

# TERMS AND CONDITIONS FOR USE OF FONDY GATEWAY

## 1. TERMINOLOGY

- 1.1. **Cardholder** – natural person or legal entity, making payments for goods or services offered by the E-Merchant in the E-shop, using the Cards.
- 1.2. **Card** – Visa, Visa Electron, MasterCard or Maestro payment card, used for carrying out the Transactions
- 1.3. **Issuing bank** – bank issuing the Card.
- 1.4. **Transaction** – financial activity, connected with payment for purchase or service, using the Card or other payment methods
- 1.5. **Software** – software for sending the Transaction authorization request and the Transaction data to FONDY.
- 1.6. **Authorization** – established procedure for receiving of the Issuing bank's permission to perform the Transaction. Authorization shall be performed according to the requests received by FONDY from the E-Merchant in electronic form, and their authenticity shall be verified with the help of the digital certificate.
- 1.7. **Transaction data** – information on the Transaction, the Card used for the Transaction and the Cardholder's identification.
- 1.8. **Merchant Application Form** – annex to this Agreement – a questionnaire, containing detailed information on the E-Merchant, its E-shop, type of goods or services, types of serviced payment methods. It is an integral part of this Agreement.
- 1.9. **E-shop** – E-Merchant's site on the Internet, where the E-Merchant offers goods or services.
- 1.10. **Chargeback** – Issuing bank's claim against the E-Merchant, challenging the Transaction according to the provisions of International Card organization Rules.
- 1.11. **Pre-arbitration**- The first step toward arbitration is called pre-arbitration. Pre-arbitration is usually requested by the customer's issuing bank, though the acquiring bank can also request it should the merchant be unhappy with the results of the initial dispute. When pre-arbitration is initiated, merchants have two options. First, they can accept liability for the chargeback, and the customer gets refunded their money in full. If they are not willing to accept liability, they can request full on arbitration. This means they will need to provide more evidence, and ultimately, the card network will make the final decision regarding the transaction.
- 1.12 **International Card Organizations** – international payment card organizations *VISA International, MasterCard International and other.*
- 1.13 **Report** – monthly report, provided by FONDY to the E-Merchant on the Transactions, made in the E-Merchant's E – shop (-s) in the previous calendar month.
- 1.14 **Business day closing procedure** – the aggregate of actions, described in Software or otherwise, performed for processing of information on direct and return Transactions performed during the E-Merchant's business day.
- 1.15 **3D Secure** – Cards', Transactions' and E-Merchants' data security check solution for acceptance of the Cards in the Internet, developed by VISA and approved together with MasterCard, the use whereof is obligatory for the above organizations' member-banks and their E-Merchants.
- 1.16 **The PCI DSS** – payment cards security standards - requirements to promote security management of payment accounts, which was developed by the founding brands of the PCI Security Standards Council, intended to help protect customer account data in global merge.
- 1.17 **Tariffs** – a list of fees that are verified by FONDY and are valid in the day, when FONDY's operations are completed. Tariffs are available in Annex 1.
- 1.18 **Other payment methods** – all payment methods which Partner provides to FONDY such as bank transfers, mobile payments, prepaid cards, e-wallets, etc.
- 1.19 **Partner** – bank or other payment service provider
- 1.20 **E-Merchant client** - natural person or legal entity, making payments for goods or services offered by the E-Merchant in the E-shop;
- 1.21 **Personal Data** – any information relating to an identified or identifiable person to be processed under the Agreement;
- 1.22 **Data Protection Legislation** – any applicable data protection law, regulations (including EU General Data Protection Regulation 2016/679) and other regulatory requirements to which Parties are subject, and any guidance or statutory codes of practice issued by the relevant Privacy Authority/ies;
- 1.23 **Data Controller** – the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;
- 1.24 **Data Processor** – a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Data Controller;
- 1.25 **Data Processing Agreement („DPA“)** – the agreement that regulates the relationship between the Parties in terms of respective duties and obligations concerning the processing of E-Merchant's clients Personal Data, by the Data Processor.

