



# Terms and Conditions

April 3 2018

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## I. General Terms and Conditions

### 1 Charges and Reimbursement

- (1) The charges to be paid by the Merchant for making use of the services of EVO Payments International GmbH (hereinafter "EVO") for the fulfilment of main and ancillary obligations (in particular disagio, transaction and chargeback fees) are set out in the **List of Prices and Services**, unless deviating charges were stipulated with the Merchant in the Agreement. In deviation from Section 675f (5) sentence 2 German Civil Code (BGB) charging for the fulfilment of ancillary obligations under Sections 675c to 676c BGB shall be permissible even if this is not explicitly permitted by law. All prices are net of VAT. EVO may opt for VAT regardless of whether the Merchant can deduct the amount of paid VAT as input VAT. The amount of VAT will be charged to the Merchant by EVO in addition to any agreed prices.
- (2) The Merchant shall reimburse against invoice all expenses directly or indirectly incurred by EVO in connection with the implementation of this Agreement which EVO reasonably regarded as necessary in the respective circumstances (Sections 675(1), 670 or Sections 675c, 670 BGB). Instead of reimbursement EVO may request discharge of an obligation entered into in this connection pursuant to Section 257 BGB. Expenses in the sense of Sentences 1 and 2 shall particularly include all Fines and Penalties, registration and certification charges or other charges as set out in the Annexes of this Agreement.
- (3) The Merchant shall immediately review any and all statements rendered by EVO and notify EVO of any possible objections without undue delay, however not later than within six (6) weeks upon issuing of the respective statement. Timely dispatch of the objections is sufficient to comply with this time limit. Upon expiration of the time limit the statement shall be deemed approved. EVO shall expressly indicate this consequence in the statement. The Merchant may request a correction even after expiration of the time limit. In this event, however, it must provide evidence that the statement was inaccurate or incomplete.
- (4) Any amounts set out in a statement will become immediately due and payable upon receipt of an invoice by the Merchant. Invoices will be provided to the Merchant in electronic form through the Business Information System (BIS). The Merchant shall be responsible to regularly check for new invoices and to store such invoices for its future reference.
- (5) For the purpose of the invoicing, EVO balances all fees, compensation, credits, chargebacks and other elements of the invoice or invoices. Should an invoice issued by EVO to the Merchant show a due negative balance, the Merchant shall pay any possible negative balance immediately after receipt of the statement showing the negative balance. In case the Merchant has granted EVO a collection authorization pursuant to Merchant Agreement, Section "Miscellaneous agreements", "Collection authorization" such payment will be effected by direct debit. In case there is no direct debit authorization or if a direct debit could not be carried out for other reasons a possible due negative balance shall be paid immediately by the Merchant.

### 2 Payments to the Merchant

- (1) All payments by EVO to the Merchant are made under reserve. There shall be no payment obligation of EVO in the event that not all of the conditions for payment to the Merchant as set out in the Annexes for the relevant service are fully satisfied. In as far as EVO nevertheless makes payments to the Merchant, EVO shall be entitled to claim refund of such payments or to set them off against own payment obligations vis-à-vis the Merchant (regardless of which contract with the Merchant they arise from), provided that it is foreseeable that such payments

cannot be recovered from the Customer without initiating legal proceedings. This right to a credit shall not apply in the event that, despite knowing that not all of the payment conditions have been fully satisfied, reimbursement to EVO of the amounts paid has been made by the Customer's bank provided that the Customer does not object.

- (2) The Annexes may include additional provisions regarding payments to the Merchant, credits and the chargeback rights of EVO as well as reporting by EVO to the Card Organizations in relation to the individual Payment Instruments.

### 3 Securities

- (1) EVO may demand that the Merchant provide the usual forms of security (in particular the types of securities detailed in the Annexes) for any existing or future claims that may arise from the relationship, even if such claims are conditional or temporary.
  - (2) If EVO, upon the creation of claims against the Merchant, has initially refrained wholly or partly from demanding that security be provided or increased, it may nonetheless make such a demand at a later time, provided, however, that circumstances occur or become known which justify a higher risk assessment of the claims against the Merchant. This may, in particular, be the case if
    - (a) the economic status of the Merchant has changed or threatens to change in a negative manner; or
    - (b) the value of the existing security has deteriorated or threatens to deteriorate.
  - (3) Unless otherwise provided for in this Agreement, EVO will allow adequate time to provide or increase security. If EVO intends to make use of its right of termination without notice according to Section 14(6)(d) in case the Merchant fails to comply with the obligation to provide or increase security within such time period, it will draw the Merchant's attention to this consequence before doing so.
  - (4) EVO reserves the right to re-assess the risk, and increase securities, especially if and to the extent
    - (a) in a given two (2) calendar month period, the average monthly transaction volume exceeds the respective forecast as specified in the Agreement or its Annexes or as adjusted in the context of an increase of securities under this Section 3(4)(a) by more than twenty percent (20 %);
    - (b) the business described by the Merchant changes in a way that the Merchant falls into a higher risk classification in accordance with the following table;
      - > Standard risk:  
All branches that are not allocated to one of the following risk categories
      - > High risk:  
Money service business  
Multi-level marketing  
Gambling  
eWallets  
Political/Religious associations/charities
      - > Very high risk:  
Future risk business models with future performance  
For example, travel, tickets (ticket sales)
- or
- (c) EVO has sufficient indications to reasonably believe that the Merchant creates a risk of fraud or loss.
- (5) Should the Merchant's business model be covered by more than one risk category EVO shall be entitled to classify the Merchant in a higher risk category.

## 4 Objections Resulting from the Underlying Transaction

- (1) The Merchant shall make clear to the Customer that it is responsible for the delivery or supply of the goods or services and all related issues (in particular Customer complaints) underlying the transactions submitted by the Merchant to EVO.
- (2) The Merchant shall clearly inform the Customer of its identity, in particular so that the Customer can distinguish the Merchant from third parties involved in the settlement of the underlying transaction.

## 5 Reference to Acceptance/Copyrights

- (1) The Merchant shall show any signs referring to the acceptance of Payment Instruments at its premises (in particular in the cash desk area or on POS Terminals), on or in its websites or in any other offers in a clearly visible manner as further set out in this Agreement.
- (2) The Merchant may use logos, trademarks or signs of EVO, the Card Organizations or any Payment Instrument, in particular the trademark-protected terms "Mastercard", "Visa", "Visa Electron", "Maestro", "giropay" or "eps", for advertising purposes only with the prior written consent of EVO unless the Merchant is otherwise entitled to do so. The Merchant is hereby obliged to comply with further requirements (e. g., based on additional terms and conditions). Section 5(1) shall be unaffected.

## 6 Customer Verification

If the Merchant becomes aware of suspicious circumstances, indicating that the Customer using a Payment Instrument is not the one entitled to do so or not the Customer whose details were provided for the purposes of the transaction, the Merchant shall verify the legitimacy of the Customer.

## 7 Involvement of Third Parties

If a Party uses the services of third parties it shall be responsible to the other Party for all actions, errors or omissions of the third party as if it had performed these acts or omissions itself. The Merchant may not subcontract or otherwise delegate the performance of any of its obligations hereunder to any third party without EVO's prior written consent.

## 8 Information Duties

- (1) The Merchant shall provide the information and documents requested in this Agreement and its Annexes completely, accurately and truthfully. All changes thereto shall be proactively notified to EVO by the Merchant in writing without delay, in particular
  - (a) any changes in the subject of its business,
  - (b) any changes in the nature of the range of products,
  - (c) any disposal or lease of the company or any other change in the ownership,
  - (d) any change in its legal form or changes in its corporate name,
  - (e) any changes of its address or bank details,
  - (f) any changes to the Merchant's financial situation, or
  - (g) any changes to the information provided by the Merchant in relation to money laundering laws.The Merchant shall proactively provide to EVO any other information and documents reasonably relevant for EVO under this Agreement. Any damage suffered by EVO as a result of the Merchant's breach of the aforementioned notification duties shall be borne solely by the Merchant.
- (2) Upon EVO's request the Merchant shall make available to EVO without undue delay its certified excerpt from the commercial register, other excerpts from registers, business concessions, articles of association, annual financial statements and any information required under any money laundering laws. Furthermore, upon EVO's reasonable request the Merchant shall

make available to EVO without undue delay any other current documents and information concerning the Merchant (e. g., regarding the Merchant's financial situation). In case of documents in a language other than German or English the Merchant shall provide such documents together with a translation into German or English, upon request of EVO as a certified translation. The Merchant shall, upon EVO's request, provide information as to the organization of its business operation (in particular security measures) including but not limited to information which EVO believes has to be provided to the Card Organizations.

- (3) Should the Merchant operate any business requiring official concessions (e. g., in relation to certain groups of customers like juveniles) under applicable law, in particular gambling, lotteries, betting, etc., the Merchant shall promptly prove to EVO that such concessions have been granted (in particular by providing a certified copy to EVO) and shall promptly notify EVO if any such concession changes, expires, is revoked or becomes otherwise invalid. The Merchant shall notify the prospective customers if any such concession does not exist, changes, expires, is revoked or becomes otherwise invalid in certain countries which are targeted by the Merchant's offer, if the respective service is otherwise prohibited or if the legal situation is unclear to the Merchant. EVO shall be entitled but not obliged in the aforementioned cases to exclude transactions from processing and making payments. EVO will inform the Merchant of such exclusion without undue delay. The provisions in the respective **Service-Related Terms and Conditions Card Acceptance General**, **Card Acceptance (CNP)** and **Card Acceptance (CP)** regarding acceptance by Merchant of Payment Cards for illegal services and EVO's right not to process such card transactions shall remain unaffected.

## 9 Bank Reference

- (1) The Merchant herewith revocably authorizes the banks for payment transfers specified by the Merchant in the Agreement or its Annexes to the Agreement to provide a general bank reference to EVO and in so far releases these banks from the banking secrecy. This authorization is effective at the same time for all banks with which the Merchant has a bank account at the time of the enquiry in so far as this bank account is notified to EVO for the purpose of credits, debits or bank debit orders.
- (2) EVO shall only make use of the above authorization in conjunction with the conclusion and implementation of this Agreement.

## 10 Liability of the Merchant, Indemnification

- (1) The Merchant agrees to indemnify and hold EVO harmless from any expense, cost, claim, obligation or liability arising from the Merchant's failure to fulfill any of its obligations under this Agreement (for the avoidance of doubt, including all Annexes) or under any applicable laws.
- (2) The Merchant shall indemnify EVO and hold EVO harmless from any Fines and Penalties imposed by any of the Card Organizations due to a negligent breach of a fundamental contractual obligation (also see Section 14(6)(f)) by the Merchant or reimburse EVO by way of a claim for damages for any Fines or Penalties that had to be paid by EVO. The Merchant reserves the right to prove a lower loss and EVO reserves the right to prove a greater loss. Section 1(2) shall remain unaffected. Sentence 1 shall apply accordingly to other claims against EVO by third parties that result from the Merchant or a third party engaged by the Merchant negligently breaching an obligation under this Agreement. Any additional liability provisions set out in the Annexes to the Agreement or by law shall remain unaffected.

## 11 Liability of EVO

- (1) In providing the services, EVO shall only be liable to the Merchant for any act or omission or breach of any duty under or in connection with this Agreement to the extent that such liability results from EVO's (a) willful misconduct, (b) gross negligence, (c) damage from injury to life, body or health due to negligent breach or (d) a slightly negligent breach of a fundamental duty under this Agreement that endangers the achievement of the objective of this Agreement. A fundamental duty shall mean an obligation whose fulfillment is critical for the due implementation of this Agreement.
- (2) EVO's liability in case of a slightly negligent breach of a cardinal duty under this Agreement shall be limited to typical and reasonably foreseeable damage to the Merchant.
- (3) In no event shall EVO's liability under this Agreement extend to any loss of profit, consequential loss or any other form of indirect loss. Section 675y German Civil Code (BGB) is waived.

## 12 Regulatory Duties and Compliance with Legal Requirements

- (1) The Merchant acknowledges that the execution, delivery and performance of this Agreement and/or the use of the services of EVO may be governed by, or subject to, certain legal and regulatory requirements and obligations under applicable laws or regulations ("Regulatory Duties") and that it has made its own independent assessment as to whether it is subject to any Regulatory Duties and as to whether to enter into this Agreement. The Merchant represents and warrants that it is in compliance with all Regulatory Duties at the time of entering into this Agreement, and agrees that it shall comply with the Regulatory Duties during the term of this Agreement.
- (2) EVO does not assume any of the Regulatory Duties of the Merchant and / or its affiliates and is in no way liable for their due fulfillment by the Merchant and / or its affiliates.
- (3) The Merchant acknowledges and expressly accepts that EVO may perform any acts whatsoever that it is obliged to in order to comply with all legal or regulatory requirements which might also affect the provision of the services under this Agreement. EVO shall not be liable for any losses, expenses or damages whatsoever of the Merchant or any of the Merchant's affiliates arising from or relating to such acts.
- (4) EVO is authorized to offer the Merchant amendments of the Agreement from time to time in accordance with Section 17 if this becomes necessary in order for EVO to comply with any requirements under the Regulatory Duties.

## 13 Confidentiality, Data Protection and Security

- (1) Each Party will treat as strictly confidential any information or documentation received or otherwise obtained from or through access granted by the other Party (the "Information Provider") prior to or after the Effective Date of this Agreement relating to this Agreement or its terms and conditions (including without limitation the Sales Documentation), regarding the business, financial situation, products and prospects, processes and methodologies, customers and employees (in particular any trade and business secrets) related to the other Party, and any other information or documentation unless otherwise stipulated in this Agreement regardless of whether it is marked as confidential or if a reasonable person would consider such information or documentation as confidential (collectively, "Confidential Information").
- (2) Each Party will not use or disclose Confidential Information to its respective employees, contractors and advisors or forward it to any third party except as required to perform its obligations under this Agreement (in particular EVO's right to transfer transaction or other data to the Card Organizations, third party

service providers or as set out in Sections 13(8) and 13(9) or elsewhere in this Agreement). The Parties will inform each recipient of the Confidential Information of its confidential nature prior to any such disclosure and will bind each recipient to confidentiality obligations which are not less stringent than those set out herein. Deviating hereof, EVO shall be entitled to disclose Confidential Information to its affiliates.

- (3) The confidentiality obligation shall not apply in relation to any Confidential Information to the extent it (a) was already known to the receiving Party other than as a result of entering into or performing this Agreement, (b) is or becomes public knowledge otherwise than as a result of the conduct of the receiving Party in breach of this Section 13, or (c) is to be disclosed by a Party pursuant to any law or order of any court or governmental or administrative authority. In the circumstances set out in (c) the disclosing Party will first provide the other Party with prompt notice and evidence of such order so that the other Party may seek a protective order or other appropriate remedy; the disclosing Party shall reasonably assist the other Party in obtaining such protective order or remedy.
- (4) Any Confidential Information shall remain the property of the Information Provider and may only be copied or reproduced with its prior written consent. Upon the Information Provider's request the other Party shall return or destroy any Confidential Information and its embodiments and confirm the destruction in writing.
- (5) If the Merchant has access to any IT systems, software or confidential information of the Card Organizations the foregoing obligations of the Merchant shall apply directly in relation to the respective Card Organization and such Card Organization may directly enforce these obligations vis-à-vis the Merchant by way of a genuine contract for the benefit of a third party in the sense of Section 328 of the German Civil Code (echter Vertrag zugunsten Dritter).
- (6) Each of the Merchant and EVO shall comply with the provisions of all applicable laws in force from time to time, concerning the protection of personal data when collecting, processing and using such data.
- (7) The Merchant shall ensure the prevention of any manipulation of data input within its sphere of influence, in particular any abusive use of devices by its employees or by unauthorized persons.
- (8) EVO shall be authorized to transmit the details provided by the Merchant in the Merchant Agreement regarding his name/company, as well as the company address, and the data of transactions submitted by the Merchant in an aggregated and (in relation to Customer data) anonymized form to distributors in charge of the Merchant in accordance with applicable data protection laws.
- (9) EVO is entitled to transmit the information and data of the Merchant specified in this Agreement to dedicated enquiry offices to check for any previous breaches of contracts with other institutions processing Payment Instruments. The same shall apply in case of breaches of contract committed by the Merchant which entitle EVO to terminate this Agreement.
- (10) The foregoing obligations shall survive any termination or expiration of this Agreement until the receiving Party proves that the Confidential Information has become public knowledge otherwise than as a result of the conduct of the receiving Party in breach of this Section 13.

## 14 Term and Termination

- (1) This Agreement shall become effective on the date when signed by both the Merchant and EVO (the "Effective Date"). It shall have a minimum term of two (2) years. After expiration of the minimum term, the term shall be extended automatically by one (1) year ("Period of Extension"), unless one party has terminated the Agreement in writing subject to a period of no-

tice of three (3) month in advance of the end of the minimum term or the respective Period of Extension. Both Parties have the right to also terminate individual services in writing with a notice period of three (3) months toward the end of the minimum term or the respective Period of Extension. The Merchant's right to terminate the Agreement at any time is excluded according to Section 675h sentence 1 German Civil Code (BGB).

- (2) EVO shall have the right to suspend the performance of its services to the Merchant if the Merchant commits a breach of this Agreement which is not merely immaterial or insofar as security concerns are held with regard to a certain transaction or if there are grounds for suspicion that would entitle EVO to terminate the Agreement. Should such breach of contract only relate to individual types of Payment Instruments or card types (e. g., only to Mastercard, to Visa or to Maestro), EVO shall have the right to suspend only the processing of the Payment Instrument or card type affected by the breach. Should security concerns relate to individual transactions, EVO may also only suspend the execution of the transactions that are subject to the security concerns.
- (3) In the event of a suspension of the services, EVO shall notify the Merchant thereof by e-mail or otherwise within one (1) bank working day after the discontinuation.
- (4) If the Merchant has ceased the conduct constituting the breach or if the security concerns are unfounded, it shall notify EVO respectively. EVO will inform the Merchant if it considers the breach to be cured and, as the case may be, will resume the services.
- (5) EVO may terminate this Agreement with three (3) months' notice to the end of a calendar month if EVO discontinues the processing of individual Payment Instruments or card transactions for individual card types (e. g., Mastercard, Visa or Maestro).
- (6) Either Party's right to terminate this Agreement for cause remains unaffected. EVO may terminate this Agreement for cause in particular if
  - (a) the Merchant is in liquidation or becomes insolvent in the sense of Section 17 of the German Insolvency Code or if it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; and/or
  - (b) if the Merchant has made incorrect statements as to its financial status, provided such statements were of significant importance for EVO's decision concerning the entering into this Agreement or a specific Annex or other operations involving risks for EVO; and/or
  - (c) if a substantial deterioration in the Merchant's financial status or in the value of security provided by the merchant occurs or threatens to occur, jeopardizing the repayment of any amounts or the discharge of any other obligation towards EVO even if security provided therefore is realized; and/or
  - (d) the Merchant fails to comply, within a reasonable time period determined by EVO, with the obligation to provide or increase security according to this Agreement, and/or
  - (e) any discontinuation of the services justified pursuant to Section 14(2) continues for more than thirty (30) days; and/or
  - (f) the Merchant violates any fundamental contractual duty (in particular the obligations stipulated in Sections 7, 8 and 13). This shall be the case in particular if
    - (i) the Merchant fails to provide documents requested by EVO or to meet requirements made by EVO at all or in due time;
    - (ii) the Merchant not only submits his own transactions with Payment Instruments, but also those of third parties to EVO for settlement (so-called "Third Party Processing");
    - (iii) the Merchant has accepted Payment Instruments for any goods or services for which such Payment

Instrument may not be accepted according to this Agreement;

- (iv) the Merchant does not possess or no longer possesses the concessions required by law for its business operation; and/or
- (v) the Merchant does not display, in accordance with Section 5, the appropriate marks and logos to indicate which Payment Instruments are accepted for payment.
- (g) fines and penalties are imposed on EVO by a Card Organization or the imposing of fines and penalties is threatened and this imposition or threat is made due to the behavior of the Merchant.

The Annexes to the Agreement may provide for further circumstances constituting a violation of a fundamental contractual duty in which EVO has a right to termination for cause of this Agreement in whole or in relation to the affected service.

- (7) EVO shall have a special termination right with immediate effect if the proportion of chargebacks from transactions with the Merchant exceeds the thresholds set out in the **Service-Related Terms and Conditions** for the respective type of Payment Instrument.
- (8) EVO shall have a special termination right with one (1) month's notice if the Merchant does not submit any transactions with any Payment Instruments to EVO for settlement within a period of three (3) consecutive months.
- (9) EVO expressly reserves the right to exercise any of its termination rights under this Agreement only in part, in particular only in relation to individual services provided under this Agreement, Payment Instruments or acceptance of Payment Card types (e. g., Mastercard, Visa or Maestro).
- (10) Any termination for cause by a Party due to a violation of a contractual duty shall only be permitted after expiry, without result, of a reasonable period fixed for corrective action by the other Party or after a warning to the other Party has proved unsuccessful, unless such period or warning can be dispensed with under applicable law due to the special circumstances of the particular case.
- (11) On termination of this Agreement the Merchant shall at the request of EVO return to EVO all documents and data made available to the Merchant and in any case remove all references to the Payment Instruments from its premises, its websites, other offers and from other locations unless it is otherwise entitled to display them.
- (12) Any termination notice shall be given in written form (including fax, but excluding e-mail).

## 15 Limitation Period

All reciprocal claims of the Parties under this Agreement shall become time-barred within twelve (12) months of the date on which the creditor of the claim becomes aware of the circumstances substantiating the claim and of the person of the debtor or should have become aware without gross negligence. Sentence 1 shall not apply to claims for damages that result from willful misconduct.

## 16 Transfer of Agreement

- (1) EVO may transfer all or any part of the rights and obligations of this Agreement to any third party. EVO shall inform the Merchant of the transfer of the Agreement in time, at least three (3) months before it is coming into force. In case that the Merchant does not agree to such transfer of the Agreement, the Merchant may terminate this Agreement within six (6) weeks from notification of the transfer of the Agreement with a notice period of six (6) weeks.
- (2) Upon the transfer of all rights and obligations by EVO taking effect EVO shall withdraw from this Agreement and be re-

placed as a contractual party by the transferee. The right to termination pursuant to Section 16(1) shall remain unaffected.

