

## VP Bank e-banking Conditions of Use

"Bank" refers hereafter to VP Bank (Luxembourg) SA.

### 1. Services provided

- 1.1. The "e-banking" service (including e-banking mobile and e-Post) provided by the Bank is described on the Bank's website ([www.vpbank.com](http://www.vpbank.com)). The account holder (hereinafter: the Client) can access and manage his business relationships via e-banking and where necessary grant an authorised agent the power to do the same. The Bank reserves the right to alter the service provided at any time.
- 1.2. The provisions governing data exchange contained in these Conditions relate to banking transactions based on separate agreements or other business conditions of the Bank (e.g. General Terms and Conditions, regulations). Within the scope of application of the e-banking services taken up by the Client these Conditions shall take precedence insofar as they deviate from the above.

### 2. Access to e-banking

- 2.1. Technical access to the e-banking services for the Client and his designated participant/s, super-user/s<sup>1</sup> and/or user/s (these three types of authorised persons being referred to collectively hereinafter as "Service Users") shall be at their discretion either over the Internet via the ISP of their choice and using the appropriate software obtained from third parties or via a mobile telephone obtained from third parties and/or via some other electronic device which at the minimum satisfies the specifications given on the relevant updated page of the Bank's website or elsewhere, or via direct dialling (without using the Internet as a channel of communication).
- 2.2. Access to e-banking services is achieved by entering the following user authentication details:
  - a) agreement number,
  - b) username,
  - c) password, and
  - d) the additional security features provided by the Bank.The user authentication details shall be sent to the delivery address provided to the Bank by the Client.
- 2.3. Persons who have identified themselves in accordance with Section 2.2 will be deemed by the Bank as authorised to use e-banking. Within the scope and limits of the entitlements selected under the e-banking agreement the Bank may without further verification allow the Client or Service User to access information, issue orders and make legally binding notifications.
- 2.4. Orders, instructions and notifications via e-banking shall be deemed to have been written, authorised and sent by the Client or Service User regardless of any restrictions in the internal relationship between the Client and the Service User and regardless of any statements to the contrary in the Commercial Register, publications or the arrangements provided for in the signature documents of the Bank. Thus the Bank shall be deemed to have satisfied its obligations properly if, having correctly verified the user's identity in accordance with Section 2.2, the Bank then complies with the notifications, instructions and orders received under the e-banking agreement.
- 2.5. The Client hereby unconditionally acknowledges all transactions made via e-banking in combination with his personal user authentication details or those of his designated Service User, especially if made without written instructions, in relation to the money/securities accounts specified in the e-banking agreement and any annexes or supplements thereto.

### 3. Issuing orders

- 3.1. The Client or Service User may use e-banking 24 hours a day. However, the execution of orders and instructions, and of stock exchange orders and payment instructions in particular, shall depend on the business hours of the Bank and the other institutions and systems involved, such as stock exchanges, settlement systems and clearing houses.
- 3.2. Orders shall be issued by sending the appropriate data and shall be processed by the Bank once all such data have reached the Bank. Once made, an order can be revoked only by contacting the Bank directly in good time, i.e. before the order has been executed. If an order (e.g. payment order, stock exchange order) was issued to the Bank

<sup>1</sup> Person with access to the administration of user rights.

electronically and it subsequently becomes clear that it has not been executed by the Bank fully or at all as instructed, the Client or Service User has a duty to lodge an appropriate complaint with the Bank.

