

### Preamble

The Merchant named in the Contract wishes to offer its customers the possibility of effecting payments in card-not-present transactions using credit cards, especially credit cards of the card organizations MasterCard International Incorporated, Visa Europe Services Inc., Diner's Club International and JCB International Credit Card Co. Ltd. (hereinafter referred to as "Card Organizations"), as well as using Maestro Cards and, as the case may be, other credit card payment instruments included in the Contract (all of the above-mentioned cards hereinafter referred to as "Payment Cards") and for that purpose to instruct Wirecard Bank AG named in the Contract as the acquirer (hereinafter referred to as the "Acquirer") to provide services within the scope of the acquiring business in accordance with these Contractual Terms and Conditions (the agreements in the Contract concerning the acceptance of cards and the following Terms and Conditions for the acceptance of cards in card-not-present transactions are together also hereinafter referred to as the "Agreement").

### Clause 1 Risk Associated with Card Payments in Card-Not-Present Transactions

The Merchant is advised that the acceptance of card payments in card-not-present transactions (ordering goods and services particularly via the internet, by phone or by fax) involves an extra high risk of unauthorized use as there is no personal contact with the customer and the Payment Card is not physically present so it is not possible to compare the signatures on the payment card and the debit voucher or to identify the cardholder (hereinafter referred to as "Cardholder") by means of a photograph on the payment card, as is customary in transactions where the card is present. Therefore, the acceptance of such payments is economically tenable only if all possibilities of preventing unauthorized use are taken. In this regard the highest responsibility lies with the Merchant, who has direct contact with the customer and can in each case decide whether, depending on the circumstances of the order being placed, it can accept payments using Payment Cards in card-not-present sales despite the risk of unauthorized use.

### Requirements of the Card Organizations

According to the binding rules of the Card Organizations (hereinafter referred to as "Card Regulations"), a return debit ("Chargeback", cf. Cause 13 (1)) of card payments in card-not-present sales is made in all cases where the Cardholder generally disputes that he has issued the instruction to debit the card account (said Chargeback is hereinafter referred to as "Disputed Case"); in addition other reasons for a return debit can also lead to Chargebacks. In the above-mentioned Disputed Case the Chargeback has to be effected because the institution which issued the Payment Card (hereinafter referred to as "Card Issuer") cannot prove the Cardholder's instructions in documentary form because there is no signed payment receipt. In the event of any such Chargeback, the Acquirer, as the Merchant's clearing house, is obliged to pay the collected amount back to the Card Issuer even if the Merchant is able to provide other proof of the customer's identity.

### Clause 2 Subject Matter of the Agreement, Types of Contract

- (1) The Merchant instructs the Acquirer to settle the card transactions submitted by it in compliance with the respectively applicable provisions of the Card Regulations and to pay the sums underlying said card transactions out to the Merchant in accordance with Clause 10 of these Terms and Conditions (contract of agency).
- (2) The Merchant further instructs the Acquirer to maintain its own licence requirements in relation to the Card Organizations in order to perform this Agreement to the extent that said requirements are open to influence by the Acquirer and to the extent necessary for the Merchant to be connected.
- (3) Even if measures are taken against unauthorized use, the remaining risk – described in Clause 1 – of a Chargeback being made in the event that the Cardholder disputes the payment instructions given ("Chargeback Risk in a Disputed Case") leads to significantly higher payment defaults than in cases when card payments are

made when the card is present. As part of the agency described in sub-clauses (1) and (2) above the Acquirer agrees to assume said Chargeback Risk in a Disputed Case in consideration for an appropriately higher fee if and to the extent that the payment default was not due to fault on the part of the Merchant and if, in this connection, the Merchant chose the form of agreement with said corresponding risk in the Contract under the section "Promise to Pay" (the alternative "With a promise to pay in the event that the Cardholder disputes having given instructions". However, alternatively the Merchant may choose to assume this Chargeback risk itself and pay a correspondingly lower fee if it chose the form of agreement provided by the alternative "Without a promise to pay in the event that the Cardholder disputes having given instructions") in the Contract under the section "Promise to Pay".

- (4) The Agreement can be concluded either for e-commerce (internet) or for mail order (telephone/fax). If Agreements are concluded for e-commerce as well as for mail order, the Merchant shall receive a separate Merchant ID number for each distribution channel.

### Clause 3 Prerequisites for the Acceptance of Payment Cards

- (1) The Merchant may allow goods/services to be paid for by Payment Cards in card-not-present sales in general or in individual cases in accordance with this Agreement. The Merchant will not accept payment by Payment Cards if there is cause to believe that there is a case of unauthorized use.
- (2) If the Merchant accepts Card Payments it undertakes to offer to sell all goods and/or services offered by the Merchant to the respective Cardholders for cashless payment for the same prices and upon the same terms as are applicable to customers wishing to use some other payment method. The Merchant shall in particular not charge any additional costs or require any security and shall not put the Cardholder in any worse position than other customers (principle of "no surcharge"). In the case of MasterCard credit cards, Maestro cards and other types of card admitted to the MasterCard Regulations (e.g. Commercial Cards, Debit Cards, hereinafter referred to as "MasterCard Cards" the Merchant is authorized to charge an additional fee ("Surcharge") if the following conditions are met – collectively:
  - a) Prior to carrying out the payment process (and therefore immediately before forwarding the transaction details to the Acquirer) the Merchant makes it clearly apparent to the Cardholder in a prominent place that if payment is made with a MasterCard Card the Cardholder must pay a Surcharge.
  - b) In the notice pursuant to a) above the Merchant must either expressly show the exact amount of the Surcharge to be paid by the Cardholder or the calculation method for determining the Surcharge and must do so in an easily understandable form.
  - c) The Surcharge must be reasonably proportional to the fees payable by the Merchant under this Agreement. In no event may the Surcharge exceed the discount/disagio and transaction-related fees payable by the Merchant to the Acquirer.

The Acquirer hereby draws the Merchant's attention to the fact that, providing it complies with the above Terms and Conditions and complies with MasterCard's Card Regulations, it may charge different Surcharges for MasterCard Cards. The terms and conditions of the MasterCard Regulations (showing the interchange fees etc.) as applicable from time to time in this regard can be inspected on MasterCard's Internet page at [www.mastercard.com](http://www.mastercard.com). The Acquirer shall provide further information on this upon request.

- (3) The Merchant is not authorized.
  - to make use of the Payment Card dependent on any minimum amount or
  - to accept the Payment Cards for paying back a previously granted loan or a cash payment previously made by the Merchant.

Customer:

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Date:

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The acceptance of the Payment Card and the collection of the card details may furthermore only be effected for the purpose of paying for goods/services of the Merchant and on the basis of a direct contractual relationship with the Cardholder. The Merchant is not authorized to accept Payment Cards as a means of payment for goods and/or services

- a) that are not provided for its own account or are provided by order of the third party or which are provided by various providers, i.e. the Merchant may not submit transactions arising out of its own services/sales of goods together with transactions of other providers to the Acquirer bundled as a single transaction or have the aforesaid submitted by third parties as their own transaction; cross-selling (e.g. offering products of a third party to customers in parallel to offerings of the Merchant and forwarding details of the Cardholder to any third party (also undertakings affiliated with the Merchant)) is not permitted.
  - b) that are not rendered in the Merchant's ordinary course of business stated in the Contract with the Acquirer; in particular no grant of credits or other cash payments may underlie such goods/services;
  - c) where the turnover to be settled does not originate from the Merchant's line of business;
  - d) the content of which is illegal or immoral; this particularly applies to goods/services in connection with gambling that is illegal under the respectively applicable law; even if the goods/services are not illegal under the respectively applicable law, this also applies to goods/services in connection with gambling within the meaning of the law that is applicable to the Merchant, the Cardholder or the Merchant's goods/services if the card, which was accepted as payment for said goods/services, was issued in the United States of America;
  - e) that show content, which under the applicable law is subject to the regulations governing the protection of young persons or
  - f) that serve as, or are associated with, instructions on how to produce weapons, bombs or other explosive devices.
- (4) Payment Cards may not be accepted as payment to meet an uncollectible debt or to pay for a cheque that has not been honoured.
- (5) If the Cardholder makes it discernable to the Merchant that he is giving contradictory or incorrect details in connection with the placement of the order and/or the request for the card details the Payment Card may not be accepted. This also applies in the event that the order itself is unusual (e.g. because the same customer orders more than five (5) identical items or services on two consecutive days or in aggregate in several orders or uses more than one card number) or there are other reasons for suspecting that the card details are being used without authority.
- (6) If the Merchant has undertaken in this Agreement to offer Payment Cards of the Card Organization MasterCard (cf. Preamble) the Merchant must accept all card types for payment in card-not-present sales which can be offered under the terms of the MasterCard Regulations, including MasterCard Consumer Cards, MasterCard Commercial Cards and MasterCard Debit Cards ("Honor-All-Cards Rule"). The same applies mutatis mutandis for the acceptance of Visa cards regarding the categories "Consumer Immediate Debit Cards", "Consumer Deferred Debit and Credit Cards" and "Commercial Cards". The Honor-All-Cards Rule does not oblige the Merchant to offer to accept Maestro or V-Pay cards.
- (7) Irrespective of the provision to make changes under Clause 24 (2) the Acquirer shall be entitled to amend or supplement the above Terms and Conditions for the acceptance of payment with two weeks' written notice to the Merchant if the Acquirer considers said amendments to be necessary due to practices of unauthorized use or because amendments become necessary because of requirements of the Card Organizations. Paragraph 675g German Civil Code (BGB) (Amendments to a Framework Agreement on Payment

Services) shall not apply.

