

General Terms and Conditions of Acceptance for Transactions at Point-of-Sale

**§ 1 Scope of Application, Subject Matter of the Agreement, Risk Warning**

**Scope of Application**

- (1) The Merchant named in the Online Application (hereinafter referred to as "**Merchant**") is a merchant who sells goods and/or services to customers in-person in store. The Merchant offers its customers the ability to pay for the goods and/or services purchased from it by cashless payment (by means of payment cards or through mobile payments as listed in the Online Application hereinafter together referred to as "**POS Payments**"). Wirecard Card Solutions Ltd. (hereinafter referred to as "**Wirecard**") provides a solution which enables merchants to accept POS Payments. The subject matter of the business relationship between the Merchant and Wirecard is the processing of the POS Payments. These General Terms and Conditions of Acceptance apply to such processing. Separate terms and conditions of business (hereinafter referred to as "**Special Terms and Conditions**"), which include derogations from or additions to these General Terms and Conditions of Acceptance, shall apply to the processing of individual POS Payments; (the General Terms and Conditions of Acceptance and the respectively agreed Special Terms and Conditions together with the Online Application are hereinafter referred to as the "**Contract**"). In the event of any conflict between the Special Terms and Conditions and the General Terms and Conditions of Acceptance, the Special Terms and Conditions shall take precedence. Unless otherwise expressly stated, any references to Clauses refer to these General Terms and Conditions of Acceptance.
- (2) When concluding and performing the Contract the Merchant is acting solely in the exercise of its commercial or self-employed occupational activity. The goods/services to be provided under the Contract may not be used for other purposes.
- (3) There is a 7-day cooling off period beginning with the date this Contract is concluded, during which the Merchant may be entitled to cancel this Contract. The Merchant must contact us as soon as possible via email or through the Mobile Application in order to cancel the Contract during the cooling-off period. The Merchant may use the template cancellation form (found in Annex 1) although this is not obligatory. Provided the Merchant's cancellation notice is received within the cooling-off period, such cancellation shall take place with immediate effect and without charge, other than in respect of services that the Merchant has already used.
- (4) Wirecard is authorised and regulated by the Financial Conduct Authority (FCA) under the Electronic Money Regulations 2011 for the issuing of electronic money (Register number 900051). Its head office is at Grainger Chambers, 3-5 Hood Street, Newcastle-upon-Tyne, NE1 6JQ, United Kingdom.

**Relationship with Wirecard Bank**

- (5) Wirecard may subcontract the performance of any or all of its obligations under the Contract to Wirecard Bank AG ("**Wirecard Bank**"). The Merchant expressly agrees to such subcontracting. Notwithstanding any role of Wirecard Bank as a subcontractor of Wirecard, Wirecard Bank is not party to the Contract and the Merchant shall have no rights against Wirecard Bank regarding the subject matter of the Contract.
- (6) If the Merchant holds a bank account with Wirecard Bank which is used in connection with the Services provided by Wirecard to the Merchant under the Contract, any such bank account relationship will be between Wirecard Bank and the Merchant only and shall be subject to separate Terms and Conditions ("**Account Terms and Conditions**") agreed between the Merchant and Wirecard Bank.

**The Merchant's Terms and Conditions**

- (7) Any conditions of purchase or other conditions of the Merchant shall apply only to the extent that they do not conflict with the Contract. This applies even if Wirecard provides the Merchant with the service without reservation while being aware of the Merchant's conflicting or deviating terms and conditions.

**Risk Warning**

- (8) The Merchant is advised that the acceptance of certain POS Payments involves a risk of fraudulent use because, for example, a card payment may be charged back because the customer demands a refund. Therefore, every caution must be exercised before such payments are accepted in order to prevent fraudulent use. The Merchant bears responsibility for ensuring this as it has

direct contact with the customer and can in each case decide whether, depending on the circumstances of the individual case, it can accept a particular POS Payment despite the risk of fraudulent use.

**§ 2 Basic Rules for the Relationship between the Merchant and Wirecard**

- (1) Wirecard shall provide information to the Merchant on each POS Payment processed and settled under the Contract through the Mobile Application (as defined in § 6 sub-clause (5)) in accordance with this sub-clause (1).
- (2) If no other agreement has been reached, Wirecard shall provide the merchant with the POS Payment information at least once per month through the Mobile Application.
- (3) If, at the Merchant's request, Wirecard provides information other than through the Mobile Application, or as otherwise agreed, the Merchant agrees Wirecard can charge a fee for doing so.
- (4) The Merchant acknowledges and agrees that where the Merchant is not a "micro-enterprise", the following provisions of the UK's Payment Services Regulations 2017 shall not apply:
  - (a) regulations 40 to 62 inclusive;
  - (b) all of regulations 66(1), 73(3) or (4), 75, 77, 79, 80, 83, 91, 92 and 94;
  - (c) a different time period applies for the purposes of regulation 74(1),

where a "micro-enterprise" is an autonomous enterprise whose annual turnover and/or balance sheet does not exceed €2 million and employs fewer than ten (10) people.

The Merchant acknowledges and agrees that it is the Merchant's responsibility to notify Wirecard of any changes to its status as a "micro-enterprise".

**Amendments to the Contract**

- (5) Wirecard shall notify the Merchant in writing by post or by email of any amendments to the Contract including to the General Terms and Conditions of Acceptance and to the Special Terms and Conditions. If the Merchant has agreed an electronic method of communication (cf. § 3) the amendments can also be sent by said method of communication. These amendments shall be deemed to have been accepted by the Merchant and shall take effect on the date stated in the notice (which shall be at least two (2) months after the date of the notice) unless the Merchant raises an objection to Wirecard. Any such objection shall be in writing or using the agreed electronic method of communication and dispatched to Wirecard before the date on which those amendments are due to take effect. Wirecard shall draw the Merchant's attention to the deemed consent in its notification of the amendment(s).
- (6) If the Merchant is offered amendments to the Special Terms and Conditions, the Merchant shall - up until the amendment becomes effective - also have the right to terminate the Contract with regard to the POS Payment affected by the amendment without notice and free of charge (partial termination).
- (7) Wirecard shall terminate the Contract immediately either in whole or in relation to the services affected by the amendments if the Merchant objects to any such amendment in time in accordance with § 2 sub-clause (5).
- (8) No verbal side agreements to the Contract have been entered into.
- (9) In all other respects the provisions of the Contract, including this requirement of written form, can be amended only by the parties' written agreement.
- (10) Any version of the provisions of the Contract in any other language is provided only for assistance; the English version, which shall be provided to the Merchant at any time upon request, shall be the sole authoritative version and shall be solely binding for the purposes of interpretation.

**Banking Secrecy and Bank Reference**

- (11) Wirecard must keep confidential all facts and assessments relating to the Merchant, which it learns, in consequence of this Contract. Wirecard may pass on to third parties such information about the Merchant and any POS Payment only if required to do so under applicable law or regulation or if the Merchant has consented or if Wirecard (itself or through Wirecard Bank) is authorised to provide a bank reference.
- (12) A bank reference contains findings and comments about the Merchant's financial situation, its creditworthiness and solvency, which are kept general; details of the amount of assets entrusted to Wirecard or details about the amount of any loans taken up shall not be stated.



- (13) The Merchant hereby authorises Wirecard (itself or through Wirecard Bank) to provide bank references concerning legal entities and merchants to the extent that the enquiry relates to their business activity. Wirecard shall not provide any references if it has been provided with contrary instructions by the Merchant. Wirecard shall, and shall ensure that Wirecard Bank shall, provide bank references about other persons, particularly about associations, only if such other persons have expressly consented either generally or in the individual case. A bank reference shall only be provided if the person making the request has demonstrated that he has a legitimate interest in the information requested and if there is no reason to suppose that the Merchant's interests worthy of protection preclude the provision of the information.
- (14) Wirecard shall (itself or through Wirecard Bank) provide bank references only to its own contract partners, other credit institutions for their purposes or for the purposes of their customers and to persons, who are authorised by statute or by reason of a court or administrative order to receive such information.
- (15) The Merchant hereby revocably authorises the financial institutions, who are named in the Online Application (i.e. those with which the Merchant holds a bank account) for payments to the Merchant, to provide Wirecard with a general bank reference and insofar releases such banks from their obligation to maintain banking secrecy. Such authorisation simultaneously applies to all financial institutions where the Merchant maintains a bank account at the time of the request if Wirecard has been notified of such bank account for the purposes of instructions to effect credit entries, direct debits or bank debits. Wirecard shall make use of such authorisation only in connection with the conclusion and the performance of the Contract.

