



# 3SKey Terms and Conditions

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## Article 1 - General

Under the following terms and conditions, SWIFT will supply to the Customer a 3SKey in form of a physical token or a digital key as ordered by the Customer using SWIFT's 3SKey Order Form or automatically supplied when subscribing to the 3SKey service or ordering the 3SKey Developer Toolkit, and will grant to the Customer a personal, non-exclusive, limited and non-transferable licence to use any software contained therein (together hereinafter called the "3SKey(s)"). The 3SKey must be used solely in connection with the 3SKey service, and the software contained in the 3SKey may be used as an integral part of the use of the 3SKey functionality only. It is a condition precedent to these terms and conditions becoming effective that the Customer is a 3SKey Subscriber, a SWIFT User, or a SWIFT registered provider that has ordered a 3SKey Developer Toolkit. For more information about the 3SKey service, please refer to the 3SKey Service Description available on the 3SKey portal at [www.3skey.com](http://www.3skey.com) (the "3SKey Portal"). SWIFT User(s), 3SKey Subscriber(s) and 3SKey User(s) are defined terms and have the meaning ascribed to them in the 3SKey Service Description available on the 3SKey Portal or in the SWIFT Glossary available on the SWIFT website.

These terms and conditions must be read in conjunction with the 3SKey Privacy Policy available at Other Terms and Conditions | SWIFT - The global provider of secure financial messaging services (the "Policy"). SWIFT and the Customer hereby agree to abide by the terms of the Policy.

## Article 2 - Title, Risks and Acceptance

- 2.1 Subject to article 2.2 below, title to the 3SKey shall pass to the Customer upon full payment of all applicable charges and fees.
- 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 contained in the 3SKey, including any associated processes or derivative works, shall at all times remain the sole and exclusive property of the 3SKey technology provider or its licensors. No rights are granted to the Customer in respect of such software other 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 3SKey.
- 2.3 The delivery of the 3SKey shall be 'Delivered Duty Unpaid' (DDU).
- 2.4 Acceptance of the 3SKey shall take place upon delivery.

## 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 or use of the 3SKey. 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 3SKey, see the then current SWIFT pricing and invoicing documentation available on [www.swift.com](http://www.swift.com).

## Article 4 - Intellectual Property Rights and Warranties

- 4.1 If a third party ever makes a bona fide claim that the supply or permitted use, distribution and sub-licensing of the 3SKey, 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 3SKey or its licensors in respect of any such claim provided always that the Customer:
  - notifies SWIFT promptly in writing of any such claim
  - does nothing to jeopardise or prejudice the defence and settlement of any such claim
  - promptly hands over to SWIFT (or any other person designated by SWIFT) control over the defence and settlement 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.
- 4.3 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 3SKEY TOKENS,

INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO THE CONDITION, QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR PURPOSE OF THE 3SKEY TOKENS.

## Article 5 – Distribution

Subject to all applicable export restrictions and other sanction programmes, and excluding any distribution and sub-licensing of the 3SKey to individuals for private purposes, the Customer may distribute and sub-license the 3SKey to third parties on the following conditions:

- (i) if the Customer is a 3SKey Subscriber, or a SWIFT User part of the same group (as that of the 3SKey Subscriber) for traffic aggregation purposes, it may distribute and sub-license the 3SKey to its 3SKey Users. At its own risk and under its sole responsibility, it may also permit affiliated entities within its corporate group to distribute and sub-license the 3SKey to 3SKey Users on the same conditions as those applicable to it;
- (ii) if the Customer is a SWIFT registered provider, it may distribute and sub-license the 3SKey to 3SKey Users that are affiliated entities within its corporate group;
- (iii) if the Customer is a Service Bureau, it may distribute and sub-license the 3SKey to SWIFT Users connecting to SWIFT through it.

In all cases, the Customer must ensure that the scope of rights granted to any person that obtains a 3SKey pursuant to this article 5 does not exceed those granted to the Customer, and any such person is bound by no less stringent obligations than those applicable to the Customer or, if expressly differentiated, those applicable to 3SKey Users, as set out in these terms and conditions. Without prejudice to the generality of the foregoing, the Customer must in particular ensure that the 3SKey will be used in connection with the 3SKey service only.

For the avoidance of any doubt, the Customer is granted no other distribution or sublicensing rights than those expressly set out in this Article 5.

## Article 6 – Support

- 6.1 SWIFT is the single point of contact for the Customer to report all problems and queries relating to the 3SKey, as set out in the then current version of the *Support Service Description* available on the 3SKey Portal.
- 6.2 For 3SKey Users that have obtained a 3SKey pursuant to article 5, online support is available through the 3SKey Portal in the event of a problem or query regarding the installation, activation or use of the 3SKey.
- 6.3 If the Customer, or a 3SKey User that has obtained the 3SKey pursuant to article 5, demonstrates to the reasonable satisfaction of SWIFT that the 3SKey does not materially conform to the specifications by no later than 90 days after its activation on the 3SKey Portal, SWIFT will, at its full discretion and at its cost, repair or replace the 3SKey. If SWIFT is unable for whatever reason to implement a reasonably satisfactory remedy within a reasonable period of time considering the nature of the problem, the Customer shall be entitled to a refund by SWIFT of all fees and charges paid to SWIFT in respect of the defective 3SKey. This clause state the sole and exclusive rights and remedies of the Customer and 3SKey User concerning defective 3SKey.