## 17 Amendments

- (1) EVO may offer the Merchant amendments to this Agreement (including the Annexes) no later than two (2) months before the proposed date on which they come into force. The Merchant may either accept or reject the amendments before the proposed date of their entry into force. The Merchant's consent to any amendment shall be deemed to be given unless the Merchant objects to EVO at the latest by the proposed date on which the amendment is to come into force. EVO shall notify the Merchant expressly of this consequence of consent in its offer.
- (2) If amendments to conditions for payment services (e. g. the respective **Service-Related Terms and Conditions Card Acceptance General, Card Acceptance (CNP) or Card Acceptance (CP)**) are offered to the Merchant, until the amendment comes into force the Merchant may terminate the Merchant Agreement affected by the amendment without notice and at no cost. EVO shall inform the Merchant of this right of termination in its offer.
- (3) EVO may terminate this Agreement with six (6) weeks notice in whole or in relation to the services affected by an amendment if the Merchant timely objects to such amendment in accordance with Section 17(1).
- (4) Otherwise, any provision of this Agreement may only be amended by written agreement of the Parties, including any amendments to this requirement of written form.

## 18 Governing Law; Submission to Jurisdiction

- (1) This Agreement shall be governed by and construed in accordance with German law.
- (2) Place of jurisdiction for all legal action arising out of or in connection with this Agreement shall be Köln, Germany. However, any legal action by EVO against the Merchant related to this Agreement may also be brought in the courts competent for Merchant's place of domicile.

## 19 Relationship of the Parties; References

- (1) Nothing in this Agreement creates a joint venture, partnership, association or company between the Parties.
- (2) EVO may name the Merchant as a reference customer in any of EVO's online and offline, written and oral marketing materials, including its websites, brochures, presentations and offers. EVO is authorized to use the Merchant's company name, logos or trademarks and company description for this purpose and to link to the Merchant's websites from EVO's websites.

## 20 Severability; Entire Agreement

- (1) Should any provision of this Agreement, or any provision incorporated therein in the future, be or become invalid or unenforceable, the validity of the remaining provisions of this Agreement shall remain unaffected. The same applies if this Agreement contains any omissions. In lieu of the invalid or unenforceable provision or in order to complete any omission, a fair provision shall apply which, to the extent legally permissible, comes as close to what the Parties would have intended, according to the spirit and purpose of this Agreement, as if they had considered the matter at this time this Agreement was entered into.
- (2) The Annexes hereto form an integral part of this Agreement. They represent the entire agreement between the Parties with respect to its subject matter and supersede all prior agreements or communications pertaining thereto.

## 21 Notices, Exclusion of Obligations to Provide Information

- (1) Except as otherwise provided herein, any kind of notices or declarations to EVO under this Agreement must be sent to  
EVO Payments International GmbH  
Elsa-Brändström-Straße 10-12  
50668 Köln  
Germany  
E-mail: support.EMEA@EVOpayments.com  
Phone: +49 (0)221 / 99577 – 777  
Fax: + 49 (0)221 / 99577 – 8666  
to be valid. EVO shall provide written notice (including by fax and e-mail) to the Merchant of a change of address to which notices shall be sent, which shall become effective not earlier than one (1) week after such notice is received.
- (2) The Merchant shall access the Business Information System (BIS) without undue delay for new or amended notices, invoices, information or data provided for the Merchant whenever notified by e-mail and in any event at least once a calendar week. The new or amended notices, information or data will be deemed received on the day following transmission of the e-mail.
- (3) In deviation from Article 12 (1) a) to c) Directive (EU) 2015/751 of 04/29/2015, EVO may provide or make the information specified therein available once per month to the Merchant, so that the Merchant can store and reproduce it unchanged.
- (4) The obligations to provide information arising under Sections 675d (1) sentence 1 BGB in combination with Art. 248 Sections 1 to 12, Section 13 (1), 3 to 5 and Sections 14 to 16 Introductory Act to the German Civil Code (EGBGB) are waived.

## 22 Complaints and alternative dispute resolution

- (1) The Merchant can send complaints regarding his rights and obligations according to Sections 675c to 676c BGB to the point of contact specified under 21(1) at EVO by e-mail. EVO will respond to the complaints within the period and in the form prescribed by law.
- (2) EVO participates in the dispute resolution procedure of the Arbitration Board of Deutsche Bundesbank. An application for arbitration can be submitted either by e-mail to [schlichtung@bundesbank.de](mailto:schlichtung@bundesbank.de) or by fax to +49 (0)69 709090-9901 or by mail to Deutsche Bundesbank, – Schlichtungsstelle –, Postfach 11 12 32, 60047 Frankfurt am Main. A form and further notes on the procedure are provided at <https://www.bundesbank.de/Navigation/DE/Service/Schlichtungsstelle/schlichtungsstelle.html> zum Download.

## 23 Connection to Internet and Payment Interfaces

- (1) Any required connection of the Merchant's employed data processing systems to the Internet or to a contractually agreed Payment Interface of EVO shall not constitute an integral part of the services to be rendered by EVO, but shall fall solely into the area of responsibility of the Merchant.
- (2) EVO points out that for technical reasons it is not possible to warrant permanent system availability. For malfunctions which arise as a result of the provision of telecommunications or the Internet by a third party when establishing a connection to a contractually agreed Payment Interface of EVO, EVO shall accept no liability insofar as EVO did not culpably cause the malfunction. Section 11 remains unaffected.
- (3) To ensure the quality and security of the Payment Interfaces of EVO, EVO shall be entitled to implement maintenance windows with limited service availability (maximum one (1) hour per calendar half-year). EVO shall inform the Merchant with a prior

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notice period of two (2) weeks of the maintenance window concerned.

- (4) EVO may at any time, and also without the consent of the Merchant, implement, or arrange for the implementation of, changes to the contractually agreed Payment Interface concerned. EVO shall devise these changes such that the contractually agreed services are not restricted or otherwise impaired.

## 24 Beta Features

EVO shall be entitled to introduce additional features and functions for test purposes into the contractually agreed Payment Interfaces of EVO ("Beta Features"), provided that the contractually agreed functional and performance scope is not restricted, and its usage is not hindered, thereby. The following terms and conditions shall apply for Beta Features:

- (a) EVO shall not be obliged to provide the Merchant with documentation on Beta Features;
- (b) EVO shall label Beta Features meaningfully, for example, with the text remark "Beta";
- (c) Beta Features shall under no circumstances become a binding contractual element, even if they are available to the Merchant over a non-negligible time period;
- (d) EVO may modify, replace or revoke Beta Features at any time, without prior notice.

## 25 Property Rights, Know-how and Usage Rights

- (1) Unless otherwise regulated in the Agreement, all intellectual property rights (such as, but not limited to, copyrights, indus-

trial property rights and know-how) that existed prior to conclusion of the Agreement shall remain with the Party that owned them at that time.

- (2) Should EVO provide the Merchant with software for the purpose of contractual fulfillment, EVO shall, for the duration of the Agreement, grant the Merchant a non-exclusive, non-sub-licensable and non-transferrable usage right to the extent required for the agreed usage of the services by the Merchant, provided that the Merchant has not already been otherwise granted such a usage right by a third party. Sentence 1 shall apply mutatis mutandis to new software and updates that EVO furnishes to the Merchant. All other rights to the software shall remain with EVO respectively its licensor.
- (3) The Merchant may not modify the software and is, in particular, prohibited from reverse-engineering the software to its source code.
- (4) The Merchant shall inform himself at regular intervals at the website [www.evopayments.eu](http://www.evopayments.eu) as to whether new software, or updates of existing software, are available and install these immediately.
- (5) Should claims relating to an actual or alleged infringement of third party rights to the software be asserted against either Party in connection with the contractual services, the Parties shall inform each other thereof immediately. The Parties shall coordinate the defense against such claims in close cooperation, whereby EVO or its licensor shall take the lead role.

## II. Definitions

### 3-D Secure

is a service in the area of card-based fraud prevention. 3-D Secure makes it possible to identify cardholders in the course of e-commerce payments by means of a specific online password. It is also known as "Mastercard SecureCode" and "Verified by Visa".

### Account Check

is a service in the area of account-based fraud prevention. Account Check allows for checking the plausibility of account data specified by a customer in a transaction.

### Address Verification Service

is a service in the area of card-based fraud prevention. Address Verification Service allows for comparing the address data of customers with the data deposited as cardholder's settlement or physical address at the card issuer in the course of card transactions (in case of Visa, Mastercard or Maestro cards for the Anglo-American region; globally in case of American Express cards).

### Agreement

the Merchant Agreement between the Merchant and EVO including all Annexes and service descriptions as well as all amendments thereto.

### arvato infoscore-Group

is the joint designation of the companies informa Solutions GmbH, infoscore Consumer Data GmbH, informa Unternehmenberatung GmbH, Deltavista GmbH, and Experian Nederland B.V.

### Bank Working Days

are weekdays from Monday to Friday, but not national holidays, holidays in the German states of Hesse and North-Rhine Westphalia and 12.24 and 12.31 each year.

### Batch file transfer

is a general additional service for EVO E-PAY MAX. Batch File Transfer permits payment processing on the basis of batch files, which can be routed manually or automatically via the reporting system of EVO E-PAY MAX (PayView).

### BIN Check with blacklist

is an additional service in the area of fraud prevention for EVO E-PAY MAX and EVO E-PAY BASIC. BIN Check with blacklist provides the possibility to determine the country of origin from the card number of a Visa or Mastercard card in order to compare it with the data specified by a customer in the framework of a card transaction.

### BIS

is the Business Information System, a website containing information and data provided by EVO for the Merchant.

### Card Check

is a service in the area of card-based fraud prevention. Card Check permits recognizing typing errors in card numbers and checking the authenticity of a card by means of service information and safety mechanisms included in each card.

### Card Acceptance (CNP)

is a service in the area of payment methods e-commerce/MOTO. Card Acceptance (CNP) allows for the acceptance of payment cards in e-commerce and/or mail order/telephone order. The payment instrument accepted by the Merchant is not presented physically. Apart from the

acceptance of the selected card types, EVO handles the transactions and settles the underlying payment procedures.

### Card Acceptance (CP)

is a service in the area of payment methods POS. Card Acceptance (CP) allows for the acceptance of payment cards in stationary business. The payment instrument accepted by the Merchant is presented physically. Apart from the acceptance of the selected card types, EVO handles the transactions and settles the underlying payment procedures.

### Card issuer

is the bank issuing the payment card.

### Cardholder

is a domestic or foreign cardholder.

### Card Organizations

are Visa and Mastercard including any possible affiliated companies.

### Clever Pay GUI

is a service in the area of additional services of Payment Interfaces. Depending on the ordered services, Clever Pay GUI permits the usage of a graphic-based interface/server software for transactions and additional services in e-commerce. When Clever Pay GUI is ordered, Card Acceptance (CNP) with 3-D Secure, Direct Debit Services and giropay Acceptance can be used via the interface (if the respective services were ordered). Moreover, transaction data of PayPal, iDEAL, eps and SOFORT Überweisung can be forwarded to the bodies responsible for processing. EVO can render the routing services only if the Merchant has concluded a contract with the respective company regarding the corresponding procedure.

### CNP

is a transaction (e. g., mail, phone or online orders) where the Payment Instrument accepted by the Merchant for payment is not physically presented to the Merchant ("Card-not-Present").

### Confidential Information

has the meaning given in Section 13(1) of these **General Terms and Conditions**.

### Corporate PayPage

is a general additional service for EVO E-PAY MAX. Corporate PayPage permits the individual design of the payment page module to adapt it to the company's layout by means of layout parameters.

### Customer

is a customer of the Merchant using a Payment Instrument to make a payment to the Merchant, i. e., in case of Payment Cards the Cardholder.

### Direct Debit Check

is a service in the area of account-based fraud prevention. Direct Debit Check permits checking of German account data specified by a customer in a transaction for negative characteristics. A blacklist file kept across Germany is used for this.

### Direct Debit Services

is a service in the area of e-commerce/MOTO payment methods. Direct Debit Services support Merchants when collecting outstanding receivables directly from its customer's bank account. EVO produces payment

transfer files from the transactions transmitted by the Merchant and then submits them to the Merchant's bank for processing and executing on bank working days.

### Dynamic Transaction Reference

is a service in the area of Additional Services E-Commerce/MOTO. Dynamic Transaction Reference permits the dynamic use of the explanation field on the cardholder's account statement. The transaction-specific message is printed on the credit card statement, provided that the card issuer has the technical ability for this, thus making it easy for the cardholder to recognize the transaction.

### Effective Date

has the meaning given in Section 14(1) of these **General Terms and Conditions**.

### EVO E-PAY

#### EVO E-PAY LIGHT

is a service in the area of Additional Services Payment Interfaces. EVO E-PAY LIGHT allows the use of a graphical standard interface / server software for payment transactions in e-commerce. When EVO E-PAY Light has been ordered, services related to Card Acceptance (CNP) with 3-D Secure can be used via the interface.

#### EVO E-PAY BASIC

is a service in the area of Additional Services Payment Interfaces. Depending on the order, EVO E-PAY BASIC allows the use of a graphical interface / server software for payment transactions and additional services in e-commerce or MOTO. When EVO E-PAY BASIC has been ordered, the services Card Acceptance (CNP) with 3-D Secure, Direct Debit Services and giropay+eps Acceptance can be used via the interface (provided that the respective services have been ordered). Moreover, transaction data of paydirekt, PayPal, iDEAL and SOFORT can be forwarded to the bodies responsible for processing. An existing agreement between the Merchant and the corresponding company on the respective procedure is required for the provision of routing services by EVO.

#### EVO E-PAY MAX

is a service in the area of Additional Services Payment Interfaces. Depending on the order, EVO E-PAY MAX allows the use of a graphical interface / server software and/or a virtual SSL terminal for payment transactions and additional services in e-commerce or MOTO. When EVO E-PAY MAX has been ordered, Card Acceptance (CNP), Direct Debit Services and for the e-commerce sales channel also 3-D Secure can be used via the interface (provided that the respective services have been ordered). Moreover, transaction data of American Express, Diners and JCB can be forwarded to the bodies responsible for processing. An existing agreement between the Merchant and the corresponding company on the respective procedure is required for the provision of routing services by EVO.

### Fines and Penalties

are any penalty payments imposed by the Card Organizations.

### Fraud Screening

is a service in the area of Card-Based Fraud Prevention. In cooperation with the service provider Retail Decisions Europe Ltd. ("ReD"), Fraud Screening offers the assessment of card transactions with reference to probability of fraud in e-commerce and MOTO. A consent of the respective cardholder is required, because person-related data are used for this service.

### Fuel Cards

are cards from the domestic fuel card organizations UTA and DKV that can be used at the affiliated filling stations.

### girocard

is any payment card that can participate in the electronic cash system of Deutsche Kreditwirtschaft [Interest Association of German Credit and Bank Institutions].

### giropay+eps Acceptance

is a service in the area of Payment Methods E-Commerce/MOTO. giropay+eps Acceptance permits the acceptance of giropay and eps. Both procedures are based on online banking and include a payment guarantee for the Merchant. The procedures comply with the highest security requirements for the end customer due to the PIN/TAN procedure. It should be noted that personal and account-related data are exchanged only between end customer and the online banking of his bank.

### Information Provider

has the meaning given in Section 13(1) of these **General Terms and Conditions**.

### IP Check

is an additional service in the area of Fraud Prevention for EVO E-PAY MAX and EVO E-PAY BASIC. IP Check offers the possibility to identify the country from the customer's IP address to use it for checks.

### Issuer

is the Cardholder's card issuing bank.

### Mastercard

is Mastercard International Incorporated (doing business as Mastercard Worldwide) / Mastercard Europe sprl.

### Mobile PayPage

is a general additional service for EVO E-PAY MAX. Mobile PayPage offers specific payment pages which are optimized for smartphones and other mobile end devices to accept card payments in mobile e-commerce.

### Offline payment methods

see Receivables Management

### Payment Cards or Cards

are credit cards or other card-based Payment Instruments included in this Agreement.

### Payout Currency

is the currency agreed between EVO and the Merchant for amounts to be paid out by EVO to the Merchant.

### Payment Instruments

are Payment Cards or any other payment instruments included in this Agreement.

### Payment Monitoring

is a service in the area of Additional Services Receivables Management. Payment Monitoring allows monitoring of the merchant's bank accounts specified in the Direct Debit and Receivables Management Annex by the Merchant for incoming and outgoing payments of certain payment methods and offers the possibility of handling incoming chargebacks automatically in the reporting and reopening the respective receivables items. Moreover, it allows the Merchant to transfer receivables data on

offline payment methods offered by him to EVO. Apart from being shown in EVO's reporting system, the receivables data can also be used for further services.

### PCI SSC

is the Payment Card Industry Security Standards Council

### POS/CP

is a transaction where the Payment Instrument accepted by the Merchant for payment is physically presented to the Merchant ("Point of Sale" or "Card-Present-Business").

### Pre-Judicial Dunning

is a service in the area of Additional Services Receivables Management. Pre-Judicial Dunning supports the Merchant in dunning. EVO generates payment reminders automatically and sends them to the debtors' addresses notified to EVO by the Merchant. In addition, standardized collection files can be produced and transmitted to the Merchant or to a collection agency mandated by the Merchant for further handling.

### Pseudo Card Number

is a general additional service for EVO E-PAY MAX and EVO E-PAY BASIC. Pseudo Card Number enables the use of clearly allocatable, but fictitious card numbers instead of real ones, to ensure data security without having to accept any limitations in functionality.

### Routing Address Validation

is a service in the area of Consumer-Based Fraud Prevention. Routing Address Validation allows the transfer of address data specified by a customer during a transaction to a company of the arvato infoscoring group to have them checked and corrected by this company with the help of databases of the respective national postal administration. An existing agreement between the Merchant and the corresponding company of the arvato infoscoring group on the respective checks and corrections is required for the provision of the services by EVO.

### Routing Basic Check

is a service in the area of Consumer-Based Fraud Prevention. Routing Basic Check allows the transfer of address data specified by a customer during a transaction to a company of the arvato infoscoring group to have them checked and corrected by this company with the help of databases of the respective national postal administration as well as the use of further merchant-specific services, such as duplicate check and client-specific positive-negative list. An existing agreement between the Merchant and the corresponding company of the arvato infoscoring group on the respective checks and merchant-specific services is required for the provision of the services by EVO.

### Routing (CNP)

is a service in the area of Payment Methods E-Commerce/MOTO. Routing (CNP) allows transmission of transaction data to the bodies responsible for processing. After being processed there, EVO receives the transaction data and further information, if existent, and transmits them to the Merchant. An existing agreement between the Merchant and the corresponding company on the respective procedure is required for the provision of the routing services by EVO.

### Routing Consumer Score

is a service in the area of Consumer-Based Fraud Prevention. Routing Consumer Score allows the transfer of data specified by a customer during a transaction to a company of the arvato infoscoring group to check customers' credit-worthiness by using information from the arvato infoscoring databases. These databases contain e.g. collection cases and local court data (debtors' registers). An existing agreement between the Merchant and the corresponding company on the respective checks is required for the provision of the services by EVO.

### Routing (CP)

is a service in the area of Payment Methods POS. Routing (CP), also referred to as network operation, allows the transfer of transaction data to the bodies responsible for processing. After being processed there, EVO receives the card transaction data and further information, if existent, and transmits them to the Merchant. Insofar as expressly agreed between the Merchant and EVO, EVO shall additionally be responsible for the settlement of transactions by means of girocard. An existing agreement between the Merchant and a payment service provider, which settles the transactions in relation to the Merchant according to the procedure requested by the Merchant is required for the provision of Routing (CP) by EVO. For transactions by means of girocard, such a contract is not required if EVO is contracted by the Merchant for the settlement of transactions by means of girocard.

### Routing Person / Address Verification

is a service in the area of Consumer-Based Fraud Prevention. Routing Person / Address Verification allows the transfer of name and address data specified by a customer during a transaction to a company of the arvato infoscoring group to enable a check on whether the name is registered in connection with the address in Germany. An existing agreement between the Merchant and the corresponding company of the arvato infoscoring group on the respective checks is required for the provision of the services by EVO.

### Routing of Additional Consumer-Based Fraud Prevention of Third-Party Providers

is an additional service in the area of Fraud Prevention for EVO E-PAY MAX. Routing of Additional Consumer-Based Fraud Prevention of Third-Party Providers allows transmission of transaction data to the bodies responsible for processing. After the data have been assessed there, EVO receives them and transmits them to the Merchant.

### Routing of Additional Payment Methods of Third-Party Providers via EVO E-PAY MAX

is an additional service in the area of Payment Methods for EVO E-PAY MAX. Routing of Additional Payment Methods of Third-Party Providers allows transmission of transaction data to the bodies responsible for processing. After they have been processed there, EVO receives the transaction data and further information, if existent, and transmits them to the Merchant. An existing agreement between the Merchant and the corresponding company on the respective service is required for the provision of routing services by EVO.

### Rules

are the predetermined rules of the Card Organizations.

### Securepay Package

is an additional service in the area of Fraud Prevention for EVO E-PAY BASIC. Securepay Package includes the additional services BIN Check with blacklist, IP Check and Velocity Check.

### Settlement Currency or Settlement Currencies

is/are the currency/currencies used for settlement between EVO and the Card Organizations. Transactions are settled between EVO and the Card Organizations in a limited number of currencies, which are listed at

<http://www.evopayments.eu/service-bereich/downloads/>.

### Term

is the term of this Agreement.

### Terminals

is a service in the area of Additional Services POS. Terminals offers the provision and management of terminals for reading and handling card data in stationary trade.

### Transaction

is a mutual transmission (query/response) of data. The following transactions can be actuated, depending on the service: (pre-)authorization, submission of sales transactions, credit, reversal, referral, reservation, diagnosis, initializing, close out.

### Transaction Currency

is the currency in which the transaction has been submitted by the Merchant to EVO.

### Velocity Check

is an additional service in the area of Fraud Prevention for EVO E-PAY MAX and EVO E-PAY BASIC. Velocity Check allows determining hourly, daily and weekly turnover and transaction limits per card and per IP address.

### Visa

is Visa International Service Association / Visa Europe Limited.

### Visa Europe Territory

Andorra, Austria, Bear Island, Belgium, Bulgaria, Channel Islands, Cyprus, Czech Republic, Denmark, Estonia, Faeroe Islands, Finland, France (including its overseas departments), Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Isle of Man, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom including its sovereign territories, Vatican City, and all other jurisdictions that become a full member of the European Union, including all military bases, embassies or consulates of the above jurisdictions located outside the sovereign territory, and with the exception of all military bases, embassies or consulates located in the sovereign territory of such jurisdictions that are outside the sovereign territory.

