

# General terms and conditions applicable to Merchants and Visitors

All Merchants and Visitors (as hereinafter both defined) must comply with these general terms and conditions.

## Definitions

“GTC”	means these general terms and conditions;
“Site”	means the website of SysPay at <a href="https://www.SysPay.com">https://www.SysPay.com</a> , or such other website through which SysPay offers its services from time to time;
“Merchant”	means any professional person identifying him/herself to access the Site and/or the services offered by the Site by using a valid login and password registered with SysPay, after having completed a registration process;
“Visitor”	means any person who connects to and browses the Site without being identified as a Merchant;
“SysPay”	means SysPay Limited, a limited liability company duly incorporated and validly existing under the laws of Malta, having its registered office at 3B, Triq Wied Ghomor, St. Julians STJ 2041, Malta registered with the Malta Business Registry under company registration number C 51532 and registered with the Malta Financial Services Authority (MFSA).

By accessing and browsing the Site, Visitors and Merchants accept these GTC.

The version of the GTC currently online on the Site is the only one applicable and enforceable against Visitors and Merchants until it is replaced by a new version. SysPay reserves the right to amend these GTC at any time, such amendments shall come into force as soon as they are published on the Site.

These GTC are divided into two parts, the first part applies to all Visitors and Merchants, while the second part applies to Merchants only.

## Section 1. Provisions applicable to all Visitors and Merchants

Visitors and Merchants undertake:

- to browse the Site in accordance with the instructions that appear on their screen;
- not to use the Site in any way that is contrary to the regulations in force and, more generally, that is detrimental to public order, good morals, the interests, fame, reputation and/or image of SysPay and third-parties' rights.

In particular, and without this list being exhaustive, when using the Site, Visitors and Merchants shall:

- comply with applicable laws in force and respect third-parties' rights;
- use the Site in a loyal, personal manner and in accordance with the legal and regulatory provisions and practices in force;

- respect intellectual property rights of SysPay and third-parties. Visitors and Merchants are prohibited from reproducing and/or communicating to the public all or part of the content published on the Site;
- not to divert or attempt to divert any of the functions of the Site outside its normal use as defined herein;
- not to use any software robot or other process or equivalent automated device to browse the Site;
- not to disseminate data, information or content of a defamatory, insulting, obscene, offensive, violent or inciting to violence nature, or of a political, racist or xenophobic nature, and in general any content that would be contrary to the laws and regulations in force or to good morals;
- not to spread/disseminate data, information or content that could diminish, disorganize, or prevent the normal use of the Site, or interrupt and/or slow down the Site; and
- not to collect information about third parties, including email addresses, for the purpose of sending commercial solicitations or the like, or for inclusion in any free or paid referral service or the like, or for competitive intelligence purposes.

If a Visitor/Merchant fails to comply with one or more of these rules, SysPay reserves the right to block access to all or part of the Site, temporarily or permanently, without compensation or indemnity.

### **1.1. Management of the Site**

For the proper management of the Site, SysPay may at any time:

- suspend, interrupt or limit access to all or part of the Site, reserve access to the Site, or to certain parts of the Site, to Merchants;
- delete any information that may disrupt the operation of the system or contravene national or international laws; and/or
- suspend the Site in order to make updates.

SysPay reserves the absolute right to:

- take all actions it considers necessary against all parties howsoever involved in the unauthorized use of the Site and without notice, in order to vindicate its rights and prevent such unauthorized use, including using blocking technology (which may itself involve conducting automated searches of such parties' websites, screen scraping therefrom, causing such parties to screen scrape the Site, breaching the terms of use of such parties' websites, or any similar or associated actions) and/or issuing legal proceedings; and/or
- conduct all necessary investigations (whether by the use of technology or otherwise) of any breaches of these GTC. By accessing the Site, Visitors and Merchants consent to SysPay conducting all necessary investigations to prevent unauthorized use of the Site.

