

# Terms & Conditions

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A hand is shown pointing at a tablet computer. The tablet displays a 3D topographic map of Europe and Africa, with some circular markers overlaid on the map. The background is a blurred, dark blue and green gradient.

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## Article 1. Definitions

In the Merchant Agreement, and in the Terms & Conditions, the following definitions shall apply:

3D Secure	The “Three-Domain Secure” protocol developed by Visa International Inc. (Visa) branded as “Verified by Visa” and “MasterCard SecureCode” developed by MasterCard International Inc. (MasterCard), including successive versions thereof and any amendments thereto.
Account Holder	Any person who is authorised to use a Payment Method issued to him.
Acquirer	A financial institution that is authorised by a Scheme Owner to enable the use of a Payment Method by accepting Transactions from merchants on behalf of the Scheme Owners, routing these to the Scheme Owners or Issuing Banks and collecting and settling the resulting funds to the Merchant.
Acquiring via Adyen	Use of a Payment Method via Adyen where Adyen acts as the Acquirer or Adyen contracts with the relevant third party Acquirer on behalf of the Merchant to enable the use by Merchant of such Payment Method.
Adyen	Adyen N.V., a company registered with the Dutch Chamber of Commerce under number 34259528 and having its seat at Simon Carmiggelstraat 6-50, 1011 DJ in Amsterdam, the Netherlands.
API	Application Programming Interface consisting of a direct secured internet connection between the Merchant's site and the Adyen environment via which Payment Details are sent.
Authorisation	The process whereby an Account Holder (or Merchant on Account Holder's behalf) requests permission for a Payment Method to be used for a particular purchase of Merchant's Service or Product. “Authorised” shall have the corresponding meaning.
Bank Account	The bank account held by an Eligible Merchant with Adyen on which funds owed by Adyen to the Eligible Merchant (credit) or by the Eligible Merchant to Adyen (debit) are administered and on which Adyen will Settle the funds for Transactions validly processed for the Merchant.
Business Day	A day other than a Saturday or Sunday on which banks are open for business in The Netherlands.
Capture Period	The period in which an Authorised Transaction can be Captured. The Capture Period varies per Payment Method.
Capturing	The confirmation by (or on behalf of) the Merchant to the Acquirer that a Transaction for which Merchant received an Authorisation is to be executed and the Account of the Account Holder is to be actually charged for the Transaction. “Captured” shall have the corresponding meaning.
Card	Any form of Credit Card or Debit Card, which may be used by a Cardholder to carry out a Transaction on a Cardholder's account.
Card Association / Card scheme	Visa, MasterCard, Discover or comparable bodies which provide Cards.

Card Verification Method / CVM Code	The 3- or 4-digit numeric code that is printed on a Card. This code is known as: for Visa: CVV2; for MasterCard: CVC2; for American Express and Discover: CID. Collectively referred to as CVM Code.
Cardholder	Any person who is issued a Card and possesses and uses a Card and, where required on the Card, whose signature appears on the Card as an authorised user.
Chargeback	A Transaction which is successfully charged back on request of the Account Holder or the Issuer pursuant to the relevant Scheme Rules resulting in a cancellation of a Transaction in respect of which a Merchant has been paid or was due to be paid. If a Chargeback occurs for a Transaction in respect of which Merchant already received Settlement of the related funds, this results in the unconditional obligation for the Merchant to immediately return the Settled funds to Adyen, to enable Adyen to return such funds to the Scheme Owner or Acquirer.
Chargeback Fee	The fee charged by Adyen to the Merchant in respect of a Chargeback.
CNP or Card Not Present Transaction	A Transaction by a Cardholder where the Cardholder is not physically present at the point of sale at the time of the Transaction. CNP shall comprise MO/TO and E-Commerce Transactions.
Credit Card	Any form of credit card, which permits or enables Transactions on a Cardholder's account.
Customer Area	The secured interface on Adyen's website where Merchants can review and operate on their Transactions, profile and settings and find usage instructions, information regarding the Services and the Payment Methods.
Debit Card	Any form of debit card, which permits or enables Transactions on a Cardholder's account.
Delivery Date	The date on which the complete Merchant Product and/or Merchant Service is delivered to the Account Holder who paid for the corresponding Transaction.
Deposit Level	The minimum level of Deposit(s) set for the Merchant from time to time pursuant to these Terms and Conditions.
Deposit(s)	A sum of money held by Adyen, withheld by Adyen from funds to be Settled to the Merchant and/or separately deposited with Adyen by the Merchant on Adyen's request as security for Chargebacks, Fines and fees due to Adyen.
E-Commerce Transaction	A Transaction by an Account Holder where said Account Holder is not physically present at the point of sale at the time of the Transaction, and the Payment Details are presented to the Merchant or Adyen by the Account Holder by means of secure Internet communications.
Eligible Merchant	A Merchant which is deemed eligible to hold a Bank Account by Adyen (in its discretion) and, as such, is provided a Bank Account.
Fine	Any fine, uplifted service fee or other additional payment as imposed by the Scheme Owners and/or Acquirers to the Merchant and/or Adyen, as a result of situations such as, but not limited to, breach of Scheme Rules by the Merchant or caused by the Merchant, excessive fraud levels or excessive Chargeback levels.
Hosted Payment Pages	The Payment Interface where an Account Holder is redirected from the Merchant

	shopping site to a payment site hosted by Adyen, on which the Payment Details are entered by the Account Holder.
Inflation	The Euro Area Inflation (HICP All Items Euro Area) as found on <a href="http://ec.europa.eu/eurostat/web/main/home">http://ec.europa.eu/eurostat/web/main/home</a> (or such future replacement website as may be used by Eurostat).
Interchange Fee(s)	The fee(s) set and charged by the Card Schemes (and in part passed on to the relevant Issuer) for processing and settlement of a Card Transaction. This fee shall include the assessment fees and any other scheme fees charged by the Card Scheme for the particular Transaction.
Issuer / Issuing Bank	An institution that issues Payment Methods to the Account Holder and whose name appears on the Card or bank account statement as the Issuer or who enters into a contractual relationship with the Account Holder with respect to the Payment Method.
Merchant	The company entering into a Merchant Agreement with Adyen and for which Adyen processes Transactions related to the Merchant Service and Merchant Products.
Merchant Agreement	The agreement between Adyen and the Merchant for the provision of the Services to Merchant, including the Terms and Conditions and all Schedules and other documents appended thereto by reference.
Merchant Product / Merchant Service	A product/service which the Merchant is selling and for which Transactions are processed.
MO/TO or Mail Order/Telephone Order Transaction	A Transaction by an Account Holder where the Account Holder is not physically present at the point of sale at the time of the Transaction, and the Payment Details are presented to the Merchant by the Account Holder by means of mail (not email), fax or telephone.
MSC / Merchant Service Charge	The fee that Adyen charges per Transaction for the use of the relevant Payment Method for that Transaction. This can be a percentage of the Transaction amount, or a fixed fee, or a combination of a percentage and a fixed fee. The Processing Fee is not part of the MSC.
Order Currency	The Currency in which the Transaction is originally offered to the Account Holder.
Payment Currency	The Currency in which a Transaction is processed.
Payment Details	The information which makes up a Transaction message which needs to be submitted to the Payment Interface to enable the processing of the Transaction by Adyen and to perform fraud checks, including details regarding the Card, the Account Holder, relevant authentication details and the payment amount.
Payment Instruction	Electronic instruction sent by an Eligible Merchant (or by an authorised third party acting on behalf of Eligible Merchant) to Adyen via the Customer Area to transfer funds from the Bank Account to another bank account.
Payment Interface	An electronic connection method provided by Adyen to the Merchant for providing the Payment Details for individual Transactions allowing Adyen to provide its Services with respect thereto.
Payment Method	A method of enabling payments by Account Holders to merchants such as Cards, online and offline bank transfers and direct debits offered by the Scheme Owners.

