banks or credit institutions.
- 2.4.** The Client shall submit the documents referred to in Clause 2.2. in the original or in copies certified to be true copies by an employee of the Bank or a Group company, or a notary or other authorised public authorities.
- 2.5.** In the case of documents issued abroad, the Bank may demand that such documents be certified for conformity with local law by the relevant Polish diplomatic or consular mission or otherwise as agreed with the Bank. The obligation to certify documents for conformity with local law shall not apply to the documents from the countries with which Poland has entered into the relevant international treaties lifting such an obligation. In the case of documents drawn up in a foreign language, the Bank may demand the submission of a translation into Polish made by a Polish sworn translator.
- 2.6.** The provisions of preceding clauses shall apply to the documents submitted by the Client in order to have an Account opened as well as to the documents submitted during the term of the Agreement.
- 2.7.** The documents submitted by the Client when applying for the opening of the Account shall constitute the documentation of the Bank and shall not be returned. Upon Client's request, the Bank may return documents submitted in the original.
- 2.8.** In the event of any changes in the documents referred to in Clause 2.2., the Client shall immediately submit the current version of the documents. The Bank shall not be responsible against the Client in the event of acting in good faith on the basis of the last submitted version of those documents.
- 2.9.** The Bank may open and maintain the Account for the limited liability companies in organisation and the joint stock companies in organisation, established under the provisions of relevant laws, provided that the Bank shall be entitled to terminate the Agreement without notice with immediate effect if the entity applying for the opening of an Account fails to submit a proof of an entry into the register of entrepreneurs of the National Court Register within six months of the date of the Deed of Incorporation or drawing up the Articles of Association. The provisions of Clause 12 shall apply accordingly.
- 2.10.** On the basis of the Agreement, the Client may request that the Bank opens and maintains additional Accounts. For this purpose, the Client should submit to the Bank a duly completed account opening form in accordance with a template made available by the Bank. If the Bank agrees to the opening of another Account, the Bank shall send to the Client a confirmation with the number of a new Account.
- 2.11.** The Client undertakes to notify the Bank of (i) the intention to issue bearer shares and (ii) conversion of registered shares into bearer shares with a suitable advance. The issuing of bearer shares by the Client or conversion of registered shares into bearer shares shall authorize the Bank to terminate the Agreement under the procedure of Clause 12.5.

### **3. ACCRUAL OF INTEREST**

- 3.1.** The Bank shall have the right to modify the interest rate specified in the Agreement without its termination if at least one of the following parameters is changed:
- a)** the interest rates announced by the National Bank of Poland,
  - b)** the level of the mandatory reserves specified by the National Bank of Poland or the basis for the calculation thereof,
  - c)** the interest rates on deposits prevailing on the inter-bank market,
  - d)** the inflation rate announced by the Central Statistical Office,
  - e)** the price of the financial instruments announced in the Polish and foreign money markets,
  - f)** any other economic index the change of which may materially influence the Bank's activity in the area of accepting deposits, or
  - g)** the level of the mandatory participation charges in the deposit guarantee scheme.
- 3.2.** Interest on the funds in the Account shall accrue in the currency of the Account as of the day on which the funds are deposited in the Account until the day preceding their withdrawal.
- 3.3.** Interest shall accrue for the actual number of days when the funds were deposited in the Account in proportion to the interest per annum, where the year for PLN shall have 365 days and for Convertible Currencies the number of days shall be consistent with the manner of calculation adopted by the Central Bank of a country in which such currency is a legal tender.
- 3.4.** Interest shall be compounded with the balance in the Account by the end of the last Business Day of each calendar month, except as otherwise agreed by the Parties.
- 3.5.** On the amount of due debt, from the date such debt is incurred until the date it is actually repaid, interest shall be charged at the interest rate calculated by the Bank as the sum of (i) Reference Rate of Narodowy Bank Polski from the current calendar month, posted on the last Business Day of every month and (ii) 5,5% (in words: five point five per cent).

