

## GENERAL CONDITIONS GOVERNING THE Ogone PAYMENT SERVICE

By reason of his subscription to the Ogone Service, the Merchant hereby agrees to the application of the General Conditions, hereinafter referred to as the "General Conditions" to his contractual relationship with Ogone, to the exclusion of all other terms and conditions, including those of the Merchant.

Except for the change of the General Conditions governed by Article 13.8 below, no variation or addition to this Agreement shall be valid unless in writing signed by a representative of each of the parties. Such variation or addition shall only be applicable to the specific contract for which it has been agreed.

The Merchant acknowledges that it is entering into the agreement as a professional and not as a consumer.

In the General Conditions, as well as in the Merchant Contract, the following terms are defined as follows, when spelled beginning with a capital letter:

**Financial Institutions:** Every financial and/or banking organism chosen by the Merchant and to which the Merchant is affiliated in order to manage his payments. The above mentioned Financial Institutions are commonly referred to as "Acquirers".

**Index of Reference:** The "Harmonized Consumer Price Indices – Global Index" of the European Union for the EURO zone, as published by Eurostat (cfr. <http://www.europa.eu.int/>). For Switzerland: the Landesindex der Konsumgüterpreise, issued by the Bundesamt für Statistik.

**Merchant:** Any physical or moral person contracting with Ogone for the supply of the Ogone Service for the processing of payments in the framework of his sales application (for example, his e-commerce site).

**Merchant Contract Proposal:** Any document enabling the subscription of the Ogone Service mentioning the rendered service and its prices, sent to the Merchant by Ogone by e-mail or any other means, downloaded by the Merchant and signed by the latter.

**Merchant Clients:** Any physical or moral person purchasing from any Merchant

**Merchant Contract:** (i) the Merchant Contract Proposal issued by Ogone and accepted in all its terms by the Merchant, leading to the activation of the Ogone Account of the Merchant or (ii) any other contractual document, including its annexes, entered into by Ogone and the Merchant in relation to use of the Ogone Service. In the absence of indication to the contrary, the Terms and Conditions shall apply to any Merchant Contract;

**Merchant personal data:** The data introduced by the Merchant in the Ogone Account, including, in particular, the postal and e-mail addresses used by Ogone in communications with the Merchant.

**Merchant Users:** Employees and certain third party independent contractors, agents and representatives of the Merchant likely to use the Ogone Service.

**Ogone:** Ogone: the company supplying the Ogone Service.

**Ogone Account:** The account opened in the name of the Merchant on the Ogone Site, permitting the Merchant, in particular, to configure his user parameters and the management of his transactions.

**Ogone Service:** The payment service described in Article 1 of the present General Conditions, the exact designation of which is provided by Ogone or a commercial partner of Ogone.

**Ogone Site:** The Internet site accessible at the Internet address <http://www.ogone.com/> or any other address of any subsidiary permitting access to the Ogone Account.

**PSPID:** PSPID is short for "Payment Service Provider ID". A PSPID is the unique, non modifiable access code to the Ogone payment platform, chosen by him when registering.

**Software:** The software referred to in Article 7 of the present General Conditions. The term refers to any software designated as such by Ogone or by an Ogone commercial partner, to the trade names for the products and services supplied, as well as any registered trademarks and other names.

**Solution Provider:** A company, external to both the Merchant and Ogone, integrating the Ogone Service into Merchant sales applications.

**Third Parties:** Any physical or moral person other than Ogone, its employees, the Merchant and Merchant Users.

**USERID:** A user's unique identifier used together with a password as credentials to log into the Ogone Website or to request the Ogone Website the processing of transactions. For standard Ogone Accounts, PSPID and USERID are the same. For advanced Ogone Accounts, several USERID may be linked to a same PSPID, or a single USERID may give access to several PSPID data.

Where appropriate, a reference in the General Conditions to a **person** includes corporations, partnerships and other unincorporated bodies of persons.

## **Article 1. Object**

1.1 Ogone, acting as Payment Service Provider (PSP), provides the Merchant with a payment service enabling the Merchant to send, receive and manage the financial data gathered from his e-commerce site or received from any other manual or automatic distance sales management system, and to send said data to the Financial Institution(s) selected by him for the purpose of payments processing, to the extent the selected Financial Institutions are available and compatible with the service provided by Ogone within the framework of the Merchant Contract ("*the Ogone Service*"). The Merchant is entitled to create his own Ogone Account, update his profile, and consult or manage his payments via the Ogone Site.

