

# Pumapa Capital Limited

Terms and Conditions



Pumapa Capital Limited

**TABLE OF CONTENTS**

1.	General .....	3
2.	Services Provided .....	3
3.	Basis for Contracting, Introducing Business .....	3
4.	Intermediaries .....	4
5.	Communications with the Client .....	4
6.	Orders, Instructions and Confirmations .....	4
7.	Best Execution .....	4
8.	Investment Exchanges .....	4
9.	Charges .....	5
10.	Representations and Warranties .....	5
11.	Breach of Clause 10.....	6
12.	Indemnity.....	6
13.	Interest.....	6
14.	Research.....	6
15.	Conflicts of Interest .....	6
16.	Telephone Recording .....	7
17.	Confidentiality and Data Protection .....	7
18.	Amendments and Termination.....	7
19.	Severance of Clauses, No Waiver.....	7
20.	Netting.....	8
21.	Entire Agreement .....	8
22.	Successors.....	8
23.	Force Majeure .....	8
24.	Governing Law .....	8



## Pumapa Capital Limited

### TERMS AND CONDITIONS

#### 1. General

These Terms and Conditions shall apply to all investment business undertaken by Pumapa Capital Limited ("Pumapa") in its dealings with you (the "Client") from the date of the Client's receipt and/or acceptance of the Terms and Conditions subject to:

- (a) any amendments in accordance with **Clause 19** below; and
- (b) the terms of any other written agreement between Pumapa and the Client, the terms of which will prevail.

Pumapa is a private, non-regulated investment firm based in the Republic of Kenya.

In these Terms and Conditions, certain words are defined in **Schedule 1**.

#### 2. Services Provided

The investment services which Pumapa may provide under these Terms and Conditions shall include guidance on investments and arranging deals in the following instruments (together, where appropriate, with related research, valuation and other services):

- (a) equity and debt securities;
- (b) government and public securities;
- (c) units in collective investment undertakings;
- (d) options, futures, forwards, swaps and other derivative instruments relating to underlying financial instruments or other assets, rights, obligations, indices and measures (excluding commodities);
- (e) commodities;
- (f) offshore; and
- (g) any instruments representing or giving entitlement to any of the above.

#### 3. Basis for Contracting, Introducing Business

The Client acknowledges that Pumapa has not made, and that the Client is not relying on, any statements, representations, promises or undertakings that are not contained herein. Any guidance (which may be given either orally or in writing) by any director, officer, employee or agent of Pumapa to the Client in relation to any transactions shall be given without any obligation to communicate to the Client the basis on which the judgement leading to any such guidance was made. All forms of investment which may be recommended by Pumapa involve risk. The value of investments and the income derived from them can fall (including a complete loss of the investment) as well as rise and is not guaranteed. The Client's attention is drawn to the risk warnings set out in Schedule 2.

Pumapa shall be under no obligation to give general investment guidance or guidance in relation to a specific transaction or a proposed transaction or to supervise or manage any of the Client's investments or to give any tax advice or to make claims for exemptions or relief or to make any filings or returns.

If Pumapa provides investment services and/or guidance to the Client, other than making a personal recommendation which it will not do, assume that the Client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transactions or products, for which the Client is classified as a Qualified Investor and/or that the Client is able to financially bear any related investment risks consistent with the Client's investment objectives or otherwise.

When the Client gives Pumapa an order or instruction in accordance with **Clause 6** below, Pumapa is entitled to, and will, assume that the Client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transactions or products, for which the Client is classified as a Qualified Investor. As such, Pumapa does not have to ensure that any such service or transaction is appropriate for the Client.

Pumapa may introduce any order from the Client to any company within the Pumapa Group of Companies (including, without limitation, Pumapa Portfolio Series 1 LLP). Pumapa or such other company within the Pumapa Group of Companies may also provide other services if and to the extent agreed between it or such company and the Client in writing.