## 4. FEES AND CHARGES

- 4.1.** The Bank shall charge the fees and charges for opening and maintaining the Account, for making money settlements and for other transactions in connection with the maintenance of the Account in the amount applicable on the date of submission of a given Instruction or on the date of performance by the Bank of other operations specified in the Agreement or the Table of Fees and Charges.
- 4.2.** The amount of the fees and charges shall be specified in the Agreement or Table of Fees and Charges.
- 4.3.** The Bank shall be entitled to modify the rates of fees and charges in particular, if, during the term of Agreement, the costs incurred by the Bank with respect to maintenance and service of bank accounts change, including changes in statutory charges incurred by the Bank or changes to capital requirements.
- 4.4.** The Bank shall charge the fees and charges from the funds standing to the credit of the Account on a daily basis at the end of following Business Day and irrespective of the coverage of the Account balance, on the last Business Day of each calendar month for the maintaining of Client's Account and for the Electronic Banking Channels.
- 4.5.** If the amount of funds in the Account is insufficient, the Bank shall be entitled to charge the fees and charges to the other Accounts of the Client, without a separate Instruction of the Client. If the Client has no other Accounts maintained by the Bank, the Bank may charge the due amount to the Account even if a Debit Balance arises as a result of such an operation.
- 4.6.** Unless agreed otherwise, the fees and charges shall be charged in the currency of the Account which the Bank was authorised to charge with such fees and charges. If an Account is maintained in Convertible Currencies, the Bank shall charge the fees and charges in the amount being the PLN equivalent of the amount of such fee or charges at the buying rate of the given currency of the Bank prevailing on the day the operation is booked.
- 4.7.** All fees and charges shall be covered by the person requesting the banking operations unless the parties to the banking operation agreed otherwise and upon the consent of the Bank.
- 4.8.** If the transfer is effected to a Member State, fees and charges are shared in accordance with SHA principle, i.e. the Recipient pays for fees and charges imposed by its bank and correspondent banks facilitating fund transfers and the Client pays for its fees and charges due and payable to the Bank. The fees and charges due and payable to the Bank incurred by the Client shall be collected from the Client's current account in PLN, indicated to be used for collection of any fees.
- 4.9.** In the case of transfer other than mention in clause 4.8., one of the three following charging options may be applied:
- a)** OUR (fees and charges incurred by the Client),
  - b)** SHA (as stipulated in clause 4.8.) or
  - c)** BEN (fees and charges incurred by the Recipient including costs of correspondent banks facilitating funds transfer).
- 4.10.** Should BEN option be applied, the Bank shall reduce the amount of Payment Instruction by fees and charges due and payable to the Bank.
- 4.11.** Should OUR option be applied, the Bank shall charge the Client's current account in PLN, indicated to be used for collection of any fees, with the amount determined by the recipient's bank immediately upon the receipt of demand for payment. The preceding sentence is applicable to correspondent banks participating in the settlement, respectively.
- 4.12.** The Bank and the Client agree that in case of the seizure of the funds in the Account, they will set off their mutual claims under the Agreement, as long as the Bank's claim has become due and payable prior to the Client's claim.
- 4.13.** The set off mentioned in Clause 4.12. shall be settled by debiting the Account by the Bank and shall have the effect as of that date.
- 4.14.** A right to set off mentioned in Clause 4.12. does not refer to the seizure of funds in the Account related to the enforcement of Client's tax liabilities.

## 5. PLACING INSTRUCTIONS

- 5.1.** If the Instruction exceeds the amount of the funds in the Account, the Bank may refuse to execute the Instruction, unless under the separate agreement the Bank granted an overdraft facility on the Current Account.
- 5.2.** The Instruction shall include the following or otherwise the execution of such an Instruction shall be refused:
- a)** the specific and complete orders of the Client,
  - b)** the clear title of the ordered operation,
  - c)** the signatures in the number required in accordance with the Card and compliant with the specimen signatures included in the Card; no facsimile instead of a signature shall be permitted,
  - d)** the information or documents required under relevant laws, including the potentially required foreign-exchange permits.
- 5.3.** The Bank shall have the right to request from the Client additional oral or written information or submission of specific documents deemed by the Bank necessary for executing the Instruction or checking its compliance with law in order to, inter alia, satisfy the requirements with regard to counteracting money laundering and terrorism financing or foreign-exchange requirements.
- 5.4.** The Instructions shall be submitted with the use of the Electronic Banking Channels made available by the Bank directly by the Client or through Payment Initiation Service Provider.
- 5.5.** The Bank shall honour the Instruction given on forms prepared and approved by the Bank submitted in original to the Bank only in the following situations:
- a)** Instructions in this form are required by the provisions of Agreement concluded with the Bank or
  - b)** in emergency situation such as: technical problems with the Electronic Banking Channels, change referred to in clause 6.3. until the access to Electronic Banking Channel is made available or in other situations upon the prior consent of the Bank.
- 5.6.** The Bank does not fulfil Instructions given by phone.
- 5.7.** The Client may submit an Instruction to execute payment transaction from the Account available via Electronic Banking Channels through the Payment Initiation Service Provider. The Bank executes such Instructions under the same rules as Instructions made by the Client acting directly which also include the right of the Bank to deny execution of the Instruction.
- 5.8.** The Instruction shall be deemed as placed in the Bank, as long as it meets the conditions described in Clause 5.2. and the Bank has received additional information or documents referred to in Clause 5.3.
- 5.9.** The Bank shall not be liable for losses resulting from:
- a)** non-execution or a delay in the execution of an Instruction due to a failure to receive the medium with the Instruction together with the required documents or due to a receipt of distorted, incomplete or illegible medium,
  - b)** repeated execution of an Instruction caused by the Client sending the medium (information) several times as a result of Client's mistake, and
  - c)** improper functioning of a telephone connection, a fax machine or the internet, and
  - d)** a delay in executing Instruction in case the accounting records of the Bank are unavailable and the Account may not be serviced due to the breakdown of the IT system used by the Bank or a failure of the power supply grid.
- 5.10.** The Bank shall be entitled to refuse to execute an Instruction if:
- a)** in the Bank's opinion the orders given, the information provided or the documents submitted under above preceding Clauses are insufficient,
  - b)** the Bank has reasonable grounds to believe that the execution of the Instruction would violate the generally applicable laws and regulations,
  - c)** the Instruction violates the provisions of the Agreement,
  - d)** the signatures of the persons submitting the Instruction do not comply with the specimens in the Card,
  - e)** the Debit balance arose (subject to the provisions of the agreement referred to in Clause 5.1.), or
  - f)** the Account was seized by an execution authority or a public prosecutor, a court or a public authority prohibited all and any withdrawals from the Account – up to the amount of such seizure.
- 5.11.** A refusal to execute the Instruction due to the reasons referred to in Clause 5.9. shall not constitute a violation of the Agreement or the General Terms and Conditions.
- 5.12.** The Bank shall promptly notify the Client of its refusal to execute the Instruction, not later than the following Business Day. The Bank shall notify the Client, as possible, about the reason of the refusal as well as the procedure of correcting errors causing the refusal.
- 5.13.** The Bank may deny a Third Party Provider access to an account where there are objectively justified and evidenced reasons relating to unauthorised use or unlawful access to the Account by that Third Party Provider. The Bank shall inform the Client about the denial before the access is denied. If it is not practicable to inform the Client before the access is denied, the Bank shall inform the Client immediately thereafter but no later than on the next Business Day after such denial. The Bank shall not inform the Client about the denial if such information compromises objectively justified security measures or is against separate regulations.
- 5.14.** The Bank shall not be liable for:
- a)** the results of a refusal to execute an inaccurate, incomplete or otherwise erroneous Instruction as well as if the Instruction has not been on the grounds indicated in Clause 5.10 or under the circumstances indicated in Clause 5.13.
  - b)** the execution of an Instruction on the basis of forged documents,
  - c)** non-compliance of the Instruction with the prevailing laws and regulations, and
  - d)** the losses resulting from the erroneous information provided to the Client by the Bank, unless such errors were attributable to the fault of the Bank.