#### Clause 4 Duties when Accepting Card Payments, Credit Entries to the Credit of the Cardholder, Connecting to the Acquirer Via the Interface or Virtual Terminal

- (1) The Merchant is entitled to submit all due accounts receivable from Cardholders for goods and services, which have been created by using a Payment Card in card-not-present transactions, i.e. using the internet (e-commerce) and/or in writing or by telephone (mail order/phone order) without presentation of the Payment Card and which have been accepted (cf. Clause 3(1)) to the Acquirer for settlement and to settle said accounts receivable through the Acquirer. The Merchant is not prevented from also concluding card acceptance agreements with other acquirers unless the Merchant has expressly undertaken in this Agreement (cf. Contract) to work together with the Acquirer exclusively.
- (2) All transactions must be fully processed using exclusively the method of communication permitted by the Acquirer and more particularly defined in the interface specifications and in compliance with the rules described therein (e.g. on the content of the data to be delivered, data format etc.).
- (3) With every order placed remotely without physical presentation of the Payment Card, the Merchant shall, prior to forwarding the transaction details to the Acquirer, electronically record
  - a) the name and address of the Cardholder,
  - b) the card number and period of validity of the Payment Card, as well as the date of the transaction;
  - c) the invoiced amount and
  - d) the card validation code

forward said details in full and in readable form to the Acquirer when the transaction is submitted and store said details – except the card validation code – for the required retention period (Clause 17 (3) below) in appropriate protocols unless another process has been agreed on. The Merchant has no obligation to store the transaction data if the Merchant has chosen to be connected via the Virtual terminal and has so instructed the Acquirer (cf. (8) below). The Merchant must submit the information under b), c), and d) above to the Acquirer in full and in a readable form every time a transaction is submitted and must submit the information under a) at the Acquirer's request.

- (4) If the Merchant offers the Cardholders a special security process (e.g. "3-D Secure" consisting of "MasterCard SecureCode" for MasterCard and Maestro, "Verified-by-Visa" for Visa, cf. Clause 5) the Merchant must forward all card transactions to the Acquirer using said security process(es) and any and all transaction details through a correspondingly certified and registered platform, and must do so complying with the relevant requirements of the Card Organizations (e.g. use of logos, etc.) and complying with the relevant specifications for said security process(es) (e.g. corresponding user manuals) as well as the agreements reached for use of said security process(es).
- (5) The Merchant shall only submit transactions for settlement that are not based on a case which falls under Clauses 3(3) to Clause 3(5).
- (6) The Merchant undertakes to immediately notify the Acquirer in writing of any change in its security classification of e-commerce transactions (non-encrypted, SSL-encrypted, etc.) with Cardholders. If such change is not notified for reasons for which the Merchant is answerable, the Merchant shall be obliged to indemnify the Acquirer upon first demand against any penalty payments (so-called fines or penalties) imposed by the Card Organizations or to pay said penalty payments by way of the reimbursement of expenses. The Acquirer shall, on request, provide the Merchant with a statement of the Card Organizations' current penalty charges.

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- (7) After completing the transaction the Merchant must provide the Cardholder with a transaction receipt in writing and/or electronically. Said receipt must include a clear transaction ID as well as the Merchant's web address.
- (8) The Merchant undertakes to create the technical requirements for communicating with the Acquirer's (technical) systems in accordance with the Acquirer's specifications and the Card Organizations' specifications itself, or to have said requirements created by a third party commissioned by the Merchant (cf. Clause 19), and to maintain them during the term of this Agreement. This can – at the Merchant's option as laid down in the order form – be done in two alternative ways:
  - a) By the Merchant's systems being directly connected to the Acquirer's systems via an interface as defined in the interface specifications (hereinafter referred to as "Connection via the Interface") or
  - b) By the Merchant using the Acquirer's so-called virtual terminal (hereinafter referred to as "Connection via the Virtual Terminal").

The Merchant undertakes to create and maintain during the term of this Agreement and in accordance with the specifications provided by the Acquirer the prerequisites for connecting the Merchant via the Interface or via the Virtual Terminal – depending on the type of connection chosen (cf. above) – and for communicating with the Acquirer's (technical) systems (hereinafter referred to as the "Prerequisites for Connection"). The Merchant undertakes to implement all alterations and modifications to, and other developments of, the specifications, of which the Acquirer notifies the Merchant in writing and in good time, usually at least 6 (six) weeks before they take effect, and to do so in a timely manner. The Merchant is aware and acknowledges that fulfilment of the Prerequisites for Connection by the Merchant is a prerequisite for the Acquirer to be able to properly render it services under this Agreement.

- (9) Delivery of the transaction details to the Acquirer's systems platform shall be the Merchant's responsibility. The Merchant is under a duty to ensure that the transaction details delivered by it or by an commissioned third party are correct and complete and are in a format that is readable and can be (further) processed. The Acquirer is not liable for any loss of (transaction) details or for other malfunctions and damage to the extent they are due to the fact that the Merchant failed to observe the Acquirer's specifications.

In the event that data is lost following delivery by the Merchant or by a third party commissioned by the Merchant and upon delivery to the Acquirer, the Acquirer shall not be liable for that part of the damage that is due to the fact that no proper backup was made by the Merchant or by the third party commissioned by the Merchant on the Merchant's or the third party's own systems prior to transmission – provided that such a backup is permitted under the provisions of this Agreement, the applicable statutory provisions and the requirements of the Card Organizations.

- (10) The Merchant further undertakes to comply with general procedural requirements, particularly to comply with all of the technical, procedural, security and other requirements of the Card Organizations' Card Regulations. The Acquirer shall notify the Merchant of said requirements in good time. The Merchant particularly undertakes to comply with the relevant requirements of the Card Organizations in the version as applicable from time to time, particularly the requirements of the Payment Card Industry Data Security Standard (PCI DSS) and to prove compliance therewith in an appropriate manner to the Acquirer upon request. Further information on this can be found at e.g. [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org). If necessary, the Merchant shall accordingly register with the Card Organizations and, as the case may be become certified. If certified, the Merchant shall regularly, but at least annually, send the Acquirer a copy of the certificate without being asked to do so. The cost of certification shall be borne by the Merchant. If the Merchant fails to implement or comply with the requirements of the Payment Card Industry Data

Security Standard (PCI DSS), does not do so in full or does not do so in due time ("Breach of the PCI DSS") the Merchant must pay the Acquirer damages in the amount set out in the price list under "Liquidated Damages for Breach of the PCI DSS" for the extra cost incurred in implementing this Agreement due to the Breach of the PCI DSS for each month in which the Merchant breaches the PCI DSS. This shall not apply if the Merchant proves that the Acquirer did not suffer any loss whatsoever due to the Breach of the PCI DSS or suffered only a minor loss. This is without prejudice to the Acquirer's right of termination under Clause 23 (5)(c) (x).

- (11) The Merchant may give refunds arising out of card transactions ("Credits") only if the original card transaction is cancelled. If the card transaction has not yet been submitted to the Acquirer the Merchant must cancel the authorization request using the method of communication authorized by the Acquirer as more particularly defined and described in the interface specifications. The Merchant must reverse refunds arising out of underlying transactions that have been cancelled relating to card transactions that have already been submitted for settlement exclusively via the Acquirer, i.e. the credit on the card account must be initiated by the Merchant via the Acquirer. In that case the Acquirer shall reverse the transaction. The Merchant may provide Credits arising out of transactions which have been submitted to the Acquirer for settlement in accordance with these Contractual Terms and Conditions using the method of communication authorized by the Acquirer as more particularly defined and described in the interface specifications, only as an electronic credit by the method of communication authorized by the Acquirer as more particularly defined and described in the interface specifications and only in the amount of the previously executed debit. In addition the Merchant must electronically draw up a credit note with the card details and the amount of the credit, which credit note must be signed by the Merchant and the original of which must be handed over to the customer/Cardholder. The Merchant must submit the Credit to the Acquirer within two working days of having cancelled the card transaction.
- (12) The Merchant undertakes not to submit any card-not-present card transactions for settlement through other Merchant ID numbers. The Merchant must settle transactions within a particular distribution channel (here: card-not-present sales) using the respective Merchant ID number allocated by the Acquirer for this distribution channel.
- (13) The Merchant shall submit a card transaction or a transaction effected by the Cardholder to the Acquirer only once for settlement. In the event that the Merchant has concluded other card acceptance agreements with other acquirers in addition to this Agreement, the Merchant shall furthermore without exception only ever submit one and the same card transaction to one Acquirer in each case for settlement ("Prohibition of Multiple Submissions"). Upon request the Merchant shall provide the Acquirer with proof that each card transaction submitted was based on a legal transaction with the Cardholder that was permitted under this Agreement and in the amount that corresponds to the submitted card transaction.
- (14) The Merchant shall not submit a card transaction until the goods or services underlying the card transaction have been delivered or provided to the Cardholder or recipient of the goods/services, or the Cardholder has agreed to an advanced debit or a recurring debit on the Payment Card. Upon request by the Acquirer the Merchant must prove that the above conditions are met.
- (15) Following authorization of the payment with the Payment Card the Cardholder can no longer revoke the card payment in relation to the institution that issued the card unless he has agreed otherwise with the Card Issuer and the payee – in this case the Merchant – has consented to such revocation, cf. Paragraph 675p(4) sentence 2 German Civil Code (BGB). The Merchant hereby undertakes towards the Acquirer not to grant consent in the sense of the above sentence and to refrain from anything which could lead to the granting of any such right of revocation of the Cardholder beyond the scope of the normal case mentioned in Paragraph 675p(2) German

Civil Code (BGB).