## 2 SUBJECT OF AGREEMENT

- 2.1 This Agreement determines and regulates mutual legal relations of the Parties, which are connected with acceptance of and settlements with the Cards and other payment methods for goods and services offered by

the E-Merchant in the E-shop and the settlement procedure between the FONDY and the E-Merchant for performed Transactions.

### **3 RIGHTS AND OBLIGATIONS OF THE E-MERCHANT**

3.1 The E-Merchant undertakes:

3.1.1 to accept from the Cardholder's the Cards and other payment methods mentioned in the Annex 1 as payment for goods and services offered by the E-Merchant in the E-shop.

To accept the Card and other payment methods as payment means only for such goods and services, which correspond to the type of business activities mentioned in the "Merchant Application Form". E-Merchant must submit to FONDY records of valid Transactions only between the E-Merchant and his client;

3.1.2 to pay commission fees provided for in respective concluded agreements;

3.1.3 to use Software for accepting the Cards and other payment methods in the E-shop;

3.1.4 If the E-Merchant's client refuses from acquired goods and/or services, or if the E-Merchant does not duly deliver goods and/or services, the E-Merchant undertakes to return to the E-Merchant's client the amount of the Transaction, either fully or partially, as provided for by the E-Merchant's rules of cancellation of the Transaction;

3.1.5 immediately, but not later than within 5 (five) business days, to inform FONDY in writing on changes of its legal details and other changes, including information contained in the „Merchant Application Form”, connected with legal status of the E-Merchant, type or sphere of its business activities, authorized signatories, and other information, which can significantly affect proper fulfillment of this Agreement. The E-Merchant shall be responsible for the consequences, arisen from failure to provide the above information in due time;

3.1.6 in respect of each E-Merchant's E-shop the E-Merchant shall prepare and submit to FONDY a separate Annex 1.

3.1.7 to use the 3D Secure solution and SSL (Secure Sockets Layer) data transmission protocol (no less than 128 bits) for receipt and transfer of the Transaction data on the Internet;

3.1.8 to the appropriate extent, to acquaint its employees responsible for the execution of this Agreement with the provisions of the Agreement, International Card organization regulations and amendments thereto;

3.1.9 to provide FONDY with as much assistance as possible in resolving the disputes of E-Merchant's clients arisen from the Transactions in the E-shop, to the extent that this is necessary in the opinion of FONDY;

3.1.10 to inform FONDY of any established cases of fraud with the Cards, regarding the execution of this Agreement

3.1.11 to accept all valid, duly authenticated Cards as cashless payment means for settlements for good and/or services according to the prices, which the E-Merchant indicates in euro (EUR) or US Dollars (USD) when executing the Transaction.

3.2 The E-Merchant has no right:

3.2.1 to set an extra charge for settlements with the Card and other payment methods, unless it is stipulated by legislative acts and FONDY has approved such extra charge in accordance with the regulations of the International Cards Organizations and Partners;

3.2.2 if an extra charge is stipulated by the legislative acts, it should be included in the amount of the Transaction and may not be collected separately;

3.2.3 to set minimal amounts of the Transactions;

3.2.4 to accept the Card and other payment methods for payment in order to cover or refinance any other existing liability than mentioned in Clouse 3.1.1. of this Agreement;

3.2.5 to issue cash in the frames of the Transaction;

3.2.6 in the frames of the Transaction to issue a commercial cheque, a bill of exchange or other document, which could be used for further settlements;

3.2.7 to divide the Transaction into several parts;

3.2.8 to store and disclose to third parties the data on the Card holder, Card number, term of validity, CVC/CVV value, as well as any other information, regarding acceptance of the Cards and the Card holders. This obligation of the E- Merchant has no time limit;

3.2.9 to accept the Card and other payment methods as payment means for commercial activities performed by third parties;

3.2.10 to issue electronic money as a result of the Transaction, unless the right to issue electronic money has been delegated according to the authorization of the EU Financial Regulators and approved by FONDY in writing, which should be indicated in the respective annex "Merchant Application Form";

3.2.11 without procession of the Transaction's data to use the Card's data for other purposes in the process of the Transaction, and also before and after performing of the Transaction.

