

GENERAL TERMS AND CONDITIONS CLICKANDBUY FIRSTGATE ("FIRSTGATE GENERAL TERMS")



1. FIRSTGATE GENERAL TERMS AND FIRSTGATE AGREEMENT

1.1 These FirstGate General Terms set out the rights and obligations of the contracting partner (hereinafter referred to as the "Partner") and ClickandBuy International Limited (hereinafter referred to as "ClickandBuy") regarding the Partner's use of the Internet Payment Gateway and its optional extensions (hereinafter collectively referred to as "FirstGate"). They form the basis for the contractual relationship between ClickandBuy and the Partner about FirstGate (hereinafter referred to as the "FirstGate Agreement"). No contractual relationship is established between ClickandBuy and the Partner's customer (hereinafter referred to as "End Customer").

1.2 The following contract documents about FirstGate form integral parts of the FirstGate Agreement in the order listed below:

- FirstGate General Terms,
- General Terms and Conditions Service Provisioning Payment Services,
- ClickandBuy order confirmation,
- ClickandBuy order form completed and signed by the Partner,
- If applicable, a contract proposal from ClickandBuy accepted by the Partner,
- Product documentation,
- Price sheets.

Documents the Partner has not already received can be obtained from ClickandBuy.

2. SERVICES TO BE PROVIDED BY CLICKANDBUY

2.1 ClickandBuy shall provide the services agreed in the other FirstGate contract documents, in particular the product documentation (see clause 1.2 above), for the Partner. The processing of credit card payments is subject to the completion of the 3D Secure implementation check.

2.2 The data shall be transmitted to and from ClickandBuy via Internet, using third-party telecommunications networks and services. Connections are also set up using third-party transmission systems existing on the Internet.

2.3 The services to be provided by ClickandBuy shall not include, without limitation,

- the connection and data transmission between the Partner and the End Customer, which is beyond ClickandBuy's sphere of influence,
- data transmission on third-party telecommunications networks which are, just like the data traffic on the Internet, beyond ClickandBuy's sphere of influence and for whose availability and reliability ClickandBuy does not accept responsibility,
- the correctness of the result of the authorisation request or blocking inquiry for the payment instrument used. Even if the transaction is authorised, ClickandBuy accepts no liability for the Partner's claim being settled by the End Customer or the authorising bank.

2.4 ClickandBuy may shut down access to FirstGate or suspend any functionalities of it if and as long as necessary works are undertaken on its systems which cannot be performed without shutting down access to FirstGate or suspending certain functionalities of it. Unless this is unreasonable for ClickandBuy, ClickandBuy shall shut down access to or suspend functionalities of FirstGate not during normal day-time peak business hours and shall notify the Partner in advance.

3. SOFTWARE

3.1 The Partner may use software as part of FirstGate. Unless otherwise agreed in writing, the properties of the software shall be laid down in conclusive form in the product documentation and the FirstGate General Terms. Descriptions of properties do not constitute guarantees within the legal sense.

3.2 The Partner shall be granted the simple, non-exclusive, non-transferrable right limited to the term of the FirstGate Agreement and to the territory of the Federal Republic of Germany and the United Kingdom to use the software for its internal purposes within the scope necessary under the FirstGate Agreement. If the right of use is to be expanded so as to include more countries, this shall be subject to express written agreement.

3.3 The Partner may reproduce the software only if and to the extent necessary for using it in accordance with the FirstGate Agreement, including, without limitation, for installing it on the server, loading it into the working memory and running the program(s).

3.4 The Partner may make one (1) backup copy of the software. If a backup of the entire data including the software is required for reasons of data security, the Partner may also make the strictly necessary number of backup copies. Data carriers with backup or archival copies shall be duly marked.

3.5 Unless otherwise stipulated in the FirstGate Agreement, the Partner shall not be entitled to translate, adapt, decompile, reverse engineer, alter or otherwise modify the software beyond the scope permitted by statute.

The Partner may undertake a rectification of errors pursuant to stipulations of copyright law only if ClickandBuy has not undertaken the same within a reasonable period and against reasonable remuneration.

Before decompiling the software pursuant to stipulations of copyright law, the Partner shall give ClickandBuy the opportunity, in writing and setting a reasonable deadline, to disclose the interface information to the Partner against reasonable remuneration. The Partner shall inform ClickandBuy in writing upon request to what extent it has used interface information and prove its use with reasonable effort.

