

Terms and Conditions of ConCardis GmbH for using the ConCardis OptiPay service

1. Scope of application/subject matter of contract

1.1 These Terms and Conditions regulate the provision of the ConCardis OptiPay service to ConCardis contractual partners and their usage thereof.

1.2 As part of the ConCardis OptiPay service, ConCardis will provide the contractual partner with technical services which enable credit and debit card payments to be made via a mobile card reader (hereinafter referred to as '**card reader**') and a mobile telephone. These technical services notably include all services necessary for the routing of so-called authorisation requests when a payment by credit or debit card is made.

1.3 These Terms and Conditions apply exclusively to credit and debit cards from credit card companies MasterCard and Visa (hereinafter referred to collectively as '**cards**'). Credit and debit cards from other credit card companies are expressly excluded from the ConCardis OptiPay service unless ConCardis has otherwise informed the contractual partner in writing. Written notification to the contractual partner may be published at www.concardis-optipay.de.

2. Terms and rights of use

2.1 In order to use the ConCardis OptiPay service and to accept cards,

a) a separate service agreement on the acceptance and settlement of MasterCard and Visa credit and debit card payments must be signed between the contractual partner and ConCardis.

b) the use of a mobile card reader initialised by ConCardis; and

c) a functional mobile telephone at their disposal and the relevant telecommunications contract.

The impetus is solely on the contractual partner to fulfil and uphold the aforementioned conditions of use.

2.2 ConCardis grants the contractual partner – if applicable – non-exclusive, non-transferable rights to use a software application for mobile telephones (hereinafter referred to as the '**ConCardis OptiPay app**'), which are valid for the term of this contract. In order to use the OptiPay app, the contractual partner must download it, for free, from the relevant app store (Apple App Store or Google Play) and install it on their mobile telephone. After successful installation, the contractual partner must register their username (email address) in the ConCardis OptiPay app and choose a password. The contractual partner is obliged to install all updates available for the ConCardis OptiPay app as soon as

possible in order to ensure that the services can be provided in full.

2.3 ConCardis further grants the contractual partner the non-exclusive, non-transferable right for the duration of this agreement to use the firmware on the card reader, including the encryption keys. At the end of the agreement the contractual partner undertakes to delete the keys by resetting the card reader to its factory settings. ConCardis will assist the contractual partner in this respect if needed.

2.4 When the ConCardis app is used as part of the ConCardis OptiPay services, ConCardis also enables the contractual partner to use a web-based merchant dashboard which they can log in to with a username and password. The dashboard gives the contractual partner an overview of all transactions and allows them to change various account settings. The contractual partner can download the transaction overview in file form.

2.5 ConCardis will transmit the information required for authorising credit and debit card requests to the credit card company (acquirer) named by the contractual partner. Response times depend on aspects such as the line connection selected, the transmission speed, the availability of the data transmission network and the response time of the operator's computer and the respective authorisation system. ConCardis assumes no responsibility for the accuracy of the data transmitted to ConCardis.

3. Duties of the contractual partner

3.1 When transmitting authorisation requests via the ConCardis OptiPay service, the contractual partner must always abide by the Terms and Conditions of ConCardis GmbH pertaining to the submission and settlement of credit and debit card payments.

3.2 The contractual partner is also obliged to:

a) register for PCI DSS certification and adhere to the current PCI DSS standards and regulations, which can be found on the website www.pcisecuritystandards.org;

b) only use the ConCardis OptiPay service with card readers that have not been altered in any way by the contractual partner or a third party;

c) ensure that the card reader's serial number matches the number that was communicated and to inform ConCardis without delay should this not be the case;

d) inform ConCardis of a change to the postal address, telephone number and bank details of

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the contractual partner immediately and in writing;

- e) immediately inform ConCardis if the card reader malfunctions or is faulty, damaged, lost or stolen;
- f) monitor the transactions processed through the ConCardis OptiPay service as they occur and to inform ConCardis immediately of any objections once they become known. Objections may only be enforced within three months of the facts justifying the objection first being discovered;
- g) ensure that the ConCardis OptiPay service is not used for any other purposes other than for payments;
- h) store the card reader in a safe place when it is not being used in order to prevent any unauthorised third-party use of the OptiPay service (e.g. in a lockable cupboard);
- i) keep their username and password safe and not to disclose these to unauthorised third parties.
- j) If the contractual partner has several card readers, they must keep a list of these, complete with serial numbers, models and locations of the readers and carry out regular stocktakes to identify any card readers that have been stolen, lost, damaged or manipulated. The results of these stocktakes must be documented and submitted to ConCardis in writing.

4. Prices/conditions

ConCardis will provide the services for the prices stated on the registration website and in the contract confirmation. The prices and conditions contained within the current ConCardis GmbH table of services and fees also apply. This table is available at www.concardis.com.

5. Term

- 5.1 The ConCardis OptiPay service agreement is open-ended and can be terminated by either party with a notice period of four weeks to the end of a month.
- 5.2 The right to extraordinary termination and termination without notice for cause is reserved.
- 5.3 A request for termination must be made in writing; however, this cannot be done by email.
- 5.4 The agreement ends automatically without having to be terminated if there is no longer a valid service agreement between the contractual partner and ConCardis for the acceptance and settlement of MasterCard and Visa credit and debit card payments.

