

# GENERAL TERMS AND CONDITIONS OF CLICKANDBUY INTERNATIONAL LIMITED: UNIVERSAL PAYMENT API (THE „AGREEMENT“)



## 1. INTRODUCTION

1.1 This Agreement is made between the Merchant and ClickandBuy on the Effective Date and applies to the Merchant's use of the Service. In registering for the Service, it is important that the Merchant reads these terms and conditions carefully.

**This Agreement only applies to Merchant ClickandBuy Accounts under Universal Payment API**

1.2 This Agreement only applies to the Merchant's ClickandBuy Account that is an account operated under the ClickandBuy Universal Payment API. The Merchant should refer to the 'General Terms and Conditions of ClickandBuy International Limited for the modules Transactionsystem, Subscription, Sessionmanagement, Easy Collect TMI and Event Messaging Service', available on the ClickandBuy Website, for the terms applying to any other account of this type the Merchant has with ClickandBuy. There are important differences as to how these different accounts operate and the terms that govern them.

### Copy of the Agreement and supporting information

1.3 At any time while this Agreement is in force, at the Merchant's request, ClickandBuy shall provide to the Merchant a copy of this Agreement and certain supporting information about the Service that ClickandBuy is required under the Payment Services Regulations to provide or make available to the Merchant.

### English language

1.4 The language of this Agreement is English and any notifications or information to be given in connection with the Agreement shall be provided in English. If a document is translated into another language both parties agree that this is done for their own benefit and if there are any discrepancies between the translated version and the English language version the text of the English language version shall prevail.

### Applicability of these terms to individuals, charities and Micro Enterprises

1.5 The following Clauses of this Agreement shall only apply to Merchants that are individual consumers, charities or Micro Enterprises:

(a) Clause 13.5(b) and (c) (relating to liability); and

(b) Clause 13.6 through to and including Clause 13.9 (relating to liability).

1.6 If the Merchant is not an individual consumer, charity or Micro-Enterprise, the time-period referred to in Clause 13.5 shall be one (1) month, not thirteen (13) months.

## 2. MERCHANT ELIGIBILITY

2.1 The Merchant shall not be entitled to use the Service pursuant to this Agreement until it has satisfied certain ClickandBuy merchant verification and due diligence requirements. ClickandBuy will notify the Merchant when this process is complete and, subject to Clause 2.2, the Services Commencement Date shall not occur until such notice has been given. The Merchant consents to ClickandBuy using due diligence data provided by the Merchant to verify the Merchant and their operations and consents to ClickandBuy passing the data to selected third parties (including but not limited to Merchant Acquirers) for this purpose both initially and on an ongoing basis.

### Temporary access

2.2 Subject to Clause 2.3, prior to satisfying ClickandBuy's merchant verification and due diligence requirements, at ClickandBuy's discretion the Merchant may be entitled to use the Service during a 7 day temporary period on the following basis:

(a) the Merchant's ClickandBuy Account may only be used to execute Payment Orders that in aggregate total EUR 2,500 or less;

(b) the aggregate total value of the e-money that (but for sub-paragraph (d)) could stand to be redeemed from the Merchant's ClickandBuy Account during the period is EUR 800 or less;

(c) the Merchant's use of the Service is limited to low-risk business categories as defined in the ClickandBuy Acceptance Policy; and

(d) the Merchant cannot make payments from its ClickandBuy Account, whether to an End User or to other ClickandBuy Accounts or bank accounts belonging to the Merchant or any other third party.

2.3 If the Merchant seeks to execute a Payment Order that would result in these restrictions being exceeded or breached, ClickandBuy may refuse the Payment Order. If the Merchant fails to satisfy ClickandBuy's merchant verification and due diligence requirements within seven days of the temporary Account status being activated, the Merchant's right to temporarily use the Service on the terms set out in Clause 2.2 shall automatically terminate.

### Restrictions on extent and type of business covered

2.4 ClickandBuy is subject to certain rules or codes of credit or debit card providers, Merchant Acquirers, banks or other payment service providers and these terms and codes may limit the extent and type of business that such providers are prepared to process. As ClickandBuy may need to act in conjunction with such providers, ClickandBuy may therefore from time to time notify (which it will do in writing if not already covered by the ClickandBuy Acceptance Policy or the Technical Documentation) the Merchant of restrictions on the extent and type of business that can be covered by the Service, including, but not limited to, with reference to payment type, geography, business line, amounts, currency and other such variables.

### System integration

2.5 Before the Service can be provided, the process detailed in the Technical Documentation must be followed to establish and test the system integration.

### Notification of change in details

2.6 The Merchant must immediately inform ClickandBuy of any changes to the Merchant's details which the Merchant supplied to ClickandBuy when registering for the Services, including (but not limited to) changes to the matters set out in Clause 12.17.

## 3. PROVISION OF THE SERVICE

3.1 ClickandBuy will provide the Merchant with the Service on the terms of this Agreement from the Service Commencement Date. ClickandBuy will issue the Merchant with a single ClickandBuy Account upon the Merchant entering into this Agreement.

3.2 ClickandBuy will provide the Service with the reasonable skill and care of a competent provider of such services. Except as expressly set out in this Agreement, no implied conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to Service or the ClickandBuy Website or to anything supplied or provided by ClickandBuy under or in connection with this Agreement.

3.3 ClickandBuy will use all reasonable endeavours to correct any reported technical faults in the Service as soon as reasonably practicable. However, ClickandBuy does not give any guarantees as to performance of the Service or any undertakings that the Service will be continuously available or free of faults.

3.4 Occasionally ClickandBuy may:

(a) for operational reasons, update the technical specification of the Service; or

(b) require the Merchant to follow instructions which it believes are necessary for reasons of security or quality,

provided that an update or requirement that represents a change to the terms of this Agreement shall be communicated in accordance with Clause 18.

### Service suspension for operational reasons

3.5 ClickandBuy may suspend the Service for operational reasons such as maintenance, or because of an emergency. ClickandBuy will restore the suspended Service as soon as reasonably practicable. The Merchant is responsible for taking back-ups of its Offers, pricing and other data prior to any suspension or maintenance work and for restoring any such data lost as a result of such suspension or maintenance work.

## 4. CHARGES

### Charges

4.1 The Merchant agrees to pay, without any set-off, restriction, condition, withholding or deduction, all Charges in accordance with this Agreement and as set out in Schedule 2 of this Agreement.

### Set-Up Fee

4.2 The Set-up Fee according to Schedule 2 shall become due from the Merchant to ClickandBuy once the Merchant is incepted and integrated as a user of the Service and shall be paid pursuant to Clause 5.3 at the end of the first Billing Period.

### Commission due for all Payment Amounts

4.3 The Commission charged by ClickandBuy according to Schedule 2 of this Agreement shall be due in respect of all Payment Amounts that are credited to the Merchant's ClickandBuy Account, whether or not monies can subsequently be retrieved from the End User, whether the End User disputes the amount, or whether the amount will be refunded to the End User or is reversed due to a Claim, Chargeback or Direct Debit Reversal.

## 5. SETTLEMENT AND INTEREST

### Settlement at end of Billing Period

5.1 The Merchant will be forwarded Payment Amounts collected from End Users in the currency of the Merchant's ClickandBuy Account in accordance with the Payment Order mechanism set out in Clause 5.3 of this Agreement, as offset against the amounts identified in Clause 5.2. Detailed information on every transaction made by End Users may at any time be obtained in the Merchant's ClickandBuy Service Area.

### Settlement calculation

5.2 ClickandBuy will, in accordance with the Payment Order set out in Clause 5.3, at the end of each Billing Period pay to the Merchant:

(a) the Payment Amounts paid by End Users and credited to the Merchant during the Billing Period, as well as all sums successfully retrieved from End Users and credited to the Merchant in accordance with Clause 10.5 below;

less

(b) any refunds, reimbursements or any other entitlements or sums paid to End Users by the Merchant during the Billing Period;

(c) the Charges and/or sums due to ClickandBuy in respect of Payment Scheme Penalties;

(d) any applicable VAT and any other taxes or duties payable by ClickandBuy on behalf of the Merchant in relation to the Service;

(e) any Payment Orders reversed or reimbursed in accordance with Clauses 7.2 or 8;

(f) any Payment Orders then subject to a Claim or a Chargeback or Direct Debit Reversal in accordance with Clause 9 (including any sum owed by the Merchant to ClickandBuy pursuant to the application of the Buyer Protection Rights) or otherwise marked as Payment Pending; and

(g) any sum that the Merchant determines should be retained in its Account and not

subject to the Payment Order set out in Clause 5.3, calculated as at the end of the Billing Period with reference to the parameters set by the Merchant in its ClickandBuy Service Area.

ClickandBuy will provide the Merchant with a statement setting out the calculation of the sums identified in this Clause 5.2.

#### **Payment to Merchant at end of Billing Period**

5.3 The Merchant requests and consents to ClickandBuy paying on the Payment Date from the Merchant's ClickandBuy Account to a bank account nominated by the Merchant the sums due to the Merchant as calculated in accordance with Clause 5.2. This Payment Order will be deemed as having been received on the Payment Date. The Merchant agrees that this Payment Order supersedes and is in satisfaction of any other rights it may have to redeem from its ClickandBuy Account.

#### **Billing Period balance in favour of ClickandBuy**

5.4 In the event that the calculation set out in Clause 5.2 results in a balance in favour of ClickandBuy, the Merchant agrees that any such sum is due to ClickandBuy and that ClickandBuy may deduct such sum from the balance of the Merchant's ClickandBuy Account (including against any sum that has been Reserved).

#### **No credit**

5.5 Nothing in this Agreement shall require ClickandBuy to provide any credit or overdraft facility to the Merchant and it is not intended that any such credit or overdraft will be granted.

#### **Insufficient funding**

5.6 Notwithstanding Clause 5.5, if for any reason the balance of the Merchant's ClickandBuy Account (including any Reserve Percentage) is insufficient to cover amounts due to or to be refunded or reimbursed to ClickandBuy, an End User (or their credit or debit card provider), a Merchant Acquirer or, in accordance with this Agreement, any other third party (whether assessed at the end of the Billing Period pursuant to Clause 5.2 or at any other time), the Merchant agrees that ClickandBuy may debit the amount of the shortfall from the Merchant using the funding method set up in accordance with Clause 5.7. The Merchant agrees that ClickandBuy may then use that sum to pay the outstanding balance.

#### **Merchant's funding method**

5.7 The Merchant will complete a Direct Debit instruction to allow ClickandBuy to debit Charges and other sums due to be paid under this Agreement. In case a Direct Debit instruction cannot be given the Merchant agrees to provide valid credit card details. The Merchant authorises ClickandBuy to debit Charges and other sums due to be paid under this Agreement from this alternate payment method.

