

# **General Terms & Conditions for Auto Account Opening and trading**

## **1. Introduction**

1. AIB –AXYS Africa ("AIB –AXYS") is a member of the Nairobi Securities Exchange ("the NSE") and as such, is regulated by the rules and directives ("the rules") of the NSE, Capital Markets Act and any rules, regulations or conditions made pursuant thereto (together, "the applicable legislation") in the conduct of its investment business in Kenya
2. These Standard Terms and Conditions and all transactions undertaken in accordance with them shall be subject to the terms of any term sheet offered to you or other agreement entered into between us, and:
  - a) The applicable legislation, all Kenyan and applicable foreign or international laws;
  - b) Rules, statements of principle and directives of applicable authorities (including self-regulating organizations) responsible for the regulation of investment business;
  - c) All statutory and other requirements relating to money laundering;
  - d) All rules, regulations and by-laws of any relevant exchange and/or clearing institution;
  - e) Applicable accepted market practice and custom; (together, "the applicable regulations").

## **2. Definitions**

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

- i. "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.
- ii. "NSE" means The Nairobi Stock Exchange where exchange of securities issued by publicly quoted companies and the government is done.
- iii. "CDS" means Central Depository System which is a computer system that facilitates holding of securities in electronic accounts.
- iv. "CDSC" means the Central Depository and Settlement Corporation which oversees the management of CDS.
- v. "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.
- vi. "AIB –AXYS" means AIB –AXYS Africa of P.O. Box 11019, 00100 Nairobi Kenya having its registered office and Head office at 5<sup>th</sup> floor The Premonade, Nairobi, which expression shall include without limitation its permitted successors in title and assigns.

vii. “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.

viii. “OST Account” means Online Share Trading Account, which shall be the website provided by AIB –AXYS for Trading of securities.

ix. “Regulators” means all the regulatory bodies involved in the Capital Markets in Kenya or in any other applicable jurisdiction

x. “Log In ID” means a confidential number issued by AIB –AXYS to the Client for purposes of identifying the Client when issuing buy or sell orders through the Share Trading Account.

xi. Unless inconsistent with the context, words relating to any gender shall include the other gender and words relating to the singular shall include the plural and vice versa.

### **3. Account opening and Trading**

- i. This product is only applicable to natural person of legal age , local citizens
- ii. The trading account will only be opened and approved for trading once the details provided via the platform are verified with applicable agencies
- iii. Trading for this product is strictly restricted for online trading until such a time when the account holder physically visits AIB –AXYS ’s physical offices for verification and opens a regular account
- iv. The account holder shall be responsible for safeguarding their own account for online trading
- v. The account holder will have full trading control of their account and shall be responsible for any losses accruing therewith
- vi. All deposits and disbursements for investment purposes shall be restricted to Mpesa. This will be expanded once a regular account is opened
- vii. The maximum allowable portfolio on this platform shall be Kshs 3,000,000 thereafter , the account holder shall be required to visit AIB –AXYS ’s physical offices to upgrade to a regular account

### **4. Conditions**

i. Each dealing is subject to the terms of the relevant confirmation issued by CDSC, NSE, or any other applicable regulator(s), amendment and cancellation of orders made by the Client before execution, and the usual trading guidelines and policies of the regulators.

ii. Each dealing conducted through the OST Account is also subject to the Terms and Conditions of Online Access set out at the OST Account at the time of dealing, as amended from time to time.

iii. AIB –AXYS does not guarantee the performance of any email, phone or alternate service provider. The Client acknowledges that the systems used in the market or at AIB –AXYS are vulnerable to disruptions or failure, which may result in the order not being executed or delayed according to the instructions. The Client releases AIB –AXYS from liability from any loss, damage or liability that he/she may suffer or incur by reason of or in connection with any such disruption or failure of network or bandwidth.