PCI DSS	The security standards for transmitting, processing or storing card data / payment details, known under the name PCI DSS, as required to be observed under the Scheme Rules of the Card Schemes. ( <a href="http://www.pcisecuritystandards.org">www.pcisecuritystandards.org</a> )
POS / Point of Sale Transaction	Transaction submitted for processing by a Cardholder via a POS Terminal where the Cardholder is physically present at the location of the POS Terminal
POS Terminal	Device designed to submit POS Transactions to Adyen by reading the relevant data on the Card, registering the approval of the Cardholder for the Transaction, encrypting the Payment Details and sending them via the public internet to Adyen for processing.
Processing Fee	The fee that Adyen charges for each Transaction submitted for processing to the Payment Interface, regardless of the Transaction amount and the type of Payment Method used.
Refund	A (partial) reversal of a particular Transaction, whereby the funds are reimbursed to the Account Holder on the initiative or request of the Merchant.
RFI or Request for Information	A request from Scheme Owner or Acquirer received by Adyen for more information about a Transaction, made available by Adyen to the Merchant in electronic form.
Scheme Owner	The party offering and/or regulating the relevant Payment Method.
Scheme Rule	The collective set of bylaws, rules, regulations, operating regulations, procedures and/or waivers issued by the Scheme Owners as may be amended or supplemented over time and with which Merchant must comply when using the relevant Payment Method. As a service Adyen endeavours to make up to date versions available of the Scheme Rules applicable to the Merchant via the Customer Area, but only the then current applicable Scheme Rules as issued by the relevant Scheme Owner and/or the relevant Acquirer are binding on Merchant.
Service(s)	The collective set of payment processing, payment routing, fraud control, reconciliation, reporting, Settlement and/or other services as provided by Adyen to the Merchant to enable the Merchant to use Payment Methods to process Transactions, as well as providing a Bank Account to Eligible Merchants and any other services offered by Adyen to a Merchant under the Merchant Agreement.
Settlement	The payment of amounts by Adyen to the Merchant, owed with respect to settlements received by Adyen from Acquirers or Scheme Owners for Transactions validly processed for the Merchant, minus the amounts for Refund and Chargebacks, Transaction Fees and the amounts needed to keep the Deposit on the then current Deposit Level. "Settle" and "Settled" shall have the corresponding meanings.
Software	The collective set of programs and data developed and/or operated by Adyen as needed to provide the Service to its merchants, including the Payment Interface.
Terms and Conditions	The current version of these terms and conditions of Adyen.
Traffic	The profile of Merchant Transactions, including volume, spread across Payment Methods, geographical spread and other relevant information.
Transaction	An Authorisation request of an Account Holder for a payment from the Account Holder to the Merchant submitted by Merchant to Adyen.

Transaction Fee	The sum of Merchant Service Charge (MSC) and Processing Fee.
Uncompleted Order Amount	The total amount of Authorised, Captured and/or Settled Transactions for the Merchant on any point in time, for which the Merchant Products and/or Merchant Services have not been delivered to the relevant Account Holders at that time and/or for which the return rights or order cancellation rights of the Account Holder under the terms and conditions of the Merchant and/or applicable law have not yet lapsed.
Working Hours	From 09:00 CET to 18:00 CET on Business Days in the Netherlands, or such other hours as may be published by Adyen on the Customer Area.

## Article 2. Description of the Services

### 2.1 PAYMENT PROCESSING

The Adyen Services deliver real time or near real time Transaction processing capability over the Internet with a high availability service level applying to the Payment Interface (as set out in clause 6). The Adyen Services include reconciliation services for Transaction Acquired and Settled via Adyen, to help match processed Transactions with settlements received from the relevant Acquirers and Scheme Owners. All Card Not Present Transactions shall be submitted to Adyen for processing through the Hosted Payment Page as Payment Interface, unless otherwise agreed in the Merchant Agreement. All POS Transactions shall be submitted to Adyen to the API by means of an Adyen approved POS Terminal, which complies with the requirements set out in clause 4.

If the relevant Acquirer or Scheme Owner settles related funds directly to Merchant (so not via Adyen), reconciliation services will not be available unless specifically agreed otherwise in writing by Adyen.

The Merchant is obliged to ensure all data that Adyen requests to be provided for a Transaction, including those needed for fraud checks, are provided with each Transaction submitted for processing by Adyen. If the Merchant fails to provide the requested data with each Transaction, Adyen has the right to immediately suspend Transaction processing. Adyen may revise the required data needed to process Transactions from time to time by giving notice to the Merchant via the Customer Area as needed to be able to process such Transaction and conduct fraud checks.

### 2.2 MERCHANT REGISTRATION AND KYC CHECK

In order to enable Adyen to comply with anti-terrorism, financial services and other applicable laws and regulations and KYC ('Know Your Customer') requirements imposed by the Scheme Owners and Acquirers, Merchant must when entering into the Merchant Agreement and thereafter on Adyen's first request, provide information about itself, its activities and its shareholders (the "Registration Information"). Merchant warrants unconditionally that all Registration Information it provides is correct and up to date.

Merchant will provide Adyen with at least three Business Days prior written notice of any change of the Registration Information. Merchant will on first request from Adyen provide such additional information and supporting documentation regarding its activities and identity and that of its shareholders as Adyen may reasonably determine to need to ensure compliance with applicable laws and regulations and Scheme Owner and Acquirer KYC requirements. Merchant agrees that Adyen may run further checks on Merchant's identity, creditworthiness and background by contacting and consulting relevant registries and governmental authorities.

Adyen's acceptance of Merchant as user of the Services and the relevant Payment Methods is strictly personal and limited to the use by Merchant of the Services for payment of Merchant's own products and services. Merchant may not use the Services to facilitate the payment for products or services sold by third parties and therefor may not resell the Services to third parties.

Support for each Payment Method is subject to acceptance by the relevant Scheme Owner or Acquirer used by the Scheme Owner, which such Acquirer or Scheme Owner may withhold or withdraw in its discretion at any time. Some Scheme Owners or Acquirers may require the Merchant to enter into a direct agreement with the Acquirer or Scheme

Owner before the Merchant may use the relevant Payment Scheme. Merchant hereby authorizes Adyen to submit Registration Information received from Merchant to the relevant Scheme Owners and Acquirers to obtain permission for providing access to their Payment Methods for Merchant.

### **2.3 PAYMENT METHOD AND CURRENCY SUPPORT**

Adyen will support the Payment Methods and Currencies as specified in the Merchant Agreement, as long as Adyen continues to support these in its general product portfolio. In case of: (i) materially different terms imposed by the relevant Scheme Owner or Acquirer; (ii) material malperformance by the relevant Scheme Owner or Acquirer (or reasonable ground for Adyen to expect such malperformance); (iii) reasonable grounds to doubt the credit worthiness of the Scheme Owner or Acquirer; or (iv) sharply increased costs for Adyen to offer the Payment Method due to new circumstances; then Adyen may decide in its reasonable discretion to stop supporting a particular Payment Method or make future support conditional on the acceptance by Merchant of additional conditions or fees. Adyen will give at least 1 month written notice of any discontinued or changed support of any Payment Method, unless this is not reasonably possible given the cause for this decision. Adyen will use its reasonable endeavours to offer an alternative for any discontinued Payment Method to the Merchant.

Merchant understands that Acquirers and/or Scheme Owners might cancel certain Payment Methods, change the characteristics thereof or change the acceptance criteria under which they make them available. As a consequence, Adyen may be forced to block Merchant from further use of a Payment Method or impose additional restrictions or conditions on its continued use as a consequence of such decisions of the relevant Acquirer and/or Scheme Owner. Where possible Adyen will use its reasonable efforts to give Merchant prior notice of any such change or cancellation with respect to the Payment Methods agreed to be offered under the Merchant Agreement. Adyen will on request of Merchant in such case reasonably assist Merchant in finding alternative Payment Methods available to Merchant or manners in which to (re-)gain the approval of the relevant Scheme Owner or Acquirer.

### **2.4 CARDHOLDER AUTHENTICATION METHODS**

For all Transactions processed through the Hosted Payment Pages, 3D Secure authentication will be offered as option to use by the Merchant where supported by the Acquirer and Payment Method used in combination with the then current Software of Adyen.

### **2.5 ACCOUNT HOLDER PAYMENT CURRENCY**

Adyen will have the right to offer the Account Holder the option to use a different Payment Currency than the Order Currency, in which case the Merchant will still always receive Settlement of the Transaction amount in the Order Currency (except in case another currency is agreed in the Merchant Agreement or the Merchant does not make a bank account available for Settlement in the Order Currency).