- 3.3. The reply given by the Bank via e-banking shall constitute confirmation of receipt only and not confirmation of the execution of orders/instructions.
- 3.4. The Client or Service User must check that all data are complete and accurate before sending them. Responsibility for data sent by the Client or the Service User lies with the Client until such time as receipt of the data is confirmed via e-banking. The Client shall bear the risk of messages being misdirected or returned to sender as a result of the entry of inaccurate or incomplete information.
- 3.5. The Bank shall be entitled at any time and without giving reasons to refuse to provide information or accept instructions, orders or notifications via e-banking and to demand user authentication in writing.
- 3.6. Order execution shall be confirmed by text message (SMS) only where stock exchange orders have been carried out in part or in full. The Client respectively Service User duly notes that such execution confirmations may be delayed. Confirmation shall not be provided in cases where stock exchange orders have been cancelled or have expired. The Client or Service User shall be required to check the status of his orders in the e-banking system.
- 3.7. Orders, instructions and notifications received by the Bank via e-banking shall be processed by the Bank within the context of its overall relationship with the Client. In particular, therefore, the Bank reserves the right to refuse to execute orders on the grounds of insufficient covering funds or an inadequate credit limit.
- 3.8. The Bank shall not accept orders or instructions by e-mail, because neither the integrity nor the authenticity of data transmitted in this way can be guaranteed.
- 3.9. Notifications pursuant to Sections 2.3 and 2.4 which are sent to the Bank via the e-banking system's internal messaging function must not include orders (e.g. stock exchange orders, payment orders), blocking instructions (e.g. blocking of access to e-banking or of Maestro cards) or any other instructions to the Bank which are dependent on a time limit. Any damage incurred by the Client as a result of notifications in breach of this provision shall be borne solely by the Client.
- 3.10. The Client duly notes and agrees that the Bank shall not provide any advice in connection with stock exchange orders issued via e-banking. The Bank shall not assess whether stock exchange orders issued via e-banking are in accord with any agreed investment objectives and the underlying client profile.
- 3.11. The Bank shall be entitled to reject or cancel stock exchange orders to the extent that they are not in keeping with the pertinent norms governing the transaction and stock exchange concerned.
- 3.12. The Client shall check that each stock exchange order issued is compatible with his own financial status and hereby confirms that he is familiar with the customs and established practices of stock exchange business and in particular with the structures and risks of the particular transaction types. Where the Client carries out stock exchange orders without having previously received appropriate advice from the Bank and without having studied the up-to-date sales documentation and the public prospectuses in particular, the Client acts at his own risk. The Bank can accept no liability for such orders.
- 3.13. The Client hereby declares that he is aware that e-banking is not suitable for same-day speculative trades in equities and derivatives or for exploiting short-term price fluctuations. The Client accepts that for system-related reasons it may sometimes be impossible to re-sell purchased securities on the same day via e-banking.

#### **4. Obligations of the Client/Service User**

- 4.1. The Bank shall allocate an agreement number, a username, an initial password and an additional security feature to the Client or Service User. The Client or Service User shall be obliged to keep his password and the additional security features in separate places, to keep them secret and to protect them from misuse by unauthorised persons.
- 4.2. The Client or Service User shall be obliged to change the initial password allocated to him by the Bank immediately upon receiving it and subsequently at regular intervals. In particular, after changing the password the Client or Service User must not make any written record of the new password. The password may comprise between 6 and 15 characters (numbers and/or letters). Passwords must not consist of easily ascertainable codes (e.g. telephone numbers, dates of birth, car registration numbers, names of friends or relatives).
- 4.3. The obligation to keep the password secret shall apply separately and individually to each individual Client or Service User. The Bank accepts no responsibility for damage arising from the misuse by a Client, Service User or other third party of the user authentication details of another Client or Service User.

- 4.4. If there is any reason to suspect that an unauthorised person might have gained knowledge of the Client's or Service User's password or other user authentication details or if the matrix/Security Card is no longer in the Client's or Service User's possession, the Client or Service User has a duty to inform the Bank of this fact without delay during normal business hours and to confirm it in writing immediately. The Bank shall immediately block the user authentication details of the person concerned. Any and all resultant costs shall be borne by the Client.
- 4.5. However, at any time (i. e. even outside the business hours of the Bank) the Client or Service User may and, where there is a danger of misuse, must block his own access to e-banking by entering an incorrect password five times in succession or, as applicable (e-banking<sup>plus</sup>), have his participant/super-user block his user entitlement (see Section 6).
- 4.6. The Client or Service User shall be obliged to minimise the security risks arising from the use of the Internet by taking appropriate state-of-the-art security measures (in particular password protection, anti-virus programs, fire walls, etc.). Further, he shall be obliged to take note of the security information given on the websites of the respective services or otherwise provided to him and, where relevant, to implement the recommended security measures within reasonable delay.