## III. Service-Related Terms and Conditions

Besides the **General Terms and Conditions** of EVO and the **List of Prices and Services**, further service-related terms and conditions shall apply to services ordered. These Service-Related Terms and Conditions shall regulate the additional conditions which apply to the provision of services vis-à-vis the Merchant.

The terms used in the Service-Related Terms and Conditions shall have the meaning as defined in chapter II unless otherwise defined in the Service-Related Terms and Conditions. References in the Service-Related Terms and Conditions to individual sections or paragraphs within the Service-Related Terms and Conditions shall mean provisions in these Service-Related Terms and Conditions unless stated otherwise.

### i. Card Acceptance

#### a. General

##### 1 Acceptance of Payment Cards

- (1) The Merchant commissions EVO ("Geschäftsbesorgungsvertrag" as defined in Section 675c(1) German Civil Code (BGB)) to process the Payment Card transactions submitted by the Merchant and settle the underlying payments and to provide additional services related to the processing and settlement as further specified in the Agreement, subject to the terms and conditions of the Agreement and in particular these **Service-Related Terms and Conditions**.
  - (2) The Merchant is entitled to admit payment for goods and services by Payment Cards in general or in individual cases; there is no general obligation to accept Payment Cards. The Merchant will not admit payment by Payment Cards, if, particularly due to the circumstances of their use, there is indication for their abuse.
  - (3) If the Merchant admits payment by Payment Cards, it undertakes not to offer or sell to the respective domestic and foreign Cardholders, without payment of cash, all goods and/or services offered by the Merchant at higher prices and at more unfavorable terms than applicable to customers requesting payment by cash, by credit transfer or by direct debit. The Merchant shall in particular not charge any additional costs or require any security ("no surcharge" principle).
  - (4) Any acceptance of a Payment Card and the query of card data from the Cardholder is only permissible for the purpose of payment for goods and services already rendered or still to be rendered by the Merchant and on the basis of a direct contractual relationship with the Cardholder.
  - (5) The Merchant is not entitled to accept Payment Cards for any goods or services:
    - (a) which are not provided for its own account or by order of any third party;
    - (b) which are not provided in the Merchant's ordinary course of business as specified in the Agreement; in particular repayment by Payment Card of a credit previously granted or of a cash payment previously made by the Merchant shall not be accepted;
    - (c) involving or being connected to any illegal or immoral content, content that is subject to protection of minors according to applicable law or instructions for making weapons or explosives; or
    - (d) which are prohibited under the law applicable to the Merchant, to the Cardholder or to the Merchant's services, or which are otherwise illegal. This shall apply in particular to services that are related to gambling which are illegal under the respective applicable law (including the federal laws of the United States of America or the law of federal states of the United States of America).
  - (6) Payment of cash by the Merchant against presentation of the Payment Card is always prohibited.
- (7) Payment Cards may not be accepted to collect amounts which otherwise would not be collectable from the Cardholder or for payment of a cheque which is dishonored.
  - (8) Irrespective of Section 17 of the **General Terms and Conditions** EVO shall be entitled to change or amend the provisions in Sections 1(1) to 1(6) with two (2) weeks' written notice to the Merchant if EVO so deems necessary due to possible abuse or if such changes become necessary as a result of the rules pertaining to the acceptance of Payment Cards (e. g., in connection with the "no surcharge" principle).

##### 2 Merchant Categories

- (1) Based on the information provided by the Merchant about its business(es), EVO will assign one or more merchant categories to the Merchant which are reflected in Merchant Category Codes (MCC). The assignment of the respective merchant category shall be at EVO's reasonable discretion in consideration of the Rules. EVO may change the merchant categories at any time if and insofar this is deemed necessary after a reassessment of the Merchant, thereby taking into account the Merchant's reasonable interests. Irrespective of the foregoing the Merchant shall notify EVO of any change in his business to enable EVO to adjust the merchant categories assigned by EVO to the Merchant.
- (2) The Merchant hereby warrants to EVO the accuracy of such information whether given at the beginning or during the term of the services to be performed according to these **Service-Related Terms and Conditions** to EVO and undertakes to adhere to the merchant categories assigned by EVO with respect to each transaction.

##### 3 Currency Conversion

- (1) When submitting and executing Transactions, credits and Chargebacks, the Transaction Currency may differ from both the Settlement Currency as well as from the Payout Currency and thereby lead to required currency conversions.
- (2) The provisions regarding the respectively valid exchange rate for currency conversions are defined in the **List of Prices and Services**. Changes to exchange rates become effective immediately and without any prior notice to the Merchant, insofar as the changes are based on the reference exchange rate specified in the **List of Prices and Services**. The reference exchange rate is the exchange rate underlying each currency conversation and which is made available by EVO or originates from a publicly-accessible source.

##### 4 Fees and Reimbursement

- (1) The disagio or service fee payable by the Merchant for the services provided by EVO according to these **Service-Related Terms and Conditions** shall be calculated on the basis of the final invoice amount of a Payment Card transaction. Further

fees for EVO's services hereunder may be provided for in the Agreement.

- (2) If the average transaction volume per month (aggregate volume of all transactions divided by the number of transactions) is ten percent (10 %) or more lower than the forecasted monthly transaction volume divided by the forecasted number of monthly transactions (upon entering into the Agreement or when a change to this forecast is agreed), the Parties negotiate in good faith a reasonable increase of the disagio respectively the service fee.
- (3) Expenses to be reimbursed according to Section 1(2) of the **General Terms and Conditions** shall particularly include all Fines and Penalties or other charges of the Card Organizations that are imposed on EVO directly or indirectly – as Licensee of the Card Organizations – by the Card Organizations as far as these Fines and Penalties or other charges were caused by the Merchant's transactions and are imposed pursuant to the rules.
- (4) If "Interchange +" or "Interchange ++" is selected in the Agreement, expenses to be reimbursed according to Section 1 (2) of the **General Terms and Conditions** shall particularly be in addition Interchange Fees which EVO has to pay to the Issuers in connection with the provision of card acceptance services with regard to the Merchant. The amount of the Interchange Fees to be paid in each case shall be based on the criteria stipulated by the Card Organizations, as amended. These criteria include for example, the registered office of the Card Issuer and the Merchant's registered office and business model, the security procedures used and the Payment Card used in each case. The Card Organizations may from time to time amend the amount of the Interchange Fees and/or the criteria relevant to their calculation. EVO shall inform the Merchant of the currently valid Interchange Fees per email.
- (5) If "Interchange ++" is selected in the Agreement, expenses to be reimbursed according to Section 1 (2) of the **General Terms and Conditions** shall particularly be in addition Transaction Processing and Administration Fees (Scheme Fees) which EVO has to pay to the Card Organizations in connection with the provision of card acceptance services with regard to the Merchant. The amount of the Transaction Processing and Administration Fees (Scheme Fees) to be paid in each case shall be based on the criteria stipulated by the Card Organizations, as amended. These criteria include for example, the registered office of the Card Issuer, the Merchant's registered office, and the Payment Card used in each case. The Card Organizations may from time to time amend the amount of the Transaction Processing and Administration Fees and/or the criteria relevant to their calculation. EVO shall inform the Merchant of the currently valid Transaction Processing and Administration Fees per email.

## 5 Lien / Retention of Securities

Irrespective of any statutory securities or securities provided elsewhere in the Agreement, in order to secure all existing and future claims (including conditional and temporary claims) of EVO against the Merchant resulting from the Agreement, in particular pecuniary claims from chargebacks including potential Fines and Penalties of the Card Organizations, the Parties agree as follows:

- (1) The Merchant herewith pledges to EVO any payment claims that the Merchant has or will have against EVO pursuant to Sections 11. EVO accepts this pledge.
- (2) In addition EVO retains for a period of six (6) months ("Retention Period") the percentage set out in the Agreement or its Annexes of the total volume of Payment Card transactions which is determined on the basis of the card transaction data submitted within the respective settlement period less possible chargebacks and credits ("Percental Security Retention"). EVO usually reviews the total amount of the Percental Security Re-

tention and possible extraordinary retentions (see below) ("Total Security Retention") on a weekly basis in connection with the payments to the Merchant and assesses the extent of the security risk.

In case that the Total Security Retention exceeds the estimated security requirement by more than ten percent (10 %), EVO shall pay out the exceeding amount to the Merchant. The Security Requirement will be estimated by EVO based on the previous chargeback rates and their anticipated future development as well as any Fines and Penalties already imposed or potentially to be expected (cf. Section 5(5) below). Should the Security Requirement exceed the Total Security Retention then EVO shall be entitled at its reasonable discretion to compensate the increased Security Requirement by making an extraordinary retention at one of the following settlement dates, by changing the level of the Percental Security Retention for the future or by reasonably extending the Retention Period. The Security Requirement shall particularly be deemed increased if

- (a) the chargeback rate of the Merchant exceeds the threshold values set out in Sections 12(6) or 12(8), or in comparison to the preceding month has increased by more than fifty percent (50 %);
  - (b) the Merchant's turnover has significantly decreased;
  - (c) the Agreement or any of the services provided in its Annexes has been terminated by the Merchant.
- (3) Upon expiration of the Retention Period the retained amount shall be paid out to the Merchant, unless otherwise provided hereinafter.
  - (4) EVO shall be entitled to satisfy due claims against the Merchant by setting off such claims against retained security amounts if and in as far as settlement by setting such claims off against payment claims of the Merchant is not possible.
  - (5) If it has to be assumed that demonstrable breaches of contract by the Merchant will result in Fines and Penalties to be borne by EVO, EVO may demand an advance compensation payment from the Merchant in the amount of the prospective Fines and Penalties.
  - (6) After termination of services hereunder securities retained for such services shall remain with EVO for further nine (9) months in order to secure reclaims resulting from chargebacks. After nine (9) months the remaining balance shall be transferred to an account denominated by the Merchant to EVO and a statement shall be rendered. If it has to be assumed that demonstrable breaches of contract by the Merchant will result in Fines and Penalties to be borne by EVO, EVO may withhold the remaining balance for up to twelve (12) months after termination of the respective services.
  - (7) The Merchant shall immediately review the statement rendered pursuant to Section 5(6) and notify EVO of any possible objections without undue delay, however not later than within six (6) weeks upon issuing of the respective statement. Timely dispatch of the objections is sufficient to comply with this time limit. Upon expiration of the time limit the statement shall be deemed approved. EVO shall expressly indicate this consequence in the statement. The Merchant may request a correction of the statement even after expiration of the time limit. In this event, however, it must provide evidence that the statement was incorrect or incomplete.
  - (8) Claims by the Merchant for the release of the retained security must be submitted in writing to EVO within a preclusion period of six (6) months after expiry of the six-week time limit according to Section 5(7). Any claims raised thereafter shall be excluded. This Section 5(8) shall not apply to claims whose existence is the subject of negotiations entered into by the Parties before the expiry of the six months' time limit.

## 6 Compliance with PCI-DSS, SDP, AIS, and PCI Certification

- (1) Throughout the complete duration of the services to be provided according to these **Service-Related Terms and Conditions** the Merchant shall be obliged to comply in full ("PCI Conformity") with the rules
  - > of the Payment Card Industry Data Security Standard (PCI DSS),
  - > of the Mastercard Side Data Protection (SDP) program, and
  - > the Visa Account Information Security (AIS) program that are valid when the Agreement comes into force or that are amended where applicable in future in accordance with Section 17 of the **General Terms and Conditions**. The Merchant shall comply with these rules in particular when storing, processing and transmitting card data. In the event that the Merchant does not store, process and/or transmit card data itself, pursuant to the PCI DSS, the SDP and the AIS program it shall be obliged to comply with specific provisions of the PCI DSS, the SDP and the AIS program only.
- (2) After receiving the respective approval number the Merchant shall in particular delete all electronically stored data that are components of the approval enquiries and the approval replies, in particular all magnetic strip data, the personal identity number (PIN), encoded PINs (PIN block) and the card verification numbers (Card Verification Code (CVC2), Card Verification Value (CVV2)). The Merchant may not store any of the above data electronically at any time even if they are encoded.
- (3) The Merchant shall be obliged to have its PCI conformity checked by a PCI-SSC accredited auditor, to have a PCI certification carried out for this purpose, and to maintain conformity throughout the term for provision of the services to be provided according to these **Service-Related Terms and Conditions** in accordance with the requirements of the provisions of the PCI DSS, the SDP program and the AIS program, as may be amended from time to time, through appropriate recertification. The Merchant shall be obliged to make valid and current verifications of successful PCI certification, or of one currently being implemented, by an accredited auditor available to EVO on request without undue delay.
- (4) The Merchant can inspect the list of accredited auditors on the PCI-SSC website. On request, EVO shall make a list of accredited auditors available to the Merchant.
- (5) If the Merchant notices a possible compromising of card data (including breaches of data privacy) in its own systems or one that has occurred, or suspects or has knowledge of compromised card data at third parties that the Merchant has commissioned to store, process or transmit card data, or to handle card transactions in any other way, the Merchant shall notify EVO of this in writing without delay. The Merchant shall be obliged to cooperate with EVO to the full extent and to let EVO have all details of a possible compromising of card data, or of compromising that has occurred, and with regard to the elimination of security loopholes. The Merchant is furthermore obligated in the case of a potential or occurred compromising of card data (including breaches of data privacy) to also cooperate to full extent with the competent law enforcement authorities. In particular, immediately upon suspicion the Merchant shall make written information available to EVO and the competent law enforcement agencies on the number of data records affected, the type of card data affected, the time of the possible compromising, the time of detection, the measures that have already been carried out, and all further information that is regarded as relevant by EVO, the competent criminal prosecution authorities or the Card Organizations.
- (6) Irrespective of whether the Merchant stores, processes and/or transmits card data itself it shall ensure that all technical service providers and other subcontractors that it commissions in connection with the submission and handling of card transac-

tions comply with the requirements of 6(1) and 6(2) throughout the term for provision of the services according to these **Service-Related Terms and Conditions** and these technical service providers and other subcontractors are in possession of a PCI certification in accordance with the requirements of the PCI-DSS, as may be amended from time to time, and that they maintain this. The Merchant shall be obliged to make valid and current verifications of the PCI certification of these technical service providers and other subcontractors available to EVO on request without undue delay.

- (7) The Merchant shall ensure that all technical service providers and other subcontractors that it commissions in connection with the submission and handling of card transactions
  - (a) notify EVO as well in writing undue without delay of their suspicion or knowledge of compromised card data (including breaches of data privacy) in their systems
  - (b) immediately notify EVO of all details of a possible compromising of card data, or of compromising that has occurred (including breaches of data privacy), and with regard to its elimination and
  - (c) cooperate to full extent with EVO and the competent criminal prosecution authorities in case of a compromising of card data (including breaches of data privacy).
- (8) The Merchant shall only use payment applications as defined in the Payment Application Data Security Standard (PA-DSS) in connection with the submission and handling of card transactions if these payment applications conform to the provisions of the Payment Application Data Security Standard (PA-DSS) valid at the time the Agreement comes into effect or with the rules of the aforesaid Standard that are amended in future pursuant to Section 17 of the **General Terms and Conditions**.
- (9) EVO shall make information on the PCI-DSS, SDP program, AIS program, and PA-DSS available to the Merchant any time on request.

## 7 Inspections

Upon EVO's request the Merchant shall permit EVO, any third parties commissioned by EVO or the Card Organizations to inspect the Merchant's business premises to audit compliance of the Merchant with the Agreement, in particular if and to what extent the organizational and security measures taken by the Merchant are suitable in the light of industry standards to prevent any abuse and/or any other manipulation of any kind of the Merchant's systems. The Merchant shall assist in and facilitate such audits without limitation and at its own cost and shall procure that any such audits can also be conducted directly in relation to (and at the premises of) any technical service providers and any other subcontractors engaged by the Merchant in connection with the submission and processing of Payment Card transactions.

## 8 Additional Requirements Regarding Direct Mail Cardholder Solicitation Merchants Using Mastercard Payment Instruments

- (1) The Merchant acknowledges that the trademark 'Mastercard' and the corresponding logotype are the property of Mastercard International Incorporated (herein, "Mastercard, Inc."). The Merchant shall not infringe upon the mark or logo, nor otherwise use the mark or logo in such a manner as to create the impression that the Merchant's products or services are sponsored, produced, affiliated with, offered, or sold by Mastercard, Inc.
- (2) The Merchant shall not use the mark or logo on its stationery, letterhead, envelopes, or the like nor in its solicitation; provided, however, that the Merchant may use one of the mark or logo in close proximity to the payment or enrollment space in the solicitation in a size not to exceed 1¼ inches in horizontal length if a logo is employed, or, if a mark is used, in type not to

exceed the size of the type used in the major portion of the text on the same page; provided further that the legend, 'Accepted for Payment' must accompany the mark or logo used and must be the equivalent size of the mark or logo. In no case, however, shall the Merchant use any of the logo on the front or first page of its solicitation. One truthful statement that the Merchant is directing or limiting its offer to Mastercard cardholders may appear in the body of the solicitation, other than in close proximity to the payment or enrollment space, subject to the limitation that:

- (a) only the word mark may be used;
- (b) the word mark may not
  - (i) exceed in type size the size of any other type on the same page,
  - (ii) differ in color from the type used in the text (as differentiated from the titles) on the same page,
  - (iii) be as large or as prominent as the name of the Merchant,
  - (iv) be the first item appearing on any page, nor
  - (v) in any other way be the most prominent element of the page;
- (c) the Merchant's name and/or logo must appear prominently on the same page as the mark; and
- (d) the following disclaimer must appear in close proximity to the mark on the same page and in an equal size and type of print:

**'Mastercard International Incorporated is not affiliated in any way with [Merchant] and has not endorsed or sponsored this offer.'**

- (3) The Merchant further agrees to submit its first direct mail solicitation(s), prior to mailing, to the Mastercard Law Department, to be reviewed only for compliance with Mastercard, Inc.'s trademark rules and shall furthermore not distribute in any manner such solicitations until the Merchant shall have obtained Mastercard, Inc.'s written approval of the manner in which it uses Mastercard mark and logo on such solicitations. The Merchant shall likewise, upon request, submit to Mastercard, Inc. any amended solicitations prior to mailing.

## 9 Merchant's claims for reimbursement and damages

- (1) In case of an unauthorized payment transaction EVO shall not have any claims against the Merchant for reimbursement of its expenses. EVO undertakes to reimburse the amount of the payment transaction to the Merchant without delay and, insofar as the amount was debited to a payment account of the Merchant, to bring this payment account back to the level at which it would have been without the debit by the unauthorized payment. EVO has to fulfill this obligation at the latest by the end of the business day that follows the day on which EVO Bank was informed of the fact that the payment process is not authorized or EVO received knowledge of this fact by any other way. If EVO informed a responsible authority in writing of legitimate reasons for the suspicion that there is fraudulent behavior of the contracting company, EVO has to verify and to comply its obligation from sentence 2 without delay if the suspected fraud is not confirmed.
- (2) In case of payment orders that are not carried out or are carried out incorrectly or late or in case of unauthorized payments, together with any rights based on commissions under Section 667 BGB and unjust enrichment pursuant to Sections 812 ff. BGB the Merchant shall be entitled to damages only in accordance with the following provisions, Section 675y is waived:
  - (a) EVO shall be liable for its own negligence. If the merchant contributed to the creation of a loss through its negligent behaviour, the extent to which EVO and the Merchant are responsible for the loss shall be determined on the basis of the principles of contributory negligence.
  - (b) EVO shall not be responsible for the negligence of agencies used by EVO as intermediaries. In these cases EVO's

liability shall be limited to the careful selection and instruction of the first intermediate agency ("weitergeleiteter Auftrag").

- (c) Claims for damages by the Merchant shall be limited to the amount of the payment plus the charges billed by EVO and interest. Insofar as consequential damages are claimed, the claim shall be limited to a maximum of EUR 12,500.00 per payment transaction. This limit shall not apply in case of intention or gross negligence on the part of EVO and for risks that EVO assumed specifically.
- (3) EVO's liability under Section 9(2) on payment transactions that the Merchant triggered is excluded if EVO proves to the Merchant that the payment was received on time and without deduction by the payment service provider of the payee.
- (4) The Merchant's claims under Sections 9(1) and 9(2) and objections by the Merchant to EVO in case of payment orders that are not carried out or are carried out incorrectly or late or in case of unauthorized payment transactions are excluded unless the Merchant notifies EVO of an unauthorized or incorrectly carried out payment transaction no later than six (6) months after the date on which such payment is debited. The time limit shall only commence if EVO informed the Merchant of the debit entry of the payment transaction in accordance with the agreed method no later than one month after the debit entry, otherwise the start of the time limit shall be the date of notification.
- (5) The Merchant's claims under Sections 9(1) and 9(2) are excluded if the circumstances that establish a claim
  - (a) are based on abnormal and unforeseeable circumstances that are beyond EVO's control and whose consequences could not have been avoided despite all efforts to the contrary, or
  - (b) were caused by EVO on the basis of a legal obligation.

## 10 Termination

- (1) The right of the Merchant to terminate at any time pursuant to Section 675h (1) BGB is excluded.
- (2) Irrespective of any statutory termination rights or termination rights provided elsewhere in this Agreement, the following circumstances shall entitle EVO to terminate the Agreement for cause in accordance with Section 14(6)(f) of the **General Terms and Conditions**:
  - (a) If the Merchant moves its registered office or the office from which the Merchant is running its business to a country outside the European Economic Area (EEA); or
  - (b) If the Merchant has accepted Payment Cards for any goods or services referred to in Section 1(5).
- (3) EVO may limit, suspend or terminate these **Service-Related Terms and Conditions** and the services provided hereunder if and to the extent so required by any of the Card Organizations or in case of a fundamental breach of the Rules.
- (4) After termination of any services according to these **Service-Related Terms and Conditions** the Merchant shall not be entitled to continue to use in any form whatsoever the trademark-protected terms "Mastercard" or "Visa", "Visa Electron" or "Maestro" in connection with such terminated services, provided it is not otherwise entitled to use them.

## 11 Credits and Disbursement of Amounts for Payment

- (1) EVO shall be obliged to make the amounts for payment resulting from the transmitted card sales data available to the Merchant without delay after they are credited to EVO's bank account. EVO shall administer the payment amounts received on trust for the Merchant as trustor in one or more of EVO's open collective escrow accounts maintained at a credit institution as defined in Section 17(1), sentence 2, no. 1 lit. b of the Payment Services Supervisory Act ("Zahlungsdienstenaufsichtsgesetz – ZAG"). This shall not affect Section 4 of the **Service-Related**

**Terms and Conditions Card Acceptance (CP)** and Section 7 of the **Service-Related Terms and Conditions Card Acceptance (CNP)**.

