



BANK OF THE COOK ISLANDS

General Terms and Conditions

BCI GENERAL TERMS AND CONDITIONS 20 JANUARY 2016

DEFINITION

These are the general terms and conditions between us, Bank of the Cook Islands Limited, Avarua, Rarotonga, Cook Islands and you. By signing an Account Mandate (Authority) you agree to be bound by these terms and conditions.

INTRODUCTION

These conditions apply to personal and business bank accounts and related services provided by us. In addition to these conditions there may be other terms and conditions that apply to some specific products and services. If there is a conflict between the conditions set out herein and the terms and conditions of a specific product or service, then, unless otherwise specified, the conditions set out herein shall apply.

The details and information that we provide to you about any of our products or services is intended as a guide only. It may not take into account your individual circumstances and you should consider obtaining independent legal and/or financial advice before you acquire any of our products or services.

We may vary these conditions at any time. We may also stop providing any of our products or services or specific terms that apply to them. If we do, you will be given at least 30 days notice by:

- Direct communication (for example by letter, email, fax or telephone); or
- Displaying the information at any of our branches or publishing the information on website; and/or
- Public advertisement (for example in the local newspaper).

We do not have to give you any notice if we are changing any interest rate or other terms due to market fluctuations.

Cook Islands law shall apply to these conditions and the Cook Islands Courts shall have non-exclusive jurisdiction.

FEES AND CHARGES

We may impose fees and charges for any services provided by us including any services in connection with any account. We have the right to deduct from your account any amounts owed to us including:

- Transaction and services fees and charges that relate to any of your accounts, or products and services provided to you (details of our standard fees and charges can be obtained from us on request);
- Interest when you exceed your agreed borrowing limit or when your accounts become overdrawn, with or without prior arrangement with us;
- Interest on any unpaid amounts owed to us including unpaid interest.

Any Government fees and charges which may apply, including withholding tax, may also be debited by us from your account.

We may change our standard fees and charges at any time. If we do so we will inform you in the same manner as we would if there was a change in these conditions.

We may also deduct from your account any expenses and costs (including legal costs on an indemnity basis) in connection with us enforcing our rights against you in relation to any account (including any securities provided by you or a third party), product or service.

We may take any interest, fees and charges you owe us from the same account or from any other account you may have with us.

PERSONAL INFORMATION

Any information you provide to us will be kept strictly confidential and will be securely stored by us. You may access the information we hold about you by contacting us and asking for the same.

In order to keep your information up to date we ask that you let us know of any changes in your personal details such as your address, email address, telephone number and fax number.

We may use your information in a variety of ways depending on for what purpose the information was provided. Generally we may use the information to:

- Consider your application for facilities, products and services;
- Opening, operating and maintaining your accounts with us;
- Administering, managing and maintaining any facilities, products and services provided by us;
- Monitoring your accounts, facilities, products and services for fraud and crime detection purposes;
- Conducting market research, data processing and statistical analysis;
- Providing you with information about any other products and services that we may provide.

Your information may be given to:

- Our agents, contractors and third parties (whether in the Cook Islands or overseas)

that provide service to or for us)

- Other banks (including overseas banks), agents, contractors or other financial service providers assisting with or involved in international transactions;
- The police, certain governmental agencies and other financial institutions where we believe that disclosure will assist the investigation, detection and/or prevention of fraud or other criminal offences;
- Credit reporting agencies (whether in the Cook Islands or overseas), other credit providers (including other banks and whether in the Cook Islands or overseas) and debt collection agencies (whether in the Cook Islands or overseas);
- Guarantors and anybody proposing to be a guarantor;
- Any current or previous employer if we need to confirm your employment history and/or income;
- To any authorized signatory to your accounts;
- To any person that the law requires us to give the information;
- Any other party authorized by you.

If you are under 18 years old, we may contact your parent(s)/ guardian(s) to disclose or to collect information about you that will help us contact you or to obtain payment for any amount you owe us. Certain laws require us to disclose information on request, for example the Income Tax Act 1997. We are also subject to anti-money laundering and terrorist financing legislation in force in the Cook Islands. You agreed to provide all information to us which we require to comply with these laws. Anti-money laundering and terrorist financing legislation may also prohibit us from entering or concluding transactions which involve certain countries, persons or entities. As a result you agree that we may:

- Delay or block any transaction or refuse to pay any money, without incurring any liability; or
- Disclose any information about you or a transaction to the police or any relevant authority in any other country in order to ascertain whether the laws in that country apply to a transaction or otherwise in compliance with laws that aim to prevent or detect money laundering or terrorist financing and we will not incur any liability to you as a result of that action.

