

# PARTICULAR CONDITIONS

VERSION 1.1 - VALID FROM 01. AUGUST 2008

**hobex**  
PAYMENT SYSTEMS

## PARTICULAR CONDITIONS FOR TERMINALS AND NETWORK OPERATION

### 1. Preamble

**hobex AG**, FN 37265b, Josef-Brandstätter-Str. 2b, A-5020 Salzburg, (hereinafter „**hobex**“) has concluded the underlying „Card Processing Contract“ with **Contracting Company** (hereinafter referred to as „**CC**“). The service provided therein currently consists of:

- 1.1. the network provider's service for the Maestro / V PAY system;
- 1.2. participation in direct debiting (DD);
- 1.3. the network provider's service for specific credit card systems and VISA ELEKTRON;
- 1.4. the network provider's service for other card systems and/or software solutions for card acceptance;
- 1.5. the provision of payment transaction terminals.

CC defines in the „Card Payment Processing Contract“ which single service or which combination of services it wishes to use. Each of the services named above are subject to associated conditions and agreements in addition to the following conditions.

### 2. Scope

- 2.1. hobex will provide an operable terminal or number of terminals. They will be provided after the „Card Payment Processing Contract“ is signed by both parties and on condition CC has created the necessary preconditions.
- 2.2. CC is responsible for providing a power supply and a telecommunications connection for the terminal. Personnel appointed by hobex can commission the terminal in CC's premises if desired by CC.
- 2.3. Any work and services hobex has to provide onsite to enable the installation and connection of the terminal are not included in the flat rate installation price and will be billed separately.
- 2.4. CC must inform hobex in writing if CC wants to use a terminal at a location other than that defined in the „Card Payment Processing Contract“ and its contract components. hobex can demand the involvement of its agents with regard to installation work if the installation location is changed. CC shall cover all expenses relating to a change of installation location. CC is not authorised to install the terminal at another location on its own authority.
- 2.5. CC is obliged to inform hobex immediately of any technical malfunction relating to the terminal. In doing so CC must provide information on all detectable details; CC shall follow instructions issued by hobex or its appointed service provider to enable problem analysis and error detection.
- 2.6. hobex will provide CC with a replacement terminal if the terminal's functionality cannot be restored with hotline support provided by telephone. The replacement terminal will be delivered by courier or installed by field staff. CC will take the replacement terminal into operation with the support of the hobex telephone hotline or field staff. CC shall return the defective terminal to hobex or its appointed service provider at CC's own expense or hand it over to the field staff. hobex is entitled to charge CC for the replacement terminal after due notification in advance if the defective terminal is not delivered to hobex or its appointed service provider within 10 (ten) calendar days after receipt of a replacement terminal.
- 2.7. The replacement terminal will be installed on site during normal business hours, otherwise by special agreement.
- 2.8. Repair work does not include the repair of damage caused by incorrect use of the equipment or other external forces for which hobex is not responsible, or incorrect use, or the connection of third-party devices without hobex's previous approval. Furthermore, equipment components subject to wear and tear are not covered by warranty.
- 2.9. It is strictly prohibited to have work carried out on the terminals and other equipment provided by hobex by any persons or companies other than those appointed by hobex.
- 2.10. hobex will provide CC with a telephone hotline for reporting malfunctions and posing other technical queries. The hotline service covers the acceptance of terminal malfunction reports and the provision of support to CC when the terminal is taken into operation. The times of day when the hotline service is available are stated under the menu item „Service“ at [www.hobex.at](http://www.hobex.at).
- 2.11. The software provided with the terminal is the property of hobex. It is prohibited to copy, download, delete or modify the software or hand it over to third parties. CC undertakes to pay hobex in the event of an infringement a contractual penalty of Euro 5,000 (in writing: five thousand Euros) per infringement.
- 2.12. CC shall immediately report malfunctions relating to the data transfer connection to the competent telecommunications company to enable repairs.

### 3. Obligations of CC

CC is obliged:

- 3.1. to immediately report any sale or lease of CC or any other change in ownership, any change to the legal form of CC or its company name and address and any change to its bank connection (the same applies to any significant change to CC's product range);
- 3.2. to truthfully and completely state in the „Card Payment Processing Contract“ and make available to hobex any information required for setting up and providing the service;
- 3.3. to create by the agreed deadline the necessary preconditions for the installation of the equipment, including a telephone connection for connecting the terminal;
- 3.4. to treat the terminals as instructed and with due care and only to use sufficiently qualified personnel and only to use the operating instructions provided by hobex;

- 3.5. to ensure the terminal is permanently connected to the telephone line and to clear transactions (transfer data) via the terminal at least once every 24 hours in accordance with the training provided by hobex and the operating manuals and instructions provided;
- 3.6. to pay the charges including any applicable transaction charges within the allocated period or to ensure sufficient credit for payments made by direct debit;
- 3.7. to obtain terminal accessories (such as paper rolls, etc.) exclusively from hobex, as the device will only function properly if used in conjunction with these carefully matched components;
- 3.8. not to allow third parties to use the terminal either against payment or free of charge and to prevent any third party from gaining access to the terminal;
- 3.9. to grant hobex and its appointed agents on request access to the terminal and any other equipment provided in connection with this contract during the duration of the contract and on its termination for the purpose of installation, removal and maintenance, and;
- 3.10. to immediately return leased equipment to hobex at CC's cost and risk at the end of the contract period.

### 4. Charges, payment terms and additional services

- 4.1. The charges (prices) payable for the services used by CC are defined in the „Card Payment Processing Contract“. The same applies to the transaction charges payable by CC. Charges apply from the day on which the terminal is installed and operable.
- 4.2. hobex will provide additional services payable separately in accordance with a separate agreement.

### 5. Contract duration and cancellation

- 5.1. The contract comes into effect when both CC and hobex have signed the „Card Payment Processing Contract“. The contract will run for the period agreed in the „Card Payment Processing Contract“. This period will be 12 (twelve) months if the terminal is purchased, and 36 (thirty-six) months if the terminal is leased. The contract will extend for an undefined period when the agreed minimum duration expires. After expiry of the minimum duration the contract can be cancelled per the end of the calendar month by either party by sending a letter of cancellation by registered post under observation of a notice period of three months. The date on which the other party receives the notification is decisive for compliance with the period of notice.
- 5.2. This does not affect cancellation of the contract by hobex for an important reason.
- 5.3. An important reason is in particular given when CC partially or completely defaults on two consecutive payments and/or when circumstances exist that seriously and permanently impair CC's financial situation or when an application for bankruptcy has been filed.

### 6. Default of payment

hobex can cease to provide services for the period in which CC is in default of payment. hobex can demand the provision of securities or cancel the contract in the event of repeated defaults of payment or the occurrence of circumstances that justify a higher risk evaluation of claims against CC.

### 7. Offsetting and right of retention

CC can only offset uncontested or legally ascertained claims against claims raised by hobex. CC is only entitled to claim right of retention in relation to counter-claims arising from this agreement.

### 8. Engagement of third parties

hobex is entitled to appoint third-parties to provide the services.

### 9. Reports to third parties

CC explicitly authorises hobex in accordance with Article 8 Section 1 Subsection 2 of the Data Protection Act 2000 to relay all details relating to this contract to the relevant credit card organisations and banking institutions and to relay the data contained in the Card Payment Processing Contract to authorised information authorities for inspections within the scope of risk management.

