

# GENERAL TERMS OF USE AND SALE V1.9

## 1 – Purpose

The present General Terms of Use and Sale detail the rights and obligations of SWIKLY (hereinafter referred to as the “Company”) and of all users of the Swikly service (hereinafter referred to as the “Service” and the “Users”) accessible after downloading the application on any smartphone or on the responsive website [www.SWIKLY.com](http://www.SWIKLY.com) or any other third party website that makes it possible to use the Service via an API (hereinafter referred to indiscriminately as the “Application”). In the latter case, the specific stipulations of Article 18 will apply to the User concerned.

## 2 – Definitions

- **General Terms** refers to the present document and all of its appendices which constitute an integral part of it;
- **Swik** refers to any commitment notified to a Customer to confirm that his request to buy or rent an asset or service, or to pay a Security Deposit in connection with the renting of an asset, has been taken into account. It results in the Company providing pre-authorisation of the debit of a specific amount, without any cash transfer taking place between the Users;
- **User** refers to any person who uses the Service, in any way whatsoever;
- **Customer** refers to the people who want to buy, rent or pay a security deposit via the Service;
- **Supplier** refers to any person who wishes to sell an asset or service, rent an asset or receive a security deposit for the renting of an asset, via the Service; the Supplier can be a natural person or a legal entity; they can be a private individual or a professional;
- **Deposit** refers to payment of an amount by a Customer in order to indicate his intention to buy or rent an asset or service from a Supplier; deposits are understood as defined in Article L131-1 of the French Consumer Code unless otherwise stated in the Supplier’s terms of sale;
- **Security Deposit** refers to the security deposit paid by a Customer to a Supplier to guarantee the return of an asset in good condition; the Security Deposit is understood according to its standard meaning; consequently the Users must take the usual precautions to ensure that the security deposit is effective, and in particular Users must carry out an inventory of fixtures of the asset before and after renting it, to avoid any disputes;
- **SWIKLY Service Charges** refers to the costs of services owed by the Supplier or Customer, depending on the case, to the Company during creation of a Swik;
- **Total Amount of the Swik** refers to the amount of the Deposit or Security Deposit that is subject to a payment commitment due to issue of a Swik; in any case, the Total Amount of the Swik cannot exceed one thousand five hundred euros (€1,500);
- **SWIKLY Payment Costs** refers to the costs owed by the Supplier to the Company in the event of Collection of a Swik;

- **Collection of a Swik** refers to the actual transfer of all or part of the Customer's Deposit or Security Deposit to the Supplier, that was previously secured by a Swik in accordance with Article 6.a);
- **Single Payment:** refers to the immediate transfer of money from a Customer to a Supplier to pay for a transaction, following a request made on the Website in accordance with Article 7.d).
- **Commission:** refers to the expenses due to the Company in the event of use of the Single Payment function.
- **MangoPay** refers to the electronic money institution registered in Luxembourg, a subsidiary of Crédit Mutuel, which the Company uses to provide payments in electronic money for the purposes of the Service;
- **Period of Validity** refers to the period during which the Swik issued by a Supplier is valid, once it has been accepted by the Customer. By default, the Period of Validity of a Swik is three (3) months. In any case, the Period of Validity must cover the planned date of delivery of the asset or provision of the service in the event of a purchase, or where appropriate, of the expiry of the lease. Consequently, the Supplier who requests the Swik is alone responsible for determining a sufficiently long Period of Validity in view of the transaction concerned;
- **Swikly API** refers to the application programming interface made available where appropriate in order to use the Service via any other application, Website or platform, under the conditions specified in Article 18.

### **3 – Creating and closing an account – cancelling an account**

Before being able to use the Service, the Supplier must download the Application free of charge or access the Application via the Website. He must then register via the Application and open an account in his name. Accounts can be created by any natural person who has full legal capacity and a bank card in his name, and any legal entity whose legal representative has full legal capacity, and has a bank card in its name. Natural persons or legal entities can only open one account in their name via the Application. Creation of an account implies full acceptance of the present General Terms, including Appendix 1 which provides the general terms and practical details of MangoPay, which is confirmed by clicking on Accept when creating the account. The General Terms are made available to the Supplier when the account is created, before finalising the account and the aforementioned acceptance.

Customers do not need to create a Swikly account to use the Service. They must nevertheless accept the General Terms when they accept a Swik under the conditions specified in Article 5.a/ below, and when they are charged the SWIKLY Service Charges.

The User can print or save the General Terms after reading them. The Company reserves the right to change the General Terms at any time.

In this case the Company will inform the Suppliers when they connect to the Application and ask them to confirm their acceptance of the new General Terms. The Customers will be informed when they next accept a Swik. Users who accept the General Terms subject to reservations, or do not accept the General Terms, cannot access the Application or use the Service.

When creating an account, any Suppliers who wish to use the Service must declare whether they are (i) a private individual, (ii) a professional or (iii) an association. Any private individuals or associations who wish to use the Service for their ordinary activities, must declare that they are professionals. Any failure to declare that capacity shall be unenforceable if it can be shown, in particular in the event of a dispute with another User or with the Company, that the Supplier concerned actually used the Service in connection with his professional activity.

When creating the account, the Supplier must provide all of the information indicated as compulsory, and if necessary the related documentary evidence. In any case, the Supplier undertakes to provide accurate information and update it regularly. This information remains confidential, apart from the information (i) that may be required by MangoPay to open a MangoPay account, in accordance with the conditions of MangoPay included in Appendix 1 hereto, (ii) that the Supplier has deliberately chosen to make visible and (iii) that the Supplier is required to make visible in accordance with the law. By default, the Supplier's first name and surname or its trade name must in any case be accessible enable its Customer to use the various functions of the Service under optimum conditions.

Suppliers who agree to link their SWIKLY account to their other social network accounts such as in particular, LinkedIn®, Facebook® etc., declare that they have accepted that other personal data may be accessible which the Company cannot control or be liable for. Suppliers must read the general terms of use of these social networks which explain the use of users' personal data and make it possible to control the personal data that is visible. The SWIKLY account is personal to each Supplier, and the Supplier cannot on any account transfer it to a third party.

When opening the SWIKLY account of if the Supplier wishes to take full advantage of all of the functions of the Service (including when a Swik is requested in accordance with Articles 4 and 5), he must enter his bank card payment details. In this case, the Company will request a bank pre-authorisation for a total of one (1) euro in order to check that the Supplier's card actually belongs to him.