#### **No interest**

5.8 The Merchant shall not be entitled to interest on the balance of monies collected by ClickandBuy that is stored in the Merchant's ClickandBuy Account.

## **6. PAYMENT TRANSACTIONS**

### **Restrictions on use**

6.1 The Merchant may only use its ClickandBuy Account:

- (a) to receive Payment Amounts from End Users;
- (b) to pay refunds, reimbursements or any other entitlements or sums due to End Users and relating to purchases made by them using the ClickandBuy Service; and
- (c) for payment of sums due from the Merchant's ClickandBuy account to the Merchant in accordance with Clause 5.3.

### **Consenting to a Payment Order**

6.2 In order to enable ClickandBuy to process a payment on the Merchant's order, the Merchant must give consent to the execution of a payment transaction for it to be authorised. The Merchant agrees that by submitting an electronic web services instruction from its own servers to ClickandBuy's servers, or by uploading a bulk transaction CSV file and clicking the „Send“ button, or by its clicking of the „Credit“, „Charge“ or „Cancel“ buttons at the time of the transaction when using the web interface payment processing options in the ClickandBuy Service Area, it confirms that it consents for the payment transaction to be processed and for the relevant fees to be charged. The Merchant's consent to the Payment Order contemplated by Clause 5.3 is given pursuant to Clause 5.3.

### **Reliance on Unique Identifier**

6.3 In requesting a Payment Order the Merchant must provide to ClickandBuy the Unique Identifier and any other details ClickandBuy asks the Merchant for such as the intended recipient's name, so ClickandBuy can make the payment. ClickandBuy may rely on and act in accordance with a Unique Identifier provided to it by the Merchant and a Payment Order executed in accordance with a Unique Identifier is deemed to have been correctly executed in terms of making the payment to the payment account specified by the Unique Identifier. Notwithstanding that the Merchant may provide ClickandBuy with information additional to the Unique Identifier, ClickandBuy shall only be liable to execute Payment Orders in accordance with the Unique Identifier provided by the Merchant.

### **End User without a ClickandBuy Account**

6.4 ClickandBuy shall not be required to accept a Payment Order from the Merchant where the relevant End User does not yet have a ClickandBuy Account. In these circumstances the Merchant may contact ClickandBuy to discuss arrangements with a view to the End User opening a ClickandBuy Account.

### **Timing of Payment Order receipt**

6.5 For the purposes of this Agreement the point of receipt by ClickandBuy of a Payment Order from the Merchant is the time at which consent is provided as per Clause 5.3 or 6.2.

### **Timing for crediting Payment Orders**

6.6 Subject to Clause 8.1, ClickandBuy will credit a Payment Order initiated by the Merchant as payer to the payee's payment services provider (which in respect of an End User will be ClickandBuy) by the end of the third Business Day following the time of receipt of the Payment Order provided that from 1 January 2012, this credit will occur by the end of the Business Day following the time of receipt of the Payment Order.

6.7 Where the Merchant is the payee to a Payment Order, ClickandBuy will only value date and credit the amount to the Merchant's ClickandBuy Account once the funds have been received. Such a credit will be without prejudice to ClickandBuy's rights under Clauses 8.2 and 9.

6.8 Where a Payment Order is initiated by or through the Merchant as payee, ClickandBuy will transmit the Payment Order to the payer's payment services provider by the end of the third Business Day following the time of receipt of the Payment Order and, from 1 January 2012, by the end of the Business Day following the time of receipt of the Payment Order, provided that any direct debit initiated by the Merchant as payee will be transmitted by ClickandBuy in sufficient time to allow the payer's payment service provider to settle the Payment Order on any agreed due date.

### **Payment status**

6.9 When a Payment Order in respect of which the Merchant is payee is credited to the Merchant's ClickandBuy Account, it shall be marked as a Success in the ClickandBuy Service Area. Until such time the Payment Order will be marked as Payment Pending. A Payment Order marked as a Success remains subject to ClickandBuy's rights to reimburse any such credited amount to the End User's ClickandBuy Account pursuant to Clause 8.2 or Clause 9.

### **Non-EEA Payment Orders**

6.10 Where a Payment Order does not relate to a payment in relation to which the payment service provider of both the payer and payee are located within the EEA and the payment transaction is to be carried out in Euro or where an EEA State has not yet adopted the Euro the currency of that EEA State, ClickandBuy shall endeavour to transfer the relevant funds to the relevant payment service provider within the next three (3) Business Days of receiving the Payment Order, but cannot guarantee that it will do so. In these same circumstances ClickandBuy will however, in respect of such a payment being transferred to ClickandBuy: (i) credit the funds to the Merchant's ClickandBuy Account on the same Business Day on which the funds are received by ClickandBuy; and (ii) ensure that the funds so credited are then available for use by the Merchant for the purposes set out in Clause 6.1.

### **Revocation of Payment Orders**

6.11 The Merchant will not be able to revoke Payment Orders once received by ClickandBuy. Should a Merchant need to revoke a Payment Order that ClickandBuy has received, it can contact ClickandBuy and ClickandBuy will use reasonable efforts to stop the order, but cannot guarantee it will be able to do so and ClickandBuy will not be able to revoke an order which has been acted on. If a Merchant revokes the regular Payment Order set out in Clause 5.3 (which under the Payment Services Regulations it is entitled to do up until the end of the Business Day before the Payment Date) ClickandBuy shall be entitled to suspend or terminate the Service.

### **Non-recovery from an End User**

6.12 If ClickandBuy is not able to retrieve Payment Amounts owed by an End User, despite taking reasonable steps to pursue these Payment Amounts, ClickandBuy may terminate the contract with the relevant End User. The Merchant acknowledges and accepts that ClickandBuy may instruct a third party collection entity with a view to recovering unpaid Payment Amounts. If a Payment Amount has been unpaid by an End User for 12 months from the due date or if, prior to 12 months from the due date, ClickandBuy has a reasonable belief that unpaid Payment Amount will not be paid (for example in the case where the End User has filed for bankruptcy or insolvency and it is not realistic that funds will be recovered), ClickandBuy may treat the Payment Order as lapsed and non-recoverable and cease any attempts to recover the amount. Notwithstanding any attempts that may be made by ClickandBuy to recover an unpaid Payment Amount, subject to the application of the Seller Protection Rights, ClickandBuy shall have no liability or responsibility to a Merchant in respect of unpaid or lapsed Payment Amounts.

### **Currency conversion service**

6.13 ClickandBuy may on request make available a currency conversion service to the Merchant enabling it to make Offers in different currencies. For each such converted Offer the multicurrency conversion fee set out in Schedule 2 shall apply. Where a Merchant requests a payment to be made to an End User that requires currency conversion, ClickandBuy will specify the amount to be collected from the Merchant's ClickandBuy Account, based on the currency exchange rate at the time of the transaction available from a reputable currency exchange rate service provider used by ClickandBuy. The total amount to be collected from the Merchant's ClickandBuy Account including the exchange rate and the multicurrency conversion fee will be displayed at the time of the transaction if the Merchant is online, otherwise details of the transaction will be made available immediately to the Merchant through their ClickandBuy Service Area.

### **Merchant's access to information**

6.14 Where the Merchant initiates a payment ClickandBuy will on request inform the Merchant of the maximum execution time, the Charges payable by the Merchant in respect of the payment and where applicable, a breakdown of the amount of such Charges.

6.15 ClickandBuy shall make available to the Merchant in the ClickandBuy Service Area, information relating to the transactions (both credits and debits) occurring on the Merchant's ClickandBuy Account immediately as they occur and shall in any event within three (3) Business Days of the end of each Billing Period make the following information available in the ClickandBuy Service Area:

- (a) a reference enabling the Merchant to identify each payment transaction and its status and, where appropriate, information relating to the End User;
- (b) the amount of the payment transaction in the currency in which the Merchant's ClickandBuy Account was debited or credited or in the currency used for the Payment Order;
- (c) the amount of any Charges for the transactions and, where applicable, a breakdown of the amounts of such Charges;
- (d) where applicable, the exchange rate used in a payment transaction and the amount of the payment transaction after that currency conversion; and
- (e) the credit or debit value date (as appropriate) or the date of receipt of the Payment Order.

## 7. SELLER PROTECTION RIGHTS AND BUYER PROTECTION RIGHTS

7.1 Where in the ClickandBuy Service Area a Payment Order is marked as, Payment Guaranteed', the Merchant may benefit from the Seller Protection Rights the terms of which are more fully set out in Part 1 of Schedule 3.

7.2 ClickandBuy may make available to End Users the Buyer Protection Rights the terms of which are set out in part 2 of Schedule 3. The Merchant agrees to provide all reasonable assistance to ClickandBuy and to cooperate as required in resolving any claims by End User's under the Buyer Protection Rights. Where ClickandBuy determines that an End User is entitled to be covered under the Buyer Protection Rights and reimburses the End User, ClickandBuy shall be entitled to recover such sums from the Merchant and the Merchant acknowledges that End Users will assign to ClickandBuy any rights and claims they have against the Merchant in respect of a payment that is the subject of the Buyer Protection Rights.

## 8. REFUSING AND REVERSING PAYMENTS

### Payment Orders refused by ClickandBuy

8.1 ClickandBuy may refuse a Payment Order if prior to the Payment Order being credited it has reason to believe that the Payment Order would not satisfy the terms of this Agreement (including but not limited to a potential breach of the restrictions set out in Clause 12.1 or due to unauthorised use or as a result of the application of Clause 11.3) or the Technical Documentation governing the use of the Service or would otherwise be unlawful or where, if the Merchant is payee, it has insufficient funds in its ClickandBuy account.

### Payment Orders reversed by ClickandBuy

8.2 ClickandBuy may reverse the effect of a Payment Order and reimburse the funds to the payer if, following the credit of a Payment Order to a ClickandBuy account, it has reason to believe that the Payment Order has not satisfied the terms of this Agreement (including, but not limited to a breach of the restrictions set out in Clause 12.1 or due to unauthorised use or as a result of the application of Clause 11.3) or the Technical Documentation governing the use of the Service or is otherwise unlawful. The Merchant consents to ClickandBuy effecting such reimbursements as a payment transaction from its ClickandBuy Account.

### Provisions applicable to refusals and reversals

8.3 Where possible and if permitted by law, ClickandBuy shall notify the relevant payment service user of a refusal under Clause 8.1 or a reimbursement under Clause 8.2 and provide reasons and, if available, the procedure for rectifying any factual errors that led to the refusal or reimbursement. ClickandBuy may in accordance with Schedule 2 charge the Merchant for such notification where the refusal or reimbursement is reasonably justified. ClickandBuy shall not be required to provide such a notification where to do so would be unlawful.