### 10. Liability

- 10.1. hobex and its vicarious agents can only be held liable for compensation in conjunction with infringements against major contractual obligations which the other party can trust in particular to be fulfilled. The above exclusion does not apply in cases of intent and gross negligence, for liability arising from warranted properties or pursuant to product liability law.
- 10.2. hobex shall be liable to a maximum amount of 5,000 Euros per claim for infringements against major contractual obligations in the above sense arising through negligence. The same restriction also applies to intentional or grossly negligent infringements by vicarious agents who are not legal representatives or executive staff of hobex.
- 10.3. Liability in every case is limited to the immediate damage usually and typically foreseeable and controllable by the other party in such cases. Liability for damages and loss of earnings arising as a consequence of defects is excluded.
- 10.4. CC's claims will become time-barred at the latest one year after the date on which CC becomes aware of the damage and the circumstances from which a claim arises, and three years after the date of the damaging event regardless of any knowledge. Shorter legal periods of prescription remain unaffected.

## 11. Confidentiality

The parties to the contract undertake to handle details relating to the contract contents and information that becomes known to them through the design and implementation of the contract confidentially and to maintain secrecy towards third parties with the exception of Article 9. CC and hobex are obliged to handle data made available to them through processing Maestro / V PAY, Mastercard / VISA and DD payments confidentially and only to process it within the scope of the existing contractual relationship. This also applies to operational and business secrets belonging to a contract party which become known to the other party during implementation of the contract.

## 12. Miscellaneous

**12.1.** The parties to the contract undertake to adapt the contract accordingly if the circumstances on which it is based change significantly in a way that is not covered by these conditions. If one of the stipulations of these conditions should be partially or completely invalid this shall not affect the remaining stipulations. The contractual parties undertake to replace the invalid stipulation with a valid stipulation that comes as close as possible to the intended purpose of the invalid stipulation.

**12.2.** Changes and amendments to the special conditions of the contract must be made in writing to be effective. This stipulation also applies to the written form requirement.

**12.3.** hobex will notify CC in writing of any changes or amendments to these conditions made by hobex and the conditions detailed under item 1. They are deemed as approved unless CC objects in writing. hobex will inform CC of this circumstance separately on notification. CC must raise any objection within 6 (six) weeks after notification of change or amendment. The date on which hobex receives the objection is decisive for compliance with the period of limitation.

**12.4.** Substantive Austrian law shall apply to all disputes relating to this contract. The applicability of conflict of laws rules of Austrian International Private Law and the Uniform Law on the International Sale of Goods are explicitly excluded. The parties concluding the contract agree on the competent courts of Salzburg (city) as the exclusive place of jurisdiction for legal disputes relating to this contract.

# PARTICULAR CONDITIONS

VERSION 1.1 - VALID FROM 01. AUGUST 2008

**hobex**  
PAYMENT SYSTEMS

## PARTICULAR CONDITIONS FOR THE PROVISION OF DIRECT DEBITING (DD) SERVICES

### Preamble:

**hobex AG**, FN37265b, Josef-Brandstätter-Str. 2b, A-5020 Salzburg (hereinafter „**hobex**“) adopts on behalf and for the account of **Raiffeisenverband Salzburg** registered cooperative with limited liability, FN 38219 f, Schwarzstraße 13 – 15, A-5020 Salzburg (hereinafter „**RVS**“) and as a technical service provided to **Contract Company** (hereinafter „**CC**“) the obligation of RVS to organise direct debit orders resulting from the proper use of bank cards within the scope of the direct debiting system and to collect the corresponding payments from banking institutes in the name of RVS and to forward them to RVS.

### Terminology:

**ADT:** automatic data transfer terminal;

**Bank day:** the days of the weeks from Monday to Friday with the exception of public holidays;

**Calendar day:** the days of the week from Monday to Sunday;

**Services:** the provision of products and/or services by CC to be paid for using a bank card;

**Service charge:** consisting of the disagio and transaction charge;

**Transaction processing:** the technical processing of card-based payment transactions and related data communication.

## 1. Subject-matter of the contract and obligations towards CC

**1.1.** The subject-matter of the contract is the collection (including technical organisation) of uncontested claims of the CC against its customers within the scope of direct debiting by RVS insofar collection is made from current accounts at Austrian, German or Dutch banks. An uncontested claim is an effective and actionable claim (or claim rendered ineffective only by fraud) of CC against a customer which is not contested by the customer with regard to subject or amount (cases of insufficient funds in the customer's account and/or fraud in which CC is covered against the risk of uncollectability up to the maximum amount defined in the „Card Payment Processing Contract“ pursuant to the provisions of Clause 3 do not count as contested claims). No payment obligation whatsoever exists towards CC with regard to contested claims. Otherwise, a payment obligation towards CC only exists when CC fulfils the stipulations and obligations of this agreement (in particular those of Clause 2). See Clause 4 for chargebacks via direct debit.

**1.2.** hobex will supply and install by order of RVS but for its own account one or more automatic data transfer terminals (ADT – hereinafter „terminal“) including software – which remains the property of hobex – pursuant to the definitions of the „Card Payment Processing Contract“:

**1.3.** CC acknowledges that RVS has appointed hobex to implement collection and the technical execution thereof on behalf of and – irrespective of the preceding clause – for the account of RVS and that hobex has explained the fulfilment of orders in conjunction with this contract. The amounts collected by hobex are transferred to the CC's account defined in the „Card Payment Processing Contract“ within six bank days after receipt of the data entered into and transferred from the terminal to the computer centre and after deduction of the service charge defined in the „Card Payment Processing Contract“.

**1.4.** Liability towards CC only exists in cases of gross negligence. CC is not entitled to raise claims (in particular for damages) or objections if collection relating to the terminal is partially or completely impossible due to legal reasons or technical malfunction. The same applies if mechanisms for identifying bank cards not covered by (sufficient) funds fail to work as intended.

## 2. Obligations of the CC

The following obligations in particular apply to CC:

### 2.1. Transactions

**2.1.1.** Every transaction via the terminal will be made in accordance with the training and operating manual and instructions provided by hobex; particular care shall be taken to ensure an error-free data transfer.

**2.1.2.** Transaction receipts are signed by the customer and the signature on the receipt is compared against the signature on the bank card. The bank card shall not be returned to the customer until correspondence between signatures is established. If the signatures do not correspond or if the bank card has been visibly modified or made illegible then payment via terminal shall not be accepted or the transaction immediately cancelled and hobex informed immediately by telephone or written notification with regard to the bank card.

**2.1.3.** The terminal is used exclusively for business transactions relating to the business sector defined by CC (see also „Card Payment Processing Contract“).

**2.1.4.** CC shall not enter claims against a customer into the terminal if he is aware or is negligently unaware of a risk – or even partial risk – of unsuccessfulness.

**2.1.5.** Business cases considered by general opinion to be of the same nature shall not be divided between multiple invoices and/or terminal transactions (in particular in the form of splitting) – regardless of the quantity and diverseness of products and services. Likewise, business cases considered by general opinion to be different in nature shall not be accumulated and processed in one terminal transaction.

**2.1.6.** No paybacks (in cash or by transfer) shall be made either directly or indirectly (deposit, exchange, complaint and similar) in conjunction with terminal transactions.

**2.1.7.** Credit notes and similar will be blocked immediately if requested by RVS or hobex; CC shall refund payments made on the basis of this agreement if the customer has not yet redeemed a credit note.

**2.1.8.** It is prohibited to pass on the collection charge or any part thereof to the customer.

**2.1.9.** It is prohibited to use the terminal to process any services provided by CC outside the scope of its general business operations, to process third-party claims taken over from a customer or to make internal transactions within the company.

**2.1.10.** It is prohibited to process any older claims (that could not be collected via the terminal or other payment method for whatever reason) against a customer through the terminal.