The Partner may have all of the acts mentioned in clause 3.5 above performed by third parties only if ClickandBuy was not prepared to perform them against reasonable remuneration.

3.6 The Partner shall not be entitled to surrender the software to third parties for use without ClickandBuy's prior written consent.

3.7 Upon receipt of software updates and/or upgrades, the Partner shall destroy or delete any previous versions and any reproductions of the same as applicable and install the updates and/or upgrades. The obligation to install and delete software as aforesaid shall not apply if it is a proven fact that the Partner cannot be reasonably expected to install the updates and/or upgrades (e.g. if updates and/or upgrades are not sufficiently safe in operation or defective).

3.8 Any copyright, trademark and other notices of proprietary rights that may be present on or in the software must not be removed. The Partner shall apply such notices also to backup and/or archival copies it created.

3.9 ClickandBuy may have compliance by the Partner with the provisions of this clause 3 verified once per calendar year by an audit to be undertaken by ClickandBuy itself or an independent auditor during normal business hours upon reasonable advance notice in writing. If this reveals that the Partner culpably breached the provisions of clause 3, the costs of the audit shall be borne by the Partner. ClickandBuy reserves the right to assert further losses.

3.10 Upon termination of contract, the Partner shall permanently delete the software and any archival or backup copies or other reproductions of it which may exist. Fulfilment of these obligations shall be confirmed by the Partner to ClickandBuy in writing upon request.

4. AVAILABILITY OF FIRSTGATE

4.1 Within the scope of technical and operational possibilities, the FirstGate services provided by ClickandBuy shall be available at least 98% on average over the year. The point of access to ClickandBuy's network is agreed to be the point of transfer, i.e. the availability stated refers only to processes within the ClickandBuy network. The availability of services, networks and other components outside the ClickandBuy network shall not be included in availability measurements.

4.2 The following times shall not be included in availability calculations: Shutdowns pursuant to clause 2.4 above, downtimes agreed with the Partner and downtimes which are attributable to the Partner or third parties other than vicarious agents of ClickandBuy or which are outside ClickandBuy's sphere of influence.

5. PROVISION OF FIRSTGATE SERVICES BY THIRD PARTIES

ClickandBuy may instruct companies affiliated with it and, if necessary, further third parties to provide services forming part of FirstGate. Such third parties shall also be entitled to retain subcontractors. ClickandBuy shall remain responsible to the Partner for the performance of the FirstGate services provided by third parties.

6. PARTNER'S RESPONSIBILITIES

6.1 The Partner shall be under an obligation to disclose to ClickandBuy all information about it that is relevant to the performance of the contract.

6.2 For use of FirstGate, the Partner shall keep web-enabled software and hardware, an Internet connection and an interface enabling the Partner to use FirstGate readily available and operable at all times in accordance with the specifications in the product documentation (see clause 1.2 above). In addition, the Partner shall comply with all other duties to cooperate which may be specified in the FirstGate contract documents (see clause 1.2 above).

6.3 Moreover, the Partner shall

- enter into a contract with the parties responsible for the payment instrument used (e.g. credit institution, credit card acquiring company) to the extent necessary to process payments,
- take all necessary precautions (including, without limitation, password protection, firewalls, anti-virus software) to ensure the safety of its systems,
- report any problems to ClickandBuy without undue delay – in the event of reports made by telephone followed by fax or emailed confirmation –, specifying the exact circumstances in which the problem occurred and potential causes, make all information and documents required for diagnosing and remedying the problem, including a detailed description of the circumstances in which the problem occurred and potential causes available to ClickandBuy and assist ClickandBuy within reasonable limits in diagnosing and remedying the problem,
- notify ClickandBuy without undue delay if intellectual property or proprietary rights are asserted by third parties with respect to FirstGate and assist ClickandBuy in defending against such claims and settling any disputes arising from this. The Partner shall enter into agreements with third parties for judicial or extrajudicial settlement of such disputes only with the prior written consent of ClickandBuy.