8.4 ClickandBuy will provide the notices to be given to the Merchant in accordance with the form of notification selected by the Merchant in the ClickandBuy Service Area. In addition ClickandBuy will appropriately mark the relevant Payment Order in the ClickandBuy Service Area. It is the Merchant's responsibility to take notice of such notifications and act accordingly and ClickandBuy shall have no liability for any loss or expense incurred by the Merchant as a result of a refusal under Clause 8.1 or a reimbursement under Clause 8.2.

## 9. CLAIMS, CHARGEBACKS AND DIRECT DEBIT REVERSALS

### Claims

9.1 Subject to the application of Clause 7.1, in the event of a Claim notified by an End User or its payment service provider to ClickandBuy, ClickandBuy will follow the Disputes Process, or, if appropriate, the determinative process under the Buyer Protection Rights. Until the matter is resolved in accordance with the Disputes Process or the Buyer Protection Rights, the relevant Payment Order will be marked as Payment Pending (even if this requires a re-categorisation of a Payment Order previously marked as a Success) in the ClickandBuy Service Area. In accordance with Clause 5.2(f), such a Payment Order will not be available for settlement at the end of a Billing Period.

9.2 If the Claim is resolved in favour of the End User, ClickandBuy will reimburse the funds to the End User or their payment service provider or other appropriate third party, from the Merchant's ClickandBuy Account. The Merchant consents to ClickandBuy effecting such reimbursements as a payment transaction from its ClickandBuy Account and in such a case the Merchant acknowledges and accepts that no sums will be forwarded to it by ClickandBuy in respect of the amount that is the subject of the Claim.

9.3 If the Claim is resolved in favour of the Merchant, the Payment Order will be marked as a Success (or if appropriate, Payment Guaranteed).

### Chargebacks or Direct Debit Reversals

9.4 Where ClickandBuy is the subject of a Chargeback or Direct Debit Reversal, ClickandBuy will reimburse the funds to the End User or their payment service provider or other appropriate third party, from the Merchant's ClickandBuy Account. The Merchant consents to ClickandBuy effecting such reimbursements as a payment transaction from its ClickandBuy Account and in such a case the Merchant acknowledges and accepts that no sums will be forwarded to it by ClickandBuy in respect of the amount that is the subject of the Chargeback or Direct Debit Reversal.

9.5 The Merchant acknowledges that the validity of a Chargeback or Direct Debit Reversal will be determined by the relevant End User's card issuer or other third party payment service provider and not ClickandBuy and ClickandBuy will have no discretion on the matter.

### Provisions relevant to Claims, Chargebacks and Direct Debit Reversals

9.6 Subject to Payment Orders marked as, 'Payment Guaranteed', the Merchant acknowledges and accepts that ClickandBuy will have no liability to the Merchant in respect of any reimbursement to an End User or their payment service provider or other appropriate third party as a result of a Claim, Chargeback or Direct Debit Reversal.

9.7 ClickandBuy may restrict at its reasonable discretion the payment methods accepted as a payment source for the Merchant's Offers (for example a type of credit card) in the event that the levels of Claims, Chargebacks or Direct Debit Reversals occurring through that payment method in connection with the Merchant are, in ClickandBuy's sole opinion, excessive.

### Merchant's response to Claims

9.8 Where an End User notifies a Claim to the Merchant, the Merchant shall respond promptly and fully and in accordance with its legal and contractual obligations. Where an End User complains to ClickandBuy that the Merchant has not so responded, ClickandBuy may notify this to the Merchant and request that the Merchant responds appropriately within 48 hours of such notice. If the Merchant does not so respond within that timetable, ClickandBuy may in its discretion suspend the Service until the Merchant has so responded.

9.9 In the event of a Chargeback or a Direct Debit Reversal the Merchant shall be liable to ClickandBuy for the Bookout Fee (as set out in Schedule 2), unless the Chargeback or Direct Debit Reversal is a transaction in relation to which the Merchant is protected pursuant to the Seller Protection Rights.

### Other remedies

9.10 A payment that has been marked as Payment Pending but subsequently marked as a Success is still subject to any other right ClickandBuy has under this Agreement to hold or reverse the payment.

### No representation by ClickandBuy

9.11 The fact ClickandBuy does not reserve or reimburse a payment pursuant to Clauses 8 or 9 does not constitute any representation or undertaking that the payment does not breach any of the restrictions in Clause 12.1 or is otherwise unlawful and should not be relied upon by the Merchant to that effect. Furthermore the fact of a payment being treated as Payment Pending is not to be treated as a representation or indication as to the character, dealings or reputation of the payee.

## 10. RESERVE

### The Reserve Percentage

10.1 ClickandBuy shall be entitled to reserve in the Merchant's ClickandBuy Account a sum equal to the Reserve Percentage calculated in respect of each Billing Period. Such sum may be reserved for up to 120 days (or such shorter time as recorded in Schedule 2) following the end of the relevant Billing Period, after which it will be settled in accordance with Clause 5.2 at the end of the next following Billing Period. All such reserved sums will be recorded in the ClickandBuy Service Area as Reserved.

10.2 The acknowledged purpose of the retention of the Reserve Percentage is to ensure that ClickandBuy is protected against Claims, Reversals, Chargebacks and Direct Debit Reversal and other occasions where the Merchant becomes liable to ClickandBuy under this Agreement.

### What the Reserve Percentage can be used for

10.3 ClickandBuy shall be entitled to:

- (a) reimburse from funds recorded as Reserved any sums due to an End User or their payment service provider or other appropriate third party as a result of a Claim, Reversal, Chargeback or Direct Debit Reversal; and
- (b) set off against the funds recorded as Reserved any liabilities incurred by ClickandBuy as a result of the Merchant's acts or omissions or breach of this Agreement, including (and as further addressed in Clause 13.13) any Payment Scheme Penalties incurred by ClickandBuy and attributable to the Merchant.

### Reserve Percentage Review

10.4 ClickandBuy shall regularly review the amount retained under the Reserve Percentage. If in ClickandBuy's reasonable discretion the amount of the retention exceeds a reasonable amount given foreseeable security or assurance needs, then ClickandBuy shall release the excess amount and cease to record it as Reserved.

### Retention of Reserve post termination

10.5 After termination of this Agreement the amount recorded as Reserved as at the date of termination can be retained by ClickandBuy for up to six (6) months (or for such period as may have otherwise been agreed as reflected in Schedule 2) in order to be available to satisfy valid Claims, Chargebacks and Direct Debit Reversals and other outstanding payments due, following which the remaining credit balance shall be transferred to the Merchant's bank account as designated to ClickandBuy.

## 11. KEEPING ACCOUNTS SAFE

### Duty to keep secure

11.1 The Merchant is responsible for the security and proper use of its user names, passwords, and security check words and other details used in connection with the Service and its ClickandBuy Account, including any reasonable security precautions notified to it by ClickandBuy pursuant to Clause 3.4(b), and must take all reasonable steps to ensure that they are implemented, kept confidential, used properly and not disclosed to unauthorised people or used in an unauthorised way. The Merchant will take all reasonable steps to keep access to, and the security features of, the Service and its ClickandBuy Account safe and to prevent unauthorised use of the Service or ClickandBuy Account by any party.

### Notification of security breaches

11.2 The Merchant must notify ClickandBuy without any undue delay as soon as it is aware that there may have been unauthorised use of the Service or where any security feature has been breached or compromised. Such notification should be given by contacting the 24/7 Customer Care Team, whose contact details can be found on the ClickandBuy Website. Furthermore, the Merchant must promptly change its passwords and security check words if there is any reason to believe that a password or security check words have or are likely to become known to someone not authorised to use them or are being or are likely to be used in an unauthorised way.

### Fraud Server detection

11.3 Each transaction made by an End User using their ClickandBuy Account may be checked by the ClickandBuy Fraud Server. This may lead to other designated means of fraud protection or to rejection of the transaction. If the transaction is rejected, the Merchant may not receive the Payment Amounts into its ClickandBuy Account, and will therefore not incur a ClickandBuy commission charge.

## Suspension of the Service

11.4 Where the Merchant has provided notification to ClickandBuy under Clause 11.2 ClickandBuy will suspend the Merchant's access to the Service. In addition ClickandBuy reserves the right to immediately suspend the Service (in whole or in part) at any time if ClickandBuy on reasonable grounds:

- (a) considers that there is or is likely to be a breach of security in relation to the Merchant's use of the Service;
- (b) suspects unauthorised or fraudulent use of the Service; or
- (c) rejects a transaction pursuant to Clause 11.3 (in which case ClickandBuy's right to suspend the Service shall only apply in respect of that transaction).

11.5 Where ClickandBuy exercises its right under Clause 11.4 to suspend the Service, ClickandBuy will inform the Merchant beforehand and give reasons for so acting. If ClickandBuy is unable to notify the Merchant beforehand, it will do so as soon as it can afterwards. In either case ClickandBuy shall not be required to provide a notification where to do so would in ClickandBuy's opinion compromise reasonable security measures or be unlawful.

11.6 Where ClickandBuy exercises its rights under Clause 3.5 or 11.4 to suspend the Service and the suspension of the Service is caused directly or indirectly by the Merchant's actions or omissions, the Merchant shall be liable for any loss or damage arising out of the suspension of the Service suffered by ClickandBuy. ClickandBuy shall not be liable for any direct or indirect loss or damage suffered by the Merchant or any other third party arising from the suspension of the Service.

## Confidentiality of ClickandBuy software

11.7 The Merchant undertakes not to use or install any software supplied by ClickandBuy in connection with the Service on any public access computer.

## Unencrypted data

11.8 The Merchant acknowledges that any unencrypted data made available to ClickandBuy, via email or other means of communication, may be obtained by unauthorised third persons, and that ClickandBuy is not able to prevent this by technical means. Therefore, ClickandBuy has no obligation to take any measures to ensure the security or protection of any unencrypted data provided by the Merchant to ClickandBuy, and it is the sole responsibility of the Merchant to take any such measures.

## 12. MERCHANT'S USE OF THE ACCOUNT

### Manner of use

12.1 The Service must not be used:

- (a) fraudulently or in connection with a criminal offence;
- (b) in an unlawful manner or in contravention of any applicable legislation, licence agreements and/or the ClickandBuy Acceptance Policy;
- (c) in any way that does not comply with any restrictions notified by ClickandBuy under Clause 2.4;
- (d) in any way that does not comply with any instructions given under Clause 3.4 (b);
- (e) to advertise, promote, sell or offer for sale, send or provide unlawful or unsolicited advertising or promotional material; or
- (f) for tampering, 'hacking', modifying or otherwise corrupting the security or functionality of the Service, and the Merchant must ensure that this does not happen.

12.2 ClickandBuy may at any time suspend the Service immediately on notice, if the Merchant uses the Service in a way that is not permitted under Clause 12.1.