You authorise us to:

- Confirm your employment history and income with any current employer and any previous employers;
- Make enquiries relating to your credit record or other information relevant to your account or the provision of facilities, products and services (both now and in the future), from credit reporting agencies and other credit providers and you authorise those parties to provide such information to us;
- Disclose your information (including default information and ongoing account information) to credit reporting agencies (whether in the Cook Islands or overseas) who will hold and use that information to provide their credit reporting services. This will mean that they may disclose information that they hold about you to customers using their credit reporting services.

We may charge you for the cost of disclosing any information that we may be required to disclose by law where the costs of such disclosure cannot be recovered by us from the person or authority entitled to the disclosed information.

ACCOUNT OPENING AND OPERATION

We reserve the right not to provide, or continue providing a product or service to you.

When you open an account with us we are required by law to confirm your identity. As a result we may require specific identification from you and will tell you what identification we require. We may also need to re-confirm your identity from time to time and you agree to provide us with identification as required.

If you are a company, a partnership a trust, or other body corporate we may need to know certain details about the individuals responsible for you. These may include directors, shareholders, trustees and beneficiaries, or anyone who may be operating an account on your behalf. We may also require copies of your constitutive documents such as your certificate of incorporation, memorandum of association, articles of association, trust deed, partnership deed etc.

When you sign the Account Mandate (Authority) you, and any authorized signatory shown in the Authority, represent to us that you:

- Have the power to sign;
- Have the power to hold and operate a bank account;
- Are bound by the terms of the Account Mandate (Authority) form;
- Will operate the account within the terms applicable to that account (including these terms and conditions).

We may, at our sole discretion, accept instructions from you via telephone, facsimile, email or any other means. You authorise us to act on those instructions. We will not take any further steps to verify such instructions or transactions but may, at our discretion, make enquiries or confirm instructions. We will not accept conditional instructions.



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We will not be liable to you or any other party if instructions are unauthorized, forged or fraudulently given and we could not reasonably have detected this from the instructions received. To the maximum extent permitted by law you will indemnify us for any losses we incur on acting on such instructions.

ELECTRONIC INSTRUCTIONS

If we allow you to operate your accounts by electronic instructions (for example instructions by telephone or other electronic process including facsimile or email instructions if permitted by us):

- You must ensure that the electronic instructions you give us are clear and unambiguous;
- We may deduct from your accounts any amounts you or any authorized signatory has requested be paid (including any fees and charges);
- To the maximum extent permitted by law you indemnify us from and against all claims, actions, demands, liabilities, costs, charges, damages, losses, expenses and consequences of whatever nature which may be brought against or incurred by us arising out of us acting or omitting to act wholly or partly in accordance with the electronic instructions which is or purports to have been given on your behalf in relation to your accounts or other dealings with us, provided that action or omission is not caused by our negligence;

We will not be liable for, and you will not make any claim against us:

- Arising out of the validity or invalidity of any electronic instructions received by us;
- Due to a failure by you to comply with any terms and conditions for giving such instructions;
- If we did not act on any electronic instructions that we considered to be illegible, unclear, or where there are insufficient funds available in your account;
- Where we are unable to act on the instructions due to circumstances beyond our reasonable control.

JOINT ACCOUNTS

Unless you have specified that two or more joint customers are required to operate your joint accounts, any one of you can give us instructions independently of the others on your joint accounts. This means, for example, that any one of you can withdraw all the money from the joint account, close the account, apply for overdrafts and other services, without the knowledge of the others. We will not be liable to other joint customers when acting in accordance with the instructions of one of you.

We are not required to make enquiries about the purpose of any payment instruction or other instruction or confirm the instructions with the other joint customers. We may, at our discretion, confirm the instructions with the other joint customers.

Your liability is joint and several and your account is subject to all incidents affecting joint accounts. Each of you is separately responsible for complying with these conditions. If any one of you does not comply with the conditions we can take action against any or all of you alone or together. For example, if one of you incurs a debt we can recover the debt from one or all of you even if the other joint customers did not know about this debt.

We may in the interests of any joint customer and ourselves, or where there is a dispute in connection with your account over either the ownership of funds or the operation of the account, stop the operation of the account either altogether or partly upon request by any of the joint customers or at our own discretion, until we are satisfied that the dispute is ended.

If one of the joint customers asks to be removed from the joint accounts, we will either suspend or close the joint accounts and we will notify the other joint customers. All joint customers including the joint customer who has asked to be removed from the joint accounts remain liable for the money owing at the date the joint accounts are suspended or closed until payment in full is made.

We may require all the joint customers to agree before acting on the instructions of one joint account holder to close the account if that joint customer has the authority to instruct us.