### **2.6 FRAUD CONTROL**

All Transactions processed by the Adyen Services will be screened by the Adyen Fraud Control Tool, which performs a number of checks on the Transactions and attaches a resulting total score to each Transaction, which represents the likelihood of the Transaction being fraudulent. Merchant must configure the scoring values for the Adyen Fraud Control Tool via the Customer Area on the Adyen website to determine how the Adyen Fraud Control Tool will judge Transactions.

The Fraud Control Tool does not guarantee the prevention of fraudulent Transactions, nor against resulting Chargebacks or Fines. Regardless of the resulting total score, Transactions may be fraudulent or non-fraudulent.

Adyen reserves the right to change the scoring values as set by the Merchant in the Fraud Control Tool in case Adyen in its reasonable discretion on the basis of clear and objective indications judges these to pose an unacceptable risk for accepting fraudulent Transactions or creating increased Chargeback levels. (Adyen is not under any obligation to check these or any other setting made by Merchant in the Customer Area.) Furthermore, Adyen has the right to add new checks to the Fraud Control Tool or change existing checks without prior notice.

For some Payment Methods, Transactions can be cancelled by the Merchant after they have been Authorised. The final responsibility for accepting or rejecting a Transaction will remain with the Merchant. Adyen reserves the right to cancel Transactions that it has reasonable grounds to suspect to be fraudulent or involving other criminal activities, even if the Fraud Control Tool failed to block the Transaction.

## 2.7 CAPTURES

For some Payment Methods it is possible to ask for Authorisation of a payment (to check whether the Account Holder indeed has an account that can be charged for the payment amount) without immediately Capturing the Transaction. The prior Authorisation gives the Merchant some additional assurance that when Merchant Captures the Transaction, it will be Settled to the Merchant (and not blocked or subject to Chargeback). The Merchant is responsible for Capturing Transactions; this can be realised via the Customer Area or the API. Merchant understands that Authorised Transactions have a limited maximum Capture Period in which they can be Captured which is set by the Issuing Bank or the relevant Scheme Owner. Beyond the applicable Capture Period, the additional assurance granted by the prior Authorisation is no longer valid, increasing the chances of the Capture not leading to a successful Settlement of the related payment. It is Merchant's responsibility to check the applicable Capture Period via the Customer Area to ensure it timely Captures Authorised Transactions. Merchant should generally take into account that the Capture Period can be as short as 5 days after Authorisation.

## 2.8 SETTLEMENTS

Subject to the Deposit being at the applicable Deposit Level, funds from the Account Holders charged for the validly processed Transactions of the Merchant which are Acquired via Adyen are paid by the Acquirer or the Scheme Owner to Adyen, who will subsequently Settle received funds to the Merchant.

Adyen is only obliged to provide Settlement of Transactions for which it has received settlement(s) by the Acquirer or the Scheme Owner. It is Merchant's responsibility to evaluate if the conditions imposed by the Payment Methods for settlement (as communicated from time to time via the Customer Area and/or by the Scheme Owners themselves via their websites and other communication channels to the Merchant) are acceptable to the Merchant. This is specifically relevant for the Merchant to take into account with respect to Payment Methods that are not monitored and regulated by governmental financial services authorities such as but not limited to non-Card Scheme related prepaid cards and SMS and IVR payments. Merchant understands and agrees that Adyen will not compensate Merchant for late or non-performance, insolvency or bankruptcy of the Acquirer or Scheme Owner due to which Merchant receives late Settlement or no Settlement at all for processed Transactions.

Adyen reserves the right to withhold Settlement of Transactions if they are Captured, but suspected to be fraudulent, related to illegal activities or likely to become subject to a Chargeback by Adyen and/or the relevant Acquirer and/or Scheme Owner, until satisfactory completion of Adyen's investigation, that of the relevant Acquirer or Scheme Owner or that of a third party nominated by any of these parties. The Merchant will give its full co-operation to any such investigation.

No interest will be due over amounts held by Adyen prior to Settlement of such funds to the Merchant, except in case Settlement is delayed for more than 30 days due to the intent or gross negligence of Adyen. In such case interest will be due by Adyen over the late Settled amount at the rate of the 3 month EURIBOR rate +2%.

Adyen may not sell or pledge its receivables on or via the Scheme Owners resulting from Transactions processed for a Merchant.

## 2.9 REQUIRED DATA

Merchant shall from time to time on the first request of Adyen provide all required information regarding the then current actual or expected Delivery Dates for processed Transactions and estimates for the average time between Transaction Authorisation and the related Delivery Date. Further Merchant shall provide Adyen on its first request with all requested information on Merchant's then current ability to provide the Merchant Products and Services, its financial status, solvability and liquidity.



This information is used by Adyen to estimate the likely Uncompleted Order Amount as used to determine the Deposit Level as per clause 3.4. In case Adyen has reasonable grounds to question (i) the accuracy or reliability of the information regarding Delivery Dates and/or (ii) Merchant's financial stability and/or (iii) its ability to provide the Merchant Product and/or the Merchant Services to the Account Holders, Adyen may in its discretion take this into account in estimating the Uncompleted Order Amount for setting the Deposit Level. Adyen will not take such action arbitrarily and will where reasonably possible (considering the grounds and urgency of the adjustment) request and consider Merchant's input on Adyen's amended assessment of the Uncompleted Order Amount before using it to amend the Deposit Level.

## **2.10 MERCHANT OBLIGATIONS AND RESTRICTIONS**

Merchant may only use the Services for payment of those Merchant Products and Services which Merchant registered for when entering into the Merchant Agreement with Adyen as reflected in the Merchant Agreement. The acceptance by Adyen of Merchant as customer is strictly linked to the description of Merchant's Products and Services Merchant registered for when entering into the Merchant Agreement. Merchant must ask prior written approval for any change or addition to the Merchant's Products and Services prior to submitting payment requests therefor.

The Merchant shall not use the Services for the payment of Merchant Products and/or Merchant Services where it is illegal to offer or provide these to or from the relevant country and/or which are stated in Adyen's Prohibited and Restricted Products and Services List. Merchant may obtain a written waiver for Products and Services in the 'restricted' section of this list, but such waiver may be revoked by Adyen in its discretion. This list may be updated in Adyen's discretion where needed to ensure legal compliance, compliance to Scheme Rules, prevent high levels of Chargebacks, reputational risks and/or to reduce exposure to potentially fraudulent or illegal transactions. Merchant will be informed of updates of this list by Adyen publishing an updated list in the Customer Area. Where a published change affects a significant portion of the Merchant's Product or Services, Merchant may terminate the Merchant Agreement by giving written notice to Adyen.

Adyen's acceptance of Merchant as customer should not be interpreted as an advice or opinion of Adyen as to the legality of Merchant's Products and Services and/or of Merchant's intended use of the Services therefore. Merchant is and remains solely responsible to ensure the Merchant Products and Services sold are compliant with the Scheme Rules and applicable laws in its country of origin and the countries its customers are based in. Further some Payment Methods apply additional restrictions as set out in the applicable Scheme Rules which Merchant must at all times ensure compliance with.

The Services of Adyen may not be used (and Transactions may not be submitted for processing) for prepaying Merchant Products and Services for which the Delivery Date is in part or in whole more than 12 months after the date the Transaction is submitted for processing.

For E-commerce Transactions, Merchant is obliged to provide on its website the following information to an Account Holder for every Transaction: complete description of the goods or services offered, returned merchandise and refund policy, customer service contact (including email address and/or telephone number), address, delivery policy, Merchant's consumer data protection policy and all other legally required information to be provided to the Account Holder in the relevant jurisdiction.

The Merchants must maintain a copy of all electronic and other records related to the Transaction and the ordering and delivery of the Merchant Product and Services for the greater of (i) 2 years subsequent to the Transaction being processed or (ii) the applicable warranty period of the delivered Merchant Product and Services. The copy of the records shall include, but not be limited to: shipping details (if relevant), invoices for the delivered Merchant Product and Services and all contacts with the Account Holder. In case of investigations by Adyen, the Acquirers and/or the Scheme Owners with respect to Chargebacks, suspected fraud or other RFI's from the Scheme Owners, Merchant will fully co-operate in the auditing of such records. Merchant's obligations to maintain documentation of its business according to applicable laws remain unaffected by this clause.