- (16) Irrespective of the proviso to make changes under Clause 24 (2) the Acquirer shall be entitled to amend or supplement the aforementioned settlement principles with two weeks' written notice to the Merchant if the Acquirer considers said amendments to be necessary or expedient due to practices of unauthorized use or said amendments have become necessary because of requirements of the Card Organizations. Paragraph 675g German Civil Code (BGB) (Amendments to a Framework Agreement on Payment Services) shall not apply.

### Clause 5 Use of 3D Secure

If the Merchant commissions the use of the security process 3D Secure (cf. Clause 4(4)) at the Acquirer the following shall apply:

- (1) 3D Secure is a security process supported by Visa and MasterCard. Its purpose is to authenticate the use of Payment Cards and to thereby reduce the risk of Chargebacks to the detriment of e-commerce merchants if cardholders generally dispute the use of the authenticated Payment Card. The Merchant's risk of Chargebacks is only reduced in those cases of disputed instructions by cardholders expressly specified by the card organizations (Disputed Case, cf. Clause 1) and if the conditions specified by the Card Organizations are complied with (hereinafter together referred to as "Conditions for 3D Secure"). Any and all return debits (chargebacks) for other reasons are not covered by 3D Secure.
- (2) The Acquirer is not the provider of the 3D Secure process, rather it only supports the Merchant with the offering or implementation of 3D Secure transactions by providing the services described below. The Acquirer has no influence over the content of the Conditions for 3D Secure. The Merchant has a duty to independently find out and to keep up to date about the Conditions for 3D Secure and shall ensure that it complies with the Conditions for 3D Secure.
- (3) The Acquirer's Obligations
- If use of the 3D Secure process is commissioned the Acquirer shall have the following obligations:
- To process requests for authorization as part of implementing this Agreement with the information from the 3D Secure process if and with the content of said information transmitted to the Acquirer by the Merchant or by a third party commissioned by the Merchant to technically connect the Merchant to the 3D Secure process (cf. Clause 19).

- (4) The Merchant's Obligations

If use of the 3D Secure process is commissioned the Merchant shall have an obligation to ensure:

- THAT the Merchant itself or through the third party commissioned to technically connect the Merchant to the 3D Secure process (in particular enabling the use of the so-called Merchant Plug-In ("MPI") (cf. Clause 19, hereinafter also referred to as the "Merchant Service Provider") complies with all of the requirements and processes in accordance with the Conditions for 3D Secure as well as the interface specifications, in particular undergoes or has undergone the certifications, registration procedures and test procedures required by the Card Organizations.
- THAT the Merchant, or the Merchant Service Provider commissioned by the Merchant in accordance with Clause 19, (i) processes the authentication transactions in accordance with the Conditions for 3D Secure, including properly transmitting necessary information to the Acquirer (e.g. information on results of the authentication requests, log files for so-called "re-presentments" in the case of chargebacks, reversed debits) when submitting transactions (cf. Clause 4(1)), and (ii) holds the necessary documentation relating to the authentication and authorization transactions ready for the purposes of proof in view of Chargebacks

that may occur.

In all other respects Clause 4(8) shall apply mutatis mutandis.

If one of the Merchant's own Merchant Service Providers is used the Merchant shall be liable for non-compliance with the requirements and processes of the Conditions for 3D Secure by the MPI provider in relation to the Acquirer as though it was its own breach of duty;

- (5) The Acquirer shall allocate a separate Merchant ID to the Merchant for the use of 3D Secure. 3D Secure transactions must be executed solely using the Merchant ID allocated for this purpose. Said Merchant ID may not be used for any transactions other than 3D Secure transactions.
- (6) Termination/Suspension of the Use of 3D Secure

The right to use 3D Secure in accordance with Clause 5 shall lapse (i) automatically upon termination of this Agreement on "the Acceptance of Cards in Card-Not-Present Transactions" or (ii) if the agreement to use 3D Secure is terminated by one of the parties with a notice period of 10 working days or (iii) is terminated by one of the parties for good cause or (iv) if the Merchant is barred from using 3D Secure by a Card Organization. There is particularly good cause for terminating the agreement to use 3D Secure within this meaning if the Merchant or its MPI provider breaches obligations under this Clause 5 and/or the Conditions for 3D Secure.

Irrespective of the above-mentioned grounds for termination the Acquirer shall be entitled to prohibit the Merchant from continuing to use 3D Secure or to suspend it from 3D Secure transactions if and to the extent that the Merchant or the Merchant Service Provider used by the Merchant intentionally or negligently breaches the provisions of this Clause 5 and/or the Conditions for 3D Secure. The Acquirer shall promptly inform the Merchant of any suspension from 3D Secure transactions.

Note: In the event of any termination/suspension of the use of 3D Secure the Merchant's risk of Chargebacks is no longer reduced and there is no longer any so-called "liability shift".

### Clause 6 Use of the Web Front End

- (1) The Acquirer shall provide the Merchant with the web front end in accordance with the further particulars of the interface specifications for use via the Internet by means of card-not-present access. Reports and statistics on the transactions, which the Merchant has submitted to the Acquirer, can be downloaded, in each case in accordance with the further particulars of the interface specifications, and certain individual actions (e.g. cancellations) can be undertaken by the Merchant via the web front end and through a personalised online access (cf. below).
- (2) The Acquirer shall set up personalised individual log-ins for accessing the web front end. The Merchant may under no circumstances use log-in details for several employees jointly. The Merchant undertakes not to store any passwords or otherwise record any passwords in writing and not to disclose any passwords to third parties and undertakes to take suitable measures to prevent employees of the Merchant or other persons who act on behalf of the Merchant from doing so. If the Merchant is aware that there is a possible case of unauthorized use or that unauthorized third parties have discovered the passwords or if there is any suspicion of this the Merchant is under a duty to promptly notify the Acquirer and to promptly have the passwords concerned blocked or deactivated.
- (3) In all other cases the more particular provisions on the use of the web front end in the interface specifications shall apply.

Customer:

Contract number:

Date:

Person dealing:

### Clause 7 The Merchant's Rights to Access the Interface, the Virtual Terminal and the Web Front End

- (1) The Acquirer grants the Merchant the right to access the interface, the virtual terminal and the web front end in accordance with this Agreement; said right is limited in terms of subject matter to the permitted contractual use and application in accordance with the Agreement and described in these Contractual Terms and Conditions and in the interface specifications and is limited in terms of time to the term of this Agreement, is non-exclusive and is non-assignable. In particular the Merchant may not sublicense any rights of use unless, by way of exception, the Acquirer has expressly consented in advance and in writing to the contractual use by third parties whom the Merchant has named in advance. The Merchant is not granted any more far-reaching rights.
- (2) All trademarks rights, copyrights and other rights to the interface, the Virtual Terminal and to the web front end (as well as to the structure and layout of the Internet pages concerned) and to the underlying software codes/source codes shall remain with the Acquirer or licensors respectively
- (3) Upon termination of the Agreement the Merchant must cease using the interface, the Virtual Terminal and the web front end and must return the interface specifications and other documentation and specifications provided, as well as any and all copies made thereof, to the Acquirer or – if it is not possible to return them or it is only possible to return them at an unreasonable cost – must delete or destroy them in a manner that is protected against any reversion of information.

### Clause 8 Availability of the Interface, the Virtual Terminal and the Web Front End

The Acquirer reserves the right to restrict the availability of the interface, the Virtual Terminal and the web front end temporarily, either in whole or in part, to a customary and reasonable extent if important reasons make such a restriction necessary – such important reasons include, inter alia, but without limitation necessary maintenance work, necessary adaptations, changes and additions to the underlying software applications, measures to locate and rectify malfunctions and to ensure the integrity of the system as well as restrictions due to specific risks of unauthorized use. Such interruptions and interference with the usability of the interface, the Virtual Terminal and the web front end shall – in the above-mentioned cases, also within the availability periods stipulated in the above sentence – be deemed to be in conformity with the contract. The Acquirer shall not be liable for any faults that occur when setting up the connection to the Acquirer's systems platform due to telecommunication or internet providing (for example as a consequence of all the lines being busy).