**2.1.11.** Accommodation facilities are obliged to record and retain the customer's personal data in the form required by law.

### 2.2. Terminal and software

**2.2.1.** Every malfunction of the terminal must be reported to hobex without delay.

**2.2.2.** A manual data transfer shall be carried out prior to deinstallation and on recommissioning to ensure the integrity of data transfers and to update the software.

**2.2.3.** It is prohibited to permanently or temporarily remove the terminal from the agreed location without the consent of RVS or hobex.

**2.2.4.** It is prohibited to change the software supplied and installed by hobex or to use it after cancellation of this contract; hobex can delete the software or render it unusable.

**2.2.5.** It is prohibited to install any software on the terminal other than the software provided by hobex.

### 2.3. Miscellaneous

**2.3.1.** At the request of RVS or hobex – and even after the contract had ended – CC shall send the requested receipts together with their corresponding invoices (originals if explicitly requested) and the recorded customer data and any other available customer data to hobex within seven days (arrival at hobex).

**2.3.2.** At the request of RVS or hobex – and even after the contract had ended – CC shall issue an order within seven days from the date of the written request to legally enforce the collection of an uncontested claim in the name of CC – either through a lawyer or creditor protection association as determined by RVS / hobex. However, RVS can also request – in writing – the assignment of the claim in question. CC shall report to hobex without delay any payments made directly to CC by customers.

**2.3.3.** CC shall retain the transaction slips for a minimum of seven years.

**2.3.4.** CC shall immediately report to hobex any change of ownership, any changes to the structure of ownership and/or the company's legal form and significant changes to the company's business operations.

### 2.4. Contravention

CC shall reimburse payments in the event of a contravention of the stipulations and obligations of this agreement (see clause 4 for the possibility of return of payment via direct debit). CC shall indemnify VS and hobex and hold them harmless against any other ensuing costs in the event CC is culpable.

## 3. Risk protection

CC is protected by RVS against the risk of uncollectability of uncontested claims up to the amount defined in the Card Payment Processing Contract on condition he does not contravene the stipulations and obligations of this agreement. The maximum amount applies per invoice but only once for the same customer on the same day. The risk of collectability for claims extending beyond the maximum amount lies with CC (see clause 4 for the possibility of return of payment via direct debit).

## 4. Direct debit authorization

In the event of a contravention of the stipulations and obligations of this agreement by CC where CC carries the risk of payment or other payments have been made to CC without a corresponding obligation, RVS / hobex will collect by direct debit the total amount of the payment or to the extent of the risk carried by CC from the account detailed in the „Card Payment Processing Contract“.

## 5. Transferring this contract

RVS is entitled to transfer the rights and obligations of RVS arising from this contract to any credit institution or debt collecting institution with a trade licence to collect uncontested claims in a member state of the European Economic Area. RVS is obliged to inform CC of a transfer by registered mail sent to the last known address of the CC or to publish the transfer in the „Wiener Zeitung“ newspaper (Monday edition). The transfer will become legally effective on the day notification is delivered (or an attempt to deliver is made) to the address or on the 15th day after publication. A transfer does not entitle the CC to cancel the contract ahead of time.

## 6. Cancelling and changing the agreement

The contract is concluded for an unlimited time period. It can be cancelled per the end of a calendar month by either party by sending a letter of cancellation by registered post under observation of a notice period of three months. The right to cancel the contract ahead of time due to an important reason remains unaffected. In particular, bankruptcy, receivership and forced administration are important reasons for RVS. Amendments to the contract communicated to CC by RVS or hobex by means of registered mail sent to the CC's last known address will be deemed as approved by CC unless hobex receives a written objection within 14 days (received by hobex) of delivery or an attempt to deliver to CC's address.

## 7. Applicable law, place of jurisdiction

Substantive Austrian law shall apply to all disputes relating to this contract. The parties concluding

the contract agree on the competent courts of Salzburg (city) as the exclusive place of jurisdiction for legal disputes relating to this contract.

#### **8. Final stipulations**

Oral subsidiary agreements to this contract are invalid; every change to or amendment of this agreement must be made in writing. This also applies to waiver of formal requirements. If any stipulations are invalid this shall not affect the remaining validity of the contract. In this case a valid stipulation that comes as close as possible to the economic purpose of the invalid stipulation is deemed as agreed. This contract comes into effect when the terminal is activated in the CC's premises after hobex has received the original „Card Payment Processing Contract“ signed by CC, whereby hobex is the authorised delivery agent for RVS in this respect.

# PARTICULAR CONDITIONS

VERSION 1.1 - VALID FROM 01. AUGUST 2008

**hobex**  
PAYMENT SYSTEMS

PARTICULAR CONDITIONS FOR PROCESSING DEBIT CARDS: MAESTRO AND V PAY

## Preamble

**hobex AG**, FN37265b, Josef-Brandstätter-Str. 2b, A-5020 Salzburg (hereinafter „**hobex**“), adopts on behalf and by order of **Deutsche Postbank AG**, Friedrich-Ebert-Allee 114-126, D-53113 Bonn (hereinafter „**Postbank**“) and as a technical service provided to **Contracting Company** (hereinafter „**CC**“) the obligation of Postbank to organise direct debit orders resulting from the proper use of debit cards within the scope of the direct debiting system and to collect the corresponding payments from banking institutes on behalf of Postbank and to forward them to Postbank. Postbank will not participate in acquisitions undertaken by CC or in transaction processing, which it has assigned to its technical service provider, hobex. hobex is authorised to offer a transaction processing service to CC and to conclude, change and amend contracts with CC. All obligations of hobex extending beyond this function are fulfilled by hobex on behalf and by order of Postbank. Any reference in the following conditions to rights or obligations of hobex (with the exception of transaction processing) shall be understood as a right or obligation on behalf of Postbank. CC is entitled to participate in the international Maestro / V PAY system in accordance with the stipulations of these conditions. Maestro / V PAY enable cashless payments at automated points of sale, so-called POS terminals. Maestro / V PAY cards issued by card-issuing companies shall be accepted at CC's POS terminals under the same conditions and prices as cash payments.

## 1. Terminology

**Authorisation:** notification sent by hobex to CC in response to an enquiry from CC and stating that a transaction involving a specific amount and a specific debit card is possible;

**Authorisation code:** a code issued by hobex in response to a query from CC to authorise transactions exceeding the limit set by hobex.

**Calendar day:** the days of the week from Monday to Sunday;

**Card holder:** the person in whose name a debit card is issued;

**Credit card organisations:** organisations such as Visa International, MasterCard Inc., Maestro International, that operate payment systems and grant licences to card-issuing companies and acquirers with regard to the debit cards included in this contract; card-issuing companies: the bank or company issuing a debit card;

**Services:** the provision of products and/or services by CC to be paid for using a debit card;

**POS (Point of Sale) terminals:** automatons supplied by hobex to enable the acceptance of debit cards by entering a secret code; service charge: consists of the disagio and the transaction charge;

**Transaction submission:** a request for payment sent to hobex by CC in the form of datasets submitted to hobex in accordance with the conditions of this contract;

**Transaction processing:** the technical processing of card-based payment transactions and related data communication.

## 2. Card payment / Obligation to pay

**2.1.** Payment at POS terminals requires the entry of a personal code (PIN) in addition to the card.

**2.2.** hobex undertakes to provide the technical processing for all sales paid for by debit card in accordance with the following conditions.

**2.3.** The CC's claim to receive payment from hobex arises when hobex receives the charge receipts or corresponding datasets. hobex will transfer the amount minus a service charge in accordance with item 4 to an account defined by CC.

