

GENERAL TERMS AND CONDITIONS SERVICE PROVISIONING PAYMENT SERVICES



1. PURPOSE OF THE AGREEMENT

The present General Terms and Conditions Service Provisioning Payment Services set out the services provided by ClickandBuy directly or through qualified third parties to its contract partners as network operator for cashless payment services via fixed or virtual terminals or respective modules (hereinafter referred to as "terminals"). These General Terms and Conditions shall prevail over any conflicting general terms and conditions of the contract partner.

ClickandBuy also cooperates with credit card companies and issuers of debit cards. Their cards as well as those of other systems (provided that they are authorized in the country of use of the terminal and are implemented by ClickandBuy) can be used by the contract partner upon order. The proper processing of the cards and systems stipulated in the General Terms and Conditions of the German banking industry (clause 2.6) must not be affected thereby. ClickandBuy shall perform a compatibility check with respect to the cards and systems listed in the order form and shall accept or reject them accordingly. The extension of ClickandBuy's scope of services so as to include additional cards or services may involve extra costs which will be notified to the contract partner in advance. If changes in the requirements of the banking industry and/or the legislation of public law impose a mandatory change of the payment system in the course of the operating life of a terminal, ClickandBuy shall offer solutions to maintain the existing payment system. Any costs incurred in this respect may be charged to the contract partner.

2. SCOPE OF SERVICES

2.1 ClickandBuy Services

ClickandBuy shall provide the goods/services agreed in accordance with the order form. The prerequisites required for the provision of the goods/services pursuant to clause 3 shall be provided by the contract partner in accordance with the specifications of ClickandBuy. Any additional services that may be desired (e.g. changes in or adjustments to technical requirements) shall be provided at extra cost. Apart from that, the other terms and conditions set out in the price sheets for the goods/services ordered shall apply.

2.2 Transmission of data

To the extent that this is included in the scope of services, ClickandBuy shall transmit data needed for card authorisation or blocking inquiries to the computer of the corresponding operator or card issuer for the card concerned and shall re-transmit the response.

Credit card inquiries shall be transmitted by ClickandBuy to the credit card company specified by the contract partner.

Response times depend inter alia on the selected line connection, on transmission speed, data communication network availability and the response time of the operator's computer and the corresponding authorization processing system.

ClickandBuy takes no responsibility for the accuracy of the data transmitted to it.

2.3 Intermediate Storage

With due regard to data protection regulations and in accordance with the requirements of the banking business, ClickandBuy shall store the data captured at the operator's computer for the purpose of

- processing complaints,
- preparing payment transaction files in accordance with the rules for uniform data exchange for processing payments,
- settling transaction fees in accordance with the terms and conditions of the German banking industry (clause 2.5).

2.4 Storage of payment transaction files and cash-up

ClickandBuy shall store the payment transaction files for 120 days from the last cash-up of the terminal. During this period, any questions concerning the processing of payments shall be answered free of charge. For questions beyond this period, ClickandBuy shall charge a research fee.

In order to ensure the safety of the payment transaction files, ClickandBuy reserves the right to initiate a chargeable cash-up on the terminal after expiry of a reasonable period, however, no later than two months after the last transaction.

2.5 Provision and transmission of payment transaction files

ClickandBuy shall create one or more payment transactions files every day according to the contract partner's specifications pursuant to clause 3 and shall transmit them to the account specified by the contract partner for credit entries by remote data transmission on the next working day. ClickandBuy assumes no responsibility for the content of the data collected or for any errors in payment transactions carried out using such data.

2.6 General Terms and Conditions of the German Banking Industry [Händlerbedingungen] (regarding payments processed in Germany)

As a prerequisite for its participation in the cashless funds transfer system [bargeldloser Zahlungsverkehr], the contract partner/participant expressly acknowledges the provisions of the following documents handed over to it upon placement of the order by signing the order form: the Merchant Terms and Conditions – General Terms and Conditions for Participation in the Electronic Cash System [Händlerbedingungen – Bedingungen für die Teilnahme am electronic-cash-System] and the Money Card System Terms and Conditions for Merchants [Händlerbedingungen für die Teilnahme am System "GeldKarte"].