## 5. Exclusion of warranty and liability

- 5.1. The Client shall bear all risks arising from the disclosure of his user authentication details or those of the Service User. The Client shall be liable for all consequences of the authorised or unauthorised use of said user authentication details.
- 5.2. The Bank shall not be held liable in any way for any damage and/or loss of earnings incurred by the Client as a result of transmission errors, technical defects, temporary loss of connectivity, delays, omissions, malfunctions of any sort or unlawful interference by third parties in telecommunications installations or the Internet or as a result of the use of the public network, interruptions and delays (in particular in the processing of orders), network overload, malicious blocking of electronic access by third parties or deficiencies on the part of network operators. The Bank thus excludes liability for any and all damage potentially arising from the use of the Internet and the associated peripheral equipment.
- 5.3. The Bank cannot accept any liability for the accuracy or completeness of the data, information and notifications it transmits. In particular, all information regarding money/securities accounts (balances, statements, transactions) and all generally available information, such as stock market prices and exchange rates, shall be deemed to be provisional and non-binding. Data provided via e-banking are not deemed to constitute a binding offer unless expressly described as such.
- 5.4. Further, the Bank expressly excludes any liability for the terminal of the e-banking Client or Service User and for technical access to the e-banking service. The Bank likewise cannot accept any liability for software it delivers by download, insofar as the Bank does not receive a complaint within one week of said delivery. Nor can the Bank accept any liability for losses arising from and during the transmission of the software via the Internet. Equally, the Bank cannot offer any guarantee that the e-banking program will live up to expectations in every respect or that it will function flawlessly in conjunction with other programs selected by the Client or Service User. The Bank cannot accept any liability for damage or disruption to the operation of e-banking as a result of computer viruses in the system of the Client or Service User.
- 5.5. In the event of security risks being detected, the Bank reserves the right to suspend e-banking services at any time for the Client's protection until said risks are removed. The Bank shall also be entitled to interrupt e-banking services for other maintenance work.
- 5.6. The Bank's liability for losses suffered by the Client as a result of faults or interruptions as described in Section 5.5 (including maintenance work required by the system), in particular during transaction processing or because of overloading of the Bank's ATMs or IT systems, shall be expressly excluded unless the Bank is guilty of gross negligence. In no circumstances can the Bank accept liability for loss of earnings or subsequent damage.
- 5.7. The Bank cannot accept any liability for damage incurred by the Client as a result of non-performance of the Client's contractual obligations, for loss of earnings, for expected events that fail to materialise, for third-party claims or for indirect or subsequent damage.
- 5.8. The Bank has no control over who receives and uses the user authentication details. In cases involving legal entities and/or delivery to a business address in particular, responsibility for monitoring who takes receipt of the user authentication details and how they are used rests solely with the Client or Service User. The Client shall bear the risks arising from manipulations of his computer and/or that of the Service User by unauthorised persons.
- 5.9. The Bank cannot accept any liability for damage incurred by the Client as a result of any lack of legal capacity on his own part or that of the Service User.

- 5.10. The Bank cannot accept any liability for ordinary negligence. In particular, the Bank excludes liability arising from ordinary negligence in respect of
- failure to execute orders in good time or at all and the resultant damage, and
  - damage caused by the Bank's auxiliary personnel in the exercise of their tasks.
- 5.11. The Bank cannot accept any liability for non-execution or late execution of orders or for the resultant damage, in particular if caused by price losses, unless the Bank is guilty of gross negligence.

## 6. Blocking access to e-banking

- 6.1. The Client may cause his own access to the relevant VP Bank e-banking services or that of the Service User to be blocked. Access to the money/securities accounts via e-banking will automatically be blocked if five successive attempts are made to gain access with an incorrect password and/or incorrect TXN. In the case of e-banking<sup>plus</sup>, an access block initiated by the Client or Service User himself, by the Bank or by incorrect password or TXN entries must be removed by the super-user of the Client or Service User; only a block on the super-user's access will be removed following an investigation by the Bank of the causes of the blockage. The other blocks will be removed by the Bank following the relevant request and investigation.
- 6.2. The Bank shall be entitled to block the Client's or Service User's access to some or all services without giving its reasons and without advance notice.