- (2) EVO may deduct the agreed charges (e.g. disagio), the expenses for reimbursement (e.g. bank charges for foreign transfers, transfers to foreign currency accounts) and any VAT that accrues on the payments and charges from the amounts for payment referred to in Section 11(1) before they are made available to the Merchant.
- (3) EVO will transfer the amounts for payment made available to the Merchant in accordance with Section 11(1) to the account shown in the Agreement or its Annexes. EVO shall commence the implementation of the transfer on the date that the Merchant notifies to EVO. Pursuant to Section 675s(1), sentence 1, second part German Civil Code (BGB), a time limit of one bank working days is agreed for the implementation of credit transfers, if the credit transfer is made in Euro. Notwithstanding sentence 3, pursuant to 675s (1) sentence 2 German Civil Code (BGB) a time limit of four (4) bank working days after the time applicable in accordance with sentence 2 is agreed for the implementation of credit transfers, if the relevant credit transfer is made in the currency of a country inside the European Economic Area other than Euro. Credit transfers in the currency of a country outside the European Economic Area and credit transfers outside the European Economic Area will be implemented as soon as possible. Amounts below the payout limit set by the Merchant will be accumulated and shall not be transferred until this limit is exceeded, but no later than the end of respective services that are provided in accordance with these **Service-Related Terms and Conditions**.
- (4) In deviation from Section 667 German Civil Code (BGB) EVO is not obliged to transfer to the Merchant any benefits that result from the amounts made available to the Merchant in accordance with Section 11(1) being held by EVO until the transfer to the Merchant (e.g. interest that EVO generates from these amounts).
- (5) The Merchant's claim as defined in Section 11(3) must be submitted in writing to EVO within an exclusion period of six (6) months after expiry of the six-week time limit under Section 1(3) of the **General Terms and Conditions**. Subsequent claims are excluded. This Section 11(5) shall not apply to claims whose existence was the subject of negotiations by the parties before expiry of the six-month time limit.

## 12 Chargebacks, Amount of Fraud

- (1) All credits and payments by EVO to the Merchant are made under reserve of chargeback. A chargeback shall take place in accordance with Section 5(1) of the **Service-Related Terms and Conditions Card Acceptance (CP)** or Sections 6(1) to 6(2) of the **Service-Related Terms and Conditions Card Acceptance (CNP)**.
- (2) Insofar as EVO has made amounts for payment available to the Merchant in accordance with Section 11(1) but has not yet paid them out to the Merchant, EVO shall not be obliged to pay them out if this would create a claim by EVO for reimbursement or for setting off pursuant to Section 5(1) of the **Service-Related Terms and Conditions Card Acceptance (CP)** or Sections 6(1) to 6(2) of the **Service-Related Terms and Conditions Card Acceptance (CNP)**. EVO shall charge the credits issued back to the Merchant.
- (3) Before an amount for payment is charged back to EVO the Card Issuer may demand in the framework of a so-called Retrieval Request that EVO requests evidence from the Merchant that the Cardholder initiated the transaction and to forward this to the Card Issuer. The Merchant shall reply to each Retrieval Request within the time limit set by EVO.
- (4) EVO shall inform the Merchant by email of chargebacks of amounts for payment and of Retrieval Requests received by

EVO. In addition, EVO shall have details on this for request through the so-called Chargeback Information System (hereinafter: "CIS"). The Merchant can access the CIS through its BIS portal.

- (5) The Merchant shall carry out the complete communication with EVO on chargebacks of amounts paid and on Retrieval Requests through the CIS. Alternatively, the Merchant can carry out this communication by transmitting Excel files in the format stipulated by EVO. EVO shall inform the Merchant on request of these formats. EVO shall forward the objections to the chargebacks of amounts for payment submitted by the Merchant to the corresponding Card Issuers.
- (6) Should the proportion of chargebacks from card transactions by means of Mastercard cards with the Merchant referred to one single narrative over a period of one (1) calendar month exceed one percent (1 %) of the number of transactions in the previous calendar month (debits only, no credits) and reach the number of at least one hundred (100) chargebacks, EVO may report the Merchant to Mastercard by means of a so-called Chargeback Monitored Merchant Report ("CMM Report").
- (7) Should the proportion of chargebacks from card transactions by means of Mastercard cards with the Merchant referred to one single narrative in each of two (2) consecutive calendar months reach at least one and a half percent (1.5 %) of the number of transactions in each previous calendar month (debits only, no credits) and the number of at least one hundred (100) chargebacks, EVO may report the Merchant to Mastercard by means of a so-called Excessive Chargeback Merchant Report ("ECM Report") stating the proportion of chargebacks.
- (8) Should the proportion of chargebacks from international card transactions by means of Visa credit cards with the Merchant referred to one single narrative within a period of one (1) calendar month exceed one percent (1 %) of the number of such transactions (debits only, no credits) and the number of one hundred (100) chargebacks, EVO may notify the Merchant thereof.
- (9) Should the proportion of chargebacks from card transactions by means of Visa cards for payment of gambling with the Merchant referred to one single narrative within a period of one (1) calendar month reach five percent (5 %) of the number of transactions in the corresponding calendar month (debits only, no credits) and the number of twenty-five (25) chargebacks, EVO may notify the Merchant monthly to Visa.
- (10) The calculation of the chargeback proportion may also include such transactions / sales where the Merchant issues a credit to the Cardholder before a chargeback is carried out in order to avoid such chargeback and thereby not exceed the threshold values set out in Sections 12(6), 12(7) or 0(8) (circumvention). The situation that a credit is issued after EVO has received a query from the Issuer with regard to a transaction and forwarded such query to the Merchant for clarification shall always be deemed circumvention.
- (11) In the event that a chargeback has been permissibly effected the Merchant shall refer directly to the Cardholder in order to assert its payment claim and for clarification of possible objections and defenses.
- (12) Should the proportion of card transactions by means of Mastercard cards that were notified by the Issuers as fraudulent (amount of fraud) referred to one single narrative over a period of one (1) calendar month reach or exceed three percent (3 %) of the number of transactions in the corresponding calendar month and reach the number of three (3) card transactions (debits only, no credits) and an accumulated transaction volume of at least three thousand US dollars (USD 3000), or the corresponding current value, EVO may notify the Merchant thereof.
- (13) Should the proportion of card transactions by means of Visa credit cards that were notified by Issuers in the Visa European

- territory as fraudulent (amount of fraud) referred to one single narrative over a period of one (1) calendar month reach or exceed seven and a half percent (7.5 %) of the volume of card transactions in the corresponding calendar month and the number of fifteen (15) card transactions (debits only, no credits) and an accumulated transaction volume of at least fifteen thousand US dollars (USD 15,000), or the corresponding current value, EVO may notify the Merchant thereof.
- (14) Should the proportion of card transactions by means of Visa credit cards that were notified by Card Issuers outside the Visa European territory as fraudulent (amount of fraud) referred to one single narrative over a period of one (1) calendar month reach two and a half percent (2.5 %) of the volume of transactions in the corresponding calendar month and the number of twenty-five (25) card transactions (debits only, no credits) and an accumulated transaction volume of at least twenty-five thousand US dollars (USD 25,000), or exceed the corresponding current value, EVO may notify the Merchant thereof.

- (15) The Merchant is obliged to take countermeasures without undue delay if the chargeback, credit and/or fraud volume approaches the threshold values referred to in Sections 0(6) to (14).
- (16) Should the Merchant reach or exceed the threshold values referred to in Sections 12(6) to (14) for chargeback, credits and/or fraudulent transactions, the Card Organizations may demand punitive measures, among other things. These may include, for example, possible measures to prevent or avoid fraud, or the implementation of monitoring measures. EVO shall inform the Merchant of such measures demanded by the Card Organizations. The Merchant shall be obliged to realize the Card Organizations' punitive measures without delay in the framework of the period stipulated by the Card Organizations, to cooperate with EVO and the Card Organizations during the realization, and in particular to notify EVO promptly of the conclusion of the respective measures.

## b. Remote Business, Card-not-present (CNP)

### 1 Scope

These **Service-Related Terms and Conditions** set out the additional terms applicable to the provision of services for Card acceptance in e-commerce and MOTO business (CNP Business).

### 2 General Risk Warning

- (1) The Parties are aware that the admission of card payments through the internet (e-commerce) and/or by mail, telephone, or fax (mail order/telephone order – "MOTO") involves extra high abuse risks as there is no personal contact with the Customer and the Payment Card is not physically present, so that, as it is customary in the POS business, due to the procedure the signature on the Payment Card cannot be compared with the one on the debit voucher and the holder of the card cannot be identified by means of an existing photograph on the Payment Card. Therefore, the admission of such payments is economically justifiable only if all appropriate means to prevent abuse are applied. In this regard the responsibility lies primarily with the Merchant since he has direct contact with the Customer and is able to decide whether the payment by Payment Card should be admitted in e-commerce/MOTO in the circumstances of the individual order and in face of the inherent abuse risk.
- (2) According to the worldwide Rules of the Card Organizations, a chargeback of card payments in e-commerce/MOTO is effected in all cases where the Cardholder disputes that he issued the instruction to debit his card account. In the event of such chargeback EVO has to pay the collected amount back to the Issuer even if the Merchant is able to provide other evidence of the orderer's identity.
- (3) The risk that Cardholders dispute the payment instruction described above remains even if measures against abuse are taken. It leads to substantially higher payment losses than in cases of card payments in the POS business. The Merchant may opt for EVO to take over this specific risk against an additional charge in as far as the payment loss is not the Merchant's fault (such option herein being referred to as "Card Acceptance with Payment Promise also in Case of Disputed Instruction"). However, the Merchant may alternatively assume this risk himself and pay a respective lower remuneration (such option herein being referred to as "Card Acceptance without Payment Promise in Case of Disputed Instruction"). Should Payment Card acceptance services be ordered for e-commerce

- as well as for mail order, the Merchant will be assigned separate merchant's numbers for each such distribution channel.
- (4) Even if the Merchant selects the option "Card Acceptance without Payment Promise in Case of Disputed Instruction", it has the technical possibility to reduce the risk described above that it assumed by selecting that option if it uses the "3-D Secure" security procedure. 3-D Secure is a special security procedure supported by Visa and Mastercard for the authentication of Cardholders when making payments in the Internet. In case of Visa this consists of the component "Verified by Visa" and in case of Mastercard and Maestro of the component "Mastercard SecureCode". With 3-D Secure the Merchant requests the Issuer prior to the approval of the transaction to check the identity of the Cardholder by means of the card data of the Payment Card used for payment. The risk of chargebacks for the Merchant's account can be reduced through the use of 3-D Secure if Cardholders generally dispute the use of the Payment Card in the context of a 3-D Secure transaction. However, it has to be pointed out that the Merchant's chargeback risk is assumed by the Issuer only in those cases of instructions disputed by Cardholders that are expressly in accordance with the regulations. 3-D Secure does not cover chargebacks made for any other reasons.

### 3 Additional Terms for Acceptance of Payment Cards in the CNP Business

- (1) The Merchant may not set any minimum or maximum amount for the use of Payment Cards.
- (2) In the event that the Cardholder provides contradictory or incorrect details in connection with the order transaction and the request for card data and this is visible for the Merchant using due care, the acceptance of the Payment Card is prohibited. The same applies in the event that the order itself is unusual (e. g., because on two consecutive calendar days the same purchaser orders more than five (5) identical items or services separately or by several orders together with the respective order; or uses more than one card number) or if there are otherwise suspicious facts indicating an abuse of card data.
- (3) **EVO shall not be obliged to process card transactions if the Merchant accepts a Payment Card for payment of services that are related to gambling as defined by the laws applicable to the Merchant, to the Cardholder or to the Merchant's services (at present Merchant Category Code (MCC) 7995) and the card that is used for this service was issued in the United States of America.** This shall also apply

if the service related to gambling is not illegal under the applicable laws in each case. Section 1(5)(d) of the **Service-Related Terms and Conditions Card Acceptance General** shall remain unaffected. A service shall in particular be deemed to be related to gambling if it is related to any of the following transactions, even if these transactions are carried out through the Internet: placing bets, buying lottery tickets and buying chips or other money units that can be used in connection with gambling that is offered by the operators of gambling, betting and lotteries. In as far as there is no obligation to pay in accordance with sentence 1, EVO shall be entitled but not obliged to exclude corresponding card transactions from processing. EVO shall inform the Merchant without undue delay of this exclusion. In case EVO processes card transactions without being obliged to do so EVO's right to exclude corresponding card transactions from processing in the future shall remain unaffected.

- (4) Irrespective of Section 17 of the **General Terms and Conditions** EVO shall be entitled to change or amend the provisions in Sections 3(1) to (3) with two (2) weeks' written notice to the Merchant if EVO so deems necessary due to possible abuse or if such changes become necessary as a result of the Rules to the extent they pertain to the acceptance of Payment Cards.

#### 4 Settlement Principles

- (1) The Merchant may submit to EVO payment claims due against Cardholders for supplies of goods and services by the Merchant that were created during the term of the services for Card acceptance for E-Commerce or MOTO, respectively, by using a Payment Card in the CNP business without presentation of the Payment Card.
- (2) All Payment Card transactions shall be completely settled by using a virtual POS terminal previously approved by EVO ("Virtual POS Terminal") and by indicating the respective merchant category assigned by EVO to the Merchant (Merchant Category Code, see also Section 2 of the **Service-Related Terms and Conditions Card Acceptance General**).
- (3) In case of any e-commerce/MOTO order submitted without presentation of the Payment Card, the Merchant shall electronically record, and – except for the card verification number or card verification value (CVC2 or CVV2) – store at least for the required preservation period (Section 9(3) below) on special receipts prior to forwarding transaction data to EVO
- (a) the name and address of the Cardholder and, if deviating, the address for the invoice and deliveries,
  - (b) the card number and validity of the Payment Card, as well as the date of the transaction,
  - (c) the invoiced amount,
  - (d) the card verification number or card verification value (in particular Card Verification Code (CVC2) in case of Mastercard and Card Verification Value (CVV2) in case of Visa) unless another procedure has been agreed. The Merchant will transmit to EVO the information specified in Sub-Paragraphs 4(3)(b), (c) and (d) with each submitted transaction and the information specified in Sub-Paragraph (a) upon EVO's request.
- (4) The Merchant shall use a strong customer authentication in the definition of Section 1(24) of the Payment Services Supervisory Act ("Zahlungsdienstenaufsichtsgesetz – ZAG)". In alternative, the Merchant may use another authentication procedure accepted by EVO, whereas the use of alternative authentication procedures comes into consideration for categories of transactions with low risks that have been identified as such in advance or for transactions executed by means of low-value payment instruments in the definition of Section 675i (1) sentence 2 German Civil Code (BGB). In addition, the Merchant must use 3-D Secure for all Maestro transactions so that Maestro to be accepted. When using 3-D Secure, the Merchant shall forward all transaction data to EVO in consideration of the requirements known to it (e.g. prescribed use of logos, etc.) as

well as the provisions in Section 7 regarding the use of 3-D Secure, via a certified platform that is approved by EVO.

- (5) The Merchant shall not submit Payment Card transactions in the circumstances set out in Sections 1(5) or 1(6) of the **Service-Related Terms and Conditions Card Acceptance General** or in Section 3(2) of these **Service-Related Terms and Conditions Card Acceptance (CNP)**.
- (6) The Merchant undertakes to notify EVO immediately of any change in the security classification of e-commerce transactions (SSL-coded, etc.) with Cardholders. Should such change not be notified to EVO due to the Merchant's fault, the Merchant shall fully indemnify EVO and hold EVO harmless from and against any Fines and Penalties imposed by the Card Organizations and reimburse EVO for any such Fines and Penalties that were required to be paid by EVO. On request EVO will make available to the Merchant at any time a current specification of the Fines and Penalties and of the amount of such Fines and Penalties that can be imposed by the Card Organizations in the aforementioned circumstances.
- (7) The Merchant shall provide the Cardholder with a written and/or electronic transaction receipt after the Payment Card transaction has been completed. In any case this receipt has to include a clear transaction identification as well as the Merchant's URL.
- (8) The Merchant shall render credits from Payment Card transactions that were settled via a Virtual POS Terminal only by electronic credit and by using the Virtual POS Terminal and only up to the amount of the previously executed debit. Any other processing is not permissible. In case of a credit note EVO will commission the Issuer on behalf of the Merchant to credit the amount of the card credit voucher to the Cardholder; the Merchant herewith authorizes EVO accordingly. If payment has already been made, EVO is entitled to charge back.
- (9) The Merchant undertakes not to submit for settlement any Payment Card transactions from the e-commerce or MOTO business through other merchant's numbers (e. g., in the card-present business). Transactions within a particular distribution channel have to be settled without exception by using the respective merchant's number allocated by EVO.
- (10) Irrespective of Section 17 of the **"General Terms and Conditions"** EVO shall be entitled to change or amend the provisions set out in Sections 4(1) to (1) with two (2) weeks' written notice to the Merchant if EVO so deems necessary due to possible abuse or if such changes become necessary as a result of the Rules to the extent they pertain to the acceptance of Payment Cards.

#### 5 Approval of Card Transactions

- (1) Each Payment Card transaction always requires an online approval by EVO regardless of its amount.
- (2) The approval number confirms that at the time of approval, the Payment Card is not subject to restrictions within the scope of the Agreement, the Payment Card is not declared invalid by a stop list of the Card Organizations or otherwise and that the transaction amount does not exceed the transaction limit. The approval number does not constitute an undertaking of EVO to pay. In particular EVO remains entitled to charge back a Card transaction in as far as the requirements for a chargeback are satisfied.
- (3) The online approval is always issued or rejected automatically; in the event of rejection an error notification appears.
- (4) The processing of Card transactions is not possible in case of a system malfunction. No manual or other processing method is permitted.

## 6 Chargeback Rights

- (1) The Merchant shall repay amounts to EVO that were paid out to it by EVO if they are charged back to EVO (e.g. because of a right of reimbursement of the Cardholder under Section 675x BGB). In addition, EVO may set off reimbursement claims under sentence 1 against its own payment obligations to the Merchant (irrespective of the agreement with the Merchant that gives rise to them). Sentences 1 and 2 apply analogously to payment amounts that were paid out to the Merchant although they were not credited to EVO's bank account.
- (2) The chargeback claim and the set-off claim according to Section 6(1) shall not apply if the Merchant has selected the option "Card Acceptance with Payment Promise also in Case of Disputed Instruction" and all the conditions referred to below in Sub-Paragraphs (a) to (q) are found:
  - (a) the acceptance of the payment card as a means of payment was permissible under the preconditions for acceptance (Section 1 of the **Service-Related Terms and Conditions Card Acceptance General** and Section 3 of these **Service-Related Terms and Conditions Card Acceptance (CNP)**);
  - (b) the settlement principles under Section 4 were complied with;
  - (c) the Merchant has an e-commerce or MOTO order from the Cardholder that shows that the latter wishes to pay using the Payment Card and the goods or services concerned were not paid for already in another way;
  - (d) the transaction date is within the term of validity of the Payment Card used;
  - (e) the card transaction was approved by EVO online; in case of e-commerce or MOTO transactions the issue of the online approval (see Section 5) may also be made dependent on identification measures, such as, for example, transmission of a copy of a valid identity card with photo;
  - (f) there are no more than seven (7) calendar days between the request for approval (date of the online approval, see Section 5) and the date of transmission of the transaction data to EVO (recording);
  - (g) the total amount of the goods sold or services provided that would have settled in a single amount in a cash transaction, is not spread over several transactions;
  - (h) the transaction data were transmitted to EVO correctly and completely and within three (3) days of the date of implementation (day on which the goods are sold or shipped or on which the service is provided);
  - (i) the transaction is in one of the transaction currencies selected in the Agreement or its Annexes;
  - (j) the Merchant has informed the Cardholder in full and correctly of the Merchant's full name and address, including Internet address and email address, and has shown the Cardholder clearly that it is the responsible contract party;
  - (k) the Merchant has provided the Cardholder with a complete, correct and legible description of the goods and services offered or has made this easily accessible;
  - (l) the Merchant has made its standard terms and conditions easily accessible to the Cardholder in such a way that the Cardholder can take note of all material terms and conditions, including a right to revoke or return, of export and age restrictions, of other restrictions with regard to the use or the delivery and of all other important facts that the Cardholder requires to be able to make an appropriate decision on the purchase of the goods and services concerned;
  - (m) the merchant has complied with all statutory provisions on distance sales and in e-commerce that are applicable to the Merchant's card transactions in a given case;
  - (n) the Merchant has issued a confirmation of an order and/or invoice in writing or via email for the payment of the goods or services with the information that the cardholder's card account will be debited; the card number,

- the card test number and the period of validity may not appear in this confirmation for security reasons;
- (o) the Cardholder has not demanded that the debit on his card account held by the Card Issuer be reversed or refused payment and within six (6) months of the debit of his card account or after the date on which the Merchant's goods or services were delivered to him or provided, or should have been delivered or provided has not declared in written form as follows:
    - (i) that the Merchant's goods or services have not been provided at all or not at the delivery address or at the agreed time; in case of a service due to the fact that the Merchant did not want or was not able to render the service;
    - (ii) that the Merchant's goods or services did not correspond to a written description existing at the time of purchase and that the Cardholder has returned the goods to the Merchant or terminated the service, or
    - (iii) that a delivery was defective or damaged.
 unless the Merchant provides evidence of due performance in the cases referred to in Sub-Paragraphs (i) to (iii) within fourteen (14) days after a corresponding demand by EVO
  - (p) the Merchant submits the complete order documentation in accordance with Section 9(1) and this shows that the purchaser (even if his identity can no longer be established) has issued an instruction that the account concerned be debited, unless the Merchant knew, or should have known had it exercised due care, that the instruction did not come from the Cardholder;
  - (q) the debit by EVO with an amount of payment in accordance with sentence 1, second alternative, was not carried out because of a claim for reimbursement by the Cardholder pursuant to Section 675x BGB.

- (3) Irrespective of Section 17 of the **General Terms and Conditions**, EVO shall be entitled to change or amend the provisions in Sub-Paragraphs (a) to (q) with two (2) weeks' written notice to the Merchant if EVO so deems necessary due to possible abuse or if such changes become necessary as a result of the Rules to the extent they pertain to the acceptance of Payment Cards.

## 7 Conditions for the use of 3-D Secure

The provisions in this Section 7 apply to the acceptance of Payment Cards only if and in as far as the Merchant submits card transactions using 3-D Secure (3-D Secure transactions).