1.2 The Ogone Service has only for purpose and only includes the payment module described in article 1.1, to the exclusion of any other commercial or functional aspect linked to the Merchant sales process, such as the creation and hosting of a product catalogue, the delivery of merchandise or the financial management of Merchant transactions.

## **Article 2. Address of the Ogone Account**

The Ogone Account of the Merchant is accessible via the login option as specified on the Ogone Site. The options "login", "subscribe", "open my account", "create an account", etc, represent clearly indicated links on the Ogone Site, the labels of which can change to the sole discretion of Ogone. The address of the Ogone Site (<http://www.ogone.com/>) as well as all the others addresses included in the General Conditions, are given for information purposes only, and are subject to change. In such event the Merchant will be advised of such change in writing with at least 15 calendar days advance notice.

## **Article 3. Creation and management of the Ogone Account**

3.1 The Merchant, under his own responsibility creates his own Ogone Account by means of the "Create a test account" button on the Ogone Site. The Merchant himself chooses his PSPID. If the PSPID chosen by the Merchant is already used by another Merchant, the Merchant will be advised thereof by Ogone during the process of creation of the Ogone Account. He will then be asked to choose another available PSPID. When the Merchant has validly chosen his PSPID, and once agreed by Ogone, he will receive his password by e-mail.

The Merchant must change his password the first time it is used, and may then change it as many times as he wishes via the administration menu of his Ogone Account. The PSPID and the password enable the Merchant, via the "Access to my Ogone Account" option on the Ogone Site, to follow the stages of configuration of his account. After explicit and prior acceptance of the General Conditions, he confirms on-line the last stage of the configuration of his Ogone Account, which then launches the account activation procedure. The Merchant is informed that except in specific mentioned cases, the completion of this procedure will lead to the creation of a test account. Such account is activated without cost by Ogone. It allows the Merchant to thoroughly test freely the entire functionalities of his Ogone Account. When he deems the moment appropriate, the Merchant activates

on line his Ogone Account in the production environment, by using the "Subscribe" option. At this point the account becomes a full paying account.

3.2 The Merchant acknowledges that it has freely selected the navigation software to access the Ogone Site and that Ogone shall have no liability in respect thereof for any reason whatsoever.

#### **Article 4 – Integration of the Ogone Service**

The Merchant may utilise his Ogone Account in manual mode or may integrate the Ogone Service into a distance sales application, for example, his e-commerce site. If he opts for an integration of the Ogone Service, a technical documentation is available on request, addressed to Ogone, and/or may be downloaded online, from the "Support" section of his Ogone Account. He may also be helped with this task by a Solution Provider. The Merchant acknowledges that the selection of one method over another is the free choice of the Merchant and that Ogone shall have no liability in respect of any problems relating to the bad integration of the Ogone Service into the applications of the Merchant.

#### **Article 5. Security and control of transactions**

5.1 The Merchant acknowledges the importance of respect of security rules. For complete information on the security rules to be respected, he should refer to the PCI DSS (Payment Card Industry Data Security Standards) standards available on the websites of Visa, MasterCard for example or with the Financial Institutions.

Among other things, the Merchant must at all times:

- ensure the application of security patches on all his machines, as well as the activation of secure configurations on the latter;
- never store sensitive information, such as credit card numbers or visual cryptograms (CVC/CVV), on any type of support;
- protect all passwords and change them regularly, in particular, the Ogone Account access password;
- protect access to all his servers and applications, as well as to his technical infrastructure in general, particularly, with the aid of a firewall and anti-virus;
- implement procedures for the development of secure applications.

5.2 The Ogone Service supplies several automatic or manual tools allowing the Merchant to control the consistency between payments processed by Ogone and his own sales system. The Ogone system enables, in particular:

- the on-line consultation of transactions via the Merchant's Ogone Account;
- through SHA-1 key systems to ascertain the consistency of the payment data;
- to send payment notices by e-mail to Merchants
- the use of other means of electronic notification in real time or deferred time. The Merchant undertakes to set up and apply adequate procedures of control to ensure the good execution of the payments. He will be responsible for any damage resulting from any breach of his obligations under this article 5. The Merchant acknowledges that the installation of insufficient transaction controls can be detrimental not only for the Merchant himself, but also for the other users of the Ogone services, as well as for the Financial Institutions.