12.3 The Service is provided solely for the Merchant's own use and the Merchant must not resell or attempt to resell the Service (or any part or facility of it) to any third party.

### Merchant's duties regarding Offers

12.4 The Merchant warrants that it shall comply with and ensure all Offers comply with all applicable laws, rules and regulations (including codes of practice and such guidelines as may be issued by regulatory authorities) of whatever jurisdiction relating to its activities, the Merchant Website and the Offers and all commercial activities conducted on or via the Merchant Website including (without limitation) taxation, foreign exchange, currency and customs requirements and all advertising, consumer protection, product liability, data protection and privacy laws, or any laws relating to the protection of children or young persons, and all laws relating to lotteries, gambling, betting, gaming or similar activities. In ClickandBuy's reasonable request the Merchant shall be obliged to make appropriate modifications to the Merchant Website and/or the Offers to fulfil the requirements of this Clause 12.4.

12.5 The Merchant must ensure that the Offers are accurate in all respects and are not misleading, and that the prices clearly specify all applicable taxes, duties and delivery charges (of whatever nature and for whatever jurisdiction).

12.6 The Merchant is and shall remain responsible for the creation, maintenance, design and control of all Offers. The Merchant warrants that the Offers will be consistent with the description appearing on the Merchant Website and of satisfactory quality and fit for purpose (and, where the Offer consists of services, supplied with reasonable skill and care and in accordance with good industry practice).

12.7 The Merchant will use all reasonable endeavours to ensure that the Offers, whilst they remain current Offers of the Merchant are and remain available for use with the Service. The Merchant shall immediately notify ClickandBuy of any recognisable faults or malfunctions in relation to the Offers or the Merchant's Website.

12.8 The Merchant shall only transact bona fide Offers through the Service where the counterparties are the Merchant and an End User. The Merchant shall not submit transactions that derive from other sellers of goods or providers of services.

12.9 The Merchant shall only transact Offers that represent the whole Offer price and shall not for any reason or purpose split Offers into two or more transactions (unless the arrangement involves legitimate Recurring Payments).

12.10 The Merchant shall make clear to End Users that an agreement for Offers purchased through ClickandBuy's provision of the Service will be an agreement between the Merchant and the End User and the Merchant will make clear to the End User that ClickandBuy shall

not be liable for any loss or damage arising out of such contract.

## Recurring Payments

12.11 A Merchant shall require approval from ClickandBuy before offering Recurring Payments in connection with Offers. If the Merchant has not received ClickandBuy's prior approval ClickandBuy may reject the Payment Order. If in ClickandBuy's reasonable opinion the Merchant misuses Recurring Payments, ClickandBuy may suspend the Merchant's ability to offer Recurring Payments.

12.12 It shall be the Merchant's responsibility to communicate the basis and terms of the Recurring Payment to the End User in a fair, clear and transparent manner.

12.13 The Merchant must provide the End User with and acknowledges that ClickandBuy must permit End Users with the ability to cancel a Recurring Payment at any time up to the end of the Business Day preceding the scheduled date of the Recurring Payment.

12.14 Where the Merchant agrees with the End User to receive Recurring Payments, ClickandBuy shall facilitate the transaction between the Merchant and the End User, but ClickandBuy shall be under no obligation to enforce any contractual obligations for payment by the End User to the Merchant or for delivery of the Merchant's goods or services to the End User. ClickandBuy makes no representation and gives no undertaking or warranty that Recurring Payments will be made by the End User. ClickandBuy will seek to process a Recurring Payment with an End User but shall not be required to credit any payment to the Merchant if there are insufficient funds in the End User's account. ClickandBuy shall otherwise be under no responsibility to enforce the Recurring Payment arrangement against the End User.

12.15 An End User may cancel a Recurring Payment using the ClickandBuy service in circumstances where the End User's obligations under the Recurring Payment arrangement it has with the Merchant are not satisfied. ClickandBuy shall have no liability to the Merchant in these circumstances.

## Merchant to give advance notice of recurring payments

12.16 The Merchant must provide the End User with advance notice of each instance of a Recurring Payment at least 5 days before it is due or if for any reason this is not practicable, must provide the End User with as much advance notice as possible.

## New business models and sales channels and ongoing due diligence

12.17 The Merchant shall not:

- (a) submit transactions that derive from business models or sales channels of the Merchant that have not previously been notified to and approved by ClickandBuy as part of ClickandBuy's due diligence on the Merchant; or
- (b) make any addition to or change to Uniform Resource Locators (URLs) representing a Merchant Website utilising the ClickandBuy Service, or that redirect to the ClickandBuy Website,

without first notifying the change to ClickandBuy (and provide such supporting material as ClickandBuy requires) and obtaining ClickandBuy's written approval. Failure of the Merchant to obtain ClickandBuy's written approval in these circumstances entitles ClickandBuy to suspend the Merchant's access to part or all of the Service until ClickandBuy is in its discretion satisfied with the changes.

12.18 ClickandBuy may from time to time request additional or updated due diligence information from the Merchant regarding its business and operations in order to enable ClickandBuy to satisfy itself that it should continue to accept the Merchant as a merchant user of the Service and for the purposes of satisfying ClickandBuy's ongoing obligations under relevant anti-money laundering legislation. The frequency of such requests will depend upon the Merchant's risk and transaction profile. Failure of the Merchant to supply requested information in a timely manner constitutes entitles ClickandBuy to suspend the Merchant's access to part or all of the Service until ClickandBuy is in its discretion satisfied with the due diligence information provided.

## Merchant's return and refund policy

12.19 The Merchant shall provide to its customers and operate a clear and fair return and refund policy. The Merchant will provide ClickandBuy with a copy of this policy as part of ClickandBuy's initial due diligence and shall thereafter provide ClickandBuy with a copy of any material changes to this policy.

## No restrictions or charges to be imposed on End users

12.20 The Merchant shall not charge End Users any additional fee or charge for purchasing Offers using the ClickandBuy service.

12.21 The Merchant agrees that it shall not set minimum or maximum transaction amounts as a condition for End Users paying through the ClickandBuy Service.

## Merchant's identity

12.22 The Merchant agrees to prominently and unequivocally inform the End User of the identity of the Merchant at all points of interaction.

12.23 The Merchant must ensure that its registered legal name, postal address, electronic mail address and telephone number are included in clear and legible form on all the Merchant Websites for the receipt of any enquiries or complaints that may arise in relation to the Merchant or any Offer, and the Merchant shall respond to any such enquiries or complaints in a professional, prompt, and diligent manner. ClickandBuy reserves the right to disclose to any person with an enquiry or complaint about an Offer the Merchant's contact name, telephone number, address and electronic mail address if such person cannot locate these details on the Merchant Website and the Merchant must supply such details to ClickandBuy on acceptance of this Agreement and immediately inform ClickandBuy of any changes to these details.

## Merchant's Website

12.24 The Merchant shall ensure that neither the Offers nor the Merchant's Website contain any viruses or other faults liable to interfere with the Service or any software provided by ClickandBuy in connection with the Service or to affect any other ClickandBuy customers or End Users.

## Use of ClickandBuy logo

12.25 The Merchant will use the ClickandBuy brand, the ClickandBuy logos and the logos of any applicable service, method or instrument in the manner described on the ClickandBuy

Website or ClickandBuy Integration Network as amended from time to time.

12.26 The Merchant shall ensure that neither any Offer nor the Merchant Website shall infringe any third party rights (including, but not limited to, defamation and all and any intellectual property rights). The Merchant shall indemnify ClickandBuy on demand against any loss suffered or incurred by ClickandBuy from time to time arising out of or in connection with any breach or alleged breach of any provision of this Clause 12.27 and/or any infringement by the Merchant of any intellectual property rights owned or licensed to ClickandBuy.

**Provision of information to ClickandBuy**

12.27 When requested to do so by ClickandBuy, the Merchant must provide to ClickandBuy all information available to it regarding transactions, and parties to those transactions, as needed by ClickandBuy for the prevention or deterrence of crime, and to meet its legal obligations and risk management objectives in relation to money laundering, terrorist financing, fraud or any other undisclosed unlawful activities in connection with the Service. The Merchant should keep any such requests and any further action taken by ClickandBuy in respect of those requests, confidential. ClickandBuy may, where it considers appropriate pass on any information received from the Merchant to the relevant law enforcement agency.

12.28 Where ClickandBuy reasonably suspects that the Merchant has a substantial percentage of fraudulent transactions, the Merchant shall respond to any fraud related questions submitted by phone or email within 24 hours and propose reasonable measures to reduce the fraud.

**13. LIABILITY**

13.1 Nothing in this Agreement limits or excludes either party's liability for death or personal injury resulting from its negligence or for fraud or fraudulent misrepresentation and the remainder of this Clause 13 does not restrict such liability.

13.2 Subject to Clause 13.1, neither party is liable to the other either in contract, tort (including negligence) or otherwise for loss (whether direct or indirect) of profits or business, destruction of data loss of or anticipated savings, or for any indirect or consequential loss or damage.

13.3 Other than in the case of gross negligence, fraud or wilful default by ClickandBuy, or its employees, directors, officers, and agents, ClickandBuy shall not be liable for any loss suffered by the Merchant as a result of:

- (a) fraud; or
- (b) malfunction or damage to ClickandBuy's system's which causes the Service to be suspended.

13.4 Where the Unique Identifier provided by the Merchant is incorrect, ClickandBuy is not liable for the incorrect execution or non-execution of a resulting payment transaction, but ClickandBuy will take reasonable efforts to recover the funds involved in such a payment transaction. ClickandBuy may in accordance with Schedule 2 charge the Merchant for any such recovery.

13.5 Subject to Clauses 6.1 and 6.2, 11.1, 11.2, 12.1, 13.2, 13.4, and 13.6 through to 13.10 and provided the Merchant has notified ClickandBuy without undue delay, and in any event and subject to Clause 1.6 no later than 13 months after the relevant payment date, on becoming aware of any unauthorised or incorrectly executed payment transaction, ClickandBuy shall, in respect of any:

- (a) unauthorised payments (being for the purposes of this Clause 13, payments from the Merchant's ClickandBuy Account that have been executed but not authorised by the Merchant), without undue delay refund to the Merchant the amount of the unauthorised payment and where applicable, restore the Merchant's ClickandBuy Account to the state in which it would have been had the relevant payment transaction not taken place;
- (b) incorrectly executed Payment Orders initiated by the Merchant as payer, without undue delay refund to the Merchant the amount of the incorrectly executed payment and, where applicable, restore the Merchant's ClickandBuy Account to the state in which it would have been had the relevant payment transaction not taken place; and
- (c) incorrectly executed Payment Orders initiated by the Merchant as payee, ClickandBuy shall be liable to the Merchant for the correct transmission of the order in accordance with the terms of this Agreement and will re-transmit the Payment Order in question.