If ClickandBuy's contract partner is not identical with the participant, the contract partner

shall bind the participant by contract to the obligation to comply with the above mentioned Terms and Conditions of the German banking industry.

The contract partner undertakes in relation to its credit institution to obtain the keys necessary for participation in the electronic cash system from the data centre of its credit institution. The keys are transmitted automatically to the terminal (OPT procedure).

3. OBLIGATIONS OF THE CONTRACT PARTNER

The contract partner shall provide ClickandBuy with all necessary information for implementing the agreed cashless payment solution on its premises or on those of the participant. Moreover, the contract partner shall

- operate all equipment provided in accordance with the accompanying instructions;
- allow the equipment to be installed by the agreed date;
- notify ClickandBuy in writing without undue delay if the equipment is moved to another location;
- notify ClickandBuy in writing without undue delay of any change in its own address and/or dial-up numbers or those of the participant;
- notify the ClickandBuy hotline without undue delay of any failures, deficiencies or defects of the equipment;
- notify ClickandBuy without undue delay of any alleged rights of third parties;
- in the event of attempts of attachment by third parties affecting ClickandBuy's ownership of the equipment supplied, point out the actual ownership situation to the third parties and the authority entrusted with the attachment;
- if the installation is undertaken by ClickandBuy, provide the necessary line termination units and outlets in accordance with ClickandBuy specifications at the desired terminal location and notify ClickandBuy of their availability without undue delay;
- if the installation is undertaken by the contract partner/participant or third parties, notify ClickandBuy without undue delay when the installation is ready for operation;
- make up the cash as a rule every day, but at least once per week and at the close of each month;
- notify ClickandBuy in writing without undue delay of any changes in the account details it specified for credit entries and direct debits;
- verify receipt in its bank account of the transaction entries processed over the terminals and check transaction entries processed over the terminals and notify ClickandBuy of any objections without undue delay after they become known. Objections must be lodged no later than three months after the facts on which the objection is based could first be taken knowledge of;
- return any equipment surrendered at its own risk and expense without undue delay after termination of the contract, or have it dismantled and collected by ClickandBuy for an extra charge;
- ensure that only ClickandBuy or third parties retained by ClickandBuy use the terminals for purposes other than payments (e.g. configuration or repairs of the terminal or its accessories);
- bind the participant to the above mentioned obligations if the contract partner of ClickandBuy is not identical with the participant;
- make all documents relevant for the contract available to the participant if/when the participant becomes a contract partner at a later point in time.

4. COMMENCEMENT AND TERM OF THE AGREEMENT

4.1 Conclusion of the contract

The agreement shall come into effect upon confirmation of the order by ClickandBuy, however, no later than when the equipment is put into operation by the contract partner/participant. The same applies mutatis mutandis to any further orders of the contract partner, even if these are not made through the order form.

4.2 Termination of the agreement

4.2.1 Unless otherwise agreed, the minimum term of the agreement is 48 months from coming into operation.

4.2.2 This Agreement shall continue for another 12 months beyond the minimum term unless terminated on three months' notice to expire on one of the scheduled expiry dates. Notice must be given in writing.

4.2.3 The right of the parties to terminate the agreement without notice for good cause remains unaffected.

4.2.4 If the contract partner does not meet its obligations anymore, ClickandBuy shall be entitled to rescind this agreement and/or claim damage compensation for non-performance. This applies as a rule, for instance, if the contact partner is in default with its obligations or if composition or insolvency proceedings have been instituted against its assets. In this case ClickandBuy shall be entitled to claim, for the remaining minimum contract term,

- 80 % of the agreed monthly lump sum rent and 80 % of the monthly base rate agreed for network services (cost of know-how transfer), after deducting a 4% discount, for rented terminals
- 80 % of the monthly base rate agreed for network services (cost of know-how transfer), after deducting a 4% discount, for purchased terminals

and to charge such amounts to the contract partner – in the former case together with any costs incurred for dismantling and collection of the terminal.