5.3 Merchants are also informed that the Ogone Service offers a "Fraud Detection Module" restricting the risk of fraud and/or the negative effects thereof on the activity of the Merchant and of the Financial Institutions.

5.4 Ogone strongly recommends Merchants to set up as many mechanisms of control as possible, especially in the case of applications of electronic commerce, and Ogone reserves the right to limit the financial capabilities of the Ogone Account (types of allowed operations, maximum number of transactions per period, etc), if it judges controls and/or follow-ups by the Merchant to be insufficient. The creation of adequate follow-up measures and control mechanisms, as well as the implementation of security options made available by Ogone (article 5.3) is to the free option of the Merchant and Ogone shall have no liability in respect thereof.

#### **Article 6 – Intellectual property rights over the Software and the Ogone Service - copyrights**

6.1 As the author and developer of the Software and the Ogone Service, Ogone warrants that it holds all rights and permits necessary to allow the Merchant to use both the Software and the Ogone Service. Ogone shall hold the Merchant harmless against any and all damages (including costs) that may be awarded to be paid in respect of any claim or action that the normal use or lawful possession of the Software or the Ogone Service by the Merchant infringes, in whole or in part, the intellectual property rights of a Third Party (an "Intellectual Property Infringement") provided that the Merchant:

(a) gives notice to Ogone of any intellectual property infringement forthwith and without delay upon becoming aware of the same; and

(b) gives Ogone the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of Ogone; and

(c) acts in accordance with the instructions of Ogone and gives to Ogone such assistance as it shall reasonably require in respect of the conduct of the said common defence including the transmission of all procedural documents and all relevant documentation.

In that case Ogone shall bear all reasonable costs incurred in conducting such common defence.

Ogone shall have no liability to the Merchant in respect of the infringement of intellectual property rights of Third Parties if this results from any breach by the Merchant of his obligations under the General Conditions.

6.2 The Ogone Service was exclusively created and developed by Ogone. Ogone is the owner and the holder of all the intellectual property rights over each and all its elements. The Software is, and shall at all times remain, the exclusive property of Ogone.

6.3 The Merchant undertakes to refrain from:

- (a) reverse compiling, copying or adapting, in whole or in part, the Software made available by Ogone,
- (b) assigning, selling, transferring, leasing, dealing in or encumbering the Software, making it available to any Third Party or using the Ogone Service on behalf of any Third Party or
- (c) making the Ogone Service or the Software available on any file sharing service,
- (d) removing or altering any copyright or other proprietary notice on any of the Software or the Ogone Service
- (e) using the Software or the Ogone Service for purposes other than those set forth in the Merchant Contract with Ogone

6.4 The Merchant acknowledges that the entire documentation of Ogone, available among others by download from the "Support" option of its Ogone Account is and shall remain at all times the exclusive property of Ogone. This documentation is protected by the copyright of Ogone. It can only be used in the strict framework of the Merchant Contract. The transmission, disclosure or copying of this documentation, in whole or in part, as well as the use or disclosure of its content, in whole or in part, or its misuse without the explicit written consent of Ogone is strictly prohibited

## **Article 7 – License on the Software and other intellectual property rights**

7.1 Ogone grants the Merchant, who accepts the same, a non-exclusive license to use, to the extent strictly necessary for enabling him to create and manage his Ogone Account according to the selected formula and within the limits and conditions stated in the Merchant Contract: (i) the Software provided through the Ogone Site; and (ii) all other intellectual property rights relating to the Ogone Service.

Ogone reserves the right to change or amend the Software at any time, to provide the Merchant with a new version thereof, and to change the functionalities and characteristics of the Software.

7.2 The license set out in article 7.1 is personal to the Merchant and cannot be assigned or sub-licensed without the prior written consent of Ogone. The license does not transfer any property whatsoever, which rights shall remain owned entirely by Ogone. The license provides no right to the source code or decompiled Software, except for the prerogatives conferred under national legislation relating to the legal protection of computer programmes. The Software shall be used by the Merchant only, to the exclusion of any other person and excluding the sale, rental, sub-contracting, leasing, etc. of said Software or of the Ogone Service.

## **Article 8 – Hosting by Ogone**

8.1. Ogone undertakes to host the Ogone Account of the Merchant.

8.2. The Merchant shall provide Ogone as soon as reasonably practical with all information relating to any fact or circumstance relating to the hosting which might give rise to any action or complaint by a Third Party against Ogone.

