

General terms and conditions of EMS

Part 1. - General provisions

1 These Terms and Conditions

- 1.1 These Terms and Conditions apply to the legal relationship between you and EMS for the provision of Services by EMS. The Terms and Conditions govern, among other things, your application for the provision of Services by EMS (the phase when no Agreement has yet been formed) and the phase following written confirmation of acceptance by EMS (the phase when an Agreement has become effective). The Terms and Conditions additionally provide rules for terminating your Agreement with EMS.
- 1.2 Other general conditions, such as your general conditions or third party's general conditions, are not applicable to the (legal) relationship between you and EMS, unless otherwise agreed in writing.

2 Definitions and interpretation

- 2.1 In these Terms and Conditions the following capitalised words shall have the following meaning:
- Agreement** means the agreement between you and EMS, comprising the Merchant Agreement, the Terms and Conditions, the Operating Guide, including the specific conditions to the Payment Methods.
- Applicable Data Protection Law:** the General Data Protection Regulation (GDPR; Regulation (EU) 2016/679), any local law of EU member states implementing the GDPR, or any other (local) law(s), or (local) regulations, policies, instructions, or recommendations of any competent supervisory authority applicable to the processing of personal data in connection with the performance of the Agreement, including any amendments, replacements, updates, or later versions of these laws and regulations.
- Authorisation** means, subject to the limits and conditions prescribed in article 20, a confirmation given by the Issuer that the amount of the Transaction is available and that the Transaction can proceed.
- Available Balance** means the Balance minus the Reserve.
- Balance** means the total of the amounts that EMS owes to you from time to time pursuant to the Agreement.
- Bank Account** means the bank account in your name that you maintain at a credit institution in a member state of the European Economic Area.
- Card** means a debit or credit card. These may also include cards issued by foreign banks. It also includes a smartphone that has comparable features, as well as cards that can be used to pay by means of, for instance, electronic funds.
- Card-Not-Present Services** means Services for Transactions on a remote basis, such as via internet or mobile telephony.
- Chargeback** means a claiming back of the amount of a disputed Transaction by the Customer or the Issuer, however named by the relevant Payment Scheme (such as chargebacks or disputes).
- Customer** means your customer.
- Customer Data** means all personal data which is provided to EMS (or any processor engaged by

EMS to process such personal data) by you in connection with the Agreement.

DCC means Dynamic Currency Conversion.

DCC Provider means a DCC provider which is approved by EMS.

EMS means European Merchant Services B.V., also trading under the name of EMS Pay.

EMS Payment Terminal means a Payment Terminal sold or rented out to you by EMS.

EMS Systems means the processing systems used by EMS for the provision of the Services, including the Gateway and My EMS.

Gateway means the EMS e-commerce gateway, which is that part of the EMS Systems used to offer Transactions for processing via one or more Payment Schemes. It also contains an internet payment terminal which enables the use of Payment Methods.

Interchange Fee means the fee that an acquirer has to pay to the Issuer in respect of certain Transactions. The fee depends, among other things, on the type of the Card and the country of issuance of such Card.

Issuer means the issuer of a Payment Instrument, such as a bank.

Merchant Account means your account with EMS for the settling of Transactions.

Merchant Agreement means the agreement with EMS, to which the Terms and Conditions apply, that you have signed electronically or on hard copy for the provision of Services plus any additional written agreements.

Merchant Systems means the Payment Terminal systems, e-commerce or m-commerce checkout portals and any hardware or software used by you and all other associated systems, including any hardware or software used by you for the integration with the EMS Systems and Payment Terminals, such as plug-ins.

My EMS means that part of the EMS Systems with which you may – via a secure access – among other things, consult Transaction Data.

Operating Guide means the guides issued by EMS for the use of the Services as published online or via My EMS.

Party means you or EMS and Parties means you and EMS collectively, and in respect of applicable articles ABN AMRO should also be deemed a Party and to be deemed to fall within the scope of Parties.

Payment Data means all data specified on or linked to a Payment Instrument, including the Customer Data. These may also include data stored on the Card's chip or magnetic strip.

Payment Instrument means a Card or other instrument, such as an electronic authorisation for direct debit, used by a Customer to give a payment order.

Payment Method means a method used by a Customer to pay you, such as a credit card, debit card, iDEAL, direct debit or electronic credit transfer, which is approved by EMS.

Payment Scheme means the provider and/or administrator of a Payment Method, such as Mastercard and Visa.

Payment Terminal means a device certified by the Dutch Payments Association, or for other countries than the Netherlands certified by a similar certifying body, which enables payments using Payment Instruments.

PCI DSS (Payment Card Industry Data Security Standard) means the payment card

industry standard as referred to in article 15.

Point-of-Sale Services means Services for Transactions where the Customer is physically present at the point-of-sale, such as in your brick-and-mortar shop.

Refund means a repayment by or on behalf of you made to a Customer in relation to a Transaction.

Regulations means the regulations and instructions issued by a Payment Scheme.

Reserve means that part of your Balance retained by EMS under the Agreement to cover your current and possible future payment obligations because of, for example, Chargebacks and Payment Schemes' fines and penalties.

Scheme Fee means the fee that an acquirer has to pay to the Payment Scheme for services provided by such Payment Scheme for the execution of a Transaction.

Services means the activities performed by EMS for authorising, clearing and settling your Transactions, including any additional services that EMS may have agreed with you in your Merchant Agreement.

Terms and Conditions means these terms and conditions of EMS.

Transaction means the payment transaction between you and the Customer in connection with an agreement for the supply of goods and/or services by you to the Customer.

Transaction Data means all details related to the Transaction including the value of the Transaction.

Transaction Service Fee means the fee that you have to pay to EMS for processing Card based Transactions by EMS to which unblended pricing applies.

- 2.2 In these Terms and Conditions 'in writing' also refers to 'electronic'. All notices under the Agreement may be issued in writing via e-mail or may be sent via My EMS. EMS may decide to provide certain information via My EMS only.

Formation Agreement

3 Client acceptance process

- 3.1 The Merchant Agreement and/or My EMS mention the Payment Method(s) and Services that you apply for. EMS decides which of the Payment Methods or Services it shall offer to you because EMS (i) has to take into account its risk and acceptancy policy and such policies of the relevant Payment Schemes and (ii) is bound by statutory rules for client acceptance.
- 3.2 In order to fulfil the client acceptance process, EMS relies on the data specified in the Merchant Agreement, My EMS and other (public) data available to EMS.

4 Written acceptance

- 4.1 Upon you signing (physically or by electronic signature, see article 55.4) the Merchant Agreement, the Agreement is not yet final. This is only the case when EMS allows you to use one or more Payment Methods or Services, which will be confirmed to you in writing.

5 Provisional acceptance

- 5.1 EMS may in its absolute discretion provisionally allow the use of certain Payment Methods or

Services before EMS completes the full client acceptance process. Final acceptance as a client and payment of any Balance to you depends in that case on a successful completion of the full client acceptance process. If the result of the process is that EMS cannot accept you as client, EMS will notify you so in writing and the Agreement will be terminated as of that date with no obligation of EMS to pay any Balance to you. In that case, EMS may be entitled to refund to your Customers any payments received and intended for you. You confirm and understand that provisionally acceptance by EMS thus creates a risk that EMS will refund payments for delivered goods or services to your Customers.

The Services

6 EMS and ABN AMRO

- 6.1 EMS provides the Services to you. EMS may also make use of other suppliers in order to provide the Services to you.
- 6.2 ABN AMRO Bank N.V. (ABN AMRO) is a member of the Mastercard and Visa Payment Schemes and sponsors EMS to provide Services to you in relation to these Payment Schemes, including Maestro and V PAY. This means that ABN AMRO is responsible for the Services that relate to Mastercard and Visa Payment Schemes and that are performed by EMS under the Agreement. Therefore, your obligations under the Agreement are also towards ABN AMRO in relation to the provision of the Services that relate to Mastercard and Visa Payment Schemes.

7 The Services

- 7.1 The Services allow your Customers to use one or more Payment Methods in order to purchase your goods and/or services. For some of the Payment Methods, EMS receives payments on your behalf. EMS collects these payments and pays out to you periodically. For other Payment Methods, you shall receive payment directly from the applicable Payment Scheme or Issuer.
- 7.2 EMS provides Card-Not-Present Services and Point-of-Sale Services. The conditions applicable to the Point-of-Sale Services are shown in part 2 of these Terms and Conditions.
- 7.3 EMS sells and rents Payment Terminals. The conditions for Payment Terminals are also shown in part 2 of these Terms and Conditions.
- 7.4 EMS also provides Dynamic Currency Conversion Services (DCC). The conditions for DCC Services are shown in part 3 of these Terms and Conditions.
- 7.5 You can also purchase a Gateway from EMS. This Gateway provides you with the option to accept several different Payment Methods.