### Clause 9 Support Service

The Acquirer shall provide the Merchant with a support service. The service times are Mondays to Fridays (other than on national or Bavarian public holidays) from 9.00 am until 6.00 pm German time. The Merchant is obliged to send enquiries to the support desk by e-mail to the address support@wirecard.com. Any deviating service times and any response times that may be agreed shall be stipulated in a service level agreement to be concluded separately. The support service shall cover the rectification by means of remote maintenance of all faults that arise during proper use of the interface, the Virtual Terminal or the web front end. The Merchant shall be available to the necessary extent and at the necessary times for rectifying the faults and is obliged to comply with and follow the Acquirer's advice and instructions aimed at analyzing the problem and determining the fault. The Merchant has no right to require that an engineer and/or employees of the Acquirer be sent on site.

### Clause 10 Payout Claims, Assignment of Claims

If all of the conditions mentioned in the following Clauses 10 (1) to 10 (13) are met, the Acquirer undertakes - subject to the provisions in Clause 10 (15) and Clause 13(1) - to pay out to the Merchant the amounts resulting

from the card sales submitted less the agreed fees and any expenses (cf. Clause 12), e.g. the discount/disagio, other agreed settlement charges, fees for foreign transfers and/or transfers to foreign currency accounts, costs due to currency fluctuations as well as the statutory value added tax applicable hereto, if any. The Acquirer is not obliged to hand over to the Merchant any benefits received from the amounts to be paid out up to and including the date of the payout. As regards this Paragraphs 667 and 668 German Civil Code (BGB) shall not apply. Unless otherwise agreed, the minimum payout amount shall be EUR 50.00. Amounts below said limit shall not be paid out until they exceed said limit, at the latest upon termination of this Agreement. This shall be without prejudice to any further-reaching set-off rights of the Acquirer that may exist. The payouts shall be paid within the periods for payment on the basis of proper and fully transmitted transaction details (cf. Clause 4(2) and (3)) by remittance or non-negotiable cheque and subject to the Chargebacks under Clause 13 and the following (cumulative) conditions:

- (1) The acceptance of the Payment Card as the means of payment was permitted under Clause 3 and at the time when the transaction was submitted the Merchant had no knowledge that the card had been declared invalid by means of blacklists or other notices;
- (2) The settlement principles under Clauses 3 and 4 have been complied with, in particular the Merchant has not yet submitted the card transaction concerned to the Acquirer or another acquirer, with whom the Merchant has concluded an agreement regarding the acceptance of cards (cf. the Prohibition of Multiple Submissions, Clause 4(11));
- (3) The Merchant has received a distance sales order from the Cardholder according to which the latter wishes to pay using his Payment Card;
- (4) The transaction date falls within the period of validity of the Payment Card;
- (5) The card sale was authorized by the Acquirer online; in the case of distance sales transactions, issuing authorization with an authorization number (cf. Clause 10) may also be made dependent on identification measures, such as e.g. the transmission of a copy of photo identification of the Cardholder;
- (6) The total amount of goods/services sold or rendered, which in the case of a cash transaction would have been settled in one amount, has not been divided into several transactions;
- (7) All sale details have been forwarded to the Acquirer correctly, completely and within two (2) days of the Performance Date;
- (8) The sale is made out in a contractually agreed transaction currency;
- (9) The Merchant has informed the Cardholder fully and correctly of the Merchant's full name and address, including the Merchant's Internet address and e-mail address, and has clearly designated itself to the Cardholder as the Cardholder's responsible contract partner;
- (10) The Merchant has made a complete, correct and readable description of the goods/services offered easily accessible to the Cardholder;
- (11) The Merchant has made its general terms and conditions of business easily accessible to the Cardholder so that it is possible for the Cardholder to become aware of all of the essential terms and conditions (particularly his rights such as e.g. the right of cancellation or right of return and any restrictions of use) which are required in order to be able to make a proper decision on the purchase of the goods/services concerned;
- (12) The Merchant has observed all statutory provisions which apply under the respective legal systems to distance sales transactions; and
- (13) The Merchant has sent a confirmation of order and/or invoice in writing or by e-mail with a note that the Cardholder's card account will be debited; the complete card number, the card security code and the period of validity may not appear on such confirmation for reasons of security.

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- (14) Notwithstanding the proviso to make changes under Clause 24 (2) the Acquirer shall be entitled to amend or supplement the payout conditions stipulated in Clauses 10 (1) to 10 (13) with two weeks' written notice to the Merchant if the Acquirer considers said amendments to be necessary due to practices of unauthorized use or said amendments have become necessary because of requirements of the Card Organizations. Paragraph 675g German Civil Code (BGB) (Amendments to a Framework Agreement on Payment Services) shall not apply.
- (15) If one of the conditions mentioned in Clause 10 is not met, the Acquirer shall be released from the payment obligation. Any payments made to the Merchant nevertheless shall be made subject to Chargeback or offset in accordance with Clause 13.
- (16) The Merchant must immediately check any and all statements rendered to it and must notify the Acquirer of any objections immediately, however no later than within a preclusion period of six (6) weeks following receipt of the respective statement. Timely dispatch of the objection shall be sufficient in order to meet the deadline. After the expiry of said period, the statement shall be deemed to have been approved. The Acquirer shall each time draw attention to this consequence in the statement of account. The Merchant can require that the statement of account be corrected even after expiry of the deadline but must then prove that the statement of account was incorrect or incomplete.
- (17) The Merchant hereby already assigns all of its claims against the Cardholder arising out of goods/services and which have been created by use of the Payment Card (claims arising out of the underlying transaction) as well as any claims against the Card Issuer, which are in connection with use of the Payment Card, to the Acquirer. The Acquirer accepts said assignment. The assignment shall in each case become effective when the Acquirer receives the submission of the transaction (cf. Clause 4(3)). Clause 13 (2) remains unaffected.
- (18) The Merchant's claims within the meaning of sentence 1 of the introduction to Clause 5 must be asserted in writing to the Acquirer within a preclusion period of six (6) months of expiry of the six-week deadline under Clause 10 (16). Any later assertion is precluded. This Clause 10 (18) does not apply to claims, about the existence of which the parties began negotiating before expiry of the six-month deadline.

### Clause 11 Authorization of Transactions

- (1) Each card transaction always requires online authorization from the Acquirer regardless of its amount. The Acquirer issues the Merchant with an authorization number together with the online authorization.
- (2) By issuing the authorization number the Acquirer confirms that, at the time of authorization, use of the Payment Card is not restricted under the scope of this Agreement, the Payment Card has not been declared invalid on any blacklist of the Card Organizations or similar lists or other notices and that the transaction amount is within the transaction limit. The authorization number does not include an undertaking to pay. In particular the Acquirer remains entitled to make a Chargeback pursuant to Clause 13.
- (3) The authorization number is issued or rejected automatically; in the event of rejection an error notification is transmitted.
- (4) It is not possible to settle Payment Card transactions if there is a disruption in the online transmission or some other operational disruption. No manual or other settlement method is permitted.

### Clause 12 Fees and Charges, Reimbursement of Expenses

- (1) The fees to be paid by the Merchant for using the Acquirer's services, in particular the discount/disagio (hereinafter together referred to as "Service Charges"), shall be in line with the prices agreed (in the Contract) when the Agreement was concluded.

In this connection the Acquirer is also entitled to demand as a

Service Charge a charge for services, which, in the circumstances, can only be expected against payment of a charge (e.g. for the provision of copies of statements of account). In derogation from Paragraph 675f(4) sentence 2 German Civil Code (BGB), charging Service Charges for the performance of secondary obligations pursuant to Paragraph 675c German Civil Code (BGB) - Paragraph 676c German Civil Code (BGB) is permitted. The Acquirer can opt for value added tax irrespective of whether the Merchant can deduct the amount of value added tax paid as input tax. The Acquirer shall charge the Merchant the value added tax amount in addition to the agreed prices. In addition the current price list applies, which shall be sent to the Merchant at any time upon request.

- (2) If special charges arise due to the Card Organizations, e.g. for registration in special vendor programmes, the Acquirer shall be entitled to charge said charges on to the Merchant.
- (3) The agreed discount/disagio (as part of the Service Charges, cf. sub-clause (1) above) has been calculated on the basis of
  - the average transaction amount per month (total value of all transactions in a month divided by the number of transactions), and/or
  - the average number of transactions of a month, and/or
  - the total turnover of a month

as stated by the Merchant at conclusion of the Agreement or when a change is agreed on (the stated average transaction amount, the stated average number of transactions or the stated total turnover hereinafter also "Forecast Amounts"); it shall imposed on each final invoice amount for a transaction. If any of the Forecasts Amounts is fallen short of by more than 10% in more than one (1) month, then the Acquirer may fix a higher discount/disagio or a separate transaction fee. The Acquirer shall inform the Merchant in advance if new discount/disagio within the meaning of the above two sentences is fixed at the same time granting a reasonable time limit for objecting. If the Merchant does not object in writing within the set time limit the Service Charge fixed by the Acquirer shall be deemed to be agreed. The Acquirer shall advise the Merchant of this in its notice of change; Paragraph 675g German Civil Code (BGB) shall not apply.