**2.4.** hobex is entitled to demand CC to assign to hobex all claims against card holders arising from sales paid for with a card, and any claims against the company issuing the debit card and relating to the use of the card.

**2.5.** CC shall only accept card transactions for services and sales falling within the normal scope of his business operations and shall not accept card transactions for services that do not belong to its normal business operations, in particular for granting credit or other cash payments.

## 3. Authorisation / terminal operation

**3.1.** A card-issuing company granting positive authorisation of a transaction declares that it will pay the amount authorised via the POS terminal (Maestro / V PAY sale).

**3.2.** The preconditions for the authorisation of a transaction are:

**3.2.1** that the secret personal code (PIN) is entered into the POS terminal approved by hobex in addition to the card.

**3.2.2** that Maestro / V PAY sales are submitted to card-issuing companies abroad within 12 (twelve) calendar days.

**3.3.** CC must submit Maestro / V PAY sales to hobex for collection without delay to ensure compliance with these time periods.

**3.4.** Authorisation queries submitted by CC must include the data required by hobex and which CC is authorised to transfer in accordance with Austrian data protection law. hobex will provide CC with an authorisation code when authorisation for the transaction is approved.

**3.5.** hobex will receive the data relating to the approval request and/or transaction free of charge in the form of a complete dataset which hobex is able to process.

**3.6.** The form and cycle of data transfers are defined in the „Particular Conditions for Terminals and Network Operation“.

**3.7.** Maestro / V PAY transactions can only be processed electronically. It is therefore strictly prohibited to make sales transactions with these cards if the terminal is malfunctioning.

## 4. Service charge

**4.1.** A service charge applies to the operation of the Maestro / V PAY system and the approval of Maestro / V PAY sales through the authorisation systems of national and international card-issuing companies.

**4.2.** The service charge is defined in the „Card Payment Processing Contract“. These amounts can be offset against later payments to be made to the CC. CC will pay the due service charge to hobex on request if a deduction or offsetting against payments due to CC is not possible. The final amount identified on the card slip is decisive for calculating the service charge.

**4.3.** hobex is entitled to redefine the service charge semi-annually, for the first time 6 (six) months after conclusion of the contract. Total turnover, transaction quantity, average sale per transaction and other cost-relevant factors will be taken into account in hobex' discretion when redefining the service charge. CC can cancel the contract within 6 (six) weeks with immediate effect in the event of a service charge increase, whereby notification must arrive at hobex within that period. The increased service charge will not apply if CC cancels the contract.

## 5. Cancellation/Chargeback

**5.1.** If a Maestro / V PAY sale is rejected due to a lack of guarantee conditions and returned to hobex (chargeback) then hobex shall be entitled to debit the sale to CC during complaint processing.

**5.2.** CC is obliged to provide without delay, but at the latest within 10 (ten) days after receiving the request, any documents relating to the sale (copy of card slip, retailer's reports) to the employee appointed by hobex to process the complaint. If this time period is exceeded and the office appointed by hobex is unable to process the complaint as a result, hobex will irrevocably charge the objectionable amount back to CC without any claim of CC arising against hobex.

**5.3.** hobex is entitled to apply a processing charge of 40.00 EUR (in writing: forty Euros) for every chargeback made in relation to a cancellation or chargeback. hobex retains the right to claim higher expenses.

## 6. Contractual obligations of CC

**6.1.** CC is obliged to ensure secret personal codes (PIN) cannot be spied out when entered into the POS terminal.

**6.2.** CC must refrain from doing anything that may impair the security or proper functioning of the Maestro / V PAY system.

**6.3.** CC shall draw attention to the Maestro / V PAY system by prominently displaying the logo provided.

**6.4.** CC shall retain the journals of POS terminals pursuant to Clause 8 and provide the originals to hobex on request. Objections and other complaints of card holders concerning the contractual relationship with CC will be asserted directly against CC.

**6.5.** Additionally, CC is obliged:

**6.5.1.** to use sufficiently qualified personnel only and to observe the operating instructions provided by hobex,

**6.5.2.** to observe legal requirements including the regulations of the data protection act.

**6.6.** At hobex' request CC will allow an inspection of its business premises by either hobex in person or an appointed representative to enable hobex to verify compliance with the stipulations of this contract.

**6.7.** On principle CC is not entitled to appoint a third party to fulfil its obligations arising from this contract or to carry out debit card sales for third parties and to submit them via hobex unless hobex has granted its explicit consent in writing. Such third parties must explicitly adopt the obligations arising from this contract and CC must provide evidence thereof. CC will remain fully responsible for the fulfilment of the contract in every case.

**6.8.** hobex is entitled to retain the services of third-parties to secure collection.

## 7. Information obligations of CC, auditing

**7.1.** CC shall complete the master data on which this contract is based fully and truthfully. Changes must be reported immediately to hobex in writing, especially changes to the product range, sale or lease of the company or any other kind of change of ownership, changes to the company's legal form, change of address or change of bank connection.

**7.2.** CC shall provide the documents requested by hobex (e.g. extract from the company register, extract from the register of associations, business registration certificate, articles of association, annual accounts report) to enable verification of legal conformity and creditworthiness; documents in a language other than German or English must be provided as officially certified translations in German or English. CC shall provide any information relating to the organisation of his business operations requested by hobex.

## 8. Retention obligations

CC undertakes to retain all documents relating to payments made by electronic transfer and the associated business transactions for a minimum period of 18 (eighteen) months, unless other longer periods are required by law or this contract, calculated from the date on which the receipt was generated, and to make them available to hobex at any time.

## 9. Contract period

**9.1.** The contract comes into effect when signed by both CC and hobex. With regard to the conditions relating to the rights and obligations of Postbank, the contract is considered as concluded on behalf of Postbank when signed by hobex.

**9.2.** Except where otherwise stipulated this contract shall continue for a minimum of 12 (twelve)

months from the date it is signed and shall then be extended for an unlimited period. After expiry of the minimum duration the contract can be cancelled per the end of the calendar month by either party by sending a letter of cancellation by registered post under observation of a notice period of three months.

**9.3.** In the event one party should contravene any of the so-called major obligations of this contract the other party shall be entitled to cancel the contract per registered mail stating the reasons why and under observation of a notice period of 30 (thirty) days.

**9.4.** hobex is also entitled to cancel the contract if: 9.4.1. the sum of the amounts charged back and or taken over by hobex (chargebacks) in any calendar week exceeds one per cent (1%) of the value or the number of transactions submitted by CC for processing during the corresponding time period.;

**9.4.2.** CC repeatedly requests or obviously intends to repeatedly request the authorisation of transactions which hobex is not obliged to execute or if CC submits transactions without authorisation;

**9.4.3.** claims of hobex are at risk due to a decline in CC's creditworthiness or if CC files for bankruptcy.

**9.5.** The parties are aware that their cooperation requires coordination with the credit card organisations. hobex is entitled to cancel the contract due to an important reason if the coordination process reveals that the cooperation is not or is only partially implementable.

**9.6.** Either party is entitled to cancel the contract due to an important reason if the cooperation would only be implementable under conditions specified by the credit card organisations which one of the parties considers to be unreasonable. The same applies if implementation of the cooperation changes to an extent which one of the parties considers to be unreasonable on account of specifications, orders, changes to the articles of association or guidelines of a credit card organisation.

**9.7.** The parties will amicably search for a solution in the event of a change in law which renders one of the parties unable to provide the agreed services.

**9.8.** Notification of cancellation must be given by registered mail at the latest 30 (thirty) days after gaining knowledge of the circumstance that justify exceptional cancellation.