8 Websites and shop locations

- 8.1 You may only use the Services for the website(s) and/or shop locations specified in the Merchant Agreement, My EMS or any other document or system accepted by EMS. Any use of the Services for any other website(s) or shop locations requires the prior written approval of EMS. EMS can withhold its approval on the basis of its risk and acceptancy policy or to otherwise protect itself from any actual or potential risk. EMS may decide to withdraw its approval for the use of

the Services for a website and/or a shop location at a later stage where circumstances change, such as the introduction of another product range.

9 Payment Methods and Services

- 9.1 You must comply with the special conditions that apply to each Payment Method and Service. These special conditions are included in the Operating Guide.
- 9.2 Some Payment Methods offered by EMS require that you also conclude an agreement with the relevant Payment Scheme yourself.
- 9.3 At any time during the Agreement, you may (i) indicate that you no longer would like to use one or more Payment Methods or Services or (ii) apply for one or more additional Payment Methods or Services. For the use of additional Payment Methods or Services, EMS shall decide whether or not to allow such use in accordance with article 3.1 and inform you in writing.
- 9.4 A Payment Scheme may decide (i) that you are not or no longer eligible to use a specific Payment Method or (ii) to cease offering a specific Payment Method. EMS acts only as an intermediary for you with the Payment Schemes and is therefore neither responsible nor liable to you for such decisions.
- 9.5 EMS may (i) also decide to cease offering a specific Payment Method or Service and/or (ii) cease or restrict your use of a Payment Method or Service if it believes there are good faith reasons for doing so, for instance in the event of suspected fraud, or if EMS is required to do so under any national and international law and regulations, Regulations or other conditions that apply to EMS and/or ABN AMRO. In these cases, EMS shall notify you accordingly, and if possible, state the reasons.

10 Availability

- 10.1 EMS shall use its reasonable efforts to ensure that the Services are available to you. As the availability of the Services is also dependent on other parties, EMS cannot guarantee full availability of the Services.

11 Acceptance and materials

- 11.1 If you decide not to accept all Cards or other Payment Instruments of a Payment Scheme in respect of a point-of-sale Transaction, you will inform the Customer thereof (insofar this is a consumer) in a clear and unambiguous way at the same time that you inform the Customer about the acceptance of other Cards and Payment Instruments of the Payment Scheme.
- 11.2 EMS shall provide you with materials that will allow you to promote which Payment Methods you accept. This information will be clearly visible at the entrance of your store and at the Payment Terminal. In case of Card-Not-Present Services, you will provide this information on your website or other applicable electronic or mobile media. You provide the information to the Customer well before he enters into an agreement with you.
- 11.3 You shall not use the materials (including logos and the marks) for any purpose, other than promotion unless authorised in writing by EMS to do so. By using the materials, you are required to comply with the provisions of the applicable Regulations.

12 Your general obligations

- 12.1 When entering into and during the term of the Agreement you must always provide EMS with full and accurate details (including information about the ultimate beneficiary owner(s) of your enterprise).
- 12.2 You must promptly notify any changes in the data specified in the Merchant Agreement and/or My EMS to EMS. You shall do so in writing or by any other means accepted by EMS. You must also provide all information requested by EMS from time to time. EMS' right to request

- 12.3 You must hold all permits and authorisations you are required to have by national and international law and regulations to the conduct of your business and its related activities. The fact that EMS provides Services to you does not imply that all of your required permits and authorisations are in place and/or that EMS has verified such.
- 12.4 In the conduct of your business and the performance of your obligations under the Agreement, you must comply with applicable national and international law and regulations, the Agreement, Regulations, instructions of national and international authorities (including supervising authorities) and any reasonable instructions given by EMS. It is your responsibility to acquaint yourself with all of your obligations under the Regulations and applicable law and regulations. EMS is under no obligation to notify you of any changes that may arise in relation to any Regulation and/or any applicable law or regulations.

Technical connection and security

13 Connection to Gateway and My EMS

- 13.1 For Card-Not-Present Services, you may use the Gateway where you have chosen to do so under the Merchant Agreement, via My EMS or any other document or system accepted by EMS. You also have access to My EMS if you have opted for this Service. EMS shall notify you of any important changes in the Gateway or My EMS. You can also opt to use My EMS and/or the Gateway at a later stage. The connection costs will be borne by you.
- 13.2 You shall use the Gateway and My EMS in conformity with the provisions of the Agreement and the other information provided to you in the Operating Guide. These requirements may only be waived if EMS has approved so in writing.
- 13.3 You may integrate your access to the Gateway and My EMS with your own Merchant Systems. EMS is not responsible for having your Merchant Systems connecting with and/or operating in conjunction with the Gateway and/or My EMS. You are responsible for such integration and the related costs.
- 13.4 You agree that the Gateway and My EMS may be modified at any time by EMS.

14 My EMS

- 14.1 If you use My EMS, you can grant one or more employees or other people working for you access to My EMS. You are responsible for ensuring that these people comply with the Agreement. You are also responsible for the use of means of authentication by these people.
- 14.2 My EMS offers you an overview of all Transactions that have been or are waiting to be processed. Processed Transactions are not always immediately visible in My EMS. Some delay may occur between the moment when the Transaction is processed and the moment when it is shown in My EMS as a processed Transaction. Accordingly, your use of the statements made available to you via My EMS shall be your own financial responsibility and be at your own risk.

15 Security and PCI DSS

- 15.1 You shall ensure that the connections between your Merchant Systems and the EMS Systems are secure. You shall only have access to the EMS Systems in a secure internet environment.
- 15.2 You shall ensure that the Merchant Systems use sufficient security features and you must

- 15.3 implement sufficient security measures. The costs of the security features and security measures shall be your own financial responsibility. You shall act in compliance with our security instructions specified in the Operating Guide or otherwise notified by EMS. It is your own responsibility to ensure that you are aware of the most recent version of the Operating Guide at all times.
- 15.4 You warrant that you shall regularly check all software and electronic files for viruses, using the most recent version of a reputable anti-virus programme and the most recent virus database.
- 15.5 You shall handle the security features with care and keep these confidential.
- 15.6 You shall immediately notify EMS if you or one of your employees (or other people working for you) becomes aware or suspects that any of the security features are compromised. In addition, you are required to change the security features immediately should a compromise arise.
- 15.7 You shall comply with PCI DSS and shall ensure that your employees and/or other people working for you do so as well. The aim of the PCI DSS is to prevent abuse and fraudulent use of Payment Data. PCI DSS sets requirements for the processing, transmission and storage of Payment Data. These requirements are prescribed in the Operating Guide.
- 15.8 You are obliged, as a minimum, to conduct a self-assessment annually to verify whether or not you comply with the PCI DSS. This is your responsibility; not that of EMS. Under certain circumstances, you also need certain PCI-DSS certificates. If you have not performed the self-assessment and/or not obtained the necessary PCI-DSS certificates (if any) within 6 months after the start of each year respectively after the start of the Merchant Agreement, EMS will remind you on a regular basis and may charge a monthly administrative fee as stated in the Merchant Agreement and/or My EMS until you are compliant.

16 Means of authentication

- 16.1 You are at all times personally responsible and liable for the use of the means of authentication provided or allocated to you for access to and use of the EMS Systems, such as passwords or authentication codes.
- 16.2 EMS may trust that any user identifying himself or herself as a specific person via means of authentication is indeed the person he or she professes to be and that he or she is authorised to represent you. You shall be bound by any messages that are sent to EMS using the means of authentication provided or allocated to you by EMS.
- 16.3 You shall promptly notify EMS if you become aware or have reason to suspect that unauthorised persons have obtained access to the means of authentication to use the EMS Systems or that these means of authentication have been abused in any other way. In addition, you shall immediately take effective steps yourself to address such unauthorised access or abuse.

Transactions

17 Permitted transactions

- 17.1 You may only use a Payment Method for the payment of goods and/or services provided by yourself and that are agreed upon with EMS, as specified in the Merchant Agreement, My EMS or any other document or system accepted by EMS. Using Payment Methods for other goods and/or services, for instance for advancing cash payments to Customers, requires the written approval of EMS. You are not permitted to use a Payment Method for the payment of goods and/or services provided by another person.
- 17.2 You may not offer any goods and/or services and Transactions that are contrary to national and international law and regulations, the Regulations, public morality and/or public order and/or that may damage the reputation of EMS.