## Pumapa Capital Limited

### **4. Intermediaries**

In any dealing or other matter where the Client is an agent or otherwise acting on behalf of or for the benefit of any other person then, notwithstanding that the Client discloses that fact or identifies that person to Pumapa, Pumapa will, to the extent permitted by applicable law, rule or regulation, treat the Client alone as its customer for all purposes relating to such dealing or matter. Pumapa shall be entitled to cancel, terminate, reverse or close out any transaction in the event that the Client fails to provide Pumapa in a timely manner with sufficient identification details of any other person on whose behalf the Client may be acting and any other information for Pumapa to comply with applicable law.

In any dealing other matter where the Client is an agent or otherwise acting on behalf of or for the benefit of any other person, and the Client discloses that fact and/or identity of that person to Pumapa, and the latter is not permitted by applicable law, rule or regulation to treat the Client alone as its customer for all purposes relating to such dealing or matter, the Client irrevocably and unconditionally agrees that it shall upon demand indemnify Pumapa for itself and as trustee for its agents, employees and officers and keep Pumapa indemnified from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgements, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by Pumapa, or its agents, officers or employees arising directly or indirectly as a result of or in connection with anything done or omitted to be done by the Client's principal arising by virtue of his/her relationship with Pumapa.

In connection with the provision of these services, Pumapa may employ agents selected on terms which it, in its discretion, may determine appropriate.

### **5. Communications with the Client**

Communications from Pumapa to the Client may be made via email or other electronic means or in writing. When using electronic media in relation to agreements and transactions, the Client should be aware that acceptance of an electronic communication may give rise to a contractual obligation on the part of the Client. The Client will be deemed to have accepted electronic media as an acceptable form of communication.

### **6. Orders, Instructions and Confirmations**

Orders or instructions may be given by the Client orally or by electronic means and shall be transmitted at the Client's risk in such manner as shall be specified by Pumapa or agreed between it and the Client from time to time. Nothing in these Terms and Conditions shall be construed as placing any obligation on the part of Pumapa to enter into any transaction with or for the Client.

If any order, communication or instruction is, in the opinion of Pumapa, unclear and/or ambiguous, Pumapa may seek clarification thereof from the Client, and may choose to take no action in respect of that order, communication or instruction until the meaning thereof has been resolved to the satisfaction of Pumapa.

The Client irrevocably authorizes Pumapa to rely and act upon, and treat as fully authorized and binding upon the Client, any order, instruction or communication (by whatever means transmitted, and whether or not in writing) which purports to have been given and which is reasonably accepted by Pumapa in good faith as having been given by the Client or on its behalf, without further inquiry on the part of Pumapa as to the genuineness or authority of the order or the identity of the person giving or purporting to give such instructions and regardless of the circumstances prevailing at the time. The Client shall be responsible for and bound by all contracts, obligations, costs and expenses entered into or assumed by Pumapa on the Client's behalf in consequence of or in connection with such orders, instructions or communications.

Orders, communications and instructions shall continue in full force and effect until cancelled or superseded.

### **7. Best Execution**

Pumapa will act in accordance with the Client's best interests when transmitting orders on behalf of the Client and will take all reasonable steps to obtain the best possible result in accordance with the terms of the best execution policy of Pumapa, except where the Client is categorized as an eligible counterparty, in which case Pumapa shall be under no obligation to provide best execution. Further information on Pumapa's best execution policy may be found in any accompanying Order Execution Policy, if any.

### **8. Investment Exchanges**

Where the Client places an order with Pumapa to buy or sell an investment that is quoted on more than one investment exchange (or which is traded both on and off the exchange), Pumapa reserves the right to send that order for execution on the Client's behalf either on- or off-exchange at its sole discretion.



## Pumapa Capital Limited

The Client should refer to the relevant Pumapa Order Execution Police, if any, accompanying these Terms and Conditions for further information.

### 9. Charges

Pumapa's charges will vary depending on the level of services and products provided. These charges will be clearly laid out in the relevant forms and documents for the Client. The Client will also pay any applicable VAT and such other taxes, duties, fees or other statutory charges as are applicable to the transaction.

In addition, Pumapa shall have a general right of lien over any investments, monies or other property held on the Client's behalf or to its order in respect of any unpaid debt due from the Client, any person on whose behalf the Client has accepted liability for their debts, or, if the Client is a corporate entity, any Associated Company. This lien may be exercised at any time without prior consultation with the Client, provided always that a written demand shall be made of the Client in respect to the debt, and no exercise of the lien shall obtain until the expiry of 48 hours after such a written demand has been sent to the Client.