## 5. PLACING INSTRUCTIONS

- 5.15.** The Bank shall not be liable for the results of execution of an Instructions submitted by the persons authorised by the Client. If the execution of an Instruction submitted by the above mentioned persons renders impossible, even partially, the execution of an Instruction submitted by the other of the above mentioned persons, the Bank may refuse to execute the submitted Instructions until it is provided with evidence of a joint position agreed by such persons or a final and binding decision of a court as to the disposal of the Account.
- 5.16.** The specimen signatures submitted to the Bank for the first Account opened under the Agreement shall be deemed valid for Instructions submitted in respect of all the Accounts of the Client maintained by the Bank, for which the Client did not submit separate Cards.
- 5.17.** The Instruction lodged electronically through Electronic Access Channels may be changed or cancelled by the Client, provided that such change or cancellation is received by the Bank before the payment is debited by the Bank from your account. All costs, if any, of such change or cancellation are to be borne by the Client.
- 5.18.** Unless agreed otherwise, if the Instruction is submitted for other currency than a currency of the Account, the calculations between currencies shall be made pursuant to the selling rate of the given currency of the Bank prevailing on the day of submitting the Instruction.
- 5.19.** Unless agreed otherwise, if funds in a currency other than the currency of the Account are deposited on the Account, the Bank shall credit the Account with the amount denominated in the Account currency by applying the buying rate for a particular currency applicable at the Bank.
- 5.20.** In case the Bank receives the Payment Instruction (which was not sent by the Client via Electronic Banking Channels) in amount equal or above USD 50.000,00 (fifty thousand dollars) or equivalent in other Convertible Currency specified in the Payment Instruction, the Bank shall be entitled to contact the Client by phone and confirm the Payment Instruction and its conditions before the execution. When the Bank is not able to contact the Client after 3 unsuccessful attempts the Bank shall be entitled to refuse to execute the Payment Instruction.
- 5.21.** The Client, within the period not exceeding 60 days from the date of debiting the Account or from the date the Instruction was due to be executed, may notify the Bank about confirmed unauthorised, not executed or incorrectly executed Instructions. Failure to meet the time limit mentioned in the foregoing sentence shall result in the expiry of the Client's claims towards the Bank arising from the irregularities described above.
- 5.22.** The Client, upon notifying the Bank about confirmed unauthorised transactions on the Account, is obliged to deliver to the Bank the evidence confirming that fact.
- 5.23.** An authorised use of the Electronic Banking Channels, according to the provisions of respective agreements, is sufficient to decide that the transaction has been executed on the basis of the Instruction submitted correctly by the Client.
- 5.24.** The Client shall undertake not to use the Account to make any money settlements:
- a)** violating Sanctions imposed in countries, where any of the Group companies conducts its operations,
  - b)** related to money laundering and terrorist financing,
  - c)** subject to Additional Restrictions.
- 5.25.** In the situation referred to in clause 12.7 (b), the Bank may block the Account in order to carry out the Instruction. In this situation the Bank is entitled to demand from the Client all documents deemed by the Bank necessary to carry out the risk assessment, referred to in clause 2.2.