18 Surcharges or discounts

- 18.1 You may only charge the Customer extra for the use of a specific Payment Instrument or charge more costs than the direct costs incurred by yourself in connection with the use of the specific Payment Instrument if the laws and regulations applicable to you allow you to do so. You shall acquaint yourself about the law and regulations that apply to you in this respect.
- 18.2 If you charge the Customer extra, or offer a discount, for the use of a specific Payment Instrument, you must inform or notify the Customer of this before the Customer submits the payment order.

Processing Transactions

19 Acceptance and non-acceptance

- 19.1 You are not allowed to accept a payment using a Payment Instrument if you suspect unauthorised use of the Payment Instrument. You have a duty to investigate any suspicious activities relating to a Payment Instrument in accordance with the procedures as specified in the Operating Guide. The Operating Guide also stipulates additional conditions for accepting a Payment Instrument. You are obliged to observe these conditions.

20 Authorisation

- 20.1 Save as otherwise provided by the Regulations, each Transaction must be authorised. Depending on the Services you receive from EMS, you will obtain authorisation yourself or EMS will obtain it for you via the Gateway. The Operating Guide specifies how this is done.
- 20.2 EMS points out that Authorisation does not mean that (i) a payment relating to a Transaction under the Agreement is guaranteed, (ii) the Transaction complies with the Agreement and the Regulations and/or (iii) the Transaction is valid. For instance, an Issuer may block payment or a Chargeback may take place. With direct debits, the Customer may decide to reverse or cancel a payment order.
- 20.3 If an Authorisation of a Transaction is refused, the Transaction may not proceed using the same Payment Method. In that case, you may also not request Authorisation for a different amount. It is however allowed to submit a Transaction for Authorisation using another Payment Method. If in that case Authorisation for the Transaction is refused again, the foregoing applies in full.
- 20.4 Even after Authorisation is given, you are required to continue acting with due care in relation to a Transaction and also to comply with the Agreement and the Regulations in relation to them.
- 20.5 You remain fully liable for Chargebacks and reimbursements of Transactions that do not comply strictly with the Agreement and the Regulations or that are invalid for any other reason.

21 Submitting Transaction Data

- 21.1 You must submit Transaction Data to EMS for each Transaction that you submit to EMS. Further instructions for doing so are prescribed in the Operating Guide. You guarantee that all submitted Transaction Data is accurate and complete. You also guarantee that the Transaction has been completed in accordance with the conditions of the Agreement and the applicable Regulations.

22 Retaining Transaction Data

- 22.1 You must at all times be able to offer proof that the Customer has approved a Transaction. To this end you are to retain the originals and/or copies of the Transaction Data as prescribed in the Operating Guide.
- 22.2 When asked by EMS, you shall produce evidence of any Transaction disputed by a Customer. You

can do this for instance by providing a copy of a transaction slip. Failure to produce the requested evidence within the period stipulated by EMS results in an obligation to refund EMS the amount you received in relation to the disputed Transaction. If you had not yet received the amount in relation to the applicable Transaction, EMS shall not be required to pay out such amount to you.

22.3 If the Transaction Data retained by you differs from the Transaction Data as administered by EMS, the Transaction Data as administered by EMS shall prevail.

22.4 If the file in which the Transaction Data is saved is lost or destroyed due to negligence on the part of EMS, EMS shall only reimburse the replacement value of the lost or destroyed file. EMS does not accept any liability for the value of the Transaction Data, or for the costs of reproducing the data, or any other damage.

23 Additional requirements

23.1 EMS may on (a short term or a long term basis) stipulate additional requirements for the Transactions that you can submit to EMS under this Agreement. An example is setting a limit on Transactions (minimum and maximum amounts, but also the number of Transactions per unit of time). EMS may implement and/or amend these requirements upon notice to you. If urgent circumstances demand immediate implementation, EMS may implement and/or amend such requirements prior to notification to you.

Refunds en Chargebacks

24 Refunds

24.1 The Operating Guide contains detailed information in relation to your obligations in relation to Refunds. You can refund a payment of a Customer in full or in part.

24.2 If you fail to effect an obligatory Refund yourself, EMS is authorised to pay the Refund in your name and recover the amount of this Refund plus associated charges from you.

24.3 EMS will transfer applicable Refund amounts, including via the Payment Scheme, to your Customer's bank account or Card number. You shall be liable to EMS for the amount of the Refund paid plus the associated charges. EMS does not warrant that the Customer shall receive the amount of the Refund. This depends, among other things, on the arrangements made with, and the financial relationship between, the Customer and the relevant Issuer.

24.4 EMS may decide against processing a Refund where it has reasonable grounds to do so; for instance if the Balance is not sufficient.

25 Chargebacks

25.1 Under most Payment Schemes, a Customer may challenge a Transaction and/or a Customer, Issuer or Payment Scheme may initiate a Chargeback against you, for instance if:

25.1.1 you have failed to comply with the Agreement or the Regulations governing the Transaction, or

25.1.2 the Transaction is subject to a Chargeback for other reasons, as specified in the Regulations governing the Transaction.

25.2 You shall be liable to EMS for the amount of all Chargebacks or fines relating to Chargebacks, plus the associated charges. Any arrangements that may have been made between you and the Customer do not affect such right of EMS. You may only oppose a Chargeback when you have reasonable grounds to do so. EMS may at its sole discretion decide whether or not to appeal a Chargeback with the relevant Payment Scheme.

Financial arrangements

26 Fees

26.1 You shall be liable to EMS for all the fees for all

the Services provided to you. The fees and payment conditions for the Services provided to you by EMS are set out in the Merchant Agreement, as agreed by EMS in writing or in My EMS.

26.2 Via My EMS you are able to inspect the Transactions processed for you by EMS. For each Card based Transaction, My EMS sets out (i) the reference of the Transaction; (ii) the amount of the Transaction in the currency in which your Merchant Account is credited; and (iii) the amount of the Transaction fee and, if you have explicitly opted for unblended pricing, the amounts of the Interchange Fee, Scheme Fee and Transaction Service Fee will be set out separately. You agree that the aforementioned information may be merged by EMS by brand, application, category of Payment Instrument and amount or percentage of the Interchange Fee that applies to the Transaction. The relevant information is made available to you via My EMS or upon written request. You have the possibility to store and to reproduce this information.

26.3 EMS is entitled to revise its fees at all times. EMS shall notify you of revisions at least 30 days before they come into effect. If a change in a fee is detrimental to you, you may terminate the Agreement by notice in writing to EMS within 30 days after the notification. If you have not terminated the Agreement within such period, you will be deemed to have accepted the revision.

26.4 EMS is entitled to revise its fees with retroactive effect for a period of 12 months. EMS may only invoke this right to revise the fees if the turnover, as a total or at a per Payment Method level, deviates at least 10% during any period of 3 months from what was expected (as indicated by you in the Merchant Agreement, My EMS or any other document or system accepted by EMS).

27 Your payment obligations

27.1 Under the Agreement, you are obliged to pay EMS, among other things, the following amounts:

27.1.1 the amount of any Refunds (see article 24);

27.1.2 the amount of all Chargebacks (see article 25);

27.1.3 the fees relating to Services (see article 26);

27.1.4 the amount of any overpayments relating to a Transaction;

27.1.5 the amount of any payments made by EMS in respect of invalid Transaction Data;

27.1.6 all amounts which you owe to EMS and/or ABN AMRO due to fines or charges that have been imposed on EMS and/or ABN AMRO and/or amounts that have been claimed by EMS and/or ABN AMRO by way of compensation because you have acted in breach with the Agreement;

27.1.7 the reasonable costs which EMS incurs in managing the Merchant Account;

27.1.8 if applicable, fees for the rent or purchase of EMS Payment Terminals; and

27.1.9 any other costs as mentioned in the Agreement.

28 Taxes

28.1 All charges, fees and other payments owed by you to EMS are exclusive of VAT and any other relevant taxes, unless otherwise stated. EMS shall charge you any taxes due. The responsibility for paying VAT and any other taxes rests entirely with you.

29 Account statements

29.1 EMS provides you with statements that are an overview of payments and charged fees relating to the Agreement. You are obliged to check each statement promptly upon receipt and to notify EMS of any errors contained in the statement within 30 days of receipt of the relevant statement. If you do not notify EMS about any errors within 30 days of receipt of the relevant statement, you are deemed to have accepted that the contents of such statement are correct.

30 Stichting Third Party Funds EMS

30.1 EMS may use the services of a separate foundation (stichting) called the Stichting Third Party Funds EMS (the "Foundation") with regard

to the safeguarding and payment of received funds. You do not have a contractual relationship with this Foundation. The involvement of the Foundation does not alter and/or limit any right or obligation of EMS under the Agreement, except for the situation as prescribed in article 30.2.