### 10. Representations and Warranties

The Client represents and Warrants on an ongoing basis to Pumapa as follows:

- i. It is neither insolvent, nor unable to pay its debts as they fall due and is not subject to any winding-up, dissolution, insolvency, bankruptcy, receivership, administration or analogous proceedings in any jurisdiction whatsoever.
- ii. That it has the legal capacity and the power to enter into this agreement and to receive the services as set out in **Clause 2** above under the laws of both its state of legal domicile and its acceptance of these Terms and Conditions and undertakings of business thereunder do not contravene any law, regulation, statute or other legal or quasi legal provision in its state of legal domicile.
- iii. If it is a corporate entity, that the acceptance of these Terms and Conditions and any business conducted thereunder is permitted under the terms of its Memorandum of Association and Articles of Association or the equivalent in its jurisdiction of incorporation.
- iv. If it is a trust, that its acceptance of these Terms and Conditions does not constitute a breach of the terms of the trust. The trustees warrant that, in their capacity as trustees, they will, at all times, adhere either to the express powers given to them by the document setting up the trust or, if no such express powers are given, to the relevant provisions, act and/or regulations of the country of domicile of the trust.
- v. If it is a natural person, that it is over 18 years of age and is not under any incapacity to contract, either under the law of its country of domicile or under the law of the Republic of Kenya.
- vi. If it is a local, municipal, government or supranational agency or authority, that the terms under which it is constituted permit it to accept these Terms and Conditions and to receive the services as set in **Clause 2** above.
- vii. That payments by it for relevant investments are not subject to any withholding tax, imports, duties or any other deductions whatsoever or to any exchange or similar controls which have or may have the effect of restricting its ability to effect payment or deliver in full and complete satisfaction of any obligations, liabilities, debts or other outstanding monies due to Pumapa, its agents, factors or associates of any description.
- viii. That it has legal power of sale over any investments which are the subject to these Terms and Conditions free from all liens, charges, options, encumbrances and third-party rights whatsoever.
- ix. That all persons dealing with Pumapa under these Terms and Conditions on the Client's behalf are authorized to represent it without limitation in its dealings with Pumapa.
- x. If it is acting as an agent or otherwise acting on behalf of or for the benefit of any other person, that it has full authority to act for that person and that person has the legal capacity and power to receive the services as set out in **Clause 2** above under the laws both of its state of legal domicile and in the Republic of Kenya.

The Client undertakes to inform Pumapa immediately upon the occurrence of any event the happening of which is, or would be, in breach of any of the representations and warranties contained in this Clause.



## Pumapa Capital Limited

### 11. Breach of Clause 10

In the event of a breach of Clause 10 (Representations and Warranties), Pumapa may, without reference to the Client, and at its sole discretion, regard such a breach as going to the root of the contract, and may therefore regard such a breach as repudiatory giving Pumapa the right to take whatever action that Pumapa, in its sole discretion, may deem to be necessary or advisable, including terminating this agreement, *provided that* Pumapa shall be under no obligation to exercise any of its rights under this Clause.

### 12. Indemnity

The Client irrevocably and unconditionally agrees that it shall upon demand indemnify Pumapa for itself and as trustee for agents, employees and officers and keep them indemnified from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgements, suits, costs, expenses and disbursements of any kind or nature whatsoever incurred or suffered by Pumapa or its agents, officers or employees arising directly or indirectly as a result of or in connection with anything done or omitted to be done under these standard Terms and Conditions. Nothing in this paragraph shall serve to indemnify any person in respect of his/her/its own gross negligence, fraud or willful default, or anything done by that person in contravention on any relevant rules of the Republic of Kenya relating to the Capital Markets.

Pumapa accepts responsibility for loss to the Client to the extent that such loss is due to the gross negligence, willful default or fraud of itself or any delegates appointed under **Clause 4** or that of its or their employees, but will not otherwise be liable for any loss to the Client. This does not affect any duty or liability of Pumapa to the Client arising under the rules of the Republic of Kenya relating to the Capital Markets.