Merchant shall not honour delivery address changes for any Transaction after requesting the Authorisation.

## 2.11 WARNING – FINES SCHEME OWNERS

For violations of certain key requirements under the Scheme Rules by Merchants, some Scheme Owners (and in particular the Card Schemes) can levy significant Fines, ranging from 25.000 Euro to over 1 million Euro. The Scheme Owners do this to protect the Account Holders, Merchants and providers of the Payment Methods collectively against misuse, fraud, illegal activities, breach of applicable laws, reputational damage and excessive costs. Key examples of Scheme Rules which are subject to such Fines: (i) using the Payment Method for other Merchant Products and Services than for which the Merchant received express authorisation to use it for; (ii) using the Payment Method for Merchant Products and Services which are violating applicable laws; (iii) using the Payment Method for selling Merchant Products and Services for which the Scheme Owner explicitly prohibited its use (e.g. adult content, drugs, arms, gambling); (iv) using the Payment Method for the benefit of a third party / reselling the use of the Payment Method to a third party (the authorisation for Merchant to use a Payment Method is strictly personal); (v) percentage of Transactions of a Merchant which is subject to a Chargeback is above the applicable acceptable level (see clause 7.1 for more information on this); (vi) breaches of security and confidentiality obligations with respect to Payment Details (see clauses 4.1 and 4.2 for more information on this); (vii) fraudulent, misleading activities of which Account Holders are the victim.

Via the Customer Area more detailed information on then current applicable Fines and Scheme Rules is available for Merchant. Merchant is strongly advised to regularly review the then current Scheme Rules and relevant changes to applicable laws as applicable to its Merchant Products and Services and business practices to ensure their compliance to applicable Scheme Rules. Adyen assists Merchant in this by providing access to and summaries of applicable Scheme Rules via the Customer Area. Where Merchant finds the Scheme Rules (including Fine possibility) to be unacceptable, Merchant is free at any point in time to stop using the relevant Payment Method (the Scheme Rules and these terms remain applicable to previously processed Transactions for Merchant).

Where Adyen becomes aware of and/or received any notice of a potential exposure to a Fine related to any Merchant behaviour, Merchant will on first request provide all reasonable co-operation to help investigate the relevant circumstances and remedy the relevant violation, notwithstanding all other rights and remedies of Adyen in such situation as per the Adyen Terms and Conditions. Where possible Adyen will share relevant feedback received by Merchant with the Acquirer/Scheme Owner handling the potential Fine so it can be taken into consideration by the Acquirer / Scheme Owner. If Fines are applied for Merchant violations, these may be invoiced by the Scheme Owners and/or the relevant Acquirer to Adyen as their contracting party (for the benefit of the Merchant). Merchant shall fully indemnify and hold Adyen harmless from any Fines applied by the Scheme Owners as a result of Merchant's breach of the terms of the Merchant Agreement and/or the Scheme Rules.

## 2.12 BANK ACCOUNT (FOR ELIGIBLE MERCHANTS ONLY)

Adyen may open a Bank Account for a Merchant which is an Eligible Merchant. The Merchant agrees that the Bank Account shall be used only for commercial or business purposes, and not for personal, family, or household purposes.

### *Outgoing funds transfers*

By default, subject to the Deposit being at the applicable Deposit Level, any credit balance on the Bank Account will each Business Day be automatically transferred to the Merchant's designated contra bank account(s) held with a third party bank ('sweepings'). If and to the extent necessary, the Merchant hereby authorises Adyen to execute sweepings from the Bank Account to the Merchant's designated contra account(s).

Adyen may also grant Merchant the option to initiate a funds transfer from the Bank Account by submitting a Payment Instruction to Adyen or by instructing a third-party payment initiation service provider to issue a Payment Instruction on Merchant's behalf.

Adyen may also grant the Merchant the option to set its own sweeping settings (including the frequency of sweeping and the bank accounts to which funds transfers will be made) for the Bank Account.

The Merchant may obtain rectification of an unauthorised or incorrectly executed automated sweeping or Payment Instruction from Adyen only if the Merchant notifies Adyen without undue delay on becoming aware of any such unauthorised or incorrect transfer, and no later than 6 months after the debit date.

#### *Date of receipt of a Payment Instruction*

If Adyen receives a Payment Instruction from the Merchant after the end of the Working Hours of a Business Day, this Payment Instruction will be deemed to have been received on the following Business Day.

The Merchant and Adyen may agree that execution of a Payment Instruction shall start on a specific day or at the end of a certain period or on the day on which the Merchant has put funds at Adyen's disposal, in which case the time of receipt of the Payment Instruction will be deemed to be the agreed day. If the agreed day is not a Business Day for Adyen, the Payment Instruction received shall be deemed to have been received on the following Business Day.

#### *No debit balance*

Adyen will not allow the Bank Account to be debited by the Merchant if the Deposit is not at the applicable Deposit Level. The Merchant agrees that Adyen has the right to debit the Bank Account to bring the Deposit to the applicable Deposit Level. Unless otherwise agreed between Adyen and the Merchant, the Bank Account shall always have a credit balance and no debit balance shall be permitted.

#### *Multi-currency*

The Bank Account has a multi-currency structure, such that multiple currencies can be administered on the same Bank Account (with the same International Bank Account Number, "IBAN"). The default currency is Euro, unless otherwise agreed between Adyen and the Merchant.

#### *Interest*

The Bank Account will carry interest in the following way. Interest will be paid on amounts that are credited on the Bank Account for longer than 2 Business Days. This means that interest will be calculated on a daily basis, based on the 'End of Day' balance of that day minus the credited amounts on the Bank Account over the most recent 2 days (that day and the day before). The interest rate will be calculated on the basis of the shortest term interbank reference rates plus a margin (which can be positive or negative), as communicated by Adyen from time to time.

### **2.13 RIGHT OF SET-OFF**

Without prejudice to any right to set-off which Adyen may be entitled to as a matter of law, Adyen may set-off any amounts due to the Merchant or standing to the credit of the Bank Account against any amounts owed or other liabilities of the Merchant, now or at any time hereafter due, owing or incurred by the Merchant to Adyen under, in connection to, or pursuant to the Terms and Conditions and/or the Merchant Agreement. This right of set-off includes but is not limited to the situation where proceedings are initiated for the winding up, bankruptcy or dissolution of the Merchant (or similar proceedings). Adyen may also set-off if: (i) Adyen's debt is conditional or not due; and/or (ii) the Merchant's debt is not due.

The Merchant will be informed of Adyen's use of its set-off rights. Claims expressed in different currencies will be set-off at the prevailing exchange rate(s) at the date of set-off.

## **Article 3. Pricing and Invoicing**

### **3.1 INVOICING**

Adyen will invoice the Merchant monthly for the Services rendered. Invoices provide an overview of (i) the Transaction Fees and other costs and fees due for the past month, calculated on the basis of last month's Transaction volume, (ii) an overview of the Transaction Fees and other fees already withheld from the Settlements and (iii) where relevant the remaining amount due or credited to the Merchant. Amounts due or credited are subsequently added to or subtracted from the next Settlement to the Merchant or in absence of a next Settlement are payable or credited as applicable within 30 days of the invoice date. The invoice currency will be Euro (EUR) unless expressly otherwise agreed in writing.

Adyen provides electronic invoices as standard. Printed invoices or statements can be requested for subsequent invoices via the Customer Area (additional costs may be charged by Adyen).

### 3.2 PRICING

Adyen shall be unilaterally entitled to raise the prices for its Services, with three (3) months prior notice. Said price increases shall only become effective for the Services rendered by Adyen starting at the end of the notice period. The Merchant may, however, during the three months' notice period, cancel the Merchant Agreement with Adyen for which the price increase is applicable by providing written notice to Adyen per the end of the three month notice period.

For the avoidance of doubt, this clause does not apply to any communicated increase of fees charged by the Acquirers or Scheme Owners for the use of their Payment Methods where such fees are not included in the fees charged by Adyen (e.g. in case the Interchange Fee is increased by the relevant Scheme Owner or Acquirer where an Interchange Plus pricing is agreed to apply) or due to changes in applicable laws.