### Confidentiality and Data Protection

- Confidentiality
- (16) Each party shall treat all information or documents, which they have received from the respective other party (hereinafter referred to as the "Disclosing Party") or otherwise through such Disclosing Party before or after the entry into force of the Contract, and which pertain to the Contract or its terms and conditions or sales documentation or to the Disclosing Party's business, financial situation, products and expectations, processes and methods, customers and employees (particularly company or trade secrets, as well as information about customers, which has not been rendered anonymous) as well as all other information concerning the Disclosing Party and documents as strictly confidential (hereinafter together referred to as "Confidential Information"). This applies irrespective of whether the Confidential Information is marked as confidential or whether it is reasonably to be classified as confidential.
- (17) Neither of the parties shall use or disclose Confidential Information in relation to their respective employees, contract partners or advisers, nor shall they transmit Confidential Information to third parties (particularly affiliated undertakings of the parties) except if necessary to perform their respective obligations arising out of the Contract. This particularly concerns Wirecard's right to transmit:
- transaction or other data to the payment systems in connection with Wirecard's services, or to third-party service providers;
  - the transaction details presented by the Merchant for batch processing and (as regards customer data) rendered anonymous in accordance with the applicable data protection laws to other contract partners and to the agent responsible for the Merchant; or
  - the Merchant's details set out in the Contract to information agencies set up for the purpose of checking any previous breaches of contract in relation to other service providers or in the event of any breach of contract, which entitles Wirecard to terminate this Contract, and to do so for such purpose in accordance with the provisions of this Contract and in accordance with applicable law and regulations.

Before transmitting Confidential Information the parties shall inform every recipient of Confidential Information of its confidential nature and shall oblige every recipient to comply with obligations to maintain confidentiality which are equally strict as the obligations governed by this Contract.

- (18) The obligation to maintain confidentiality shall not apply to Confidential Information to the extent that such information:
- may be published by reason of an express contractual agreement between the parties and/or by reason of the written consent of the party affected (in particular pursuant to § 12 sub-clause (8));

- was already known to the receiving party irrespective of the conclusion or the implementation of this Contract;
- is already generally known or becomes generally known by the receiving party by some means other than by a breach of § 2 sub-clause (16) or § 2 sub-clause (18); or
- must be disclosed by one of the parties by operation of law or by reason of a court or administrative order or the Confidential Information is disclosed to a person, who is under a professional obligation to maintain confidentiality (e.g. tax advisers, lawyers).

In the circumstances stipulated under letter d) the Disclosing Party shall - to the extent legally permitted - in the event of a court or administrative order, first immediately notify the other party submitting evidence of such order so that the other party can take action for interim relief or other suitable legal remedies. The Disclosing Party shall thereby provide the other party with a reasonable amount of support.

- (19) Any Confidential Information shall remain the property of the Disclosing Party and may be copied or reproduced only with such party's prior written consent or to the extent so required in order to implement the Contract. Upon request by the Disclosing Party the other party must return or destroy the Confidential Information and its embodiment and must confirm the destruction in writing. There shall be no obligation to return or destroy the Confidential Information if and to the extent that the other Party is legally obliged to retain the documents and data concerned. Furthermore, copies of computer records and computer files, which have been created in the context of an automatic backup, are excluded from the deletion obligation.
- (20) The confidentiality obligations stipulated above shall survive termination or expiry of the Contract.
- (21) Data Protection
- (22) Insofar as Wirecard and Wirecard Bank acquire claims against the Merchant's end customers Wirecard and Wirecard Bank act as a controller within the meaning of Art. 4 (7) General Data Protection Regulation – EU Regulation 2016/679 – (GDPR).
- (23) Regarding alternative payment methods and transaction processing Wirecard will be processor within the meaning of Art. 4 (8) GDPR. This requires for the parties to enter into a Data Processing Agreement (DPA) as set out in Appendix 1.

### Limits on the Merchant's Right of Set-Off

- (24) The Merchant can claim a right of set-off against Wirecard's claims only if its claims are undisputed or have become final and absolute.

### Objections arising out of the Underlying Transaction

- (25) The Merchant must advise its customers that it is responsible for the delivery of the goods and/or the performance of the services underlying the transactions which the Merchant has presented to Wirecard for processing, as well as all questions in connection therewith (particularly customer complaints).
- (26) The Merchant must clearly inform its customers of its identity so that the customer can distinguish the Merchant from third parties who may be involved in the processing of the underlying transaction.
- (27) If the Merchant wishes to levy any surcharge for use of a particular payment instrument, the Merchant must at all times ensure it does so in compliance with any applicable laws and regulations in the country in which the Merchant is based, and the relevant rules of any Card Scheme (as applicable and to the extent these do not conflict with applicable laws and regulations) and any Special Terms and Conditions.
- (28) If the Merchant wishes to offer a currency conversion service before the initiation of the payment transaction with the customer (commonly referred to as "dynamic currency conversion"), the Merchant must disclose to the customer all charges as well as the exchange rate to be used for converting the payment transaction.

### Notice regarding Acceptance / Copyrights

- (29) The Merchant must make the marks/logos/other distinctive signs, which advertise the ability to pay with the payment cards included in this Contract, clearly visible at its business premises and at the point of sale. The Merchant may use logos, trade marks or distinctive signs of Wirecard and of the card schemes of the payment systems underlying the POS Payments (e.g. card organisations MasterCard and Visa; hereinafter generally referred to as "Card Schemes") or any payment cards, particularly the designations "MasterCard", "Visa", "Visa Electron", "Maestro" or "V PAY" or any mobile payment methods (e.g. "AliPay" or "WeChat") protected by trade mark, for advertising purposes only with the prior written consent of Wirecard unless it is otherwise entitled to do so. The Merchant must comply with Wirecard's respective requirements (e.g. by reason of any specifications, on



which the Contract may, as the case may be, be based) and with the provisions of any Special Terms and Conditions. The logos and/or marks may not be used in a manner which impairs the interests of the respective rights holder. This includes giving the impression that any Card Scheme or POS Payment method renders or supports the Merchant's goods and/or services. Use of the logos and trademarks must be discontinued, and corresponding distinctive signs at the Merchant's premises and/or on its website must be removed promptly after termination of this Contract. If one of the Card Schemes or the POS Payment method requires, whether directly or through Wirecard, that use of the respective trademark/logo be ceased or requires that it be adapted to be in line with the requirements of the respective Card Scheme or the POS Payment method, the Merchant shall promptly comply with this requirement at its own cost.

### Engaging Third Parties

- (30) If one of the parties uses third parties for rendering services it shall be responsible towards the other party for all acts, mistakes or omissions of the third party in the same way as it is for its own acts and omissions. The Merchant is not entitled to engage or otherwise use third parties to perform the obligations incumbent upon the Merchant by reason of this Contract without the prior written consent of Wirecard. Wirecard shall refuse such consent only if there is good cause. This does not affect the right of the Merchant (again with the prior written consent of Wirecard) to engage third parties in areas, which do not affect the security of Wirecard's systems. Wirecard has the right to engage third parties to perform its contractual obligations.

### Business Day

- (31) A Business Day is any day on which Wirecard and, as the case may be, the payment service provider involved in the execution of a payment transaction, maintain the business operations required for executing the payment transactions (hereinafter "**Business Day**"). Wirecard maintains the business operations required for executing payments on all working days except that business operations may not be maintained at all or only on a restricted basis on any or all of the following:
- Saturdays and Sundays;
  - 24, 25, 26 and 31 December and 1 January;
  - all statutory public holidays at the places where Wirecard and/or Wirecard Bank have their registered offices;
  - working days, on which Wirecard and/or Wirecard Bank is closed because of local particularities (e.g. carnival, works meetings or other reasons) and the closure has been announced in good time in advance.

## § 3 Contractual Communication

- (1) Unless expressly otherwise agreed in these General Terms and Conditions of Acceptance or in the Special Terms and Conditions (as is for example the case for notices of termination) the parties agree that they will communicate in the following manner:
- all contractual notices must be made in writing and by post or by email; and
  - all other communications are to be made through the Mobile Application, as defined in § 6 sub-clause (10).
- All communications shall be in English or German.

## § 4 Wirecard's Liability, Services which are not Contractually Owed

- (1) In rendering the services Wirecard's liability to the Merchant for fraud or for death or personal injury resulting from its negligence shall be unlimited.
- (2) Subject to sub-clause (1), Wirecard's liability to the Merchant under this Contract shall be limited to €10,000 per claim.
- (3) Subject to sub-clauses (1) and (2), Wirecard shall not be liable to the Merchant:
- for business interruption, loss of profits, loss of business, loss of revenue, loss of goodwill, loss of opportunity, loss or injury to reputation or loss of anticipated savings even where Wirecard was aware of the possibility that such loss or damage could occur, which may arise out of or in connection with the Contract; or
  - for any indirect or consequential loss or damage which may arise out of or in connection with the performance or purported performance of or failure in performance of Wirecard's obligations under the Contract; or
  - for any loss or damage of a type which was not reasonably foreseeable when the Contract was concluded, whether or not the possibility of that type of loss or damage was

subsequently advised to or otherwise became known, or should have become known, to Wirecard after the date on which the Contract was concluded; or