8.3. Ogone can perform all the operations necessary to host and protect the Ogone Account, in particular: the creation of backup copies of its content.

8.4. In this context, Ogone must comply with the restrictions imposed by the Financial Institutions and all applicable data security laws and regulations, including but not limited to those listed in the attached addendum (the "Addendum"). In particular, Ogone shall be entitled to store sensitive information, such as credit card numbers or visual cryptograms (CVC/CVV), for a limited period of time only.

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## **Article 9 – Liability, warranties and commitments**

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### **Principles:**

In case of breach of its contractual obligations, Ogone's liability can be withheld in the following conditions and within the limits set out hereafter:

(i) *General limitation of liability:* Except with respect to its indemnification obligations under the Addendum, Ogone shall only be liable for serious and repeated contractual breaches which can be directly imputed to it.

Online payment operations being complex and requiring the intervention of a number of parties, it is explicitly acknowledged that Ogone shall only be held liable for facts originating in the infrastructure managed by Ogone and over which Ogone exercises power of control but including its obligations under the Addendum.

(ii) *Exclusion of certain losses:* Except with respect to its indemnification obligations under the Addendum, Ogone shall not be liable to the Merchant in contract, tort, or breach of any statutory duty or howsoever otherwise arising and shall therefore not pay any compensation for any loss of profits, business, revenue or anticipated savings; or for any loss of goodwill or injury to reputation; or for any type of indirect or consequential or special loss or damage, or loss or damage as a result of any recourse, in particular where the occurrence and the evolution of the damage were beyond Ogone's control.

This exclusion shall apply regardless of whether or not the principle of the damage and its extent were foreseeable at the conclusion of the Merchant Contract, even if Ogone was advised of the possibility that such damage could occur.

(iii) *Limitation of the amount of liability – limitation of compensation:* Any liability of Ogone not excluded by the provisions of the General Conditions shall be limited to

the amount of the Merchant's monthly invoice for the period immediately preceding the event giving rise to liability.

This limitation of liability is necessary in order to maintain the proportionality principle between the claimed damages on one hand and the prices invoiced by Ogone as well as the breaches committed on the other hand.

(iv) *Death, Personal injury and fraud*: Nothing in the General Conditions shall limit Ogone's liability for death or personal injury; or gross negligence or for fraud or for any breach of its obligations under the Addendum.

Except where explicitly agreed otherwise and in writing, Ogone's liability is exclusively governed by the provisions set out herein. Ogone cannot be held liable under the General Conditions for any breach of service levels. Such liability can only be accepted in the case of subscription to an SLA and within the limits set out therein.

### 9.1 Warranties relating to the hosting and functioning

9.1.1. Ogone provides the hosting and ensures the functioning of the Ogone Service using the hardware and software environment freely selected for the purpose of hosting the Ogone Account.

9.1.2. The Merchant, managing his Ogone Account under his sole responsibility remains exclusively liable for the selection and management of the PSPID, the connection data (credentials) of the Merchant Users (USERID) and related passwords.

Each party remains responsible for the security of the data he transmits via the Internet.

9.1.3 The Merchant manages his Ogone Account under his sole responsibility and ensures its good administration. Ogone shall not be held liable for any losses or damages of any kind incurred by the Merchant (such as operating losses, data loss, etc.) caused by improper functioning of the Ogone Service solely as a result of any change made to the same, whether or not voluntarily, by the Merchant or any person other than Ogone and the employees thereof, unless such change is carried out in total conformity with explicit instructions given by Ogone.



9.1.4 The Merchant bears sole liability for his Ogone Account as regards other holders of Ogone Accounts in relation to any loss generally, of any nature whatever, suffered by any other holder caused by fraud or serious negligence in the use of the Ogone Account or any of the components thereof (PSPID or password, for example). The Ogone log files tracing access to his http servers and his Ogone servers shall prevail in this regard. The Merchant shall be liable to Ogone in the event of any action brought by a Third Party for any damage suffered by such parties in such regard, such as interruptions in, or access problems relating to, their Ogone Account.

9.1.5. Without prior express and written authorisation by Ogone, the Merchant shall not permit any Third Party to use his Ogone Account, in whole or in part.

9.1.6. Ogone shall not be held liable for losses suffered by the Merchant or any Third Party resulting from a case of force majeure or any event above and beyond the control of Ogone.