### **1.2. SysPay's liability**

SysPay takes every care in the creation and updating of the Site.

However, Visitors and Merchants acknowledge that SysPay does not have control over all the data and information published on the Site. SysPay therefore does not guarantee that the latter are exhaustive, accurate, up-to-date, error-free and complete, nor that they perfectly meet the expectations of Visitors and/or Merchants.

Consequently, SysPay cannot be held liable for the use of the Site and its content by Visitors, Merchants or any third party.

SysPay undertakes to make its best efforts to ensure that the Site is accessible and available to Visitors and Merchants at all times. However, SysPay cannot be held responsible for any errors or omissions:

- in the event of unavailability of the Site, for any reason whatsoever;
- when the Site proves to be incompatible or presents malfunctions with certain software, configurations, operating systems, equipment of the Visitors and/or Merchants;
- in case of power failure.

Each Visitor or Merchant acknowledges that he/she is familiar with the hazards of the Internet, its characteristics and limitations, and acknowledges and is aware of the following:

- the possibility of suspension or impossibility of access to the Site;
- that data transmissions on the Internet are only relatively reliable and may be subject to saturation at certain times of the day;
- that the data circulating on the Internet are not protected against possible misappropriation; and
- that the Site may be subject to intrusion by unauthorized third parties and attacks of any kind.

SysPay cannot be held responsible for this.

The equipment used by each Visitor or Merchant to connect to the Site is under his/her entire responsibility. As such, Visitors and Merchants must take all appropriate measures to protect their equipment and their own data, in particular from viral attacks via the Internet.

SysPay cannot be held responsible for the hypertext links present on the Site giving access to other Internet sites that it does not control. As such, SysPay is not responsible for the content and availability of these sites.

### **1.3. Illegal content**

SysPay invites any Visitors and Merchants to report any problem or content that appears to be illicit, offensive, shocking or not in conformity with morality by contacting SysPay. In such a case, SysPay may take any action it deems necessary in the event of unauthorized or illicit use of its Site.

### **1.4. Intellectual Property**

SysPay implements legal and technical measures to protect intellectual property rights.

The Site taken as a whole, as well as each of the elements that make it up independently, including trademarks, programs (including APIs) and specific developments, the database, the graphic charter are the exclusive property of SysPay. No provision of the present document may be interpreted as implying any transfer of intellectual property rights from SysPay to Visitors and/or Merchants.

Only a personal, non-exclusive, non-assignable and non-transferable right to use the Site is granted to the Visitors and Merchants.

Therefore, Visitors and Merchants shall not under any circumstances:

- reproduce, represent, use, distribute, by any means whatsoever and in any form or medium whatsoever, the Site, and any component of the Site (e.g. text, photo, image, video, sound, software, API, brand, logo, company name, or any other distinctive sign etc.), except for strictly private purposes, provided that all copyright notices and any other legal notices appearing on the originals are preserved on printed copies;
- extract by permanent or temporary transfer, or reuse by making available to the public, all or a qualitatively or quantitatively substantial part of the databases present on the Site, as well as extracting or reusing, repeatedly and systematically, qualitatively or quantitatively insubstantial parts of them, when these operations manifestly exceed the conditions of normal use;
- to exploit, market, distribute for the benefit of third parties, in any form whatsoever, the Site, any element constituting the Site (including APIs) and other databases present on the Site;
- modify, remove, alter, by any means whatsoever and in any form or medium whatsoever, all or part of the various mentions of intellectual property and copyright on the Site.

Any use not in compliance with the above provisions is unlawful and will result in prosecution. The fact that SysPay does not initiate proceedings upon becoming aware of such unauthorized use does not constitute acceptance of such use and waiver of such proceedings.

#### **1.5. Technical Assistance - Complaints**

For any technical information or complaint, Visitors and Merchants are invited to refer to the "Contact" section of the Site.

#### **1.6. Personal data**

All processing of Personal Data by SysPay is done in accordance with the Privacy Policy available on the Site.