### 3.3 INFLATION

Adyen shall be entitled to change its prices to adjust for inflation with as maximum last year's published Inflation. Said price change may be applied by Adyen only once annually and will be announced at least one month in advance. For an increase under this clause 3.3 the termination right referred to in clause 3.2 does not apply.

### 3.4 DEPOSIT LEVEL CALCULATION

Adyen shall set the Deposit Level to be applied by Adyen to account for and cover for the potential indebtedness of Merchant for fees, Fines and Chargebacks payable from Merchant to Adyen, based on Adyen's reasonably assessed then current estimate of the Uncompleted Order Amount, potential Fine exposure and other potential liabilities. Adyen has the right to adjust the Deposit Level in its discretion from time-to-time to bring it in line with its then current estimates. Upon Merchant's first request Adyen will inform Merchant of the information, estimations and assumptions and calculations used by Adyen to establish the then current Deposit Level.

### 3.5 DEPOSIT RESERVATION

The initial Deposit Level will be set by Adyen on the basis of the information provided by Merchant regarding its anticipated initial use of the Services when entering into the Merchant Agreement. Adyen may require Merchant to transfer the Initial Deposit to Adyen before it may start using the Services for commercial (so non-testing) purposes.

Adyen shall subsequently keep the Deposit at the Deposit Level by deducting funds from or adding funds to each Settlement. If at any point in time the Deposit drops below the then current Deposit level, Adyen may require Merchant to immediately transfer such funds to Adyen as is necessary to bring the Deposit in line with the then current Deposit Level.

After termination of the Merchant Agreement or after processing of Transactions is stopped, the Deposit shall be released by Adyen in monthly steps to the Merchant to account for the decrease in Uncompleted Order Amount, fraud exposure and/or Fine exposure until the full Deposit is released to the Merchant or where applicable, in part or in whole applied by Adyen to pay for Chargebacks, cover Fines or fraud claims or pay for unpaid Adyen fees due by Merchant. The Deposit will as standard be fully released to the Merchant 6 months after processing of Transactions for Merchant has stopped unless specifically identified potential liabilities still exist at that point in time.

### 3.6 MSC CALCULATION

For the 'Blend Fee' pricing structure for the MSC, Merchant acknowledges that the underlying Interchange Fee is calculated by Adyen based on Traffic characteristics provided by the Merchant and documented in the Merchant Agreement when agreeing the Blend Fee. If the actual Traffic differs materially from the figures provided by the Merchant, Adyen has the right to proportionally adjust the Blend Fee per direct, based on the actual then current Traffic characteristics. Reason for this is that certain types of Transactions (e.g. Transactions made with Credit Cards issued outside Europe for transactions with European Merchants) are charged at higher rates by the Card Schemes than similar Transactions with European issued Cards.

For the 'Interchange Plus' pricing structure, Merchant acknowledges that the actual MSC is calculated by Adyen based on the actual then current Interchange Fee per Transaction attracted by that Transaction, according to Card

Scheme Interchange pricing which varies from time to time. The then current Card Scheme Interchange pricing level is published by the Card Schemes. In the Customer Area (internet links to) the then current published Interchange Fees are published.

The agreed MSC pricing structure is documented in the Merchant Agreement.

### **3.7 PAYMENT**

Merchant agrees with the withholding of any fees and other sums due to Adyen under the Merchant Agreement including Chargebacks and Fines from the Settlement amounts and including funds required to meet the then current Deposit Level requirements. If the Settlement amounts are not sufficient to cover amounts due to Adyen, the amounts remain due as per the due date as stated on the invoice and shall be paid separately by the Merchant within 30 days of the date of the relevant invoice.

Adyen has the right at any time to require immediate payment of sums or to set-off Merchant's debts to Adyen against Settlements to Merchant in the following cases:

- Refunds and/or Chargebacks in case the outstanding Refund and/or Chargeback amounts exceed the Settlement amount.
- Any amount required by Adyen to cover any (potential) liability of the Merchant under this Agreement.
- Any other charges or amounts due by Merchant under this Agreement including Fines from the Card Schemes.

Interest shall accrue on any unpaid amounts owed by the Merchant to Adyen at the rate of 1% per month.

### **3.8 TAXES**

All fees of Adyen are excluding applicable VAT, turnover and other taxes or levies which will be separately payable by Merchant where applicable to invoiced amounts or services.

## **Article 4. Integration**

### **4.1 HOSTED PAYMENT PAGES**

The Services shall be used by the Merchant for Card Not Present Transactions via the Hosted Payment Pages unless agreed otherwise in the Merchant Agreement. The Merchant redirects the Account Holder to the secured Hosted Payment Page of Adyen. The Hosted Payment Pages can be tailored on some points by the Merchant by using the standard 'skin' options embedded therein.

Merchant shall not capture, register and/or have the Account Holder fill in, any Payment Details (expressly including Credit Card data) on its own site, but will use the Hosted Payment Pages instead to have the Account Holder submit its Payment Details there. Merchant will not use screen grabbing or other emulation technologies to input Payment Details onto the Hosted Payment Pages.

### **4.2 API INTERFACE**

(The following is only applicable for Merchants with which Adyen expressly agreed to provide a Payment Interface via the API method for Card Not Present Transactions.)

Connections to the API interface are made with "SOAP" calls using HTTPS. Authentication is performed via a combination of username/password, IP and/or client certificate checks.

If Merchant does not activate 3D-Secure for Transactions offered via the API interface where such option is available, Merchant understands that a higher Interchange Fee may be applied by the Card Schemes / Acquirers and other restrictions may be applied by the Card Schemes / Acquirers.

The Merchant using the API interface must at all times fully comply with the then current PCI-DSS rules and on Adyen's first request demonstrate such compliance and provide its valid certification of its compliance. If the Merchant cannot prove the compliancy to the PCI-DSS rules or its certification/compliancy becomes invalid, Merchant will notify

Adyen immediately. Adyen has the right to immediately suspend Transaction processing for Merchant in case Adyen has any indication that Merchant is not compliant with the PCI-DSS standards which Merchant cannot immediately prove to be not founded. Merchant shall fully indemnify and hold Adyen harmless from any losses, claims (including applied Fines by the Scheme Owners), costs or damage Adyen incurs as a result of Merchant's breach of this obligation.

### **4.3 MERCHANT EQUIPMENT AND SOFTWARE / POS TERMINALS**

The Merchant shall be solely responsible for the installation, servicing, maintenance, security and operation of the equipment and software needed to connect to the Payment Interface and submit Transactions for processing by Adyen. Adyen provides standard software modules and installation guides to the Merchant to help enable the connection to the Payment Interface and may provide software tooling to interact with POS Terminals provided or approved by Adyen to connect to the API. Adyen shall ensure its input is provided in a professional manner, but Merchant remains responsible to ensure the correct implementation and use of the Services in its own systems in accordance with the then current installation and usage instructions and software updates provided by Adyen via the Customer Area.

Merchant may only submit POS Transactions to Adyen if this is explicitly agreed in the Merchant Agreement. Merchant may only submit POS Transactions for processing using POS Terminals approved by Adyen for such purpose from time to time, adhering strictly to any then current usage instructions as issued by Adyen with respect thereto via the Customer Area, including by updating the software embedded on the POS Terminal with software updates made available by Adyen.

Where a POS Terminal is provided by Adyen or recommended for use by Merchant in combination with a third party device like a tablet, I-pad, cash register etc., a "Third Party Device", Merchant must install the then current version of the software and related updates issued by Adyen for such Third Party Device on such Third Party Device. Adyen is not responsible or liable with respect to the proper functioning of the Third Party Device and use of such third party device will be subject to license and usage terms imposed by the relevant third party providers of such Third Party Device. Then current supported Third Party Devices are listed in the Customer Area.

Adyen may also provide Merchant with software building blocks (such as software libraries) to enable Merchant to create applications to interact with Adyen provided or Adyen approved POS Terminals. Support by Adyen with respect to the use of such tooling and software building blocks and the applications created therewith, is not included in the Services of Adyen and such tools are provided on an "as is" basis without any warranty.

