



HSM Card, Reader & Token Terms and Conditions

December 2006

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Article 1 - General

Under the following terms and conditions, SWIFT will supply to the Customer the HSM Card, Reader & Token equipment as ordered using SWIFT's eOrdering service and will grant to the Customer a personal, non-exclusive, limited and non-transferable licence to use any software and algorithm contained therein (together hereinafter called the "Equipment"). The Customer may use the Equipment solely in conjunction with SWIFT services and products, and the software and algorithm contained therein may be used as an integral part of the use of the Equipment only. It is a condition precedent to these terms and conditions becoming effective that the Customer is a duly registered SWIFT User, SWIFT Partner or Service Bureau.

Article 2 - Title, Risks and Acceptance

- 2.1 Subject to article 2.2 below, title to the Equipment shall pass to the Customer upon full payment of the applicable one-time fee or, if no one-time fee applies, upon delivery.
- 2.2 Any and all rights, including title, ownership rights, copyright, trademarks, patents and any other intellectual property rights of whatever nature in the software and the algorithm contained in the Equipment, including any associated processes or derivative works, shall at all times remain the sole and exclusive property of the Equipment manufacturer or its licensors. No other rights are granted to the Customer in respect of such software and algorithm than those set forth in these terms and conditions. The Customer shall not remove, alter, cover, obscure or cancel from view any copyright or other notices of proprietary rights, marks or legends appearing on or contained in the Equipment.
- 2.3 To the extent not prohibited under applicable laws and regulations and subject to the Customer co-operating with SWIFT to obtain any applicable import licence and to fulfill all customs duties and taxes, the delivery of the Equipment is 'Delivered duty paid' (DDP) at the delivery address designated by the Customer.
- 2.4 Acceptance of the Equipment shall take place upon delivery. If the Customer however demonstrates to the reasonable satisfaction of SWIFT that the delivered Equipment does not conform to the specifications, and if SWIFT is unable for whatever reason to implement a reasonably satisfactory remedy thereto within a reasonable period of time considering the nature of the problem, the Customer shall be entitled, as its sole and exclusive right and remedy, to a refund by SWIFT of all fees and charges paid by the Customer in respect of the defective Equipment.

Article 3 - Price, Invoicing and Payment Conditions

The Customer must pay to SWIFT all charges and fees applicable to it for and in connection with the supply and use of the Equipment. These charges and fees are as notified by SWIFT to the Customer from time to time. Equally, the terms and conditions relating to invoicing by SWIFT and payment by the Customer are as notified by SWIFT to the Customer from time to time. For more information about the price, invoicing and payment conditions for the Equipment, see typically the SWIFT price list for HSM equipment.

Article 4 - Warranties

- 4.1 If a third party ever makes a bona fide claim that the supply or permitted use of the Equipment, in whole or in part, infringes its intellectual property rights, SWIFT undertakes to ensure that the Customer shall enjoy the benefit of any right or remedy granted to SWIFT by the manufacturer of the Equipment or its licensors in respect of any such claim.
- 4.2 This Article 4 states the sole and exclusive rights and remedies of the Customer concerning the infringement of intellectual property rights of third parties, or allegations of infringement.

4.4 WITHOUT PREJUDICE TO THE FOREGOING, AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, SWIFT DOES NOT GIVE AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SUPPLY OR USE OF THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO THE CONDITION, QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR PURPOSE OF THE EQUIPMENT.

Article 5 – Support

In the event of a problem regarding the supply or use of the Equipment, the Customer must promptly notify the SWIFT support centres thereof. SWIFT will handle any such notification as documented in the relevant SWIFTSupport service description.