## Article 7 – Customer Responsibilities

- 7.1 The Customer must comply with any guidelines or instructions in force given by or for SWIFT regarding the use of the 3SKey. For more information about how to install, activate and use the 3SKey, the Customer must in particular refer to the 3SKey Portal online help, 3SKey installation guides, 3SKey service description, and other relevant documentation referred to therein. To assist the Customer, SWIFT will also publish latest news, changes, known problems and solutions, and frequently asked questions on the 3SKey Portal. It is the responsibility of the Customer to access the latest information and documentation about the 3SKey available on the 3SKey Portal.

7.2 The installation, activation and use of the 3SKey are the sole responsibility of the Customer.

7.3 The Customer acknowledges that the supply and use of 3SKey are subject to U.S. export restrictions and other sanction programmes in effect from time to time. Currently, persons located in or from Cuba, North Korea, Iran, region of Crimea or Syria and persons identified on U.S. government or EU "denied party" or specifically designated nationals lists are not permitted to possess or use the 3SKey. The Customer agrees to comply

with all applicable international and national export and import laws, regulations, orders, and policies that apply to the supply and use of the 3SKey. The Customer shall be responsible for procuring all required permissions (if any) for the initial import and use of the 3SKey, and for any subsequent export, import and use of the 3SKey.

7.4 The Customer recognizes the confidentiality of the 3SKey and related documentation and, subject to the right to distribute and sub-license the 3SKey pursuant article 5 (if any), the Customer agrees not to disclose them, in whole or in part, to any third party without the prior written approval of SWIFT.

7.5 Subject to the right (if any) to distribute and sub-license the 3SKey pursuant article 5, the Customer must not assign, transfer, sub-license or sub-contract any rights or obligations in connection with the supply of the 3SKey and related documentation and support without SWIFT's prior written consent.

#### **Article 8 - Damages - Limitation of Liability**

8.1 The Customer hereby recognises that the use of the 3SKey shall in no way deny or be regarded as a substitute for good business prudence and practice and compliance with best practices (typically, those set out in the 3SKey Best Practices Guide in effect from time to time).

8.2 Subject to the other provisions of this article 8, SWIFT accepts liability (whether in contract, tort or otherwise) to the Customer or a 3SKey User in connection with the supply or use of the 3SKey solely for direct damages or losses arising out of SWIFT's default up to the amount paid by the Customer to SWIFT for the supply of the 3SKey or 10,000 EUR (whichever is higher).

8.3 SWIFT shall bear no liability for:

- any unforeseeable loss or damage (whether direct or indirect)
- any 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 other similar pecuniary loss howsoever arising (whether direct or indirect)

- any indirect, special, or consequential loss or damage of any kind.

8.4 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 3SKey;
- the provision or use of services or products not supplied by SWIFT for use in connection with the 3SKey;
- any act, fault or omission of the Customer, the 3SKey User or a third party for which SWIFT is not responsible; or

- Force Majeure.

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

8.6 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 9 - Term of the Agreement and Termination**

9.1 These terms and conditions shall become effective upon SWIFT's confirmation of acceptance of the Customer's order for the 3SKey.

9.2 These terms and conditions shall automatically and immediately terminate in any of the following circumstances:

- upon the revocation, expiry, or replacement of the 3SKey or, more generally, termination of the 3SKey service;
- if either 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 thereof shall have been given in writing to the party in breach;
- if either 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 has been appointed over the whole or any substantial part of that either party's business or assets, or any steps shall be undertaken to that effect, and, consequently, the other party has notified it in writing of its intention to terminate these terms and conditions.

9.4 Upon termination of these terms and conditions for any reason whatsoever, the Customer shall automatically and immediately cease to install, activate or use the 3SKey and, as applicable, to distribute or sub-license the 3SKey. Furthermore, it shall promptly thereafter dispose of the 3SKey in accordance with all applicable laws and regulations.

#### **Article 10 - General**

10.1 These terms and conditions together with the Policy, the information set out on the 3SKey Order Form, or other relevant documentation referred to in these terms and conditions constitute the entire contract between the Customer and SWIFT for the supply, installation, activation and use of the 3SKey and, as applicable, the distribution and sublicensing of the 3SKey. Any conflicting conditions in letters or other documents issued by the

parties shall have no bearing thereon unless expressly provided otherwise and signed by authorized representatives of the parties.

10.2 Any notice or other communication required or permitted under these terms and conditions shall, except as otherwise expressly 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.

10.3 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 3SKey or the provision of the support service that cannot be settled by mutual agreement shall be subject to the exclusive jurisdiction of the competent court of Brussels, Belgium.