4.2.5 The contract partner and ClickandBuy are also entitled to terminate the agreement without notice for good cause if the requirements of the German banking industry change or other requirements and/or the legislation of public law impose a mandatory change of the payment system in the course of the operating life of the terminal (clause 1 para. 4) and a solution to maintain the existing payment system is not available or is not offered.

4.2.6 If the German banking industry terminates the existing agreement for admission to its electronic cash system, ClickandBuy shall be entitled to extraordinary termination of the agreement with respect to the contract partners concerned.

4.2.7 The damages provision set out in clause 4.2.4 shall not apply in the cases specified in clauses 4.2.5 and 4.2.6.

5. PRICES AND PAYMENT TERMS

5.1 Prices

The remuneration for the goods/services to be provided by ClickandBuy shall be based on the prices applicable upon conclusion of the agreement as set out in the Master Agreements, price sheets or individual quotations and on the Merchant Terms and Conditions – General Terms and Conditions for Participation in the Electronic Cash System of the German Banking Industry. The remuneration shall be charged to the contract partner on the basis of the direct debit authorisation to be granted by the latter. Usage-based fees such as transactions and authorization fees shall be charged for the month just ended by the 10th day of the following month, all other fees shall be charged by the 10th day of the current month and explained in the narrative on the direct debit entry. Unless otherwise agreed, ClickandBuy shall not issue additional invoices. If the contract partner requests an additional invoice, this shall be provided for a charge and the invoice shall be payable within ten days without discount.

If a fee payment collected by direct debit is reversed without justification, ClickandBuy will be entitled to charge a failed direct debit fee of EUR 5.00 to the contract partner. In addition the terminal may be blocked and the further damage suffered may be charged to the contract partner after a deadline fixed for payment has expired fruitlessly.

In the event that the contract partner is in default with payments, ClickandBuy shall be entitled to charge a flat reminder fee of EUR 5.00 for each formal reminder.

5.2 Commencement of the obligation to pay

The contract partner's obligation to pay begins to apply as soon as the systems supplied are ready to operate or the agreed services have been provided. If terminal devices are installed and put into operation by the contract partner or a third party, the obligation to pay begins to apply upon initialization of the terminal (first call to ClickandBuy's data centre), but no later than 10 calendar days after provable delivery. A terminal is ready to operate if and when at least one type of card can be processed.

5.3 Set-off

The contract partner may set off claims of its own against claims of ClickandBuy only if its claims are undisputed or have been established to be final and non-appealable.

5.4 Price changes

Price increases come into effect ten weeks after written notification of the contract partner, unless the latter terminates the agreement, making specific reference to the announced price increase within a period of eight weeks (from receipt of the written notification) to expire when the new prices take effect. The contract partner shall only be notified of price reductions if these take effect in the course of the agreed term of the agreement and do not only apply for new agreements.

6. RESERVATION OF TITLE

If equipment or other furniture and fixtures are purchased, they remain the property of ClickandBuy until all claims are met, including any balance claims ClickandBuy may be entitled to under this business relationship.

7. WARRANTY AND LIABILITY

7.1 Warranty for equipment

ClickandBuy warrants the equipment supplied in accordance with the order form free from defects for a period of two years from delivery in accordance with the statutory provisions. Moreover, as part of the services under the full or depository maintenance agreements (cf. clause 8.1), ClickandBuy warrants the continuing functionality of this equipment on site. This warranty shall not apply to damage caused to equipment by any of the circumstances specified under clause 7.3. ClickandBuy shall not be responsible for combining the equipment with other equipment and programs as part of their installation to the point of readiness for operation, unless specifically agreed otherwise between the Parties in writing. The contract partner/participant shall inspect the delivered items without undue delay for any transport damage or other visible defects, secure the relevant evidence and assign any rights of recourse to ClickandBuy, surrendering the supporting documents.