30.2 Each payment made by the Foundation to you reduces EMS' debt to you by an equivalent amount under the Agreement.

30.3 So far as required by law, you irrevocably authorise and grant permission to the Foundation to debit, on instruction of EMS, your Merchant Account in order to pay to EMS any amount you owe to EMS under the Agreement (including any fees due).

30.4 For and on behalf of the Foundation, EMS excludes any liability for any failures on the part of the Foundation. This clause is a third-party clause. You expressly agree to this third-party clause.

31 Payment obligations of EMS

31.1 EMS shall credit the value of the Transactions to your Merchant Account minus deductions EMS is permitted to make under the terms of the Agreement and taking into account the conditions set out below in the articles 31.2 to 31.5. The timing and frequency of payments to your Bank Account is provided for in the Merchant Agreement and/or My EMS.

31.2 EMS will credit your Merchant Account as follows: for Cards and iDEAL Transactions as soon as practically possible after the following conditions are fulfilled: (i) Authorisation of the applicable Transaction by the Issuer and (ii) receipt by EMS of the Transaction Data, provided that such data is submitted to EMS in accordance with the terms of the Agreement; and for all other Payment Methods, as soon as EMS has received a payment for you from an Issuer, Payment Scheme or other payment services provider. With regard to these Payment Methods, EMS notes that there is always a risk that the Issuer, the Payment Scheme or the other payment services provider may pay late or not at all, for instance in the event of insolvency. If EMS does not receive payment, EMS shall not be obliged to pay you. This means that EMS does not warrant payment by the Issuer, the Payment Scheme or the other payment services provider.

31.3 You shall only be credited pursuant to article 31.2 for the amount of the Transaction less the amount of Chargebacks, the fees owed to EMS and other permitted deductions under the Agreement.

31.4 Crediting pursuant to article 31.2 will not take place if EMS has reasonable grounds to assume that the relevant Transaction is or may be fraudulent or in any other way may be contrary to the Regulations, applicable law and/or regulations. Crediting shall not take place if EMS suspects that a Chargeback may be possible with regard to the relevant Transaction.

31.5 Should you receive any payments from EMS or the Foundation that are not owed to you, you are obliged to transfer these payments back as soon as possible and in any event on first demand by EMS or the Foundation to EMS' bank account or the Foundation's bank account. EMS and/or the Foundation may also set off any amounts against amounts that they owe to you. The making of payments by EMS to your Bank Account shall depend on whether there is an Available Balance in your Merchant Account. The Available Balance is based on the amounts credited to you by EMS in accordance with article 31.2 minus the Reserve.

32 No negative Balance

32.1 Your Merchant Account may not have a negative Balance. As soon as your Merchant Account has a negative Balance, you are obliged to transfer funds into your Merchant Account to ensure that the Balance is no longer negative and/or, if EMS has stipulated a Reserve, you shall also transfer

funds into your Merchant Account to ensure that the Balance is equal to the amount of the Reserve. EMS shall in any event have an immediately payable claim against you for the amount of the negative Balance.

33 Claims against you and set off

33.1 Any claims EMS may have against you, shall be immediately due and payable. This means that any debts you owe to EMS must be paid immediately. The only exception to this is in respect of fees that are invoiced on a regular (e.g. monthly) basis to you. Such invoices shall be payable within 30 days of their issue to you by EMS, unless agreed otherwise in writing.

33.2 EMS may set off any amounts owed by you against the Balance or other payment obligations of EMS to you. This applies also to fees invoiced on a monthly basis, even if the payment term of 30 days has not expired yet. You hereby authorise EMS to make such set off payments.

33.3 If a set off is not possible or if EMS decides against a set off, EMS may collect payment on the basis of your direct debit mandate (if applicable). You shall be notified of this at least five business days before the debiting date. If EMS is unable to collect payment, you shall be in default by operation of law as from the debiting date. You shall owe statutory commercial interest (wettelijke handelsrente) on the amount due to EMS as from the debiting date. You shall also still be obliged in such cases to pay your debt plus any collection costs to EMS as soon as possible.

33.4 You are not allowed to suspend your payment obligations, deduct amounts, or set off your debts against claims you have or allege you have against EMS and/or ABN AMRO.

34 Collateral

34.1 You hereby agree to and hereby create a first-ranking right of pledge in favour of EMS over all claims you have against EMS under the Agreement. You create this right of pledge as security for all claims EMS has now or may acquire against you in the future. You hereby confirm that you are authorised to grant and create this pledge. You also confirm that your claims are not encumbered by any other pledges. EMS declares that it is aware of this pledge and hereby accepts the pledge.

34.2 EMS is entitled to enforce the security you have granted without prior notification. This right relates to all amounts that you owe or shall owe to EMS under the Agreement.

34.3 Upon request of EMS, you are obliged to provide additional collateral for your obligations under the Agreement. The additional collateral may also relate to any future amounts you may owe (for instance Chargebacks, fines, adjustments and liability for damage). EMS shall decide about the form of the collateral, such as a parent guarantee. EMS shall also decide the amount of the collateral for example based on your risk profile.

34.4 If, when concluding the formation of the Agreement, EMS stipulates collateral, EMS shall only be obliged to provide Services after it has actually received this collateral.

34.5 EMS can also hold a Reserve. The Reserve can be a fixed amount, but can also vary depending on the total of Transactions processed for you. Any credit, or other amount payable by EMS to you under the Agreement, may be used by EMS to establish and maintain a Reserve.

34.6 The Balance shall be blocked for the amount of the Reserve. The Balance less the Reserve is the Available Balance. If at any time the Balance drops below the amount of the Reserve, you are obliged to top back up immediately to at least the amount of the Reserve.

Suspension by EMS

- 35 Suspension**
- 35.1 EMS may suspend payments, the processing of Transactions, its Services and/or its obligations, wholly or in part, with immediate effect if:
- 35.1.1 your assets held by EMS or the Foundation are seized in pre-judgment attachment or attachment in execution;
- 35.1.2 you or a Customer have been involved or EMS suspects your involvement in fraudulent acts or in any other way of acting in contravention of law and regulations and/or the Regulations;
- 35.1.3 EMS knows that you have failed or suspects that you may have failed to comply with one or more of your obligations under the Agreement, for example in case of Chargebacks;
- 35.1.4 EMS believes this is necessary in order to ensure the security and integrity of EMS Systems or EMS' reputation;
- 35.1.5 EMS believes there are other good faith reasons to do so, such as unauthorised use of means of authentication or instructions of a Payment Scheme to suspension;
- 35.1.6 the level of Chargebacks is excessive;
- 35.1.7 any Transaction is or may be subject to fraudulent or other unlawful activity; and/or
- 35.1.8 one or more of the circumstances as referred to in article 37.1 or 37.2 occurs.
- 35.2 EMS shall notify you as soon as possible after any of these instances occur, stating the reasons (if possible). EMS may make the ending of the suspension subject to conditions. EMS shall not be obliged to pay any compensation for any suspension by EMS under the Agreement.

The Agreement

- 36 Duration and termination**
- 36.1 Unless otherwise stipulated in the Merchant Agreement, the Agreement is concluded for an indefinite period of time. You or EMS can terminate the Agreement by giving 30 days prior written notice to the other Party.
- 37 Termination in special cases**
- 37.1 Either you or EMS may at all times terminate the Agreement by written notice if:
- 37.1.1 the other Party fails to perform one or more material obligations under the Agreement despite a notice of default with a 30 days cure-period. If the default is not curable, a notice of default is not necessary;
- 37.1.2 the other Party is declared bankrupt, is granted moratorium or if comparable insolvency proceedings are applicable to the other Party;
- 37.1.3 it has reasonable grounds to assume that the other Party may be declared bankrupt, may be granted moratorium or insolvency proceedings may become applicable to the other Party.
- 37.2 Additionally, EMS may at all times terminate the Agreement by written notice if:
- 37.2.1 you have failed to perform one or more obligations under article 12;
- 37.2.2 you do not comply with instructions received from EMS in connection to the performance of your obligations under the Agreement, including instructions about (sensitive) Payment Data;
- 37.2.3 you are not in compliance with PCI DSS;
- 37.2.4 circumstances occur that in EMS' and/or ABN AMRO's opinion may increase the risk of Chargebacks or may present a financial, reputational, or security risk for EMS for any other reasons;
- 37.2.5 you have during a period of 30 days a negative Balance in your Merchant Account or the amount of the Reserve is not met;
- 37.2.6 this is demanded of EMS and/or ABN AMRO under the Regulations, by a Payment Scheme or by a supervisory authority, such as the Dutch Central Bank;
- 37.2.7 if you do not use the Services for a period of at least 18 months; and/or
- 37.2.8 there is another material reason of such nature that EMS can no longer reasonably be required to continue the Agreement.