Since the Service is based on the use of MangoPay electronic purses, the Supplier is expressly informed and accepts that the Company will use the electronic purse opened in his name, managed by MangoPay, an approved electronic money institution, registered on the register of companies of Luxembourg under reference No. B173459, whose head office is located at 10 boulevard Royal, L-2449 Luxembourg. The Suppliers accept the general terms and practical details of MangoPay (Appendix 1) by ticking a box when they open their SWIKLY account. If there is a contradiction between the general terms and/or practical details of MangoPay (Appendix 1) on the one hand and the General Terms on the other, the latter shall have precedence, unless otherwise provided by law.

The opening of the SWIKLY account by the Supplier is confirmed by an email sent by the Company to the Supplier. Moreover, SWIKLY reserves the right to ask the Supplier at its discretion, for any documents and information that it considers necessary in order to complete the registration, and creation of the account may be dependent on receipt of these documents and information.

Throughout the period of validity of the account, the Supplier is responsible for keeping his username and password confidential and for the use that is made of his account, and must take all of the usual precautions to regularly change his password. In the event of loss or discovery of an intrusion into his account, the Supplier must immediately change his password or follow the security procedure proposed by the Company to recover his username or password.

After opening the SWIKLY account, the Supplier can access all of the functions of the Service.

Suppliers can decide to close their account at any time: in this case they must send an email to the Company at the following address: [contact@swikly.com](mailto:contact@swikly.com). The account closure date is the date of receipt by the Company of the email requesting closure, unless there is a valid Swik at the time of closure. In this case, the account will be closed at the end of the transaction concerned by the Swik, or if necessary once the Company has made its decision in accordance with Article 8.

The Company reserves the right to close any SWIKLY account that remains inactive for more than thirteen months after sending a reminder to the Supplier to no avail.

In the event of a serious breach by a User of any of his commitments under the present General Terms that is not remedied within fifteen (15) days of receipt of a registered letter with acknowledgement of receipt or an email with a delivery receipt from the Company, the Company shall be entitled to suspend or cancel the account of the User concerned, depending on the seriousness of the acts, or if necessary to ban use of the Service. The letter or email will indicate the acts concerned. In addition, it will be impossible for the User to access his account and/or the functions of the Service, without prejudice to any other damages that the Company may claim. In the event of a manifestly unlawful disturbance or violation, the time limit to remedy the breach may be shorter.

If a Supplier opens a new account after closing his previous account, or after it has been closed by decision of the Company, the Company reserves the right, at its discretion, to include the history of the aforementioned Supplier before the initial account was closed.

#### **4 Swik request**

A Swik can be requested by the Supplier in the form of a Swik Deposit if it is intended to ask the Customer to confirm a commitment to buy an asset or service, or to rent an asset. The Swik can be requested in the form of a Swik Security Deposit if it is intended to ask the Customer to undertake to keep the asset rented in the condition in which it was received.

The Swik request is issued by the Supplier by SMS or email. In any case, the Swik, or at least the accompanying email or its attachments, must include the information required to identify the Customer and Supplier concerned, as well as the details of the planned transaction, i.e. at least the following information:

- to validate a purchase: identification of the Customer, the asset or service, the total price, the date of delivery or of the service, the Total Amount of the Swik, its nature as a Swik Deposit and its Period of Validity;
- to validate a lease: identification of the Customer, the asset, the lease period, the dates and place of the lease, the total price, the Total Amount of the Swik, its nature as a Swik Deposit and its Period of Validity;
- to validate a security deposit: identification of the Customer, identification of the asset, dates and place of the lease, cases in which it will be possible to carry out the Collection of a Swik (e.g. failure to return, damage to the asset etc.) the Total Amount of the Swik, its nature as a Swik Security Deposit and its Period of Validity;
- If this is chosen by the Supplier, he must also indicate that the SWIKLY Service Charges will be payable by the Customer.

In any case, the Supplier undertakes to check the aforementioned information and guarantees that it complies with the requirements of Article L 111-1 of the French Consumer Code.

For the Swik request to be submitted to the Customer, the Supplier must know his phone number or email address.

The Swik request must include the Supplier's identity and all of the compulsory information in accordance with Article L111-1 of the French Consumer Code if the Supplier is a professional. If the Supplier is not a professional, the Swik must include the Supplier's first name and surname. The Supplier acknowledges that this disclosure is required for proper use of the Service: it cannot on any account call it into question or hold the Company liable due to this disclosure.

Validation by the Supplier of all of the information contained in the Swik constitutes confirmation of the Swik request and implies confirmation of acceptance of the present General Terms, and in particular acceptance, where appropriate, by the Supplier of payment

of the SWIKLY Service Charges to the Company if the Swik request is accepted by the Customer.

The transaction is indicated in the Application as “Pending acceptance”.

## **5 Acceptance or Refusal of a Swik**

Customers who receive a Swik request sent to them will receive an email or SMS containing the information relating to the Swik and a link enabling them to accept it within a specific time limit. The email or SMS will also contain a link enabling them to read, download and print out the General Terms and if necessary the Supplier’s general terms of sale or service, before accepting the Swik. In any case, the Customer can accept or refuse the Swik:

### ***a/ Acceptance of the Swik:***

If the Customer wishes to accept the Swik, he must click on the link included in the email or SMS he has received.

The Customer must then (i) approve all of the characteristics of the proposed transaction and the Total Amount of the Swik, (ii) indicate at least his surname, first name and all of the information expressly requested by MangoPay, (iii) enter his bank card number, and after reading them, (iv) accept these General Terms and the Supplier’s general terms of sale or service, by ticking the appropriate box.

The Company will send a Swik acceptance confirmation email to inform both of the Users concerned.

In the event of acceptance of the Swik, both of the Users concerned will no longer be able to question the characteristics of the proposed transaction: from then on the Customer and Supplier are contractually bound to carry out the transaction which is shown as “Active” in the Application: the Swik remains effective throughout the Period of Validity.

If the Supplier has decided to charge the SWIKLY Service Charges to the Customer, the amount will be notified to the Customer by the Company, and the Customer expressly agrees to make this payment by accepting these General Terms.

Acceptance of the Swik means that the SWIKLY Service Charges must be paid to the Company by the Supplier, or where appropriate, by the Customer. However, payment will be made at the end of each calendar month in the event of payment by the Supplier, in one instalment if other SWIKLY Service Charges or SWIKLY Payment Costs are due, and by immediate debit in the event of payment by the Customer. The SWIKLY Service Charges may be paid by direct debit from the bank card or debited from the bank account concerned.

### ***b/ Refusal of the Swik:***

The Swik request may not be accepted by the Customer if he decides that the characteristics of the Swik do not meet his expectations, or if he does not accept these General Terms or the Supplier’s terms of sale or service. In this case, the Swik is deemed to have been “refused” and the Customer must not fill in the form that opens after clicking on the link included in the SMS or email received: the Customer must not give his bank card number or accept the General Terms.