### **4.4 HARDWARE WARRANTY POS TERMINALS PROVIDED BY ADYEN**

Each POS Terminal is provided by Adyen with a four months limited hardware warranty, which starts on the day the POS Terminal is made available to Merchant. The hardware warranty solely entitles Merchant to the free reparation or replacement of an Adyen provided POS Terminal which through a defect in the POS Terminal cannot be used to submit Transactions to Adyen. In order to claim the reparation or replacement of a defective POS Terminal under the hardware warranty, Merchant must contact the Adyen Service Desk prior to the expiry of the term of the hardware warranty and obtain a return address to send the defective POS Terminal to, together with a filled out hardware claim form as provided to Merchant by Adyen for such purpose.

The hardware warranty does not apply in case: (i) the defect is caused by any undue external influence (e.g. contact with water, extreme temperatures, dropping the device etc.); (ii) the defect is caused by any (attempt to) open, change, repair or add to the POS Terminal by parties other than Adyen or approved by Adyen in writing; (iii) the defect is caused by use contrary to the operating instructions in the then current usage guides and operating instructions issued by Adyen for such POS Terminal via the Customer Area; (iv) the defect is caused by use of the POS Terminal in combination with any third party software or device other than the then current Adyen approved versions of Third Party Devices, using then current approved versions of Adyen released software applications for the relevant Third Party Device.

Any discontinued approval by Adyen for connection to the API by means of a type of POS Terminal provided or previously approved by Adyen, will where reasonably possible be announced at least 3 months in advance by Adyen

via the Customer Area. Adyen will use commercially reasonable efforts to continue to support a specific model of POS Terminal it previously provided to Merchant for at least 2 years from the date it is made available for use by Merchant. Adyen reserves the right to apply a shorter notice period where reasonably deemed necessary: (i) to comply with new Scheme Owner requirements; (ii) to comply with changes in applicable laws; or (iii) to address an imminent security threat identified by Adyen. If Adyen discontinues support of a previously provided POS Terminal during the applicable hardware warranty period as specified in this clause 4, Adyen will on Merchant's request replace such POS Terminal at no additional charge.

#### **4.5 MERCHANT INTEGRATION RESPONSIBILITY**

It is the responsibility of the Merchant to comply with the relevant instructions and installation manuals issued by Adyen regarding its integration into the Adyen Services and Software, including updates issued from time to time to Merchant via the Customer Interface. Adyen is not obliged to provide notification of changes to the Software and the interfaces thereto which would not impact Merchant's use of the Services if it had correctly followed the integration instructions and other usage manuals.

#### **4.6 DEFENSIVE PROGRAMMING:**

Adyen strongly advises to use "defensive programming" when integrating with the Adyen Services. This implies for example that automated decisions programmed into the systems of Merchant should be defaulted to non-delivery of products and services. E.g. program your systems only to deliver products or services after receiving an express authorization of the payment requested and not program you system to deliver in case no explicit rejection is received.

#### **4.7 MEANING OF PAYMENT STATUS "AUTHORISED"**

If a payment request receives the status "Authorised" (or similarly worded status), this means the payment transaction is likely to be successful. However, this is not 100% certain. Payment may still be blocked or subject to Chargeback by the Account Holder (where Chargeback is possible under the relevant Scheme Rules). The likelihood of a payment marked as "Authorised" being blocked or unsuccessful depends on the Payment Method which is used. For example for direct debit transactions this risk is significant because in most cases the status "Authorised" only means the Account Holder's bank account exists and not that there are enough funds on the bank account to actually perform the payment.

#### **4.8 CHANGES TO SOFTWARE**

Adyen reserves the right to change or amend the Software and the interface to it at any time, to provide the Merchant with a new version thereof, and/or to change the functionalities and characteristics of the Software. No changes will be implemented by Adyen which materially reduce functionality of the Services which was explicitly committed to be provided under the Merchant Agreement, except where this is made necessary by: (i) the need to follow generally accepted changes in industry standards, (ii) changes in applicable laws or Scheme Rules, (iii) the need for increased security due to security risks identified by Adyen (iv) other reasonable grounds which warrant the reduction of functionality. If Merchant is significantly impacted by a material reduction of functionality due to a change in the Software, it may terminate the Merchant Agreement by giving written notice to Adyen within one month after Adyen announced the change.

Adyen will announce material changes to the API Interface for the Merchant where reasonably possible at least 12 months in advance to allow Merchant to prepare for any impact. Adyen endeavours to minimise changes to the API Interface. Shorter notice periods may have to be made to comply with applicable laws, changes in requirements from Acquirers or Scheme Owners or the need for increased security due to security risks identified by Adyen.

#### **4.9 SECURITY OF PAYMENT DETAILS**

Merchant guarantees not to copy, capture or intercept Payment Details such as credit card numbers, CVM Codes, 'PIN' codes that are entered on the Hosted Payment Page or on the POS Terminal. This rule is imposed by the Scheme Owners to protect Account Holders against misuse of their Payment Details (like credit card numbers) and is strictly enforced by the Scheme Owners, and a violation of this rule can lead to the application of high Fines by the Schemes Owners. If Adyen has reason to believe that Merchant is copying, capturing or intercepting Payment Details,

Adyen has the right to suspend processing of Transactions and Settlement. Merchant shall fully indemnify and hold Adyen harmless from any losses, claims (including applied Fines by the Scheme Owners), costs or damage Adyen incurs as a result of Merchant's breach of this obligation.

## **Article 5. Customer Support**

Regular support is available by email, web or telephone on Business Days on Working Hours. Emergency support is provided 24 hour per day. Supported helpdesk languages are English, German and Dutch. Support documentation is available in English. The support web site will contain a knowledge base, news items and troubleshooting helpers on a personalised basis.

## **Article 6. Service Level Agreement**

### **6.1 UPTIME COMMITMENT PAYMENT INTERFACE**

Adyen commits to use all commercially reasonable efforts to achieve an average minimum uptime of 99.9% (measured on a quarterly basis) of the Payment Interface, to receive Transaction requests, excluding from the uptime calculation any downtime of the Payment Interface caused by acts or omissions of Merchant, Acquirers or Scheme Owners, changes implemented on specific Merchant request, general internet failures, failures of individual Payment Methods or force majeure. Merchant is obliged to immediately notify Adyen of any downtime of the Payment Interface which it experiences and to provide all reasonably requested co-operation in investigating and resolving any such downtime.

Adyen uses all reasonable efforts to avoid having to take the Payment Interface offline for executing planned maintenance. Should under exceptional circumstances such maintenance nevertheless prove necessary, Adyen will provide as much notice as practically possible and plan such maintenance in a manner and on a date and time to minimize the potential number of affected potential Transactions for all its Merchants. Should under emergency situations (e.g. in case of force majeure event or terrorist attack) unplanned maintenance be necessary to the Payment Interface necessitating it to be taken offline, Adyen will use all available resources to keep the required downtime to the absolute minimum.

### **6.2 SECURITY AND COMPLIANCE**

Adyen takes reasonable measures to provide a secure payment system and shall keep its systems used to provide the Services PCI-DSS certified.

### **6.3 BACKOFFICE MAINTENANCE**

Planned maintenance to the back office of Adyen's payment processing system (the Customer Area) will happen in the standard weekly maintenance window on Tuesdays 07:00 – 07:15 hours CET or at other times as determined by Adyen and communicated to Merchant. The Customer Area may be temporarily not available during planned maintenance. As specified in clause 6.1 back-office maintenance will only in exceptional circumstances affect the availability of the Payment Interface for accepting Transactions.

## **Article 7. Chargebacks and Refunds**

### **7.1 CHARGEBACK LIABILITY**

Many Scheme Owners, and in particular including most Scheme Owners issuing Credit Cards allow Account Holders to Chargeback Authorised and Settled Transactions by requesting a Chargeback from the Scheme Owner or the Issuing Bank. Merchant's receipt of a Settlement and/or Authorisation confirmation regarding a particular Transaction therefore does not unconditionally entitle Merchant to receive Settlement of the Transaction amount or to keep the Settled amount, as in case the Account Holder claims a Chargeback in accordance with the relevant Scheme Rules, Merchant loses entitlement for the relevant amount and must return it via Adyen to the Account Holder. Please check the relevant Scheme Rules to see which Payment Methods allow Chargebacks and what procedures apply. Adyen



credits an Eligible Merchant's Bank Account with Settlement amounts on the condition that no Chargeback shall occur. If there is a Chargeback, Adyen is authorized to debit the credit that was made to the Bank Account.