## 9.2 *Declarations and warranties relating to the content of the Ogone Account.*

9.2.1 With the exception of the elements supplied by Ogone, the Merchant is and remains fully liable for the content of his Ogone Account, including the configuration parameters of said Ogone Account, as well as the related financial transactions themselves (hereinafter referred to as "the Content"). The Merchant undertakes to keep said Content up to date, as well as to keep said Content exact, complete and permanently updated.

9.2.2 The Merchant warrants that (i) the Content of his Ogone Account is and will not be in violation of the intellectual property rights of any Third Party, or the right to protection of privacy, fundamental right of individuals, the right of representation or any other right of a Third Party; (ii) the Content is and will not be contrary to good morals, public order and any applicable codes of conduct; (iii) the software and files supplied by the Merchant are free of viruses; (iv) the Content is and will not be in violation of the applicable laws or regulations, such as the laws relating to trade practices.

Furthermore, the Merchant undertakes to comply with the applicable data protection legislation arising from the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ, L 281, 23 November 1995, p. 31-50 (hereinafter referred to as the "Directive") and warrants if necessary to declare any creation, conservation and use of files containing personal data.

9.2.3 The personal data, as defined in the Directive, communicated by the Merchant to Ogone, will be treated by Ogone within the European Union in accordance with the Directive.

### 9.3 *Warranties relating to the Merchant – Commitments of the Merchant*

9.3.1 The Merchant warrants that he possesses the legal capacity and all permits necessary to sell his products/services using the Ogone Account.

9.3.2 The Merchant undertakes to use his Ogone Account solely for professional purposes, and only for payments due and payable to said Merchant. The Merchant is the counterparty in all membership contracts with the Financial Institutions and is the sole contracting party with regards to the same. The Merchant hereby provides an assurance that he is not acting as an intermediary.

9.3.3 Prior to using the Ogone Account, the Merchant undertakes to inform himself with the Financial Institutions with whom he has concluded the above mentioned membership contracts in order to process all payments adequately as well as to comply with the user instructions of said Financial Institutions. The Merchant also undertakes to provide Ogone, via the configuration of the Ogone Account or by e-mail, with all useful information received from the Financial Institutions to ensure the proper processing of all transactions, for example, the Merchant Activity Code (MCC code) or transaction origin code (e-Commerce, recurrent payments, distance sales). The Financial Institutions and the Merchant shall be solely responsible for ensuring the proper flow of all financial payments.

9.3.4 In particular, the Merchant shall ask the Financial Institutions managing his VISA/MasterCard payments whether he is required to possess a PCI (Payment Card Industry) certification.

9.3.5 The Merchant undertakes to implement efficient practices concerning security management, in conformity with article 5.1 above.

9.3.6 The Merchant undertakes to exercise regular, efficient and sufficient control over all transactions, in conformity with article 5.2 above.

9.3.7 Ogone only acts as a technical intermediary between the Merchant, the Merchant Clients and the Financial Institutions, for the purpose of payments processing. The payments themselves, however, shall be made directly to the Merchants by the Financial Institutions without Ogone being able to interfere whether in the process or in the information retransmitted at this occasion. The modalities of these payments are described in the membership contracts entered into directly between the Merchants and the Financial Institutions. Ogone shall not be held responsible for incorrect execution of such payments.

9.3.8. The Merchant shall use the Ogone Service according to the documentation supplied to him by Ogone. He shall not disrupt the Ogone Service, for example by badly implementing the service or by using it for purposes which are not explicitly provided for under the Merchant Contract. Thus, e.g., systematic queries of the system to check its availability or useless repetitive queries to know the status of

non existing transactions or of transactions for which the status will not evolve anymore are forbidden.

## **Article 10 – Price – Payments**

10.1 Ogone may change its prices with 180 days' prior notice based on the trend in the Reference Index.

$$P = P0 * (I/I0)$$

In which:

P = New price after indexation

P0 = Price before indexation

I0 = Last value of the Index of Reference published upon last indexation

I = Last value of the Index of Reference published upon indexation

The Merchant may, however, during the notice period, cancel his contract without costs; said cancellation being effective at the end of the above mentioned notice period.

10.2 The Ogone Service shall be invoiced to the Merchant on a monthly basis. Ogone shall be entitled to change the invoicing interval with one month prior notice to the Merchant. The monthly subscription fee and the fee for the options shall be paid in arrears, at the beginning of the period while the costs for the use of the Service (i.e. the transactions passed by the Ogone Account) will be invoiced at the end of the period, based on real consumption and/or if applicable on the agreed transaction package.