- (4) Notwithstanding Clause 12 (3) and Clause 24 (2) the Acquirer shall during the term of the Agreement additionally be entitled to change the discount/disagio and other Service Charges, exercising equitable discretion in accordance with Paragraph 315 German Civil Code (BGB), every half year, for the first time twelve (12) months following conclusion of the Agreement if material cost factors change. When a change is made, the parameters total turnover sums, the number of transactions, the average turnover, the number of credits and Chargebacks and other cost-relevant framework conditions (e.g. amendments to the Card Regulations and/or charges by the Card Organizations) shall, in particular, be taken into account as cost factors exercising equitable discretion (Paragraph 315 German Civil Code (BGB)). The Acquirer shall inform the Merchant of the change in writing and in good time.
- (5) All expenses which the Acquirer incurs, whether directly or indirectly, in connection with the performance of this Agreement must be reimbursed by the Merchant after a corresponding statement of account has been issued provided that the Acquirer was, in the circumstances, entitled to consider said expenses to be necessary (Paragraphs 675c, 670 German Civil Code (BGB)). In lieu of the reimbursement the Acquirer can - pursuant to Paragraph 257 German Civil Code (BGB) - demand an indemnity from and against any liability entered into by it or incurred by it in this connection. Expenses for the purposes of sentences 1 and 2 shall in particular but without limitation be all penalties, Chargebacks/reverse debits (cf. Clause 13) or other charges by the Card Organizations, which the Card Organizations impose on the Acquirer - as the Card Organizations' licensee - either directly or indirectly on the basis of the Card

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Regulations (cf. Clause 1), to the extent that said penalties or other charges were caused by the Merchant's transaction or any act and/or omission of the Merchant and were charged on the basis of the Card Regulations. Provided the use of 3D Secure has been commissioned in accordance with Clause 4a expenses for the purposes of sentences 1 and 2 are in addition particularly also payment obligations of the Acquirer arising out of claims of third parties based on the fact that the Merchant or its MPI provider has breached the obligations under Clause 5 and/or the Conditions for 3D Secure.

- (6) The Acquirer shall be entitled to withhold the Service Charges (cf. Clause (1) above), special charges (cf. Clause (2) above and expenses (cf. Clause (5) above) agreed with the Merchant plus the statutory value added tax as applicable from time to time from each card transaction (cf. Clause 10).
- (7) If the account kept by the Acquirer for the Merchant shows a negative balance that is due, the Merchant shall be obliged to settle said negative balances immediately after receipt of the statement showing the negative balances. If the Merchant has given the Acquirer a corresponding direct debit mandate for this, the settlement shall be effected by direct debit. If no direct debit authorization has been granted or a direct debit entry is not possible for other reasons, the Merchant must settle any negative balances in some other way.
- (8) All statements of account are due for payment immediately upon receipt of the account.
- (9) The Acquirer offers the Merchant that it will show the charges payable by the Merchant separately for the individual types of card of the Card Organizations VISA and MasterCard and shall additionally issue the Merchant with a separate statement of account in which the charges for the transactions submitted by the Merchant are separately broken down according to Card Organization and type of card used (e.g. VISA Commercial Card, VISA Consumer deferred debit and credit cards, MasterCard Debit Card transactions etc.) (hereinafter referred to as "Detailed Breakdown of Charges"). If the Merchant, at its request, receives a Detailed Breakdown of Charges from the Acquirer the Acquirer shall be entitled to charge an additional Service Charge in accordance with the price list for preparing the Detailed Breakdown of Charges in view of the associated extra cost.

### Clause 13 Chargebacks

- (1) Any payout relating to the respective payment card transaction is in principle made under reserve. Any payment obligation shall lapse in the event that one of the conditions set out in Clauses 10 (1) to 10 (13) is not met or is not met in full (even if this was not apparent at the time of the payout by the Acquirer) and if the corresponding amount of the card transaction (card turnover) has been charged back to the Acquirer by the Card Issuer (so-called "Chargebacks").
- (2) If in the cases of Clause 13 (1) the Acquirer nevertheless makes payments, the Acquirer can within 18 months of the payment date require that said payments be refunded or that said payments be offset against its own payment obligations owed towards the Merchant ("Chargeback"). The Chargeback is effected plus the Service Charges that accrue for a Chargeback. In the event of any Chargeback the Acquirer shall be entitled to charge the card turnover already paid to the Merchant plus the Service Charge incurred for the Chargeback fee back to the Merchant and to offset them against other due claims of the Merchant. If there is no possibility of offset the Merchant shall be obliged to pay immediately. The Acquirer shall be entitled to collect the due amount by direct debit from the Merchant's bank account stated in the Contract. The Merchant must ensure that its account has sufficient funds.

In the event of any Chargeback under this Clause 13 the Acquirer reassigns the Merchant's claim against the Cardholder which underlies the Chargeback back to the Merchant (cf. Clause 10 (17)) upon complete satisfaction of the corresponding Chargeback claim by the Merchant. The Merchant hereby accepts said reassignment. The Merchant does not have any right to reassignment of the Serv-

ice Charge which accrued for the transaction concerned because the Acquirer has rendered the service paid for.

- (3) The Acquirer can furthermore make a Chargeback under Clause 13 (2) if the Cardholder does not recognize a debit and demands cancellation of the debit on its card account held at the bank that issued the card or refuses to make payment and within six (6) months after his card account has been debited or after the goods/services have been rendered to the Cardholder the Cardholder declares in writing:
  - a) THAT he has not given any instruction to pay using his Payment Card or has not done so in the amount debited from him (Disputed Case, cf. Clause 1),
  - b) THAT the goods/services were not provided at all or not to the agreed delivery address or at the agreed time;
  - c) THAT the goods/services did not correspond to a description which existed at the time of purchase or that the Cardholder has returned the goods to the Merchant or has cancelled the contract or the service or
  - d) THAT the delivery received by the Cardholder was defective or damaged,
    - unless
      - i) in the case of (a) there is a case of Clause 13 (5) or that
      - ii) in the cases of (b) to (d) the Merchant proves proper performance within fourteen (14) days following a corresponding request by the Acquirer.

The proof mentioned under (ii) above for the avoidance of a Chargeback is not possible if the transaction turnover is less than EUR 10.00.

- (4) In addition the Merchant is under a duty to pay back under Paragraph 812 German Civil Code (BGB) if the underlying transaction between the Merchant and the Cardholder is void or has been cancelled by revocation, avoidance or termination by the Cardholder.
- (5) The Chargeback right under Clause 13 (3)(a) does not exist if
  - a) in the Contract the Merchant has chosen the form of agreement "With a promise to pay in the event that the Cardholder disputes having given the instructions" and the Merchant submits the complete documentation relating to the order in accordance with Clause 17 (1) and it arises therefrom that the customer (even if the customer's identity can no longer be determined) issued an instruction to debit the respective card account, unless the Merchant knew or exercising ordinary care ought to have known that the instruction did not come from the Cardholder or
  - b) The Acquirer can prove to the rightful Cardholder's Card Issuer with the cooperation of the Merchant THAT
    - The Merchant carried out the card transaction by properly using a special security process (see Clause 4(4), Clause 5 above) and
    - All conditions, particularly the conditions stipulated in the respectively applicable rules and regulations of the Card Organizations for the security process concerned, for shifting the liability (so-called "liability shift") or for the Card Issuer to assume liability are met (the Acquirer shall provide details regarding this upon request) and
    - A code for the reason for disputing that the instructions were given was in fact issued in accordance with the terms and conditions applicable to the special security process and for which the Card Issuer has declared that it will assume liability and furthermore
    - The Merchant has fulfilled all of the obligations under this Agreement as well as all obligations under the requirements of the

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Card Organizations with regard to compliance with the special security process applicable from time to time (e.g. 3D Secure).

- (6) If the proportion of Chargebacks arising out of card transactions at the Merchant exceeds 1 % of the number of such transactions (only debits; no credits) or 2 % of the total turnover volume (“Limits”) over a period of one (1) month the Acquirer shall immediately notify the Merchant thereof.
- (7) In the event that the Limits mentioned in Clause 13 (6) are exceeded and the Card Organizations therefore impose penalty charges on the Acquirer for excessive chargeback rates (so-called Excessive Chargebacks) the Merchant shall, upon first demand, fully indemnify the Acquirer against such penalty charges and pay such penalty charges in accordance with Clause 12 (6) The Acquirer shall, at any time upon request, provide the Merchant with a list of the offences incurring penalty charges and the amount of the penalty charges. The Acquirer is thereby not obliged to allow the Merchant the possibility of negotiating, or suchlike, with the Card Organization prior to payment of the penalty charges by the Merchant. This shall be without prejudice to the Merchant’s obligation to additionally reimburse the Acquirer other expenses, which the Acquirer incurs whether directly or indirectly in this connection or otherwise in connection with the performance of this Agreement, in accordance with Clause 12 (6) or to indemnify the Acquirer from and against such liabilities.
- (8) When calculating the proportion of the Chargebacks, account shall also be taken of those transactions/sales where the Merchant issues credits to the Cardholder before a Chargeback is made so as to avoid such Chargeback and to thereby not exceed the Limits mentioned in Clause 13 (6). This is always to be presumed if the credit is issued after the Acquirer has received a query from the Card Issuer regarding a transaction and has forwarded said query to the Merchant for clarification.
- (9) The provisions of this Clause 13 shall continue to apply for a further period of 18 months following the termination of this Agreement. The Acquirer’s rights to impose Chargebacks on the Merchant are not limited by either the issue of the authorization number by the Acquirer (Clause 11 (1)) nor by Paragraph 675p (2) German Civil Code (BGB).