In the event that any joint customer dies, we will continue to act on the instructions of the remaining joint customers in relation to any joint accounts held by you. The money in the joint accounts will belong to the remaining joint customers. The death of a joint customer does not discharge any liability to us.

TRUSTEES RESPONSIBILITIES

If you are a trustee of a trust, you agree to:

- Advise us of any resignation or appointment of any trustee (whether yourself or any other trustee);
- Not allow the trust deed to be amended or varied unless we agree to such amendment or variation;

- Ensure that every trustee agrees to be bound by the terms and conditions applying to your account.

If there is a change in trustees we may require you to sign a new Account Mandate (Authority). We will also require certified copies of the documents showing the change in trustees.

If we have agreed that you are an independent trustee you will not be personally liable to us if the assets of the trust are not sufficient to repay any money owing to us. This applies unless the situation arises from your intentional default or dishonesty (but not negligence) in breach of trust in which case you will be personally liable to us.

Unless you have advised us that you are a trustee of a trust, we are entitled to rely on the assumption that you are acting on your own behalf in entering into agreements and obligations with us and, to the fullest extent permitted by law, we will not be liable to you or any other person if this is not the case.

CHILDREN'S ACCOUNTS

If you are under 18 years old, there may be certain products and services that are not available to you. In some cases, we may require the consent of your parent or guardian to provide you with certain products or services.

POWER OF ATTORNEY

While we prefer to deal with you personally in all cases, there may be legitimate circumstances when someone needs to operate your bank account or sign documents on your behalf under the authority of a Power of Attorney. We are not obligated to accept someone acting on your behalf under a Power of Attorney, and there may be circumstances when we will not agree to it. If we do accept someone acting on your behalf under a Power of Attorney we will need to see the original signed document or a true copy certified by solicitor or Justice of the Peace.

SET-OFF

If you owe us any money (for example overdrawn account or a loan in arrears or otherwise) which is overdue for payment, we may use money from any other accounts you have with us to reduce or repay the money owed to us. We may also use money from any joint account you operate. For this purpose:

- Money may be transferred from one account to another;
- Any number of accounts may be treated as one;
- Term deposits may be broken.

We may do any of the above without notice to you but will inform you once we have done it.

You must pay on demand any costs or expenses incurred by us to recover money owed to us by you which is overdue for payment (including legal costs on an indemnity basis).

CHEQUES

When you pay a cheque into your account you will not be able to use the funds until we are reasonably satisfied that the amounts deposited will be met. This usually takes three business days for local cheques and one month for overseas cheques.

If the payer stops a cheque that you have paid into your account with us, we will take money from your account to the value of the stopped cheque.

REVERSAL OF PAYMENTS

If we believe you have:

- Received a payment into your account and then withdrawn or transferred that payment knowing (or if you should have known) that the payment into your account was not made by the true owner of the funds;
- Acted fraudulently or negligently; or
- Acted in a way which causes us loss resulting from unauthorized access to your accounts,

We may deduct money from your account to the value of such payment without giving you prior notice. We may use money you have in any other accounts with us to make this payment.

We may reverse payments paid into your account when we or another bank has made an error.

PAYMENTS OUT OF YOUR ACCOUNT

We may determine the order in which payments are made from your account. It is your responsibility to make sure that you have funds available to meet any payments out of your account. If a payment is not made it is your responsibility to make sure the payment is subsequently made.

We may make payments from your account without your permission if we are legally required to do so for example if the Court or other authority tells us to do so.

Unless the law prevents us from doing so, we will try to contact you to advise you we are refusing or are unable to act on your payment instructions.



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You may be able to stop a cheque that has not yet been paid in by calling us with the details of the cheque number, amount and date and who it was payable to. We may charge you for attempting to stop the cheque whether or not we are successful in doing so. In some circumstances it may not be possible to stop the cheque where for example it has been cashed or presented by way of "special answer".

We may not accept a cheque for payment out of your account if it is more than six months old, it is not correctly completed, it is not on one of our pre-printed cheque forms or there are insufficient funds in your account to cover the payment of the cheque and we may charge you a fee if this occurs.

We will not be liable for any loss you may incur as a result of us stopping payment on a cheque.

If someone asks you to replace a cheque for whatever reason it is your responsibility to ask for the old cheque back and to destroy it or to ask us to stop the old cheque before writing the replacement cheque. If you do not do this there is a risk that both the old cheque and the replacement cheque will be paid from your account.

DISPUTES

You must advise us if a dispute arises in relation to your account. We may refuse to allow you to operate your account until you have confirmed in writing that the dispute has been resolved to our satisfaction.