- (1) If the Merchant wishes to use its own merchant plug in (MPI), it shall only use it if the MPI was certified and approved by the Card Organizations in accordance with the applicable requirements of the Card Organizations, in particular to run through the certification and test procedures required by the Card Organizations. Throughout the term of provision of the services according to these **Service-Related Terms and Conditions Card Acceptance (CNP)**, the Merchant has to maintain a current certification in accordance with the regulations of the Card Organizations as amended from time to time.
- (2) If the Merchant does not wish to use an MPI from EVO or its own MPI but an MPI from a third MPI provider, the Merchant shall ensure that this MPI provider runs through the certification and test procedures required by the Card Organizations. The Merchant shall ensure that this MPI provider uses only its MPI if it was certified and approved by the Card Organizations in accordance with the requirements of the Card Organizations as amended from time to time. Throughout the term for provision of the services according to these **Service-Related Terms and Conditions Card Acceptance (CNP)**, the third MPI provider has to maintain a current certification in accordance with the regulations of the Card Organizations as amended from time to time. If a third MPI provider is engaged the Merchant shall be liable for the non-compliance with the above require-

ments by the external MPI provider in the same way as for its own breach of obligation to EVO.

- (3) The Merchant shall be obliged to make valid and current verifications of the successful respective certification and approval by the Card Organizations of its own MPI and the MPI of a third MPI provider engaged by it as defined in Sections 7(1) and (2) to EVO on request without undue delay.
- (4) In the framework of the 3-D Secure procedure, the Merchant has to submit to EVO the respective authentication transaction and the corresponding authorization transaction without exception by using the same merchant's number allocated by EVO.
- (5) Irrespective of either Party's termination rights under the Agreement EVO shall be entitled at any time to block the Merchant for 3-D Secure transactions if and as far as the Merchant or any MPI provider engaged by the Merchant culpably violates any material provision of the Agreement, the **Service-Related Terms and Conditions Card Acceptance General** or the **Service-Related Terms and Conditions Card Acceptance (CP)** or if and as far as such blocking is necessary to prevent risk to EVO's platform, the Card Organizations or other merchants. EVO shall be entitled in particular to block the Merchant for 3-D Secure transactions if and in as far as there is no current certification of the Card Organizations for the MPI used by the Merchant or an MPI of an MPI provider engaged by the Merchant or if this certification is not proven by making valid and current verifications to EVO on request without undue delay.
- (6) Section 7(5) shall apply accordingly in as far as a Card Organization demands that EVO discontinues 3-D Secure.
- (7) EVO shall inform the Merchant without undue delay of any blocking of 3-D Secure transactions according to Sections 7(5) or (6). The Merchant may not submit any Maestro card transactions for processing for as long as the blocking of 3-D Secure transactions persists.

## 8 E-Commerce

- (1) The Merchant shall ensure that the card payment information, including card number, validity and card control number, if any, may only be transmitted in encrypted form and only by way of the procedure admitted by EVO in each single case.
- (2) The Merchant's offer of its goods and services shall avoid the impression that the Card Organizations are the offerer or the dispatcher of the goods or services.
- (3) The Merchant undertakes also vis-à-vis EVO to comply with all statutory provisions, in particular concerning distance selling contracts, including contracts entered into in the e-commerce.
- (4) Any internet addresses of the Merchant other than the ones specified in the Agreement or its Annexes which are used for the distribution of the Merchant's goods and services have to be notified to EVO without delay. These internet addresses may only be used for the distribution of the Merchant's goods and services after examination and permission by EVO.
- (5) The Merchant shall ensure that it is clearly pointed out to the Cardholder at the payment operation which Internet address will appear on the settlement. Should this address be different from the one having been used for the order the Merchant shall ensure that a note, a link or other reference to the order address will be set up on the page of the settlement address.
- (6) The Merchant shall provide the following particulars in clear form on a website that may be reached via the addresses specified in the Agreement or its Annexes:
  - (a) the complete name and address, head office, commercial registry number, place of the commercial registry and all other information that has to be provided on business letters according to the statutory provisions in the country of the Merchant's place of business;

- (b) the general terms and conditions of business, above all terms of delivery, provisions concerning rights to revoke and/or return as well as on the processing of credits;
- (c) any and all remuneration to be paid for the Merchant's goods and services, including shipping, packaging and taxes;
- (d) in the event that the Merchant ships abroad, the possible countries of destination and all special delivery terms and conditions, if any;
- (e) at the latest at the time of order, the currency in which the Merchant's goods and services will be settled;
- (f) an indication of the customer service together with its full address including all existing means of communication in particular as well that the Merchant will react (e.g. by email or telephone) to all customer enquiries within two (2) working days ;
- (g) the principles applied by the Merchant with regard to the use of customer data and the processing of card data;
- (h) available security procedures;
- (i) complete description of the products and services offered by the Merchant;
- (j) acceptance logos of the Card Organizations to show that payment with the accepted card types is possible;
- (k) highly visibly and easily accessible indication of the date of billing to its customers and the time at which the contract is fulfilled;
- (l) indication that the Cardholder should keep a copy of the transaction receipt in an accessible place. The Merchant must show clearly the URL through which the customer's order took place on the transaction receipt, as well as the clear transaction identity number of the respective card transaction;
- (m) information on the date the Cardholder's account is debited;
- (n) query of the customer's billing/delivery address;
- (o) information on the narrative used by the Merchant on the card account for the Cardholder during each payment procedure and/or in the Merchant's General Terms and Conditions of Business.

- (7) The Merchant undertakes to
  - (a) indicate prices only in the transaction currencies agreed in the Agreement or its Annexes for settlement;
  - (b) set up simple possibilities of online termination for the Cardholder in the event of recurring provision of goods or services, in as far as a termination is possible according to the Merchant's terms and conditions or mandatory statutory provisions. Any procedure for online termination or cancellation shall be at least as simple and accessible as the procedure of the original registration;
  - (c) in the event of a trial use of the Merchant's goods or services, inform the Cardholder in due time when such trial use will end by clearly indicating the beginning of the payment obligation and the Cardholder's possibilities to terminate; and
  - (d) should the Merchant offer to its customers direct access to websites of other companies through links, expressly indicate when the Merchant's websites are left.

On request by the Merchant EVO shall make the acceptance logos available to the Merchant that the Merchant must show on its website and the specifications for use from the Card Organizations for implementing these logos on the website that the Merchant must comply with. It should be noted in particular that the logos for the use of 3-D Secure Procedures, for example, Mastercard SecureCode or Verified by Visa, are not by themselves sufficient to display acceptance.

- (8) Should the Merchant operate websites in languages other than German or English, it shall provide EVO with German or English translations of these websites and later amendments on request.
- (9) The Merchant is obligated to separate the transactions clearly from the online shop in order to make it easier for Cardholders

to recognize when they communicate with EVO and not the Merchant.

## 9 Documentation and Preservation Duties

- (1) The Merchant undertakes to preserve the following data or documents in electronic or written form with regard to each transaction submitted to EVO:
  - (a) the transaction number, currency and date;
  - (b) in case of e-commerce all additional data transmitted by the Cardholder except for the card control number
  - (c) in case of MOTO via mail or fax all documents transmitted by the Cardholder,
  - (d) in case of MOTO via telephone the date and time of the telephone call, the person having received the instruction to debit the Cardholder's card account and the subject matter of the order, but not the card control number.
- (2) The card control number shall – to the extent that it has been recorded – be deleted after the approval request. The preservation of any documents forwarded by the Cardholder on which the card control number is indicated is allowed.
- (3) The Merchant undertakes to preserve all documents and data mentioned in Section 9(1) for a period of at least eighteen (18) months after the submission of the transaction, in as far as a deletion is not required by law. All data and documents shall be made available to EVO for review anytime without delay upon request in written form or in a format readable by way of usual standard software. Any further statutory preservation duties of the Merchant shall remain unaffected.

## 10 Termination

- (1) Irrespective of any statutory termination rights or termination rights provided elsewhere in the Agreement, EVO shall have a special right to terminate the services set out in the Agreement or its Annexes with immediate effect if
  - (a) the proportion of chargebacks from Payment Card transactions with the Merchant by means of Mastercard cards and/or Maestro cards referred to one single narrative over an assessment period of two (2) consecutive calendar months in each case exceeds one percent (1 %) of the number of transactions in each previous calendar month (debits only, no credits) or two percent (2 %) of the total transaction amount (with regard to the calculation of the proportion supplementary reference is made to Section 12(10) of the **Service-Related Terms and Conditions Card Acceptance General**); during the first six (6) months of the provision of the relevant services this assessment period for Mastercard/Maestro shall be reduced to one (1) calendar month, and/or
  - (b) the proportion of chargebacks from Payment Card transactions with the Merchant by means of Visa cards re-

ferred to one single narrative over an assessment period of two (2) months exceeds one percent (1 %) of the number of transactions (debits only, no credits) or two percent (2 %) of the total transaction amount (with regard to the calculation of the proportion supplementary reference is made to Section 12(10) of the **Service-Related Terms and Conditions Card Acceptance General**); during the first six (6) months of the provision of the relevant services this assessment period for Visa shall be reduced to one (1) month, and/or

- (c) the proportion of chargebacks from Payment Card transactions with the Merchant by means of Visa cards referred to one single narrative exceeds two percent (2 %) of the number of transactions (debits only, no credits) within one (1) month (with regard to the calculation of the proportion supplementary reference is made to Section 12(10) of the **Service-Related Terms and Conditions Card Acceptance General**).
  - (d) A reason for termination shall not cease to apply if EVO temporarily waives the termination despite existing grounds for termination as specified in Section 10(1) lit. a-c – e. g. because of a positive forecast.
- (2) Irrespective of any statutory termination rights or termination rights provided elsewhere in the Agreement, the following circumstances entitle EVO to terminate the Agreement for cause in accordance with Section 14(6)(f) of the **General Terms and Conditions**:
    - (a) the Merchant does not disclose immediately to each Cardholder prior to the completion of the payment process the country in which the Merchant has its registered place of business; or
    - (b) the Merchant's website is not provided in at least one European language (e. g., English); or
    - (c) the Merchant does not clearly provide information about the contractual terms and conditions, in particular about the law applicable to the respective contracts as well as the transaction currency; or
    - (d) the Merchant has submitted Maestro card transactions without using the "Mastercard SecureCode" security procedure.
  - (3) If the Merchant has selected the option "Card Acceptance with Payment Promise also in Case of Disputed Instruction" EVO shall in addition be entitled to terminate the services set out in the Agreement or its Annexes for cause subject to a two (2) weeks' notice period if the amount of chargebacks which have been taken over by EVO and not been debited to the Merchant during the respective preceding month exceeds three percent (3%) of the total transaction amount (E-Commerce and MOTO combined) within the same period.

## c. Stationary Business, Card-present (CP)

### 1 Scope

These **Service-Related Terms and Conditions Card Acceptance (CP)** set out the additional terms applicable to the provision of services for Card acceptance in the Card-Present Business (POS or CP).

### 2 Service-Related Terms and Conditions in the POS Business

- (1) The Merchant may not set a minimum or maximum amount for the use of Payment Cards in the POS business. The Merchant may not refuse acceptance of a Payment Card (except corporate credit cards) if the Cardholder presented the Payment Card duly in accordance with the applicable terms for acceptance (in particular these **Service-Related Terms and**

**Conditions Card Acceptance (CP)**); in particular, the Merchant may only request a valid official photo identification to verify the identity if this is required according to Sections 7(1) and 7(2).

- (2) The Merchant may not accept Payment Cards in the POS business if the Cardholder is not present or the Payment Card is not physically presented ("Card-not-Present" transactions); acceptance of Payment Cards in these circumstances is subject to the requirements set out in the **Service-Related Terms and Conditions Card Acceptance (CNP)**.
- (3) Irrespective of Section 17 of the **General Terms and Conditions** EVO shall be entitled to change or amend the provisions in Sections 2(1) to 2(2) above with two (2) weeks' written notice to the Merchant if EVO so deems necessary due to possible abuse or if such changes become necessary as a result of the

Rules to the extent they pertain to the acceptance of Payment Cards.

### 3 Settlement Principles

- (1) The Merchant may submit to EVO payment claims due against Cardholders for supplies of goods and services by the Merchant that were created during the term of the services for Card acceptance in the Card-Present Business by using and presenting a Payment Card.
- (2) The settlement of Payment Card transactions via EVO requires the use of debit vouchers that were issued electronically. In order to properly issue an electronic debit voucher the presented Payment Card – if it is furnished with a chip – has to be inserted in the chip card reading device of the card reader (POS terminal or other POS device, hereinafter jointly referred to as “POS Terminal”), or – if it is not furnished with a chip – has to be drawn through the reading device for magnetic stripes of the POS Terminal. Thereby the card data are electronically collected, simultaneously forwarded to the Issuer for approval, and after online approval (see Section 4 below) the transaction data are printed out. Issuing electronic debit vouchers without adequate online approval is only possible if this is separately agreed by the Parties in writing. The Merchant shall hand out the copy of the debit voucher printed by the POS Terminal to the Cardholder upon its request.
- (3) The Merchant may only use POS Terminals which have an EMV certification and which were activated by EVO prior to their first use. As soon as the Merchant has installed a POS Terminal at the cash counter it shall notify EVO accordingly and inform EVO of the terminal ID number so that the POS Terminal can be initialized and activated for processing Payment Cards. The POS Terminal has to be installed in a way that the spying of the PIN when it is entered can be excluded as far as possible.
- (4) Issuing debit vouchers manually by use of an imprinter is only permissible if a technical problem prevents the automatic issuing and approval by telephone according to Section 4(2) was previously obtained. The Merchant shall prove this to EVO upon its request by presenting the error log produced by the POS Terminal. In case of Maestro transactions the manual issuing of debit vouchers is always prohibited. The Merchant may not enter card data in the POS Terminal manually by circumventing the orderly issuing of debit vouchers as described in the foregoing provisions. Section 4(2) shall remain unaffected.
- (5) The Merchant shall not submit transactions in the circumstances set out in Sections 1(5) or 1(6) of the **Service-Related Terms and Conditions Card Acceptance General**.
- (6) Refunds or other credits may only be rendered for transactions which were settled in accordance with the Agreement. The Merchant undertakes to render refunds or other credits only by issuing a card credit voucher, the original of which has to be handed out to the Cardholder. The card credit voucher has to be issued like a debit voucher by using the POS Terminal and has to be signed by a representative of the Merchant. Manual issuing of card credit vouchers is prohibited in any case. In case of a credit note EVO will commission the Issuer on behalf of the Merchant to credit the amount of the card credit voucher to the Cardholder; the Merchant herewith authorizes EVO accordingly. If payment has already been made EVO is entitled to charge back.
- (7) If amounts of money on the Cardholder's payment account are blocked, especially for reservations, the Merchant always has to obtain the Cardholder's authorization for the exact amount. This also applies for the case of a retrospective increase or a further reservation.
- (8) Irrespective of Section 17 of the **General Terms and Conditions** EVO shall be entitled to change or amend the provisions set out in Sections 3(1) to 3(6) with two (2) weeks' written notice to the Merchant if EVO so deems necessary due to possible

abuse or if such changes become necessary as a result of the Rules to the extent they pertain to the acceptance of Payment Cards.

- (9) The Merchant has to ensure that its employees concerned with the settlement of payments by Payment Card have been familiarized with the applicable settlement principles.

### 4 Approval of Card Transactions

- (1) Immediately upon the presentation of the Payment Card the Merchant has to request an approval number from EVO via the POS Terminal by way of an electronic approval request for each card transaction regardless of its amount.
- (2) Maestro transactions cannot be processed if an electronic approval request is not possible in an individual case due to a system malfunction. In case of credit card transactions (Mastercard and Visa) the approval request has to be submitted by the Merchant by telephone by obtaining an approval for the respective credit card transactions from EVO's telephonic approval service. The Merchant has to insert the approval number issued by the telephonic approval services on the debit voucher that was issued manually. In addition, the Merchant has to submit the card transaction data including the approval number in electronic form by manually entering them in the POS Terminal without undue delay after the malfunction has been rectified. The Merchant has to prove the malfunction to EVO upon its request by submitting the error log produced by the POS Terminal. Sentences 2 to 4 of this Section 4(2) shall apply accordingly if the Merchant is requested by the POS Terminal in an exceptional case to submit an approval request by telephone.
- (3) The approval number confirms that at the time of approval, the Payment Card is not subject to restrictions within the scope of the Agreement and that the Payment Card is not declared invalid by a stop list of the Card Organizations or otherwise, e.g., by the Issuer. The approval number does not constitute an undertaking of EVO to pay. In particular EVO remains entitled to charge back a Card transaction in as far as the requirements for a chargeback are satisfied.

### 5 Chargeback Rights

- (1) The Merchant shall repay amounts to EVO that were paid out to it by EVO if they are charged back to EVO (e.g. because of a right of reimbursement of the Cardholder under Section 675x BGB). In addition, EVO may set off reimbursement claims under sentence 1 against its own payment obligations to the Merchant (irrespective of the agreement with the Merchant that gives rise to them). Sentences 1 and 2 apply analogously to amounts that were paid out to the Merchant although they were not credited to EVO's bank account. The chargeback claim and the set-off claim under sentences 1 to 3 shall not apply in the event of the existence of all the conditions referred to below in Sub-Paragraphs (a) to (q):
  - (a) the acceptance of the payment card as a means of payment was permissible under the preconditions for acceptance (Section 1 of the **Service-Related Terms and Conditions Card Acceptance General** and Section 2 of these **Service-Related Terms and Conditions Card Acceptance (CP)**);
  - (b) the settlement principles under Section 3 were complied with;
  - (c) the Cardholder has authenticated the transaction by means of a PIN. This requirement applies only to transactions for which the terminal demands the entry of a PIN;
  - (d) the Cardholder has authenticated the transaction with his signature and it is visible that the signature on the debit voucher corresponds with the signature of the Cardholder on the back of the Payment Card. This requirement only applies to transactions for which no PIN is required pursuant to the preceding Sub-Paragraph;

- (e) the Merchant has no indication of facts which would lead to the conclusion that a transaction was initiated with fraudulent intent or that it was not authenticated by the Cardholder;
- (f) the Payment Card transaction was transferred to EVO using a POS Terminal with an EMV certification;
- (g) the Payment Card transaction was processed with EVO with the approval number required according to Section 4;
- (h) the Payment Card is not recognizably subject to restrictions within the scope of the Agreement;
- (i) the Payment Card has not been declared invalid by stop lists or otherwise;
- (j) the Payment Card has not recognizably been altered or made illegible;
- (k) the period between the date when the debit voucher was issued and the date of receipt by EVO does not exceed seven (7) calendar days;
- (l) the electronic debit voucher does not show an error notification;
- (m) the Merchant duly issued a debit voucher in accordance with Section 3 and within three (3) days after the date of the Merchant's performance (day on which the goods are sold or dispatched respectively, or on which the service is rendered);
- (n) the Payment Card number was not manually entered in the POS Terminal;
- (o) the person presenting the Payment Card recognizably conforms to the Cardholder's photograph on the card, if any;
- (p) the Payment Card transaction is made out in a transaction currency selected in the Agreement or its Annexes; and
- (q) the debit by EVO with a payment amount in accordance with sentence 1, second alternative was not carried out because of a claim for reimbursement by the Cardholder pursuant to Section 675x BGB.

- (2) Irrespective of Section 17 of the **General Terms and Conditions** EVO may amend or supplement the provisions of Sub-Paragraphs (a) to (q) by means of written notification to the Merchant with two (2) weeks' notice, if EVO regards this as necessary because of possible abuse or such amendments become necessary because of the Rules with regard to the acceptance of payment cards.

## 6 Documentation and Preservation Duties

- (1) The Merchant undertakes to preserve any data or documents in electronic or written form with regard to each card transaction submitted to EVO and the underlying transactions, in particular all debit vouchers, for a period of at least eighteen (18) months after the date the respective debit voucher has been issued. The Merchant will provide the required information to EVO without undue delay and upon request will provide receipts without undue delay.
- (2) The Merchant may not transfer the data stored on a Payment Card, including the card number and the Cardholder's name, to any third party.
- (3) The Merchant shall take the necessary technical and organizational measures to prevent unauthorized access by third parties to any card numbers, Customer and transaction data and documents stored by the Merchant. If the Merchant no longer needs the data referred to in the first sentence these data have to be finally deleted from all data carriers by the Merchant so that they cannot be reconstructed. If the data referred to in the first sentence are stored by a third party commissioned by the Merchant the Merchant shall oblige such third party to comply in particular with the provisions in Section 6(2) and in sentences 1 to 3 of this Section 6(3).

## 7 Security Obligations

- (1) The Merchant shall verify the identity of the Cardholder based on valid official photo identification if the Merchant was requested by the POS Terminal to carry out an identity verification.
- (2) If the Merchant suspects that a presented Payment Card was not authenticated by the authorized Cardholder (e. g., because the signature on the presented Payment Card does not correspond with the signature on the debit voucher, the back of the card does not carry a signature, or the signature line or the card is obviously damaged) the Merchant shall verify the identity of the Cardholder based on a valid official photo identification. If the identity cannot be clearly determined the Merchant shall reject the acceptance of the Payment Card.
- (3) If the Merchant suspects that a presented Payment Card is forged or falsified or that a transaction was initiated with fraudulent intent or is not authenticated by the authorized Cardholder and this suspicion cannot be dispelled through an identification in accordance with Section 7(2) above the Merchant shall promptly notify EVO by telephone, if possible before returning the Payment Card. In this context EVO may request the Merchant to note the identity card number on the debit voucher or instruct the Merchant to confiscate the Payment Card subject to general considerations of reasonableness.
- (4) If the Cardholder accidentally left his Payment Card with the Merchant the Merchant shall keep it in a safe place for forty eight (48) hours. If the Cardholder contacts the Merchant within this time period the Merchant shall hand out the Payment Card to him if the signature of the Cardholder matches the signature on the Payment Card. If the Cardholder does not contact the Merchant within this time period the Merchant shall cut through the Payment Card in the middle and shall contact the Issuer regarding the further procedure. If the Issuer cannot be reached the Merchant shall contact EVO.