7. REMUNERATION

7.1 The remuneration for the FirstGate services shall be based on the price lists of ClickandBuy currently in force upon conclusion and extension of the FirstGate Agreement, unless the remuneration is specifically agreed upon with the Partner. The Partner's payment obligation

shall begin to apply when ClickandBuy makes FirstGate available for operation. FirstGate shall be deemed available for operation if and when at least one payment system can be processed.

7.2 The terms of payment and the implementation of price changes are set out in ClickandBuy's General Terms and Conditions Service Provisioning Payment Services.

8. WARRANTY RIGHTS

8.1 ClickandBuy warrants that FirstGate shall be available for use within the scope of availability agreed by contract.

8.2 If the services provided by ClickandBuy have any material defect, ClickandBuy shall initially have the right and the obligation to render subsequent performance. The Partner can terminate the FirstGate Agreement or demand that the remuneration be reduced only if at least two attempts by ClickandBuy at subsequent performance within a reasonable period have proved unsuccessful.

8.3 Any claims for damages shall be governed by clause 9 below.

9. LIABILITY

9.1 ClickandBuy shall be liable – on whatever ground – only in cases of intent, gross negligence, culpable breach of an obligation the very discharge of which is a prerequisite for the proper performance of the FirstGate Agreement and on the discharge of which the Partner can and does rely (hereinafter referred to as "Material Contractual Obligation"), if a guarantee has been given and in cases of malice or culpable injury to life, limb or health. Strict liability and other liability for negligence shall be excluded.

9.2 In the event of negligent breach of Material Contractual Obligations, ClickandBuy shall be liable only for typical and foreseeable damage.

9.3 In the cases specified in clause 9.2 above, ClickandBuy's overall liability shall be limited to EUR 100,000.00 per damaging event and EUR 150,000.00 per calendar year. ClickandBuy shall not be liable for any indirect or consequential damage (e.g. loss of profit or sales).

9.4 The above mentioned limits of liability shall also apply for damage caused by legal representatives, executive employees or vicarious agents of ClickandBuy.

9.5 The above mentioned limits of liability shall not apply in cases where liability applies under mandatory statutory provisions, e.g. on the basis of product liability law.

9.6 The Partner shall be under an obligation to take reasonable measures to avert and/or mitigate any damage, including, without limitation, to secure data and protect against computer viruses.

10. CONFIDENTIALITY

10.1 The Parties shall treat any information from the sphere of the respective other Party and/or companies affiliated with it that is marked as or is manifestly confidential, including, without limitation, company or trade secrets, as strictly confidential, use such information strictly for the purposes of cooperating under the FirstGate Agreement and not to disclose such information to third parties unless otherwise stipulated in the FirstGate Agreement or subject to the prior written agreement of the respective other party. This confidentiality obligation shall also apply with respect to the content and integral parts of the FirstGate Agreement. Companies affiliated with ClickandBuy and employees of the Parties shall not be deemed to be third parties.

10.2 Employees, subcontractors and other vicarious agents shall also be required to comply with the confidentiality obligation.

10.3 This confidentiality obligation shall survive any termination of the FirstGate Agreement for a period of two years.

10.4 The confidentiality obligation shall not include information that (a) is or becomes publicly known without breach of the confidentiality obligation, (b) was lawfully acquired by the receiving Party from third parties without any breach of confidentiality by such third parties in relation to the disclosing Party, (c) was developed independently of the disclosing Party, (d) is required to be disclosed pursuant to a judicial or administrative proceeding or for other compelling legal reasons or (e) was in the possession of the receiving Party already before receipt from the disclosing Party.

11. DATA PROTECTION

The Partner shall be responsible for ensuring compliance with all applicable data protection laws and regulations if it collects, processes (e.g. by transmitting them to ClickandBuy) or uses personal data of data subjects, e.g. End Customers or its employees, in using FirstGate. This applies, for instance, for obtaining any consent of data subjects which may be required. In particular the Partner is obliged to obtain in a legally valid way the End Customers' consent to transmit their data to ClickandBuy for the provision of the payment services. The Partner will amend its online-shop and/or the general terms and conditions for End Customers accordingly.

12. PARTNER'S GENERAL TERMS AND CONDITIONS

General Terms and Conditions or any other terms and conditions of the Partner shall not apply. This shall also apply if ClickandBuy does not expressly object to them where the Partner refers to them being included.