Furthermore, the Swik is automatically deemed to be “refused” at the end of the acceptance period, if it is not expressly accepted by the Customer.

In the event of refusal of a Swik, the Company immediately informs the Supplier. The transaction concerned is then abandoned. The SWIKLY Service Charges are not due.

## **6 Closure of a Swik**

A Swik can be closed after it has been accepted by the Customer in accordance with Article 5 paragraph a), in one of the three following cases:

### ***a/ On the Supplier's initiative by a request for collection***

The Supplier can decide to request the collection of all or part of the Total Amount of the Swik and in this case must indicate via the Application, the reason for the collection (Customer failed to show up in the event of a Swik Deposit, the asset concerned by the transaction was returned damaged, allowing collection of the Swik Security Deposit) in particular if it is a partial collection. A collection request by the Supplier constitutes a Complaint against the Customer. A collection request by the Supplier constitutes acceptance of the General Terms and in particular of payment by the Supplier of the SWIKLY Payment Charges to the Company.

In this case, confirmation is sent to the Supplier and notice is sent to the Customer by email. Collection is then pending, and the Company will settle the Complaint, acting as arbitrator, in accordance with Article 8 below.

The SWIKLY Payment Charges are owed by the Supplier to the Company. The amount of the Swik actually paid must correspond to the Collection of the Swik requested by the Supplier unless the Company has decided on a lower payment, in accordance with Article 8. The SWIKLY Payment Charges will however be paid by direct debit from the Supplier's bank card or debited from his bank account at the end of each calendar month, and in a single instalment if other SWIKLY Service Charges or SWIKLY Payment Costs are due.

Collection of the Swik results in closure of the Swik, including if the aforesaid payment is a part payment in accordance with the initial request.

### ***b/ On the Supplier's initiative by a cancellation request***

The Supplier can decide to cancel the Swik, and this cannot on any account be challenged by the Customer. This cancellation constitutes closure of the Swik.

In this case, if the Swik is a Swik Security Deposit, this involves the Supplier cancelling the virtual deposit cheque: the Customer is informed of this by email and is therefore no longer bound by the transaction for the Total Amount of the Swik.

In the case of a Swik Deposit, cancellation allows the Supplier to withdraw and, unless otherwise stated in the Supplier's terms of sale, the cancellation has the scope specified in Article L131-1 of the French Consumer Code.

The Supplier alone is liable for his decision to cancel a Swik and for any consequences of it.

On no account can the Supplier or Customer hold the Company liable for the consequences of cancellation of a Swik on the Supplier's initiative.

### ***c/ At the end of the Period of Validity of a Swik***

Since all Swiks have a Period of Validity set by the Supplier who requested the Swik, the Swik is automatically closed at midnight two days after its expiry. The Users are notified when the Swik is closed.

## **7 Financial conditions**

### ***a/ Electronic purse of the Company***

The Company is allocated an electronic purse managed by MangoPay, in order to make the payments provided for under the present General Terms. This enables the Company to collect the SWIKLY Service Charges and the SWIKLY Payment Charges owed to it by the Suppliers or Customers using the Service, as well as the Commission where appropriate.

***b/ Acceptance and payment of SWIKLY Service Charges and SWIKLY Payment Charges***

Issue of a Swik by a Supplier implies one-click acceptance of the General Terms. This acceptance therefore constitutes acceptance of payment by the Supplier of the SWIKLY Service Charges relating to use of the Application, once the Swik has been accepted by the Customer, unless the Supplier has chosen the "Customer Pays" option, whereby the SWIKLY Service Charges are borne by the Customer. The date of acceptance of the Swik by the Customer constitutes the due date of the SWIKLY Service Charges.

Request for collection of a Swik by the Supplier implies one-click acceptance of the General Terms. It constitutes acceptance of payment by the Supplier of the SWIKLY Payment Charges for closure of the Swik, once the Customer has accepted actual payment of the Total Amount of the Swik or a lower amount in the event of arbitration by the Company in accordance with Article 8. The date of acceptance by the Customer of payment of the Total Amount of the Swik constitutes the due date of the SWIKLY Payment Charges.

The exact amount of the SWIKLY Service Charges and the SWIKLY Payment Charges are indicated when they are accepted by the Supplier, or where appropriate by the Customer, and depend on the Total Amount of the Swik.

The SWIKLY Service Charges are deducted directly from the Total Amount of the Swik, and the SWIKLY Payment Charges are deducted directly from the Total Amount of the Swik at the time of transfer of the Total Amount by the Company to the Supplier. The transfer takes place at the end of each calendar month if the SWIKLY Service Charges are owed by the Supplier, and immediately if they are paid by the Customer. They are either debited directly from the bank card, or deducted.

The sales agreement concluded between the Company and the Supplier is a distance sales agreement. However, if the Supplier is a professional, he acknowledges that he does not have a right of withdrawal due to his capacity as a professional. If the Supplier is a private individual or association and has not declared that he is a professional, he has the capacity of a consumer: however he acknowledges that he does not have the right of withdrawal provided for under Articles L121-16 et seq. of the French Consumer Code since he benefits immediately from the Service provided by the Company, i.e. before expiry of the withdrawal period. Consequently he declares that he waives this right of withdrawal.

The sales agreement concluded between the Company and the Customer, if the Customer must pay the SWIKLY Service Charges, is a distance sales agreement. However, the Customer acknowledges that he does not have the right of withdrawal provided for under Articles L121-16 et seq. of the French Consumer Code since he benefits immediately from the Service provided by the Company, i.e. before expiry of the withdrawal period. Consequently he declares that he waives this right of withdrawal.

***c/ Collection of the Swik***

During Collection of the Swik, the aforesaid Total Amount is deducted directly from the bank card of the User concerned, and paid into the Company's electronic purse. The Total Amount of the Swik is transferred to the bank account indicated by the Supplier when the Swikly account was opened, within a reasonable period of time.

***d/ Single Payment***

The Company has introduced an extra function for Single Payments, which enables any Supplier to request payment of an amount by a Customer (whether or not it is related to a transaction involving a Swik). In this case, the Supplier initiates a request for distance payment via the Application, specifying the price including taxes, and the Customer receives a link by email or SMS enabling him to confirm the amount of the request for Single Payment. Use of the Application as a method of payment by the Supplier involves acceptance of the automatic payment of Commission to the Company, the amount of which will be notified to the Supplier when he initiates the payment request (before confirming the request).

Consequently, when the Single Payment is made, the aforesaid amount is deducted directly from the Customer's bank card, and paid into the Company's electronic purse. This amount is transferred onto the Supplier's bank account within two to five days.

All invoices issued by the Company are issued in electronic format, which the Supplier accepts by accepting these General Terms.