- (d) for any claim where the circumstances giving rise to a claim:
- are due to an unusual and unforeseeable event, outside the reasonable control of Wirecard and the consequences of which could not have been avoided even if all due care had been exercised (such as, for example, force majeure, events of war and acts of God, strike, lockout, traffic disruption, acts of domestic or foreign governmental authorities); or
  - were caused by Wirecard due to its compliance with applicable laws and regulations; or
- (e) to the extent that the Merchant contributed to the occurrence of any loss by any negligent or intentional action or omission and the Merchant's liability in that instance shall be determined in accordance with the principles of contributing negligence; or
- (f) for the actions or inactions of any intermediary service provider instructed by Wirecard, and Wirecard's liability in such instance shall be limited to using reasonable care in the selection, appointment and instruction of such intermediary service provider (but not of any third party such provider may use); or
- (g) for any failure or disruption in the technical infrastructure, including the proper functioning of the technical transmission procedure, devices, cable routes and other technical equipment, which the Merchant uses as applicable (e.g. to submit the data records resulting from the payment transactions) if such failure or disruption is due to abnormal and unforeseen circumstances beyond Wirecard's control, the consequences of which would have been unavoidable despite all efforts to the contrary; or
- (h) for any loss of data and other malfunctions or for damage if such loss of data, other malfunctions and damage is due to the fact that the Merchant does not comply with the stipulations for the delivery of data to Wirecard via the Mobile Application (cf. § 6 sub-clause (10)). If data is lost following delivery by the Merchant or by a third party commissioned by the Merchant and upon delivery to Wirecard, Wirecard shall not be liable for that part of the damage that is due to the fact that no proper backup was made by the Merchant or by the third party commissioned by the Merchant on the Merchant's or the third party's own systems prior to transmission – provided that such a backup is permitted under the provisions of the Contract, the applicable statutory provisions and the requirements of the Card Schemes (as applicable); or
- (i) for the following, which are not contractually owed obligations of Wirecard:
- the connection and data transmission between the Merchant and its customers; Wirecard cannot influence this; the Merchant is responsible for ensuring the requisite transmission security between customers and the Merchant including compliance with applicable data protection provisions as well as specific requirements for POS Payments;
  - the data transmission within the Merchant's systems or in telecommunications networks of third parties;
  - the provision, servicing, maintenance and, as the case may be, configuration and programming of the hardware and software to be maintained by the Merchant during the term of the Contract in order to ensure fulfilment of any prerequisites for the acceptance of POS payments; and/or
  - the transfer of Wirecard software to the Merchant for storing/using on the Merchant's systems.
- (4) Notwithstanding sub-clauses (2) and (3), where the Merchant acts as a payer, it may be entitled to a refund from Wirecard of the full amount of any authorised payment transaction initiated by or through the payee, in accordance with Regulation 80 of the Payment Services Regulations 2017.

### Liability for unexecuted or incorrectly executed payment transactions

- (5) Wirecard will not be liable to the Merchant if Wirecard executes a payment transaction in accordance with the unique identifier provided by the payer, but where the incorrect unique identifier was provided. Such transactions shall be deemed to be correctly executed by Wirecard and shall not be construed as unexecuted or incorrectly executed payment transactions for which Wirecard may





have liability. However, in such circumstances Wirecard will make reasonable efforts to recover the funds involved in the payment transaction and the Merchant agrees Wirecard may charge the Merchant for any such recovery.

- (6) Wirecard's liability for damage incurred by the Merchant due to a unexecuted or incorrectly executed payment transaction or due to a payment order that was not authorised by the Merchant is limited in quantum to the amount of the respective payment transaction plus an amount to restore the Merchant's payment accounts to the state in which it would have been had the defective payment transaction not taken place plus any charges for which the Merchant is responsible and any interest which the Merchant must pay as a consequence of the non-execution or defective execution of the payment transaction.
- (7) Nothing in this Contract shall detract from the Merchant's right to reimbursement under regulation 76 of the Payment Services Regulations 2017 in the event of an unauthorised payment transaction.
- (8) The Merchant is only entitled to redress from Wirecard in respect of an unauthorised, unexecuted or incorrectly executed payment transaction made by Wirecard on the Merchant's behalf if the Merchant notified Wirecard of the unauthorised, unexecuted or incorrectly executed payment transaction without undue delay on becoming aware of that unauthorised, unexecuted or incorrectly executed payment transaction and in any event within thirteen (13) months of the date of the payment transaction. The thirteen (13) month period shall only begin to run if Wirecard has made the Transaction Information available to the Merchant in accordance with terms of this Contract no later than one month from the date of the payment transaction.
- (9) If an instruction is, by reason of its content, typically executed in such a form that Wirecard entrusts the further settlement to a third party, Wirecard fulfils the order by forwarding it to the third party in its own name. This concerns, for example, the obtaining of bank references from other credit institutions. In such cases Wirecard's liability shall be limited to carefully choosing and instructing the third party.

## § 5 The Merchant's Liability and Indemnity

- (1) The Merchant shall be liable for and shall indemnify Wirecard from and against all expenses, costs, claims, obligations or any liability and all other damage or loss arising from any breach by the Merchant of its obligations under the Contract or of applicable laws and regulations. The Merchant shall be liable to Wirecard for the proper fulfilment of its obligations exercising the care of a responsible businessperson.
- (2) The Merchant acknowledges that if charges are imposed on Wirecard by the Card Scheme or POS Payment provider due to a negligent or intentional breach of a contractual obligation of the Merchant, the Merchant shall indemnify Wirecard from and against any such penalty charges or shall refund Wirecard any penalty charges paid by way of damages. For this, it shall be irrelevant whether the penalty charges are justified in the relationship between Wirecard and the Card Scheme or POS Payment provider. The duty to indemnify shall also apply regardless of whether the Merchant had an opportunity of raising objections or defences prior to payment by Wirecard. Wirecard shall, upon request, provide the Merchant with a schedule of the current penalty charges for the individual payment methods. The Merchant shall remain entitled to prove that less damage has occurred than that stipulated by the penalty; Wirecard shall remain entitled to prove that greater damage has occurred than that stipulated by the penalty. The above shall also apply in respect of other claims of third parties against Wirecard where the Merchant or a third party employed by the Merchant intentionally or negligently breaches its obligations under the Contract.
- (3) Where the Merchant is acting as a payer, it may be liable for up to €50 for any losses incurred in respect of an unauthorised payment transaction, arising from the use of a lost or stolen payment instrument or, where the Merchant has failed to keep any personalised security features of the Mobile Application safe, from the misappropriation of the Mobile Application. The Merchant will, however, be liable for all such losses where it has acted fraudulently, or has failed (with intent or gross negligence) to comply with its obligation in relation to the Mobile Application.

## § 6 The Merchant's Duties

### Notification of Changes

- (1) So that business dealings can be properly processed, the Merchant must notify Wirecard of any changes to its name and its address as

well as of any expiration of or change to any power of representation (particularly any power-of-attorney) in relation to Wirecard without undue delay. This duty to notify shall even apply if the power of representation is registered in a public register and the expiration thereof or change thereto is entered in such Register. The Merchant acknowledges that notification of changes may trigger further notification duties on the Merchant, for example pursuant to anti-money laundering legislation.

### Clarity of Orders

- (2) Orders from the Merchant to Wirecard must be clear and unambiguous. Instructions which are not clearly formulated may give rise to queries which may lead to delays. The Merchant must pay particular attention to the correctness and completeness of details it provides on the account to which funds will be settled by Wirecard under the Contract, particularly the correctness and completeness of the account number and bank sort code or IBAN and BIC as well as of the currency. Any changes to, confirmations or repetitions of orders must be marked as such.

### Notification of Unauthorised or Incorrectly Executed Payment Transactions

- (3) The Merchant must notify Wirecard without undue delay (and in any event within thirteen (13) months of the date of the relevant payment transaction) after discovering an unauthorised, incorrectly executed or unexecuted payment transaction made by Wirecard on the Merchant's behalf.

### Duty to Inform

- (4) The Merchant must provide or make available to Wirecard any information and/or documents reasonably requested in the course of the establishment and performance of the Contract. The Merchant must provide or make available such information and documents fully, correctly and truthfully. The Merchant must notify Wirecard of all changes in such information and documents without being asked to do so and without undue delay in writing, particularly:
  - (a) any change in the objects of its business;
  - (b) any change to the type of product range;
  - (c) any disposal or leasing of the business or any other change of ownership;
  - (d) any change of legal form or company name;
  - (e) any change of address or bank details;
  - (f) any change in the Merchant's financial situation; and
  - (g) any change to the information, which the Merchant has provided pursuant to applicable anti-money laundering regulation, particularly regarding the beneficial owner and/or for Wirecard's due diligence purposes.

The Merchant shall, without being asked, also provide Wirecard with all other information and documents, which may be of relevance to Wirecard for rendering the services under the terms of this Contract.

The Merchant must bear the cost of any and all damage suffered by Wirecard as a result of any negligent or intentional breach of this duty to notify.

- (5) Upon request by Wirecard the Merchant shall promptly provide Wirecard with extracts of its certified Commercial Register, other extracts from registers, its company books (including the register of shareholdings) trading licences, articles of association/partnership agreement, annual accounts and all information required pursuant to any and all applicable laws and regulations, ordinances or official notices and circulars which relate to anti-money laundering and countering terrorist financing. In addition the Merchant shall promptly provide Wirecard with all other current information and documents requested by Wirecard concerning the Merchant (e.g. regarding the Merchant's financial situation) to a reasonable extent. If documents have been drafted in a language other than English or German, the Merchant shall provide such documents together with an English translation, which shall be a certified translation if so requested by Wirecard. The Merchant shall in each case, upon request by Wirecard, provide information about the organisation of its business operation (including security measures) including information, which in Wirecard's judgement has to be provided to third parties (e.g. Card Schemes or a POS Payment provider) for the purposes of performing this Contract.