#### **1.7. Severability**

Each provision of these GTC is severable from the others. If at any time any provision is or becomes illegal, invalid or unenforceable in any respect under the laws of Malta or the laws of any other jurisdiction, the legality, validity or enforceability of the remaining provisions shall not be affected in any way.

### **1.8. Applicable law and jurisdiction**

The present GTC are governed by the laws of Malta.

In the event of a claim by either party relating to the interpretation or performance of these GTC, SysPay and Visitors/Merchants shall attempt to reach in good faith an amicable agreement to resolve such difficulty.

If no amicable agreement is reached, any dispute or difference between SysPay and the Visitor/Merchant regarding these GTC will be subject to the jurisdiction of the competent court in Malta.

## **Section 2. Provisions applicable to Merchants only**

The following provisions are supplemental to Section 1 of the GTC and govern the provision of services by SysPay that (i) are not already the subject of a specific agreement between the Merchant and SysPay and/or (ii) are not specifically governed by specific terms and conditions, such as credit card verification services provided by SysPay to Merchants (hereinafter referred to as the “**Services**”).

The provisions governing the conditions of use of Merchant’s credentials provided by SysPay (Merchant’s account, login and password) are hereby incorporated by reference and constitute part of these GTC as if fully set forth therein.

Only Merchants complying with Section 1 of these GTC shall benefit from the Services.

Any Merchant who uses the Services (including by starting to provide the information required for the provision of the Services) shall be deemed to have conclusively and irrevocably accepted these GTC, including more specifically this Section 2, as well as the fee schedule applicable to these Services.

As a consequence, before using the Services, Merchants must ensure that they are aware of the most recent version of these GTC as well as the fee schedule applicable to these Services, both of which may be amended by SysPay at any time.

SysPay provides the Service on an “as is” and “as available” basis.

SysPay has the right to specify or vary from time to time the features of the Service without prior notice.

### **2.1. Limitation of SysPay’s liability**

SysPay does not give warranty, whether express or implied, of any kind relating to the Service including any warranty of merchantability, fitness for a particular purpose, title or non-infringement of right.

SysPay is not liable for any loss, damages or expenses of any kind incurred or suffered by the Merchant arising from or in connection with his/her use of or inability to use the Service, or any failure or error in transmitting information unless it is caused solely and directly by the negligence or willful default on SysPay's part.

The provision of the Services may fail or may be delayed or interrupted due to the traffic over the internet network. SysPay is not liable for any loss, damages or expenses of any kind incurred or suffered by the Merchant arising from or in connection with any failure, delay or interruption in providing the Services or any suspension or unavailability of the Service due to any failure of the internet network or any other circumstance beyond SysPay's reasonable control.

Under no circumstances shall SysPay be liable for any indirect, special, incidental, consequential, punitive or exemplary loss or damages, including loss of profits, loss due to business interruption or loss of any software or data in the Merchant's computer system, mobile phone or any other telecommunication devices.

SysPay's contractual liability is capped to the amount of fees effectively paid by the Merchant for the Services.

## **2.2. Merchants' liability**

Merchant shall indemnify and hold SysPay harmless from and against any and all damages (whether in contract, tort or otherwise, including attorneys' fees) suffered or incurred by SysPay as a direct or indirect result of any claim brought against SysPay by a third party arising out of Merchant's misuse of the Service and/or its credentials, the Site or Merchant's breach of these GTC.

## **2.3. Modification, suspension and termination of the Services**

SysPay may modify, suspend or terminate the Services or their use (or any part thereof) by the Merchant or as a whole at any time without giving prior notice or reason where SysPay reasonably considers necessary or advisable to do so. These cases may include, without limitation, actual or suspected breach of security, or where SysPay reasonably believes that the information provided to SysPay is untrue, inaccurate, outdated or incomplete.

SysPay may at any time discontinue the provision of the Services and cannot incur any liability in this regard.