Scheme Owners and Adyen do not accept Merchant generating excessive levels of Chargebacks as Chargebacks are an indication of Merchant's inability to provide the Merchant Products and Services in accordance with Account Holder expectations and create additional work and costs for all parties involved (including Scheme Owner, the Issuing Bank and Adyen). If Chargeback levels of the Transactions of the Merchant for a specific Payment Method are above levels acceptable for Adyen and/or the relevant Scheme Owner for that Payment Method or are expected to become above unacceptable levels, Adyen reserves the right to suspend the availability of said Payment Method in its discretion.

In general Merchant should take into account that a Chargeback level of more than 0.5% of the total volume of Transactions which is Authorised, is considered unacceptable for Adyen and most Scheme Owners and can lead to suspension of Transaction processing for the relevant Payment Method and/or Fines being applied (for which Merchant will be responsible). For some Payment Methods higher or lower tolerances for Chargeback levels may apply, please check the relevant then current version of the relevant Scheme Rules for this (see Customer Area for more information). Please note that the relevant Scheme Owner, Acquirer and/or Adyen not taking immediate action in case of excessive Chargeback levels occurring cannot be interpreted as consent or a waiver of related rights by Adyen, the relevant Acquirer or Scheme Owner.

Merchant may not provide Refunds to an Account Holder for a previously processed Transaction using a different Payment Method than the method used for the original Transaction. The original Transaction can in such case still be subject to Chargeback by the Account Holder or Issuer, causing the Merchant having to refund the received funds twice. This is a well-known method to make fraudulent use of stolen Credit Cards at the expense of Merchants.

In case Adyen has reasons to suspect that Merchant is not delivering its Merchant Services or Merchant Product on or prior to the Delivery Dates used to calculate the Uncompleted Order Amount and/or if Adyen has reason to suspect that the Merchant Products or Merchant Services for which Adyen processes Transactions are based on fraud, likely to cause high Chargeback volumes and/or illegal, Adyen has the right to suspend Settlement of all related Transactions and/or block Authorisations therefor until Adyen has been given assurances to its satisfaction that the relevant Merchant Products and Services are actually delivered in accordance with applicable laws and orders placed by the Account Holder.

## **7.2 CHARGEBACK FEE**

For every Chargeback, a non-refundable Chargeback Fee will be charged to the Merchant as set out in the Merchant Agreement.

## **7.3 CHARGEBACK PAYMENT**

For every Chargeback where Adyen is obliged to pay the Chargeback amount, Merchant gives Adyen authority to deduct the same amount from the Merchant Settlements or where the Settlement amount is too low, from the Deposit.

## **7.4 CHARGEBACK PERIOD**

As Chargebacks may arise a considerable period after the date of the relevant Transaction, the Merchant acknowledges and agrees that, notwithstanding the termination of the Merchant Agreement for any reason, Adyen shall remain entitled to recover Chargebacks and Chargeback Fees and related Fines from the Merchant in respect of all Chargebacks that occur in relation to Transactions effected during the term of the Merchant Agreement.

## **7.5 REFUND CHARGES**

Refunds will be charged as a Transaction by Adyen and a Refund fee can be applied by Adyen after giving prior notice to Merchant, if manual intervention is needed or additional costs are incurred by Adyen to process such Refund.

Adyen will not execute a Refund (meaning the relevant sum will not be returned by Adyen to the relevant Account Holder, directly or via the relevant Acquirer / Scheme Owner) in case the funds for this cannot be subtracted from the next Settlement. Refunds are not funded by Adyen from the Deposit (as the Deposit is not calculated taking Refunds into account) or funded from its own means. On Merchant's request an additional deposit specifically for funding Refunds may be created with Adyen to ensure the immediate execution of Refunds, irrespective of then current Settlement amounts.

## **7.6 NO REFUND OF FEES**

Fees charged for executing the original Transaction will not be refunded in part or in whole to the Merchant if the Transaction is Refunded or made subject to a Chargeback.

## **Article 8. Property Rights**

The property rights in the Software and other materials and all other intellectual property rights related to the Adyen Services are owned by Adyen and its licensors. The Merchant Agreement does not transfer any intellectual property rights with respect thereto and only provides Merchant a limited, non-exclusive and non-transferable license to use the Software and all other materials made available by Adyen solely for the purpose of using the Services in accordance with these terms and the applicable usage instructions communicated to Merchant via the Adyen website from time to time.

## **Article 9. Confidentiality, Privacy and Compliance**

### **9.1 CONFIDENTIALITY**

All information relating to the Merchant or to Adyen and designated as being confidential, and all information not expressly designated as confidential but which should reasonably be deemed confidential by reason of its nature or content, is considered "Confidential Information". Each party remains the owner of all data made available to the other party. Merchant acknowledges that the terms of the Merchant Agreement and any information provided by Adyen on its Services (including communications from Adyen's support functions) are Confidential Information.

Each party undertakes to take all necessary steps to protect the confidential nature of all Confidential Information of the other party, agreeing, in particular:

- to share Confidential Information solely with personnel and representatives of the parties which have a need to have access to such information in order to exercise rights and obligations under the Merchant Agreement; and
- to refrain from making any Confidential Information available to any third party without the prior written consent of the other party except for Adyen where necessary to perform the Services.

The obligation to maintain confidentiality does not apply to information:

- available to the general public;
- disclosed to one of the parties by a third party without any obligation of confidentiality;
- already in the possession of or known to one of the parties at the time of disclosure;
- developed independently of the Confidential Information by the other party; or
- if and to the extent to one of the parties and/or their employees are obliged under an act or by decision of a court or administrative authority to disclose such information.

The obligation of confidentiality as described in this clause shall remain in effect also following the termination of the Merchant Agreement, regardless of the grounds for termination.

The following data is to be considered confidential, without need for special mention:

- all financial data;
- any agreed Merchant specific terms and conditions in the Merchant Agreement, if applicable; and
- all user manuals, guides and any Software relating to Adyen's products and services.

## 9.2 PRIVACY

Where Adyen processes personal data while performing the Services they will act as data processor under the direction and responsibility of the Merchant in accordance with EU Privacy Directive 95/46 and any successor (including EU Privacy Regulation 2016/679) and applicable Dutch privacy laws. Merchant will comply with the personal data protection laws of the Merchant's country of origin and of those countries in which the Merchant offers its goods and/or services from time to time, in particular when processing and sending personal data to Adyen in the context of using the Services and submitting transactions. Both Adyen and Merchant shall implement appropriate technical and organisational measures to protect personal data against misuse.

## 9.3 COMPLIANCE

The Merchant's use of the Hosted Payment Page is PCI compliant under Adyen's PCI DSS certification for the Hosted Payment Pages subject to Merchant complying to these Adyen Terms and Conditions.

# Article 10. Duration and Cancellation

## 10.1 DURATION

Except where explicitly agreed otherwise in the Merchant Agreement, the Merchant Agreement is entered into for an indefinite period until it is terminated by either party by giving at least two (2) months' written notice to the other party.

## 10.2 TERMINATION

Merchant has the right to terminate the Merchant Agreement immediately if:

- The Service availability in any given calendar month is less than 90%; and/or
- The SLA commitments in clause 6 are not met during two consecutive quarters.

Adyen has the right to terminate the Merchant Agreement and/or stop the processing or Settlement of Transactions for Merchant immediately in part or in whole if:

- The provision of Merchant's Services/Products is reasonably suspected by Adyen to be in breach with legislation in the country where the Merchant Services/Products are offered from or to;
- Merchant has materially changed the type of Merchant Services or Merchant Products without obtaining Adyen's prior written permission to use the Services for the new or changed types of Merchant Services or Merchant Products;
- Merchant materially breaches any of the terms of the Merchant Agreement, the Scheme Rules and/or applicable laws in the context of using the Services;
- An Acquirer or Scheme Owner demands Adyen to terminate or suspend providing Services to Merchant with respect to Payment Methods made available by such Acquirer or Scheme Owner to Adyen; or
- Adyen finds there are clear indications that Merchant is, or is likely to become insolvent and/or unable to provide a material part of the Merchant's Products and/or Services.