## **8 Amicable Settlement Procedure**

Article 8 constitutes an arbitration agreement between the Users as defined in Article 1442 of the French Code of Civil Procedure.

The purpose of the Amicable Settlement Procedure is to enable the Users to discuss the Complaint made by the Supplier in order to reach an amicable settlement of that Complaint.

By means of the Amicable Settlement Procedure the Company enables Users to discuss the Complaint and submit their arguments and documents by email, while sending copies to the Company or asking it to intervene and pronounce its decision. Any Supplier can, at any time, ask the Company to act as arbitrator for his Complaint against the Customer, provided that he is in the situation specified in Article 6 a/.

The Company reserves the right to ask any User concerned by the Complaint for any additional documents that will enable it to reach a verdict.

The Company will appoint a physical person within the Company to act as arbitrator and pronounce a decision on the Complaint concerned within fifteen (15) working days.

The Users concerned and the Company in its capacity as arbitrator shall act swiftly and fairly in conducting the procedure.

Subject to legal obligations, the arbitration procedure must be kept confidential.

The arbitrator's decision is intended to make it easier to reach a compromise that is acceptable for all of the Users: the arbitrator's decision will be based on equity. He therefore pronounces his decision as an arbitrator, in accordance with the provisions of the French Code of Civil Procedure and in particular with Articles 1478 et seq.

The Company will notify each of the Users concerned of the decision reached by the arbitrator and will make the payments by transferring the amounts due in accordance with the decision: collection of the Total Amount of the Swik and payment of SWIKLY Payment Charges if necessary.

All Suppliers who submit a Complaint via the Amicable Settlement Procedure declare that the information they submit to the Company, and therefore to the arbitrator, is accurate and complete.

All Users who wish to implement the Amicable Settlement Procedure accept the stipulations of the present Article and acknowledge that the decision pronounced by the arbitrator concerning the Complaint submitted will be enforceable against them, and that they will accept its terms.



In accordance with Regulation (EU) No 524/2013, any User can also use the European platform for online dispute resolution at any time: [webgate.ec.europa.eu](http://webgate.ec.europa.eu)

## **9 Obligations and liability of the Company**

The Company cannot be held liable for any unavailability of the Application, the Service or the electronic purse made available by MangoPay due to technical hazards linked to the internet, a force majeure event, the internet connection of a User or his equipment, or the maintenance operations required for the smooth functioning of the Application, the Service, or the service offered by MangoPay. The Company reserves the right to interrupt access to the Application or Service at any time, in particular in order to protect the confidentiality or integrity of Suppliers' accounts and the data stored, in the event of a virus attack.

The Company shall implement the technical means at its disposal to maintain as far as possible the integrity and security of the Service and Application and the confidentiality of Users' personal data. However, there is no guarantee that the Service is free from errors, bugs, flaws or defects.

Regarding the Swik Deposit, the Company cannot guarantee that it will function as specified in Article L131-1 of the French Consumer Code, since the Supplier can include any statement to the contrary in its general terms applicable to the transaction concerned. It is therefore the Customer's responsibility to read carefully the general terms of the Supplier applicable to the transaction concerned and reject them if necessary. Regarding the Swik Security Deposit, the Company guarantees the existence of an authorisation by the Customer's bank at the time of acceptance of the Swik by the Customer; in the event of a refusal to pay, the Company can decide to repay the Total Amount of the Swik to the Supplier. In this case, a transaction of this kind cannot on any account constitute an assignment of receivables to the Company.

The Company cannot be held liable for any damage resulting from an intrusion or fraudulent maintenance by a third party affecting a User's SWIKLY account or illicit data extraction, in spite of implementation by the Company of security measures in accordance with current technical standards.

Since the Company merely has the role of a service provider who enables Users to secure the payment of a virtual Deposit or Security Deposit, it cannot on any account be declared to be an intermediary in the transaction between the Users to sell or rent an asset or service, or as a payment service provider or electronic money institution. Only MangoPay has the role of electronic money issuer and manager as defined in the regulations.

In particular it accepts no liability for (i) the legality, security, compliance, nature, content or characteristics of the goods or services sold or rented by the Users, (ii) the terms of sale or rental applied by the Suppliers to Customers, (iii) any data, information, image or other content published by a Supplier via the Application in connection with the "Classified advertisements" function that violates the rights of third parties or in any way breaches current legislation. In particular, the Company will not carry out any moderating, selection, checking or control of the content published on the Application, since it merely acts as a hosting service provider in this regard.

In the event of a complaint by a third party or User concerning any content published by another User, the Company must be notified in accordance with Law No. 2004-575 of 21 June 2004 regarding confidence in the digital economy.

The Company cannot be held liable for any damage to a third party or User resulting from the breach or non-compliance by another User with one of its obligations under the General Terms. Consequently, in the event of action or a claim by a third party against the Company, the Company may institute third party proceedings against any User who, by failing to respect the commitments of the present General Terms, causes the complaint by the aforementioned third party to the Company.

The Company is liable towards Users for the smooth functioning of the Service, unless it proves that the non-performance or poor performance of the Service is due to one of the Users, or to an unforeseeable and insurmountable act by a third party, or to a force majeure event.

The Company shall retain for a period of ten (10) years the data relating to all transactions carried out through the Service, the aforementioned data constituting prima facie evidence in writing in the event of a dispute between the Company and a User, or between two Users, which all Users acknowledge and accept. Consequently, in connection with such a dispute, even if the matter is referred to the Company via the Amicable Settlement Procedure, the Company may make this data available to any person in order to settle the dispute.

## ***10 Obligations and liability of the User***

All Suppliers, whether or not they are professionals, undertake to:

- comply with the provisions of Articles L111-1 et seq. of the French Consumer Code, as well as Articles L121-1 et seq. of the aforementioned code concerning misleading commercial practices and the obligations linked to distance sales;
- if necessary, make available to Customers its own general terms of sale or service prior to any sale or lease, so that the Customers act with full knowledge of the facts;
- if necessary, specify in its general terms of sale the consequences of cancellation for payment of the deposit, these stipulations being applied in full to the Swik Deposit in the event of cancellation.

Once the Supplier has provided all of the information concerning a transaction to a Customer and a Swik has been requested, the conditions of the transaction (price, duration, dates, characteristics of the asset or service etc.) can no longer be modified by the Supplier. The Supplier acknowledges that if there is any change in the characteristics of the transaction, the Customer is entitled to cancel the Swik and is not required to make any payment whatsoever, in accordance with the law.

The Suppliers alone is liable towards the Customer for the availability of an asset or service proposed via the Service and the terms and conditions of the transaction proposed via the Service; the Company is in no way party to the transaction and its intervention is limited to providing the Service making it possible to submit dematerialised Deposits or Security Deposits.