**9.9.** hobex can cancel this contract per registered letter to CC under observation of a notice period of 14 (fourteen) calendar days in the event of a significant and disadvantageous change to the rights of Postbank as a member of Visa or MasterCard that has a significant impact on hobex's ability to provide acquiring services such as those of this contract. hobex will inform CC of every significant and disadvantageous change immediately upon receipt of such information.

**9.10.** hobex can cancel this contract per registered letter to CC under observation of a notice period of 30 (thirty) calendar days (or a shorter period if so required by a credit card organisation) if (i) any credit card organisation expresses through whatever means the justified written opinion that this contract contravenes its guidelines or byelaws, or (ii) a credit card organisation or the financial market supervisory body or any other supervisory authority demands that hobex and/or Postbank cancel the contract for whatever reason. hobex assures that, to the best of its knowledge, no circumstances exist that could lead to a cancellation of this nature and that it will undertake whatever measures are necessary and required to reach a consensus with the parties concerned. Efforts should be made whenever possible in such a situation to maintain the contract in hand and to amend it as necessary.

**9.11.** The effects of cancelling or not extending the contract are as follows:

**9.11.1.** A cancellation does not exclude the right of the injured party to execute its rights and all legal means to which it is entitled pursuant to this contract and under current law.

**9.11.2.** All liabilities and obligations of each party arising from or relating to an act or omission or event before the date on which the contract expires or is cancelled will remain valid without change unless explicitly limited to the contract period.

## 10. Confidentiality

**10.1.** Each party acknowledges that the parties and their employees and representatives will or could receive or have access to information through the transactions provided for in the framework of this contract and the fulfilment of its conditions, or through the discussions and negotiations preceding this contract and the fulfilment of its conditions, which is confidential and legally protected for the other party. Each party agrees on its own behalf and on behalf of its employees and representatives that this contract and all such information shall be treated confidentially during the contract period and shall not be disclosed or used by the receiving party or its employees, partners or representatives for whatsoever purpose, unless provided for in this contract, except to the extent to which the other party has granted its explicit written consent to disclosure or use. All information passed on from one party to the other shall be treated in the same way the receiving party treats its own legally protected and confidential information.

**10.2.** There are no restrictions to Clause 10.1, unless such information (i) is known to the recipient or its representatives prior to receipt from the other party; (ii) is or becomes legally accessible through a different source without any infringement of an obligation to maintain confidentiality; (iii) must or should be disclosed to an administrative authority with responsibility for one of the parties or for another legal reason, but only on condition that the other party has been informed of the intended disclosure in as much detail as possible and the party intending to disclose cooperates with the other party's reasonable attempts to restrict or prevent disclosure; (iv) must be disclosed to a credit card organisation for legal reasons, or (v) to the extent that the other party has waived the obligation to maintain confidentiality in writing.

**10.3.** CC shall not release press information announcing the implementation of this contract or the transactions it is intended to provide for without having previously obtained consent from hobex.

## 11. Liability

**11.1.** In the event of a violation of contract by hobex and/or its vicarious agents hobex shall only be liable for compensation if the violation concerns major contractual obligations. hobex shall be liable to a maximum amount of 5,000 Euros (in writing: five thousand Euros) per claim for infringements against major contractual obligations and/or other legal obligations through negligence.

**11.2.** Any liability of hobex for consequential harm caused by a defect or for loss of earnings is excluded.

**11.3.** CC's claims will become time-barred at the latest one year after the date on which CC becomes aware of the damage and the circumstances from which a claim arises, and three years after the date of the damaging event regardless of any knowledge. Shorter legal periods of prescription remain unaffected.

## 12. Miscellaneous

**12.1.** All changes of and amendments to this contract including all its Clauses must be made in writing to be effective.

**12.2.** If individual stipulations of this contract are partially or completely legally invalid this shall not

affect the validity of the other stipulations. In this case the invalid stipulation shall be replaced by a valid stipulation that comes as close as possible to the effective purpose of the invalid stipulation.

**12.3.** hobex is entitled to change the particular conditions of this contract. Changes will be deemed as approved by CC unless it raises an objection in writing within 6 (six) weeks of having received notification by letter, fax or email. hobex will explicitly draw CC's attention to this detail in the event of such a notification. hobex can express an extraordinary cancellation of this contract prior to its scheduled expiry date under observation of a notice period of 6 (six) weeks for the purpose of changing the contract if such a change is deemed necessary after due consideration by hobex on account of the legal situation (including case law) regarding the formalities of credit card organisations, the current state of technology or objective market conditions and a continuation of the contract would be unreasonable for hobex.

**12.4.** Substantive Austrian law shall apply to all disputes relating to this contract. The applicability of conflict of laws rules of the Austrian International Private Law and the Uniform Law on the International Sale of Goods are explicitly excluded. The parties agree on the exclusive responsibility of the competent court in Salzburg (city).

# PARTICULAR CONDITIONS

VERSION 1.1 - VALID FROM 01. AUGUST 2008

**hobex**  
PAYMENT SYSTEMS

PARTICULAR CONDITIONS FOR PROCESSING CREDIT CARDS: MASTERCARD AND VISA

## Preamble

**hobex AG**, FN37265b, Josef-Brandstätter-Str. 2b, A-5020 Salzburg (hereinafter „**hobex**“), adopts on behalf and by order of **Deutsche Postbank AG**, Friedrich-Ebert-Allee 114-126, D-53113 Bonn (hereinafter „**Postbank**“) and as a technical service provided to **Contracting Company** (hereinafter „**CC**“) the obligation of Postbank to organise direct debit orders resulting from the proper use of credit cards within the scope of the direct debiting system and to collect the corresponding payments from the credit company on behalf of Postbank and to forward them to Postbank. Postbank will not participate in acquisitions undertaken by CC or in transaction processing, which it has assigned to its technical service provider, hobex. hobex is authorised to offer a transaction processing service to CC and to conclude, change and amend contracts with CC. All obligations of hobex extending beyond this function are fulfilled by hobex on behalf and by order of Postbank. Any reference in the following conditions to rights or obligations of hobex (with the exception of transaction processing) shall be understood as a right or obligation on behalf of Postbank. In return, CC undertakes to sell its proffered products and services to anyone presenting a Master-Card/Visa Card or VISA ELECTRON card (hereinafter „card or card“) issued in their name at the same price and under the same conditions as for customers paying in cash. In particular, CC shall not charge any additional costs or demand securities.

## 1. Terminology

**Authorisation:** notification sent by hobex to CC in response to an enquiry from CC and stating that a transaction involving a specific amount and a specific credit card is possible;

**Authorisation code:** a code issued by hobex in response to a query from CC to authorise transactions exceeding the limit set by hobex.