## 8 Term and Termination

- (1) The terms agreed for POS Terminals and Routing (CP), which may differ from Section 14 of the **General Terms and Conditions** if applicable, shall apply, provided that the services to be rendered according to these **Service-Related Terms and Conditions Card Acceptance (CP)** in connection with the services governed by the **Service-Related Terms and Conditions POS Terminals and Routing (CP)** are rendered.
- (2) Irrespective of any statutory termination rights or termination rights provided elsewhere in the Agreement, EVO shall have a special right to terminate the services set out in the Agreement or its Annexes with immediate effect if
  - (a) the proportion of chargebacks from Payment Card transactions with the Merchant by means of Mastercard cards and/or Maestro cards referred to one single narrative over an assessment period of two (2) consecutive calendar months in each case exceeds a half percent (0.5 %) of the number of transactions in each previous calendar month (debits only, no credits) or a half percent (0.5 %) of the total transaction amount (with regard to the calculation of the proportion supplementary reference is made to Section 12(10) of the **Service-Related Terms and Conditions Card Acceptance General**); during the first six (6) months of the provision of the relevant services this assessment period for Mastercard / Maestro shall be reduced to one (1) calendar month, and/or
  - (b) the proportion of chargebacks from Payment Card transactions with the Merchant by means of Visa cards referred to one single narrative over an assessment period of two (2) months exceeds a half percent (0.5 %) of the number of transactions (debits only, no credits) or a half percent (0.5 %) of the total transaction amount (with regard to the calculation of the proportion supplementary reference is made to Section 12(10) of the **Service-**

**Related Terms and Conditions Card Acceptance General**); during the first six (6) months of the provision of the relevant services this assessment period for Visa shall be reduced to one (1) month, and/or

- (c) the proportion of chargebacks from Payment Card transactions with the Merchant by means of Visa cards referred to one single narrative exceeds one percent (1 %) of the number of transactions (debits only, no credits) within one (1) month (with regard to the calculation of the proportion supplementary reference is made to Sec-

tion 12(10) of the **Service-Related Terms and Conditions Card Acceptance General**).

- (d) A reason for termination shall not cease to apply if EVO temporarily waives the termination despite existing grounds for termination as specified in Section 8(1) lit. a-c – e. g. because of a positive forecast.

## d. Hotels

### 1 Definitions

#### 1.1 Guest Folio

A list of all claims of the Merchant against the Cardholder listed by the Merchant in its balance of the Cardholder's account. It should be in duplicate form (Cardholder and Merchant's copy) and pre-numbered for internal control and storing purposes.

At check-out, the Guest Folio shall include all charges and payments incurred during the stay of the guest/Cardholder.

#### 1.2 Delayed or Amended Charges

Charges incurred for goods and services provided by the Merchant to the guest during the stay of the guest which have to be paid by the Cardholder to the Merchant and which were not paid at check-out. These charges may be (except costs for damage, theft or loss):

- > Room charges
- > Food or beverage charges
- > Telephone charges

### 2 Hotel Reservation Service

- (1) If a Cardholder uses the Hotel Reservation Service the Merchant shall obtain the following information from the Cardholder in order to guarantee a reservation and compile billing information:

- (a) Cardholder name;
- (b) Card number; and
- (c) Card expiry date.

The Merchant shall in return provide the Cardholder with a written confirmation of the reservation. The confirmation shall contain the following information:

- (a) Cardholder name;
- (b) Exact physical address of the Merchant's hotel establishment;
- (c) Room rate plus applicable tax;
- (d) Confirmation code of reservation; and
- (e) Cancellation policy and charges in case of a No-Show-Event (see Section 2(4) and 3(1)).

- (2) If any accommodation guaranteed by the Hotel Reservation Service is unavailable, the Merchant shall provide the guest with the following services free of charge:

- (a) Comparable accommodation for one (1) night at another hotel establishment;
- (b) A three (3) minute telephone call and a call transfer for any incoming telephone calls for the guest to the alternative establishment; and
- (c) Transportation to an alternative establishment.

- (3) If a Cardholder uses the Hotel Reservation Service, the Merchant must hold the reserved accommodation until check-out time on the day following the scheduled check-in day unless the Cardholder has cancelled the reservation.

- (4) (a) The Merchant shall accept all cancellations from a Cardholder using the Hotel Reservation Service. The Merchant shall accept a cancellation without charge if the Cardholder cancels prior to the following deadlines.

- > If a Cardholder uses the Hotel Reservation Service to make a reservation more than seventy-two (72) hours

prior to the scheduled arrival date, the cancellation deadline must be no earlier than seventy-two (72) hours prior to the scheduled arrival date.

- > If a Cardholder uses the Hotel Reservation Service to make a reservation within seventy-two (72) hours prior to the scheduled arrival date, the cancellation deadline must be no earlier than 6:00 pm at the premises of the booked hotel on the scheduled arrival date.

(b) A Merchant's cancellation policy, in relation to the Hotel Reservation Service, may not stipulate that the Merchant is entitled to charge the Cardholder for more than one (1) night accommodation at the Merchant's hotel establishment (room rate plus applicable tax), if the reservation is not cancelled by the Cardholder within the time limits specified in Section 2(4)(a).

- (5) If the Cardholder cancels a reservation made by use of the Hotel Reservation Service, the Merchant shall provide the Cardholder with a written confirmation of the cancellation containing the following information:

- (a) Cancellation code;
- (b) Cardholder name;
- (c) Card number, truncated to show only the last four (4) digits; and
- (d) Card expiry date.

### 3 No-Show

- (1) If the Merchant's cancellation policy regarding the Hotel Reservation Service stipulates that the Merchant is entitled to charge the Cardholder for one (1) night accommodation, the Merchant may charge the Cardholder for only one (1) night's accommodation (room rate, plus applicable tax), if the Cardholder/guest:

- (a) has not registered at the Merchant's hotel establishment by the check-out time the day following the guest's scheduled arrival date; or
- (b) has not cancelled the reservation in time as specified in Section 2(4)(a) (each (a) and/or (b) a "No-Show Event").

- (2) If the Merchant is entitled to charge the Cardholder for one (1) night accommodation (room rate, plus applicable tax), the Merchant may submit to EVO its respective payment claim due against the Cardholder as a CNP transaction according to the **Service-Related Terms and Conditions Card Acceptance (CNP)** ("No-Show Transaction"). This shall not affect the provisions of Section 4.6.

- (3) After obtaining an approval number from EVO for a No-Show Transaction the Merchant shall complete a Transaction Receipt containing the following information:

- (a) Amount of one (1) night accommodation (room rate plus applicable tax)
- (b) Cardholder name;
- (c) Card number; and
- (d) Card expiry date.

The words "No Show" must be on the signature line on both the Transaction Receipt and the Guest Folio.

- (4) The Merchant shall send a copy of the Guest Folio and of the Transaction Receipt to the Cardholder with the card number truncated to show only the last four (4) digits.

#### 4 Advance Deposit

- (1) The Merchant may offer the Cardholder to choose an Advance Deposit Transaction when using the Hotel Reservation Service. If the Cardholder chooses an Advance Deposit Transaction, the Merchant shall obtain the following information from the Cardholder in connection with the respective Advance Deposit Transaction:

- (a) Cardholder name as it appears on the card;
- (b) Card number;
- (c) Card expiry date;
- (d) CV2/CVC2 number;
- (e) Cardholder telephone number and billing address;
- (f) Scheduled date of arrival; and
- (g) Intended length of stay.

Section 2(3) of the **Service-Related Terms and Conditions Card Acceptance (CNP)** shall not be affected.

- (2) The Advance Deposit Transaction amount shall not exceed the cost of the intended length of stay, at least not more than fourteen (14) nights of accommodation (room rates plus applicable tax).
- (3) After obtaining an approval number from EVO for an Advance Deposit Transaction, the Merchant shall complete a Transaction Receipt for the respective Advance Deposit Transaction containing the following:
- (a) Advance Deposit Transaction amount;
  - (b) Cardholder name;
  - (c) Card number;
  - (d) Card expiry date; and
  - (e) Cardholder telephone number and billing address.

The words "Advance Deposit" must be on the signature line on both the Transaction Receipt and the Guest Folio.

- (4) The Merchant must provide the Cardholder with the following information within three (3) working days after the transaction date of the Advance Deposit Transaction:
- (a) Name and physical address of the Merchant's hotel establishment
  - (b) Advance Deposit Transaction amount paid
  - (c) Confirmation code of reservation
  - (d) Scheduled Check-in date
  - (e) Cancellation Policy (see Section 2(4))
  - (f) Advance Deposit Refund Policy (see Section 4(6))
  - (g) Copy of the Guest Folio
  - (h) Copy of the Transaction Receipt with the card number truncated to show only the last four (4) digits.
- (5) At the time of Check-out, the Merchant shall offset the Advance Deposit Transaction amount against the total cost of the hotel accommodation to be paid by the Cardholder to the Merchant.
- (6) The Merchant is obliged to refund the entire Advance Deposit Transaction amount, if the Cardholder uses the Advance Deposit Service and cancels the reserved accommodation. Differing thereof, the Merchant has the right to retain part or the entire Advance Deposit Transaction amount only if the Cardholder/Guest fails to:
- (a) Check in at the Merchant's hotel establishment by the check out time on the day following the specified last day of accommodation; or
  - (b) Cancel the reservation within the time limit specified by in the Merchant's cancellation policy, as set out in Section 2(4)(a).

If the Merchant retains all or part of the Advance Deposit Transaction amount, the Cardholder shall not be charged for a No-Show Transaction.

#### 5 Priority Check-out Service

- (1) If the Cardholder chooses to check out using the Priority Check-out Service, the Merchant has to conclude a written agreement with the Cardholder authorizing the Merchant to charge the Cardholder with the final amount of the bill regarding the goods and services specified in this agreement without requiring the Cardholder's signature at check-out. This agreement must contain the following information:
- (a) Cardholder name and address;
  - (b) Card number, truncated to show only the last four (4) digits;
  - (c) Card Expiry date;
  - (d) Room rate plus applicable tax;
  - (e) Date of departure;
  - (f) Goods and services under the agreement; and
  - (g) Delayed and Amended Charges Agreement (see Section 6.)

(hereinafter referred to as "Priority Check-out Agreement").

- (2) If the Merchant has concluded a Priority Check-out Agreement with the Cardholder, the Merchant is entitled to submit a final transaction ("Priority Check-out Transaction") in the amount of the claim of the Merchant against the Cardholder relating to the goods and services specified in the Priority Check-out Agreement without requiring the Cardholder's signature at check-out and independent of the Cardholder's knowledge of the total amount due to the Merchant.
- (3) At the time of check-out the Merchant shall request an approval number from EVO for the respective Priority Check-out Transaction and complete a Transaction Receipt. The words "Priority Check-out" on the signature line must be on both the Transaction Receipt and the Guest Folio.
- (4) The Merchant shall provide the Cardholder with a copy of the signed Priority Check-out Agreement, the Transaction Receipt and an itemized bill for the goods and services that are subject to the Priority Check-out Agreement within three (3) business days after check-out.
- (5) The Merchant shall retain the itemized bill for the goods and services that are subject to the signed Priority Check-out Agreement for a minimum of six (6) months after the respective transaction date.

#### 6 Delayed or Amended Charges

- (1) At the time of check in, the Merchant shall conclude a written agreement with the Cardholder allowing the Merchant to invoice to the Cardholder Delayed or Amended Charges.
- (2) Subsequent to check-out, the Merchant shall complete the Guest Folio by supplementing it with any Delayed or Amended Charges.
- (3) If the guest chooses the Priority Check-out Service, a separate Guest Folio for Delayed or Amended Charges must be created by the Merchant no later than thirty (30) days after check-out of the guest. Not later than thirty (30) days after check-out of the guest, the Merchant shall submit to EVO a card transaction in the amount of the Merchant's whole claim against the Cardholder regarding Delayed and Amended Charges and request an approval number from EVO for the respective transaction. In this case, the Transaction Receipt and the Guest Folio shall contain the words "Signature on File" on the signature lines.
- (4) The Merchant shall send to the Cardholder a copy of the signed Delayed or Amended Charges Agreement, the Transaction Receipt and the Guest Folio.
- (5) The Merchant must retain a copy of the itemized bill for the goods and services that are subject to the signed Delayed or Amended Charges Agreement for a minimum of six (6) months after the respective transaction date.

## 7 Approvals for Estimated Amounts, Subsequent Approvals, Transaction Receipt

- (1) The Merchant is entitled to request approvals from EVO for Payment Card transactions that cover the Merchant's whole estimated claim against the Cardholder at the time of check-in of the guest.
- (2) The authorization amount may be estimated based on the following (except costs for damage, theft or loss) information:
  - (a) Guest's intended length of stay at Check-in time;
  - (b) Room rate plus applicable tax; and
  - (c) Service charges.
- (3) At any time prior to the guest's check-out, the Merchant is also entitled to correct its estimation and request subsequent approvals for additional amounts above any amount already approved.

- (4) The Merchant shall request an additional approval number from EVO in any of the following cases:
  - (a) If the guest's length of stay is prolonged to more than fourteen (14) days for the estimated additional claim regarding the prolongation of the guest's intended length of stay (e.g. 15<sup>th</sup>, 16<sup>th</sup> day); or
  - (b) If Delayed or Amended Charges exceed the estimated total amount.
- (5) The Merchant shall attach all Transaction Receipts to the Cardholder's Guest Folio.

The Merchant shall send a copy of the Guest Folio and all Transaction Receipts to the Cardholder with the card number truncated to show only the last four (4) digits.

One copy of the final Guest Folio should be retained by the Merchant.

## ii. POS-Terminals and Routing (CP)

### a. General

#### 1 Fees

- (1) All fees that are payable by Merchant to EVO in the framework of the service "POS Terminals and Routing (CP)" shall be billed by EVO as set forth hereunder:
  - (a) Rental charge on a calendar-monthly basis, in advance per the first day of each calendar month; and
  - (b) All additional, payable fees on a calendar-monthly basis, per the last day of each calendar month.

In addition, EVO will invoice for the German Banking Industry (*Deutsche Kreditwirtschaft*) each month for the previous calendar month the authorization fees payable by Merchant to the German Banking Industry for card transactions in the electronic cash system. The fees shall be transferred to the issuing payment service provider. The contracting company herewith accepts the authorization fee agreements these payment obligations are based on, which the concentrator acting for us has concluded with the German Banking Industry on his behalf.

- (2) In deviation from Section 21(2) of the **General Terms and Conditions** EVO shall transmit all invoices to the Merchant in written form.
- (1) If service provision includes rental of POS terminals, in deviation of Section 14 of the **General Terms and Conditions**, a different minimum term may apply for the services to be rendered according to these **Service-Related Terms and Conditions POS Terminals and Routing (CP)**, the minimum term then being based on the rental period stipulated in the Agreement.
- (2) Partial terminations with regard to the individual services to be provided in accordance with these **Service-Related Terms and Conditions POS Terminals and Routing (CP)** are not permitted, unless otherwise agreed.

### b. POS Terminals

#### 1 Provision of POS terminals

- (1) EVO shall provide to Merchant for the term of the services to be provided in accordance with these **Service-Related Terms and Conditions POS Terminals and Routing (CP)** the POS terminals set forth in the Agreement and its Annexes, together with a telecommunication cable and a network cable ("Terminal") for processing card transactions for Merchant's business operations. Depending on the order, the provision shall be done either by way of sale or by way of rental, rental only being possible to a German contractual partner. Merchant shall ensure that the connectivity requirements set forth under Part 3, Section 2 are fulfilled.
- (2) After Merchant has communicated all necessary details for the configuration and installation of the Terminal at the installation location, EVO shall pre-configure the Terminal and subsequently deliver the pre-configured Terminal to the installation address specified in the Agreement or to the indicated deviating delivery address. Consignment shall be carried out by postal service and shall be instituted either within twenty (20) bank workdays ("Consignment Installation") or within five (5) bank workdays ("Consignment Installation express") after communication of all necessary details by Merchant. In case of consignment

by postal service, Merchant shall be responsible for installing and commissioning of the Terminal.

For installation locations in Germany, "Technician Installation" can alternatively be agreed upon. In this case, EVO shall arrange the details required for configuration and installation of the Terminal at the installation location as well as an installation date with Merchant by phone. In the framework of the installation appointment a technician will install the Terminal at the installation location communicated by Merchant and explain the basic functions of the Terminal to the Merchant. In case of a "Technician Installation", Merchant shall ensure that the location at which the Terminal is to be installed is freely accessible at the communicated installation time. Work time resulting from Merchant's failure to fulfill his obligations or to properly fulfill his obligations shall be charged additionally to Merchant

- (3) EVO may make alterations and install attachments to the Terminal if this is valuable for maintaining the Terminal. Improvement measures may only be taken if these are reasonable for Merchant and the contractual usage of the Terminal is not impaired thereby. Alteration shall mean any change to the mechanical, electrical or electronic construction of the Terminal

nal, including changes to the software loaded onto the Terminal. Attachment shall mean any mechanical, electrical or electronic connection of the Terminal with other appliances, elements or auxiliary components to the extent these are not defined as standard in the vendor's interface description. EVO shall notify Merchant in advance of planned Alterations and Attachments.

- (4) If, following the Terminal's handover, the operators of the payment schemes concerned place new or altered demands on the equipping or mode of operation of the Terminal, such changes and/or Alterations to the Terminal shall only be performed by EVO at additional cost. Merchant has no entitlement to the implementation of such changes or Alterations. The obligation of EVO to rectify defects in the Terminal remain unaffected hereby.

## 2 Merchant's Terminal handling obligations

- (1) Merchant shall ensure its proper deployment and correct operation through adequately trained personnel. In the framework of that which is reasonable, he shall additionally heed all EVO-issued instructions (especially in the framework of the Operating Manual) for commissioning and employing the Terminal. Aforementioned sentence applies mutatis mutandis to analyzing and rectifying defects. In this respect, Merchant shall cooperate in analyzing and rectifying defects.
- (2) Any software which might have been installed on the Terminal may be used solely for its intended purpose by Merchant. Merchant is not permitted to surrender the software for usage by a third party.
- (3) Merchant shall notify EVO promptly about any intended change of installation location of the Terminal.
- (4) Alterations and Attachments to the Terminal by Merchant shall require the prior written consent of EVO. Section 29, Sentences 3 and 4 apply mutatis mutandis.
- (5) In the framework of that which is reasonable, Merchant shall protect the Terminal from third-party access and protect it from impairment by third parties.

## 3 Rights of Merchant in case of defects in the Terminal

- (1) Unless otherwise agreed, defects in the Terminal shall be rectified by means of cost-free consignment of an equivalent replacement appliance in exchange for the return of the defective Terminal. Merchant shall grant EVO a reasonable period of time therefor. Termination by Merchant under Section 543, Para. 2, Sentence 1, Section 1 German Civil Code (Bürgerliches Gesetzbuch, BGB) due to denial of contractually agreed usage shall only be permissible if EVO was granted adequate opportunity to remedy the defect and said opportunity was abortive. Remedy shall be deemed abortive if it is impossible, or if it is refused or inequitably delayed by EVO, or if founded doubts exist about its prospects of success, or, if for other reasons, remedy would be unreasonable for Merchant.
- (2) The defect-related rights of Merchant are excluded to the extent that Merchant made Alterations or Attachments to the Terminal without the consent of EVO, save Merchant can credibly demonstrate that said Alterations had no unreasonable impact on the Terminal for EVO. Merchant's rights remain unaffected if he is authorized to make Alterations and Attachments (by way of example under Section 536a, Para. 2 BGB) and the Alterations and Attachments were performed professionally and fully documented.
- (3) For initial material defects and defects of title, EVO shall only assume liability pursuant to Section 11 of the **General Terms**

**and Conditions.** Liability for initial material defects and defects of title – regardless of negligence or fault – is excluded.

## 4 Additional rights and duties for rented Terminals

- (1) Further accessories apart from the accessories mentioned in Section 1(1) (by way of example: rechargeable batteries, cash register connection cable and equipment pouches) are not part of the rented Terminal.
- (2) Merchant shall treat the rented Terminal with due care and protect it from spoilage. Merchant is not permitted to sub-rent the rented Terminal. The loss of a rented Terminal (e. g. due to theft) does not release the Merchant from the payment of rent.
- (3) Any imminent or effectuated enforcement measures, attachments and claims from purported renter liens and must be communicated to EVO promptly in writing, submitting with such notification the garnishment record and name and address of the obligee  
Merchant shall additionally notify EVO promptly about foreclosure and receivership petitions on real property at which the rented Terminal is situated.
- (4) Upon expiry of the rental relationship and in the case of a defective rented Terminal, Merchant shall at his own expense dismantle the rented Terminal and, in a proper state and appropriately packed and with transport insurance, promptly return it to EVO. The continued use of the rented Terminal by Merchant after expiry of the rental relationship shall not result in a prolongation of the rental relationship.
- (5) If the rented Terminal is not returned or the rented Terminal exhibits deterioration ascribable to extraordinary attrition, EVO may demand lump-sum compensation from Merchant amounting to the replacement cost of the rented Terminal if Merchant is blamable for the absent return or deterioration. Merchant retains the right to prove lesser damage, EVO to prove greater damage suffered.

## 5 Disruptions of the Terminal

- (1) For rectifying disruptions and answering questions, EVO operates a hotline service. In the case of rented Terminals, this service is included in the monthly rental charge. In the case of purchased Terminals, the service must be ordered separately as "depot service flatrate".
- (2) In the case of a disruption, Merchant shall adequately assist in implementing measures to rectify the malfunction and shall observe and heed advice and instructions on analyzing the problem and rectifying the malfunction.
- (3) When a disruption in the Terminal cannot be rectified with the assistance of the hotline service, the disruption shall be rectified through the cost-free consignment of an equivalent replacement appliance in exchange for the return of the defective ("Depot Service"). The return has to be carried out appropriately packed in the postbox procedure using the packaging of the replacement appliance to the address specified by EVO. For installation locations in Germany, alternatively an On-Site Service of the Merchant can be used. Insofar as the additional service "On-Site Service Flatrate" was agreed in the Agreement, on-site replacement shall be free of charge; otherwise, the service shall be invoiced in each individual case.
- (4) In the framework of the Depot or On-Site Service, the Terminal shall also be replaced when Merchant has no entitlement to warranty claims vis-à-vis EVO. Aforementioned sentence is ineffective if Merchant effectuated the disruption intentionally or through gross negligence.

## c. Routing (CP)

### 1 Processing of card transactions

In case of payments by means of a giro card (ec card) issued in Germany, in accordance with the configuration of the payment transaction terminal required by the Merchant the Merchant's payment transaction terminal triggers a card transaction in the payment procedure required by the Merchant (electronic cash system or ELV), if the processing of such payments was agreed between the Merchant and EVO. In case of payments using another debit card, credit card, GeldKarte card, customer card or fuel card the Merchant's POS-terminal triggers a card transaction in the respective payment procedure, if the processing of such card transactions was agreed between Merchant and EVO.