### Security

- (6) If the Merchant has reasonable grounds for believing that the customer who uses a POS Payment method is not the person authorised to use the POS Payment method, the Merchant must check the customer's authorisation on the basis of a valid identification document.



- (7) The Merchant shall ensure that within its sphere of influence it is not possible for the data input to be manipulated, in particular that any unauthorised use of terminals by employees, other personnel, agents or unauthorised persons is not possible.

### Compliance with law, Permits

- (8) The Merchant undertakes to comply strictly with all applicable laws and regulations in the operation of its business, this particularly applies to compliance with provisions which apply in relation to consumers.
- (9) If the Merchant conducts business, which under applicable laws and regulations requires an official authorisation, licence or permit ("permit") (e.g. in relation to certain customer groups such as, for example, young persons), particularly games of chance, lotteries, betting and suchlike, the Merchant shall provide to Wirecard without undue delay evidence that such permit has been granted (including by submitting a certified copy of the notification of the permit if so requested by Wirecard), and shall inform Wirecard without undue delay if any such permit is changed, expires, is withdrawn or otherwise loses its validity. The Merchant shall expressly inform potential customers if in certain countries where the Merchant directs its offering no such permit has been issued, or if any such permit changes, expires or is withdrawn or otherwise loses its validity, if the goods/services concerned are prohibited for other reasons or if the Merchant is unclear what the legal situation is. In such cases Wirecard may refuse to process transactions or payouts. Wirecard shall inform the Merchant of any such exclusion in a timely manner and Wirecard shall have no liability to the Merchant or any third party for any loss or damage resulting from the Merchant's failure to hold or maintain the appropriate permit(s). The provisions in individual Special Terms and Conditions on inadmissible goods/services of the Merchant and Wirecard's right not to provide services relating to any such inadmissible goods/services of the Merchant shall remain unaffected.

### Other Obligations regarding Conduct when Presenting Transactions

- (10) The Merchant may only use a data entry device (hereinafter referred to as "Terminal") that has been approved by Wirecard for presenting transactions. Furthermore, the Merchant may transmit transaction details to Wirecard using only the method of communication approved by Wirecard. The Terminal shall either be a traditional payment transaction terminal or a mobile end device (e.g. smartphone) on which a software application ("Mobile Application") provided by Wirecard has been installed and which is equipped with a reader provided by Wirecard. The type of Terminal which the Merchant may use shall be agreed in the Online Application.
- (11) The Merchant must not publish in any way any false or misleading details about the goods/services it sells.
- (12) The Merchant is not entitled:
- to present to Wirecard transactions for charges for goods/services, which are not provided solely for its own account or are not provided solely in its own name or which are provided by order of a third party or which are not effected on the basis of a direct contractual relationship with the cardholder;
  - to present to Wirecard transactions from its own services/sale of goods together with transactions of other providers bundled into one transaction or have the aforesaid presented to Wirecard by third parties;
  - to present to Wirecard transactions for charges for goods/services that are not provided in the Merchant's ordinary course of business stated in the Contract with Wirecard and in particular grant of credits or other cash payments must not underlie such transactions;
  - to present to Wirecard transactions for charges for goods/services, the content of which is illegal or immoral under applicable laws and regulations; this applies in particular to goods/services in connection with gambling (even if the goods/services themselves are not illegal), and if the payment card used as payment for such goods/services was issued in the United States of America;
  - to present to Wirecard transactions for charges for goods/services which comprise content that is subject to the law governing the protection of young persons;
  - to present to Wirecard transactions for charges for goods/services that are owed for, or are associated with, instructions on how to produce weapons, bombs or other explosive devices;
  - to accept payment for goods/services if the POS Payment method is not physically present ("card-not-present"

transactions); this also applies in exceptional cases and emergency situations;

- to accept a POS Payment method as payment to meet a non-collectable debt or to pay for a cheque that has not been honoured or for the purposes of payment out in cash;
- to accept a POS Payment method if, due to circumstances surrounding the transaction, there is cause to believe that there is a case of fraudulent use, particularly if there are any doubts about the customer's right to use the POS Payment method. There shall in particular be grounds to suspect such fraudulent misuse if the order is unusual (because e.g. the customer uses more than one POS Payment method) or other reasons give rise to a suspicion of fraudulent use of the POS Payment method details (e.g. because at the customer's request the total amount of the transaction is to be divided or even split amongst several POS Payment methods or because the customer says that problems may arise in connection with acceptance of the POS Payment method when the transaction has already been initiated);
- to offer dynamic currency conversion ("DCC") at the point of sale without Wirecard's express consent and subject to any special terms Wirecard may apply to a Merchant who wishes to offer DCC at the point of sale.

In the above-mentioned cases the Merchant is not permitted to retrieve any details from the particular POS Payment method.

## § 7 Retention and Documentation

- For every transaction initiated through payment cards and presented to Wirecard the Merchant is obliged to record the signatures obtained from the customer as well as the wording on the respective transaction receipt, under which the customer signed his/her signature, and to do so electronically or in writing. The documentation and retention obligations agreed in individual Special Terms and Conditions and any statutory retention obligations of the Merchant shall remain unaffected by the above provision.
- The Merchant must retain the documents and data defined in § 7 sub-clause (1) above for at least eighteen (18) months calculated from the date of presentation of the transaction unless earlier deletion or destruction is mandatory by law. The above sentence applies mutatis mutandis to all and any other documentation relating to the transactions. The statutory duties of the Merchant to retain documents/data shall remain unaffected. The data and documents must, upon request, be made available to Wirecard for review purposes on paper or in a readable electronic format. If the Merchant does not comply with any such request by Wirecard without undue delay, Wirecard shall have the right to charge back the corresponding transaction amount.
- For any POS Payments the Merchant shall use the information and payment details obtained in connection with the execution of a payment transaction solely for the purpose of performing its contractually owed obligations and shall not pass such information or data on to unauthorised third parties or otherwise exploit such information.
- If the Merchant so requests at any time during the term of this Contract, Wirecard shall provide to the Merchant a copy of this Contract and all information referred to in Schedule 4 of the Payment Services Regulations 2017.
- The obligations contained in this § 7 shall continue to apply in accordance with the above provisions even after the termination or expiry of the Contract.

## § 8 Fees, Expenses

### Fees and Reimbursement of Expenses

- The charges to be paid by the Merchant for using the services of Wirecard (in particular but without limitation the discount, the transaction charge and the chargeback fees) are set out in the Contract (via the Online Application and the Online Tool). These can be found and accessed at any time via the Online Tool. Wirecard will not reimburse these charges paid by the Merchant for using Wirecard's services, if the Merchant refunds the transaction amount to the POS Payment method user.
- Wirecard's usual charging structure for payment cards is based on blended merchant service charges which comprise the interchange fee, the scheme fee and our acquiring fee and, subject to the request made during the Online Application, the Merchant acknowledges and agrees that it will be charged for Wirecard's merchant services as a blended rate. The Merchant can find more detailed information regarding the fees which comprise the merchant service charges via the Online Tool.



- (3) In addition, Wirecard shall be entitled to charge a fee to the Merchant for any additional service, provided by Wirecard at the request of the Merchant (e.g. providing copies of statements of account).
- (4) Unless expressly otherwise agreed (e.g. in Special Terms and Conditions) all prices are stated exclusive of any value added tax. Insofar as individual services under the business relationship can be provided subject to value added tax Wirecard can opt for value added tax irrespective of whether the Merchant can deduct the amount of value added tax paid as input tax. The Merchant shall be charged the value added tax amount in addition to Wirecard's agreed charges.
- (5) The Merchant recognises that charges in the Contract are assessed prior to the commencement of its term on the basis of information given to Wirecard by the Merchant. If that information proves to be incorrect or there is a reasonably significant change to such information, Wirecard shall, acting reasonably, be entitled to adjust charges during the term of the Contract. Examples include where transaction volumes, the number of transactions, the average turnover, the number of credits and chargebacks are different from what was predicted or when a third party makes amendments to other cost-relevant framework conditions (e.g. amendments made by a Card Scheme or POS Payment provider to their rules, services and/or charges). Wirecard shall give the Merchant at least two (2) months' notice of any such change and the procedure in § 2 sub-clause (5) shall apply to any changes to charges.
- (6) Notwithstanding sub-clause (5), changes in interest or exchange rates may be applied immediately and without notice to the Merchant where the changes are based on any reference interest or exchange rate, or where the charge is more favourable to the Merchant.