**Calendar day:** the days of the week from Monday to Sunday;

**Credit cards:** all credit cards and other instruments of payment issued in compliance with the formalities of the credit card organisation and explicitly included in this contract and used by a customer to issue an instruction to debit his current account instead of paying in cash; card holder: the person in whose name a credit card is issued;

**Card verification number:** the three-digit number printed in addition to the card number on the card (usually on the signature field on the reverse side of the card);

**Credit card data:** the credit card number, the card verification number, the validity date, the amount paid and, if so defined by hobex for the case in question, the name and address of the card holder;

**Credit card organisations:** organisations such as Visa International, MasterCard Inc., Maestro International, that operate payment systems and grant licences to card-issuing companies and acquirers with regard to the credit cards included in this contract;

**Credit card-issuing company:** the bank or company issuing a debit card;

**Services:** the products and/or services to be provided by CC and to be paid for using a credit card;

**Service charge:** consisting of the disagio and transaction charge;

**Transaction submission:** a request for payment sent to hobex by CC in the form of datasets submitted to hobex in accordance with the conditions of this contract;

**Transaction processing:** the technical processing of card-based payment transactions and related data communication.

## 2. Promise of payment made to CC

**2.1.** hobex undertakes to provide the technical processing for all sales paid for by cards in accordance with the conditions of Clause 7 and subject to the chargeback rights defined in Clause 8 if the following preconditions are accumulatively fulfilled:

**2.1.1.** the card presented is valid at the time of presentation at bears the card holder's signature;

**2.1.2.** the card presented is not declared as invalid in a list or file of blocked cards or in any other message sent to CC;

**2.1.3.** the person presenting the card corresponds with a photo on the card (where extant);

**2.1.4.** the card presented has not been changed or is illegible;

**2.1.5.** CC issues a card receipt on which the card data, in particular the card number and validity date, are complete and clearly legible and which also states the gross price of the products or services as well as the date and name/company, address and hobex contract number of the CC.

**2.1.6.** the card holder has confirmed the transaction either by entering his PIN or by signing the card slip with a signature that corresponds with the signature on the card in the presence of a representative of CC and CC has handed a copy of the confirmed slip to the card holder.

**2.1.7.** the total amount does not exceed the approval-free current maximum amount communicated by hobex and defined under Clause 4.1 of this contract, or if hobex as issued an appropriate approval pursuant to Clause 4.2;

**2.1.8.** the charge slip is submitted to hobex with a submission note or as a processable dataset with 5 (five) calendar days after the transaction;

**2.1.9.** that CC generates charge slips electronically at least in duplicate using a terminal or POS cash register system approved by hobex or, if permissible, at least in triplicate using a manual imprinter.

**2.2.** hobex is entitled, but not obliged, at any time to verify the preconditions defined under 2.1 from case to case.

**2.3.** CC's claim to receive payment from hobex pursuant to the conditions of 2.1 arises when the charge receipts or corresponding datasets are received by hobex. hobex will transfer the due amount minus the service charge pursuant to Clause 6 to the account defined by CC in the „Card Payment Processing Contract“.

**2.4.** hobex is entitled to demand CC to assign to hobex all claims against card holders arising from sales paid for with a card, and any claims against the company issuing the credit card and relating to the use of the card.

**2.5.** CC shall only accept card transactions for services and sales falling within the normal scope of his business operations and shall not accept card transactions for services that do not belong to its normal business operations, in particular for granting credit or other cash payments.

## 3. Terminal/cash register system

**3.1.** If CC is in possession of a terminal or cash register system approved by hobex it must be used to process every transaction. Unless agreed otherwise with hobex upon installation of the POS device, a transaction approval is always required regardless of the amount and is obtained electronically via the POS device.

**3.2.** Authorisation queries submitted by CC must include the data required by hobex and which CC is authorised to transfer in accordance with Austrian data protection law. The data must comply with the specifications provided to CC by hobex with regard to content, format and means of transfer. hobex will provide CC with an authorisation code when authorisation for the transaction is approved.

**3.3.** The charge slips signed by the customer must be retained in accordance with Clause 11 for every transaction transferred automatically via terminal or POS cash register system.

**3.4.** In the event of a terminal or POS cash register system malfunction, charge slips should be produced manually in triplicate using an imprinter where permissible; the transaction data should be transferred electronically to hobex once the malfunction is remedied if the technical equipment provides this functionality. In the event of a retrospective electronic transfer of data CC should retain the charge slips signed by customers pursuant to Clause 11, unless stricter retention periods apply by law. The manually produced charge slips shall be sent to the address detailed by hobex instead of transferring the data electronically if the malfunction lasts for more than one day.

**3.5.** VISA ELECTRON cannot be used to make payments in the event of a malfunction as they can only be processed electronically. Manual processing using an imprinter is not permitted.

## 4. Approval-free maximum amount

**4.1.** The maximum amount acceptable without approval („limit“) for all cards is defined in accordance with the limits specified by the credit card organisations. hobex can change the amount at any time within the scope of its technical processing authorisation.

**4.2.** hobex is entitled to approve an amount in excess of the limit by approving by telephone, fax, electronically or in any other way a request submitted by CC prior to producing a charge slip. CC can only refer to the approval if the authorization code conveyed in conjunction with approval is noted on the charge slip or printed on the charge slip produced by the terminal or POS cash register system printer.

**4.3.** Any obligation to pay a total amount shall become nil and void if the sum of all transactions executed on the same business day via the same cash desk and/or in the same CC outlet using the same card („total amount“) exceeds the limit defined under Clause 4.1 of this agreement without the proved approval of hobex pursuant to Clause 4.2 of this agreement. In case of doubt undated charge slips are deemed as produced on the same day as the last dated charge slip. Different cash desks that cannot be differentiated by the imprint produced by the imprinter will be treated as one cash desk.

**4.4.** The same applies if the total amount of a transaction that would have been paid as one sum in cash is reduced to an amount lower than the limit by producing multiple VISA or MasterCard charge slips. If payments in these cases are made nonetheless, hobex is entitled to request the refund of the paid amounts at any time or, if this is not possible for technical reasons, to offset the amounts against other payment obligations towards CC.

**4.5.** CC is not authorised to inform the card holder or third parties as to the extent of the limit.

## 5. Particular contractual obligations of CC

**5.1.** CC must inform hobex immediately by telephone and before handing the card back to the customer if he suspects a card presented to him could be fake or forged, or if the signature on the card does not match the signature on the charge slip, or the person presenting the card does not correspond with the person on the photo. hobex can request the card holder to present a valid form of photo identification to CC. hobex is authorised to instruct CC to withhold the card if forgery is suspected.

**5.2.** CC shall also ensure it is impossible to manipulate data input in personnel areas and on the premises and, in particular, to misuse the equipment. CC shall routinely inform hobex of measures implemented in this field. The general operating instructions must be followed precisely when entering data into a terminal or POS cash register system.

### 5.3. Furthermore, CC is obliged:

**5.3.1.** to immediately report any sale or lease of the CC or any other change of ownership, any change to CC's legal form or registered company name and any change to its address and bank connection. The same applies to any significant change to CC's product range.

**5.3.2.** to provide hobex with any and all information required to set up and implement the contract;

**5.3.3.** to use sufficiently qualified personnel only and to observe the operating instructions provided and/or delivered by hobex,

**5.3.4.** to observe legal requirements including the regulations of the data protection act.

**5.4.** CC shall install the advertising material provided by hobex, in particular the signs indicating the acceptance of cards pursuant to the „Card Payment Processing Contract“, at clearly visible locations in his premises.

## 6. Service charges

- 6.1.** A service charge is payable for the services provided. It is defined in the underlying „Card Payment Processing Contract“.
- 6.2.** The service charge and the sales tax due on that amount will be deducted from the amount payable to CC pursuant to Clause 2.1. These amounts may also be offset against later payments to be made to the CC. CC will pay the due service charge to hobex on request if a deduction or offset against payments due to CC is not possible.
- 6.3.** hobex is entitled to redefine the service charge semi-annually, for the first time 6 (six) months after conclusion of the contract. Total turnover, transaction quantity, average sale per transaction and other cost-relevant factors will be taken into account in hobex' discretion when redefining the service charge. CC can cancel the contract within 6 (six) weeks with immediate effect in the event of a service charge increase, whereby notification must arrive at hobex within that period. The increased service charge will not apply if CC cancels the contract.