6. Offsetting

The contractual partner may only offset claims from ConCardis with undisputed or legally established claims. ConCardis is also entitled to offset its claims for payment with receivables of the contractual partner from the acceptance of credit cards.

7. Liability

7.1 ConCardis is contractually and extra-contractually liable to the contractual partner in accordance with statutory provisions governing damages or the reimbursement of wasted expenses in the event of deliberate acts and gross negligence.

7.2 In other cases, ConCardis is only liable – unless otherwise stipulated in 7.4 – for breach of a contractual obligation, the performance of which is necessary for the proper performance of the contract and which the contractual partner as a customer is generally entitled to rely on (known as an essential obligation). Liability is limited to compensation for foreseeable and typical damages and may not exceed €5,000 for each case of loss, and may not exceed €20,000 per calendar year. Apart from the liability set out in 7.4, ConCardis accepts no liability in any other cases – particularly in the circumstances mentioned in 7.3.

7.3 Further damages, especially indirect damages and liability for the inaccurate content of collected data or for errors when performing payment transactions, are excluded in line with 7.4. The exclusion applies particularly to

- a) damages that are due to inappropriate or improper use, or other use not provided for in this agreement; incorrect operation; incorrect or careless handling; chemical, electrochemical or electronic influences; or changes or repair work performed by the contractual partner or a third party without the prior consent of ConCardis;
- b) missing deadlines, unless ConCardis acknowledges these in writing in a binding manner;
- c) loss of interest incurred by the contractual partner due to late value dates;
- d) loss of profit and savings;
- e) outages or obstructions caused by authorisation systems; and
- f) the recovery of data, unless ConCardis has caused their destruction intentionally or as a result of its gross negligence and the participant has ensured that this data can be reconstructed from other data sources (e.g. from keeping slips, documentation, etc. or by virtue of backups) with reasonable effort.

7.4 ConCardis' liability for damage to life, limb and health and under the German Product Liability Act (ProdHaftG) is not affected by the aforementioned limitations and exclusions.

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8. Confidentiality and data protection

- 8.1 The contractual parties mutually undertake to treat as confidential all information that the other contractual party has expressly indicated as confidential, or which is recognisable as confidential based on its content, and not to make this information accessible to third parties. This obligation applies in particular to trade and business secrets of a contractual party that become known during the performance of the contract.
- 8.2 The confidentiality agreement will cease to apply if,
- a) the information was already public knowledge when it was accessed or disclosed, or later became public knowledge through no fault of one of the parties, or
 - b) the holder of the information had already passed it on to the recipient(s) of the information by other means when the information was revealed to them, or
 - c) it was disclosed/made available to the recipients(s) of the information at any other time by an authorised third party who was not bound by a confidentiality agreement, or
 - d) the recipients(s) of the information had legally possessed or gained knowledge of the information before it was revealed to them and they can prove this, or
 - e) they had been given written exemption from this confidentiality agreement, or
 - f) if information must be disclosed following official request by the authorities or a court – however the recipient(s) of the information must immediately inform the holder of said information in writing and, if possible, before they are due to disclose the information.
- 8.3 ConCardis is to ensure that the companies employed by it for the processing of data observe the provisions of the applicable data protection laws.

9. Credit card company requirements/legal requirements

If the requirements of the credit card companies MasterCard or Visa change or if other requirements and/or provisions of public/federal law lead to compulsory changes to the ConCardis OptiPay service during the course of a terminal's period of operation, ConCardis will offer solutions for the upkeep of the ConCardis OptiPay service. Any costs that arise in relation to this can be billed to the contractual partner.

10. Other matters

- 10.1 This agreement, which governs the use of the ConCardis OptiPay service, is only effective in conjunction with a valid service agreement between the contractual partner and ConCardis for the acceptance and settlement of MasterCard and Visa credit and debit

card payments. Any other terms already laid down in the service agreement between the contractual partner and ConCardis for the acceptance and settlement of MasterCard and Visa credit and debit card payments do not appear again in this agreement and shall retain their validity as long as they apply to the use of the ConCardis OptiPay service and are compatible with this agreement.

- 10.2 In order to be effective, all amendments or additions to this agreement must be made in writing. The same applies to any agreement waiving the requirement for the written form.
- 10.3 If any provision of this additional agreement is or should become invalid, this will not affect the validity of the remaining provisions. The parties are to replace the invalid provision with the valid provision which best achieves the desired economic result.
- 10.4 ConCardis may amend or supplement the terms of the contract or the table of fees and services by notifying the contractual partner in text form. Any amendments or additions are deemed to have been accepted by the contractual partner if no written objection is received within six weeks of notification. ConCardis will alert the contractual partner to this outcome when the notification is sent. Objections sent within the six-week period will be deemed to meet this deadline.
- 10.5 The contract is subject to the law of the Federal Republic of Germany. The place of performance is Frankfurt am Main. The place of jurisdiction for all legal disputes arising from this agreement is Frankfurt am Main.