For equipment installed by ClickandBuy, the risk shall pass to the contract partner/participant as soon as the installation is completed.

The contract partner may not derive any rights from defects that do not impair the value of the goods and/or the works or their suitability for the agreed, assumed or customary purpose or impair them only to a minor extent.

If the goods have a defect upon transfer of risk, ClickandBuy shall initially only have the right and the obligation to render subsequent performance. Subsequent performance shall be, at ClickandBuy's option, either by remedying the defects or delivering a replacement. The contract partner can rescind the agreement or demand that the purchase price and/or the remuneration be reduced only if at least two attempts by ClickandBuy at subsequent performance within a reasonable period have proved unsuccessful. Any parts that may have been replaced shall become the property of ClickandBuy.

7.2 Liability of ClickandBuy

ClickandBuy shall be liable for damage arising from injury to life, limb or health in accordance with the statutory provisions if ClickandBuy is responsible for the breach.

Any further claims of the contract partner for warranty and damages, on whatever legal ground, beyond those expressly mentioned in these General Terms and Conditions, in particular claims based on interruption of business, lost profit, unrealised cost savings, loss of information and data or consequential damage shall be excluded, unless mandatory liability applies, e.g. under product liability law or in cases of intent, gross negligence, absence of guaranteed qualities or breach of cardinal obligations.

However, to the extent permitted by law and unless intent or gross negligence exists, damages for breach of cardinal obligations shall be limited to the typical and foreseeable damage, in any event to an amount of EUR 100,000 per damage event. The foregoing provisions do, however, not shift the burden of proof to the contract partner.

In particular, ClickandBuy shall not be liable for:

- damage attributable to improper, inadequate or otherwise contractually non-conforming use, incorrect operation, wrong or negligent treatment, chemical, electro-chemical or electronic influences, alteration or maintenance work undertaken by the contract partner or by third parties without prior consent;
- non-compliance with deadlines, unless these were acknowledged by ClickandBuy as binding;
- loss of interest incurred to the contract partner/participant due to later value dates;
- network bottlenecks, breakdowns or malfunctions caused by Deutsche Telekom or other network providers and their private automatic branch exchanges;
- failures or hindrances caused by authorisation systems;
- recovery of data, unless ClickandBuy caused their destruction by gross negligence or wilful intent and the participant has ensured that such data can be reconstructed at reasonable cost from other data (e.g. by retaining vouchers, supporting documents etc. or by restoring a backup).

7.3 Liability of the participant/contract partner

The contract partner shall be liable to ClickandBuy for

- damage to property, mere pecuniary loss and personal injury caused by gross negligence or wilful intent on the part of the contract partner or of the persons whose services it uses in order to perform its contractual obligations;
- damage caused by improper or negligent/inappropriate treatment, in particular by connecting third-party products without ClickandBuy's consent, or by effects of third-party equipment, such as, for instance, electronic anti-theft alarm systems, and any consequences resulting therefrom, also with a view to complaints from cardholders and operators of authorisation systems;
- damage to or loss or other destruction of surrendered equipment and the consequences thereof, for which the contract partner shall take out adequate insurance.

8. MAINTENANCE AND REPAIR

8.1 Full or depository maintenance for fixed terminals

In order to maintain the equipment and related fixtures and furniture in proper operating condition in conformity with the agreed or ordered scope of functions, or to restore them to such condition, ClickandBuy offers the contract partner full or depository maintenance at its choice. The conclusion of a maintenance agreement is mandatory in the case of a rental agreement. Maintenance only comprises rectification of errors at the request of the participant or contract partner.

Regardless of the form of maintenance chosen (full or depository) and after a time and date has been agreed for this purpose, the contract partner shall grant access to the terminal via remote maintenance software or for on-site preventive maintenance with a view to ensuring the agreed scope of services of the terminal. The contract partner/participant shall be under an obligation to state all recognizable details and reasonably follow the technicians' instructions for analysing the problem and identifying the fault when reporting a failure in order to ensure that the failure is effectively remedied.