## **6. AUTHORISATION TO DISPOSE OF THE ACCOUNT**

- 6.1.** Subject to Clause 6.3., the Client shall submit to the Bank the Card for the purposes of managing the funds in the Account. The Client shall submit to the Bank a new Card if the person authorised to place Instructions (named or not in the Card hitherto) has had his/her rights to represent the Client changed or the Client's statement confirming that the existing Card is valid and the new one only broad it.
- 6.2.** A new Card sent by the Client shall replace the previous Card without a separate statement, save that the Bank shall accept the above changes no later than as of the second Business Day following the receipt of the notice.
- 6.3.** If data disclosed in the Card change, the Bank shall be entitled to cross off the outdated data and to enter new data in the applicable Card in accordance with the data contained in a valid extract from the register of entrepreneurs (issued not earlier than 3 months before) or a register where the Client is registered, delivered to the Bank. In the event of a change in the data disclosed in the Card which do not need to be reported to a relevant register of entrepreneurs, the Bank shall be entitled to cross off those data and enter new data in the applicable Card in accordance with the Client's written information delivered to the Bank and documents stating that the above mentioned changes were effected.
- 6.4.** A letter with a notice of changes referred to in Clause 6.3. shall be signed by the persons authorised to make declarations as regards the proprietary rights and obligations of the Client. A change of data contained in the Card shall be effective for the Bank from the next Business Day after the Bank receives relevant documents indicated in Clause 6.3. The Bank shall not be liable for the verification of the correctness of submitted documents stating that data were changed.
- 6.5.** The person designated in the Card shall not be authorised to appoint further attorneys, unless the Client authorises such a person in writing to appoint further attorneys in a separate document.

## **7. MAKING MONEY SETTLEMENTS THROUGH THE BANK**

- 7.1.** The Bank shall make non-cash money settlements.
- 7.2.** The Bank shall make non-cash money settlements by executing:
- a)** transfer orders,
  - b)** Direct Debits,
  - c)** standing orders, or
  - d)** other operations, on the terms and conditions prevailing at the Bank.
- 7.3.** The standing orders may be cancelled in writing not later than on the Business Day preceding their execution.
- 7.4.** If the Bank receives an order to credit the Account with an amount received from another bank, the Client shall be identified as a payee solely on the basis of the Account number. An incorrect Account number included in the order to credit the Account shall be the reason for the Bank to refuse to execute the order.
- 7.5.** As an exception (when due to a sole fault of the Bank the Client may not place a Payment Instruction in the form specified in Clause 5.4.) the Client may place a Payment Instruction via a fax sent to the number specified by the Bank. The Bank shall not be obligated to execute Instructions sent to other number. The Bank reserves the right to change the above number during the term of the Agreement and shall notify the same to the Client. The Client shall be solely responsible for any losses resulting from a lack of the authenticity or from a forgery of documents sent by the Client to the Bank by fax in connection with the Agreement.
- 7.6.** The Bank shall be liable – up to the amount of the actual loss incurred by the Client – for a prompt and correct execution of Payment Instructions.
- 7.7.** The Direct Debit shall be effected provided that the Client provides the Bank with a written consent to debit its Account with particular amounts. The Bank shall undertake appropriate actions upon the receipt of such consent.
- 7.8.** The Parties agree that in order to deem the consent correct and enforceable, despite the provision of any additional information, the consent must include: business name of the Client, Account number of the Client and identification number of the recipient and identification number of payment. Consent or its cancellation, as a result of the need to make relevant registration in the bank settlement system, shall come into effect on the day following Business Day on which such consent/cancellation of consent has been submitted.
- 7.9.** Submission of the consent is considered the authorisation of all subsequent payments effected under Direct Debit service, until such consent is cancelled.
- 7.10.** The Bank shall refuse to effect the Direct Debit, due to lack of consent by the Client to charge the Account with Direct Debits or to inconsistency of data provided in the consent with the data provided in the direct debit submitted by the recipient.
- 7.11.** The Client shall have the right, without giving any causes, to submit an application for a refund of the effected direct debit. The application should be submitted in writing, within 5 Business Days of debiting the Account. The date of application shall be the date of delivery of the application to the Bank.
- 7.12.** The Parties unanimously agree that in order to consider the application for a refund of the effected direct debit correctly submitted and enforceable, such application must include at least: name of the Client, Account number, recipient identification number and payment identification number, and the amount and date of payment.
- 7.13.** The Bank, upon accepting the instruction to refund the amount of the effected direct debit, credits the Account immediately, or at the latest on the following Business Day, with the amount of refunded direct debit together with interest due and payable to the payer in connection to interest in the Account.
- 7.14.** Payment Instruction shall be effected by the Bank of the recipient provided that a separate Agreement on the use of Direct Debit is concluded.
- 7.15.** For the Direct Debit, the provisions of Clause 11 shall apply accordingly.
- 7.16.** The Bank may suspend availability of execution with respect to specific types of transactions in case of changes of law, regulation or their interpretation which impose on the Bank an obligation of implementation of significant enhancements in IT (information technology) infrastructure of the Bank. The Bank will notify the Client about necessity of suspending the service and inform in advance, when possible not later than 7 days prior such suspension, about the suspension date. The Bank shall not be liable for any losses incurred by the Client as result of the suspension that was communicated to the Client by the Bank.