10.3 In the absence of indication to the contrary in the Merchant Contract, the invoices of the Ogone Service shall be payable by direct debit, credit card or any other means permitting automatic debiting, which the Merchant undertakes not to revoke during the lifetime of the contract. If said automatic debits are rejected by his bank, the Merchant undertakes to pay without delay his due invoices; as well as to take all necessary steps immediately with regards to said bank for the purpose of remedying such situation.

10.4 In the absence of indication to the contrary in the Merchant Contract, the invoices of the Ogone Service shall be paid by the Merchant within 45 calendar days of date of the receipt of the invoice. The Merchant will receive a reminder if the payment has not been received by the end of said period. In such case, reminder fees in the amount of 25€ / 40 CHF / 20 GBP will be automatically added to the Merchant's next invoice, without other advance notice. Such reminder fees may be dropped only if (i) such delay in payment is the Merchant's first one, and (ii) the situation is meanwhile remedied.

10.5 In the event of major late payment, i.e., more than 45 calendar days after the due date of invoice or in the event of cancellation of the automatic debit

mechanism referred to in 10.3, arbitration proceedings will be initiated. In this case, the Ogone Account of the Merchant may be cancelled by Ogone if failure to cure and with prior notice, the costs mentioned in article 11.3 and any debt recovery fees being calculated and invoiced by Ogone. In all cases of delay in payment, the Merchant will be charged interest at a rate of 12% per year from the date of invoice receipt. Interest shall accrue daily and both before as well as after any judgment.

## **Article 11 – Duration**

11.1 In the absence of indication to the contrary, the Merchant Contract enters into force upon the Effective Date.

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11.2 In the absence of indication to the contrary, the Merchant Contract is as from its date of entry into force concluded for a fixed initial term of one year. At the end of this initial term, the Merchant Contract will automatically renew for successive periods of one (1) year (each a "current period") on the same terms and conditions as contained herein.

Unless agreed otherwise, the Merchant Contract can only be terminated by notice given in writing at least 1 month prior to the end of the current period by Merchant. To be valid, such notice must be given by registered post or fax on the commercial paper of the notifying party, bearing its original signature. In the case of termination by Ogone, Ogone must give 90 days' written notice prior to the end of the current period by Merchant.

11.3 Any termination of the Merchant Contract outside the above mentioned term, shall imply the immediate collectability of the total fixed monthly charges remaining due.

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11.4 The parties shall nevertheless be entitled to terminate the Merchant Contract with immediate effect without prior notice and without costs or compensation in the event of the following situations on the part of the other party:

11.4.1 the other commits any material breach of its obligations as agreed upon in the Merchant Contract and fails to remedy the breach within 1 month after being required by written notice to do so, or

11.4.2 if the other goes into liquidation, insolvency, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or a moratorium comes into force in respect of the other, or in case of protective seizure and distraint of the Merchant in the hands of Ogone, filed by a creditor of the Merchant.

It is a material breach of this Agreement if Ogone breaches any provision of the Addendum.

## **Article 12 – Confidentiality**

12.1 All data, regardless of the medium and their nature, relating to the Merchant or to Ogone and designated as being confidential, as well as all data not expressly designated as confidential but which should reasonably be deemed confidential by reason of the medium, nature or content is to be considered confidential. Each party remains the owner of all data made available to the other party.

12.2 Each party undertakes to take all necessary steps to protect the confidential nature of all confidential data under the terms of the present General Conditions, agreeing, in particular, to:

12.2.1 only use the confidential information of the other for the purpose of fulfilling its obligations set out in the Merchant Contract and not for any other purpose whatsoever;

12.2.2 communicate all such confidential data supplied within the framework of fulfilment of the Merchant Contract, in whole or in part, orally or in writing, solely to the personnel and representatives of the parties, who shall be informed thereof within the framework of the collaboration described in the Merchant Contract; such data may be made available to the legal authorities upon written request;

12.2.3 refrain from making any such confidential information available to any Third Party without the prior written consent of the other party;

12.2.4 to return to the other party, upon request and without delay, all documents, copies, notes, recordings, memoranda or other documents issued by said other party which might contain confidential information.