## 7. Authorisations and conferral of powers in e-banking / legal effect of VP Bank documents

- 7.1. By signing the e-banking application form the Client confers on the Service User a right of access to information regarding all money/securities accounts and transactions, to e-Post (if requested) and to data on transactions involving a bank payment slip with reference number (payment transactions, stock exchange and money market orders, statement requests, incoming transactions involving a bank payment slip with reference number) pertaining to the Client specified on said application form.
- 7.2. The Client's authorisation of Service Users to use e-banking shall remain in effect until a written revocation has been received by the Bank. It is hereby expressly stipulated that an issued authorisation shall not expire upon the death or incapacity of the Client but shall remain in effect until revoked in writing, irrespective of any statements to the contrary in Commercial Register entries or other publications.
- 7.3. A revocation or change of a Service User's signing authority on the Client's signature forms deposited with the Bank shall not in any way alter that Service User's authorisation to use e-banking unless expressly stipulated otherwise. Rather, any alteration of said authorisation shall require express revocation as described in Section 7.2.
- 7.4. The Bank may accept as legally valid VP Bank documents that were scanned and transmitted using the in-house e-banking message function and that were signed by the Client or by an authorised representative (within the scope of his respective authorisation pursuant to the power of attorney forms of the Bank), although it is not obliged to do so. Inter alia, it may make the legal validity of the VP Bank documents dependent upon the physical forwarding of a signed original document as well as upon the use of specific data formats.

## 8. Banking secrecy

The Client and/or Service User duly note/s that, because of the way the Internet is designed, its use as a transmission medium means that data relating to the Client may be routed in an uncontrolled manner into other countries even if the sender and recipient are both located in the same country (e.g. Luxembourg). Luxembourg banking secrecy legislation is applicable solely to data situated in Luxembourg. The legal systems of other countries often do not provide a level of protection of the Client's privacy comparable with the banking secrecy provisions of the Bank with which the account is held. The sender and recipient are identified on the Internet in unencrypted format. It is therefore possible for third parties to infer the existence of a banking relationship.

Likewise the Client hereby accepts that notifications from the Bank which the Client has arranged to receive separately via e-mail, text message, etc., are normally unencrypted, such that banking secrecy does not apply and/or cannot be guaranteed.

## 9. Storing and processing Client data

The Client duly notes that, as part of the operation and maintenance of e-banking services, the Bank may outsource Client data for processing and storage. These data shall be processed and stored in accordance with the relevant banking and data protection legislation and all other applicable provisions and in compliance with banking secrecy requirements.

## 10. Security on the Internet

10.1. In the development of e-banking, special emphasis has been placed on security. To protect the Client, a multi-level security system has been developed which, among other things, makes use of high-standard encryption processes. In principle, this encryption makes it impossible for unauthorised persons to gain access to the Client's confidential data. However, despite the use of state-of-the-art security procedures, absolute security cannot be guaranteed on either the Bank's side of the relationship or the Client's side. The Client duly notes that his own workstation and that of his designated Service User can be a particularly weak point in terms of e-banking security.

10.2. The Client duly notes the following risks in particular:

- The Bank cannot guarantee either unrestricted access to the relevant services or unrestricted use of the same. Nor can the Bank guarantee the unrestricted operational availability of the Internet.
- Inadequate knowledge of the system and faulty security precautions (e.g. inadequately protected storage of data on the hard disk, file transfers, unauthorised "screen peeking") may facilitate unauthorised access. It is the Client's responsibility to ascertain exactly what security precautions are required and to comply with them.
- By drawing up an Internet traffic profile, the Client's Internet provider or that of the Service User is able to determine with whom the Client or Service User has been in contact and when such contacts took place.
- There is a latent danger that, when the Internet is being used, a third party could gain access to the Client's computer or that of the Service User without being noticed (e.g. by means of a Trojan horse, virus, etc.).
- In spite of security measures, when using the Internet there is a constant danger of computer viruses spreading to the Client's computer or that of the Service User as soon as it comes into contact with the outside world. Virus scanners can assist the Client or the Service User in protecting his system and are urgently recommended. For additional information, please refer to the Bank's website ([www.vpbank.com](http://www.vpbank.com)).

10.3. Moreover, it is important to stress the importance of using only software from trustworthy sources.

## 11. Termination with immediate effect

The e-banking agreement is of unlimited duration. It may be terminated in writing by either Party at any time with immediate effect and without need to give reasons. However, the Bank shall be entitled to delete access to e-banking without terminating the e-banking agreement if e-banking services have not been used for 12 months or longer.

## 12. Reservation of mandatory law

These Conditions are subject to any statutory provisions that might affect the operation and use of e-banking. By way of supplement reference is also made to the disclaimer on the Bank's website ([www.vpbank.com](http://www.vpbank.com)).