The User remains liable for the proper performance of all formalities, in particular the administrative, fiscal and/or social security formalities, and for all payments, contributions, taxes and duties of any kind whatsoever that he is required to make in connection with the sale or lease of assets or services via the Application. The Company's liability cannot on any account be incurred for this reason.

When using the Service, the User undertakes to moderate its language and not disclose or publish content (words, images, videos, links etc.):

- of an advertising or promotional nature, for regulated or illicit products or services,
- contrary to public order or good conduct and/or that do not comply with the laws and regulations in force,
- of a slanderous, offensive, extreme, untruthful, discriminatory or libellous nature with regard to a User, third party or the Company,

- of a racist, xenophobic or revisionist nature, encouraging discrimination, hatred or violence towards a person or group of people due to their origin, sex, family situation, physical appearance, patronymic, health, handicap, genetic characteristics, morals, actual or presumed sexual orientation, age, political opinions, union activities, actual or presumed membership of a specific ethnic group, nation, race or religion,
- containing viruses or any computer program likely to disrupt, interrupt or wholly or partly destroy the Application and/or the Service.

Similarly, the User cannot publish content that infringes the intellectual property rights of a third party, invades privacy or damages the image of a person or the reputation of a company.

In particular, the User declares that he will only disclose or publish content of which he is the owner and holds the related intellectual property rights, or failing that for which he has first obtained the intellectual property rights from the author or initial holder. The User declares that he has obtained any authorisations or transfers required to use images, trademarks and videos in the content published, and has paid any amounts due (and will pay any amounts due in future) to any person on this account, including to any person whose image is reproduced in that content. In this connection, the User will provide any written evidence of this on request by the Company.

The User declares that he will not publish or disclose any content that is confidential or of which publication would constitute a breach of a contractual commitment towards a third party.

The User guarantees the Company full and quiet enjoyment of the content, due both to third parties and to the User, and shall cover all costs of action by a third party against the Company due to use of the content.

All Users waive all claims against the Company in connection with proceedings instigated by a third party against it due to the publication or use of the content it has published using the functions of the Application.

When creating hypertext link, the User must ensure that all of the above obligations are respected.

In view of the above, the User waives all recourse against the Company:

- based on an infringement of its intellectual property rights, provided the present General Terms are respected by the Company,
- in the event of a dispute with another User.

All Users guarantee the Company that they have the required authorisations to use the bank account attached to their SWIKLY account due to their registration. Consequently they undertake to take all necessary measures to ensure that their bank account has the funds required for the transactions that they intend to carry out via the Application.

It is the User's responsibility to make sure that his equipment and internet connection are sufficient to access the Application and/or the Service. All Users remain liable at all times for use of their SWIKLY account, username and password.

All Users acknowledge that any action likely to interrupt the Service, limit its availability or prevent its continuity, is prohibited. The Company is entitled to take action against the User for any intrusion or attempted intrusion into the Application, hijacking of data, infringement of the security and authentication measures of the Service, and more generally any breach of the present General Terms.

Any User who discovers abuse or a breach of the commitments made by each User under the present General Terms undertakes to immediately notify the Company by email at the following address: [contact@swikly.com](mailto:contact@swikly.com)

## **11 Intellectual property**

The Company has full ownership of the Service, the functions it provides, the Application and all of the elements they comprise, including the related intellectual property rights.

The Company grants all Users a free, limited, personal, non-transferable and non-exclusive licence to download, install and use a copy of the Application on any mobile device or computer. Any other use is expressly excluded.

## **12 Objection to a transaction by a User**

If a User denies having authorised the Swik Payment via the Service, it must comply with Article L133-23 et seq. of the French Monetary and Financial Code. It can refer the matter to the Company's customer service department at the following address, which must replay within fifteen (15) working days: SWIKLY, 12 rue de la Barre, 69002 Lyon, FRANCE – [contact@swikly.com](mailto:contact@swikly.com)

The Company can pass on to MangoPay all of the proof of acceptance of the transaction by the User, which the User accepts.

The User has thirteen months following the date of the debit to take action regarding any unauthorised Swik Payment. Regarding objections by a User to a Swik Payment for which the exact amount was not specified or for an amount that was not expected by the User, the objection must be passed on to the User within eight weeks of execution of the Swik Payment.

In the event of loss or theft of usernames and passwords allowing use of SWIKLY accounts, any unauthorised transaction carried out before notification of the loss or theft will be payable by the User concerned, up to a limit of €150. The Company cannot be incurred held liable in the event of misconduct by the User, serious negligence or deliberate breach, bad faith or late notification of its objection.

If the transaction was not authorised by the User and the objection is recognised as legitimate, the amount concerned will be repaid within ten working days of receipt of the objection.

## **13 Personal data**

The Company collects personal data concerning the Users in order to manage the Application and the Service and enable them to function, and to manage its customers and prospects. The Company has declared its processing of personal data to the French Data Protection Authority (CNIL) under reference number 1948037.

The following personal data regarding Suppliers is accessible to all Customers who have accepted a Swik from the Supplier concerned:

- first name and surname of the Supplier.

When they accept a Swik as specified in Article 5.a/, Customers agree to give the Company their email address, first name, surname, date of birth, nationality and country of residence. This data will be kept by the Company for the purposes of the Service, in accordance with the aforementioned declaration to the CNIL. The same applies to all Suppliers when they create their account.

The Company transfers the personal data to its service providers and subcontractors, in accordance with the aforementioned declaration to the CNIL. Any access by these

subcontractors and service providers to the User's personal data is subject to use of a username and password, and in addition the data is transmitted via an encrypted link.

In any case, pursuant to the French Data Protection Act of 6 January 1978, Users have the right to access, modify and remove their personal data. To exercise this right, contact: CNIL Department, SWIKLY, 12 rue de la Barre, 69002 LYON, France – [contact@swikly.com](mailto:contact@swikly.com)

## **14 Management of cookies**

The Company informs you that it installs cookies.

The Company uses cookies to enable and facilitate electronic communication, and to provide functions suited to Users' requirements. Cookies identify Users each time they connect, thereby facilitating their access to the Service. Users can refuse cookies when they access the Application or by changing the configuration of their browser. However, this may change the functions of the Application, which the User accepts.

## **15 Language**

If the present General Terms are translated into one or more languages, the French version hereof shall prevail between the Parties in the event of a contradiction or dispute regarding the meaning of a term.

## **16 Conditions applicable to Trial Offers**

Users who wish to benefit from a Trial Offer must open a SWIKLY account for the first time, in accordance with Article 3, during the subscription period of the Offer. Once they have subscribed, Users have full access to the Service for the period specified in the Offer, from the time they open the SWIKLY account (hereinafter the "Trial Period"), and within the limit of the number of Swik requests specified in the Offer.