3.2.12 E-Merchant must not submit to FONDY a Transaction that the E-Merchant knows or should known to be fraudulent or not authorized by the E-Merchant's client, that it knows or should have known to be authorized by a E-Merchant's client colluding with the E-Merchant for a fraudulent purpose. For purposes of this Agreement, E-Merchant is deemed to be responsible for the conduct of its employees, agents and representatives;

3.2.13 to disclose to third parties any information that has become known to it in connection with the execution of this Agreement.

3.3 The E-Merchant is obliged:

3.3.1 to ensure compliance of its E-shop to the requirements of International Card organization;

3.3.2 within 7 (seven) days upon receipt of FONDY's request to send to the copies of the requested documents confirming the Transaction either by fax, electronic mail, and/or by registered mail or in any other way fixing the fact of sending. If the E-Merchant is not able to send or submit the copies of the documents confirming the Transaction within 7 (seven) days, the E-Merchant within the above-mentioned term upon receipt of the request should inform the claimant about it in writing, indicating the date of sending of the information or the reason for failure to submit the information. If the E-Merchant is visited by a representative of FONDY such representative shall have the right to receive the copies of information confirming the Transaction;

3.3.3 to observe FONDY's regulations, International Card organization regulations and the provisions of this Agreement. This obligation also concerns the regulations, instructions and directions on acceptance of the Cards, adopted or approved after conclusion of the Agreement. FONDY undertakes to timely inform the E-Merchant on adoption or approval of such regulations and instructions;

3.3.4 within 10 (ten) business days upon receipt of a respective invoice from FONDY to pay to FONDY the amount of the Transactions, in respect whereof the Chargeback's were received in compliance with the regulations of the International card organizations and/or in respect whereof the E-Merchant has not submitted the copies of information confirming the Transaction according to Clause 3.3.2. of the Agreement within the time, mentioned in the request for the copies of the documents confirming the Transaction, if in the E-Merchants accounts at FONDY are not enough funds, to fulfill the obligations mentioned in Clause 4.3;

3.3.5 to pay to FONDY all fees that are set in Bank's Tariffs and has enter into force in the relevant commission adoption day.

#### **4 RIGHTS AND OBLIGATIONS OF FONDY**

4.1 FONDY is obliged to ensure the Authorization of the Transactions and transfer of the amounts of the Transactions to the E-Merchant.

4.2 FONDY undertakes to perform:

4.2.1 servicing of the Cards and other payment methods;

4.2.2 processing of the Transactions;

4.2.3 settlements for arranging of the Transactions;

4.2.4 preparing the reports on the Transactions and sending them to the E-Merchant;

4.2.5 processing of the Chargebacks.

4.3 FONDY has the right:

4.3.1 to charge from any E-Merchant's account in FONDY the amounts of the Transactions, in respect whereof the Chargebacks are laid in accordance with the regulations of the International Card Organizations and this Agreement. If the E-Merchant does not have an account in FONDY or there is no enough money in the account, FONDY has the right to issue an invoice, which the E-Merchant undertakes to pay within the term mentioned in Clause 3.3.4. of the Agreement;

4.3.2 Not to process refunds created by E-Merchant in the event that unsettled funds of the E-Merchant held by FONDY are less than the refund amount requested by E-Merchant. In such cases E-Merchant will need to provide Fondy with an amount of funds sufficient to cover such refund requests.

4.3.3 In the event that the E-Merchant's chargeback ratio equals or exceeds 0.65% of total transaction value in any month, Fondy has the right, at its option, to block the E-Merchant's account or terminate this Agreement, and in either case to hold for its benefit any unsettled funds of the E-Merchant for 190 days for offset against future chargebacks related to the E-Merchant.

4.3.4 In the event that the E-Merchant does not promptly provide satisfactory evidence at the request of FONDY that 1) goods or services have actually been delivered to the E-Merchant's customer, 2) that such goods or services are from the business type originally approved by FONDY, 3) that such goods or services are advertised in the E-Merchant's E-shop, and/or 4) that such goods or services are not prohibited goods or services under the rules of the International Card Organizations or of FONDY (in each case as may be requested by FONDY), then FONDY has the right, at its option, to block the E-Merchant's account or terminate this Agreement, and in either case to hold for its benefit any unsettled funds of the E-Merchant for 190 days for offset against future chargebacks related to the E-Merchant or penalties assessed against FONDY. Prior to the provision of the requested evidence by the E-Merchant, FONDY shall have the option to place a temporary block on the E-Merchant's account.