12.3 The obligation of confidentiality as described in article 12 shall remain in effect throughout the entire lifetime of the Merchant Contract. It shall moreover subsist for five years following the end of the test period or termination of the Merchant Contract, regardless of the grounds for termination.

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

- all financial data;
- the terms and conditions of the Merchant Contract;
- all User Manuals and guides relating to Ogone products and services.

## **Article 13 – General provisions**

13.1 In the event of technical problems relating to his Ogone Account, the Merchant can access the Ogone Site for the purpose of on-line consultation of any available documentation and FAQ, use of the "Support Box" option appearing under the "Support" option in the menu of his Ogone Account to create an incident ticket, send e-mail messages to [support@ogone.com](mailto:support@ogone.com) or contact the Ogone Help Desk by telephone (the Ogone telephone number is available on the Ogone Site, on the "Contact" page) during opening hours: 9:00h – 17:00 h –time of the contracting

Ogone subsidiary, on working days. Saturday, Sunday and national Bank Holidays are not considered a working day.

Non-electronic support (telephone, meetings, etc.) is free under the following conditions:

- the type of subscription selected by the Merchant shall not exclude said free support;
- the Merchant shall master the Ogone Service and shall first have attempted to find the cause of the problem in the available documentation;
- the problem must originate from the Ogone Service, and not from any system upstream or downstream;
- if the support request relates to a test account, the Merchant shall activate a production Ogone Account within 3 months of said support request at the latest.

In the event of failure to fulfil the above conditions, the Merchant may be invoiced for such support at the price of 100 Euros/hr (155 CHF/hr or 85 GBP/hr)

### 13.2 *Force majeure*

13.2.1 The parties shall not be held responsible for delays or failings in the fulfilment of the Merchant Contract if such delays or failings arise from facts or circumstances reasonably perceived to be above and beyond the control of either party, being unpredictable and inevitable.

The parties agree that the viruses or other defects resulting from unauthorized access to software or non-authorized access to the Ogone Site or any type of hacking, including in particular DOS attacks, shall not be considered a case of force majeure.

13.2.2 The party invoking such facts or circumstances shall immediately inform the other party in writing and take all steps to avoid such cases of force majeure by reducing, insofar as possible, the duration thereof. Said party shall also inform the other party upon cessation of said facts or circumstances.

### 13.3 *BchjW*

The parties will provide notice to each other by certified, registered mail or recognized carriers such as DHL, FedEx and UPS.

### 13.4 *Assignment of the account*

13.4.1 Ogone shall be entitled, at any time, to transfer the Merchant Contract to another company in the Ogone Group, i.e., a company with at least 50% the same shareholders, without the prior consent of the Merchant.

13.4.2 The Merchant shall not assign the rights and obligations arising from the present Merchant Contract concluded with Ogone, in whole or in part, except in a change of control event, merger, split or any other means of operation of law assignment, whether particular or universal.

13.5 *Clauses declared null and void and/or inapplicable*

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

13.6 *Waiver*

The failure of either party to exercise his rights at any time shall in no way imply a waiver of said rights.

13.7 *Entirety of the agreement*

13.7.1 The Merchant Contract and the Addendum contains all the commitments between the parties and replaces all other prior contractual commitments between the parties.

13.7.2 Each party confirms that any statement, representation or warranty agreed upon during the contract negotiations is included in the Merchant Contract and Addendum.

13.8 *Changes to the General Conditions*

Exceptionally, Ogone can unilaterally change the essential elements and material obligations contained in the General Conditions with immediate effect, on the condition that Ogone proves that:

- such changes are necessary as a result of new terms and conditions imposed upon Ogone by a Third Party such as (i) a credit card company, a Financial Institution, a hardware or software supplier, et c. (the list is provided for information purposes and is in no way exhaustive) or (ii) a legal authority;
- without such changes, the activity of Ogone would have suffered a negative impact or been rendered impossible.

In such case, the Merchant may terminate the Merchant contract immediately with no further liability or obligation to Ogone.

### 13.9 *Client list and promotions*

Intentionally deleted.

## **Article 14 – Applicable law**

The Merchant Contract is governed by the law of the state of New York, USA.

## **Article 15 – Settlement of disputes**

15.1 The parties undertake to take all steps to reach an amicable agreement to any dispute relating to the Merchant Contract.

15.2 In the absence of an amicable agreement, any dispute shall be submitted to the exclusive jurisdiction of the courts and tribunals located in the Southern District of the State of New York.