## **5. OST Accounts**

i. OST Account shall only allow access to one person per account at any one given time. In the event of joint accounts, then all persons are jointly and severally bound by these terms and conditions. The Client however agrees to nominate one person to operate the Account (the Nominee). The Client further acknowledges that he shall be bound by the actions of the Nominee and shall absolve AIB –AXYS from any liability and/or damages incurred by AIB –AXYS from actions of the Nominee.

ii. In the event of Corporate accounts, the Client agrees to nominate one person to operate the Account (the Nominee). The Client shall provide AIB –AXYS with Board Resolution appointing the Nominee to operate the Account and any subsequent change(s) thereto as the Client shall resolve from time to time. The Client further acknowledges that he shall be bound by the actions of the Nominee and shall absolve AIB –AXYS from any liability and/or damages incurred by AIB –AXYS from actions of the Nominee.

iii. The Client acknowledges that AIB –AXYS reserves the right to refuse any application to open an OST Account in AIB –AXYS 's absolute discretion.

iv. The Client acknowledges that AIB –AXYS reserves the rights to terminate or suspend his/her Account at any time without prior notice, if AIB –AXYS suspects that:

- a) The Client Account has been accessed fraudulently;
- b) The client is involved in illegal activities or the funds used for investments are obtained from illegal or illicit activities;
- c) The Client has committed or attempted market manipulation; or
- d) The Client has committed fraudulent, illegal or unauthorized dealings on their Account.

v. Without limiting the rights of AIB –AXYS under paragraphs (a) to (d), AIB –AXYS may terminate or suspend the Client access to the OST Account and the Services for reasons other than the ones mentioned above.

vi. If AIB –AXYS exercises its rights under this Clause, the Client agrees to pay AIB –AXYS any damages, losses, costs or expenses that AIB –AXYS incurs in relation to any action taken, including without limitation to legal, administrative costs and/or costs of sale or purchase of any Securities or deal put in place for the purposes of meeting AIB –AXYS 's obligations under these terms and conditions.

vii. The Client is responsible for fraudulent, illegal or unauthorized dealings on his Account, and the Client releases, indemnifies and discharges AIB –AXYS from all liability in this regard.

## **6. CDS Account**

i. The Client agrees to open and maintain a CDS Account with AIB –AXYS and acknowledges that all proceeds of "Sell" orders are to be paid into the Bank Account and uploaded into his CDS Account held with AIB –AXYS . The Client irrevocably directs AIB –AXYS to debit from his CDS Account from time to time and to the maximum extent permitted, any and all amounts owed by him to AIB –AXYS under or in connection with these terms and conditions, including without limitation any amounts due to AIB –AXYS in respect of any costs, commissions, expenses, taxes or reimbursements.

ii. AIB –AXYS shall give prior notice to the Client in the event of deposit or withdrawal of funds from the Client's CDS Account as provided for under these terms and conditions.

## **7. Security Identification**

i. In order to use this service, the Client must have a Login ID issued by AIB –AXYS to enable him access the OST Account.

ii. The Client is solely responsible for the confidentiality and use of the Login ID and will notify AIB –AXYS immediately if he becomes aware of any loss or theft or unauthorized use of the Login ID or any part thereof. After such notification AIB –AXYS shall as soon as reasonably possible disable access to the Client's Account for such Login ID and shall issue a replacement Login ID accordingly.

iii. AIB –AXYS is entitled to assume that any instruction received via the OST Account containing the client's Login ID originates from the Client and that such instruction is a valid instruction. AIB –AXYS is not obliged to inquire into the validity of any such instruction received.

iv. AIB –AXYS deems that the person using a Login ID or any part of it when giving instructions is the person to whom the Login ID is assigned to and shall not bear any liability in the event of misrepresentation.