#### Expenses

- (7) All expenses which Wirecard incurs whether directly or indirectly in connection with the performance of this Contract (e.g. long-distance telephone calls, postage, the processing of chargebacks, costs in connection with the creation, administration, release or realisation of security) must be reimbursed by the Merchant after a corresponding statement of account has been issued. Wirecard may demand an indemnity from the Merchant from and against any liability entered into by it or incurred by it in connection with the expenses due from the Merchant which remain unpaid.
- (8) **Charges in the event of Termination by the Merchant**  
In the event of termination by the Merchant other than where terminated due to cause (e.g. due to a breach by Wirecard of its obligations under this Contract), any charges already paid will not be refunded pro rata. The Merchant must pay the charges agreed up until the time notice of termination was given.

## § 9 Payments to the Merchant, Settling of Accounts

#### Payout

- (1) Payouts regarding payment transactions presented to Wirecard by the Merchant shall be made less the agreed fees and any expenses as well as any value added tax applicable thereto, if any. Wirecard is not obliged to hand over to the Merchant any benefits received from the amounts to be paid out up to and including the date of the payout. This shall be without prejudice to any other set-off rights of Wirecard that may exist. Provided the transaction details required for the processing have been received by Wirecard in full and in a processable form by 24:00 on a Business Day and no particular payout date has been requested by the Merchant and agreed with Wirecard in writing, Wirecard shall remit the amounts to be paid out to the Merchant without undue delay after Wirecard has received the sums of money in full. Otherwise the sums to be paid out to the Merchant shall be remitted within the payout cycle agreed between the parties to the bank account designated by the Merchant.
- (2) All payouts and statements to the Merchant are made conditionally; Wirecard shall have no obligation to make payments to the Merchant if the prerequisites for payout agreed under this Contract (including the Special Terms and Conditions) for the corresponding payment transaction and the service concerned are not met in full and if the corresponding amount of the payment transactions concerned has been charged (back) to Wirecard. If Wirecard makes payouts to the Merchant, Wirecard can demand that they be repaid or can offset them against its own payment obligations owed towards the Merchant (also under other contracts with the Merchant) provided that it is foreseeable that payments by the Merchant cannot be obtained without instituting court measures. Accordingly, any and all payouts paid by Wirecard to the Merchant shall be deemed to have been paid subject to chargeback up until

the time when Wirecard learns that the respectively agreed prerequisites for payment out have been fulfilled (however no longer than eighteen (18) months as of the date of presentment of the respective payment transaction to Wirecard, hereinafter referred to as the "Chargeback Period"). The payouts shall no longer be subject to any chargeback after the Chargeback Period has expired.

#### Billing

- (3) The Merchant shall be provided with statements in the individually agreed settlement period showing the payouts made, chargebacks and reverse entries, the charges and disbursements due in accordance with § 8 as well as the expenses and penalty charges to be reimbursed in accordance with § 5 sub-clauses (1) and (2). If presented payment transactions are credited collectively Wirecard shall be entitled not to show the individual payment transactions in the statement but instead only the total amount. These statements shall be sent to the Merchant by e-mail, using the details set out in the Online Application.
- (4) If the statement prepared by Wirecard shows that a negative balance is due the Merchant must settle said negative balance immediately after receipt of the statement showing the negative balance; all of the sums included in statements shall be due for payment to Wirecard immediately upon receipt of the statement. If the Merchant has given Wirecard a national direct debit mandate or a SEPA direct debit mandate for this, the settlement shall be effected by direct debit. If no national direct debit mandate or debit mandate has been granted or collection by direct debit is not possible for other reasons, the Merchant must settle any negative balance that is due without undue delay in some other way.
- (5) The Merchant must immediately check the statements rendered to it and must notify Wirecard of any objections or of any failure to provide statements immediately and in accordance with the provisions of § 6(3).

## § 10 Security for Wirecard's Claims against the Merchant

#### The Creation of or Increase in Security

- (1) Wirecard may demand that bank security be provided for all claims arising out of the acquiring relationship and, more particularly, even if the claims are conditional or limited in time. If the Merchant has assumed liability in relation to Wirecard for the liabilities of another of Wirecard's merchants (for example as a guarantor) Wirecard shall have the right to require the Merchant to grant security or increase the value of security granted previously with regard to the debt ensuing from the assumption of liability.
- (2) Unless otherwise provided in this Contract (including any agreed Special Terms and Conditions), Wirecard shall allow the Merchant a reasonable period for creating or increasing the security. However, Wirecard retains the right to terminate pursuant to § 11 sub-clause (4)(d) if the Merchant fails to comply with its obligation to create or strengthen security in a timely manner, and it shall give the Merchant advance notice of a decision to terminate (and a chance to remedy the default).

#### Changes to, and Re-Assessment of, the Risk

- (3) If Wirecard refrains, whether in whole or in part, from demanding that security be created or increased at a time when claims against the Merchant arose, it may still demand security at a later point in time. A prerequisite for this is, however, that circumstances arise or become known, which justify an increased risk assessment of the claims against the Merchant. This can particularly be the case if:
  - (a) The Merchant's financial situation has changed for the worse or there is an impending risk that they will change for the worse; or
  - (b) The value of existing security has depreciated or there is an impending risk that they will depreciate.
- (4) Wirecard shall have no claim to security if there exists between the parties a pre-existing agreement expressly exempting the Merchant from providing any security or limiting the range of security which may be charged in favour of Wirecard.
- (5) Wirecard reserves the right to reassess the risk and to require corresponding security particularly if and to the extent that:
  - (a) the monthly transaction volume exceeds the average transaction volume of the previous period of two (2) calendar months in connection with an increase in security pursuant to this § 10 sub-clause (5)(a) by more than twenty percent (20 %);
  - (b) The business described by the Merchant changes in such a way that the Merchant falls into a higher risk category; or
  - (c) Wirecard has adequate reasons for believing that the Merchant constitutes a risk of fraud or loss.





**Agreement of a Lien to the Benefit of Wirecard**

- (6) The Merchant and Wirecard are in agreement that Wirecard acquires a lien on the claims, to which the Merchant is entitled, or will in future be entitled, against Wirecard under the acquiring relationship.
- (7) The lien shall serve as additional security for all existing, future and conditional claims, to which Wirecard is entitled against the Merchant under the acquiring relationship. If the Merchant has assumed liability in relation to Wirecard for the liabilities of another of Wirecard's merchants (for example as a guarantor) the lien shall secure the debt ensuing from the assumption of liability, however only with effect from when it is due.

**Limits on the Right to Security and Obligation to Release Security**

- (8) Wirecard may assert its right to require the Merchant to grant or increase the value of security given to Wirecard up until the point in time when the realisable value of all security corresponds to the total sum of all claims arising out of this contractual relationship ("Cover Limit").
- (9) If the realisable value of all security exceeds the Cover Limit over a long term period the Merchant may request that Wirecard releases the whole or part of its security to the extent that the value of that security exceeds the Cover Limit. When selecting the security to be released, Wirecard shall take into account the legitimate interests of the Merchant and of any third party guarantor, who has created security for the liabilities of the Merchant. Within these parameters Wirecard is also under an obligation to carry out the Merchant's mandates for values, which are subject to the lien (for example payment out of payment transactions).
- (10) If a different evaluation from the realisable value has been agreed for a particular security or if a different Cover Limit or a different limit for the release of security has been agreed, such different evaluation/ limits shall apply.

**The Realisation of Security**

- (11) When realising and selecting any security to be realised, Wirecard shall do so at its option but shall take into account the legitimate interests of the Merchant and of any third party guarantor, who has created security for the liabilities of the Merchant.
- (12) If the realisation is subject to value added tax, Wirecard shall issue the Merchant with a credit note for the proceeds, which shall serve as an invoice for delivery of the property acting as security and which complies with the requirements of value added tax law.

**Holdback**

- (13) As security for all existing and future claims - including conditional claims and claims that are limited in time - to which Wirecard is entitled against the Merchant under the Contract, particularly claims in connection with chargebacks, including any penalty charges by the Card Schemes or other POS Payment providers, Wirecard shall hold back the portion of the agreed final invoice amount from all of the payment sums made available in the respective payout period (set out in the Online Application) as a holdback (hereinafter referred to as "**Holdback**"), i.e. after expiry of the respective payout period the sum in the amount of the Holdback shall remain with Wirecard for the respective agreed period.
- (14) Wirecard shall regularly review the amount of the Holdback and shall assess the extent of the security risk. If the amount of the Holdback exceeds Wirecard's foreseeable security requirement (hereinafter referred to as "**Security Requirement**") by more than 10% Wirecard shall pay out the excess amount. If the Security Requirement exceeds the current Holdback, Wirecard shall, acting reasonably, have the right to alter the amount of the Holdback and/or to extend the Holdback period. Wirecard's Security Requirement shall in particular be increased if:
  - (a) the Merchant's chargeback rate exceeds 10% for payments by direct debit or the Limits in § 9 sub-clause (6) of the Special Terms and Conditions for the Acceptance of Cards in Card-Present Transactions for other payment cards or has actually increased by more than 50 % compared to the preceding month;
  - (b) the volume of the Merchant's transactions processed under this Contract drops significantly;
  - (c) the Merchant presents transactions under the Contract where the agreed transaction limits are significantly exceeded or transactions are repeatedly submitted, which exceed agreed transaction limits;
  - (d) taking into account the usual principles for assessing credit standing there is evidence to suggest that the Merchant's financial circumstances have considerably worsened;

- (e) a petition for the opening of insolvency proceedings over the Merchant's assets is filed; or
- (f) the Contract has been terminated.