### 13. Interest

In the event of the Client's default in timely payment of any amount which falls due under the terms of these Terms and Conditions, Pumapa reserves the right to charge interest at a rate not to exceed 1% above the cost to it of borrowing the due amount in the relevant money markets as decided by it in its sole discretion, or 1% above LIBOR, whichever is the higher, whether in the case of a Kenya Shilling amount of any amount payable in another currency. Interest will accrue on a daily basis and will be due and payable by the Client to Pumapa as a separate debt.

### 14. Research

The Client will receive research as agreed with Pumapa and the latter shall not be under any duty to furnish the Client with any research report. Such research shall not constitute an offer on the part of Pumapa to participate in any investment which may be the subject of any research report, and any such research report shall not constitute any specific advice to the Client regarding the merits or demerits of any investment mentioned therein. Neither Pumapa nor any of its Associated Companies shall be obliged, in advising the Client, to take into account any research which has been carried out by such company.

### 15. Conflicts of Interest

The services provided by Pumapa to the Client under these Terms and Conditions shall not give rise to any fiduciary or equitable duties on Pumapa's part or on the part of Pumapa's Associated Companies which would prevent or hinder Pumapa or any Associated Company in doing business with the Client as provided under these Terms and Conditions.

When Pumapa gives the Client investment guidance, Pumapa or any of its Associated Companies or any other person connected with Pumapa, may have an interest, relationship or arrangement that is material in relation to the service provided. Pumapa or any of its Associated Companies may have material interests in, or conflicts of duty in relation to, any transaction effected with or for the Client.

Without limiting the generality of the foregoing, such conflicting interests or duties arise from:

- (a) effecting, arranging or guidance in relation to investments where Pumapa or an Associated Company has a holding, dealing or market position or otherwise trades in that investment;
- (b) guidance in relation to investments in which an Associated Company has underwritten, managed or arranged an offer for sale, issue or takeover during the preceding twelve months;
- (c) guidance in relation to investments issued by any person to which Pumapa or an Associated Company is or was manager, banker, advisor, trustee or acting in any similar capacity;
- (d) effecting, arranging or guidance in relation to investments where Pumapa or an Associated Company benefits from a commission, fee, mark-up or mark-down payable otherwise than by the Client; or



## Pumapa Capital Limited

- (e) effecting, arranging or guidance in relation to investments in respect of which another client, or a client of an Associated Company has given Pumapa instructions to buy or sell.

All employees of Pumapa and its Associated Companies, regardless of location, are required to comply with a policy of independence. This means that where Pumapa or any such Associated Company gives the Client investment guidance or (where relevant) deals in the exercise of its discretion on the Client's behalf, although Pumapa or one of its Associated Companies may have a material interest or (but for the previous paragraph) conflict of interest in relation to such guidance or dealing, such employees are required to disregard or disclose any such interest.

In the course of providing services to the Client, to the extent permitted by the rules of the Republic of Kenya relating to the Capital Markets, Pumapa may pay a fee or commission or a non-monetary benefit to any other person where the payment or benefit is designed to enhance the quality of the relevant service to the Client and does not impair compliance with Pumapa duty to act honestly, fairly and professionally in accordance with the best interest of the Client and may receive minor non-monetary benefits from another person. Minor non-monetary benefits may include information or materials relating to a financial instrument or investment service, participation in conferences and training events relating to the benefits and features of a specific financial instrument, hospitality of a de minimis amount and such other minor non-monetary benefits as are permissible under the rules of the Republic of Kenya relating to the Capital Markets.

### 16. Telephone Recording

Pumapa reserves the right to record telephone conversations with the Client and to retain such recordings and use the same as conclusive evidence relating to any transactions between the parties.

Pumapa's recordings shall be and remain its sole property. The Client agrees that Pumapa may deliver copies or transcripts of such recordings to any court or regulatory authority. Where Pumapa executes an order on behalf of the Client, it shall provide such copies of transcripts produced in relation to such an order on request, to the extent required by the rules of the Republic of Kenya relating to the Capital Markets.