## **8. DETAILED TIME LIMITS FOR EXECUTING TRANSFER ORDERS**

- 8.1.** The Bank shall effect credit transfers not later than at times specified in the Table of Cut-Off Times.
- 8.2.** If a credit transfer does not meet the requirements for Instructions placed electronically specified in “Conditions for effecting transfers in HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce” constituting the Appendix to “General Terms and Conditions of Opening and Maintaining Bank Accounts with HSBC Continental Europe (Spółka Akcyjna) Oddział w Polsce”, the Bank may reject such credit transfer or, due to the need for data verification, to effect such credit transfer at a later date taking account of the time necessary for data verification.
- 8.3.** The Bank shall credit the Account with the amounts specified in payment instructions received from other banks on the Business Day on which the account of the Bank has been credited with the amount of payment instruction.
- 8.4.** The Bank may take a decision to credit the Account of the Client, despite the Account of the Bank has not been previously credited with this amount.
- 8.5.** Should the Bank take the decision in accordance with clause 8.4. above, and there is no credit transfer or a delay in crediting the Account of the Bank, the Bank has the right to debit the Account with the amount of such credit transfer.
- 8.6.** In the case of payment instructions received from other banks, such instructions must include information on the Client, such as the name, address and Account number.
- 8.7.** Should the information referred to in clause 8.6. above be missing, in order to fulfil the requirements of Regulation (EU) 2015/847 of 20 May 2015 on information accompanying transfers of funds, FATF VII, recommendations of Basel Committee on Banking Supervision and the requirement regarding anti-money laundering and counteracting terrorism, the Bank shall ask the payer’s bank to provide the missing information, and if there is no answer, it shall transfer the amount of the payment instruction back to the payer’s bank and debit the Client’s Account with the amount previously credited.

## **9. BANK STATEMENTS**

- 9.1.** The Bank shall prepare the bank statements for the periods of times specified by the Client in the account opening form.
- 9.2.** The Bank statement shall include the balance of the Account and the list of transactions concluded as at the date preceding the issuing of the Bank statement.
- 9.3.** Following the instruction of the Client, the Bank statements may be:
  - a)** sent by regular mail to the address specified by the Client, or
  - b)** provided to the Client in any other way agreed with the Bank, in particular with the use of Electronic Banking Channels.
- 9.4.** Irrespective of the Bank statements, referred to above, the Bank shall send to the Client notices of the balance of its Accounts at the end of each calendar year by sending a confirmation of the Account balance.
- 9.5.** The Client is obliged to reconcile the balance of the Account on the current basis based on the Bank statements or notices received and should notify the Bank of any discrepancies within 14 days from the date of receipt of the Bank statement or a notice.
- 9.6.** The Bank shall promptly investigate the reasons behind the discrepancies notified and provide the Client with the necessary explanations and, in the event of an incorrect entry in the Account, shall make an appropriate reverse entry and immediately notify the Client thereof.
- 9.7.** The Bank shall be entitled to reverse the erroneous entry in the Account, even if such reversal could result in the Debit Balance.
- 9.8.** At the request of the Client, the Bank shall prepare copies of the bank statements and any other documents confirming an execution of transactions upon a fee specified in the Table of Fees and Charges.
- 9.9.** Upon the Client's telephone request, the Bank undertakes to confirm the balance or a transaction history on Client's Accounts. The information shall be given subject to the Client providing the identification password specified in a separate Client's instruction which the Parties undertake to keep confidential. The Bank shall not be liable for any losses incurred by the Client as a result of disclosing the password to unauthorised persons.
- 9.10.** The Bank and the Client agree to recording telephone calls by each of them on electronic information carriers. Such recordings shall constitute a proof and may be used in any pre-litigation or court proceedings.

## **10. VAT ACCOUNT**

- 10.1.** The Bank shall maintain a single VAT Account for all Accounts opened in PLN which are settlement accounts.
- 10.2.** At the request of the Client, the Bank shall open subsequent VAT Accounts. In such a case, the Client shall be required to indicate in the application for which Account(s) the subsequent VAT Account shall be maintained. The VAT Account referred to in Clause 10.1. shall be maintained for the Accounts for which the Client has not indicated another VAT Account in the application.
- 10.3.** The execution of a separate agreement between the Bank and the Client shall not be required for opening and maintaining a VAT Account.
- 10.4.** The Bank shall notify the Client of the VAT Account number in writing or otherwise, as indicated in the Bank Account Agreement.
- 10.5.** Should the Client hold several Accounts for which one VAT Account is maintained, and fail to select the Priority Account for the VAT Account, upon request the Bank shall notify the Client of the Priority Account number in the manner specified in Clause 10.4. The Client may at any time change the Priority Account for a given VAT Account by submitting to the Bank a relevant instruction on the form made available by the Bank for this purpose. Such a change shall become effective within 3 Business Days from the receipt by the Bank of the instruction to change the Priority Account.
- 10.6.** The Bank shall notify the Client of the balance in the VAT Account in a manner and within the time-limits indicated for the Priority Account.
- 10.7.** The VAT Account shall be maintained in PLN.
- 10.8.** No additional fees and charges shall be charged by the Bank for opening and maintaining the VAT Account.
- 10.9.** Interest shall accrue on the funds accumulated in the VAT Account as in the case of funds accumulated in the Priority Account, unless the Bank and the Client agree otherwise in writing.
- 10.10.** Should interest on the funds accumulated in the VAT Account accrue, the Bank shall credit the amount of such interest to the Account for which the VAT Account is maintained, without a separate instruction of the VAT Account holder being necessary. If the VAT Account is maintained for several Accounts, the Bank shall credit the respective Priority Account.