During the Trial Period the Service is only free of charge for the SWIKLY Service Charges linked to the Swik requests included in the Offer. The SWIKLY Payment Charges remain due to the Company under the conditions specified in these General Terms which apply in full.

## **17 Applicable law and jurisdiction**

The present General Terms are governed by French law. In the event of a dispute regarding the validity, interpretation and/or performance hereof, the Parties agree that the courts of Lyon shall have jurisdiction.

## **18 Distinctive features of use of the Service via an API**

If, as a Supplier, you have developed your own booking, leasing or purchasing website, application or platform (hereinafter the "Third Party Platform") and wish to use the Service via a Swikly API, you agree to be bound by the following terms:

- you have declared your Third Party Platform to the Company beforehand via an email sent to the following address: [contact@swikly.com](mailto:contact@swikly.com)
- the aforementioned declaration implies in all cases the creation of a SWIKLY account in accordance with the present General Terms, which we will connect technically to your Third Party Platform, as well as express acceptance of the General Terms;
- your Third Party Platform must not allow any storage, export, or use of data belonging to Users of the Service other than those of which the use is authorised herein, and other than for the use authorised herein;

- your Third Party Platform must not have the same purpose as the Service;
- you acknowledge that you alone are responsible for the smooth functioning and use of the Swikly API;
- you cannot give the Swikly API access codes that we will give you to anyone else; these codes constitute confidential information under these General Terms;
- you recognise the rights of ownership, including the intellectual property rights, of the Company to the Swikly API;
- you have a non-exclusive, limited and non-transferable licence to use the Swikly API in order to develop, test and maintain your Third Party Platform and enable your customers to use the Service via your Third Party Platform via the inclusion of the Swikly API;
- you must use the Swikly API under the same conditions as the Service and the Application, and in particular in accordance with Article 10;
- you must immediately delete any User data at our request;
- in addition you have a licence to use the SWIKLY trademark for the sole purpose, where appropriate, of identifying the Service on your Third Party Platform;
- you must take all necessary measures to ensure the technical security of the data transmitted on your Third Party Platform and the Application;
- you acknowledge that the rights resulting from this Article can be terminated at any time in the event of non-compliance with the General Terms, by decision of the Company.

## **APPENDIX 1**

**Framework contract for MANGOPAY electronic money payment services**

## Framework Contract for Payment Services using MANGOPAY Electronic Money

This agreement is important and you should read it carefully. It creates a legally binding agreement between you (hereinafter referred to as “You” or the “User”) and MANGOPAY S.A. (hereinafter referred to as the “Issuer”) relating to the use of Electronic Money issued by MANGOPAY S.A. as a means of payment on the Website.

MANGOPAY S.A. is a public limited liability company incorporated under Luxembourg law, with a share capital of 2.000.000 euros. The Issuer is listed under number B173459 in the Luxembourg Trade and Companies Register. The Issuer is authorised to conduct its business in certain European Member States under the freedom of establishment, as an electronic money institution approved by the Luxembourg Financial Sector Supervisory Commission, whose address is at 110 route d’Arlon L-1150 Luxembourg and whose website is at: [www.cssf.lu](http://www.cssf.lu).

You can contact the Issuer at its registered offices, which are at 59 Boulevard Royal, L-2449 Luxembourg, or by email at: [legal@mangopay.com](mailto:legal@mangopay.com).

References hereinafter to the “Parties” are a reference to you and the Issuer.

### Warning

Please carefully read these General Terms and Conditions for the Use of Electronic Money and the Financial Conditions communicated to you on the Website before accepting them.

The Framework Contract is concluded in English and all communication between the Issuer and You will be in English.

### 1. Definitions

For the purposes hereof, the words hereafter are defined as follows:

**Account:** Means an internal reference allowing the Issuer (i) to identify in its records each transaction involving the purchase, use and reimbursement of Electronic Money carried out on behalf of a User, and (ii) to determine the amount of Electronic Money available to the User at any time. The Account may under no circumstances be compared to a deposit account, a current account or a payment account.

**Banks:** Credit institutions that hold funds collected by the Issuer corresponding to the Electronic Money in circulation. The institutions selected are currently Barclays, Crédit Mutuel Arkéa and ING Luxembourg. The Issuer reserves the right to select any other credit institution based in a European Union Member State or in a State party to the agreement on the European Economic Area. The current list of the selected credit institutions is available upon request at MANGOPAY S.A.

**Business Day:** Means between the hours of 9am and 7pm on any calendar day, apart from Saturdays, Sundays and public holidays, in France, Luxembourg and in the host country indicated in the Special Conditions, on which the payment infrastructures of all these countries and the Banks are open for business.

**Card:** The bank, payment or credit card used by the User to pay to the Issuer the purchase price of the Electronic Money. This card belongs to one of the following networks: Visa, MasterCard, CB, Amex.

**Distributor:** Means the entity whose contact information is stated in the Special Conditions and who operates the Website. The Distributor prepares, facilitates and advises its customers, for the purpose of



concluding the Framework Contract through the Website. It assists the customers for the duration of their relationship with the Issuer within the context of carrying out Payment Transactions, including Purchases and Reimbursements of Electronic Money. To this end, the Distributor provides each User with a dedicated user service for Payment Transactions carried out hereunder. The Distributor does not collect funds apart from those agreed in the Financial Conditions.

**Electronic Money:** Means the monetary value available at any given time that represents a debt payable by the Issuer to the User. Electronic Money is issued by the Issuer in exchange for the User's delivery of the corresponding funds and constitutes a means of payment exclusively accepted by the Recipients. The Issuer stores the Electronic Money on its server in an Account opened for this purpose.

**Financial Conditions:** Means the document comprising all the fees paid by the User for the purchase, use and management of Electronic Money, as provided in the Special Conditions of Use.

**Framework Contract:** Means the General Conditions for the Use of Electronic Money and the Special Conditions for the Use of Electronic Money.

**General Conditions of Use of Electronic Money:** Means the present document.

**General Conditions of the Website:** Means the general conditions of use of the Website concluded between the User acting as a customer of the Website and the Distributor, including those conditions governing access to the Website.

**Issuer:** Means MANGOPAY SA, an issuer of Electronic Money licensed in Luxembourg by the Financial Sector Supervisory Commission under reference n°3812 and entitled to conduct business in the host country indicated in the Special Conditions. The Issuer is on the list of electronic money institutions available at <http://supervisedentities.cssf.lu/index.html?language=fr#Home>.

**Login:** Means the data required for the Issuer to identify a User in order to carry out a Payment Transaction, consisting of a user name (valid email address).