## 7. Refunds/credit notes issued by CC to the card holder

- 7.1.** It is prohibited to refund transactions for which a charge slip was issued and signed by the customer in the form of cash or cashless payments; refunds are only permissible in the form of a credit voucher, whereby the original should be handed to the customer.
- 7.2.** Credit vouchers must be completed in full and signed by CC. They must be submitted to hobex within 5 (five) calendar days of issue. hobex will instruct the card holder's bank to credit the amount on the credit voucher to the card holder's account on behalf of CC. Beforehand CC shall transfer the creditable amount to the account maintained by hobex. Credit notes issued using a terminal or POS cash register system shall be produced in accordance with the operating instructions for the device; if the original credit voucher cannot be handed over CC shall retain it in accordance with the stipulations of Clause 11, unless stricter legal retention periods and/or deletion periods apply.
- 7.3.** Refunds for purchases made with VISA ELECTRON cards are only possible via a terminal or POS cash register system.

## 8. Chargeback rights

- 8.1.** CC shall avoid actions and omissions that would entitle his customers to chargebacks (e.g. by selling goods free of defects or providing unobjectionable services).
- 8.2.** In the event CC fails to comply with the stipulations under Clauses 2.1, 4; 5.1 and 5.2 hobex shall be entitled for a period of 18 months from the date of transfer to request reimbursement of the amounts paid. Reimbursement shall take the form of a direct debit to the CC's account or offsetting against a claim held by CC.
- 8.3.** CC is in any case obliged to provide hobex on request with proof of the obligation to pay pursuant to Clause 2.1, as far as the obligation lies in the business sphere of CC.
- 8.4.** Furthermore, hobex is authorised to implement a chargeback if the customer requests a cancellation of the charge to his card account or refuses to pay and in both cases presents facts in writing to hobex or the credit card organisation within six months after his account was charged that entitle him to withdraw from, cancel or contest the transaction. A chargeback is excluded if CC proves within a period of 10 (ten) days after receiving a request from hobex that the customer's objection is unfounded.
- 8.5.** CC shall fulfil the pecuniary claim directly to the card holder if the chargeback was implemented permissibly or if CC failed to comply with the period of 10 (ten) calendar days.
- 8.6.** The issue of an authorisation code does not restrict hobex's chargeback rights.
- 8.7.** Chargebacks are made for the invoiced amount of the claim in question plus the chargeback fee. CC is obliged to pay the chargeback amount without delay. CC is not entitled to raise a claim for reimbursement of the service charge paid for the transaction in question or for further damages and/or unjustified enrichment as hobex has provided the service paid for.
- 8.8.** hobex is entitled to apply an administration fee of EUR 40.00 (forty Euros) per chargeback. hobex retains the right to claim higher expenses.

## 9. Accounting

CC can request a monthly breakdown of the sales submitted during the course of an accounting month. hobex is entitled to change the accounting cycle during the course of the contractual relationship. CC is obliged to verify the correctness and completeness of the breakdowns provided by hobex. CC must submit any objections relating to incorrectness or incompleteness of the breakdown within six weeks of receipt. Failure to submit an objection in good time is deemed as approval. hobex will inform CC of this consequence on delivery of the breakdown.

## 10. Information obligations of CC, auditing

- 10.1.** CC shall fully and truthfully complete the master data on which this contract is based. Changes must be reported immediately to hobex in writing, especially changes to the type of management, the product range, sale or lease of the company or any other kind of change of ownership, changes to the company's legal form, change of address or change of bank connection.
- 10.2.** CC shall provide the documents requested by hobex (e.g. extract from the company register, extract from the register of associations, business registration certificate, articles of association, annual accounts report) to enable verification of legal conformity and creditworthiness; documents in a language other than German or English must be provided as officially certified translations. CC shall provide any information relating to the organisation of his business operations requested by hobex.
- 10.3.** At hobex' request CC will allow an inspection of its business premises by either hobex in person or an appointed representative to enable hobex to verify compliance with the stipulations of this contract.
- 10.4.** On principle CC is not entitled to appoint a third party to fulfil its obligations arising from this contract or to carry out debit card sales for third parties and to submit them via hobex unless hobex has granted its explicit consent in writing. Such third parties must explicitly adopt the obligations arising from this contract and CC must provide evidence thereof. CC will remain fully responsible for the fulfilment of the contract in every case.
- 10.5.** hobex is entitled to retain the services of third-parties to secure collection.

## 11. Retention obligations

CC undertakes to retain all documents relating to submitted card slips or electronically transferred sales and the underlying business transactions for the legally required retention period counted from the day on which each document was issued and to make them available to hobex without delay at any time.

## 12. Contract period

- 12.1.** The contract comes into effect when signed by both CC and hobex. With regard to the conditions relating to the rights and obligations of Postbank, the contract is considered as concluded on behalf of Postbank when signed by hobex.
- 12.2.** Except where otherwise stipulated this contract shall continue for a minimum of 12 (twelve) months from the date of validity and shall then be extended for an unlimited period. After expiry of the minimum duration the contract can be cancelled per the end of the calendar month by either party by sending a letter of cancellation by registered post under observation of a notice period of three months.
- 12.3.** In the event one party should contravene any of the so-called major obligations of this contract the other party shall be entitled to cancel the contract per registered mail stating the reasons why and under observation of a notice period of 30 (thirty) days.
- 12.4.** hobex is also entitled to cancel the contract if:
- 12.4.1.** the sum of the amounts charged back and or taken over by hobex (chargebacks) in any calendar week exceeds one per cent (1%) of the value or the number of transactions submitted by CC for processing during the corresponding time period;
- 12.4.2.** CC repeatedly requests or obviously intends to repeatedly request the authorisation of transactions which hobex is not obliged to execute pursuant to Clause 4 or if CC submits transactions without authorisation;
- 12.4.3.** claims of hobex are at risk due to a decline in CC's creditworthiness or if CC files for bankruptcy.
- 12.5.** The parties are aware that their cooperation requires coordination with the credit card organisations. hobex is entitled to cancel the contract due to an important reason if the coordination process reveals that the cooperation is not or is only partially implementable.
- 12.6.** Either party is entitled to cancel the contract due to an important reason if the cooperation would only be implementable under conditions specified by the credit card organisations which one of the parties considers to be unreasonable. The same applies if implementation of the cooperation changes to an extent which one of the parties considers to be unreasonable on account of specifications, orders, changes to the articles of association or guidelines of a credit card organisation.
- 12.7.** The parties will amicably search for a solution in the event of a change in law which renders one of the parties unable to provide the agreed services.
- 12.8.** Notification of cancellation must be given by registered mail at the latest 30 (thirty) days after gaining knowledge of the circumstance that justify exceptional cancellation.
- 12.9.** hobex can cancel this contract per registered letter to CC under observation of a notice period of 14 (fourteen) calendar days in the event of a significant and disadvantageous change to the rights of Postbank as a member of Visa or MasterCard that would have a significant impact on hobex's ability to provide acquiring services such as those of this contract. hobex will inform CC of every significant and disadvantageous change immediately upon receipt of such information.
- 12.10.** hobex can cancel this contract per registered letter to CC under observation of a notice period of 30 (thirty) calendar days (or a shorter period if so required by a credit card organisation) if (i) any credit card organisation expresses through whatever means the justified written opinion that this contract contravenes its guidelines or bylaws, or (ii) a credit card organisation or the financial market supervisory body or any other supervisory authority demands that hobex and/or Postbank cancel the contract for whatever reason. hobex assures that, to the best of its knowledge, no circumstances exist that could lead to a cancellation of this nature and that it will undertake whatever measures are necessary and required to reach a consensus with the parties concerned. Efforts should be made whenever possible in such a situation to maintain the contract in hand and to amend it as necessary.
- 12.11.** The effects of cancelling or not extending the contract are as follows:
- 12.11.1.** A cancellation does not exclude the right of the injured party to execute its rights and all legal means to which it is entitled pursuant to this contract and under current law.
- 12.11.2.** All liabilities and obligations of each party arising from or relating to an act or omission or event before the date on which the contract expires or is cancelled will remain valid without change unless explicitly limited to the contract period.

