GTC

GENERAL TERMS & CONDITIONS TRANSACTION HANDLING

This General Terms & Conditions in English are being provided to Merchants for informational purposes only and can not be relied upon to justify claims or responsibilities. Please refer to the German Terms & Conditions (Allgemeine Geschäftsbedingungen Transaktions-abwicklung) available at Computop Wirtschaftsinformatik GmbH.
Note that in the event of any dispute only the Terms & Conditions in German language will be applicable and they shall prevail over this Terms & Conditions

1. Subject of these General Terms and Conditions of Business

1.1 Through the setup and provision of a connection for electronic systems to an Internet platform for transaction handling, Computop provides the MERCHANT with a service that receives transaction-relevant data from the MERCHANT`s business concern and processes it and/or forwards it to FINANCIAL INSTITUTIONS and/or THIRD-PARTY PROVIDERS chosen by the MERCHANT for further processing. The requirement for forwarding is a corresponding order by the MERCHANT as well as technical availability.

1.2 Computop acts exclusively as technical service provider between the MERCHANT, the MERCHANT'S CUSTOMERS and the FINANCIAL INSTITUTIONS regarding the handling of the payment transaction. The payments themselves will be executed directly from the FINANCIAL INSTITUTIONS to the MERCHANT, without Computop having any influence on the payment or the information transmitted in the process, and without forwarding or receiving payments itself. The modalities of these payments are governed by individual contracts concluded between the MERCHANT and the FINANCIAL INSTITUTIONS.

2. Applicability

2.1 By concluding the MERCHANT CONTRACT, the MERCHANT agrees with and accepts that these GENERAL TERMS AND CONDITIONS OF BUSINESS shall govern his contractual relationship with Computop to the exclusion of any and all other Terms and Conditions, including those of the MERCHANT himself. Apart from these General Terms and Conditions of Business, the basis for the contractual agreement for the respective service of Computop is the respective order form.

2.2 The service-specific or product-specific auxiliary conditions, if they have expressly become part of the contract, shall take priority in case of contradictions. Deviating mandatory legal regulations take priority; deviating agreements between Computop and the MERCHANT only precede if agreed in writing in an individual contract.

2.3 Any assurance of characteristics by Computop requires express and written confirmation. The general description of deliveries and services by Computop in catalogues, brochures and the product description on the website is not an assurance of characteristrics in the sense of the law.

3. Conditions at the contract partner

3.1 For individual services the MERCHANT requires conditions that are to be established by him through contracts with THIRD-PARTY PROVIDERS.

3.2 In particular, the modalities for the handling of monetary transactions are governed by third-party contracts concluded directly between the MERCHANT and the FINANCIAL INSTITUTIONS on the MERCHANT'S own responsibility. The monetary transactions governed by third-party contracts take place directly between the FINANCIAL INSTITUTIONS and the MERCHANT, without Computop having any influence on the contractual relationship, the payment or the information transmitted in the process, such as in the case of acceptance contracts for credit card payments, for example. The contractual relationship with Computop does not establish such an acceptance right, but requires one.

3.3 Therefore, Computop cannot be held liable for the contents of such contractual relationships or for errors or defaults in the execution of transactions within them.

3.4 It is the duty of the MERCHANT on his own responsibility to provide for the technical connection of his system and its requirements to the Computop merchant interface. Computop can recommend service providers for this, but accepts no liability whatsoever for the contents or existence of contracts, even if these come into being throug referrence or intervention by Computop.

4. Computop services

4.1. General service obligations

4.1.1 The service encompasses the setting up and parameterisation of the merchant configuration (Computop merchant interface) for the products selected on the order form at the price agreed on such form, on Computop's Internet platform for transaction handling.

4.1.2 Computop grants the MERCHANT a time-limited right to use the Computop merchant interface for the duration of the contract for the selected product at the respective price agreed on the order form (see no. 5).

4.1.3 Furthermore, the service encompasses the technical handling of individual transactions in the context of the selected product at the agree transaction price.

4.1.4 The specific scope of the service results from the products selected on the order forms as well as further additional conditions that may apply to the respective products.

4.1.5 General technical changes, amended conditions or other requirements at Computop (that represent a good reason for change), at the MERCHANT, at the CUSTOMER or at THIRD PARTIES (credit card companies, credit institutes, banks etc.) and which affect the interface or the upstream system can necessitate measures for changes, adaptations or reprogramming with the MERCHANT. Computop is not obligated to render these services. If Computop renders such services on the MERCHANT's system at the latter's request, the MERCHANT shall bear the costs for this in accordance with the currently valid price list.