### 17. Confidentiality and Data Protection

Pumapa may from time to time share with any of its Associated Companies, irrespective of location, any and all information supplied to Pumapa by the Client. Such information shall be kept confidential within the Pumapa Group of Companies. However, without prejudice, and in addition to any other right or obligation by virtue of which Pumapa or any company within the Pumapa Group of Companies may be entitled or bound by the laws of any state, territory, country or other jurisdiction, pursuant to any regulatory requirement, request, demand or summons in any territory, state, country or other jurisdiction, Pumapa shall be entitled, in its absolute unfettered discretion to disclose any information known to it, or to produce any documents, relating to the business or affairs of the Client. This right shall include, but shall not be limited to, requirements or requests from any competent and relevant regulatory authority.

Such notice shall not affect any obligation entered into prior to the furnishing of such notice.

You hereby consent and confirm that you are duly authorized to consent on behalf of your officers and employees, and that you have obtained representations from your agents and delegates, to the extent applicable, that their officers and employees have consented, to the processing and use of their personal data (as defined in the General Data Protection Regulation "GDPR") provided under these Terms of Business or otherwise acquired which may include transfer and processing of such data outside of Kenya as stated in our Privacy Notice. Such personal data may include, without limitation, for example, names, addresses, descriptions and responsibilities, and shall only be used for the purpose of administering these Terms of Business and any Transactions executed in accordance with it.

### 18. Amendments and Termination

These Terms and Conditions may be amended or terminated at any time by Pumapa without notice. Amended Terms and Conditions shall take effect from the time such amended Terms and Conditions are posted on Pumapa's website. You acknowledge that by continuing to deal with Pumapa that you will be bound by such Terms and Conditions in effect at the time and that it is your responsibility to check the Pumapa website from time to time.

Termination under this Clause shall not affect any outstanding orders or transactions or any legal rights or obligations, which may have arisen prior to the termination.

### 19. Severance of Clauses, No Waiver



## Pumapa Capital Limited

If any Clause of these Terms and Conditions is held by any court, regulator or other competent authority to be illegal, invalid or unenforceable, these Terms and Conditions shall be construed as if the Clause in question were deleted from the text of the Terms and Conditions. Such deletion, however, shall only be deemed to occur to the extent that the Terms and Conditions relate to any activities undertaken within the jurisdiction of the relevant court, regulator or other competent authority. Any failure by Pumapa to insist at any time upon strict compliance with these Terms and Conditions shall not constitute or be considered a waiver by Pumapa of any of its rights.

### 20. Netting

Without prejudice to any other right it may have, Pumapa shall be entitled to set off any amount at any time owing to it or any Associated Company from the Client under or in respect of any contract or otherwise against any amount owing by it or any Associated Company to the Client under any contract or otherwise or against all monies at any time standing to the Client's credit on any account with Pumapa or any Associated Company, and any security, guarantee or indemnity given to Pumapa by the Client for any purpose shall extend to any amount owing from the Client after any exercise of such right of set off.

### 21. Entire Agreement

Except where changed in accordance with **Clause 19** (Amendments & Termination) above, in relation to the provision of services in instruments set out in **Clause 2**, Paragraph (a) to (g), the terms of these Terms and Conditions shall represent the entire terms under which Pumapa and the Client conduct business, and any other purported agreements, or terms and conditions shall not be of any effect, except for specific matters set out herein which contemplate further agreements or terms and conditions (for example, any agreement or terms and conditions as to the level of commission payable as contemplated by Clause 9 (Charges) above).

### 22. Successors

Pumapa may, in its absolute discretion, assign all of its rights hereunder to any Associated Company upon seven days' written notice to the client. The Client hereby consents to such assignment provided that such assignee agrees to assume all of Pumapa's rights hereunder.

### 23. Force Majeure

In the event of any failure, interruption or delay in performance of Pumapa's obligations resulting from acts, events or circumstances not reasonably within its control, including but not limited to industrial disputes, acts or regulations of any government or governmental or supranational bodies, agencies or authorities, or of any exchange or platform, or of any regulatory body including but not restricted to the Capital Markets Authority ("CMA"), whether in Kenya or elsewhere, breakdown, failure of any telecommunications or computer/digital services, defaults by any third parties in the performance of obligations necessary to have been performed for the completion of transactions with you, suspension or restriction of trading on any exchange or other market, orders of court, fire, war, natural disaster, strikes or other labor controversies, riots, civil commotion, Pumapa shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the Client, or any person for whom the Client acts.