- (15) After termination of the Contract, the Holdback shall in any event remain with the Acquirer pursuant to Wirecard's instructions for a further nine (9) months in order to secure any claims for recovery resulting from chargebacks. The remaining credit balance shall be transferred to the Merchant's account designated to Wirecard nine (9) months after termination or expiry of the Contract. If Wirecard reasonably assesses that, due to breaches of contract by the Merchant, penalties will be imposed by the Card Schemes, the remaining credit balance can be retained for up to twelve (12) months after termination of the Contract. After expiry of the Holdback period, Wirecard shall pay out the remaining amount to the Merchant.

**§ 11 Term, Termination and Right to Suspend Services**

**Term, Mutual Termination Rights**

- (1) The Contract shall come into force upon acceptance by Wirecard of the Merchant's application for the services. Wirecard shall communicate its acceptance of the Merchant's application by e-mail or through provision of the services to the Merchant (whichever is the earlier). The Contract shall initially have a term of one (1) year ("**Initial Term**"). Notwithstanding the Merchant's cancellation rights under § 1 sub-clause (3), the Contract may be terminated at any time by the Merchant with one (1) month's written notice and Wirecard may terminate the Contract with two (2) months' written notice. This is without prejudice to any statutory rights of termination, particularly to terminate for good cause
- (2) Wirecard's acceptance of the Merchant's application for the services may be conditional upon the Merchant providing Wirecard with information and documentation pursuant to § 6 sub-clause (5) and the Merchant satisfactorily fulfilling all of Wirecard's compliance, credit and other due diligence checks it will perform on the Merchant. If the Merchant fails to provide any requested information, or does not satisfactorily complete Wirecard's due diligence checks, Wirecard has the right to take any action it deems appropriate under the circumstances, including suspending and/or terminating the Merchant's use of the services. For the avoidance of doubt, Wirecard may withhold any funds due to the Merchant if the Merchant fails to fulfil all anti-money laundering, counter-terrorist financing verification processes or credit checks.

**The Right to Suspend Services, Wirecard's Rights of Termination**

- (3) Wirecard shall have the right to suspend its services towards the Merchant if the Merchant breaches its obligations under the Contract. In the event that services are to be suspended Wirecard shall, to the extent permitted by law and regulation, notify the Merchant thereof before suspending services or immediately afterwards, using the method agreed. If the grounds for suspending services no longer exist, Wirecard shall notify the Merchant thereof without undue delay after learning of this and shall resume provision of the services.
- (4) Wirecard shall particularly have the right to terminate the Contract immediately and without notice if:
  - (a) the Merchant is in the course of winding up or is insolvent or if the Merchant disposes of its assets, its operation or its business, either in whole or in part, outside the ordinary course of business;
  - (b) the Merchant has made incorrect statements about its financial situation if said statements were of particular significance for Wirecard's decision to enter into the Contract or other operational transactions, which comprises a risk for Wirecard;
  - (c) there is a considerable worsening of the Merchant's financial situation or of the value of the security provided by the Merchant or there is a threat of such worsening which calls into question the repayment of sums or the performance of other obligations owed to Wirecard even if security provided for this is realised;
  - (d) the Merchant fails to comply with its obligation to provide or increase security in accordance with this Contract within a reasonable period set by Wirecard;
  - (e) a justified suspension pursuant to § 11 sub-clause (3) lasts for more than thirty (30) days; or
  - (f) the Merchant breaches any of its material contractual duties. This is particularly the case if:
    - (i) The Merchant fails to fulfil conditions imposed by Wirecard or fails to fulfil them in good time; or



- (ii) The Merchant does not have or no longer has the permits statutorily prescribed for its business operations.
- (5) The Special Terms and Conditions may for individual POS Payments stipulate further circumstances on the basis of which Wirecard has the right to terminate the Contract without notice in whole or in relation to the service concerned.
- (6) Wirecard shall not be obliged to terminate the Contract if there is a ground for termination without notice. Any failure on the part of Wirecard to exercise a right of termination shall not constitute a waiver by Wirecard of its right to terminate.
- (7) Wirecard shall have a special right of termination without notice if the proportion of chargebacks arising out of the Merchant's transactions exceeds the limits regulated in the Special Terms and Conditions for the respective payment instrument.
- (8) Wirecard expressly reserves the right to partial termination, particularly with regard to individual services provided under this Contract, individual POS Payments or the acceptance of certain brands of POS Payment methods.
- (7) This Contract does not establish any company/partnership in any legal form whatsoever, any association or any joint venture between the parties.
- (8) Wirecard may name the Merchant as a reference customer in its online and offline, written or oral marketing documents, including its website, brochures, presentations or offerings. Wirecard is entitled to use the Merchant's name, logos or trademarks and company description for said purposes and to incorporate references to the Merchant's websites in its websites.

### Severability, Entire Agreement, Savings Clause

- The Setting of Deadlines, Form, Termination or Expiry of the Contract**
- (9) Where Wirecard has a right of termination without notice it may, in its sole and absolute discretion, allow the Merchant a period of time to remedy the breach. Judgement as to whether the breach has been satisfactorily remedied within the requisite timescale, and determination of and the right to terminate remains with Wirecard.
  - (10) Every notice of termination must be in writing and sent to the address specified in § 12 sub-clause (12).
  - (11) In the event of any termination without notice Wirecard shall grant the Merchant a reasonable deadline for the winding up unless immediate completion is necessary.
  - (9) In the event that one of the provisions contained in this Contract now or in the future is or becomes void or unenforceable, this shall not affect the validity of the remaining provisions. This shall apply mutatis mutandis in the event of any lacuna in the Contract. The parties undertake to replace the void provision by a valid provision, which comes closest to the economic purpose of the Contract.
  - (10) The Online Application, further Special Terms and Conditions and any description of the services form an integral part of the Contract. They form the entire agreement between the parties concerning the subject matter of the Contract and replace all previous agreements or arrangements concerning the subject matter of the Contract.
- Limitation Period**
- (11) All of the parties' mutual claims arising out of this Contract shall be time-barred fourteen (14) months after the respective creditor/obligee of the claim learned - or ought to have learned without gross negligence - of the circumstances giving rise to the claim and of who the debtor/obligor is. Sentence 1 does not apply to claims for damages resulting from an intentional or grossly negligent action and does not apply to personal injury (injuries to life, body and health).

## § 12 Miscellaneous Provisions

### Regulatory Obligations and Compliance with Statutory Provisions

- (1) The Merchant acknowledges that the implementation and performance of this Contract and the availment of Wirecard's services may be subject to certain statutory and regulatory requirements and obligations in accordance with applicable laws or regulations (hereinafter referred to as "**Regulatory Obligations**") and that the Merchant has checked independently whether it is subject to Regulatory Obligations and whether it will conclude this Contract. The Merchant warrants that it will comply with all of the Regulatory Obligations at the time when this Contract is concluded and during its entire term.
- (2) Wirecard shall not assume the Regulatory Obligations of the Merchant and any of its affiliated undertakings and is in no way liable for the fulfilment of such Regulatory Obligations by the Merchant and any of its affiliated undertakings.
- (3) The Merchant acknowledges and expressly agrees that Wirecard may take all actions, which Wirecard is obliged to take to fulfil any Regulatory Obligations (which may apply to Wirecard and/or the Acquirer), even if this may affect the provision of the services under this Contract. Wirecard does not accept any liability for the losses, costs or damage incurred by the Merchant or any of its affiliated undertakings due to or in connection with such actions.

### Assignment of Contract

- (4) Wirecard may transfer the entirety of all rights and duties under this Contract to a third party to be designated by it (hereinafter referred to as "**Assignment of Contract**") on providing two (2) months' notice to the Merchant. If the Merchant does not raise an objection in writing or using the electronic method of communication agreed in this Contract within two (2) months following receipt of the notice of Assignment of Contract it shall be deemed to have been approved by the Merchant. Any objection to an Assignment of Contract shall constitute the Merchant's notice to terminate this Contract pursuant to § 11.
- (5) When Wirecard's assignment of all the rights and obligations becomes effective Wirecard shall withdraw from the Contract and the third party, to whom the rights and obligations have been assigned, shall enter the Contract as the contracting party in lieu of Wirecard.
- (6) The Merchant is not entitled to transfer any of its rights and duties under this Contract to a third party without the prior written consent of Wirecard.

### The Relationship between the Parties

### Notices

- (12) Unless otherwise provided in this Contract, the Merchant must send all notices or declarations addressed to Wirecard to the following address in order for them to be effective:

Wirecard Card Solutions Ltd.  
Postfach 31 01 36  
04161 Leipzig  
Germany

TELEPHONE: +49 (0) 30 300 11 22-10  
EMAIL: support.en@checkoutportal.com

If Wirecard's address, to which the Merchant must direct its notices changes, Wirecard shall notify the Merchant thereof in writing. Such change shall become effective one (1) week after receipt of any such notice.