4.4 On E-Merchants request, FONDY undertakes to send to the E-Merchant the report on the Transactions, performed in the E-Merchant's E-shop in the previous calendar month.

4.5 Prior to settlement, the funds payable to the E-Merchant are segregated from all funds belonging to FONDY and are kept in safeguarding accounts at credit institutions as required by applicable regulation. The funds held are not covered by the Financial Services Compensation Scheme.

## **5 SETTLEMENT PROCEDURE**

5.1 FONDY undertakes to ensure transfer of the amount of the Transaction for the Transactions performed in the E- Merchant's E-shop, according to the Annex 1 to this agreement.

5.1.1 All payments made in favour of the E-Merchant under the terms of this Agreement, shall be transferred to a bank account number which is listed in Annex 1.

5.1.2 FONDY undertakes to transfer to the respective E-Merchant's bank account mentioned in this Agreement, the amounts, corresponding to the Transactions performed by the respective E-Merchant, withholding commission fees due to FONDY. Period of all settlements are listed in Annex 1.

5.1.3 The minimum settlement amount is 5 EUR or equivalent.

5.1.4 FONDY may carry out any currency conversion required to effect the services and to make remittances or settlements to the E-Merchant in the settlement currency selected in Annex 1 of the Contract where the corresponding Transactions were effected in a different currency, with such currency conversions being made in accordance with the Contract and any applicable laws and regulations. FONDY will convert the relevant Transaction value into the remittance or settlement currency at a rate and spread as FONDY determines in its discretion acting reasonably.

The E-Merchant acknowledges and agrees that in order to carry out any currency conversion, FONDY may engage a third party provider and that FONDY may use funds otherwise required to be held or held in the E-Merchant's payment account with FONDY and/or in any account in which funds corresponding to the E-Merchant's receivables under the Contract are held and transfer such funds to any third party provider or counterparty in advance of receiving the corresponding funds back in the relevant currency.

5.2 The E- Merchant undertakes to pay to FONDY all payments due to FONDY.

5.3 The E- Merchant undertakes:

5.3.1 if the Transaction is cancelled, not to pay cash to the E-Merchant's client;

5.3.2 if the E-Merchant's client refuses from acquired goods and/or services, or if the E-Merchant does not duly deliver goods and/or services, the E- Merchant, upon receipt of respective information from the E-Merchant, undertakes to return to the E-Merchant's client the amount of the Transaction, either fully or partially, as provided for by the E-Merchant's rules of cancellation of the Transaction.

5.4 The E- Merchant shall irrevocably assign and authorize FONDY without any additional approval or authorization, to deduct the amounts, related to processing of the Complaints, i. e., by debiting the E- Merchant for the amounts of respective Complaints, as well as for commission fees for processing of the Complaints.

5.5 If the E- Merchant wishes to challenge the received Complaint, then all expenses, arisen due to consideration of the dispute, including commission fees for processing of the Complaints, for processing of the challenged Complaint and possible arbitration costs, shall be paid by the E- Merchant.

5.6 If it is impossible to debit the required amount from the E- Merchant's accounts in FONDY, the E- Merchant undertakes to pay the invoice for the aforementioned expenses within no more than 10 (ten) business days after receipt of the respective invoice.

5.7 In case of violation of International Card organization regulations, and International Card organization informs FONDY about such violations, FONDY has the right to charge all penalties levied by International Card organization connected with such violation and other Bank's expenses connected with the E-Merchant's violations.

5.8 By signing the Agreement the E- Merchant acknowledges that that the activities of the E- Merchant are legal, meets and will meet in duration of the Agreement the requirements of E-Merchant's and residence countries legislation of E-Merchant's client, existing legislation of the United Kingdom, legislation of all EU countries and International Card organization rules.