13. AMENDMENTS TO THE FIRSTGATE GENERAL TERMS AND THE FIRSTGATE SERVICES

13.1 These FirstGate General Terms are subject to amendment by ClickandBuy. ClickandBuy shall notify the Partner in writing of any amendments to the FirstGate General Terms. Unless the Partner objects to the amendments in writing to ClickandBuy within four weeks of receipt of such notification, the amended FirstGate General Terms shall apply from the effective date of the amendments as specified in the notification. In the notification, ClickandBuy shall expressly point out this consequence of refraining from any statement to the Partner. In the event of an objection, ClickandBuy shall be entitled to terminate the

FirstGate Agreement to expire on the intended effective date of the amendment or up to three weeks thereafter by extraordinary termination with immediate effect.

13.2 ClickandBuy shall be entitled to make the following amendments to the FirstGate services:

13.2.1 Technical improvements and innovations and any other changes, provided that these are reasonably acceptable for the Partner and the services are not materially changed.

13.2.2 Changes made to comply with requirements of public authorities or courts and/or legal requirements.

14. TERM AND TERMINATION

14.1 The FirstGate Agreement shall come into effect upon confirmation of the order by ClickandBuy or upon acceptance by the Partner of a contract proposal from ClickandBuy, however, no later than when the Partner begins to use FirstGate. The same shall apply mutatis mutandis for any subsequent orders placed by the Partner.

14.2 Unless otherwise agreed, the minimum term of this Agreement shall be 12 months.

14.3 The FirstGate Agreement shall renew for a further 12 months beyond the minimum term in each case unless terminated by ordinary termination on three months' notice to expire at the end of the (minimum) term.

14.4 The FirstGate Agreement can be terminated by extraordinary termination as follows:

14.4.1 By ClickandBuy on three months' notice to expire at the end of a calendar month if ClickandBuy wishes to discontinue the operation of FirstGate.

14.4.2 By either Party on three months' notice to expire at the end of a calendar month if, due to the rescission and/or termination of any part(s) of the FirstGate Agreement, the terminating Party, from an objective standpoint, no longer has an interest in continuing the FirstGate Agreement.

14.4.3 The statutory right of the Parties to extraordinary termination for good cause shall not be affected thereby. ClickandBuy shall be deemed to have good cause for termination in particular if (a) the Partner, despite a reasonable deadline having been set by ClickandBuy, materially fails to comply with a material duty to cooperate or breaches any provisions of data protection laws, (b) the Partner keeps available or offers illegal content as part of its Internet offering, (c) due to statutory provisions or requirements imposed by public authorities or courts, it is no longer possible for ClickandBuy to provide FirstGate or adjustments are necessary which would involve unreasonable efforts for ClickandBuy or (d) the Partner is insolvent or execution measures against the Partner have remained unsuccessful.

14.4.4 The Partner and ClickandBuy shall also be entitled to terminate the FirstGate Agreement by extraordinary termination without notice if the requirements of the banking industry and/or of credit card organisations change or other requirements and/or the legislation of public law impose a mandatory change of the payment system during the term of the Agreement and it is therefore impossible to maintain FirstGate or ClickandBuy does not offer to do so.

14.4.5 If the FirstGate Agreement is terminated by extraordinary termination pursuant to clause 14.4.3 above before the expiry of its term, ClickandBuy shall be entitled to claim damages for non-performance in an amount equal to 80% of the agreed monthly flat fee, multiplied by the number of the months remaining until the end of the term, taking into account a 4% discount previously deducted, unless the Partner is not responsible for the termination. Any further-reaching claims for damages shall remain unaffected.

14.5 Notice of termination must be given in writing. If notice of termination was transmitted by fax, the original shall be submitted without undue delay.

15. REFERENCE LIST

ClickandBuy shall be entitled to name the Partner in a reference list it keeps.

16. FINAL PROVISIONS

16.1 Any changes and amendments to these FirstGate General Terms require written form. This also applies to any waiver of the requirement for written form.

16.2 This FirstGate Agreement shall be governed by and construed in accordance with the laws of England and Wales to the exclusion of the international law of conflicts and the UN Sales Convention (CISG). To the extent permitted by law, the registered office of ClickandBuy shall be the place of jurisdiction. A person who is not a party to this FirstGate Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16.3 The registered office of ClickandBuy shall be the place of performance for ClickandBuy and the Partner.