**Order:** Means the instruction given by the User to the Issuer in accordance with the procedure specified in the Framework Contract, for the purpose of carrying out a Payment Transaction and/or Reimbursement.

**Payment Page:** Means the secure page provided by the Issuer's electronic banking provider.

**Payment Transaction:** Means the transfer of Electronic Money to the User's designated Recipient on the Website.

**Recipient:** Means the recipient of Electronic Money, being any natural or legal person acting on their own behalf, selected by the User from among the clients of the Website, who receives Electronic Money as part of a Payment Transaction. Any Recipient can also become a User upon acceptance of the Framework Contract, subject to the Issuer's prior approval. In certain cases, the Recipient may also be the Distributor, in accordance with the Special Conditions.

**Reimbursement:** Means the transfer by the Issuer upon an Order from the User, of cashless payments corresponding to all or part of the available Electronic Money held by him/her, less any costs due.

**Special Conditions of Use of Electronic Money:** Means the form to be filled out by the User on the Website containing his/her personal data and the applicable Financial Conditions for Electronic Money.

**User:** Any natural or legal person acting on their own behalf and holding Electronic Money registered in an Account opened in their name, in order to carry out one or more Payment Transactions.

**Website:** Means the website operated by the Distributor with the aim of selling goods or services to Users or to establish links between Recipients and Users. The address of the relevant Website is indicated in the Special Conditions.

## 2. Purpose

These General Conditions of Use of Electronic Money set out the conditions under which the Issuer will provide You with a means to pay the Recipients that you choose through the Website.

The proposed means of payment must be consistently prepaid by the User and will not be subject to any advance, credit or discount. It is based on the Electronic Money issued and managed by the Issuer.

The Issuer has authorised the Distributor to offer this means of payment to customers of the Website, to facilitate the conclusion thereof and to assist the Users for the duration of their relationship with the Issuer.

These General and Special Conditions of Use of Electronic Money constitute the whole Framework Contract entered into between the Parties regarding the issue, use and management of the Electronic Money issued by the Issuer. The User can, at all times and without any supplemental fees, obtain a copy of these documents on the Website. Only the Framework Contract shall be valid in case of any dispute between the parties.

## 3. User Registration

### 3.1 Necessary preconditions for User registration

Any natural person of at least 18 (eighteen) years of age, with capacity to enter into legally binding contracts, as well as any legal person, resident of or registered in a European Union Member State or in a State party to the agreement on the European Economic Area or an equivalent third country that imposes the equivalent requirements regarding money laundering and the financing of terrorism, can request to open an Account, provided that they are a customer of the Website.

The User, a natural person, will be deemed to be acting exclusively for non-professional purposes.

### 3.2 Registration procedure and procedure for opening an Account

You must provide the Distributor with:

- your surname, name, email address, date of birth and nationality (for natural persons); or
- the name, corporate form, capital, head office address, business description, identities of associates and executives, as well as a list of beneficial owners as defined by the regulations (for legal persons),

if the Distributor is not already in possession of this information.

You must indicate a Login, consisting of a User name and a password, or connect via your Facebook account. You are solely responsible for the use of your Login and maintaining the confidentiality of your Login. You agree not to use the Account, name or Login of another User at any time, or to disclose Your Login to a third party.

You must protect the secrecy of your Login and password at all times and never disclose it to another person. You must take reasonable steps to keep Your Login and password safe and prevent fraudulent use of Your Account. For example, You should keep information relating to Your Account in a safe place, You should not write down your Login and password and You should take care to ensure that other people do not oversee or hear you using your Login and password.

You agree to immediately inform the Distributor in the event that You suspect any unauthorised use of Your Account or Login.

The Issue reserves the right to immediately suspend or withdraw Your right to make Payment Transactions where: the Issuer has reasonable grounds to believe that there may be a breach in the security of your Account, the Issuer suspects unauthorised or fraudulent use of Your Account or the Issuer is required by law. If the Issuer decides to take such action, the Issuer will notify You in advance, except where this is not possible, in which case the Issuer will inform You at the earliest opportunity. The Issuer will not inform You if it would compromise its reasonable security measures or is otherwise unlawful. If the reasons for the Issuer's actions cease to exist, the Issuer will reinstate Your Account or issue You with new account details as soon as practicable.

After carefully reading the Framework Contract, You must accept it in accordance with the terms specified on the Website and must provide all information and relevant documents requested by the Distributor. By accepting the terms of the Framework Contract, You agree that the Distributor may transmit Your application to register as a User to the Issuer, together with all supporting documents received.

Only the Issuer can accept the Your registration as a User and open an Account in Your name. The Distributor will notify You if the Issuer accepts Your registration in accordance with the terms specified on the Website.

The Issuer may, without stating reasons and with no right to compensation to You, refuse an application to register as a User and to open an Account. You will be notified of this refusal by the Distributor in accordance with the terms specified on the Website.

In addition, the Issuer reserves the right to ask You, before any registration and at any point in the duration of the Framework Contract, for supplementary information and identification data for the purposes of identity checks, as well as any supporting documents that the Issuer may deem necessary.

You confirm upon submission of Your request to register to the Distributor and throughout the duration of the Framework Contract that:

- (a) (if You are a natural person) You are at least 18 (eighteen) years old;
- (b) You are legally competent to enter into this agreement;
- (c) You are acting on your own behalf and not for any other person; and
- (d) all information that You provided during registration is true, accurate and up-to-date.

### **3.3 Account use limitations**

At the Issuer's discretion, a User who has not provided all the required documents as listed below may be expressly authorised by the Issuer to use his/her Account for the purchase of goods or services up to a limit of 2,500 Euros of Electronic Money held by a User within the same year, provided that this Electronic Money has not been subject to requests for reimbursement exceeding 1,000 Euros per year.

Upon receipt of all the documents listed below and provided that they are deemed satisfactory by the Issuer, the User may initiate reimbursements exceeding 1,000 Euros per year and hold an amount of Electronic Money exceeding 2,500 Euros per year. These Reimbursements will only be granted if the purchase or Reimbursement of Electronic Money is carried out to or from an account opened in the User's name with a payment services provider established in a European Union Member State or in a state party to the agreement on the European Economic Area or in a third country that imposes equivalent requirements regarding money laundering and the financing of terrorism.

The documents required for any User who is a natural person in accordance with the above are as follows:

- A copy of an official and valid identity document<sup>1</sup>
- And, on request, a proof of residence which is less than 3 months old.

The documents required for any User who is a legal person in accordance with the above are as follows:

- An original or copy of an extract of the official register, less than three months old and stating the name, legal form, head office address and the identities of associates and executives;
- A certified copy of the statutes and any decisions appointing the legal representative
- a copy of the legal representative's identity document<sup>1</sup>

It is expressly provided that the Issuer retains the right to request at any time additional documents regarding the User, the Recipient, the beneficial owner or any Payment Transaction or Reimbursement.