## 13. Confidentiality

- 13.1.** Each party acknowledges that the parties and their employees and representatives will or could receive or have access to information through the transactions provided for in the framework of this contract and the fulfilment of its conditions, or through the discussions and negotiations preceding this contract and the fulfilment of its conditions, which is confidential and legally protected for the other party. Each party agrees on its own behalf and on behalf of its employees and representatives that this contract and all such information shall be treated confidentially during the contract period and shall not be disclosed or used by the receiving party or its employees, partners or representatives for whatsoever purpose, unless provided for in this contract, except to the extent to which the other party has granted its explicit written consent to disclosure or use. All information passed on from one party to the other shall be treated in the same way the receiving party treats its own legally protected and confidential information.
- 13.2.** There are no restrictions according to Clause 10.1, unless such information (i) is known to the recipient or its representatives prior to receipt from the other party; (ii) is or becomes legally accessible through a different source without any infringement of an obligation to maintain confidentiality; (iii) must or should be disclosed to an administrative authority with responsibility for one of the parties or for another legal reason, but only on condition that the other party has been informed of the intended disclosure in as much detail as possible and the party intending to disclose cooperates with the other party's reasonable attempts to restrict or prevent disclosure; (iv) must be disclosed to a credit card organisation for legal reasons, or (v) to the extent that the other party has waived the obligation to maintain confidentiality in writing.
- 13.3.** CC shall not release press information announcing the implementation of this contract or the transactions it is intended to provide for without having previously obtained consent from hobex.

## 14. Liability

- 14.1.** In the event of a violation of contract by hobex and/or its vicarious agents hobex shall only be liable for compensation if the violation concerns major contractual obligations. hobex shall be liable to a maximum amount of 5,000 Euros (in writing: five thousand Euros) per claim for infringements against major contractual obligations and/or other legal obligations through negligence.
- 14.2.** Any liability of hobex for consequential harm caused by a defect or for loss of earnings is excluded.
- 14.3.** CC's claims will become time-barred at the latest one year after the date on which CC becomes aware of the damage and the circumstances from which a claim arises, and three years

after the date of the damaging event regardless of any knowledge. Shorter legal periods of prescription remain unaffected.

## **15. Miscellaneous**

**15.1.** All changes of and amendments to this contract including all its Clauses must be made in writing to be effective.

**15.2.** If individual stipulations of this contract are partially or completely legally invalid this shall not affect the validity of the other stipulations. In this case the invalid stipulation shall be replaced by a valid stipulation that comes as close as possible to the effective purpose of the invalid stipulation.

**15.3.** hobex is entitled to change the particular conditions of this contract. Changes will be deemed as approved by CC unless it raises an objection in writing within 6 (six) weeks of having received notification by letter, fax or email. hobex will explicitly draw CC's attention to this detail in the event of such a notification. hobex can express an extraordinary cancellation of this contract prior to its scheduled expiry date under observation of a notice period of 6 (six) weeks for the purpose of changing the contract if such a change is deemed necessary after due consideration by hobex on account of the legal situation (including case law) regarding the formalities of credit card organisations, the current state of technology or objective market conditions and a continuation of the contract would be unreasonable for hobex.

**15.4.** Substantive Austrian law shall apply to all disputes relating to this contract. The applicability of conflict of laws rules of the Austrian International Private Law and the Uniform Law on the International Sale of Goods are explicitly excluded. The parties agree on the exclusive responsibility of the competent court in Salzburg (city).

# PARTICULAR CONDITIONS

VERSION 1.1 - VALID FROM 01. AUGUST 2008

***hobex***  
PAYMENT SYSTEMS

## PARTICULAR CONDITIONS OF TERMINAL LEASE

### 1. Creation and subject-matter of the leasing contract

**hobex AG**, FN 37265b, Josef-Brandstätter-Str. 2b, A-5020 Salzburg, (hereinafter referred to as „hobex“) has concluded the underlying „Card Payment Processing Contract“ with **Contracting Company** (hereinafter referred to as „CC“). The conclusion of a leasing contract between CC and hobex for one or more terminals – as far as selected by CC in the „Card Processing Contract“ – is a component of this contract. Lease contract stipulations are defined in detail in the Particular Conditions of Terminal Lease.

### 2. Contract duration, delivery schedule

**2.1.** The lease begins when both parties have signed the „Card Payment Processing Contract“ and the terminal is installed and operable. The leasing contract has a minimum duration of 36 (thirty-six) months. The contract will be extended for an unlimited period on expiry of the minimum period. After expiry of the minimum duration the contract can be cancelled per end of calendar month by either party by sending a letter of cancellation by registered post under observation of a notice period of 3 (three) months.

**2.2.** The lease and maintenance charge and the accounting period are defined in the „Card Payment Processing Contract“ and will be collected by direct debit at the start of each accounting period. The lease and maintenance charge is payable in full at the start of every accounting period and immediately if the lease commences during the accounting period.

**2.3.** hobex will present this contract to the financial authorities for the assessment of fees and will pay said fees to the financial authorities when they are due. hobex will then collect the full amount of the fees from CC who undertakes to cover these costs.

**2.4.** The contract ends automatically when the „Card Payment Processing Contract“ is cancelled. The obligation to pay the lease and maintenance charge ends on the last day of the month in which the terminal is returned.

**2.5.** CC is obliged to return the terminal and its accessories to hobex at CC's own expense and risk and to pay a handling charge pursuant to the „Card Payment Processing Contract“ plus VAT if CC cancels the lease contract prior to expiry of the minimum contract period.

**2.6.** Any violation of a major obligation of these contractual by CC, including default of payment of more than two weeks, will entitle hobex to cancel this agreement or the „Card Payment Processing Contract“ with immediate effect. The same applies when insolvency proceedings are opened against CC's assets or in case of justified reason to suspect insolvency.

### 3. Handover/return

**3.1.** The terminal and accessories (cables, operating instructions, mains adapter and software) are handed over to CC by hobex in unobjectionable condition. The handover is documented in a report which is signed off by CC.

**3.2.** CC shall return the terminal and accessories to hobex without delay and at his own expense and risk when the contract terminates.

### 4. Damage reporting

CC shall immediately report any loss, defects and damage relating to the terminal and its accessories, as well as claims under warranty and other claims. All consequential costs, including those accountable to delayed reporting, are payable by CC.

### 5. Miscellaneous

**5.1.** Every change or amendment to this agreement must be made in writing. Oral subsidiary agreements to this contract are invalid. This also applies to waiver of formal requirements.

**5.2.** If individual stipulations of this contract are partially or completely invalid this shall not affect the validity of the other stipulations. In this case a valid stipulation that comes as close as possible to the economic purpose of the invalid stipulation is deemed as agreed.

**5.3.** Substantive Austrian law shall apply to all disputes relating to this contract. The applicability of conflict of laws rules of the Austrian International Private Law and the Uniform Law on the International Sale of Goods are explicitly excluded. The parties agree on the exclusive responsibility of the competent court in Salzburg (city).