Article 6 - Customer Responsibilities

- 6.1 The Customer must comply with any guidelines or instructions in force given by SWIFT regarding the use of the Equipment. For more information about how to use the Equipment, the Customer must in particular refer to the relevant service description and other documentation referred to therein. It is the responsibility of the Customer to access the then current version of the relevant service description and other documentation (whether in paper or electronic format) so as to be aware of and comply with all terms and conditions for the time being applicable to it in connection with the use of the Equipment.
- 6.2 Without prejudice to the other terms and conditions, the selection (within the range of options supported by SWIFT), installation and use of the Equipment is the sole responsibility of the Customer.
- 6.3 The Customer shall not re-export the Equipment without SWIFT's prior agreement.
- 6.4 The Customer recognises the confidentiality of the Equipment and its documentation, and agrees not to disclose it, in whole or in part, to a third party without the prior written approval of SWIFT.
- 6.5 The Customer must not assign, transfer, sub-license or sub-contract any rights or obligations in connection with the supply of the Equipment without SWIFT's prior written consent.

Article 7 - Damages - Limitation of Liability

- 7.1 The Customer hereby recognises that the use of the Equipment shall in no way deny or be regarded as a substitute for usual business prudence and practice.
- 7.2 Subject to the other provisions of Article 7, SWIFT accepts liability (whether in contract, tort or otherwise) to the Customer in connection with the supply or use of the Equipment solely for direct damages or losses arising out of SWIFT's default up to the amount paid by the Customer to SWIFT for the Equipment.
- 7.3 SWIFT shall bear no liability for:
 - any indirect, special or consequential damage or loss of any kind;
 - loss of business or profit, revenue, anticipated savings, contracts, loss of or corruption to data, loss of use, loss of goodwill, interruption of business or claims of other parties against the Customer or other similar pecuniary loss howsoever arising, even if SWIFT has been advised of their possibility.
- 7.4 SWIFT shall under no circumstances be obliged to perform any obligation or have any liability to the extent resulting from:
 - any unauthorised or improper downloading, possession, installation, access to or use of the SWIFT Services and Products;
 - the provision or use of services or products not supplied by SWIFT for use in connection with the SWIFT Services and Products;

- any act, fault or omission of the Customer or a third party for which SWIFT is not responsible (including any downloading by the Customer of any Software); or
- Force Majeure.

7.5 To have a valid claim, SWIFT must receive it within 12 months of the date on which the claiming Customer becomes aware of (or should reasonably have become aware of) the event giving rise to the claim.

7.6 Any limitation or exclusion of SWIFT liability applies except for fraud or gross negligence of SWIFT, or to the extent prohibited under applicable law.

Article 8 - Term of the Agreement and Termination

8.1 These terms and conditions shall be binding on SWIFT upon SWIFT's confirmation of acceptance of the Customer's order.

8.2 Either party is entitled to terminate these terms and conditions immediately upon written notice to the other party if:

- that other party shall be in material breach of any obligation applicable to it and such breach either shall be incapable of remedy or shall continue unremedied for a period of 30 days after notice of the breach thereof shall have been given in writing to that other party;
- that other party shall become insolvent or generally fail to pay, or admit its inability to pay, all or a substantial part of its debts as they become due, or shall apply for or be granted a moratorium; or
- a receiver, manager, administrator or liquidator is appointed over the whole or any substantial part of that other party's business or assets, or any steps shall be undertaken to that effect.

Article 9 - General

9.1 These terms and conditions together with the information set out on SWIFT's eOrdering service or other relevant contractual arrangements with SWIFT constitute the entire contract between the Customer and SWIFT for the supply of the Equipment. Any conflicting conditions in letters or other documents issued by the parties have no bearing thereon.

9.2 Any notice or other communication required or permitted under these terms and conditions shall, except as otherwise specified, be in writing and shall be personally delivered or sent by a means evidenced by a delivery receipt. Such notice or communication shall be effective upon receipt.

9.3 These terms and conditions shall be governed by Belgian law. Any claim brought by the Customer arising out of or in connection with the supply of the Equipment that cannot be settled by mutual agreement shall be subject to the exclusive jurisdiction of the competent court of Brussels, Belgium.