### Clause 14 Preclusion of the Right to Object, Objections resulting from the Transaction with the Cardholder

If a Chargeback has been lawfully made under Clause 13, further claims and any objections by the Merchant – for example arising out of the law governing unjust enrichment – against the Acquirer shall be excluded. The Merchant shall remain at liberty to turn directly to the Cardholder in order to assert its payment claim arising out of the underlying transaction which it concluded with the Cardholder.

### Clause 15 Retention / Provision of Security

In order to secure all existing and future claims – also conditional claims and claims that are limited in time – to which the Acquirer is entitled against the Merchant resulting from this Agreement, in particular claims arising out of Chargebacks including any penalty charges by the Card Organizations, the parties agree the following:

- (1) From every transaction the Acquirer shall retain the fraction of the final invoice amount defined in the Contract (“Holdback”). The Acquirer shall not pay said Holdback out to the Merchant until after the expiry of the agreed holdback period, in each case at the most, however, after the expiry of 180 days.
- (2) If, due to breaches of contract by the Merchant, it has to be assumed that such breaches will lead to penalty charges by the Card Organizations, for which the Merchant has to reimburse the Acquirer the expenses or, from and against which it must indemnify the Acquirer in accordance with Clause 12 (5), the Acquirer may already in advance demand a payment equivalent to the prospective penalty charge.
- (3) The Acquirer shall in each case separate the amounts held back

within one working day after the statement of account has been issued and shall transfer said amounts to a separately account held for this purpose.

- (4) The Acquirer has a right to realise the retained security as soon as the Merchant does not pay following a written statement of account or equivalent payment statement within two (2) weeks of the date of the statement of account.
- (5) The Acquirer shall regularly review the amount of the retained security and shall assess the extent of the security risk. If the amount of the retention exceeds the foreseeable security requirement by more than 10 % the Acquirer shall pay out the excess amount. If the estimated security requirement exceeds the Holdback, the Acquirer shall have the right, which must be exercised according to equitable discretion (Paragraph 315 German Civil Code (BGB)), to change the amount of the Holdback and/or to reasonably extend the holdback period. The Acquirer’s security requirement shall particularly be increased if
  - a) the Merchant’s Chargeback rate exceeds the Limits mentioned in Clause 13 (6) or has actually increased by more than 50 % compared to the preceding month;
  - b) the Merchant’s turnover falls significantly;
  - c) The Merchant submits transactions under this Agreement to the Acquirer, which significantly exceed agreed transaction limits or transactions are repeatedly submitted, which exceed agreed transaction limits;
  - d) Taking into account the usual principles for assessing credit standing there is evidence to suggest that the Merchant’s financial circumstances have considerably worsened;
  - e) A petition for the opening of insolvency proceedings over the Merchant’s assets is filed; or
  - f) the Agreement has been terminated.
- (6) After termination of the contractual relationship the Holdback shall in any event remain with the Acquirer for a further nine (9) months in order to secure any claims for recovery resulting from Chargebacks. Nine (9) months after termination of the Agreement the remaining credit balance shall be transferred to the Merchant’s account designated to the Acquirer. If it has to be assumed that, due to breaches of contract by the Merchant, penalties will be imposed by the Card Organizations the remaining credit balance can be retained for up to twelve (12) months after termination of the Agreement. After expiry of the holdback period the Acquirer shall pay out the remaining amount to the Merchant.
- (7) The Merchant must immediately check the statements rendered in this regard and must immediately notify the Acquirer of any objections, however no later than within a deadline of six (6) weeks following receipt of the statement. Timely dispatch of the objection shall be sufficient in order to meet the deadline. After the expiry of said deadline, the statement shall be deemed to have been approved. The Acquirer shall point out this consequence in the statement of account. The Merchant can require that the statement of account be corrected even after expiry of the deadline but must then prove that the statement of account was incorrect or incomplete.
- (8) The Merchant’s rights to have security that has been retained returned must be asserted in writing to the Acquirer within a preclusion period of six (6) months following expiry of the six-week deadline under Clause 15 (7). Any later assertion is precluded. This Clause 15 (8) does not apply to claims, about the existence of which the parties began negotiating before expiry of the six-month deadline.

### Clause 16 Advertising and Marketing

- (1) The Merchant is obliged to make the marks/logos/other distinctive signs advertising the possibility of paying by Payment Cards clearly

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visible on its website.

- (2) Furthermore, the Merchant may use the trademark-protected designations of the respective Card Organizations (e.g. “MasterCard”, “Maestro”, “Visa” and “JCB”) including the respective logos for advertising purposes only with the prior written consent of the Acquirer, unless it is otherwise entitled to do so. The logos and/or marks may in particular not be used in any manner which impairs the interests of the respective Card Organization as the proprietor of the mark. This includes, inter alia, that the impression may not be given that the respective Card Organization produces, renders or supports the Merchant's goods and/or services. Use of the logos and trademarks must be discontinued, and corresponding distinctive signs at the Merchant's premises and/or on its website must be removed, promptly after termination of this Agreement.
- (3) If the Merchant carries out direct mail campaigns or other forms of advertising the relevant symbols and logos may only appear in connection with the payment details or payment notes and on no account on the first page of any such direct mail. If the direct mail campaign is directed at the holders of only one type of card the direct mail campaign must include an express note to the effect that the respective Card Organization does not assume any responsibility for the respective offering and does not support it. Before sending out the first samples of a direct mail campaign the specific design of the direct mail campaign or of the advertising must be approved by the respective Card Organization. The above provision applies mutatis mutandis to mail campaigns sent by e-mail.
- (4) If one of the Card Organizations requires, whether directly or through the Acquirer, that use of the respective mark/logo be ceased or requires that it be adapted to be in line with the requirements of the respective Card Organization, the Merchant shall promptly comply with this requirement at its own cost.

### Clause 17 Retention and Documentation

- (1) The Merchant is obliged to retain the following data and documents in electronic or written form for every transaction transmitted to the Acquirer:
  - a) In the case of e-commerce, all data transmitted by the customer without the card security code;
  - b) In the case of distance sales by post or fax, all documents transmitted by the customer;
  - c) In the case of distance sales by telephone, the date and time of the phone call, the person from whom the instruction to pay by Payment Card was taken and the subject matter of the order, but not the card security code;
- (2) The card security code must be deleted after the authorization request.
- (3) The Merchant must retain all documents and data defined in Clause 12(1) for at least eighteen (18) months after the submission of the transaction, unless deletion is mandatory by law. The data and documents must, upon request, be made available to the Acquirer for review purposes on paper or in a readable electronic format. If the Merchant does not comply with any such request without undue delay, the Acquirer shall have the right to charge back the full invoiced amount in accordance with Clause 8. Any further statutory duties of the Merchant to retain documents/data shall remain unaffected.

### Clause 18 Notification Duties

If when a written, phone or electronic order is placed the Merchant has reasonable grounds for believing that the order has not been transmitted by the rightful Cardholder the Merchant must try to clarify the correctness of the order with the Cardholder.

### Clause 19 Third Parties involved in Processing the Agreement

- (1) The Merchant is in principle not entitled to engage third parties

to perform its obligations under this Agreement. The Merchant is, however, entitled to instruct a Merchant Service Provider if and to the extent that the Acquirer has expressly approved said Merchant Service Provider in writing. If the Merchant Service Provider is Wirecard Technologies AG, Einsteinring 35, 85609 Aschheim, Germany, Register No. 142427 (Local Court of Munich, Companies' Register) consent shall be deemed to have been given upon conclusion of this Agreement.

There is no right to be granted consent; the Acquirer is in particular entitled to make its consent dependent on the Merchant Service Provider guaranteeing that it will comply with the provisions and obligations under this Agreement as well as the requirements of the Card Organizations, in particular that it will comply with the PCI regulations (cf. Clause 4(10)) and in this connection – as far as necessary – granting the Acquirer as well as the Card Organizations sufficient audit possibilities (“Audit Right”).

If a Merchant Service Provider is used the Merchant shall be liable for non-compliance with the obligations under this Agreement by the Merchant Service Provider in relation to the Acquirer as though it was its own breach of duty.

- (2) The Acquirer has the right to engage third parties to perform its contractual obligations.

### Clause 20 Information, Right to Information, Confidentiality, The Correctness of Information

- (1) The Merchant must provide the details on the attached Contract in full and truthfully. Any changes thereto must be notified to the Acquirer in writing without delay, in particular
  - a) any change in the objects of the business,
  - b) any change to the product range,
  - c) any disposal or lease of the business or any other change in ownership or shareholders/partners,
  - d) any change in the legal form or company name,
  - e) any change of address or bank details.

The Merchant must bear the damage incurred by the Acquirer as a result of any negligent or intentional breach of said duties.

In addition, due to money-laundering regulations, the Acquirer is under an obligation to collect certain details from the Merchant. The Merchant undertakes in this regard to provide all details in full and correctly and to promptly inform the Acquirer of any changes to said details. In addition, the Merchant undertakes to comply with all money-laundering regulations applicable to it.