38 Effects of termination - end of the Agreement

- 38.1 In order to terminate the Agreement, you must send a notification via regular mail to EMS' postal address or via e-mail to the e-mail address dedicated for this purpose as designated by EMS. EMS will confirm receipt of such notification within 3 business days upon receipt thereof.
- 38.2 If you would like to terminate the Agreement, the Agreement ends:
- 38.2.1 if terminated under article 26.3, 37 or 41.3, on the date EMS confirms receipt of your notification of termination;
- 38.2.2 if terminated under article 36.1, 30 days after EMS confirms receipt of your notification of termination.
- 38.3 If EMS would like to terminate the Agreement, the Agreement ends (i) if terminated under article 36.1 on the date 30 days after written notice is given; and (ii) under article 37 or 64.12, as of the date on which the written notice is given.

39 Effects end of the Agreement

- 39.1 As soon as the Agreement ends, you shall cease doing everything you are allowed to do under the Agreement. Upon request of EMS, you shall return to EMS or destroy all items that are the property of EMS.
- 39.2 After termination of the Agreement, the mutual obligations that exist at the time of termination continue in force. Specifically, article 25 (Chargebacks), article 26 (Fees), article 33 (Claims against you), article 34 (Collateral), this article 39 (Effects end of the Agreement), article 43 (Liability, fines, levies and damage), article 45 (Complaints) and article 51 (Confidentiality; storing data) shall continue in effect.
- 39.3 EMS shall not be obliged to pay any compensation for any damage that arises because EMS has validly terminated the Agreement.
- 39.4 Access to Transaction Data after the end of the Agreement shall be provided by EMS at your request.
- 39.5 The following applies to the Reserve and any other collateral granted by you:
- 39.5.1 After termination of the Agreement, the Reserve and other collateral shall remain at the disposal of EMS until all of your liabilities have been discharged under the Agreement and there is no risk that, for instance because of Chargebacks, you will have any payment obligations towards EMS.
- 39.5.2 Release of the Reserve and other collateral shall in no event be earlier than 180 days after the ending of the Agreement (in accordance with article 38).
- 39.5.3 EMS may at its discretion release a part of the Reserve and/or other collateral, for example in circumstances where your existing and future liabilities under the Agreement have significantly decreased or if you have provided sufficient replacing collateral.
- 39.5.4 If, at any time, the Reserve or other collateral appears to be insufficient to fulfil your payment obligations, you are obliged to pay the difference, plus any associated costs made by EMS, immediately to EMS.
- 39.5.5 As soon as there is no risk that you will have any payment obligation towards EMS, for example because of a Chargeback, and all of your liabilities have been discharged under the Agreement, EMS will release the amount of the Reserve and other collateral available as soon as possible after that time.
- 39.6 After termination of the Agreement under article 37, EMS shall be entitled to communicate the termination and the reasons thereto to Visa, Mastercard, the other Payment Schemes, the police, supervisory authorities or any other law enforcement or investigating body.

40 Assignment of rights and obligations

- 40.1 You are not allowed to assign your rights and obligations under the Agreement, wholly or in part, to third parties or to pledge them, without the prior written approval of EMS.
- 40.2 EMS and/or ABN AMRO may assign its rights and obligations under the Agreement to third

parties. EMS must inform you in writing about such assignment a reasonable time prior to the effectuation of such assignment, stating the date on which it shall take place. Such prior notification is not required if EMS and/or ABN AMRO assigns its rights and obligations under the Agreement to an affiliate. If an assignment takes place, you shall reasonably cooperate to effectuate the assignment. If you do not agree with the assignment, you shall be entitled to terminate the Agreement in accordance with article 36.1. ABN AMRO and/or EMS do not owe you compensation for the early termination if you exercise this right.

41 Revisions and additions

- 41.1 EMS may at all times revise and/or supplement the Agreement.
- 41.2 Any revisions and additions to the Agreement shall be binding on you within 30 days after written notification to you.
- 41.3 If you do not accept the revisions and/or additions, you will inform EMS accordingly in writing within 30 days after EMS' notification in order to terminate the Agreement. If you have not terminated the Agreement within such period, you will be deemed to have accepted the revisions and/or additions.

42 Continued effect of provisions and validity

- 42.1 If any of the provisions of the Agreement are null and void or declared invalid, the other provisions of the Agreement shall remain fully applicable. In this event, EMS shall make a proposal to substitute provision(s) that is/are valid and that coincide(s) with the purport of the substituted provision(s) as closely as possible.

Liability

43 Liability, fines, levies and damage

- 43.1 A Payment Scheme may impose fines and/or levies on EMS and/or ABN AMRO or claim damages, among other things, if you act in breach of the provisions of the Agreement, the rules for accepting Transactions imposed on you by the Payment Scheme, the Regulations, PCI DSS or applicable law and regulations. These fines, levies, and damages shall be immediately due and payable by you to EMS. The same applies if another provider of payment services seeks to recover fines and levies from EMS or claims damages if you act in breach of the provisions of the Agreement, the rules for accepting Transactions imposed on you by the Payment Scheme or the PCI DSS.
- 43.2 You shall be liable to EMS for any damage suffered by EMS as a result of your acts or omissions including without limitation all losses arising from or in connection with (a) any Transaction or any other dealing between you and a Customer; (b) any Payment Scheme imposing a fee, fine, penalty or charge on EMS or ABN AMRO which is attributable to you; (c) any loss of Payment Data or Transaction Data by you; (d) any violation by you of your obligations under article 52 (Customer Data use); (e) any breaches or violation of PCI DSS by you; (f) any act or omission of any of your agents, suppliers or any other third party including, without limitation, any a payment service provider engaged by you; and (g) any breach of applicable laws by you. You shall be similarly liable for the acts or omissions of your employees, auxiliary staff and other third parties engaged by you. You agree to indemnify EMS against any third-party claims that are in any way related to the Agreement, including claims of third parties which relate to infringement of intellectual property rights. You are liable for all damage suffered by EMS for such claims, including lawyer's fees and all other costs and expenses which are arise as a result of legal proceedings.
- 43.3 The liability of EMS shall in any event be limited to (a) thirty thousand euros (€ 30,000) or, if less,

- (b) the amount of the fees received by EMS under the Agreement in the immediately preceding twelve months.
- 43.4 EMS shall only be liable for failures on its part that are intentional or due to gross negligence. Any other liability is excluded. EMS shall never be liable for any increased costs, loss of profit, loss of business, loss of goodwill, loss of data, consequential loss, loss of revenue and anticipated savings. EMS shall also never be liable to you for the acts of third parties, including Issuers, Payment Schemes and other providers of payment services nor for any failure on the part of Issuers, Payment Schemes and other providers of payment services to fulfil their obligations.
- 43.5 The liability of EMS to you shall lapse if you have not held EMS liable in writing within two months after you have become aware of the damage, unless an authorised person has admitted liability on behalf of EMS in writing prior to end of this two months' period.
- 43.6 This article 43 and article 44.1 apply also to ABN AMRO for any of its obligations as referred to in article 6 of these General Conditions.
- 44 Force majeure**
- 44.1 EMS and/or ABN AMRO shall not be liable for any failure to perform its obligations in the event of force majeure. Events of force majeure include failures in Payment Terminals and any failure on the part of suppliers, including internet providers, Payment Schemes and financial institutions, to fulfil their obligations towards EMS and/or ABN AMRO. If new and/or amended law, regulations and/or Regulations prevent the execution of Transactions, this shall be considered an event of force majeure affecting EMS and/or ABN AMRO as well.
- 44.2 In the event of force majeure, EMS shall take every measure it may reasonably be expected to take to limit the adverse effects thereof for you.

Complaints – Disputes with Customers

45 Customer Complaints

- 45.1 EMS is not a party to the agreement concluded between you and the Customer. You shall settle any complaints about delivered or undelivered goods and/or services by you to a Customer directly with the Customer, without the intervention of EMS.

46 Disputes with Customers

- 46.1 If a Customer submits a claim against EMS and/or ABN AMRO, you agree to indemnify EMS and/or ABN AMRO in respect of all related costs and damages. This indemnification does not apply to the extent that the costs and damage are the result of gross negligence by EMS or ABN AMRO with respect to meeting their obligations under the Agreement.
- 46.2 EMS may at its own discretion decide whether or not to put forward defences against a claim submitted by a Customer against EMS. EMS may also at its own discretion decide to settle with the Customer. These decisions shall be binding on you and you shall indemnify EMS in accordance with article 46.1.

47 Your complaints

- 47.1 Your complaints will be handled by EMS provided that EMS' complaints procedure is followed. The complaints procedure can be found on the website of EMS.