STOPPING ACCOUNTS

We may refuse to allow you to operate your account for various reasons including, but not limited to:

- There is a dispute in relation to your account over either the ownership of funds or the operation of the account (for example between joint customers);
- There is a need to protect one or all of the parties to the account, us or a third party who has reasonably claimed an interest in the account;
- The authority of the person(s) representing a body corporate needs to be clarified;
- You have been placed into bankruptcy or liquidation;
- You no longer have contractual capacity for whatever reason;
- You do not provide us with acceptable identification when requested;
- We learn of your death; or
- We receive an order from the Court, or are advised that a Court order is pending that compels us to do so.

If you are a partnership, we may refuse to allow your account to be operated if a partner dies, is retiring or if the partnership is dissolved.

If you are a company, we may refuse to allow your account to be operated if, in certain circumstances, a director dies. This will depend on the number of directors you have or what signing authority you have for the account and the terms of your articles of association.

If you are a trust, we may refuse to allow your account to be operated if a trustee dies. This will depend on the number of trustees you have, what signing authority you have for the account and the terms of the trust deed.

CLOSING ACCOUNTS

We may, at our discretion close any of your accounts if:

- We consider there are insufficient funds in your account (for example when cheques or withdrawals are dishonoured or unpaid);
- Cheques or withdrawals contain irregularities;
- Any credit facility with us is terminated; or
- We consider the account is not being conducted in a satisfactory manner.

We will give you reasonable notice (at least 14 days) that we are closing your accounts. We may close your accounts and end our relationship with you without notice in certain circumstances including, but not limited to:

- We are complying with a Court order;
- You have acted unlawfully;
- You have breached our conditions; or
- You have acted abusively towards our staff.

If we close your account you must return to us all unused cheque forms and any cards in respect of your account. All amounts owing in relation to your account must be paid immediately by you.

On closing your account any money due and payable from the account will be made available to you. We may withhold repayment of any money from the account until all amounts contingently due or not calculated have become due or have been calculated. If there is any dispute about the credit balance in your account, we may not be able to return the credit balance to you until the dispute has been resolved.

INOPERATIVE ACCOUNTS

If you have not operated your account for some time, we can do any of the following:

- We can change the frequency of when we issue your account statements so that you receive these every twelve months;
- We can close your account if you have a nil balance, or if we believe that your account is likely to go into an unarranged overdraft due to regular account and other fees;
- We may be required to transfer the balance of any account into the Public Account if the Unclaimed Moneys Act 1970 applies.

STATEMENTS

We will make available to you account statements as often as you request them (although we may charge you for this). For Deposit and Loan Products for which a Statement is a feature, at a minimum we will make available to you an account statement every twelve months. We will send all account statements and any correspondence to your last recorded postal or email address. BCI will introduce products from time to time for which Statements will not be posted. However a transaction history will be made available online through internet banking, and a period specific statement can be issued to you at your request by calling into your nearest branch of BCI or by email.

It is your responsibility to check that the account statements are correct. If you believe there are any errors or discrepancies in the account statement you must notify us in writing within 60 days of receiving the account statement of any error or discrepancy. If you do not notify us, then to the fullest extent permitted by law:

- You will be deemed to have accepted that the balance and transactions recorded in the account statement are lawful and correct;
- We will have a full defence against any action you take for claims of any nature. This includes claims for breach of contract, negligence, wrongful debiting of funds, any other tort, equitable remedy or any other cause of action brought against us in relation to your account, or the transactions recorded on the account statement.

RECEIPT OF COMMUNICATIONS

All communications from us to you may be given by posting a communication to your last recorded address as notified by you and shall be deemed to have been given to you three days after posting.

If you move overseas you must provide us with your new address as well as proof of that address in a form acceptable to us.

CONSUMER GUARANTEES ACT

If we provide any products or services to you in the course of your business then the Consumer Guarantees Act 2008 shall not apply to those products and services.

CODE OF BANKING PRACTICE

We are a member of the banker's Association of Cook Islands. As a member of the Association we subscribe to the standards set out in the Association's Code of banking Practice.

COMPLAINTS

If you have any complaints you will need to let us know about this. You can do this by contacting us and advising us of your complaint. Your complaint will be registered and will be dealt with by a manager. We will advise you of any decision or outcome after we have carefully considered your complaint.

OUR LIABILITY

If we are in breach of these conditions we will not be liable for losses or costs caused by abnormal and unforeseeable circumstances outside our reasonable control, which would have been unavoidable despite all efforts to the contrary, for example delays or failures caused by power cuts, problems with any system or networks, or mechanical failures.

YOUR LIABILITY

You are responsible for all liabilities relating to your accounts and your relationship with us and you indemnify us against these liabilities unless the liability is a result of our fraudulent or negligent acts or omissions