- (2) Based on the details provided by the Merchant about the businesses operated by the Merchant, the Acquirer shall allocate the Merchant one or more Merchant Category Codes. Notwithstanding this the Merchant must notify the Acquirer of every change so that the Acquirer can, if appropriate, adjust the Merchant Category Code.
- (3) The Merchant shall provide the Acquirer with a copy of each of the documents requested by it concerning the Merchant (e.g. certified extract from the Commercial Register, other extracts from the Commercial Register, trading licences, annual accounts, articles of association/partnership agreement, print-out of internet pages). The Merchant shall in each case provide information about the organization of its business operation (including security measures) insofar as such information has to - in the Acquirer's judgement - be provided to the Card Organizations.
- (4) The contracting parties undertake to keep business and trade secrets and other business or technical information or know-how of the other contracting party, which they obtain in connection with this Agreement, strictly confidential and to impose a corresponding

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confidentiality obligation on their employees and on third parties insofar as they entrust them with performance of this Agreement. The confidentiality obligation does not apply to information, which it can be demonstrated is already publicly known, the collection, use or processing of which the other contracting party expressly consented to in writing or the transmission of which is prescribed or permitted by legal provisions or administrative measures.

- (5) The Acquirer is granted the authority to report the master data stated in the Contract to appropriate offices to check for any other breaches of contract in relation to other credit card acceptance companies provided this is not unlawful. This applies mutandis in the case of breaches of contract by the Merchant.
- (6) The contracting parties undertake to comply with the relevant data protection provisions and to protect the data relating to the Cardholder, which is collected and stored in connection with performance of the Agreement, against access by unauthorized third parties, not to forward said data to third parties and to use said data solely for the purposes of performance of the Agreement. In this regard the Merchant must also comply with the relevant requirements of the card organizations in the version as applicable from time to time, in particular the PCI DSS. The Merchant guarantees that within its sphere of influence it is not possible for the data input to be manipulated, in particular that any unauthorized use by members of the firm or unauthorized persons is not possible. In the event of any unauthorized access or attempt to access its computer systems pertaining to cards or in the event of any possible unauthorized use of card data the Merchant shall be obliged to notify the Acquirer without undue delay and at its cost to introduce the necessary steps by agreement with the Acquirer. The Acquirer shall be entitled to extraordinarily terminate the Agreement with immediate effect if it does not consider the measures to be adequate.
- (7) On request the Merchant shall permit the Acquirer, the Card Organizations or a third party instructed by the Acquirer or the Card Organizations to inspect its business premises and to carry out security audits (e.g. a PCI audit) in order to enable the Acquirer to check that the provisions of this Agreement as well as the requirements of the Card Organizations to be complied with by the Merchant are being complied with. In doing so, checks may particularly be made as to whether, and the extent to which, the Merchant's organizational measures are appropriate according to the standards customary in the trade to exclude the possibility of any unauthorized use and/or other manipulation of any kind of the Merchant's systems. The Merchant undertakes that it will - at its own cost - fully cooperate with and enable such inspections/audits.
- (8) Furthermore, the Merchant must ensure that all inspections/audits can be carried out directly in relation to and at the business premises of the technical service providers and other subcontractors commissioned by the Merchant and vicarious agents of the Merchant, whom the Merchant has commissioned in connection with the submission and processing of card transactions.

### Clause 21 Electronic Commerce

- (1) The Merchant warrants that information about cards, including the card number, expiry date and, as the case may be, card security code will be transferred only in encrypted form using the method authorized by the Acquirer.
- (2) The Merchant's offerings must avoid the impression that the Card Organizations are the providers or senders of the goods or services.
- (3) The Merchant undertakes towards the Acquirer to comply with the relevant provisions, in particular those concerning distance sales contracts.
- (4) The Merchant accepts that the web address provided in the Contract will be indicated on the Cardholder's Payment Card statement.
- (5) The Acquirer must promptly be notified of any other web addresses of the Merchant through which card payments are to be processed and said web addresses may be used for card payments only once

they have been approved by the Acquirer.

- (6) The Merchant shall clearly point out to the Cardholder when payment is made which internet address will appear on the statement. If this address is different from the one where the order was placed, the Merchant will set up a reference or link to the address where the order was placed on the page of the settlement address.
- (7) Whenever offerings are settled by Payment Card, the Merchant undertakes to give the following details clearly and unambiguously in accordance with the EU Distance Selling Directive and the EU E-Commerce Directive:
  - a) Full name and address, company's registered office (seat), commercial registry number, location of the commercial registry and all other details required in the Merchant's country of establishment;
  - b) The terms and conditions of delivery, especially any provisions concerning the right of withdrawal or the right to return goods as well as the settlement of credits;
  - c) All charges to be paid for the Merchant's goods/services, including delivery, packaging and taxes;
  - d) The currency, in which the goods/services will be invoiced;
  - e) A reference to customer service including possibilities of contacting them;
  - f) The data protection principles observed by the Merchant for the use of customer data and for transmitting card details.
- (8) The Merchant undertakes:
  - a) To offer prices only in those currencies, which have been accepted for settlement by the Acquirer according to the Contract;
  - b) In the case of recurring goods/services, to set up simple possibilities of terminating online;
  - c) In the event that its pages/services are used for a trial period, to inform the Cardholder in a timely manner when such trial use will end, as of when the duty to pay begins and what possibilities of termination the Cardholder has;
  - d) In the case of direct access to other companies (links), to expressly point out said change.
- (9) If the Merchant operates internet addresses in languages other than German or English, it shall, upon request, send the Acquirer a German or English translation.
- (10) If the Merchant operates a business which, according to the applicable law, requires an official licence (particularly gambling) or requires particular access controls the Merchant shall promptly prove to the Acquirer that they are guaranteed.

### Clause 22 Liability; Obligation of the Merchant to Pay a Contractual Penalty in the Event of a Breach of Duty for Which the Merchant is Answerable

- (1) The Merchant shall be liable towards the Acquirer for the proper fulfilment of the obligations assumed under this Agreement exercising the care of a responsible businessman.
- (2) The Acquirer shall be liable in accordance with this Agreement – also when executing payment transactions – only for intentional or negligent breaches of duty. The Acquirer does not have strict liability pursuant to Paragraph 675y German Civil Code (BGB) in the event of any non-executed or incorrectly executed payment transaction.
- (3) In the event that one of the Card Organizations imposes penalty charges on an Acquirer due to a negligent or intentional breach of a contractual duty (cf. also Clause 23 (4)(c)) by the Merchant or by some other conduct attributable to the Merchant, the Merchant shall, upon first demand, fully indemnify the Acquirer against said

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penalty charges or pay them. For this, it shall be irrelevant whether the penalty charge is justified in the relation between the Acquirer and the Card Organization. The duty to indemnify shall also apply if the Merchant had no opportunity of raising objections or defences prior to payment by the Acquirer. The Acquirer shall, upon demand, provide the Merchant with a catalogue of the current penalty charges. This shall be without prejudice to Clause 13 (7) as well as the Merchant's obligation to additionally reimburse the Acquirer other expenses in accordance with Clause 12 (5), which the Acquirer incurs whether directly or indirectly in this connection or otherwise in connection with the performance of this Agreement, as well as other damage in accordance with Clause 22 (1) or to indemnify the Acquirer from and against such liabilities.

- (4) For each case of breach of a contractual duty under these Contractual Terms and Conditions (particularly the duty to comply with the requirements of the Card Organizations' Card Regulations, cf. Clause 4(10), the Merchant is under a duty to pay the Acquirer a reasonable contractual penalty to be fixed by the Acquirer exercising equitable discretion in accordance with Paragraph 315(1) German Civil Code (BGB). The reasonableness of the amount of the respective contractual penalty can be reviewed by a court having jurisdiction, Paragraph 315(3) German Civil Code (BGB). The duty to pay the contractual penalty shall not exist if the Merchant is not answerable for the breach of the contractual duty. Any further claims for damages by the Acquirer, against which the contractual penalty shall, however, be offset, remain unaffected hereby.
- (5) The Acquirer's liability for claims for damages shall be as follows:
  - In accordance with the German Product Liability Act (Produkthaftungsgesetz);
  - In the event of any injury to life, body or health and in the event of any intent or gross negligence the Acquirer shall be liable without limitation in terms of quantum.
  - Beyond that, the Acquirer shall only be liable for an intentional or negligent breach of contractual obligations which are essential obligations for achieving the purpose of the Agreement (so-called "Cardinal Obligations"); in such cases the liability is limited to the typical damage caused by the respective goods/services, which the Acquirer had to expect might be incurred at the time the contract was concluded because of the circumstances that were known to it at that time.
- (6) In derogation from Clause 22 (4) the Acquirer shall be liable towards the Merchant for damage incurred because of non-execution or incorrect execution of a payment transaction, which is not covered by Paragraph 675y German Civil Code (BGB), up to a maximum amount of € 12,500.00 per payment transaction. This does not apply in the event of intent or in cases of gross negligence or for risks which the Acquirer has a particularly assumed.
- (7) The Merchant must notify the Acquirer of any unauthorized or incorrectly executed payment transaction without undue delay after discovering it. In derogation from Paragraph 676b(2) and (3) German Civil Code (BGB), the Merchant can assert claims and objections because of an unauthorized or incorrectly executed payment transaction only within six (6) months of the date on which the corresponding – unauthorized or incorrect - debit was entered. Liability on the part of the Acquirer for any claims or objections asserted thereafter is excluded.
- (8) The provision under Paragraph 676c German Civil Code (BGB) remains unaffected.
- (9) The Acquirer shall not be liable for any failure or disruption in the technical infrastructure outside its sphere of responsibility, in particular not for the proper functioning of the technical transmission procedure, devices, cable routes and other technical equipment, which the Merchant uses to submit the data records resulting from the credit card transactions.