# Article 11. Liability

## 11.1 NO LIABILITY FOR SCHEME OWNERS AND THIRD PARTY ACQUIRERS

Adyen shall only be liable for its own acts or omissions and not for acts or omissions of third parties. This exclusion expressly applies to acts or omissions of Scheme Owners and Acquirers or for events or activities originating outside the systems of Adyen (such as internet disturbances or malfunctions in third party systems), except in case such events were caused by the intent or gross negligence of Adyen.

## 11.2 RESERVED

## 11.3 LIMITATION OF LIABILITY

The total liability of Adyen under the Merchant Agreement towards Merchant for breach of contract, tort or under any other legal theory in any calendar year is limited to an amount equal to the total Processing Fees paid by the

Merchant to Adyen during the previous full calendar year (or if no Services were provided in the previous calendar year, the total Processing Fees paid in the initial 12 months of the term of the Merchant Agreement).

Adyen shall not be liable for breach of contract, tort or under any other legal theory for any loss of profit, business, contracts, revenues or anticipated savings, or damage to good name; or for any special, indirect, or consequential damages.

Neither Adyen nor any other party to the Merchant Agreement excludes or limits its liability under the Merchant Agreement for intent, gross negligence, death, fraud or personal injury.

## **Article 12. Indemnification and Fines**

If any claims for damages, costs and expenses are asserted against Merchant by third parties asserting that these third parties are the owner of any rights regarding the Software and/or systems of Adyen, Adyen shall indemnify Merchant without delay from these third-party claims, including Merchants reasonable costs of its legal defence, and offer Merchant the necessary assistance in its legal defence.

Merchant shall indemnify and hold Adyen harmless from any claim (including legal fees) brought against Adyen by any third party (expressly including Scheme Owners and Acquirers and their claims for payments of Fines) as a result of Merchant's breach of the terms of the Merchant Agreement, applicable laws and/or the Scheme Rules applying to the Payment Methods used by Merchant.

## **Article 13. General Provisions**

### **13.1 TRANSFER**

Adyen shall be entitled, at any time, to assign, novate or otherwise transfer the Merchant Agreement to another company in the Adyen group, (i.e., a company with at least 50% the same shareholders), without the prior consent of the Merchant by providing written notice to Merchant of such transfer.

### **13.2 NULL PROVISIONS**

In the event that any provision in the Merchant Agreement (including the Adyen Terms and Conditions) is declared null and void or inapplicable, said provision shall be deemed non-existent, and all other provisions of the Merchant Agreement (including the Adyen Terms and Conditions) shall remain applicable. The parties undertake to take all steps to eliminate the provision declared null and void and/or inapplicable and to replace the same with a provision approaching, insofar as possible, the economic objective of the provision declared null and/or inapplicable.

### **13.3 ENTIRE AGREEMENT**

The Merchant Agreement contains all the commitments between the parties and replaces all other prior contractual commitments between the parties. No representation, warranty or undertaking given by any of the parties to any of the other parties under the Merchant Agreement shall be of any force or effect unless expressly reduced to writing and repeated in the Merchant Agreement, and all implied or prior representations, warranties and undertakings are, save to the extent expressly set out in the Merchant Agreement, expressly excluded to the fullest extent permitted by law.

### **13.4 USE OF NAME OF THE PARTIES**

The Merchant agrees that its name and standard logo (as published by the Merchant) may be included by Adyen on the Adyen client list on its website and in its sales materials. Adyen shall be entitled to use said list freely in its commercial efforts. Any other use of Merchant's name, logo or information shall only occur with Merchant's prior written approval which Merchant may withhold in its discretion.

The Merchant may on its website in the section "frequently asked questions", or in a similar informational section on its website, refer to Adyen as its payment service provider, explaining that this is the reason why the name Adyen may appear on bank statements of the customer. Merchant may also include an internet link to the website of Adyen

in such context. Merchant may not mention Adyen on the home page of its website in any situation. Merchant must in each case also clearly state that customers of Merchant should not contact Adyen for support or questions regarding payments processed by Adyen for Merchant. Merchant may not use the logo of Adyen anywhere on its website without the prior express written approval of Adyen, which Adyen may refuse or withdraw in its discretion.

### **13.5 CHANGES TO THE TERMS AND CONDITIONS**

Adyen may revise the Terms and Conditions from time to time by giving at least 30 days written notice to the Merchant via email or a notice in the Customer Area. If the change has a material adverse impact on Merchant and Merchant does not agree to the change, Merchant may give written notice of its objection to Adyen within thirty days after receiving notice of the change. If Adyen receives such notice, Adyen will contact Merchant to discuss the objections of the Merchant. If the Merchant continues to refuse to accept the change and Adyen refuses to withdraw the announced change, Merchant may terminate the Merchant Agreement by giving at least one month written notice to Adyen (such termination notice to be sent at the latest 60 days after Merchant received notice of the change). Merchant is not entitled to object to and shall not have the rights set out in this clause for any change which Adyen implements in order to comply with applicable law or requirements imposed by the relevant Acquirers and/or Scheme Owners. For such imposed changes shorter notice periods may be applied by Adyen as is needed to comply with the relevant requirement.

### **13.6 DEVIATING TERMS**

The applicability of Merchant's purchasing or other general terms and conditions is expressly rejected. If Merchant accepts a proposal made by Adyen (including a proposed Merchant Agreement) by issuing a separate written statement - for example a purchase order - which refers to the proposal and/or the Merchant Agreement, then additional or deviating terms or conditions contained in or referred to in such separate document shall not apply between the parties unless such deviating terms are explicitly accepted in a written statement issued and signed by an Adyen board member. In any case the terms of the Merchant Agreement as proposed by Adyen, including the Adyen Terms and Conditions shall take precedence over any terms and conditions contained or referred to in any such acceptance document from Merchant.

### **13.7 ONLINE CONTRACTING – WRITTEN CONFIRMATION**

In case Merchant has concluded the Merchant Agreement with Adyen via Adyen's website or via any other online means, Adyen may at any time request that Merchant re-confirms its acceptance of the terms of the Merchant Agreement (including these Adyen Terms and Conditions) by means of a written document signed by an authorised representative of the Merchant. If Merchant does not comply with such request within 5 working days after receiving a request by Adyen to do so (which request may be issued to Merchant via the contact email address submitted by Merchant when concluding the Merchant Agreement), Adyen reserves the right to suspend part or all of the Services until Merchant has complied with such request.

### **13.8 APPLICABILITY OF PAYMENT SERVICES DIRECTIVE**

Title 7B of Book 7 of the Dutch Civil Code (*Burgerlijk Wetboek*) and other laws and regulations implementing Directive (EU) 2015/2366 ("PSD2") or its predecessor, Directive 2007/64/EC ("PSD"), are not applicable to the extent it is permitted to deviate from relevant provisions in relationships with non-consumers, in accordance with Article 38 and 61 PSD2 (or Article 30 and 41 PSD).

Where Adyen provides payment services for the Merchant within the European Economic Area ("EEA") and where the Account Holder's payment service provider is located in the EEA, the parties hereby agree and confirm in accordance with article 62(2) of PSD2 that the Merchant shall pay the charges levied by Adyen and the Account Holder shall pay the charges levied by his payment service provider (i.e. the 'SHA' (shared) principle).

## **Article 14. Settlement of Disputes**

### **14.1 DISPUTE HANDLING**

The parties undertake to take all steps to reach an amicable agreement to any dispute arising in relation to the validity, interpretation or fulfilment of the Merchant Agreement. This clause 14.1 is without prejudice to a party's right

to seek interim relief against any other party (such as an injunction) through the competent courts to protect its rights and interests, or to enforce the obligations of any of the other parties.

#### **14.2 APPLICABLE LAW AND JURISDICTION**

The Merchant Agreement and these terms and conditions are solely governed by Dutch law excluding the Convention on Contracts for the International Sale of Goods. In the absence of an amicable agreement, any dispute relating to the validity, interpretation or fulfilment of the Merchant Agreement shall be submitted to the exclusive jurisdiction of the competent courts of Amsterdam the Netherlands.