### Complaints

- (13) In the event that Wirecard needs to contact the Merchant in respect of suspected fraud or any other security threat, it will do so in a manner that it deems to be most secure in the circumstances.
- (14) In the first instance, the Merchant shall raise with Wirecard any complaint relating to the services provided under this Contract via the Mobile Application. Wirecard shall deal with any complaints in accordance with its complaints procedure, a copy of which is available to the Merchant on request. If Wirecard is not able to resolve such complaint to the Merchant's satisfaction, the Merchant may be able to refer the complaint to the UK's Financial Services Ombudsman who offers a free complaints resolution service to individuals, micro-enterprises, small charities and trustees of small trusts. The UK's Financial Ombudsman can be contacted:
  - (a) On Monday to Friday from 8am to 8pm (UK time) and on Saturday from 9am to 1pm (UK time), by telephone on 0300 123 9123 (from inside the UK) or +44 20 7964 0500 from other countries; or
  - (b) By post at Exchange Tower, London E14 9SR; or
  - (c) By email: enquiries@financial-ombudsman.org.uk.
- (15) The UK's Financial Ombudsman Service is available in a number of languages and can introduce the Merchant to a translator if required.

### Governing Law and Place of Jurisdiction

This Contract shall be governed by English law and any disputes arising out of it shall be subject to the non-exclusive jurisdiction of the English courts.







# General Terms and Conditions

for Transactions at Point-of-Sale

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### APPENDIX 1 DATA PROCESSING AGREEMENT (DPA)

Data Processing on behalf regarding the Contract between the Merchant (Controller) and Wirecard (Processor)

#### § 1 Subject Matter and Duration of Data Processing on Behalf

- (1) In the course of the Contract it is necessary for the Processor to process Personal Data of the Controller's customers (Controller Data) for which the Controller functions as the Data Controller in terms of data protection law.
- (2) The subject matter of data processing on behalf of the Controller shall be the processing of electronic payment transactions. The duration of Data Processing on behalf of the Controller shall comprise the term of the Main Agreement within the framework of which these Supplementary Provisions have been concluded.
- (3) Schedule 1 to this Agreement contains a list of which types of Controller Data the Processor the Processor may process in which manner and for what purposes and to which categories of Data Subjects the Controller Data relate.

#### § 2 Technical and Organisational Measures

- (1) The Processor will implement and maintain all appropriate technical and organizational security measures within the meaning of Art. 32 GDPR to protect the Controller's Data from Security Incidents and to preserve the security, integrity and confidentiality of such data ("Security Measures"). Such measures shall have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. The Processor agrees to the Security Measures identified at Schedule 2.
- (2) The technical and organisational measures are subject to technical progress and further developments. In this respect, the Processor shall be permitted to further develop any measures taken and/or to replace them by adequate alternatives. In doing so, the degree of protection must not drop below the level of data protection prescribed by statute. Any significant changes shall be documented.

#### § 3 Data Subject's Rights

The Processor shall, in accordance with the instructions of the Controller, assist the Controller to the extent possible in responding to requests by data subjects exercising their rights. The Processor shall take the appropriate and necessary technical and organisational measures for this purpose. If data subjects contact the Processor directly for the purpose of exercising their rights with regard to their personal data, the Processor shall forward this request to the Controller. Insofar as the Processor supports the client in fulfilling the claims of the parties concerned, the Controller shall reimburse the Processor for costs and expenses.

#### § 4 Obligations of the Processor

- (1) The Processor will only process the personal data on the instructions of the Controller, i.e. the documented order of the Controller directed towards a certain data protection handling (e.g. anonymisation, blocking, deletion, publication) unless the Processor is legally obliged to process the Controller Data in another way; in this case the Processor will inform the Controller of this legal requirement in advance, unless such a communication is prohibited due to an important public interest.
- (2) The Processor warrants that its employees engaged in data processing have been obliged in writing to maintain confidentiality in accordance with Art. 28 para. 3 b) GDPR or are subject to an appropriate statutory duty of confidentiality. Insofar as the Controller is subject to further confidentiality obligations, for example in accordance with professional, criminal or procedural regulations, it shall inform the Processor of this and instructs the Processor and its employees upon request in the application of the confidentiality obligations.
- (3) The technical and organisational measures as defined in Section 2 of this Agreement and in Schedule 2 thereto shall be implemented and complied with. This includes in particular
  - (a) the pseudonymisation and encryption of personal data;
  - (b) the ability to ensure the confidentiality, integrity, availability and resilience of the systems and services associated with the processing;
  - (c) the ability to rapidly restore the availability of and access to personal data in the event of a physical or technical incident;
  - (d) a procedure for the regular review, evaluation and evaluation of the effectiveness of technical and organisational measures to ensure security of processing.
- (4) Insofar as there are no procedural considerations to the contrary, the Processor shall inform the Controller about supervisory measures of the competent supervisory authority pursuant to Art. 58 GDPR and about court decisions in connection with Art. 83, 84 GDPR.
- (5) The Processor has appointed a data protection officer and will appoint him to the Controller in writing or by e-mail.
- (6) The Processor shall inform the Controller immediately if it considers that an instruction given by the customer violates statutory regulations. The Processor is entitled to suspend the execution of the relevant instruction(s) until it is confirmed by the Controller or changed into a lawful instruction

#### § 5 Establishment of Sub-contractual Relationships

- (1) The Processor may sub-contract parts of the processing to sub-contractors in order to perform the contractual services. At the time the Contract is concluded, the following subcontractor is responsible for providing services relevant to the contract:
- (2) Wirecard Technologies GmbH, Aschheim: Technology service provider of Wirecard Bank AG
- (3) In the case of credit card payment processing, additional services are provided by:
  - (a) Wirecard Processing FC LLC, Dubai
  - (b) SIX Card Solutions, Zurich, SwitzerlandFurthermore, the Processor may make use of the following subcontractors:
  - (c) Wirecard Technologies GmbH
  - (d) Wirecard Issuing Technologies GmbH
  - (e) Wirecard Service Technologies GmbH
  - (f) Wirecard Acceptance Technologies GmbH
- (4) The Controller agrees to the sub-contracting of the aforementioned companies. The Controller is also deemed to have agreed to sub-contract further companies, provided that the obligations of this agreement are passed on to the sub-contractors and at least the same level of protection is maintained.
- (5) If further sub-contractors are involved, the Processor shall inform the Controller upon request. The Controller may only reject the additional sub-contractor if there is a compelling reason under data protection law and this was communicated to the contractor in writing immediately after the information. Services used by the Processor as an ancillary service to assist third parties in the execution of the order are not to be understood as subcontracting relationships within the meaning of this provision. These include telecommunications services, including housing, data transmission and hosting, transport and communications services, cleaning services, and data storage and document disposal.
- (6) The Processor concludes the contracts required under data protection law within the framework of the subcontracting relationships. The Processor is also permitted to process the data outside the EEA in compliance with the provisions of this Contract or to have them processed by sub-contractors if it informs the Controller in advance about the location of the data processing and proves compliance with the technical and organisational measures upon request. This Clause shall apply to any subcontractors. The Controller hereby authorises the Processor, to conclude contracts with subcontractors - necessary to ensure an adequate level of data protection with regard to data transfers. The Processor



may grant sub-authorizations to subcontractors. The Controller shall support the Processor free of charge and to the extent necessary and reasonable in fulfilling the legal requirements for data transfer.

### § 6 Controller's Rights to Monitor

- (1) The Controller must ensure that his Personal Data are processed properly and that the technical and organisational data security measures taken at the Processor's premises are observed. At the Controller's request, the processor will provide evidence of compliance with the technical and organizational documentation such as current certificates, reports or report extracts from independent bodies (e.g. auditors, data protection officers, IT security department, external data protection auditors) or certification by an IT security or data protection audit (e.g. according to PCI-DSS) and/or recognized certifications according to ISO 27001.
- (2) If such evidence is insufficient, the Processor will enable and contribute to the verification, including inspection, of the Controller or an independent external auditor commissioned by the Controller, in particular if, for example, a security incident has occurred and/or an audit, including inspection, is required by law or by a data protection authority.

### § 7 Notification in Case of Infringements by the Processor

The Processor informs the controller immediately if it becomes aware of a violation of the protection of personal data of the Controller. The Processor takes the necessary measures to secure the data and to reduce possible adverse consequences for those affected and immediately consults the Controller.

### § 8 Controller's Responsibility and Authority to Issue Instructions

- (1) The Controller is responsible for the processing of Controller Data by the Processor. The evaluation of the admissibility of the data processing shall be the obligation of the Controller. The Controller shall provide the Processor with the data in due time and in the required quality to ensure that the Processor will be able to render the services.
- (2) The Processor shall process the Controller Data within the framework of the instructions issued by the Controller as stipulated in the Contract.
- (3) The Processor and its sub-contractors may process the data for their own purposes in accordance with data protection law, provided that this is permitted by statute or the data subject's consent. These supplementary provisions shall not be applicable to any such data processing. In any case, the Processor and its sub-contractors may process the data for their own purposes in an anonymised form.
- (4) The Controller shall bear additional costs incurred due to any instructions; the Processor may request an advance payment. The Processor may refuse to carry out any additional or modified data processing if it resulted in any change in the amount of work or if the Controller refused to reimburse the additional costs or to make the advance payment.
- (5) For reasons of traceability, any instructions of the Controller shall be given in writing or in text form (e.g. by e-mail); any oral instruction shall be confirmed in writing or in text form without undue delay.
- (6) If the Processor considers that an instruction given by the Controller infringes Applicable Data Protection Law, the Processor may refuse to execute the instructions until the Controller has confirmed the instruction or has changed it into an instruction that is in accordance with data protection regulations.