13.6 In the case of either Clause 13.5(b) or (c), ClickandBuy will at the Merchant's request make immediate efforts to trace the payment and notify the Merchant of the outcome and will also be liable to the Merchant for any charges or interest that the Merchant has had to pay as a consequence of the incorrectly executed Payment Order. ClickandBuy shall not be liable pursuant to Clause 13.5(b) or (c) where it can prove (if the Merchant initiated the transaction as payer) that the End User or its payment service provider received the amount of the payment transaction or (if the Merchant initiated the transaction as payee) that it was not liable for the incorrect transmission.

13.7 Subject to Clauses 13.8 and 13.9, the Merchant where it is the payer is liable for up to a maximum of €50 (or Euro equivalent) for any losses incurred in respect of an unauthorised payment arising due to the use of lost or stolen password or security check words or due to the Merchant failing to keep the personalised security features of the Service safe.

13.8 Subject to Clause 13.9, the Merchant shall be liable for all losses incurred in respect of an unauthorised payment where the Merchant has acted fraudulently or has with intent or gross negligence failed to use the Service in accordance with the terms and conditions set out in this Agreement governing its use or failed to give a notification to ClickandBuy in accordance with Clause 11.2.

13.9 Except where the Merchant has acted fraudulently, where it is the payer under a Payment Order the Merchant is not liable for any losses incurred in respect of an unauthorised payment made by the Merchant: (a) arising after the Merchant has provided a notice in accordance with Clause 11.2 (or ClickandBuy has failed to make available to the Merchant the means to give such a notice); or (b) where the payment has been made by the Merchant in connection with a distance contract other than an excepted contract (with "distance contract" and "excepted contract" have the meanings given in the Consumer Protection (Distance Selling) Regulations 2000).

13.10 Subject to Clause 13.1, either party's liability to the other either in contract, tort (including negligence) or otherwise in relation to this Agreement is limited to 125% of the

Commission, Support Charges and Other Charges payable by the Merchant in any Month in which the incident occurred for any one incident or series of related incidents, provided that this Clause 13.10 shall not in any way limit the Merchant's obligations in respect of satisfying Chargebacks, Direct Debit Reversals, Claims, Payment Scheme Penalties attributable to the Merchant or any duty to fund its ClickandBuy Account pursuant to Clause 5.6 or ClickandBuy's obligations under Clauses 13.5 or 13.6.

13.11 Where the Merchant is not an individual consumer, charity or Micro-Enterprise, ClickandBuy shall not be liable under Clause 13.5(a) unless the unauthorised payment was directly caused by ClickandBuy's negligence or breach of this Agreement.

13.12 ClickandBuy shall not be responsible or liable for any instructions received by ClickandBuy from the Merchant that relate to the Merchant's Offers to End User that are communicated using valid and current User ID and Password data.

13.13 Each provision of this Agreement, excluding or limiting liability, operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

**Merchant's liability for Payment Scheme Penalties**

13.14 If ClickandBuy incurs a Payment Scheme Penalty that can in whole or in part, in ClickandBuy's reasonable discretion, be attributed to the activities of the Merchant, the Merchant shall, upon first demand, fully indemnify ClickandBuy in the amount of the Payment Scheme Penalty that can be attributed to the activities of the Merchant.

13.15 ClickandBuy shall, at any time upon request, provide the Merchant with a statement of the current Payment Scheme Penalties that can in ClickandBuy's reasonable discretion be attributed to the activities of the Merchant. The Merchant shall not have any right to negotiate or deal with the relevant credit card scheme about payment or grounds for the penalty charges.

**14. MATTERS OUTSIDE EITHER PARTY'S REASONABLE CONTROL**

14.1 If either party is unable to perform any obligation under this Agreement, or its performance is detrimentally affected, because of an abnormal and unforeseeable circumstance beyond that party's control the consequences of which would have been unavoidable despite all efforts to the contrary, that party will have no liability to the other party for that failure to perform. Such a circumstances could include lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving its employees), or acts of local or central Government or other competent authorities, or the quality or speed of the Internet connection. The delaying party shall promptly notify the other of the delay and the reasons for and likely duration of the delay.

14.2 In the event that ClickandBuy's contract with a Merchant Acquirer is terminated or service under ClickandBuy's contract with a Merchant Acquirer is suspended for any reason then ClickandBuy will have no liability to the Merchant for failure or limited supply of the Service to the extent interrupted by that terminated or suspended service.

14.3 ClickandBuy shall not be liable to the Merchant for any contravention of a requirement imposed on it under Part 6 of the Payment Services Regulations where the contravention is due to the obligations of ClickandBuy under other provisions of Community or national law.

**15. TERMINATION RIGHTS**

15.1 The Merchant may terminate this Agreement on giving 1 months' written notice to ClickandBuy.

15.2 ClickandBuy may terminate this Agreement on giving at least 2 months' written notice to the Merchant.

15.3 ClickandBuy may terminate this Agreement immediately upon giving notice to the Merchant at any time if:

- (a) ClickandBuy reasonably considers the Merchant is:
  - (i) acting fraudulently or illegally (in any jurisdiction); or
  - (ii) subject to, or it appears to ClickandBuy is likely to be subject to, an investigation by a regulator or authority into the activities of the Merchant in relation to any gambling, gaming, betting, lottery or other similar law in any jurisdiction; or
- (b) ClickandBuy reasonably consider that it will be in breach of European Union or national law, regulation or Court order if it continues this Agreement.

15.4 The Merchant shall endeavour where practicable to notify ClickandBuy of any proposed Change of Control at least 2 months in advance of the Change of Control being effective. Where the Merchant is not able to so notify ClickandBuy in accordance with this timing requirement, it shall nonetheless notify ClickandBuy as soon as it becomes aware of a Change of Control being proposed or effected. The notification obligations imposed on the Merchant in this Clause 15.4 shall be subject to any unavoidable obligations of confidentiality.

15.5 ClickandBuy may terminate the Agreement and close the Merchant's ClickandBuy Account where it has not received any Payment Orders (whether with the Merchant as payer or payee) for twelve (12) months, provided that Clause 10.6 shall apply. Funds standing in credit on the Merchant's ClickandBuy Account will be paid to the Merchant's nominated bank account.

15.6 Where an investigation is commenced or appears to ClickandBuy to be likely to be commenced by a regulator or authority into the activities of the Merchant, ClickandBuy shall be entitled to provide any assistance and information it deems appropriate to any investigatory or official body in relation to such investigation or activities.

15.7 If notice is given to terminate this Agreement or the Service for any reason the Merchant must immediately pay all Charges due for the Service up to the expiry of the notice. Where any regular Charges have been paid in advance and the period or service in respect of which they have been paid will not, due to the termination of this Agreement, be completed, such Charges shall to that extent be reimbursed to the Merchant proportionately.

15.8 Termination does not avoid ClickandBuy's liability for the Services already provided.

**16. CONSEQUENCES OF TERMINATION**

16.1 Upon termination or expiry of this Agreement for any reason:

(a) any hardware, software, documentation, information or other materials provided to the Merchant under this Agreement must be returned immediately to ClickandBuy, and the Merchant must stop using the Service and the ClickandBuy identity which includes ceasing to use the ClickandBuy Marks;

(b) those provisions relating to confidentiality and those provisions which by their content or nature are intended to survive, shall survive the expiry or termination of this Agreement; and

(c) to cover any potential liability to End Users or other parties having legitimate claims, Chargebacks, Claims and Direct Debit Reversals, ClickandBuy shall, in addition to the amount of the Reserve retained pursuant to Clause 10.6, be entitled to retain for a period of six (6) Months following termination an additional amount equivalent to fifty per cent (50%) of all sums due to the Merchant at the point of termination in accordance with Clause 5.2 of this Agreement.

16.2 Following the end of the relevant retention period specified in Clause 16.1 (c) and in any case within five (5) Business Days of that period, ClickandBuy shall return to the Merchant any retained amounts which have not been used to cover liability to End Users or other parties having legitimate claims.

## 17. BREACHES OF THE AGREEMENT

17.1 Either party may at any time terminate this Agreement or the Service immediately on notice, if the other:

(a) commits a material breach of this Agreement, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or

(b) commits a material breach of this Agreement which cannot be remedied; or

(c) is repeatedly in breach of this Agreement (whether the breach is of the same obligation(s) or not).

17.2 ClickandBuy may at any time terminate this Agreement or the Service immediately on notice if the Merchant is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or enters compulsory liquidation, or a receiver or administrator is appointed over their assets, or if the equivalent of any such events occurs under the laws of the jurisdiction in which the Merchant is located.

17.3 ClickandBuy shall have the right to serve notice to suspend this Agreement in the event that Chargeback and Direct Debit Reversal levels exceed five per cent (5%) of overall Payment Amounts attributable to the Merchant in any Month or three per cent (3%) of Payment Amounts attributable to the Merchant that are funded to ClickandBuy by an End-User using a credit card account. ClickandBuy can refuse to restore the Service until ClickandBuy receives what it considers to be an acceptable assurance or remedial action plan from the Merchant to the effect that Chargeback and Direct Debit Reversal levels will be improved such that they do not exceed these levels. ClickandBuy will use all commercially reasonable efforts to limit suspensions under this clause 17.3 to specific payment methods and/or Merchant's ClickandBuy Accounts only, so that the Service can be continued to the greatest possible extent.

17.4 If the Merchant commits any breach of this Agreement, whether remediable or not, or if any of the events set out in Clause 17.2 shall occur in respect of the Merchant, ClickandBuy may suspend the Service without prejudice to its right to terminate this Agreement. ClickandBuy can refuse to restore the Service until ClickandBuy receives what it considers to be an acceptable assurance from the Merchant that there will be no further breach of this Agreement or (as the case may be) no further prohibited use.

17.5 On termination under this Clause 17 the Merchant shall pay to ClickandBuy all Charges that are due for the Service under this Agreement. Any outstanding sums due to the Merchant under this Agreement will be forwarded in accordance with the terms of this Agreement, but subject to any rights ClickandBuy has to retain or reserve funds. Where any regular Charges have been paid in advance and the period or service in respect of which they have been paid will not, due to the termination of this Agreement, be completed, such Charges shall to that extent be reimbursed to the Merchant proportionately.

17.6 The Merchant will remain liable to pay all Charges that are due for the Service during any period in which the Merchant does not comply with this Agreement.

17.7 If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Agreement by the other party, that waiver is limited to that particular breach.

## 18. VARIATION OF TERMS AND CONDITIONS

18.1 ClickandBuy may amend this Agreement by providing the Merchant with at least 2 months notice of the proposed changes. The Merchant shall be deemed to have accepted the changes unless it notifies ClickandBuy to the contrary prior to the proposed effective date of the changes. The Merchant may before any notified changes become effective terminate this Agreement immediately and without charge by giving notice to ClickandBuy.