For on-site servicing, the contract partner shall accept duly trained and certified ClickandBuy service partners. At the contract partner's request, employees of these service partners shall prove their identity by producing their ClickandBuy sales-partner identity card or equivalent documents.

Depository or full maintenance does not include the rectification of defects caused by external factors such as third parties or other circumstances regulated under point 7.3. It can be agreed that such rectification of defects shall be charged on a time and materials basis.

8.2 Hotline service

If Hotline service is agreed, ClickandBuy shall make available to the contract partners/participants a 24-hour telephone service for fault reports and inquiries attended by authorized staff.

8.3 Right of access for dismantling equipment

After termination of the agreement, ClickandBuy and third parties retained by the latter shall be granted access to the terminal for the purpose of dismantling the terminal as well as any other equipment made available by ClickandBuy.

8.4 Availability for dial-up access

As a prerequisite for service, the contract partner/participant shall ensure that the terminal can be dialled up to directly from outside.

8.5 Depository maintenance

In the case of depository maintenance, the contracting partner has an obligation to cooperate in undertaking the terminal diagnosis and locating the fault. The contract partner shall promptly dismantle faulty equipment and send it to a depository appointed by ClickandBuy at its own cost. Unless otherwise agreed, ClickandBuy shall undertake the free repair, or replacement by equivalents to the defective devices, and shall return these to at the contract partner's expense. The contract partner undertakes to install the equipment and duly put it into operation.

8.6 Full maintenance

In the case of full maintenance, ClickandBuy shall undertake the maintenance of the equipment by repairing or replacing it at the agreed location of the terminal. For mobile terminals, this shall be the address of the contract partner, unless otherwise agreed. In order to perform the maintenance works, the contract partner shall grant full access to the equipment during ClickandBuy's normal business hours or as per special agreement at an extra fee. The call-out fee due to inoperable non-functioning line termination units, the contracting partner's own POS and telecommunications systems, appointments not kept and the provision of on-site service where depositary maintenance was agreed shall be charged separately. Where necessary, ClickandBuy shall try to exchange equipment within 24 hours of proper notification of the fault during normal business hours (from 8 am to 8 pm Monday through Friday).

9. CONFIDENTIALITY AND DATA PROTECTION

9.1 Confidentiality

The contract parties mutually undertake to treat all information as confidential which the respective other contract partner has expressly marked as confidential or which is recognisable as confidential, and not to make such information available to third parties.

This obligation applies in particular for all business and trade secrets of a contract party which become known in the performance of the agreement. ClickandBuy shall ensure that the persons it employs for data processing observe data privacy in accordance with data protection laws.

9.2 Access security

ClickandBuy shall provide all data in intermediate storage with access protection. Access to ClickandBuy's data processing facility shall be secured by multiple safeguards.

9.3 Registration

ClickandBuy is registered with the competent supervisory authority in accordance with the provisions of applicable data protection laws.

10. PLACE OF JURISDICTION; APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of London. The provisions of the UN Sales Convention (CISG) are excluded. A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

11. CHANGES TO THESE GENERAL TERMS

ClickandBuy shall have the right, in particular with a view to changing market conditions, changes in the statutory provisions, the case law of the highest court instances or if a provision was established by judgement to be invalid. ClickandBuy shall notify the contract partner of the change concerned in writing. If the contract partner should not object to the changes within two weeks of receipt of the change notification, the changes shall be deemed agreed. ClickandBuy shall point this legal consequence out to the contract partner in its change notice.

12. FINAL PROVISIONS

Depending on the goods and services to be delivered under the confirmation of order, the present General Terms and Conditions may be supplemented by separate general terms and conditions for specific areas of activity.

Amendments or additions to these General Terms and Conditions require the written form. This also applies to this same written form rule.

The invalidity of any individual provision of these General Terms and Conditions does not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision coming as close as possible to the economic purpose of that provision.