

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 MasterCard/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 on 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).