18.2 Any amendments to this Agreement proposed by the Merchant must be agreed to by the parties in writing.

## 19. TRANSFER OF RIGHTS AND OBLIGATIONS

19.1 Subject to Clauses 19.2 and 19.3, neither party may assign or transfer any of its rights or obligations under this Agreement without written consent of the other.

19.2 ClickandBuy may assign or transfer its rights or obligations (or both) to a ClickandBuy Group Company without consent.

19.3 ClickandBuy may engage a subcontractor to perform any part of the Service provided that ClickandBuy shall remain responsible to the Merchant for the performance of the Service.

## 20. NO AGENCY

20.1 ClickandBuy and the Merchant accept that they are independent contractors and that neither is acting as the agent of the other (and that ClickandBuy is not acting as agent for

any End User). Neither party has any authority to bind or contract or negotiate on behalf of the other or to incur any debt or other obligation on behalf of the other or to create any liability against the other in any way or for any purpose.

20.2 The Merchant acknowledges and accepts that any contracts for the purchase or other acquisition of Offers appearing on the Merchant Website are strictly and solely between the Merchant and the End User.

## 21. NOTICES

21.1 Notices given under this Agreement must be in writing and delivered by hand, email, prepaid post or by fax as follows:

(a) to ClickandBuy: by utilising the address and contact details as specified on the imprint pages of the ClickandBuy Website at or any alternative address or contact details which ClickandBuy notifies to the Merchant at any time;

(b) to the Merchant: to the email and contact details which the Merchant has previously supplied to ClickandBuy for the sending of invoices or other communications or, if the Merchant is a limited company, its registered office.

## 22. INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY

22.1 All End User Details are and shall remain the property of ClickandBuy. However, the Merchant may be provided with anonymous data provided to do so is in accordance with the Data Protection Act 1998.

22.2 ClickandBuy authorises the Merchant and the Merchant agrees only to use the ClickandBuy Marks in accordance with the conditions set out in this Agreement for the sole purpose of using the Service.

22.3 Intellectual property rights in (1) any software or documentation supplied by ClickandBuy to the Merchant for or in connection with the Service, and (2) any custom graphic interfaces, design elements, graphics or other applications or content which ClickandBuy may provide and which are placed on or incorporated into the Merchant Website, remain the property of ClickandBuy or its licensors.

22.4 Where any software, documentation or other materials are provided to enable the Merchant to use the Service, ClickandBuy grants the Merchant a non-exclusive, non-transferable licence to use the software, documentation or other materials for that purpose only and in accordance with this Agreement.

22.5 The Merchant will not, without ClickandBuy's prior written consent, copy or (except as permitted by law) decompile or modify the software, nor copy the manuals or documentation.

22.6 The right to use the ClickandBuy Marks and any software, documentation or other materials supplied under this Agreement shall last only for the duration of this Agreement and may not be assigned or sub-licensed in full or in part.

22.7 The Merchant may make one copy of the software, documentation and other materials supplied under this Agreement for backup purposes.

22.8 The Merchant shall grant to ClickandBuy a non-exclusive, non-transferable (other than in accordance with Clause 18) licence, for the duration of the Agreement, to use the Merchant's trade mark and trade names (collectively, the "Merchant Marks") in the course of providing the Service with respect to Offers and to feature the Merchant Marks on the ClickandBuy Website for promotional, reference or operational purposes and may include links to the Merchant's website on the ClickandBuy Website.

22.9 Neither party will issue any promotional or advertising material or press release relating to the other, without first obtaining the other's prior consent (in writing).

22.10 The Merchant is authorised to use the ClickandBuy logos or marks only on the Merchant's promotional materials and website to indicate that the Service is accepted as payment for the business goods and services. The Merchant agrees that it shall not use the logos and marks either directly or indirectly, to imply that ClickandBuy endorses the Merchant's goods or services; nor may the Merchant refer to ClickandBuy when stating eligibility requirements for purchasing its products, services, or memberships.

22.11 The Merchant agrees that it shall not engage in any acceptance practice that discriminates against or discourages the use of ClickandBuy in favour of any other acceptance brand.

## 23. CONFIDENTIALITY

23.1 The parties will keep in confidence the terms of this Agreement and any information (whether written or oral) of a confidential nature (including without limitation documents, software, drawings and manuals) obtained under this Agreement and will not disclose that information to any person (other than their respective employees or in the case of ClickandBuy the employees of a ClickandBuy Group Company or their professional advisers or suppliers, who need to each know the information) without the written consent of the other party. The parties shall make the necessary contractual arrangements that their employees, professional advisors and suppliers are also bound by confidentiality agreement obligations that are equivalent to those set out in this Clause 23.

23.2 This Clause 23 will not apply to:

(a) any information which has been published other than through a breach of this Agreement;

(b) information lawfully in the possession of the recipient before the disclosure under this Agreement took place;

(c) information obtained from a third party who is free to disclose it; and

(d) information which a party is requested to disclose and, if it did not, could be required by law to do so.

23.3 The restrictions in this Clause 23 will survive the termination or expiry of this Agreement for as long a period as permitted by applicable law.

## 24. COUNTERPARTIES

This Agreement may be executed in any number of counterparts by the parties each of which shall when executed and delivered constitute an original but all of which together constitute one and the same document.

## 25. ENTIRE AGREEMENT

25.1 This Agreement contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.

25.2 The parties acknowledge and agree that, subject to Clause 13.1:

(a) they have not been induced to enter into this Agreement by any representation, warranty or other assurances not expressly incorporated into it; and

(b) in connection with this Agreement, and except in the case of fraud, their only rights and remedies in relation to any representation, warranty or other assurance shall be for breach of the terms of this Agreement and that all other rights and remedies are excluded.

25.3 In the event that any provision of this Agreement is determined to be unlawful or otherwise unenforceable, such provision shall be deemed severed from this Agreement, but every other provision of this Agreement will remain in full force and effect.

25.4 In the circumstances of Clause 25.3 if any such provision is determined to be unlawful, there will be substituted a provision reflecting the original intent of the parties as closely as possible and to the extent permissible under applicable law. The parties shall negotiate promptly and in good faith to achieve this objective.

25.5 A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 26. TRANSACTION ACCURACY AND TAXATION

26.1 The Merchant is solely responsible for the filing of appropriate returns and the payment of any and all taxes and duties of whatever nature levied or imposed by whatever jurisdiction in connection with the promotion, sale, licensing, supply or other exploitation of an Offer and shall indemnify ClickandBuy against liability for any such taxes and duties.

26.2 Neither ClickandBuy nor its licensees provides any advisory services to the Merchant regarding taxation and any customs or other import/export duties.

26.3 Any information that ClickandBuy provides to the Merchants or End Users in respect of tax or VAT shall merely represent the data that the Merchant has initially provided to ClickandBuy and does not remove the obligation from the Merchant to account correctly to HM Revenue Customs or other relevant bodies for the VAT or other applicable tax on the services the Merchant has supplied.

26.4 The Merchant must immediately inform ClickandBuy of any changes to the Merchant's tax or VAT registration number or if the Merchant ceases to be registered for tax or VAT.

26.5 It is the Merchant's responsibility to determine what, if any, taxes apply to the payments it makes or receives, and it is the Merchant's responsibility to collect, report and remit the correct tax to the appropriate tax authority. ClickandBuy is not responsible for determining whether taxes apply to the Merchant's transaction, or for collecting, reporting or remitting any taxes arising from any transaction. ClickandBuy shall have no responsibility for and shall not provide End-Users with any invoices on behalf of the Merchant.

## 27. GOVERNING LAW AND DISPUTES WITH CLICKANDBUY

27.1 This Agreement is governed by the laws of England and Wales, and both parties irrevocably submit to the exclusive jurisdiction of the English courts.

27.2 If the Merchant is not satisfied with any aspect of the Service it may contact its nominated contact person at ClickandBuy or the support department at the telephone number or email address stated on the ClickandBuy Website. A copy of ClickandBuy's complaints handling policy is available on request or can be found under the Company Information section of the ClickandBuy Website.

27.3 The Financial Ombudsman Service may apply to this Service for out of court dispute settlement where the Merchant is an eligible complainant under DISP 2.7 of the rules of the Financial Services Authority. Any claim or dispute arising out of, or in relation to, this Agreement or the provision of the service by ClickandBuy that cannot be resolved by contacting the Merchant's contact point at ClickandBuy or as notified to the Merchant from time to time, or the support department at the telephone number or email address stated on the ClickandBuy Website, could be referred to the Financial Ombudsman Service or the Courts of England and Wales, Scotland or Northern Ireland, depending on where the Merchant is resident. Information regarding the Financial Ombudsman Service is available at <http://www.financial-ombudsman.org.uk>.

27.4 Electronic Money or Payment Services are not covered by the Financial Services Compensation Scheme or any other government compensation or insurance scheme and accordingly Merchants will have no rights to claim under such a scheme.

## 28. DEFINITIONS

28.1 In this Agreement, unless the context otherwise requires:

„**Agreement**“ means these General Terms and Conditions and the Schedules.

„**Billing Period**“ means the period of time as agreed between the Merchant and ClickandBuy over which ClickandBuy will periodically calculate and distribute the Merchant's Payment Amounts in accordance with Clauses 5.5 & 5.6, as set out in Schedule 2.

„**Bookout Fee**“ means the fee payable in respect of Chargebacks and Direct Debit Reversals as set out in Schedule 2.

„**Business Day**“ means Monday to Friday, 09:00 – 17:00 (UK local time), excluding public or bank holidays in the United Kingdom.

„**Buyer Protection Rights**“ means the facility of that name offered to End Users as detailed on the ClickandBuy Website.

„**Change of Control**“ means an event which has the effect that an undertaking which is not (a) the Ultimate Parent Undertaking of that party at the date that the Agreement has been signed, or (b) an undertaking which was immediately before such event a wholly owned subsidiary undertaking of that Ultimate Parent Undertaking, becomes the Ultimate Parent Undertaking of that party and, for this purpose, where the Ultimate Parent Undertaking consists of a partnership or group of individuals, the Ultimate Parent Undertaking shall not

be treated as having changed unless a majority of the partners or a majority of the members of the group of individuals have changed.

„**Chargeback**“ means where (other than due to a Direct Debit Reversal) ClickandBuy is legally obliged under law or pursuant to card issuer, bank or other payment service provider terms or codes, to refund funds back to or does not receive funds from a card issuer, bank or any other payment service provider where the receipt of such funds had previously been authorised or expected, due to insufficient available funds, incorrect account details, End User disputes, fraud or for any other reason.

„**Charges**“ means Commission, Set-up Fee, Support Charges and any Other Charges.

