

# 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.