## **11. EXECUTION OF CASH SETTLEMENTS USING THE SPLIT PAYMENT MECHANISM**

- 11.1.** In order to execute a transfer requested using the Split Payment Message, the Bank shall in the first place debit the VAT Account (i) with the amount of the tax on goods and services indicated in the Split Payment Message or (ii), where no such amount is present in the VAT Account — up to the amount of the account balance, and shall credit that amount to the respective Account indicated in the Split Payment Message.
- 11.2.** If, with reference to Clause 11.1., the funds in the Account are insufficient for the payment of the amount which corresponds to the gross sales value indicated in the Split Payment Message, the Bank shall not perform the transfer.
- 11.3.** The Bank shall not be obligated to verify whether the amount corresponding to the tax on goods and services indicated in the Split Payment Message has been calculated correctly.
- 11.4.** The provisions of Clauses 11.1. and 11.2. shall apply accordingly to the execution of transfers indicated in art 62b par. 2 of the Banking Law.
- 11.5.** After receiving the funds as part of the Split Payment Mechanism, the Bank shall credit the received amount to the respective Account, and subsequently shall debit that Account with the amount that corresponds to the amount of the tax on goods and services, as indicated in the Split Payment Message, and credit that amount to the respective VAT Account.
- 11.6.** Should the payment of the invoice be performed on the basis of the Split Payment Message to an Account for which the Bank does not maintain a VAT Account, the Bank shall return the funds by means of the Split Payment Message.
- 11.7.** The provisions of Clause 11.5. shall be applicable also in the case where the Bank has received the return of the payment effected using the Split Payment Message, regardless of whether, or to what degree, the payment of the VAT amount has been effected by way of debiting the settlement account.
- 11.8.** Upon obtaining the Consent of the Tax Office Head, the Bank shall immediately debit the VAT Account with the amount indicated in the Consent of the Tax Office Head and shall credit that amount to the respective Account of the Client.
- 11.9.** Should the amount indicated in the Consent of the Tax Office Head exceed the amount of the funds accumulated in the VAT Account, the Bank shall debit the VAT Account up to the amount of the available balance in that account and shall credit that amount to the respective Account of the Client. In such a case, it shall be deemed that the obligation referred to in Clause 11.8. has been entirely fulfilled.
- 11.10.** The Bank shall perform the transfer of funds between the VAT Accounts maintained by the Bank for the same Client through crediting and debiting the respective Priority Accounts for the given VAT Accounts.

## **12. TERMINATION OF THE ACCOUNT AGREEMENT**

- 12.1.** Subject to the following provisions, the Account shall be closed upon the termination of the Agreement or the expiration of the period of time for which it was concluded.
- 12.2.** Subject to the following clauses, the Agreement may be terminated:
- a)** by notice in writing by any of the parties,
  - b)** by agreement of the parties thereto.
- 12.3.** The period of notice of termination of the Agreement, subject to Clause 12.5., shall be one month, unless otherwise agreed upon by the Parties. The period of notice of termination shall start on the first day of the month following the month in which the notice of termination is given, except that when the last day of the period of notice of termination is a day not being a Business Day, the period of notice of termination shall expire on the nearest Business Day.
- 12.4.** The Client may terminate the Agreement at any time provided it has repaid all the amounts in respect of the Debit Balance in the Account, together with the interest due as well as due fees and charges.
- 12.5.** The Bank may terminate the Agreement with immediate effect, without observing the period of notice of termination only in the following circumstances:
- a)** if the Client misled the Bank upon concluding the Agreement,
  - b)** if the Client has failed to make the first deposit in the Account within a months of the date of the Agreement,
  - c)** if the Client provided the Bank with forged documents or documents confirming the untruth,
  - d)** if the Client has taken illegal actions or has taken other actions as a result of which the Bank may lose its confidence in the Client,
  - e)** if the Client has disclosed information which may constitute the Bank's business secret,
  - f)** if the Client has violated the provisions of the Agreement,
  - g)** if an authorised enforcement body initiates an execution against the Client's assets, including the execution of receivables from the Account,
  - h)** if a justified suspicion exists that a crime has been committed in connection with the Client's business activity,
  - i)** if the bank account agreement in another bank, credit institution or foreign bank has been terminated due to the infringement of the terms and conditions of the agreement by the Client or an Entity related to the Client.
- 12.6.** The Bank shall immediately notify the Client of the termination of the Agreement without observing the period of notice of termination.
- 12.7.** The Bank may only terminate the Agreement by notice for an important reason, and in particular in the following circumstances:
- a)** failure by the Client to perform its obligations towards the Bank or their undue performance, including overdue payments to the Bank,
  - b)** the lack of any transactions in the Account for 6 months (except for inflows to the Account, the periodic interest accruals and deductions of the Bank's charges and fees),
  - c)** a petition is filed for the dissolution, liquidation, declaration of the Client's bankruptcy or institution of reorganisation proceedings,
  - d)** maintaining an unauthorised Debit Balance in the Account for more than 1 week,
  - e)** conducting cash settlements via Accounts with countries covered by Sanctions or placed on the Transparency International list with the Corruption Perception Index (CPI) below norms acceptable for the Bank,
  - f)** occurrence of changes in the organizational structure of the Client's group of companies, including in particular changes concerning the beneficial owner, which in the Bank's justified opinion could constitute the basis for refusing to open a bank account, including also due to exposing the Bank to a reputational risk,
  - g)** exposing the Bank to the risk of non-fulfilment of regulatory obligations of the Bank, including those arising from the provisions of international law or provisions of a foreign law applicable to the Bank in connection with the operation of the Bank under a financial holding,
  - h)** changes to the scope of services rendered by the Bank, including the cessation of services provided to clients in a given market segment,
  - i)** termination of the transaction or Client's activity for which the Account has been opened.
- 12.8.** Upon termination of the Account the Bank shall specify the reasons for such termination.
- 12.9.** No later than 7 days prior to the termination of the Agreement by notice, or upon an agreement of the parties, or due to its expiration upon the lapse of the period of time for which it was concluded, the Client shall submit to the Bank an Instruction specifying the method of disposal of the funds remaining in the Account on the date of its closing. The Bank shall charge a fee for executing the Instruction concerned, such a fee reducing the amount of the Instruction.
- 12.10.** If the Client fails to submit the above mentioned Instruction, the Bank shall close the Account and shall transfer the balance of such Account to a non-interest bearing suspense account in the Bank.
- 12.11.** Upon the expiration or termination of the Agreement, the claims of the Bank towards the Client under the Agreement shall become immediately due and payable. The Bank may block the funds remaining in the Account on the date of its closing necessary to satisfy the liabilities of the Client towards the Bank.
- 12.12.** The closure of an Account for which the Bank maintains a VAT Account which is not linked to another Account of the Client shall be effected simultaneously with the closure of the VAT Account.
- 12.13.** In the case described in Clause 12.12., before closing the VAT Account, the Bank shall credit the amount of funds accumulated in the VAT Account being closed to another VAT Account indicated by the Client which is maintained by the Bank for that Client. Should the Client fail to indicate a VAT Account within 7 days before the lapse of the term of the Agreement or before the termination of the Agreement, it shall be deemed that the Bank is authorized to perform the operation referred to in the previous sentence by way of crediting the VAT Account selected by the Bank which is maintained by the Bank for a given Client.