### § 9 Deletion of Data and Return of Storage Media

Upon the end of the contractual relationship, the Processor shall be obliged, at the Processor's option, to delete, to block or to return to the Controller any personal data that has been provided to the Processor in connection with the service agreement and has not yet been processed or deleted by then. Any retention obligations, including but not limited to those in accordance with statutes, by-laws, contracts and regulatory instructions shall remain unaffected.

### § 10 Point of Contact for Data Processing and Data Protection Queries

On the part of the Processor: External data protection officer: Dr. Felix Wittern, Fieldfisher (Germany) LLP, Am Sandtorkai 68, 20457 Hamburg, Germany





SCHEDULE 1  
DATA PROTECTION – PROCESSING ACTIVITIES

The Personal Data processing activities carried out by Wirecard (or a Wirecard group company) under this Contract may be described as follows:

**§ 1 Subject matter of processing**

Fulfilling Wirecard's obligations under these General Terms and Conditions of Acceptance towards the Merchant insofar as and for the duration that Wirecard is a processor in accordance with § 2 sub-clause (22).

**§ 2 Nature and purpose of processing**

Facilitating payments for goods and services purchased by customers from the Merchant in card present transactions in connection with goods and services purchased from the Merchant by cashless payment.

**§ 3 Categories of Personal Data**

Transaction data, transaction IDs, payment service account handles, wallet credentials, customer name, e-mail addresses, purchase details and prices.

**§ 4 Categories of data subjects**

Merchant's customers.



### SCHEDULE 2 TECHNICAL AND ORGANISATIONAL MEASURES (TOMs)

Wirecard has taken appropriate measure to ensure an adequate level of security appropriate to the risk. To this end, the Wirecard has taken into account the protection objectives of Art. 32 (1) GDPR, such as the confidentiality, integrity and availability of systems and services and their resilience with regard to the nature, scope, circumstances and purpose of the processing operations. The Data Processor has also implemented a process for regular testing, assessing and evaluation the effectiveness of technical and organizational measures for ensuring the security of the processing.

The measures taken to ensure compliance with the individual controls are explained in more detail below.

#### Control of access to premises

- All premises of Wirecard have an access system in place based on chip cards. Distinction is made between entries to different areas within the buildings. All employees are provided with chip cards with access rights required for their work. Access rights granted centrally by the Facility Management department are documented, and reviewed by the IT Security department at regular intervals. Visitors must be accompanied when moving inside the office premises and are provided with separate identity cards.
- All entries to Wirecard buildings are monitored by CCTV.
- Access to data centres is subject to stringent regulations. Any access to the data centres requires a separate registration, which also applies to Wirecard employees. The registrations are made by heads of the IT department and in a manner protected against forgery (authenticated).
- Third parties are allowed to enter the data centres only in exceptional cases and must be accompanied by Wirecard employees. Any access is logged in a revision-proof manner. The access logs are reviewed by the IT Security department at regular intervals.
- The data centres are protected against unauthorised access, with security staff being on site 24/7 as well as by CCTV and alarm systems.

#### Control of access to systems

- All systems at Wirecard are equipped with access control systems.
- Access to systems is personalised for each member of staff at Wirecard. Access is secured by personal passwords, only known the respective employee. The Password Policy requires changing the personal password at regular intervals (depending on the system, periods of 90 days or less have been set) and ensures the quality and complexity of the password by means of specifically defined rules. All rules on the assignment and modification of passwords have been laid down in writing and are in compliance with the binding PCI-DSS regulations.
- The screens of all workstations and all services processing or storing personal data are automatically blocked after 15 minutes of inactivity. De-blocking is only possible using the personal user password by repeated log-in. Moreover, any blocking of the workstation computer when leaving the workstation is regulated by an internal policy in a mandatory manner.

#### Control of access to data

- The access control is based on a system of roles and rights used to ensure the need-to-know principle of any access to data. Thus, each member of staff has access to precisely such data that he/she needs for his/her daily work.
- The rights required for the employee's respective position have been defined in the form of roles assigned to the employee. Any further individual authorisations have to be released by the IT Security department. Authorisation takes place after consultation with the information owner (as a general rule, the head of the responsible specialist department) and within the framework of the instructions given under data protection law.
- The assignment of rights is documented in a comprehensible manner.
- The role descriptions and the rights assigned are documented and maintained by the responsible departments and are verified on a sample basis at regular intervals (at least once a year) by the IT Security department.
- Administrator access authorisations are only granted after prior internal training. Any administrator access to the systems is recorded in a revision-proof manner in accordance with PCI-DSS regulations.
- The prevention of any unauthorised persons from gaining access to data is guaranteed by installing security updates at regular intervals and in a prompt manner for all third-party applications used; the IT operating systems (OS) are provided with monthly security updates in accordance with PCI-DSS regulations.
- The quality of any applications developed by Wirecard is ensured, prior to implementation, by a comprehensive quality assurance process.
- The systems of Wirecard are secured from Internet traffic by means of a multi-stage firewall concept. All modifications in the firewalls are subject to an internal authorisation process and are verified by the IT Security department. In addition, at least once a year the network configuration and the payment applications accessible from the Internet are reviewed by network and vulnerability scans as prescribed by PCI-DSS.
- Wirecard is operating intrusion detection systems (IDS) and intrusion protection systems (IPS) and 24/7 stand-by duty ensures timely alerts in any case of failure (incidents).
- All workstation computers are equipped with an anti-virus solution which is automatically and continuously updated. Mobile computers (laptops) are equipped with hard disk encryption.



### Transmission control

- As a general rule, the exchange and transmission of personal data only take place in encrypted form. Depending on the way in which the data is transferred, SSL-encrypted transmission procedures via HTTPS and SFTP are used. E-mails and files can be encrypted (e.g. PGP encryption for the regular, encrypted exchange of data). In addition, there is a system ensuring the secure one-time transmission of personal data (data room principle).
- When exchanging personal data, encryption is a key issue of the general data protection training courses which are mandatory for each member of staff. All interfaces to external bodies transferring personal data in automated form are secured in accordance with the latest standards, e.g. by SSL encryption.
- All interfaces are documented. The external documentations of the interfaces are available.
- Media inventories and a clean desk policy prevent the unauthorised inspection as well as theft of storage media and documents. As a general rule, storage media and documents containing special personal data are sent by courier service, with the storage media being encrypted.

### Input control

- In the event of administrator access, all modifications made to personal data in the systems of Wirecard are recorded by the respective software application or documented on the basis of corresponding processes to ensure that all modifications can be traced back at any time.
- For the purposes of data input and modification, each member of staff has a personal user name for the respective system to ensure that all inputs can be attributed to a specific person.

### Job control

- As the data processor, Wirecard is already ensuring by the regulations laid down in the agreement with the respective controller that the legal bases of data processing on behalf are observed.
- When awarding any contracts for data processing on behalf, Wirecard also pays particular attention to compliance with data protection regulations. Before any contracts are awarded, the processors are properly reviewed with regard to technical, financial, data security and legal aspects. The review includes a visit on site, discussions with the company's representatives and background checks using publicly accessible sources. Furthermore, it is ensured that the processor meets the PCI requirements.
- All contractual provisions are reviewed by the data protection officer with respect to their conformity with the GDPR.
- All employees at Wirecard undergo regular training on the latest data protection regulations. In addition, all members of staff are obliged to observe data confidentiality.

### Availability control

- Wirecard is operating two data centres at different locations which, in accordance with BSI requirements, are located at least 5 km away from each other to guarantee the highest level of fail-safe operation. Within each data centre, redundancy is built-in for all key system components. The data centres are at least in compliance with the TIER 3 standard of the Uptime Institute and are certified according to ISO 27001 or ISAE 3402; this guarantees appropriate measures to protect them against failures, and the processes tailored to this.
- Backups of all data are created at regular intervals (daily) and are kept at a safe location separated by structural measures, with the requirements of the BSI (also regarding sabotage) being observed.
- All systems are monitored around the clock to ensure that immediate action can be taken in any case of error.

### Separation of the processing of data collected for different purposes

- As a service provider, Wirecard processes data for a large number of customers for payment processing in the context of data processing on behalf. Carefully granting access rights ensures that all data will only be processed in accordance with purpose limitation and the instructions given by the controller.
- All relevant data is stored in the databases of Wirecard with a unique customer identification to ensure that unambiguous attribution is possible at any time. At the same time, test data is clearly separated from any productive data.
- In addition, the stringent purpose limitation and separation of processing are ensured through regular training of the employees as well as by regular reviews carried out by the IT Security department.