### Clause 23 Term, Right to Suspend the Services

- (1) This Agreement shall enter into force upon a date defined in the Contract and shall run for two years ("Initial Term"). Unless terminated in writing by either party with three (3) months' notice to the end of the Initial Term the Agreement shall automatically be extended for an indefinite period of time. After expiry of the Initial Term this Agreement can be terminated to the end of a calendar quarter by giving three (3) months' written notice. Paragraph 675h(1) German Civil Code (BGB) (Merchant's Right to Terminate at Any Time) and Paragraph 675h(2) German Civil Code (BGB) (Limitation of the Acquirer's Right of Termination and Particular Requirements as to Form) shall not apply.
- (2) The Acquirer can suspend rendering its services to the Merchant from time to time if the Merchant fails to properly fulfil its obligations under this Agreement.
- (3) In that case the Acquirer shall notify the Merchant thereof electronically within one working day following the suspension.
- (4) The right to extraordinary termination shall remain unaffected by the above. The Acquirer shall particularly have said right if a petition is filed for the opening of insolvency proceedings over the assets of the Merchant or if such insolvency proceedings are opened or if the opening is rejected because of a lack of assets. The Acquirer shall particularly also have a right of extraordinary termination if:
  - a) A justified suspension of the rendering of the services pursuant to Clause 23 (2) lasts for more than thirty (30) days or
  - b) The proportion of Chargebacks from card transactions over a period of two (2) months ("Assessment Period") exceeds 2 % of the total turnover volume or 1 % of the number of transactions (Clause 13 (8) applies mutatis mutandis to the calculation); during the first six (6) months after the Agreement has entered into force the Assessment Period is reduced to one (1) month and/or
  - c) The Merchant breaches any material contractual obligations (including but not limited to non-compliance with the obligations stipulated in Clauses 3, 4, 5, 20 and 21 as well as the operating regulations of the Card Organizations). Such breaches are in particular:
    - i) The Merchant (also) submits to the Acquirer not only sales from its own business but also sales by third parties (so-called "Third Party Processing") (cf. Clause 3(3)(a));
    - ii) The Merchant does not have or no longer has the necessary official licences to operate its business;
    - iii) The Merchant does not show the Cardholder the country, in which the branch office of the Merchant entering into the agreement has its registered office (seat), prior to the completion of the payment process;
    - iv) The Merchant's website is not available in at least one European language (e.g. English);
    - v) The Merchant does not clearly refer Cardholders to its general terms and conditions of business;
    - vi) On its Internet site the Merchant does not clearly indicate the Card Organizations' trademarks to be used;
    - vii) The Merchant has not within a period of three months after the Agreement has entered into force submitted transactions to the Acquirer for Payment Card settlement;
    - viii) The Merchant has not submitted any, or has submitted only negligible, card transactions (in terms of the number of transactions and turnover volumes) to the Acquirer for a period of three months. Sales are negligible if the actual transactions or the actual sales fall short of the Merchant's forecast figures (Merchant Configuration) by more than 75%;
    - ix) Despite a request by the Acquirer, the Merchant does not implement the technical and security requirements of the Card

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Organizations, in particular the PCI DSS (cf. Clause 4(10)) or does not do so in due time.

- d) One of the Card Regulations of the card organizations requires termination of this Agreement between the Acquirer and the Merchant or a Card Organization demands the termination of this Agreement;
  - e) The Merchant submits transactions under this Agreement to the Acquirer, which significantly exceed agreed transaction limits or transactions are repeatedly submitted, which exceed agreed transaction limits;
  - f) The Merchant offers its customers credit card payments, which are settled in accordance with this Agreement, through Internet addresses of the Merchant other than those listed in the Contract or otherwise approved by the Acquirer;
  - g) Taking into account the usual principles for assessing credit standing there is evidence to suggest that the Merchant's financial circumstances have considerably worsened or
  - h) A petition for the opening of insolvency proceedings over the Merchant's assets is filed.
- (5) The Acquirer can terminate this Agreement – also in part in relation to individual types of Payment Card – with one (1) month's notice to the end of a calendar month ("Special Right of Termination") if the Acquirer (i) ceases the settlement of card transactions for certain types of card (e.g. MasterCard, Visa or Maestro) or (ii) loses any licences and/or permits that are necessary to render the performances under this Agreement (e.g. software licenses, licences from the Card Organizations).
- (6) If the Merchant has decided on the form of agreement in the alternative "With a promise to pay in the event that the Cardholder disputes having given the instructions", the Acquirer shall be entitled to terminate extraordinarily with two (2) weeks' notice if the amount of the Chargebacks assumed by the Acquirer, which cannot be charged on to the Merchant, during the previous month exceeded 3 % of the total turnover volume in said month.
- (7) The Acquirer shall not be under any obligation to extraordinarily terminate the Agreement on the Acceptance of Cards, either in whole or in part, even if there is good cause. However, any non-exercise of a right of termination which may exist shall not have the consequence that the Acquirer thereby waives its right to exercise said right in future.
- (8) The Acquirer expressly reserves the right to partial termination only in relation to settlement with only one Card Organization / certain Card Organizations (i.e. for example only MasterCard, Maestro, Visa, Discover/Diners Club and/or JCB) in accordance with Clause 18.
- (9) Any notice of termination is required to be in writing in order to be effective.
- (10) On termination of this Agreement the Merchant shall be under a duty to return to the Acquirer all documents made available and, without being requested to do so, to delete all references to the credit cards concerned/Credit Organizations including their logos (e.g. MasterCard / Maestro / VISA / Discover/Diners Club / JCB cards) in its e-shop unless it is otherwise authorized to display them.

six (6) weeks following receipt of the notice. The Acquirer shall particularly draw the Merchant's attention to this consequence. If the Merchant raises an objection, the Acquirer shall have the right to terminate this Agreement extraordinarily with two (2) weeks' notice within six (6) weeks following receipt of the objection.

- (2) The Acquirer is entitled to amend these Contractual Terms and Conditions. The Merchant shall be notified in writing of any amendments no later than six (6) weeks before the amendments become effective. Any amendments shall be deemed to have been acknowledged by the Merchant if it does not raise an objection in writing within six (6) weeks following receipt of the notice. The Acquirer shall particularly point out this consequence in the written notice. Paragraph 675g German Civil Code (BGB) shall not apply.

### Clause 25 Limitation of Actions

All of the parties' claims arising out of this Agreement shall be time-barred twelve (12) months after the respective creditor/obligee of the claim learned - or ought to have learned without gross negligence - of the circumstances giving rise to the claim and of who the debtor/obligor is. Sentence 1 does not apply to claims for damages resulting from an intentional or grossly negligent action and does not apply to personal injury (an injury to life, body or health).

### Clause 26 Jurisdiction, Governing Law, Final Provisions

- (1) As provided by Paragraph 675e(4) German Civil Code (BGB) applicable to framework agreements governing payment services, which are not concluded with consumers, the following provisions of the German Civil Code are contracted out of and do not apply to this Agreement: Paragraphs 675d(1) sentence 1, (2) to (4), Paragraph 675f(4) sentence 2, Paragraphs 675g, 675h, 675j(2) and Paragraph 675p and Paragraphs 675v to 676.
- (2) This Agreement shall be governed by German law excluding the provisions of German international private law and excluding the UN Convention on Contracts for the International Sale of Goods.
- (3) The place of jurisdiction for all disputes arising out of this Agreement shall, to the extent permitted, be the Landgericht [Regional Court] Munich I.
- (4) In the event that one of the provisions of this Agreement is void, either in whole or in part, the validity of the remaining provisions shall not be affected thereby. The parties undertake to replace the void provision by a valid provision, which comes closest to the economic purpose of the Agreement.
- (5) No verbal side agreements to this Agreement have been entered into. Amendments and/or additions are required to be in writing in order to be effective. This shall also apply to any amendment to this provision itself. Clause 24 (2) remains unaffected.
- (6) the Merchant's claims against the Acquirer arising out of this Agreement, including claims of the Merchant against the Acquirer which arose or arise in connection with this Agreement, the initiation thereof or its implementation, may not be assigned to third parties.

### Clause 24 Assignment of the Agreement / Amendments to the Agreement

- (1) The Acquirer is entitled to assign the entirety of all rights and duties under this Agreement to a third party to be designated by the Acquirer ("Assignment of Agreement"). The Acquirer shall notify the Merchant of the Assignment of Agreement in a timely manner, at least six (6) weeks before it becomes effective. An Assignment of Agreement shall be deemed to have been approved by the Merchant if the Merchant does not raise an objection in writing within

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