### 24. Governing Law

The governing law covering these Terms and Conditions shall be the laws of the Republic of Kenya. Both parties agree to submit themselves to the exclusive jurisdiction of the Kenyan Courts in all matters appertaining to these Terms and Conditions.





## Pumapa Capital Limited

### SCHEDULE 1: TERMS AND DEFINITIONS

In these Terms and Conditions, the following words shall have the following meanings:

“Associated Company”	shall bear the same meaning as that given within Section 1 (1) of the Companies Act (No. of 2015) The Companies (General) Regulations, 2015 of Kenya.
“Articles of Association”	means the Articles of Association of the Company.
“Business Day”	shall be any day between a Monday and a Friday (inclusive) not designated a Bank Holiday within the Republic of Kenya.
“CMA”	shall mean the Capital Markets Authority of Kenya.
“LIBOR”	shall mean the London Interbank Offer Rate, as published by the British Bankers’ Association, or, if no publication exists for the currency in question, the rate obtained by Pumapa from practitioners in the market, such choice of practitioner to be at the sole discretion of Pumapa, which for the avoidance of doubt, is hereby specified to be able to include itself or any of its Associated Companies in the list of practitioners use.
“Memorandum of Association”	represents the Charter of the Company.
“Pumapa Group of Companies”	shall mean Pumapa together with any parent undertaking or subsidiary undertaking of Pumapa, including, without limitation, Pumapa Portfolio Series 1 LLP. For the purposes of this definition, “parent undertaking” and “subsidiary undertaking” shall have the meaning set out in the Companies Act (No. of 2015) The Companies (General) Regulations, 2015 of Kenya.
“Registered Office”	shall be the premises at ABC Place, Waiyaki Way, P.O. Box 925-00606, Nairobi, Kenya.
“VAT”	shall mean Value Added tax.

These Terms and Conditions shall be construed so that the plural shall encompass the singular, and vice versa.

Where such expressions as “timely”, “reasonable” or “proper” are used in these Terms and Conditions, the opinion of Pumapa shall prevail in deciding whether any particular action by either party to these Terms and Conditions falls within these expressions.

All references to statutes in these Terms and Conditions shall relate to Acts of the Government of the Republic of Kenya in force at the time of the event provoking any need to construe these Terms and Conditions.



Pumapa Capital Limited

## **SCHEDULE 2: RISK WARNINGS**

**By using the services of Pumapa Capital Limited or its Associated Companies, you acknowledge and accept that your investment has the possibility of achieving financial gains as well as the risk of loss, including the possibility of complete loss of capital and that you are in a financially able to bear these risks. You agree that Pumapa and its Associated Companies shall not be held liable, accountable or responsible for the performance of your investment.**

- I/We have understood the risk(s) involved in investing in various different opportunities and there is a possibility of achieving financial gains as well as a complete loss of capital. I/We do not hold Pumapa Capital Limited, Pumapa Portfolio Series 1 LLP or its partners accountable for the performance of the underlying investments.

The Client's attention is drawn to the following information regarding the specific risks related to the services to be performed by Pumapa under the Terms and Conditions:

- The services which Pumapa provides may involve instruments which are not readily realizable, in that the market for these investments is limited, or could become so. It may be difficult to deal in these investments and to obtain reliable information on their value or the risks associated with them.
- Pumapa may provide guidance on and arrange transactions in various currencies and the movement of exchange rates may have a separate effect, unfavorable as well as favorable, on the gains or losses otherwise made on the investments. Where investments are sold overseas and/or in another currency, it may not be possible to transfer and/or convert the proceeds of sale without some delay.
- Pumapa may provide guidance on and arrange transactions in warrants or in options, futures or other derivative contracts which involve contingent liabilities.
- Pumapa may provide guidance on and arrange transactions in investments, the price of which depends upon fluctuations in the financial markets outside the control of Pumapa.