### 2 Obligations of EVO in the framework of the service "Routing (CP)"

- (1) In case of payments by means girocard (ec card) issued in Germany or by means of any other debit card specified in the Agreement or its Annexes, credit card, customer card or fuel card, EVO shall transmit the authorization requests received from Merchant's POS terminal to the authorization office responsible for the card concerned. Additionally, EVO shall forward the authorization response received from the authorization office concerned back to the Merchant's respective POS terminal. Sentences 1 and 2 only apply to the extent that the processing of payments in the payment procedures concerned was agreed between Merchant and EVO. Irrespective of the payment procedure, EVO shall assume no liability for the correctness of forwarded data, but solely for forwarding data that have not been substantively changed.
- (2) EVO shall on Merchant's behalf forward to the recipient address agreed with Merchant the transaction records that Merchant transmits to EVO via his POS terminal; EVO shall forward these data on the bank workday following its own receipt of the transaction records. In each case, the data shall be forwarded in the format prescribed by the recipient address for processing the card transaction concerned.
- (3) EVO shall be responsible for the execution of the transactions, especially for the direct debit from the respective customer account or the transfer and respective crediting of the corresponding payment amount to the Merchant's account, only to the extent, as this is agreed between the Merchant and EVO.

### 3 Settlement of Transactions by Means of girocard

- (1) Insofar as the settlement of payment transactions by means of girocard is agreed between the Merchant and EVO, the Merchant commissions EVO, besides for the services specified in Section 2 in the scope of a relationship for conducting business on instruction pursuant to Section 675c (1) German Civil Code, additionally for the settlement of the payment transactions resulting from the use of a girocard, which have been submitted by the Merchant. For this purpose, EVO shall enter the transactions resulting from the transaction datasets transmitted to EVO by the Merchant, within the payment procedure agreed with the Merchant (electronic cash or electronic direct debit) to a separate account of EVO. EVO shall be obliged to make the amounts for payment resulting from the transmitted payment transactions available to the Merchant without delay after they are credited to EVO's bank account. EVO shall administer the payment amounts received on trust for the Merchant as trustor in one or more of EVO's open collective escrow accounts maintained at a credit institution as defined in Section 17(1), sentence 2, no. 1 lit. b of the Payment

Services Supervisory Act ("Zahlungsdienststeuergesetz – ZAG").

- (2) EVO shall be entitled to deduct the agreed charges (e.g. disagio), expenses for reimbursement (e.g. costs for incurred reverse charges) and if applicable and any VAT that accrues on the payments and charges from the amounts for payment referred to in Section 3(1), before these amounts are made available to the Merchant.
- (3) EVO shall transfer the amounts for payment made available to the Merchant pursuant to Section 3(1) to the account respectively specified in the contract or its annexes. EVO shall begin with the execution of the transfer at such time that is respectively specified by the Merchant to EVO. The amounts for payment to the Merchant shall be subject to the proviso of the final crediting of the payment amounts to the accounts of EVO. If amounts are not credited to EVO's account or charged back to EVO's bank account, EVO may demand from the Merchant to repay the amounts having been passed on and which are subject to the proviso.
- (4) In deviation from Section 667 German Civil Code (BGB), EVO is not obliged to transfer to the Merchant any benefits that result from the amounts made available to the Merchant in accordance with Section 3(1) being held by EVO until the transfer to the Merchant (e. g. interest that EVO generates from these amounts).
- (5) The Merchant's claim within the meaning of Section 3(3) must be brought in writing against EVO within a preclusion period of six (6) weeks as of the expiration of the six-week deadline pursuant to Section 1(3) of the **General Terms and Conditions**. Claims brought at a later time shall be precluded. This Section 3(5) shall not apply to claims in respect of which the parties have entered negotiations prior to the expiration of the six-month period concerning the establishment of said claims.

### 4 Obligations of Merchant in the framework of the service "Routing (CP)"

- (1) Merchant shall at his own expense provide for the contractual fundamentals needed to settle the payment schemes to be processed on the basis of these **Service-Related Terms and Conditions POS Terminals and Routing (CP)**. In the case of payments by means of girocard (ec-cash) in the electronic cash system the Merchant – unless it commissions EVO for the settlement of payment transactions by means of girocard – shall ensure through a suitable contractual agreement that its credit institute designated in the Agreement or its Annexes accepts the transaction data records that are forwarded by EVO or by a third party commissioned by EVO in the form of payment transactions files via the BCS-FTAM or the EBICS procedure, or through another standard banking communication procedure approved by EVO in writing, and processes them.
- (2) Merchant shall at his own expense provide for and maintain all the connectivity conditions needed for operating the POS terminals (in particular but not limited to electricity and telephone connections).
- (3) Insofar as Merchant employs POS terminals or software-based checkout solutions which are not rented from EVO, he shall ensure that: these fulfill the guidelines (as amended) for the payment scheme concerned; they have been formally approved by EVO for rendering Performances according to these **Service-Related Terms and Conditions POS Terminals and Routing (CP)**; and that he is operating the most recent version of the respective software for rendering Performances according to these **Service-Related Terms and Conditions POS Terminals and Routing (CP)**. EVO shall at Merchant's request furnish details of the existing software requirements concerned.

- (4) Merchant shall at his own expense furnish EVO with all information needed to initialize and maintain POS terminal operations. EVO shall upon request instruct Merchant about the type and scope of the necessary information.
- (5) Merchant shall promptly verify the proper processing of the transaction records he submits via EVO and promptly notify EVO in writing of any occurring irregularities (especially deviations, error messages output by Merchant's POS terminal related to the transmission of transaction records).
- (6) Merchant shall transmit all transaction records to EVO as promptly as possible to ensure compliance with the submission limitation periods (as amended) prescribed by the German Banking Industry's terms and conditions for merchants.
- (7) Merchant may only submit authorization requests and transaction records to EVO for those payment schemes covered by these **Service-Related Terms and Conditions POS Terminals and Routing (CP)** pursuant to the terms of the Agreement.
- (8) If settlement of payment transactions by means of girocard are agreed between the Merchant and EVO, the Merchant may use exclusively the voucher texts as prescribed by EVO for the processing of such payment transactions.

## d. Merchant Terms and Conditions

In the relationship between the Merchant and the German Banking Industry, the Terms and Conditions for Participation in the electronic cash System (girocard system) of the German Banking Industry (Merchant Terms and Conditions) along with the Technical Annex shall apply in the respective valid version.

Merchant must pay a separately agreed authorization fee for operation of the electronic cash system and approval of the electronic transactions.

With respect to the electronic cash authorization fees, the issuing payment service provider of the concentrator has the right to combine the negotiated fees by way of a mixed calculation and to determine a uniform authorization price for the issuing service payment service provider to be paid by Merchant. In the process, the concentrator must first weigh the prices offered to them by the card-issuing service provider according to the sales to be expected and then determine the price which is offered as a type of average in consideration of the economic and legal risks. Insofar as the concentrator should turn a profit as a result of their calculation, the card-issuing payment service provider grants the concentrator said profit as a share to be retained for the efforts of the concentrator. The concentrator must compensate the banks for any shortfalls.

## Terms and Conditions for Participation in the electronic cash System of the German Banking Industry

### 1 Participation in the electronic cash system of the German Banking Industry

Company may participate in the electronic cash system of the German Banking Industry pursuant to the provisions set forth herein. The electronic cash system enables cashless payments to be made at automated checkouts – electronic cash terminals. Company's contractual partner in connection with the authorization of each individual transaction is the issuing payment service provider concerned (cf. Section 5). The universe of all payment service providers participating the electronic cash system will hereinafter be referred to as "Banking Industry".

### 2 Card acceptance

Debit cards issued by the payment service providers and bearing a girocard logo pursuant to Section 2.3 of the Technical Annex shall be accepted at Company's electronic cash terminals. Company remains at liberty to offer discounts. The cardholder shall be notified by Company of any non-acceptance of debit cards of payment service providers for lack of a fee agreement by means of a sticker, electronically, or in another manner.

Insofar as the Banking Industry has concluded corresponding cooperation agreements with foreign-domiciled operators of, or participants in, guaranteed and PIN-based debit card systems ("Cooperation Partners"), Company shall pursuant to the conditions in the electronic cash system (as amended) additionally accept for cashless payments at its electronic cash terminals debit cards issued by a payment service provider of a Cooperation Partner's cashless payment system.

The network operator shall instruct Company on the debit cards of Cooperation Partners to be accepted in the framework of the electronic cash system and take these into account in the technical processing in the framework of the electronic cash system. The acceptance of cards of other systems at electronic cash terminals is not affected by this to the extent

that the proper processing of the cards to be accepted in the electronic cash system is not impaired. For cards that are accepted by Company, Company can install automatic mechanisms in its electronic cash Terminals that preselect a certain payment brand or payment application. It may not prevent Cardholder from overriding the preselection.

### 3 Connection of Company to the operator network of a network operator

Participation of Company in the electronic cash system is, so far as Company itself does assume the role of network operator, conditional upon the connection to an operator network on the basis of a separate agreement between Company and a network operator.

The task of the operator network is to connect the electronic cash terminals with Banking Industry's authorization systems in which the Electronic Cash Sales are authorized. The network operator is responsible for installing the electronic cash terminals, their connection to the operator computer system as well as their technical support including the loading of cryptographic keys. Insofar as the procedure for online personalization of terminal hardware security modules (OPT procedure) is used, the network operator shall be responsible for the carriage of cryptographic keys in the framework of each procedure. The network operator shall ensure the operator network fulfils the prescribed security requirements of Banking Industry.

### 4 Replacement of cryptographic keys needed for terminal operation

To maintain the security of the electronic cash system, the cryptographic keys must be exchanged at regular intervals or on a causal basis. Banking Industry generates the cryptographic keys needed for terminal operations. Company shall accept these cryptographic keys in the same form as they are furnished by Banking Industry. This is performed via the network operator. Insofar as the OPT procedure must be loaded,

Company shall conclude an appropriate agreement with a payment service provider of their choice ("Terminal Service Provider") or a network operator commissioned by this Terminal Service Provider.

## 5 Transaction authorization by the issuing payment service provider

The issuing payment service provider connected to the electronic cash system declares with a positive authorization of a payment request that it will settle the receivable to the value of the amount authorized at the electronic cash terminal ("Electronic Cash Sale"). If Company accepts at its electronic cash terminal a debit card issued by a bank of a Cooperation Partner's system, the issuing bank in the Cooperation Partner's system declares with the positive authorization of the payment request that it will settle the receivable to the value of the amount authorized at the electronic cash terminal ("Electronic Cash Sale").

Settlement of the Electronic Cash Sale is conditional upon the electronic cash terminal having been approved vis-à-vis the network operator and operated pursuant to the procedures agreed with the network operator, and Company's compliance with the conditions set forth in Sections 2 and 7. If the issuing payment service provider is connected to the electronic cash system, settlement is **additionally conditional upon the Electronic Cash Sale being submitted to a payment service provider of the Company ("Payment Collection Service Provider") within 8 days**. The submission of the Electronic Cash Sale by Company to its payment service provider shall not constitute an integral part of the authorization of the Sale by the card-issuing payment service provider vis-à-vis Company.

With the reversal of an Electronic Cash Sale, the payment obligation of the issuing payment service provider lapses. The connected Company shall on request – which shall be communicated via the network operator – promptly furnish Banking Industry with specific documentation about the reversed Electronic Cash Sale (e.g. copy of sales slip, merchant audit trail), **however no later than 10 (ten) days after receipt of the request**.

## 6 Fees

For the operation of the electronic cash system and authorization of the Electronic Cash Sales in the authorization systems of Banking Industry or in the authorization system of a Cooperation Partner, Company and/or a third party contracted by Company shall be charged the fee agreed upon with the issuing payment service provider. Both the technical requirements of the Electronic Cash System must be observed with the agreement of individual fees. No fee shall be charged for reversed sales.

Company undertakes to furnish the network operator with proof of the existence of their fee agreements with all issuing payment service providers and to inform the network operator of the basic points which are necessary for the processing of the transaction by the network operator (e.g. possible information about an individually agreed calculation basis). If Company has not concluded fee agreements with one or multiple payment service providers, Company must strive to conclude fee agreements with said payment service providers without delay. Insofar as proof has not been furnished or only partially furnished, the network operator shall be permitted to take suitable and appropriate precautions with inclusion of Company, such as notification of the cardholder by Company of the non-acceptance of debit cards of certain issuing payment service providers for lack of a fee agreement or the (temporary) decommissioning of the terminal until proof of the missing fee agreement(s) has been furnished.

The network operator can, at the request of Merchant, process fee agreements negotiated directly between a company and issuing service provider(s) after agreement to a service contract. If Company should contract a third party for fee calculations of electronic cash fees, Company shall be obligated to post the electronic cash fees in an account separately from their other assets. Subject to any agreement otherwise, these fees are also the trust assets of the issuing payment service provider. The fee owed to the respective issuing payment service provider shall be periodically transferred via the network operator to the issuing payment service provider, insofar as this has been agreed upon between Company and/or its contracted third party and the respective issuing payment service provider and/or their contracted third party in consideration of the technical requirements of the network operator.

## 7 Terminal operation pursuant to the provisions of the Technical Annex

Company shall operate the electronic cash terminals for the cards authorized under these Terms and Conditions (cf. Section 2) exclusively in accordance with the "Operating Instructions" formulated in the attached Technical Annex. The requirements contained therein are elements of these Terms and Conditions.

In particular to rule out unauthorized parties gaining access to the PIN during its entry at the terminal, terminals shall be installed in compliance with the security requirements set forth in the attached Technical Annex. Company shall desist from all actions that might impair the security or proper workflows of the electronic cash system. Company shall be obliged to inform its network operator of possible incidents that could compromise the security or the correct process of the electronic cash system.

For participation in the electronic cash system, only terminals which have been approved by Banking Industry may be used. Necessary adjustments on the terminal must be carried out on a timely basis and according to the specifications of Banking Industry to ensure compliance with applicable approval requirements. Terminals which have not been adapted may not be operated in the electronic cash network after the lapse of a grace period.

## 8 Personal Identity Number (PIN) entry upon payment

For payment at an electronic cash terminal, not only the card, but also the Personal Identity Number (PIN) must be entered. The PIN may only be entered by the cardholder. In the processing of contactless payments (provided that the electronic cash Terminal supports such payments), the card-issuing payment service provider may waive the entering of the PIN in transactions of up to 25 euros per transaction.

## 9 Granting access

Company shall upon request permit Banking Industry to access and inspect the electronic cash terminals.

## 10 Collection of electronic cash transactions

The collection of electronic cash transactions is regulated by separate agreements between Company and the elected payment service provider and is not an element of these Terms and Conditions. The network operator has agreed to support Company in the processing of its automated payments by converting the Electronic Cash Sales or other sales of Company into direct debit files and

- > to furnish Company with these direct debit files for submission to its account-managing payment service provider or to a central operator named by same, or

- > to submit the direct debit files itself to Company's account-managing payment service provider on Company's behalf, or
- > to hand over the direct debit files for collection by the collection management institution after Company's assignment of the receivables.

## 11 Retention periods

Notwithstanding statutory retention periods, Company shall retain the merchant audit trails of electronic cash terminals for at least 15 months and, upon request, submit said audit trails through which the Electronic Cash Sale had been collected to the Payment Collection Service Provider. Objections and other claims of cardholders under Section 2, Sentence 1 in regard to the contractual relationship with Company shall be promptly asserted vis-à-vis Company.

## 12 Acceptance mark

Company shall clearly display a reference to the electronic cash system by means of the provided mark in accordance with Section 2.3 of the Technical Annex. This shall take place without promoting a specific payment service provider or payment service provider group.

## 13 Special conditions for disbursements of cash by Company

If Company offers the possibility of cash disbursements in the scope of the electronic cash procedure, the following additional conditions shall apply:

- > The disbursement of cash is only permissible in combination with an electronic cash transaction as payment for goods and services of Company. The amount of the electronic cash transaction should be at least € 20.00.
- > The disbursement of cash takes place exclusively on the basis of a mandatory authorization of the requested amount by the issuing payment service provider.

- > Subject to sufficient cash available at the checkout, Company is bound to the result of the authorisation of the payment service provider.
- > The cash disbursement may not exceed € 200.00.
- > Company shall make no differentiation between cardholders of various issuing payment service providers with respect to the offering of the disbursement of cash. Merchant can take the cash available at the checkout into consideration in this process.

## 14 Amendments to Terms and Conditions

Company shall be instructed in writing about any amendments to these Terms and Conditions. If an electronic communication channel was agreed with Company, the amendments may additionally be communicated by these means if the form of communication permits Company to save or print out the amendments in readable form. They shall be deemed accepted if Company fails to oppose them in writing or via the agreed electronic channel with its account-managing payment service provider. Company shall be expressly instructed about this consequence upon notification of the amendment. Company must submit any opposition to its account-managing service provider within six weeks of notification of the amendment.

## 15 Applicable law, legal venue and language

These Terms and Conditions and their Annexes are regulated by the legal system of the Federal Republic of Germany. The sole legal venue for conflicts arising from these Terms and Conditions is Berlin, Germany. Legal action may also be taken against a defendant payment service provider and Company at its respective place of business. For translations, the German wording shall be binding in all events.

## Annex: Technical Annex to the Terms and Conditions for Participation in the electronic cash System of the German Banking Industry (Merchant Terms and Conditions)

### 1 Authorized cards

Cards issued by German banks and bearing an girocard logo pursuant to Section 2.3 may be deployed at terminals of the electronic cash system of the German Banking Industry.

### 2 Operating Manual

#### 2.1 Security requirements (visual protection)

System security is fundamentally provided for by the network operator. Merchant, in turn, contributes by providing suitable visual protection measures to ensure that the customer's personal identification number is not observed upon entry.

The following are of particular relevance:

- > The location of the PIN pad should be chosen and designed in such a way that the visual guard together with the customer's body provide an optimal protection of the PIN entry;
- > Hand-held devices should be handed over to the customer;
- > Table-top devices should be slidable to enable the customer to adapt to different circumstances and conditions;
- > Video cameras and mirrors should be mounted such that the PIN entry cannot be observed with their assistance;
- > Distance zones should be set up in front of the input device.

#### 2.2 General requirements for terminals

The network operator may only connect to its network terminals that fulfill the Banking Industry's requirements (cf. Section 3 of the Merchant Terms and Conditions). These requirements are limited to:

- > Smooth transaction workflow subject to a few basic functions;
- > Design of the so-called customer interface (display / customer sales slips / PIN entry keypad) to ensure a uniform appearance of the system; and in particular
- > System security which ensures the secure transmission of transaction data and Personal Identification Number (PIN) through the deployment of suitable hardware and software.

#### 2.3 girocard logos

In the checkout area a "girocard" logo must be used as sign of acceptance.



## Terms and Conditions for Participation in the “GeldKarte” System

- (1) Company participates in the GeldKarte system of the German Banking Industry pursuant to the provisions set forth herein. For this, it receives from its bank a merchant card or appropriate software containing the Banking Industry's necessary authentication key and an appropriate identification (generally the account number) at its bank so that the GeldKarte sales can be credited to Company. All media placed at Company's disposal remain property of the bank. The media may not be used for any purpose other than for executing the intended automated payment applications.
- Company shall desist from all actions that might impair the security or proper workflows of the GeldKarte system.
- (2) Company shall only deploy Banking Industry approved GeldKarte terminals. Company shall demand evidence of such approval from the terminal vendor.
- (3) Company shall accept at its GeldKarte terminals ec cards issued in Germany as well as other cards, as set forth in Annex 1, using the same prices and terms as for cash payments. The acceptance of cards of other systems at GeldKarte terminals of Company is not affected hereby subject to the proper processing of the cards set forth in Sentence 1 not being impaired.
- (4) With the completion of a proper GeldKarte-based payment transaction at an approved GeldKarte terminal, Company purchases from the issuing bank the guarantee of payment of the amount of the effected sale.
- (5) For the operation of the GeldKarte system and guarantee, Company shall be charged a fee amounting to 0.3 percent, however no less than EUR 0.01 per transaction.
- (6) Merchant shall submit all GeldKarte transactions to his bank or a center named by his bank.
- To preserve system security and prevent e.g. the submission of counterfeit or falsified and / or multiple instances of the same sales transaction, the bank respectively commissioned center shall inspect the correctness of the submitted transactions. If no defects are identified, the transactions shall be released for collection.

- (7) Company shall clearly display a reference to the GeldKarte system by means of the provided logo, however without promoting a specific bank or banking group in doing so.
- As soon as Company ceases its participation in the GeldKarte system of the German Banking Industry, it shall remove all acceptance signs referring to the GeldKarte system.
- (8) Company shall be instructed in writing about any amendments to these Terms and Conditions.
- They shall be deemed accepted if Company fails to oppose them in writing. Company shall be expressly instructed about this consequence upon notification of the amendment. Company must submit any opposition to its account-managing bank within 1 (one) month of notification of the amendment.

### Annex 1: Approved Cards

The integrated circuit cards set forth hereunder may be accepted at terminals of the GeldKarte system of the German Banking Industry.

- (a) eurocheque cards (ec cards) which are issued by German banks
- (b) Other cards (“customer cards”)
- (I) BANK-CARD of the Volksbanken und Raiffeisenbanken [→ local cooperative banks]
- (II) S-CARD of the Sparkassen [→ savings banks] and Giro centers
- (III) Customer cards of Deutsche Bank
- (IV) Dresdner ServiceCard
- (V) Postbank Card
- (c) Additional cards may be approved by the “Chipkarte” Steering Committee of the Zentraler Kreditausschuss (ZKA) [→ German Credit Commission].



## iii. giropay+eps Acceptance

### a. Preamble

#### 1 giropay+eps

EVO offers the use of the online payment method giropay (referred to below as “**giropay**”). In addition, EVO offers the use of the payment method eps transfer (referred to below as “**eps**”) as an option. Both, giropay and eps, are payment instruments as defined in the Agreement.

Both, giropay and eps, are Internet-based payment methods based on a uniform copyrighted standard. In the framework of giropay or eps online payment orders (referred to below as “**giropay Payment**” or “**eps Payment**”, collectively “**Payment**”) from customers of banks that are linked to giropay or eps (referred to below for the above-mentioned banks as the “**Customer's Banks**” and as “**Customers**” for their customers) for the benefit of a bank account held by the Merchant are carried out. Characteristic for this payment procedure is that the Customer's bank account is held at a bank in Germany in the case of giropay and at a bank in Austria in the case of eps. The Merchant's account must be held at a bank in the SEPA zone.