## **8. Representations and Warranties**

i. The Client warrants that all information provided by him on the application to open an OST Account with AIB –AXYS or such other information provided by him from time to time, is accurate and complete, and that AIB –AXYS may rely on the information provided. The Client will notify AIB –AXYS of any change in the information provided, including any information and/or documents provided to AIB –AXYS in writing within seven (7) business days. AIB –AXYS shall update such information on their records as soon as reasonably possible.

ii. The Client acknowledges that AIB –AXYS provides self-directed investors with discount brokerage services. AIB –AXYS does not make recommendations or offer investment advice of any kind. The content of the Web site is solely for information, education and non-commercial purposes only. Although AIB –AXYS may provide data, information and content relating to investment approaches and opportunities to buy or sell securities, the Client should not construe any such information as investment, financial, tax, legal or other advice. In exchange for using such data, information or content, the Client agrees not to hold AIB –AXYS or its third-party content providers liable for any possible claim for damages arising from any decision he makes based on information made available to the client through the OST Account or any related Web site.

iii. If the Client is a trustee or an agent, he is bound by these terms and conditions as a trustee or an agent, and personally. If the Client is a corporation, the directors are also bound by these terms and conditions.

iv. The Client warrants that he is and at all times will be in a position to meet all the commitments of all the dealings with AIB –AXYS .

v. The Client warrants that the moneys or funds used for the investment in securities is not arising out of the proceeds of any money laundering or other illicit activities

## **8. Instructions**

i. AIB –AXYS bears no responsibility as to the validity of the orders placed by the Client. The Client shall be solely responsible for placing the orders through the OST Account which shall be forwarded to AIB –AXYS servers. AIB –AXYS shall forward the orders to NSE for execution without any amendments.

ii. The Client agrees that he shall check the progress of all orders placed by him to AIB –AXYS and further that he shall renew all orders that have not been executed within Seven (7) business days. AIB –AXYS shall not be liable for any direct or indirect damage or loss that may arise in respect of unexecuted orders.

iii. The Client acknowledges that the orders may be purged from the market subject to the procedures, customs, usages and practices of NSE without notice. The Client further acknowledges that AIB –AXYS is not obliged to notify him of any orders which are purged from the market. The Client shall be responsible to reinstate all orders that have been purged from the market.

## **9. Payments and Indemnity**

i. The Client agrees to pay all AIB –AXYS brokerage fees, commission and charges applicable to the OST Account as shall be advised by AIB –AXYS from time to time. AIB –AXYS reserves the right to vary such fees and charges, and method of charging, at any time and without prior notice to the Client.

## **9. Authorities & Acknowledgements**

i. The Client authorizes AIB –AXYS to provide information about him/her to any of its related entities and/or regulators and their respective officers and employees. The Client also authorizes AIB –AXYS to supply information about him/her that AIB –AXYS may hold from time to time to officers and employees of AIB –AXYS who have a need to know, any Regulator(s), a court of competent jurisdiction or any other competent authority as shall be necessary. Such information supplied may include details of orders placed and trades entered into by the Client, other transactions conducted or in connection with the OST Account, and other information concerning the Client that AIB –AXYS may receive from the Client through the use of the OST Account or any associated website, but excluding the Client's PIN and security details.

ii. AIB –AXYS shall however disclose this information only as far as it is required by a relevant regulatory authority or pursuant to any legal or regulatory process in any territory.

iii. The Client acknowledges that he has read and understood AIB –AXYS 's privacy policy contained on the OST Account. By conducting a trade through the OST Account, the Client agrees and acknowledges that AIB –AXYS may deal with his information in accordance with AIB –AXYS 's privacy policy (as amended from time to time).

## **10. Liability**

i. To the maximum extent permitted by law, the Client acknowledges that AIB –AXYS will not be liable to the Client or anyone else for any loss or damage, whether direct or indirect, special, incidental or consequential or economic (including loss of profits and opportunity costs), whether or not AIB –AXYS knew or could have known of the possibility of such damage, where that damage arises from:

a) delay, interruption, omission, failure, error or fault in the execution of the Client's instructions in the market(including negligence) by AIB –AXYS , its agents and/or employees;

b) any error, omissions, non-receipt or invalidity in the Client's instructions by NSE or AIB –AXYS servers;

c) any fault, error, defect or engineering of the OST Account or any delay, fault, failure in or loss of access to the OST Account; and

d) any cause beyond the reasonable control of AIB –AXYS , including but not limited to, failure of electronic or mechanical equipment or communication lines, unauthorized access or labour problems.

ii. To the maximum extent permitted by law, the Client agrees that AIB –AXYS 's liability is limited to the cost of the transaction.