Inspections

48 By EMS

- 48.1 EMS may subject you to an unannounced audit. EMS may instruct a third party to conduct the audit. You shall cooperate in the conduct of the audit, which includes you granting access to the relevant premises, information and Merchant Systems.

<p>48.2 If it appears that you have materially failed to fulfil any of your obligations under the Agreement, EMS may charge you the reasonable costs of the audit.</p> <p>48.3 Upon request of EMS, you shall cooperate with any investigation to establish whether a Transaction was or may have been completed using a forged or stolen Payment Instrument.</p> <p>49 By third parties</p> <p>49.1 You must cooperate with any investigations conducted by or on behalf of supervisory authorities and/or Payment Schemes. If you are approached for such investigation, you shall immediately notify EMS thereof unless such is prohibited by law. You shall follow all reasonable instructions given to you by EMS in these circumstances.</p>	<p>51.6 You shall not retain Payment Data any longer than is strictly necessary. You shall destroy the data as soon as it is no longer needed.</p> <p>51.7 This article shall not apply in a case where a Party has a statutory obligation to provide information, if a competent authority has requested to provide information or if the information is already public.</p>	<p>52.5 Unless expressly stated otherwise in the Agreement, in the event of any conflict between the other provisions of the Agreement and this article of the Terms and Conditions, this article 52 will prevail.</p> <p>52.6 All notices and other communications between the Parties in respect of this article 52 must be provided by email to: (a) in the case of EMS, the e-mail address designated by EMS for this purpose and (b) in the case of you, via your e-mail address known to EMS or My EMS, except formal notices in legal proceedings or termination which must be provided in accordance with the notice provisions in the Terms and Conditions.</p>	<p>53.5 EMS may also disclose any information provided by you (other than Customer Data) to EMS or its respective agents, to its affiliates, the police, Payment Schemes, supervisory authorities, or any other law enforcement or investigating body for use in the prevention or detection of fraud or other criminal activity, or to any credit reference agency which EMS also use(s) as a source of information. In respect of Customer Data, the privacy notice provides to which parties the data may be disclosed.</p>
<p>50 Intellectual property; right of use</p> <p>50.1 All intellectual property rights to the Services, the EMS Systems and other programmes, websites, databases, EMS Payment Terminals, materials, such as documentation, reports or Operating Guides, are reserved to EMS or its licensors. EMS grants you for your own purposes a personal non-transferable revocable licence for receipt of the Services under the Agreement.</p> <p>50.2 EMS may limit the number of users of the Services or the number of servers and/or work stations on which the Services run. EMS shall notify you of such limits as soon as reasonably practicable. EMS may verify whether you comply with such limits. If you are found to be exceeding these limits during an inspection or otherwise, EMS may nonetheless decide to grant you the missing rights of use and charge additional fees where relevant.</p>	<p>52 Customer Data use</p> <p>52.1 Both Parties shall, each acting as a controller as defined in the GDPR, process Customer Data. Each of the Parties warrant that it shall process the personal data processed within the context of the performance of the Agreement in compliance with Applicable Data Protection Law. This means, inter alia, that you shall implement adequate security measures to prevent loss of or unauthorised access to Customer Data or any other form of unlawful processing, and inform Customers, your employees and other persons working for you, and relevant ultimate beneficiary owners on the processing of their Customer Data by EMS in the context of the performance of the Agreement. You shall be solely responsible for obtaining the consent of the Customers, employees and other persons working for you, and relevant ultimate beneficiary owners, if required, for the collection or use of Customer Data, including Payment Data and Transaction Data, in accordance with Applicable Data Protection Law.</p> <p>52.2 Each Party will provide the other Party with such assistance and co-operation as it reasonably requests to enable the requesting Party to comply with any obligations imposed on it by Applicable Data Protection Law in relation to the processing of the Customer Data. A Party will be entitled to refuse or limit its assistance where the requesting Party is in the position to fulfil the obligations without that Party's assistance.</p> <p>52.3 You are the party that has direct contact with the Customer, employee or other persons working for you, or ultimate beneficiary owners of your business. Therefore, you shall, also on behalf of EMS, provide the Customer and, where relevant and if any, employee, other persons working for you, and your business' ultimate beneficiary owners whose Customer Data are provided to EMS for entering into or the performance of the Agreement, with all necessary information on the processing of their Customer Data in accordance with Applicable Data Protection Law. You will inform the Customer, employee or other persons working for you, or ultimate beneficiary owners of your business inter alia that (i) EMS and you are each controllers in relation to the processing of their Customer Data, (ii) which Customer Data will be processed, (iii) what the purposes are for the data processing activities, and (iv) any other information necessary under Applicable Data Protection Law, including the information referred to in articles 13 and 14 of the GDPR. You will follow our reasonable instructions in respect of the processing of Customer Data by EMS and will bring EMS' privacy notice, as published on EMS' website, to the attention of the Customers, employees or other persons working for you and ultimate beneficiary owners of your business.</p> <p>52.4 You shall inform EMS without undue delay if a Customer, or your employee or other persons working for you, an ultimate beneficiary owner or other data subject exercises, or seeks to exercise, its rights of access, rectification, erasure, objection, the right to restriction of processing, the data portability right, or the right to object an automated individual decision-making, as well as other rights recognised by Applicable Data Protection Law, or files a complaint or claim that is related to the processing of their personal data by EMS. You will also follow EMS' reasonable instructions in the context of handling such requests, complaints, or claims.</p>	<p>53 Data use</p> <p>53.1 Any information that you provide to EMS (other than Customer Data) may be used by EMS (or any of its affiliates) for one or more of the following purposes:</p> <p>53.1.1 to assess applications for Services that you have requested;</p> <p>53.1.2 to extend the scope of Services EMS may wish to make available to you from time to time;</p> <p>53.1.3 to manage accounts and policies and to make decisions on questions arising from any application, agreement or correspondence which you may have with EMS;</p> <p>53.1.4 to conduct, monitor and analyse the business relationship with you; and</p> <p>53.1.5 any assessment by EMS or any of its affiliates of your risk profile, or the financial or operational condition of your business.</p> <p>In respect of Customer Data, the privacy notice provides for which purposes EMS may use such data.</p> <p>53.2 Any information that you provide to EMS (other than Customer Data) may be disclosed to the following:</p> <p>53.2.1 EMS or its respective employees or affiliates (or any employees of its affiliates);</p> <p>53.2.2 any agents or subcontractors of EMS;</p> <p>53.2.3 anyone to whom EMS or ABN AMRO proposes to transfer any of their respective rights and/or responsibilities under any agreement they may have with you;</p> <p>53.2.4 the Payment Schemes;</p> <p>53.2.5 anyone in order to comply with any applicable statutory requirements applicable to EMS, ABN AMRO or their affiliates; and</p> <p>53.2.6 anyone to whom you have consented to disclose such information to.</p> <p>In respect of Customer Data, the privacy notice provides to which parties the data may be disclosed.</p> <p>53.3 EMS (and its respective employees and affiliates) may search the records of credit reference agencies and fraud prevention agencies on you and people financially linked to your enterprise. EMS is doing so with a view to making credit and/or business decisions about you and/or managing the Merchant Account and with a view to fraud prevention, debtor tracing, debt collection and credit claims.</p> <p>53.4 EMS may disclose certain information about and in relation to your business to ABN AMRO. This information will only concern your business and will not contain any personal data. EMS will only disclose information to ABN AMRO if you were brought in to EMS by ABN AMRO and as long as you have a contractual relationship with ABN AMRO. The information that EMS will disclose to ABN AMRO will consist of (i) the type of Services provided by EMS to you, (ii) the amount of Transactions per Payment Method and (iii) the gross amount per Payment Method (totaalbedrag per betaalmethode). ABN AMRO will use this information for portfolio management, which includes risk analysis. You may inform EMS in writing that EMS may not share information with ABN AMRO pursuant to this article (opt-out). For the avoidance of doubt, portfolio management shall mean: the management (maintaining, expanding or reducing) of the relationship between you and ABN AMRO with regard to current and future</p>	<p>Payment Methods. The data provided by EMS to ABN AMRO in this context can be used by ABN AMRO to assess your evolution as ABN AMRO's client e.g. with regard to the nature and extent of the relation.</p>
<p>51 Confidentiality; storing data</p> <p>51.1 The Parties undertake to keep confidential all information they obtain about the other Party or a Customer that is of a confidential nature, except where necessary for the performance of the Agreement or within the scope of the purposes authorised in the Agreement. Information of a confidential nature includes, for example, information in relation to the organisation, business operations and financial affairs of your enterprise or those of EMS, or information in relation to the Customer. You have to observe all statutory and other applicable rules in this regard, including those set out in the Operating Guide.</p> <p>51.2 You shall not store sensitive Payment Data. If storage of sensitive Payment Data, such as data on a Payment Instrument or about the Customer, is necessary to implement a Transaction, you may only do so if you have the prior written permission of EMS and subject to the terms of the Agreement, including compliance with PCI DSS and applicable laws and regulations.</p> <p>51.3 You shall immediately, and in any case within 12 hours, notify EMS of any (potential) accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to, or theft of personal data, Payment Data, Transaction Data or other payment security breaches. You shall provide all information requested by EMS and follow all directions and instructions given by EMS or other authorised parties, including the supervisory authorities, and Payment Schemes to limit further damage and risks, including the prevention of new incidents.</p> <p>51.4 You shall take all steps to ensure compliance with the confidentiality obligations under this article by your employees and/or other people working for you as well. You are liable if these people act in breach of these confidentiality obligations.</p> <p>51.5 All Payment Data used by you in the context of</p>	<p>54 Representation</p> <p>54.1 If EMS receives a notice from you (irrespective the form of such notice), EMS may verify whether the sender of such notice is authorised to represent you. EMS can verify this among other things via information filed with the relevant trade register, such as the Dutch Chamber of Commerce (Kamer van Koophandel), Crossroads Bank for Enterprises (Kruispuntbank voor Ondernemingen) or any similar organisation, via a power of attorney sent to EMS or via a list of authorised individuals that has been provided to EMS by you. EMS may assume that a power of attorney circulated to EMS remains in full force and effect, until EMS receives a written notice that such power of attorney has been withdrawn. EMS may also assume that all individuals listed as authorised individuals remain authorised to represent you, until you inform EMS otherwise in writing. A written notice in respect of a withdrawn power of attorney or an amended list of authorised individuals will have effect once EMS confirms receipt of such notice and change in writing. Article 16.2 applies in respect to notices received via My EMS.</p> <p>54.2 If EMS receives a notice from an individual of which EMS may assume that he is authorised to represent you, EMS may act on such notice.</p>	<p>54 Representation</p> <p>54.1 If EMS receives a notice from you (irrespective the form of such notice), EMS may verify whether the sender of such notice is authorised to represent you. EMS can verify this among other things via information filed with the relevant trade register, such as the Dutch Chamber of Commerce (Kamer van Koophandel), Crossroads Bank for Enterprises (Kruispuntbank voor Ondernemingen) or any similar organisation, via a power of attorney sent to EMS or via a list of authorised individuals that has been provided to EMS by you. EMS may assume that a power of attorney circulated to EMS remains in full force and effect, until EMS receives a written notice that such power of attorney has been withdrawn. EMS may also assume that all individuals listed as authorised individuals remain authorised to represent you, until you inform EMS otherwise in writing. A written notice in respect of a withdrawn power of attorney or an amended list of authorised individuals will have effect once EMS confirms receipt of such notice and change in writing. Article 16.2 applies in respect to notices received via My EMS.</p> <p>54.2 If EMS receives a notice from an individual of which EMS may assume that he is authorised to represent you, EMS may act on such notice.</p>	<p>55 General</p> <p>55.1 The Agreement constitutes the entire agreement between you and EMS for the Services. The agreement replaces all previous agreements and arrangements between you and EMS.</p> <p>55.2 If any provisions of the Terms and Conditions conflict with the provisions of the Operating Guide, the provisions of the Terms and Conditions take precedence. This is only not the case where the Operating Guide clearly states that a provision deliberately differs from the Terms and Conditions.</p> <p>55.3 Title 7B of Book 7 of the Dutch Civil Code and all other laws and regulations implementing Directive 2007/64/EC of the European Parliament, the Council of 13 November 2007 and Directive 2015/2366 of the European Parliament and the Council dated 25 November 2015 are not applicable insofar as it is permitted by law to depart from these provisions in agreements concluded with non-consumers.</p> <p>55.4 The Agreement may be implemented by the Parties (or one of them) by means of an electronic signature (both digital and encrypted), which shall have the same validity as a written signature. For the purpose of this article 55.4 an electronic signature constitutes any form of electronic authentication, symbol, or process made available or otherwise approved by EMS for the purpose of signing the Agreement.</p>

