

# 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.