## **11. Variation and Termination**

i. The Client may terminate his Account by giving not less than Seven (7) clear business days written notice to AIB –AXYS , subject to filling all the requisite forms provided by AIB –AXYS and CDSC. AIB –AXYS also reserves the right to terminate the Client's Account by giving

not less than Seven (7) clear business days written notice to the Client. Termination will not affect any liabilities, rights or obligations accrued by either Party prior to termination.

- ii. AIB –AXYS may at any time vary the terms and conditions applying to the Client’s OST Account as pertains to:
  - a) Addition, change or removal of any concessions or benefits;
  - b) Adoption or implementation of any legal requirement, decision, recommendation, regulatory guidance or standard of any court, tribunal, or regulator;
  - c) Accommodation of changes in the needs or requirements of the Client, such as new product features or services;
  - d) Correction of errors, inconsistencies, inadvertent omissions, inaccuracies or ambiguities;
  - e) Bringing AIB –AXYS into line with our competitors, industry or market practice or best practice in Kenya or overseas; or
  - f) Reflecting changes in technology or AIB –AXYS processes including our computer systems.
- iii. Without limiting our rights under paragraphs (a) to (f), AIB –AXYS may from time to time vary any of the terms and conditions for reasons other than the ones mentioned above.
- iv. If AIB –AXYS varies these terms and conditions the changes shall apply to all dealings between the Client and AIB –AXYS on and from the day on which the variation takes effect.

AIB –AXYS is not obliged to give the Client advance notice where any variation of these terms and conditions is required to comply with a Prescribed Requirement or is necessitated by an immediate need to restore or maintain the security of the system or individual OST Accounts.

## **12. Notice**

- i. Any notice given by either party, or demand made by AIB –AXYS, may be made by hand delivery, registered mail, email or facsimile, telephone, or by email to the last notified address, facsimile or phone number or email address as the case may be. The Client shall provide AIB –AXYS with the details of his contact on/or before opening the OST Account and shall notify AIB –AXYS in case of any change or variation thereto.
- ii. Such notice or demand shall be deemed to have been received in the case of hand delivery at the time on the received stamp, in the case of a registered mail at the expiration of five Business Days after posting, in the case of an email, as soon as the email is sent if within market hours, in the case of phone it shall be immediate and in the case of facsimile transmission shown above having been successfully made it shall be deemed to have been received on the next business day. Evidence that the notice was properly addressed, stamped and put into the post shall be conclusive evidence of posting.

## **13. Dispute Resolution**

- i. Any disputes between the Client and AIB –AXYS if not resolved by mutual agreement within thirty (30) days, shall be referred to and finally resolved by arbitration under the Arbitration Act No.4 of 1995, which Act is deemed to be incorporated by reference into this Clause. The seat of the arbitration shall be Nairobi, Kenya, and the language of the arbitration shall be English

#### **14. Complaints**

- i. If the Client is not satisfied with the service he receives from AIB –AXYS , they are entitled to complain. AIB –AXYS has established procedures to ensure that all enquiries and complaints are properly considered and dealt with. The Client shall gather all the facts, questions and documents in respect of the complaint and remedies required from AIB –AXYS .
- ii. AIB –AXYS shall take all reasonable measures to resolve the complaints within a reasonable time.
- iii. In case of dispute, AIB –AXYS records of electronic or telephone communications or facsimile transmission shall be conclusive evidence of the details of the communications by email, internet, telephone or facsimile (as the case may be) between the Client and AIB –AXYS

#### **15. Applicable Law**

- i. These Terms and Conditions and any other documents required to be executed by the Client in connection with the OST Account, shall be governed by and construed in accordance with the laws of the Republic of Kenya and the Client submits to the non-exclusive jurisdiction of the Kenya courts