4.1.6 If Computop provides technical information or advice free of charge and this information or advice is not expressly part of the scope of performance agreed with and contractually owed by Computop, this takes place to the exclusion of all liability. If no separate Service Level Agreement (SLA) was agreed for consultation, Computop is not obligated to adhere to certain service parameters (e.g. reaction or call-back times).

4.1.7 Computop is entitled to employ THIRD PARTIES or subcontractors to render the service.

4.2 Service level

4.2.1 Computop renders its service to the MERCHANT as a preferential contract partner and shall make every reasonable effort to achieve the highest possibility availability of the technical service. The MERCHANT acknowledges, however, that the accessibility and the functionality of the technical service depend on the functionality of THIRD-PARTY systems, in particular the technical systems of the banks and other service providers as well as the availability of the Internet. Computop cannot guarantee the full availability of the technical service at all times in the case of a malfunction, a failure or other problems in such third-party systems. That said, the following is agreed:

4.2.2 If Computop falls below a monthly average availability of the interface of 99.5 per cent, Computop shall reimburse the MERCHANT on written demand 50 per cent of the rent in accordance with no. 7 for the current month in the form of a credit note. This does not apply in the case of disruptions for which Computop is not responsible, such as force majeure, criminal intervention by THIRD PARTIES or short, maintenance-related downtimes, which are expressly excluded from the calculation of the availability. There are no further rights to compensation of damages.

4.2.3 If Computop does not achieve the aforementioned availability of 99.5 per cent in two consecutive months, or falls below said availability by more than three per cent more than three times per contract year, the MERCHANT can demand in writing that Computop establish the contractually agreed availability of the interface. If Computop does not comply with such a request within a period of three months, or does not comply with it to an adequate degree, or if Computop falls below the availability again within a period of six months following receipt of the written demand, the MERCHANT shall have the right to terminate the contractual relationship without notice. There are no further rights to compensation of damages (beyond no. 4.2.2).

5. Right of use and other intellectual property rights

5.1 Depending on the service package selected and within the limits of the provisions of the MERCHANT CONTRACT, Computop grants the MERCHANT a non-exclusive right to use the merchant interface provided by Computop to the extent that is absolutely necessary for the setting up and management of his merchant connection and his access to the Computop backend system. Computop reserves the right to adapt the merchant interface at any time, to provide a new version to the MERCHANT or to change and also restrict the functions and properties of the merchant interface.

5.2 The right of use mentioned in no. 5.1 is bound to the MERCHANT and may neither be transferred or passed on in any other way by the MERCHANT without the prior written consent of Computop and is also not otherwise transferable. The right of use does not include ownership rights of any kind, nor does

it grant any rights to the source code or decompiled software. The interface may be used only by the MERCHANT himself, not by THIRD PARTIES.

6. Obligations of the contract partner, security and checking

6.1 The MERCHANT is aware of the elementary importance of adherence to the security regulations. Detailed information about security regulations to be adhered to can be found in the PCIDSS rules (Payment Card Industry Data Security Standard: www.pcisecuritystandards.org), which is also available on the websites of Visa or MasterCard or FINANCIAL INSTITUTIONS among others and is acknowledged and adhered to by the MERCHANT.

The MERCHANT is obligated to ascertain that all systems that communicate with the Computop merchant interface or receive, forward or further process data via it are fundamentally suitable for this purpose and that they are always at the latest technical level (including with update and patch level) and effectively protected against unauthorised access by appropriate access controls (including with firewall and anti-virus protection). The MERCHANT undertakes to make available all necessary information for the technical handling of payments via the Computop merchant interface or to provide this information on request.

6.2 The Computop merchant interface offers the MERCHANT various possibilities to check his configuration and transaction data via an access to the Computop backend system, with which the MERCHANT can check the conformity of his transactions (e.g. payments) handled via the Computop merchant interface with his own system data.

The MERCHANT undertakes to setup suitable processes for checking his transaction data and to use them regularly, at least once per month. He is liable for all damages and losses arising from failure to fulfil his checking obligations. The MERCHANT acknowledges that insufficient checking of the transaction data can also result in THIRD PARTIES (e.g. FINANCIAL INSTITUTIONS) suffering damages or losses.

6.3 In addition, the MERCHANT undertakes to transmit all data necessary for the execution of the contract to Computop in a correct and processable condition and to immediately inform Computop in writing of any changes to his master data as well as all disruptions, defects or other impairments with a sufficiently detailed description, including the consequences.

6.4 The MERCHANT shall handle all complaints by his customers within his own contractual relationship directly with the customers. The MERCHANT indemnifies Computop from claims of his customers.

6.5 The MERCHANT is obligated to make data backups himself within the legally permissible and/or prescribed scope. In addition, the MERCHANT undertakes to adhere to the respective currently applicable data protection regulations, in particular those arising from the German Federal Data Protection Act as well as from the European Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Official Journal L 281 of 23/11/1995, p. 31-50, hereinafter referred to as 'DIRECTIVE').