„**Claim**“ means where an End User:

(a) makes a complaint in relation to goods offered or services rendered by the Merchant for being insufficient, incorrect or defective or where they have not been delivered, including complaint or claim under the Buyer Protection Rights; or

(b) claims to have a legal entitlement to cancel and/or reverse any goods offered or services rendered by the Merchant.

„**ClickandBuy**“ means ClickandBuy International Limited, a company registered in England and Wales under number 5661160, whose registered and head office is located at Lincoln House, 137–143 Hammersmith Road, London W14 0QL, United Kingdom. ClickandBuy International Limited is authorised and regulated as an Electronic Money Institution by the Financial Services Authority (FSA) and is entered into the FSA register under register number 454127. The FSA register can be found at <http://www.fsa.gov.uk/register>

„**ClickandBuy Acceptance Policy**“ means a document describing ClickandBuy's corporate policy and setting out for which offers and services the ClickandBuy Service may not be used. The current version may be obtained from [http://www.clickandbuy.com/GB\\_en/terms-and-conditions.html](http://www.clickandbuy.com/GB_en/terms-and-conditions.html)

„**ClickandBuy Account**“ means an Electronic Money account held by an End User or a Merchant which is required as part of the Service.

„**ClickandBuy Cooperation Agreement**“ means the agreement entered into between ClickandBuy and the Merchant regarding the Merchant's acceptance of this Agreement.

„**ClickandBuy Group Company**“ means a ClickandBuy subsidiary or holding company, or subsidiary of that holding company, as defined by Section 736 of the Companies Act 1985, as amended by the Companies Act 1989.

„**ClickandBuy Marks**“ means the „ClickandBuy“ logo, the Firstgate trade marks and the „ClickandBuy“ identity as more particularly set out in the ClickandBuy Brand Guidelines.

„**ClickandBuy Service Area**“ means a personalised area on the ClickandBuy Internet Platform accessible for the Merchant at any time. The ClickandBuy Service Area contains, inter alia, updated information on transactions and the ClickandBuy system.

„**ClickandBuy Website**“ means the ClickandBuy website at the URL <http://www.clickandbuy.com> notified by ClickandBuy from time to time.

„**ClickandBuy Integration Network**“ means the ClickandBuy website at the URL <http://integration.clickandbuy-community.com>.

„**Commission**“ means the amount of Payment Amounts which ClickandBuy retains as a commission set out in Schedule 2.

„**Day**“ means a calendar day.

„**Direct Debit Reversal**“ means where ClickandBuy is legally obliged under law or pursuant to bank or other payment service provider terms or codes, to refund a direct debit or does not receive funds under a direct debit where the receipt of such funds had previously been authorised or expected, due to insufficient available funds, incorrect account details, End User disputes, fraud or for any other reason.

„**Disputes Process**“ means the Disputes Process identified as such and accessible from the ClickandBuy Service Area or ClickandBuy Website.

„**EEA**“ means the European Economic Area.

„**Effective Date**“ means the date on which the Merchant accepts these General Terms and Conditions by either:

(a) where ClickandBuy requests it to do so, executing a Cooperation Agreement; or

(b) otherwise, indicating its agreement on the ClickandBuy Website.

„**Electronic Money**“ means the investment, specified in article 74A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (Electronic money), which is monetary value, as represented by a claim on the issuer, which is:

(a) Stored on an electronic device;

(b) Issued on receipt of funds;

(c) Accepted as consideration or a means of satisfying a debt by persons other than the issuer; and

(d) The virtual currency which is stored in the ClickandBuy Account.

For the Merchant, Electronic Money refers to Payment Amounts collected by ClickandBuy and stored in the ClickandBuy Account. For an End User, Electronic Money refers to electronic value loaded to the ClickandBuy Account with a view to purchasing goods or services from Merchants.

„**End User**“ means a person or entity who holds a ClickandBuy account or who is invited to open a ClickandBuy account for the purpose of purchasing Offers using the Service.

„**End User Details**“ means the information about End Users which ClickandBuy collects and processes in connection with the Service.

„**including**“ means including without limitation and does not limit any matter to which it refers.

„**Merchant**“ means the person so named on this Agreement and anyone reasonably appearing to ClickandBuy to be acting with the Merchant's authority or permission.

„**Merchant Acquirer**“ means that party that stands between ClickandBuy and a credit/debit card issuer.

„**Merchant Website**“ means the World Wide Web site(s) on which the Offers are hosted.

„**Micro-Enterprise**“ means any enterprise engaged in an economic activity, irrespective of its legal form, including self-employed persons and family businesses engaged in craft or

other activities, and partnerships or associations regularly engaged in an economic activity, where, as at the Effective Date, that enterprise:

- (a) employs fewer than 10 persons; and
- (b) has an annual turnover and/or annual balance sheet total of less than 2 million Euros (or GBP Sterling equivalent),

and for the purposes of these calculations the Merchant should take account of any 'linked' or 'partner' enterprises on the basis set out in the European Commission's SME Recommendation (2003)/361/EC.

„**Month**“ means 00:00:00 (coordinated universal time) on the first day of a calendar month until 23:59:59 (coordinated universal time) on the last day of that calendar month.

„**Offer**“ means all products, services and information including text, words, names, graphics, (including logos), software (including all software applications), video, audio or other offers appearing on the Merchant Website.

„**Payment Amounts**“ means the sums payable by an End User for Offers, including VAT.

„**Payment Date**“ means the Business Day agreed between ClickandBuy and the Merchant following the end of each Billing Period on which payment of the Payment Amounts to the Merchant's bank account will be initiated pursuant to Clause 5.3.

„**Payment Guaranteed**“ means where a Payment Order credited to the Merchant ClickandBuy Account is capable of being subject to the Seller Protection Rights.

„**Payment Order**“ means an instruction supplied to ClickandBuy by an End User or the Merchant for the placing, transferring or withdrawing of funds to or from a ClickandBuy Account.

„**Payment Pending**“ means where a Payment Order is marked in the ClickandBuy Service Area as 'Payment Pending', meaning ClickandBuy has received notice of the Payment Order, but not yet credited it to the Merchant's ClickandBuy Account.

„**Payment Scheme Penalty**“ means a charge or penalty (however described) that may be incurred by ClickandBuy and owed to a credit or debit card provider, merchant acquirer or bank or other payment services provider under the relationship rules or codes imposed on ClickandBuy by that provider for reasons specified in those rules or codes, such as:

- (a) for excessive volumes of Chargebacks or Direct Debit Reversals;
- (b) breaches of acceptable use policies; or
- (c) for processing payments in respect of fraudulent activities or for goods or services the provision of which is in breach of law.

„**Payment Services Regulations**“ means the Financial Services and Markets Act 2000 (Payment Services Regulations) 2009, as amended from time to time.

„**Recurring Payment**“ means a payment under an arrangement where the End User provides authorisation to ClickandBuy for the Merchant to collect a series of payments from the End User.

„**Reserved**“ means the sum from time to time reserved pursuant to Clause 10.1 as indicated from time to time in the ClickandBuy Service Area.

„**Reserve Percentage**“ means a percentage of the total funds received into the Merchant's ClickandBuy Account during a Billing Period as set out in schedule 2.

„**Seller Protection Rights**“ means the policy set out in Schedule 3.

„**Service**“ means the service known as „ClickandBuy“, including all Electronic Money and the payment services and related services provided by ClickandBuy via the ClickandBuy electronic facility as more particularly set out in Schedule 1.

„**Services Commencement Date**“ means the day on which the Merchant is first able to use the Service, being the later of:

- (a) the Effective Date;
- (b) the date on which the process detailed in the Technical Documentation is completed to establish and test the system integration between ClickandBuy and the Merchant's website; and
- (c) subject to clause 2.2, the date ClickandBuy notifies the Merchant that ClickandBuy has carried out satisfactory due diligence on the Merchant's business operation, business model and ownership, to be determined at ClickandBuy's sole discretion.

„**Set-up Fee**“ means the amount set out in Schedule 2.

„**Success**“ means where a Payment Order is marked as a „success“ in the ClickandBuy Service Area, meaning ClickandBuy has credited it to the Merchant's ClickandBuy Account.

„**Support Charges**“ means the support charges, if applicable, as set out in Schedule 2.

„**Technical Documentation**“ means the documents provided by ClickandBuy to the Merchant. The latest version of these documents can be obtained at any time from the ClickandBuy Integration Network.

„**Ultimate Parent Undertaking**“ means, in relation to an undertaking, its parent undertaking or, if it has more than one parent undertaking, that one of its parent undertakings which does not itself have a parent undertaking.

„**Unique Identifier**“ means the combination of numbers, letters or symbols used to identify an End User account on the ClickandBuy system or to identify an account with another bank or other financial institution. An existing End User account on the ClickandBuy system will be commonly referred to by the unique Customer Reference Number issued by ClickandBuy.

## List of Schedules

Schedule 1: Services

Schedule 2: Fees

Schedule 3: ClickandBuy Seller Protection Rights

## SERVICES

ClickandBuy has developed an electronic facility which enables End Users to make purchases of Offers from participating Merchants on-line or with a mobile device without disclosing their financial details. Each End User and participating Merchant will be provided with a ClickandBuy Account. When an End User visits the website of a participating Merchant, the End User will have the option of purchasing the Offer using their ClickandBuy Account. If the End User chooses to do so, they will log in to their ClickandBuy Account via the Merchant Website to make the purchase. If a person who is not registered with the Service visits the Merchant Website of a participating Merchant, that person will be able to use a link from the Merchant Website to register as an End User.

The complete and current scope of functions constituting the Service provided by ClickandBuy can be viewed at any time on the ClickandBuy Website and/or the ClickandBuy Integration Network.

ClickandBuy will make available a core service which includes particular account features and account funding/withdrawal methods. However, ClickandBuy reserves the right to add or remove account features as well as account funding/withdrawal methods at any time in order to improve the quality of the overall service. Certain value added features may also be made available to Merchants. Where such features are identified, the Merchant may make use of the feature upon acceptance of revised terms of use.

**Reporting Malfunctions:** Malfunctions can be reported around the clock using the contact form as published on the ClickandBuy website.

**Statistics:** ClickandBuy shall make available to the Merchant statistical data in digital form, for instance the turnover effected by ClickandBuy. This data can be accessed in the ClickandBuy Service Area.

**Security:** All server and system components of the ClickandBuy system are operated in a redundant computer network. The data configured by Merchants shall be securely stored using up-to-date technology. ClickandBuy shall generally perform scheduled maintenance at regular intervals on the ClickandBuy system at night. In the unlikely event of data loss the Merchant shall be responsible for setting up and pricing its Offers afresh.

## FEES

ClickandBuy charges the following fees for processing payments.