## **6 RESPONSIBILITY OF THE PARTIES**

6.1 The E-Merchant shall cover losses, which arise:

6.1.1 as a result of the E-Merchant's mistake when accepting the Cards, when performing the Transactions, when sending erroneous data on the Transactions;

6.1.2 if the E-Merchant violates International Card Organization regulations, including, but not limited to, those concerning the Chargebacks and the amount of fraudulent Transactions, and processing of the Transactions, as well as other losses, inflicted upon FONDY, if International Card organization levies a penalty due to the E-Merchant's Transactions;

6.1.3 if the E-Merchant discloses to third party the data on the Card, or in any other unfair way uses the information received under this Agreement;

6.1.4 if the E-Merchant has not stored the Transaction data, excluding sensitive data which is not allowed to store according to PCI DSS requirements;

6.1.5 if the E-Merchant or its authorized representative violates the provisions of this Agreement.

6.1.6 if FONDY requests E-Merchant to prevent any breach of the Agreement or International Card Organization rules or Partner rules, the E-Merchant undertakes to prevent such breach of the Agreement or International Card

organization rules or Partner rules within 3 days after receiving of Bank's notice.

6.2 If the E-Merchant violates International Card Organization Rules or Partner rules and as a result of such Rules violation International Card Organization imposes any penalty sanctions against FONDY, the E-Merchant undertakes to reimburse to FONDY amount of International Card Organization penalty sanctions in full amount and pay all FONDY's direct expenses related to the prevention of violations. E-Merchant undertakes to provide such reimbursement within 5 (five) business days after receiving of FONDY's notice, by transferring the amount mentioned in the notice, to the account mentioned in FONDY's notice.

6.3 FONDY shall not be responsible for losses, inflicted upon the E-Merchant or third parties due to acts or omission of communication organizations, other banks or any other third parties.

6.4 FONDY shall not be responsible for losses, inflicted upon the E-Merchant due to withholding or detention of transfer of the amounts of the Transactions in accordance with the provisions of this Agreement.

6.5 If the E-Merchant breaches the International Card Organization Rules or commits any violations connected with the E-Merchant illegal activity in pharma sales, child pornography, bestiality, tobacco, gambling, rape/hate/violence, 3rd party processing or aggregation., FONDY has the right without prior warning of E-Merchant to take the following actions:

6.5.1 Withdraw from any current account of the E-Merchant or from the other accounts containing the E-Merchants receivable funds in FONDY a penalty in amount of EUR 10 000,- (ten thousands euro).

6.5.2 Withdraw from any current account of the E-Merchant or from the other accounts containing the E-Merchants receivable funds in FONDY all International Card organization penalties applied to the violation of the International Card organization rules.

6.5.3 Block any funds in the current accounts of the E-Merchant or in the other accounts containing the E-Merchants receivable funds, until the breach or violation . is remedied and all International Card organization penalties are paid to FONDY.

6.5.4 terminate Agreement with immediate effect.

6.6 If the E-Merchant breaches the International Card Organization Rules Fondy has the right to take the following action:

6.6.1 Withdraw from any current account of the E-Merchant or from the other accounts containing the E-Merchants receivable funds in FONDY all International Card organization penalties applied to the violation of the International Card organization rules.

6.7 E-merchant must be compliance with the following requirements of the information mentioned on E-shop: working state of the web-site; availability of the certificate; name and address of the company and representation office; description of the goods or services offered for sale (including sizes and image); International Card organization logos; description of payment methods, including currency of transaction; customer service contact, including mail address or phone number; return/refund policy; delivery policy - delivery methods and timing; consumer data privacy policy (privacy statements); Security capabilities and policy for transmission of payment card details (statement on security controls); copyright (developer of the site or merchant); A "click to accept" button, or other acknowledgement, on its web-site evidencing that the E-Merchant client has accepted the return/refund policy; display its purchase terms and conditions to the E-Merchant client during the order process.

## **7 CONFIDENTIALITY**

7.1 All and any information connected with this Agreement and/or fulfilment thereof, which is not publicly available, is confidential and can be disclosed to third parties only upon written consent of the other Party, except for cases, when obligation to disclose such information to third parties is stipulated by the legislation of the United Kingdom. This provision shall be valid during the whole period of validity of this Agreement and also upon termination of this Agreement. For the purposes of this Agreement third parties shall not include the organizations, which are authorized by FONDY to perform processing of the card or other payment method Transactions;

7.2 The Parties undertake to comply with the Data Protection Legislation and any other relevant data protection and privacy law, regulations and other regulatory requirements, guidance or statutory codes of practice to which Parties is subject.