The MERCHANT undertakes, as far as is necessary, to accordingly announce each creation, storage and use of files containing personal data as well as to obtain the consent of his

customers affected regarding particular services (e.g. creditworthiness checks at credit agencies).

Unless expressly agreed in the contract, Computop is not obligated to carry out data backup measures, data recovery measures or other support services. In particular, the MERCHANT shall bear the costs in accordance with the order form if Computop has to render support services or other services that are obviously based on the fact that the MERCHANT has no or insufficient knowledge of dealing with the systems and aids necessary for the processing of transactions.

6.6 The personal data in the sense of the German Federal Data Protection Act and the DIRECTIVE which the MERCHANT transmits to Computop are processed by Computop within the European Union in compliance with the directive. In this context the MERCHANT acknowledges that Computop has proven to him that it has taken adequate precautions with regard to security and organisational measures for the processing of this data. Computop's liability on account of the handling of personal data contrary to duty is exclusively governed by no. 9 of these GENERAL TERMS AND CONDITIONS OF BUSINESS.

6.7 The MERCHANT acknowledges and accepts that it is necessary for Computop to transmit personal data and transaction data to such THIRD PARTIES, whose involvement is required for proper handling of the process commissioned by the MERCHANT. The MERCHANT undertakes to inform his customers of this and in this respect indemnifies Computop from THIRD-PARTY claims.

6.8 The MERCHANT guarantees that he is in possession of the full legal capacity and the necessary permits for the sale of his products/services using the services of Computop.

6.9 The MERCHANT guarantees that he shall use the services of Computop exclusively for his commercial purposes and for transactions in his own favour. The MERCHANT is the sole party to the contracts for the connection to the connected THIRD-PARTY SYSTEMS (e.g. service providers, acquirers and FINANCIAL INSTITUTIONS). He guarantees that he is not acting as a middle man. The MERCHANT undertakes to handle complaints directly with his customers himself.

6.10 Before using Computop's services, the MERCHANT undertakes to request information with regard to the adequate handling of transactions to the FINANCIAL INSTITUTIONS and/or THIRD-PARTY PROVIDERS that he has selected and with whom he must conclude separate contracts, and he must also obtain the usage regulations of these service providers. In addition, the MERCHANT undertakes to transmit to Computop, correctly and in a processable condition, all information from these service providers that is required for the smooth handling of transactions or is otherwise relevant for Computop's services.

The FINANCIAL INSTITUTIONS and the MERCHANT are solely responsible for the smooth handling of the cash flow in payment transactions.

7. Modes of payment

7.1 The amounts of the charges for usage and service are to be taken from the price lists/order forms in their respectively valid edition. All prices are exclusive of VAT at the rate legally stipulated at the time of the rendering of the service. The rent and transaction charges are due for payment at the end of the month. All accumulated charges are due for payment in each case at the latest on receipt of the invoice, unless a particular date is specified.

Invoicing takes place according to the MERCHANT's choice on the order form. However, the MERCHANT shall receive at least a detailed annual statement of accounts. The parties are agreed that invoices can also be rendered electronically, for example in the form of a PDF document. The MERCHANT expressly consents to this form of invoice rendering.

7.2 In the case of a delay in payment for which the MERCHANT is responsible, the MERCHANT shall bear the entire damages for delay. In the case of a return debit for which the MERCHANT is responsible, the MERCHANT shall also bear the charges for the return debit.

7.3 Computop has the right to adjust the prices from time to time according to changes in economic, technical or legal conditions that cause considerable additional costs. Computop will inform the MERCHANT at least six weeks in advance in the case of an intended adjustment. If the MERCHANT does not agree with the adjustment, he shall have the right to an extraordinary written notice of termination of that part of the contract affected within a time limit of six weeks after receiving the information about the increase in charges. The receipt of the notice of termination by Computop is decisive. On expiry of the time limit a termination on account of the increase in charges is no longer possible. If the MERCHANT does not exercise this right to terminate, the increase in charges becomes effective.

7.4 Possible THIRD-PARTY costs (see also no. 3, e.g. routing costs, PIN authorisation, credit agencies, acquiring contracts) are not covered by this contract and shall be invoiced to the contract partner by the respective THIRD PARTY.

8. Term, termination of the contract

8.1 The contractual relationship starts on the first day of the month following the date of signing the order form, unless expressly agreed otherwise on the order form. It runs for a initial term of at least 36 months and is automatically extended on expiry of each fixed term for a further fixed term of at least 12 months if no notice of termination is served. The contract may be terminated in writing subject to a notice period of three months to the end of a fixed contractual term. This does not affect the right to extraordinary termination.