### 1. COMMISSION AND TRANSACTION FEE

ClickandBuy and the Merchant will agree a rate card ("Rate Card") at the point that the Merchant first registers with ClickandBuy. Changes to the Rate Card will require the consent of the Merchant in accordance with the terms of this Agreement. The Rate Card will set out the specific fees to apply to the Merchant's ClickandBuy Account in accordance with this Schedule 2 and will set out information that is supplemental to this Schedule, such as the specific Commission Fee and Transaction Fee that will apply across the volume bands. The Commission Fee and Transaction Fee for the Merchant's ClickandBuy Account shall apply on the basis of

- the average value of the payments received into the Merchant's ClickandBuy Account from End Users (the "Payments Received"), as stated by the Merchant at the point that the Merchant first registers with ClickandBuy or when a change is agreed upon. If this amount reduces by more than 10% for more than one month, then ClickandBuy may recalculate the commission and transaction fee Rate Card on the basis of the average value of actual payments received into the Merchant's ClickandBuy Account in the last 30 days.
- the Billing Period as stated by the Merchant at the point that the Merchant first registers or when a change is agreed upon
- the settlement delay as stated by the Merchant at the point that the Merchant first registers or when a change is agreed upon
- the volume defined as total amount of payments received in the Merchant's ClickandBuy account in the last 30 days.

The Commission Fee and Transaction Fee applicable to each volume band will be set out in the agreed Rate Card.

As the Rate Card will be specific to each Merchant and may be varied in accordance with this Schedule, it is not set out in this Agreement. However, current and historical iterations of the Rate Card may be agreed, viewed and downloaded by the Merchant from within the ClickandBuy Service Area.

The calculations in this section do not include any settlement redemptions made from the Merchant's ClickandBuy Account to its own bank account or other similar payment.

### 2. OTHER FEES

#### Set-up Fee

Fee as defined in clause 4.2.

**0.00 €**

DKK 0.00, CHF 0.00, NOK 0.00, PLN 0.00, SEK 0.00, HKD 0.00, USD 0.00, MXN 0.00, BRL 0.00, GBP 0.00

#### Basic Fee

Fee for the provision of the Service per Billing Period.

**0.00 €**

DKK 0.00, CHF 0.00, NOK 0.00, PLN 0.00, SEK 0.00, HKD 0.00, USD 0.00, MXN 0.00, BRL 0.00, GBP 0.00

#### Credit Fee

Fee for credit payments sent to an End User's ClickandBuy Account.

**For credits in Euro: EUR 1.80**

For credits in other currencies: DKK 13.50, CHF 2.90, NOK 14.50, PLN 7.00, SEK 16.80, HKD 12.50, USD 1.60, MXN 21.00, BRL 2.10

**3 % of the amount of the payment to be converted**

#### Currency Conversion Fee

If the Purchase Currency used differs from the Merchant Currency, ClickandBuy automatically calculates the conversion and includes a currency conversion fee. ClickandBuy will display to the Merchant the relevant payment amounts both in the Purchase Currency and the Merchant Currency.

#### Consumer Fee

In order to cover its service, support, registration and call centre costs, ClickandBuy shall charge the Merchant a Consumer Fee for each new End User registering with ClickandBuy through the Merchant. This charge will be applied per new transacting End user at the end of the next Billing Period following an End User's first transaction with the Merchant.

**EUR 0.00**

DKK 0.00, CHF 0.00, NOK 0.00, PLN 0.00, SEK 0.00, HKD 0.00, USD 0.00, MXN 0.00, BRL 0.00, GBP 0.00

#### Bookout Fee

Where ClickandBuy has taken reasonable measures which ClickandBuy regard as appropriate to retrieve an amount due from an End User to the Merchant and ClickandBuy have been unable to retrieve the amount due, the Merchant will be charged a fee to cover in part the administrative costs incurred by ClickandBuy in performing its debt collection process.

**Retail – Digital Goods /**

**Entertainment – Gaming**  
 EUR 10.00/15.00, DKK 75.00/115.00,  
 CHF 16.00/25.00, NOK 80.00/120.00,  
 PLN 40.00/60.00, SEK 95.00/140.00,  
 HKD 68.00/105.00, USD 9.00/13.00,  
 MXN 115.00/180.00, BRL 12.00/18.00

#### Cancellation and Refund Fee

Fee for End User's payments that are cancelled or refunded. A refund or a cancellation will revert to the originally used payment method. A refund can be associated with 0 up to 100% of the Payment Amount. A cancellation will always be 100% of the Payment Amount. In the event that the originally used payment method does not support cancellations or refunds, the funds will be credited to the End Users ClickandBuy Account.

**EUR 6.00**

DKK 45.00, CHF 10.00, NOK 48.00, PLN 23.50, SEK 56.00, HKD 40.00, USD 5.50, MXN 69.00, BRL 7.00, GBP 0.00

#### Settlement Fee

For every settlement from the Merchant's ClickandBuy Account to his bank account. No automatic settlement is executed if the settlement amount is less than € 50.00.

**EUR 0.50**

DKK 4.00, CHF 0.80, NOK 4.00, PLN 2.00, SEK 4.70, HKD 3.40, USD 0.45, MXN 5.80, BRL 0.60, GBP 0.00

#### Settlement Conversion Fee

In case of a settlement to an account with a different currency to the currency of the Merchant's ClickandBuy Account.

**1 % of the amount converted**

#### Foreign Settlement

If the merchant requests settlement to a bank account outside of the SEPA region. Fees levied by the recipient bank are to be covered by the Merchant.

**EUR 3.00**

DKK 22.50, CHF 4.80, NOK 24.00, PLN 12.00, SEK 28.00, HKD 21.00, USD 2.60, MXN 35.00, BRL 3.50

#### Failed Settlement

If the settlement to the Merchant's registered bank account returns for whatever reason.

**EUR 3.00**

DKK 22.50, CHF 4.80, NOK 24.00, PLN 12.00, SEK 28.00, HKD 21.00, USD 2.60, MXN 35.00, BRL 3.50

#### Failed Debit on bank account

If the debit of outstanding amounts from the Merchant's selected funding account fails.

**EUR 5.00**

DKK 37.50, CHF 8.00, NOK 40.00, PLN 20.00, SEK47.00, HKD 34.00, USD 4.50, MXN 57.50, BRL 6.00

We may make a charge for any additional services we provide outside this Agreement. You will be informed of those charges when requesting any additional services. All prices stated are net prices plus VAT at the current rate.

### 3. RESERVE

The Reserve Percentage is set as

#### Segment

E- Commerce  
 Digital Content  
 Adult Content  
 Gambling & Betting

**Reserve Percentage and number of days it can be retained from the relevant Billing Period**

5% for 90 days  
 5% for 120 days  
 10% for 120 days  
 10% for 120 days

## CLICKANDBUY SELLER PROTECTION RIGHTS

### 1. WHAT IS COVERED?

ClickandBuy will ensure the Merchant is protected from End Users not paying or reversing a payment (a "Failed Payment") if all the following conditions are met:

**1.1 Payment Guaranteed:** The Payment Order is one that has been marked Payment Guaranteed in the ClickandBuy Service Area.

**1.2 Merchant's Refund Policy:** The Merchant must operate a public, clear and fair return and refund policy and have made this clearly available to the End User.

**1.3 Type of goods:** The Payment Order related only to tangible goods (the "Goods") (and not services or digital content or other non-physical goods) that did not breach the ClickandBuy Acceptance Policy.

**1.4 Goods Shipped:** The Goods must have been shipped to the End User's address as provided to the Merchant through the ClickandBuy Service. The conditions specified in paragraph 2 regarding the shipping of the Good must be satisfied.

**1.5 Reason for Failed Payment:** The reason for the Failed Payment was either the Payment Order was not authorised by the End User or the Goods were not received by the End User. No other reasons for a Failed Payment are covered.

**1.6 Single payment owed:** There was to be single payment for the Good by the End User made through the ClickandBuy Service. If the Good was to be paid for by more than one payment, whether in instalments through the ClickandBuy Service or using an additional alternative means of payment, then the Failed Payment will not be covered.

**1.7 Merchant's cooperation:** The Merchant cooperates with ClickandBuy as set out in paragraph 3. If these conditions are met, ClickandBuy will not seek reimbursement from the Merchant regarding the Payment Order.

### 2. WHAT ARE THE SHIPPING REQUIREMENTS?

**2.1 Shipped to correct address:** The Merchant must have shipped the Good to the End User's address as provided to ClickandBuy through the ClickandBuy Service. Goods will not be covered if they have been shipped to an alternative address (even if authorised by the End User) or arrangements have been made for the End User to collect the Goods.

**2.2 Shipped on time:** The Merchant has shipped the Good to the End User:

- within 7 days of the Payment Amount being marked as a Payment Guaranteed in the ClickandBuy Service Area; or
- within such later period as the Merchant can prove to ClickandBuy's reasonable satisfaction was clearly communicated in writing to the End User as the delivery window prior to their purchase of the Good (whether as part of the description of the Goods or in the Merchant's conditions of delivery).

**2.3 Shipping receipt:** The Merchant must prove to ClickandBuy that the Goods have been shipped to the End User at the correct address by providing ClickandBuy with a valid shipping receipt provided by an independent third party shipping firm that shows:

- the name of shipping firm;
- the correct name and address of the End User (which must be the same End User as the Payment Order counterparty);
- the correct name and address of the Merchant;
- the shipping date.

**2.4** The following are a non-exhaustive list of independent third party shipping firms that issue shipping receipts that should meet the above criteria:

- GLS, DPD, Hermes, UPS, FedEx, TNT.
- Deutsche Post AG and DHL (except parcels without receipt and letters, incl. Warensendung, book deliveries and Maxibrief). Deutsche Post AG certified mail delivery should comply, provided the shipping receipt shows the date customer's signature and the correct name of the End User.

**2.5 Online shipping tracking Ids:** At its discretion ClickandBuy may accept an online shipping tracking ID it can access and review as proof of shipping, but is entitled to ask for a copy of the full shipping receipt.

### 3. HOW MUST MERCHANTS COOPERATE WITH CLICKANDBUY?

**3.1** The Merchant must respond to all ClickandBuy's queries and requests for further information regarding a Failed Payment in relation to which it is claiming Seller Protection Rights within 7 days of the query being made. Unless ClickandBuy requires otherwise, responses should be communicated to ClickandBuy online using the ClickandBuy Service Area or via email to sellerprotection@clickandbuy.com.

**3.2** ClickandBuy reserves the right to request receipts from the Merchant and if applicable limit the use of the interface and access to the Merchant's ClickandBuy Account in the event that ClickandBuy has reason to suspect that the Merchant has acted fraudulently.

**3.3** ClickandBuy may (and the Merchant gives ClickandBuy authority to) access the independent third party shipping firm in the Merchants name in order to check the delivery status of a Good.