## **12. TERMINATION OF THE ACCOUNT AGREEMENT**

- 12.14.** Should the execution of the operations referred to in Clauses 12.13. be impossible due to the fact that the Bank does not maintain another VAT Account for the Client, the Bank closes the VAT Account and transfer all the funds accumulated on the VAT Account to a separate account not being a settlement which is used for the identification of the VAT tax payer (technical account).
- 12.15.** The Bank may also terminate the Agreement in part, indicating in the statement on termination of the Agreement, the terms of the Account maintenance that are subject to change. If the Customer makes a statement during the notice period that he does not agree to the change in terms, the Agreement shall be terminated at the end of the notice period. The provisions of paragraphs 12.8 and 12.9 shall apply accordingly.

### **13. SCOPE OF THE BANK'S LIABILITY**

- 13.1.** The Bank shall use its best efforts in order to ensure the security of the funds kept in the Account.
- 13.2.** Subject to the other provisions of the General Terms and Conditions, the Bank shall only be liable for the normal consequences of acts or omissions, resulting in the damage and to the extent of actual losses suffered by the Client.
- 13.3.** The Bank shall not be liable for the damage resulting from the events influenced or controlled by the Client as well as for the damage resulting from other events caused by circumstances beyond the control of the Bank, and in particular:
- 13.3.1** an event of force majeure, including the occurrence of defects in and damage to the public telephone network, failures of the power supply grid or the IT hardware, rendering the accounting records inaccessible and the servicing of the Account on a current basis impossible, or
  - 13.3.2** the decisions and orders of the public and government authorities.
- 13.4.** The Bank shall not be liable for any losses resulting from the change of the exchange rates in the course of executing the Instruction or a banking money settlement in the Convertible Currencies. The issues related to the foreign exchange risk management shall remain solely on the part of the Client.
- 13.5.** The Client shall release the Bank from all liability which might be related to the use by the Client of the funds accumulated on VAT Account in a manner contrary to the law.
- 13.6.** The Client acknowledges and accepts the risk that communication and documents sent to or from the Bank using electronic means of communication may be intercepted, monitored, altered, damaged, contain viruses or may be otherwise tampered with by third parties ("Defective Communication") and acknowledges and agrees that the Bank shall not be liable to the Client or any other person for any damages resulting from Defective Communication, and the Client waives all claims in relation to such damages, and undertakes to indemnify the Bank from liability to third parties resulting from actions by the Bank on the basis of Defective Communication received from the Customer. This provision binds the parties to the extent permitted by applicable law, including the Payment Services Act.