The implementation of the giropay Payments or eps Payments is secured by a payment guarantee from the Customer's Bank.

In the framework of giropay or eps the payee and purpose details from the Merchant's shop system are entered automatically in the Customer's online banking mask. In case of a positive authorization the Merchant receives a confirmation from the system of the implementation of the online transfer. The confirmation of the implementation is combined with a payment guarantee by the respective Customer's Bank as the guarantor, in which the Customer's Bank confirms bindingly and irrevocably that in the framework of these **Service-Related Terms and Conditions giropay+eps Acceptance** the respective payment can be implemented and not cancelled again (referred to below as “**giropay Payment Guarantee**” or “**eps Payment Guarantee**”, collectively “**Payment Guarantee**”). The Customers' Banks to which the instructions for Payments are issued, make the necessary legitimation procedure and the transaction page or online banking mask available.

#### 2 giropay Acquirer

giropay Acquirers (referred to below as “**giropay Acquirers**”) are connected to the other page.

EVO was granted the authority to market giropay and eps and to link the system operated by EVO to giropay on the basis of a contract with a company that operates giropay (referred to below as "**giropay Operator**") and through which EVO is connected to giropay as a giropay Acquirer.

On the basis of the Agreement and on the basis of these **Service-Related Terms and Conditions giropay+eps Acceptance**, EVO enables the Merchant to accept payments that are carried out using giropay or eps as a form of payment independent of a payment card to pay for goods and services offered by the Merchant via the Internet. For this purpose EVO will connect the Merchant to giropay.

### 3 Interoperability

In 2013, the two online payment methods giropay from Germany and eps transfer from Austria interfaced their systems

with one another and now offer online shops the handling of both procedures via one interface. The bilateral cooperation between giropay GmbH and STUZZA Ges.m.b.H., operator of eps transfer, is the basis for the cross-border online transfer with Payment Guarantee. This increases the convenience of the online payment methods. For merchants, this opens up the possibility of addressing a total of up to 40 million online banking customers in Germany and Austria.

As an option, apart from giropay payments, EVO can also handle eps payments for the Merchant. Moreover, based on the interoperability, the Merchant's business account can be held at a bank in Austria for the acceptance of payments. Thus, giropay+eps Acceptance of EVO provides all services of a giropay Acquirer and an eps Acquirer.

## b. Service-related conditions for giropay+eps Acceptance

### 1 Order to effect a transaction ("*Geschäftsbesorgungsauftrag*")

(1) The Merchant commissions EVO in accordance with the Agreement, the **General Terms and Conditions** and these **Service-Related Terms and Conditions giropay+eps Acceptance** to connect it to giropay to enable it to accept giropay Payments as well as – on request – eps Payments in payment of the services and goods it offers via the Internet.

EVO shall provide the following services in fulfillment of this commission:

- a) Accepting transaction-related notifications in the form of data records of a Customer, according to which the latter wishes to pay by selecting the "giropay" or the "eps online transfer" payment option on the Merchant's website through an online interface approved by EVO and forwarding to the giropay Operator;
- b) Forwarding all messages from the Customers' Banks that EVO received from giropay without delay and in full through an online interface approved by EVO;
- c) Forwarding all Payment Guarantees to the Merchant through EVO as the communicating messenger of the Customers' Banks;
- d) Punctual submission of claims under Payment Guarantees against the respective Customer's Bank, if a Payment is not received within seven (7) days of the date of the transaction in the Merchant's bank account, although the corresponding Customer's Bank has issued a Payment Guarantee (referred to below as "**Guarantee-Activating Event**").

(2) Every single Payment Guarantee is limited to the amount of ten thousand euros (€10,000.00) per payment, even if the latter is for a higher amount.

### 2 Inadmissibility of the Acceptance of Payments

(1) In principle, giropay or eps may be used for the payment of all goods and services, unless a good or service is specified in the following negative list.

(2) The Merchant may not offer or use giropay or eps for payment of the following goods and services (negative list):

All goods and services that are or will be illegal as such and whose promotion, offering or sale is or will be illegal or that are offered in conjunction with illegal, obscene or pornographic contents, in particular

- a) all goods and services whose promotion, offering or sale would infringe copyright and industrial property rights or other third party rights (e.g. the rights to own image, name and personality rights);

- b) all goods and services that are among the "inadmissible offers" as defined in § 4 Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (*Jugendmedienschutz-Staatsvertrag*) (that show among other things propaganda or markings of anticonstitutional organizations, that glorify war, infringe human rights, show children or young persons in unnatural, sexual poses or are of a pornographic nature);

- c) archaeological findings;

- d) drugs, narcotics, mind-altering substances and other prohibited substances or agents;

- e) goods that are subject to a trade embargo;

- f) body parts and human remains;

- g) national-socialist articles and publications;

- h) protected animals and protected plants;

- i) means of payment (cash, book money or e-money, currencies including virtual currencies, such as bitcoins as well as checks), insofar as the recipient of the means of payment cannot be identified by the acquirer or Merchant and except for coupons, value cards and vouchers.

(3) EVO is entitled to regularly review the Merchant with regard to the restrictions specified in Section 2(1) and (2); the Merchant is obliged to cooperate in these reviews.

### 3 The Merchant's Obligations on Participation in giropay and eps

(1) The Merchant shall handle all transactions in the framework of giropay and eps in full through an online interface previously approved by EVO taking into account the other technical requirements laid down by EVO and showing the respective Merchant number allocated by EVO.

(2) The Merchant undertakes to handle communication with the Customer exclusively via a connection secured against data manipulation (at least SSL 128 bit encryption).

(3) The Merchant shall design the order process and its website in such a way that when it commissions the payment there is no doubt that the Customer is on the online banking page of the respective Customer's Bank and can recognize this through the display of the Customer's Bank's URL in the browser address line and by checking the security certificate. When incorporating giropay and eps the Merchant may in particular not use any iFrames. iFrames is a technology by means of which Internet content can be incorporated in the Merchant's Internet offer without the user of the Internet offer being able to recognize that the content is not the Merchant's own content.

- (4) Selection of institution for payment:  
For the initiation of a payment, beside the actual transaction data, the BIC of the Customer's bank is required for the selection of the institution for payment. The following options are permitted for the retrieval or transfer:
- (a) If a customer profile is available at the Merchant, including in particular the BIC of the Customer's institution, this BIC is transferred in the framework of transaction initiation.
  - (b) If the BIC of the Customer's bank is not available at the Merchant, he is entitled to query exclusively the BIC of the Customer's bank after selecting "giropay" or "eps transfer". EVO will provide adequate tools that are also made available on the website of giropay GmbH. The retrieval of further data (in particular person-related data, such as IBAN and name) after selecting "giropay" or "eps transfer" as method of payment is not allowed.
  - (c) If the BIC of the Customer's bank is not available at the Merchant and if it is not retrieved as specified in Section (b) above, the Merchant transmits the transaction data without BIC. In this case, the Customer is forwarded to the central bank selection page and the BIC will be retrieved there.
- (5) It is prohibited to query data of the Customer, in particular person-related data, such as IBAN or name, after selecting "giropay" or "eps transfer" as method of payment.
- (6) The Merchant undertakes to offer giropay and eps to Customers only in such a way that giropay Payments are possible through all the Customer's banks. This means that excluding individual banks is expressly prohibited.
- (7) The Merchant undertakes to settle through EVO all due payment claims against Customers for deliveries and services that were established using giropay and eps.
- (8) Irrespective of the proviso to make changes according to Section 17 the **General Terms and Conditions**, EVO shall be entitled to change or amend the provisions in Sections 3.1 to 3.6 with two (2) weeks' written notice to the Merchant if EVO regards these amendments as necessary or expedient because of possible fraudulent uses or these amendments have become necessary because of specifications from the giropay Operator.

#### 4 Preconditions for performance

EVO shall only be obliged to provide the services described in Section 1.1 if all of the preconditions described below in 4.1 to 4.4 are present cumulatively:

- (1) The acceptance of a payment was admissible under Section 2;
- (2) The Merchant's obligations under Section 3 were complied with;
- (3) The Merchant's obligations under Section 8(3) of the **General Terms and Conditions** were complied with;
- (4) The respective payment was accepted exclusively for goods or services that are offered in the framework of the Merchant's usual business operations as stated in the Agreement through an Internet address previously released by EVO.
- (5) Insofar as EVO does not have any evidence with regard to a payment that one of the preconditions referred to in Section 4(1) to 4(4) has not been fulfilled and insofar as, in addition, the respective Customer's Bank has issued a Payment Guarantee, EVO shall notify the Merchant that the sales submission has been "successfully processed" through the online interface approved by EVO.

#### 5 Payment Guarantee

- (1) With the issue of a Payment Guarantee the respective Customer's Bank assumes a guarantee in favour of the Merchant for a limited period of six weeks after the date of the transaction that the Payment covered by the Payment Guarantee will

be made. It is made clear that EVO does not issue the Merchant with its own guarantee bond and does not assign any claims against the Customer's Bank. EVO does not assume any liability for the due fulfillment of the Payment Guarantee.

- (2) Insofar as the respective Customer's Bank issues a Payment Guarantee to EVO, EVO shall forward the Payment Guarantee issued by the Customer's Bank to the Merchant by means of the declaration in accordance with Section 4(5) as communicating messenger of the Customer's Bank.
- (3) In a guarantee-activating event EVO undertakes to submit the claim for payment against the Customer's Bank resulting from the Payment Guarantee in the name and for the account of the Merchant in accordance with the procedure agreed for this purpose by EVO and the giropay Operator, insofar as the Merchant has notified the occurrence of a guarantee-activating event within a period of seven (7) to thirty-eight (38) days after the transaction date using the online report "giropay+eps Transaction Summary" in BIS. EVO shall not be obliged to provide legal services as defined in § 2 German Legal Services Act (RDG).

#### 6 Trademark Rights / Reference to Acceptance

- (1) EVO grants the Merchant the non-exclusive (simple) right to use word mark "giropay" and the word/picture mark "giropay" (referred to be jointly as "**giropay Trademarks**") as well as the word mark "eps transfer" and the word/picture mark "eps transfer" (referred to be jointly as "**eps Trademarks**") limited geographically to the territory of the European Union and limited in time to the duration of the Agreement and these **Service-Related Terms and Conditions giropay+eps Acceptance**.
- (2) The Merchant shall be entitled to use the giropay Trademarks and eps Trademarks without alteration to sell, introduce, offer, advertise and market giropay and eps only in accordance with the provisions of these **Service-Related Terms and Conditions giropay+eps Acceptance** and in accordance with the Brand Book.
- (3) The Merchant may not issue third parties with sub-licences to the rights awarded to it in the above Sections 6(1) and 6(2).
- (4) If the Merchant is sued by third parties because of infringements of the rights of third parties caused by the use of the giropay Trademarks or eps Trademarks the Merchant shall notify EVO of this in writing without delay. In addition, the Merchant shall notify EVO in writing without delay of all infringements of trademarks that come to its notice.
- (5) In the event that the Merchant does not comply with the obligations on using the giropay Trademarks and the eps Trademarks stipulated in Section 6(1) to 6(4) and in the Brand Book, or complies with them to an insufficient extent, and in spite of a written warning does not discontinue this breach of contract immediately, but no later than within a time limit of seven (7) days and does not rectify the consequences of the breach of contract within this time limit, EVO shall be entitled to block the Merchant's access or link to giropay and eps for as long as the breach of contract lasts or the consequences of the breach of contract are not eliminated to the full extent. In the event that the Merchant has not eliminated the breach of contract following a warning of this kind within fourteen (14) days after receipt of the warning, EVO shall have the right to terminate the Agreement without notice. This shall not affect further rights of EVO.

#### 7 Information Duties, Security

- (1) Any Internet addresses of the Merchant other than the ones specified in the Agreement or its Annexes to the Agreement which are used for the distribution of the Merchant's goods and services using giropay and eps have to be notified to EVO

without delay. Insofar as giroipay or eps is offered as the method of payment, these Internet addresses may not be used for the distribution of the Merchant's goods and services after examination and permission by EVO.

- (2) The Merchant shall provide any information on the organization of its business operations (including the security procedure) that EVO requests, among other things insofar as in accordance with EVO's assessment the information must be issued to the giroipay Operator. This shall not affect Section 8 of the **General Terms and Conditions**.

## 8 Accessory Obligations of the Merchant / Using Merchant Data for Advertising Purposes

- (1) The Merchant shall approach EVO only in all questions on giroipay and eps, in particular on the occurrence of a guarantee-activating event. The giroipay Operator and the respective Customer's Bank are not in a position to answer any questions from the Merchant.
- (2) The Merchant shall offer customers the cashless acquisition of or sell all goods and/or services offered by the Merchant at the same prices and subject to the same terms and conditions as customers that request another method of payment. In particular, additional costs may not be invoiced or security demanded and customers may not be placed in a worse position than other customers ("No Surcharge" principle).
- (3) The Merchant shall ensure that it can be clearly identified at any time by each Customer. For this purpose it shall display its address (not a P.O. box) on the respective Internet pages and fade it in immediately before the sale of goods or provision of a service.
- (4) The Merchant shall provide each Customer with a contact facility and shall issue information on transactions that have been carried out at all times. This can also be done by showing a telephone number or an email address. The contact facilities must be clearly visible, easily accessible and available for a period of not less than ninety (90) days after the respective transaction date.
- (5) The Merchant shall ensure by means of suitable age verification methods that content with age restrictions (in particular

age restrictions imposed by the *Freiwillige Selbstkontrolle der Filmwirtschaft GmbH, Wiesbaden*) is made available solely to those persons of the appropriate age.

- (6) The Merchant agrees that the information on the Merchant referred to below may be used by EVO, where applicable through a link to the Merchant's homepage, to refer to the Merchant as a giroipay participant in advertising materials and on the giroipay homepage ([www.giroipay.de](http://www.giroipay.de)):
- > the Merchant's full trading name, in case of legal entities showing the legal form and all authorized representatives;
  - > the full address of the Merchant's location;
  - > the complete Internet address on which giroipay and eps are to be used;
  - > specification of the goods and services category;
  - > the Merchant's logo.

EVO shall be entitled to transfer this right to third parties, in particular the giroipay Operator and giroipay GmbH. When the Agreement comes into effect, the Merchant shall let EVO have the logo that it uses as file in format gif, jpg, jpeg or png with a maximum of 200 pixels (width) and a maximum of 100 pixels (height).

## 9 Suspension; Termination

Irrespective of any statutory termination rights and the termination rights regulated in Section 14 of the **General Terms and Conditions** and in Section 6(5) of these **Service-Related Terms and Conditions giroipay+eps Acceptance**, EVO shall have the right to terminate for cause if

- (a) the Merchant has not referred Customers clearly to its Standard Terms and Conditions of Business, in particular to the law applicable to the respective contracts, or
- (b) contrary to Section 2 the Merchant sells goods or services for which giroipay and eps are not approved as a payment method, or
- (c) the Merchant is in breach of one of the obligations referred to in Section 3 or,
- (d) contrary to Section 7(1) the Merchant uses giroipay or eps on Internet addresses that have not been approved, or
- (e) the Merchant is in breach of Section 8(2).

## c. Brand Book giropay

### Preamble

In this Brand Book, the parties provide in conjunction with part III, Section d. "CD guidelines" for the terms of use, on which Partners or merchants may use the giropay marks and eps marks.

The terms of use are intended to secure the standardized use of the giropay marks and eps marks by Partners or merchants as well as the marks' integrity and scope and also to create a high degree of recognition by end customers.

The present terms of use are furthermore intended to ensure that the giropay marks, the eps marks and/or the giropay and the eps system are not in any way connected with illegal or questionable marks or services or with marks or services that in any way violate the sensitivity of just and fair-minded people.

### 1 Definitions

In the sense of these terms of use:

- (1) Marks are
  - (a) the "giropay" and "eps transfer" wordmarks and/or
  - (b) the word/design marks



- (2) Licensee is the owner of an acquirer license and his sub-licensees (providers).

### 2 Scope of application

The present terms of use apply to any use of the marks regardless of form or media used.

### 3 General requirements of using the marks

- (1) Prohibition of variations  
Partners or merchants are not entitled to vary the marks in any way. They may only be used as registered by the owner of the marks, giropay GmbH, with the German Patent Office and as shown in section (3) and in part iii section d of this Brand Book.
- (2) Spelling of the word marks  
The terms "giropay" and "eps" or "eps transfer" are always written in lower case, even when used at the beginning of a sentence. No spaces may be added to the term "giropay" or "eps" or "eps transfer" (e.g. "g i r o p a y" or "g i r o p a y" etc.) and it may not be written in small caps (e.g. "GIROPAY"). In consecutive texts, the term "giropay", "eps", "eps transfer" may be accentuated using italics. Special regulations are possible for headlines, but EVO must be consulted in advance.
- (3) Standard colors of the word/design mark
  - (a) The word/design marks "giropay" or "eps transfer" may only be used as specified in part iii, section d.
  - (b) As an alternative to the color depiction, the word/design mark "giropay" may also be used in black-and-white if the colors red and blue are replaced with standard black. This alternative black-and-white depiction must not be used if other payment systems are shown in color next to giropay. Further details follow from part iii, section d of this Brand Book.
  - (c) The word/design marks may not be distorted, compressed, recolored, cut or alienated in any other way. Ideally, the word-/desing marks appear on a white background.
  - (d) giropay GmbH alone may implement the "giropay" word/design mark in other ways outside the defined specifications.
  - (e) STUZZA Ges.m.b.H. alone may implement the "eps transfer" word/design mark in other ways outside the defined specifications.
- (4) Obligation to label

If the term "giropay" or "eps transfer" or the "giropay" or "eps transfer" word/design mark is used in a brochure or on an information site (Internet) exclusively dedicated to this topic, then a label must be affixed to the product, which shows that it is a registered mark of giropay GmbH or STUZZA Ges.m.b.H. This note must be located on the same page, on which the marks are used. The specific details of such labeling are left to the Partners or merchants.

### 4 Use in connection with word or picture markers

- (1) Any use of the "giropay" or "eps" terminology that may have a negative effect on the marks' distinctiveness is prohibited.
- (2) This applies in particular to the use of the word "giropay" or "eps transfer" before or after other terms and/or in case of any connection of the word "giropay" or "eps transfer" by hyphen or forward slash with
  - (a) an incorrect company name, e.g. giropay AG or
  - (b) any other mark, e.g. giropay / XY process or
  - (c) any other banking or financial service, e.g. giropay direct debit or
  - (d) any other product similar to banking or financial services.
- (3) The "giropay" and "eps transfer" word marks may not be used in connection with any possessive nouns (e.g. "our giropay system offers you ..."), but may only be used as a fixed term (e.g. "simple, fast, and secure payment with giropay").
- (4) If the "giropay" or "eps transfer" word mark is to be used in any other form (e.g. as verb), this must be agreed with EVO in advance in each individual case.
- (5) Using the word/design mark on the Internet:
  - a) Animations of the logo and/or the claim ("online zahlt man giropay" – "pay online with giropay") are not permitted.
  - b) If a hyperlink is attached to the logo, such link may only be to the pages of giropay GmbH ([www.giropay.de](http://www.giropay.de)) and not to any sub-page or other website.

### 5 Use in connection with other payment methods

- (1) If one of the marks of giropay GmbH or STUZZA Ges.m.b.H. is offered together with other payment or verification methods, then the distance requirement set forth in part III must be observed.
- (2) In order to show the giropay marks as equal to the other payment methods, special care must be taken that the giropay mark is used in the same size, frequency, and color design as reference to other payment methods.

### 6 Marketing in search engines

Previous written approval must be obtained from EVO to use the term "giropay" as a keyword in search engine marketing (paid content).

The approval of giropay GmbH must be obtained through EVO, who also has a list of possible search engines.

### 7 Responsibility for giropay transactions

Merchants or Partners and any sub-licensees are required to ensure that the way, in which the marks are used does not create the impression that the Operator assumes any warranty or guarantee or liability or takes responsibility in any other way with regard to the yet to be acquired or acquired goods or services that will be paid via "giropay" or "eps".

## 8 Trademark misuse

The Merchant is obliged to inform the operator without delay if he comes to know that a third party misuses the trademark.

### d. CD guidelines

In this document you will find all necessary basic elements and specifications for the use of the giropay design elements. These design elements can be downloaded from: [www.giropay.de](http://www.giropay.de).

The giropay logo may only be used in the provided data records; its proportion and presentation may not be changed.

As a rule, the logo is used on a white background. It can be used on any other monochrome background, if adequate.

The logo versions to be used as standard are available for download in eps, jpg and png format.



Display PRINT 50 %

Design format PRINT: 100 mm = 100 %

Design format DIGITAL: 100 px = 100 %

Minimum size PRINT: 15 mm = 15 %

Minimum size DIGITAL: 35 px = 35 %



The giropay logo with supplement may only be used in the provided data records; its proportion and presentation may not be changed.

**Caution:** It is not permitted to create own supplements or logo versions.

As a rule, the logo with supplement is used on a white background. It can be used on any other monochrome background, if adequate.

The logo versions to be used as standard are available for download in eps, jpg and png format.



Display PRINT 100 %, Illustration PRINT 100 %

Design format PRINT: 110 mm = 100 %

Design format DIGITAL: 150 px = 100 %



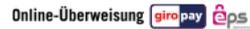
Minimum size PRINT: 35 mm = 32 %

Minimum size DIGITAL: 75 px = 50 %



## 9 Miscellaneous

- (1) If the giropay system and the associated use of the licensed marks cause any question that is not provided for in this Agreement, then the Partner or merchant will be required to notify EVO without delay. In this case, the parties will be required to agree on a new term of use regarding such question.
- (2) Part iii, section d forms an integral part of this Brand Book.



The partner logo (giropay and eps) may only be used in the provided data records; its proportion and presentation may not be changed.

As a rule, the logo is used on a white background. It can be used on any other monochrome background, if adequate.

The logo versions to be used as standard are available for download in eps, jpg and png format.



Design format PRINT: 75 mm = 100 %

Design format DIGITAL: 100 px = 100 %



Minimum size PRINT: 25 mm = 33 %

Minimum size DIGITAL: 50 px = 50 %



Display PRINT 100% Illustration PRINT 100%

Design format PRINT: 120 mm = 100 %

Design format DIGITAL: 150 px = 100 %



Minimum size PRINT: 50 mm = 41 %

Minimum size DIGITAL: 100 px = 67 %



Further guidelines for the use of the eps logo (e.g. separate version) can be found on the website: [www.stuzza.at](http://www.stuzza.at).