## 13. Partial nullity

In the event that one or more provisions of the e-banking agreement or of these Conditions are or become void, unlawful or unenforceable, the remaining provisions shall be unaffected. Such provisions as are no longer applicable shall be replaced by new provisions that achieve the original intended legal and economic purpose as precisely as possible.

## 14. Foreign law

The Client duly notes that by using e-banking from abroad the Client or Service User may in certain circumstances violate the law of his country of domicile (e.g. import and export restrictions for encryption algorithms) or other foreign law or that the use of the Bank's e-banking services may be prohibited. The Client bears sole responsibility for ensuring he is fully informed on this subject. The Bank cannot accept any liability in this regard.

## 15. Exclusion of particular persons

With reference to the aforementioned provisions, persons who are domiciled and/or using e-banking in the USA shall be excluded as contractual partners, Clients or Service Users of e-banking. The Bank shall be entitled to restrict the range of e-banking services provided in the light of the regulatory environment in a given country.

## 16. Amendments

Amendments to e-banking provisions shall be notified to the Client and the Service Users by circular via the e-banking system itself. An amendment shall be deemed accepted as soon as an e-banking service is reused in spite of said amendment or if no written objection is received by the Bank within 30 days of its announcement.

## 17. Client data

The Client hereby agrees that the Bank may use his data in anonymised form for bank-internal statistical purposes.

## 18. Recording of conversations

The Bank shall be entitled but not obliged to record telephone conversations held with the contracting party in connection with e-banking.

## 19. Electronic delivery of bank documents (e-Post)

By selecting the "e-Post" entitlement the Client commissions the Bank with immediate effect to deliver the bank documents for one or more banking transactions to the Client or his Service User in electronic format via the e-banking system. In so doing the Client foregoes physical delivery of said documents as previously but duly notes and hereby declares that he agrees that not all Bank notifications shall be made via e-Post.

## 20. Place of performance and due service of bank documents

20.1. The e-banking system is deemed the place of performance for electronic service of bank documents. The Client thus expressly acknowledges that, by delivering the bank documents electronically within the e-banking system, the Bank fulfils its duties of notification and accountability in particular.

20.2. However, the Bank shall also be entitled at any time and without giving reasons to deliver the bank documents in hard copy by normal post or in accordance with a retained correspondence agreement.

20.3. Electronic bank documents shall be deemed duly delivered on the day on which they are made available within the e-banking system. All relevant time limits (including in particular the time limit for complaints) shall begin to run upon receipt of the corresponding bank document.

## 21. Complaints

21.1. The Client or Service User undertakes to file complaints concerning electronic bank documents immediately and at the latest within 30 days of receipt, failing which the electronic bank documents in question shall automatically be deemed to have been approved. This express or tacit approval shall include the recognition and renewal of all entries contained in the documents as well as any reservations made by the Bank. Insofar as the Client's balance on the electronic bank document is negative, the Client shall be deemed to recognise said balance as a debt to the Bank even if the account relationship is continued.

21.2. If electronic delivery of an expected electronic bank document is not made, the complaint must be filed as if it were a complaint relating to a similar document delivered to the Client electronically in the normal course of business. The Client shall bear all damage arising from complaints that are not filed in good time.

## 22. Recording and safekeeping of bank documents

Within the bounds of any applicable statutory provisions the Client himself shall be responsible in particular for the content, recording and safekeeping of electronic bank documents. The Client duly notes that individual electronic bank documents will be available within e-banking for at least 180 days from their arrival in the system but will no longer be available in electronic form after said period has expired. A fee shall be charged for any documents ordered after that period. If the e-banking agreement is terminated, the aforementioned time limit shall not apply.

## 23. Deactivation

The Client may commission the Bank at any time to deliver the bank documents relating to one or more banking transactions a second time to him or his Service User in hard copy. In this case, the Bank shall deliver the bank documents a second time in hard copy within a reasonable delay. The Client duly notes that such electronic bank documents previously made available to the Client by the Bank are already deemed duly served.

#### **24. Applicable law and place of performance, debt enforcement and jurisdiction**

All legal relationships between the Client and the Bank are governed by the legal jurisdiction that applies in the location of the Bank's registered office, to the exclusion of its conflict of law provisions. The place of performance and exclusive place of jurisdiction for all disputes and legal proceedings in connection with the legal relationship between the Client and the Bank is the Bank's registered Office. However, the Bank shall have the right to bring action against the Client before any other competent court or authority.