7.3 The Parties acknowledge that the execution of the contractual activities by FONDY involves FONDY processing Personal Data of individuals who are E-Merchant's clients of which E-Merchant is the Data Controller, with exclusive responsibility for decisions on the purposes and methods of the aforementioned processing. Therefore, E-Merchant will appoint the FONDY as Data Processor, via the DPA attached to this Agreement.

## **8 OTHER PROVISIONS**

8.1 The claims of the E-Merchant's client on the Transactions performed by the E-Merchant shall be settled according to the regulations of the International card organizations or Partners.

8.2 Amendments to the terms and conditions of the International card organizations or Partners shall be the basis for FONDY's refusal to fulfil the Agreement fully or partially.

8.3 If any clause of the Agreement becomes invalid or impracticable according to applicable legislative acts, it

will not affect fulfilment of other clauses of this Agreement.

8.4 All disputes arising in connection with the Agreement and which cannot be resolved by parties' negotiation shall be referred to the Arbitration Court in London in accordance with its Arbitration Rules. The Dispute settlement language - English, arbitrator will be - one. Dispute between the Parties may consider, without mandatory participation in the arbitration process, based on the submitted documents.

8.5 FONDY, having previously notified the E-Merchant, shall have the right freely and without previous approval to assign its rights and obligations under the Agreement to other organizations, including, but not limited to, assignment to perform the actions ensuring acceptance of the Cards by authorization of the Cards, processing the Transactions, submission of Reports to the E-Merchant, issue and servicing Software and performance of other actions ensuring acceptance of the Transactions.

8.6 All notifications connected with this Agreement shall be sent to the contact persons of the Parties:

8.6.1 contact person of the FONDY: Adriana Kovacova, phone: +421 903 722 992, e-mail: [adriana@fondy.eu](mailto:adriana@fondy.eu)

8.6.2 contact person of the E-Merchant: doname, phone:+ pnum, e-mail: eadd

## **9 EFFECTIVENESS, AMENDMENT AND TERMINATION OF AGREEMENT**

9.1 The Agreement shall come into force upon signing by both Parties and is concluded for unlimited period of time.

9.2 The Agreement may be amended by mutual written agreement of the Parties. Any amendments constitute an annex to this Agreement and become an integral part thereof.

9.3 FONDY shall have the right, upon 7 (seven) days' prior notice to the E-Merchant, to unilaterally change the provisions of this Agreement, as well as to stop ensuring the transfer of the amount of the Transaction to the E-Merchant, if there are suspicions in violations at acceptance of the Transactions.

9.4 Either Party has the right to unilaterally withdraw from this Agreement, having notified about it the other Party in writing 1 (one) month in advance.

9.5 FONDY has the right to unilaterally withdraw from the Agreement and/or stop the activity of any e-shop of the E-Merchant with immediate effect, having notified about it the E-Merchant, if it establishes that:

9.5.1 the E-Merchant has provided incorrect information;

9.5.2 if FONDY has not been informed about changes in the E-Merchant's legal details or any other information mentioned in the Agreement;

9.5.3 the E-Merchant does not comply with the requirements or recommendations of the International card organizations, Partners or breaches any provision of Agreement;

9.5.4 the E-Merchant has been declared insolvent;

9.5.5 the State Revenue Service has seized the accounts of the E-Merchant;

9.5.6 the E-Merchant is engaged in the activities, undermining prestige of FONDY or the International card organizations or Partners;

9.5.7 the E-Merchant is engaged in fraudulent and unlawful transactions.

9.6 Notification on termination of the Agreement, as well as termination of the Agreement does not release the E-Merchant from compensation of losses, as well as from fulfillment of other obligations towards the FONDY.

9.7 All Annexes are an integral part of this Agreement

9.8 The Agreement has been drawn up in English in two counterparts, one of which shall be kept by the FONDY, and one – by the E-Merchant, have equal legal force.