Intellectual property, confidentiality, and privacy

Representation

Final provisions

56 Applicable law; competent court

56.1 The Agreement is subject to Dutch law. In the first instance, only the court of Amsterdam has exclusive jurisdiction to hear disputes between the Parties arising from the Agreement. However, EMS or ABN AMRO can also initiate legal proceedings against you before the court where you are established or where your office is registered.

Part 2. - Point of sale services

Payment Terminals

57 Access

57.1 If you opt for Point-of-Sale Services, you shall be granted access to the EMS Systems, under the Agreement, using the certified Payment Terminals you have registered. If approved by EMS, you may use an EMS Payment Terminal or a Payment Terminal which is sold or rented from a third party.

57.2 EMS is entitled to change the EMS Systems. EMS shall notify you of any material changes as soon as reasonably possible.

58 Payment Terminals and installation

58.1 You have no authority to rent Payment Terminals or give Payment Terminals to third parties if you have opted for Point-of-Sale Services from EMS. You are the only party that is entitled to use the EMS Payment Terminals and the Payment Terminals you have registered with EMS.

58.2 You may only use Payment Terminals that are sufficiently certified and registered in your name by EMS.

58.3 If the certificate of a registered Payment Terminal expires, EMS shall remove the Payment Terminal from its systems. After such removal, the Payment Terminal will no longer be capable to be used.

58.4 You are not allowed to install or use any other facilities that can read or alter the data from a magnetic strip and/or the chip of a Card. The same applies to data obtained from data communication in connection with use allowed by EMS. This is the case unless EMS has given its prior written permission.

58.5 The instructions for the installation of an EMS Payment Terminal are published in the Operating Guide. You must strictly observe these instructions.

58.6 EMS points out that it is possible that EMS Payment Terminals that have been purchased by you cannot be used with another acquirer. You can verify with EMS whether your EMS Payment Terminals can be used with another acquirer. Rented EMS Payment Terminals can never be used with another acquirer.

59 Irregularities, faults, inspections

59.1 EMS points out that external influences may adversely impact the operation of the Payment Terminals, such as connectivity, power and weather conditions. The performance, coverage, reliability, and processing capacity may for instance be reduced or even cease completely. You hereby accept these risks.

59.2 Each time you log in or out on the Payment Terminal it must be inspected for irregularities. You must immediately notify EMS of any irregularities, fraud or suspected fraud.

59.3 You will ensure that the receipt of Transactions processed by the Payment Terminals is inspected at least once every two business days. You will report any errors or possible errors to EMS that same day.

59.4 EMS shall in no event be responsible for rectifying faults in a Payment Terminal or in the systems involved in the operation of a Payment Terminal.

59.5 EMS is allowed, on first request, to inspect, repair and/or service the EMS Payment Terminal installed at your premises or for you. In case of a rented EMS Payment Terminal, EMS is also

allowed, on first request, to remove the EMS Payment Terminal. EMS may also instruct a third party to perform such actions. You will allow EMS, or a third party designated by EMS, all access they require for these purposes to the premises and documentation and also all necessary support. Any inspection may include the systems involved in the operation of the EMS Payment Terminal.

59.6 You will ensure that no one other than EMS or its agents is able to make any changes to the EMS Payment Terminals.

60 Merchant Systems, wireless networks and SIM cards

60.1 You have to ensure that your Merchant Systems are compatible with the Payment Terminal. If you use a Wireless Local Area Network (WLAN) or wireless Payment Terminal, you are required to use a Wi-Fi Protected Access (WPA) that supports the WLAN technology. The use of a Virtual Private Network (VPN) is recommended. If the WLAN does not support WPA, you are obliged to use a VPN. You must also comply with the provisions about wireless networks as included in the Operating Guide.

60.2 Some Payment Terminals use a data SIM card. SIM cards supplied by EMS may only be used for Card transactions or for making reports on the EMS Payment Terminals. You are liable for all costs, losses, or damage caused by the unauthorised use of EMS' SIM cards.

60.3 Some Payment Terminals use a data SIM card. SIM cards supplied by EMS may only be used for Card transactions or for making reports on the EMS Payment Terminals. You are liable for all costs, losses, or damage caused by the unauthorised use of EMS' SIM cards.

61 Notifications and responses

61.1 You will inspect the EMS Payment Terminals within seven days of delivery. You have to report any defects to EMS as soon as possible. In any event, you must report this within fourteen days after delivery.

61.2 You will notify EMS in writing before moving EMS Payment Terminals to a different location. You may move the EMS Payment Terminals to a different area specified in the Agreement. The EMS Payment Terminals may not be moved outside the country specified in the Merchant Agreement and/or My EMS without the prior written approval of EMS.