8.2 If the remaining term of the contractual relationship should be less than 12 months when re-ordering further services, the remaining term is extended to 12 months and later on according to no. 8.1 if no notice of cancellation is given within the time limit of 3 months to the expiry of the remaining term. The re-ordering of individual services within a contractual relationship for which notice of termination has been served is therefore not possible.

8.3 The contract can be terminated by Computop in its entirety or with regard to partial services by giving notice of three months if a service is related to THIRD PARTIES or suppliers or can no longer be offered by Computop for legal reasons. In individual cases Computop is also entitled to terminate with a shorter notice period if the service provided by third-party service providers is verifiably no longer available.

9. Liability

9.1 Each contracting party is liable according to the legal regulations for damages to the other contracting party

- arising from a grossly negligent or deliberate breach of obligations,
- due to the absence of a guaranteed property,
- due to a culpable breach of essential contractual obligations,
- due to a culpable injury to health, life and limb or
- for which the product liability law stipulates liability

with the following limitations:

9.2 In the case of gross negligence of vicarious agents who are not legal representatives or managerial employees of the contracting parties, liability is limited to the typically foreseeable direct damages. Liability for loss of profits is excluded.

9.3 Essential contractual obligations are those whose fulfilment makes the execution of the contract possible at all and in whose observance the Contracting Parties regularly trust and should be able to trust and whose breach on the other hand endangers the attainment of the purpose of the contract. In the case of a breach of essential obligations, liability is limited to the typically foreseeable direct damages. Liability for loss of profits is excluded.

9.4 In cases of simple negligence or liability regardless of negligence or fault, the liability is limited, provided the damage does not concern life, limb or health or a promised guarantee or damage for which the product liability law stipulates liability, per calendar year to a sum of five thousand euros or, if it should be higher, to the amount of the remuneration paid by the Contract partner to Computop in the previous calendar year. Liability for loss of profits is excluded.

9.5 Liability, provided the damage does not concern life, limb or health or a promised guarantee, or damage for which the product liability law stipulates liability is excluded in all other cases.

10. Confidentiality/Advertising

10.1 The MERCHANT is obligated to keep secret all data and information that he has received or become aware of in the context of the contractual relationship, unless such data and information is expressly marked or intended for forwarding. The MERCHANT further undertakes to make information accessible only to those employees or vicarious agents who directly require the information for the execution of the contract and who are bound by a corresponding obligation to secrecy.

10.2 The MERCHANT undertakes in particular to take measures to keep disclosed passwords secret and to monitor this. Computop is to be informed of this on demand.

10.3 The MERCHANT grants Computopto a worldwide, non-transferable, non-exclusive license during the term of the contract to use the Merchant`s Licensed Marks, trade Marks and name, for advertising and Marketing purposes and Computop is entitled to promote the commercial relationship on the Computop Website or in other media.

11. Data protection

11.1 The contracting parties undertake to adhere to all relevant data protection regulations and data protection laws when collecting, processing and using personal data within the scope of this contract.

11.2 Computop undertakes to use the data obtained within the scope of the execution of the contract only to the extent and purpose necessary for the execution of the contract and in accordance with the contract partner's instructions.

11.3 The data is processed exclusively in the territory of the Federal Republic of Germany, in a member state of the European Union or in another state that is a signatory to the Treaty on the European Economic Area. Outsourcing to a third-party country requires the prior consent of the contract partner and may take place only if the special requirements of Articles 4b and 4c of the German Data Protection Act are satisfied.

11.4 Computop undertakes to take appropriate and suitable technical and organisational measures to protect the contract partner's processed data. These are to be adequately documented and the contract partner is to be allowed insight on written request.

11.5 Computop undertakes to inform the contract partner without delay in case infringements of the regulations for the protection of personal data are discovered, in case of serious disruptions in Computop's operational procedures and in case of the loss or the illegal transmission or gaining knowledge of personal data.

11.6 Computop shall inform the contract partner without delay in case of enquiries, complaints and notices of termination on the part of THIRD PARTIES regarding their personal data.

12. Place of jurisdiction, choice of law

12.1 This contract and all legal relationships arising from the contract are governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

12.2 The place of jurisdiction for disputes between the parties arising out and from this contract is exclusively Bamberg.

13. Final provisions

13.1 Amendments or additions to the contractual relationship between Computop and the contract partner must be in writing. This also applies to amendments regarding the requirement of the written form.

13.2 If individual provisions of the contract should be entirely or partly ineffective, this does not affect the effectiveness of the other provisions. The parties shall replace the ineffective clause by an effective clause that achieves as far as possible the purpose and economic intention of the ineffective clause.