## **14. BANKING SECRET AND TRANSMISSION OF DATA**

- 14.1.** The Client hereby consents to the disclosure to the members of the Group of the information related to the conclusion and performance of the Agreement, including to members of the Group with their registered offices in third countries as defined by the GDPR<sup>1</sup> and Polish act on protection of personal data. Detailed information on principles for the processing of personal data at the Bank is presented in schedule no 2 to the Bank Account Agreement.
- 14.2.** The Bank is the personal data controller as defined by the provisions of the GDPR.
- 14.3.** The Client shall keep confidential any and all information which constitutes or may constitute a business secret of the Bank.
- 14.4.** The Bank provides the Third Party Provider with any information regarding the specific Account (including VAT account) and the related payment transactions, required for this provider to render the service of access to the account information or initiation of payment transactions.
- 14.5.** Any communication between the Parties in relation to the Regulations and the Agreement or related to them, including the submission of declarations of will other than Instructions, should be in writing and, unless the provisions of the Regulations or the Agreement provide otherwise, should be delivered by letter or using Electronic Access Channels or other electronic means of communication.
- 14.6.** Subject to the provisions of the documents on the basis of which the Bank has made a given Electronic Access Channel available, all communication between the parties should be sent to the address (e-mail address) of the party indicated in the Agreement or to another address (e-mail address) indicated by the other party in advance, at least 7 Business Days.
- 14.7.** Notwithstanding the provisions of paragraph 6.3. The customer is obliged to update his address data. In the event of a breach of the obligation to indicate the current address of the Customer, the correspondence addressed to the last indicated address will be deemed effectively delivered on the date of the first postal notification or receipt of the return of the parcel by the Bank due to inability to deliver.
- 14.8.** Any communication will be deemed to be effectively made by the Parties:
- if delivered by letter, at the time of delivery
  - if delivered using Electronic Access Channels, under the conditions specified in the documents on the basis of which the Bank made the given Electronic Access Channel available
  - if delivered using another means of electronic communication at the time of its actual receipt (or making available) in a legible form
- 14.9.** Any communication that becomes effective for delivery in accordance with 3 paragraph 14.8 above on a day other than a Business Day or after 3.30 pm (local time) at the place of receipt shall be deemed effective on the next Business Day.

<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the European Union, L 119, 4 May 2016).

## 15. FINAL PROVISIONS

- 15.1.** These General Terms and Conditions have been issued on the basis of Article 109 of the Banking Law.
- 15.2.** At any time, the Bank may, without terminating the Agreement, change:
- a)** these General Terms and Conditions,
  - b)** the Table of Fees and Charges,
  - c)** the Table of Cut-Off Times.
- 15.3.** Notifying the Client of the change to these General Terms and Conditions or the Table of Fees and Charges the Bank shall:
- a)** provide the Client with the amended General Terms and Conditions or the Table of Fees and Charges or the Table of Cut-Off Times or the changes made, as well as specify their effective date and notify of the possibility to make a declaration referred to below, or
  - b)** publish on the [www.hsbc.pl](http://www.hsbc.pl) website the information of the change and the amended content of the General Terms and Conditions or the Table of Fees and Charges or the Table of Cut-Off Times; therefore the Client shall check – at least once a week – the above mentioned website.
- 15.4.** The changes, referred to in Clause 15.2., shall be binding upon the Client within 14 days upon being notified thereof (or upon other date specified in a notice of changes), unless the Client submits to the bank a written declaration of its refusal to accept the changes in 14 days of the receipt of the notification of such changes. A declaration of refusal to accept the changes, submitted by the Client in writing within the above mentioned period of time, shall be treated as a termination of the Agreement.
- 15.5.** The Bank may set off its claims towards the Client against the claims of the Client towards the Bank to the extent permitted by law.
- 15.6.** The assignment of receivables from the Account or the establishment of a limited property right against the receivables from the Account shall require a prior written consent of the Bank.
- 15.7.** If any provision of these General Terms and Conditions turns out to be illegal, it shall not influence the effectiveness or the validity of the remaining provisions of these General Terms and Conditions.
- 15.8.** On the basis of Article 16 “Payment Services Act”, Chapter II of the Payment Services Act shall not be applicable to the Agreement.
- 15.9.** On the basis of Article 33 of the Payment Services Act, Articles 35-37, 45, 46 section 2–5 and Articles 47-48 of the Payment Services Act shall not be applicable to the Agreement.
- 15.10.** On the basis of Article 53 section 3 of the Payment Services Act, Articles 54-58 of the Payment Services Act shall not be applicable with respect to the transactions described in Article 5 section 2 and 3a of the Payment Services Act, whereas the Bank shall be required to credit the account of the Recipient’s supplied within four Business Days of the receipt of Instruction.
- 15.11.** Cash deposits held by the Bank are covered by the French deposit guarantee scheme (Fonds de garantie des Dépôts et de Résolution - FGDR) under the terms and conditions and in accordance with the procedures set out in the French Monetary and Financial Code (Code monétaire et financier).
- 15.12.** The FGDR pays compensation in respect of eligible deposits, if a FGDR member is no longer able to repay its customers’ deposits. The FGDR protects eligible bank deposits up to the maximum amount of €100,000 per depositor per credit institution. In case of a joint account, the limit of €100,000 applies to each joint account holder separately.
- 15.13.** In particular, the balance of the joint account is equally shared between the joint account holders, the share allocated to each joint account holder is added to each joint account holder’s individual accounts and deposits, and the limit of €100,000 applies to that total.
- 15.14.** Further information about the compensation provided by the FGDR can be obtained from FGDR official website at: [www.garantiedesdepots.fr](http://www.garantiedesdepots.fr) and in the information sheet attached hereto.
- 15.15.** The Bank shall process complaints regarding the Account and payment transactions under the same rules irrespectively whether they have been lodged directly by the Client or through the Third Party Provider.