61.3 You will immediately notify EMS in writing if you change the connection method used for the Payment Terminals (e.g. phone number, static IP connection), or in the event of any failures or defects in the Payment Terminals, or in case of theft or loss of or damage to the Payment Terminals.

61.4 You will immediately respond to all requests for information from EMS or its agents concerning the EMS Payment Terminals.

Rental

62 Payment terminals - Rental

62.1 EMS offers you the opportunity to rent EMS Payment Terminals in return for payment of an agreed monthly fee. The details of the rental are included in the Merchant Agreement and/or My EMS. You pay the monthly rent in advance. You may ask EMS to make you a proposal for any changes in or modifications to the technical requirements.

62.2 The minimum rental period is twelve months. During this period the rental agreement and the Agreement may not be terminated. After the minimum rental period, the rental period shall continue for an indefinite period. After the minimum rental period, you may terminate the rental agreement by giving written notice, observing a 30 days' notice period. If the Agreement has been terminated, the rental of the EMS Payment Terminal will automatically end at the same moment.

62.3 You shall act as a good borrower and shall be responsible for the use of the EMS Payment Terminals. You shall handle the EMS Payment Terminals with due care, refrain from damaging them, act in accordance with the instructions

given by EMS, and only use the EMS Payment Terminals for the purposes for which they are intended under the Agreement. You shall ensure that the EMS Payment Terminal is operated by competent and qualified personnel in accordance with the Operating Guides.

62.4 You will immediately notify a third party who claims to be the owner of the EMS Payment Terminals or who wishes to seize them that EMS is the owner of the EMS Payment Terminals. You will contact EMS as soon as possible.

62.5 You have no authority to authorise a right of pledge on EMS Payment Terminals rented by you. EMS is entitled to replace the EMS Payment Terminals with the same type of or similar EMS Payment Terminals, which shall be subject to the same conditions.

62.7 On the expiration of the rental period or the termination of the Agreement, you shall return the EMS Payment Terminals in good condition and state of repair (fair wear and tear excepted) at your own expense and risk to EMS or its agents in accordance with their instructions. If you fail to return the EMS Payment Terminals in accordance with the instructions of EMS or its agents, EMS or its agents shall be authorised to take possession of the EMS Payment Terminals. If EMS does not receive the EMS Payment Terminals within 30 days after the expiry of the rental period or the termination of the Agreement, you shall owe (i) the full replacement value of the EMS Payment Terminals supplied to you under the Agreement; and (ii) any loss incurred due to breach of contract, as well as any and all loss, damage, costs and any fees payable by EMS in connection with retrieving or trying to retrieve the EMS Payment Terminals and/or enforcing its rights under the Agreement.

62.8 All EMS Payment Terminals installed at your premises or under your supervision are at your risk. You agree to indemnify EMS fully and perpetually against any loss of or damage to the EMS Payment Terminals, irrespective of the cause.

62.9 If an EMS Payment Terminal is not used for a period of 12 months and its certificate is not yet expired, you will return such EMS Payment Terminal to EMS in order to secure the security module and software.

62.10 If an EMS Payment Terminal is not used for a period of 12 months and its certificate is not yet expired, you will return such EMS Payment Terminal to EMS in order to secure the security module and software.

Sale

63 Payment terminals - Sale

63.1 If you decide to purchase EMS Payment Terminals from EMS, the Merchant Agreement shall specify the purchase price and service fee. You pay the full purchase price on or before the date of delivery of the EMS Payment Terminals. You pay the service fee in advance on a monthly basis.

63.2 The EMS Payment Terminals you purchase remain the property of EMS until they are paid for in full. All rights to software and security mechanisms that form part of the EMS Payment Terminal, will remain owned by EMS, the supplier of the EMS Payment Terminal and/or other third parties. As long as the Agreement is in force, you are entitled to use such software and security mechanisms by way of a (sub) licence. Such (sub)licence will immediately terminate upon termination of the Agreement.

63.3 Upon delivery of an EMS Payment Terminal, you are responsible for all risks in connection with the EMS Payment Terminals, such as theft, loss or damages, other than as set out in article 63.4

63.4 If EMS sells EMS Payment Terminals to you, EMS warrants for a period of six months of the day after delivery that the hardware shall be free of material defects. You must notify EMS of any material defects that occur during the warranty period as quickly as possible and at the latest 3 business days after becoming aware of the defect. If the defect cannot be attributed to careless use, EMS shall, at its own expense, repair the defect or provide a replacement. Alternatively, EMS may decide to refund the

purchase price. EMS will repair or replace the EMS Payment Terminal or will inform you that it refunds the purchase price within a reasonable period.

Part 3. DCC

64 Dynamic Currency Conversion ("DCC")

64.1 If you have agreed that EMS provides DCC services, this article shall apply.

64.2 You shall always advise the Customer that the DCC-service is optional and that alternatively the Transaction may be completed in your local currency.

64.3 You shall ensure that: 64.3.1 the default currency for any Transaction is your local currency;

64.3.2 DCC is never the default position for the processing of any Transaction;

64.3.3 your procedures (including those relating to language) do not make it difficult for a Transaction to be processed in your local currency;

64.3.4 your procedures do not cause a Customer to choose DCC for such a Transaction by default; and

64.3.5 all DCC Transactions accepted by you must be in one of the currencies supported by EMS as notified to you by EMS from time to time.

64.4 If the Customer is requested to accept or decline DCC, you shall ensure that the following information is made available to the Customer:

64.4.1 the amount of the Transaction in your local currency;

64.4.2 the amount of the Transaction in the currency of the country where the Customer's Payment Instrument is issued;

64.4.3 the exchange rate used to convert the amount of the Transaction in your local currency to the amount of the Transaction in the currency of the country where the Customer's Payment Instrument is issued;

64.4.4 the source of, and any mark-up applied to, the exchange rate referred to in Article 64.4.3; and

64.4.5 any commission or fees applicable to convert the amount of the Transaction in your local currency to the amount of the Transaction in the currency of the country where the Customer's Payment Instrument is issued.

64.5 You shall ensure that all DCC-receipts are made easily visible to the Customer.

64.6 Each DCC-receipt shall show: 64.6.1 the Customer was advised in the manner set out in Article 64.4;

64.6.2 the information made available to the Customer pursuant to Article 64.4;

64.6.3 the Customer chose to pay in the currency of the country where the Customer's Payment Instrument is issued;

64.6.4 the Customer could have paid in your local currency;

64.6.5 the Customer's choice was final; and

64.6.6 the name of the entity providing DCC for the Transaction to which the DCC-receipt relates.

64.7 Each DCC-receipt shall be printed in the Customer's local language or, in default, the English language.

64.8 Each DCC-receipt may not contain any misleading text, layout, font sizes or use of text or highlighting that may confuse the Customer or lead to the Customer to misinterpreting or misunderstanding details of the Transaction set out in the DCC-receipt.

64.9 You may only use point-of-sale equipment and/or software to process DCC-transactions that has been approved in advance by EMS.

64.10 You shall provide EMS with an up-to-date list of all Payment Terminals, websites and premises/outlet locations where you conduct your business and where DCC is enabled.

64.11 Where EMS has agreed to provide DCC Services, you agree, if requested by EMS, to complete an additional contract with a DCC Provider for the provision of DCC Transactions.

64.12 You agree that you will only use EMS and/or any DCC Provider approved in advance in writing by

EMS, to process DCC Transactions. Where you are in breach of any provision of this article 64 then EMS may terminate the Agreement immediately upon written notice to you.

64.13 For the avoidance of doubt, where you wish to change any DCC Provider you shall obtain the prior written consent of EMS to do so. EMS shall have absolute discretion over the acceptance or rejection of any request by you.

64.14 You agree to use the transaction rates made available from time to time to you by EMS, or any DCC Provider, to process DCC Transactions.

64.15 Where any additional service is provided by a DCC Provider to a Customer in relation to a DCC Transaction, you shall not misrepresent the terms upon which those services are to be provided by the DCC Provider to the Customer in relation to the DCC Transaction. You shall be liable for all costs and losses and all other damages of any kind whatever that EMS may suffer or incur in connection with any such misrepresentation by you.

64.16 You accept and acknowledge that EMS will not be liable to process any DCC Transaction until EMS has received the Transaction from a DCC Provider.

64.17 You agree that EMS shall not be liable for any losses or liabilities of whatever nature which may occur as a result of a DCC Provider handling any DCC Transaction, or failing to meet any of its obligations in relation to any DCC Transaction.

Do you have any questions for EMS?

Contact us at +31 206 603 040

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Any transaction - any way **EMSpay.eu**

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