The Recipient is considered to be the recipient of the funds that have been transmitted by the User. Where appropriate, the Recipient agrees to provide his/her email address, date of birth and nationality, as well as the postal address of the person to whom the Recipient will pay the funds.

### **3.4 Communication between us**

The Issuer will contact You using the contact details You provided when You opened Your Account, or any updated contact details You have provided to the Issuer. It is Your responsibility to update the Issuer with any new contact information, including a change in address. The Issuer will send any correspondence to most recent email address or postal address You have provided to the Issuer for Your Account. You must advise the Issuer promptly of any change to Your contact details in the interests of security (including name or address) and provide appropriate supporting evidence required by the Issuer.

You can contact the Issuer by telephone call to the customer service department of the Distributor at the number indicated in the Special Conditions. All contact should initially be directed through the Distributor. If You wish to contact the Issuer directly, please email [legal@mangopay.com](mailto:legal@mangopay.com)

## **4. Operation of the Account**

### **4.1 Purchase of Electronic Money**

Electronic Money can be purchased by Card (or any other means accepted by the Issuer), in one or more instalments.

To carry out such a transaction, You must Login to the Website and place a money transfer order via the dedicated Payment Page. For any payment, You may be asked to enter a single-use code on the Payment Page, which You will receive on Your mobile phone. By using the Payment Page and, where applicable, entering the single-use code, You are giving Your consent to the Payment Transaction.

The Issuer may refuse any payment at its sole discretion and without giving rise to any right to

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<sup>1</sup> Inside the EEA : passport, national identity card, driving licence, resident permit from third-country nationals in the European Union

Outside the EEA: passport is compulsory, driving licence for USA and Canada accepted

compensation. The transaction is carried out by Your Card issuer. Any dispute concerning such transfer must be notified to Your Card issuer. The Issuer is not entitled to cancel such a transfer. Notwithstanding the foregoing, You may receive a Reimbursement of Electronic Money in accordance with article 4.4.

The registration of Electronic Money in the User's name is subject to the actual receipt of funds by the Issuer less the costs agreed in the Financial Conditions.

In the event that the transfer of funds is cancelled by the Card issuer following a dispute, for whatever reason, the Issuer may, upon receipt of the information, suspend or cancel any Payment Transaction, close the Account concerned, debit, at any time, the Account for the amount of Electronic Money corresponding to the funds of the cancelled transfer and recover the amount due from the User by any means.

#### **4.2 Functioning of the Account**

The Electronic Money is stored for an indefinite duration on the User's Account by the Issuer under the agreed Financial Conditions.

The Electronic Money purchased is credited to the User's Account, following the receipt of the funds transferred by Card (or any other means accepted by the Issuer). The amount to be credited is equal to such funds less the corresponding costs as provided in the Financial Conditions.

Upon the User's Order, the Electronic Money corresponding to the amount of the Payment Transaction or Reimbursement is debited from its Account and the related costs, as provided in the Financial Conditions.

The Issuer is entitled, at any time, to reimburse an amount of available Electronic Money on the Account equal to the charges due and payable, as provided in the Financial Conditions.

The amount of Electronic Money available on the Account is automatically adjusted based on the Orders transmitted to the Issuer (or in the process of being transmitted), the Electronic Money issued, any charges due and payable and any cancellation of one of the aforementioned transactions hereunder.

#### **4.3 The use of Electronic Money to carry out a payment Transaction**

Before transmitting an Order, the User must be sure to have a sufficient amount of Electronic Money available to cover the Payment Transaction amount and the related costs as agreed in the Financial Conditions.

Where appropriate, the User must acquire a sufficient amount of Electronic Money in accordance with article 4.1 before an Order can be legitimately transmitted to the Issuer for execution. The Electronic Money may be issued and stored by the User, provided that the corresponding funds are duly received by the Issuer. The Electronic Money may in no way be issued on the basis of a credit granted to the User.

As such, if the amount of available Electronic Money, at the date of execution of the Order by the Issuer, is lower than the amount of the Payment Transaction (fees included), the Order is automatically refused by the Issuer. The information about this refusal is made available to the User on the Website. This refusal may give rise to additional fees in accordance with the Financial Conditions.

The transmission terms of an Order by the User are as follows:

When carrying out a Payment Transaction, the User logs on to the Website by entering his/her Login and password or by connecting through his/her Facebook account. The User completes the relevant form on the Payment Page and, where appropriate, provides the supporting documents requested by

the Issuer. The form should include the following components: the Payment Transaction amount; the currency, which may only be the currency of the Electronic Money; the details required to identify the Recipient; the date of execution of the Order; and any other required information. The User then gives his/her consent to the Order and the Order becomes irrevocable when the User clicks on the validation tab on the form. The User then receives a confirmation email on a date referred as the 'Date of Receipt'.

In certain cases, the User may fill in a single form containing the purchase of Electronic Money as provided in article 4.1 and an Order in compliance with the previous paragraph.

#### Execution of the Order

The Electronic Money is debited from the User Account to be credited to the Recipient Account, following the User instructions. As such, the Recipient may open an Account in accordance with article 3.2 in order to receive the Electronic Money if he/she is not already a User. Where appropriate, the funds corresponding to the Electronic Money transferred to the Recipient can be directly reimbursed to a bank account or a payment account opened in the name of the Recipient upon the receipt by the Issuer of the relevant account details. For this purpose, the Recipient must provide the IBAN number and SWIFT code of his/her bank or payment account as well as his/her address. This account must be opened by a bank or a payment institution, based in a European Union Member State or in a State party to the agreement on the European Economic Area.

It is agreed between the Parties that the Payment Transaction will be executed, at the latest, on the next Business Day following the Date of Receipt if the Recipient has an Account. If the Recipient does not have an Account, the Payment Transaction will be executed as soon as an Account is opened or on the date the Issuer receives the bank or payment account details of the Recipient to whom the funds are due.

If the Date of Receipt is not a Business Day, the Issuer will be deemed to have received the Order on the following Business Day.

#### **4.4 Transmission and execution of an Order for Reimbursement**

When the User wishes to transmit an Order for Reimbursement, the User identifies him/herself on the Website by indicating his/her Login and password or by connecting through his/her Facebook account. The User completes the relevant form on the Payment Page and, where appropriate, provides the supporting documents requested by the Issuer. The form must contain the following components: the Reimbursement amount, the currency, which may only be the currency of the Electronic Money, the date of execution of the Order and any other required information. The User then gives his/her consent to the Order and the Order becomes irrevocable when the User clicks on the validation tab on the form. The User then receives a confirmation email on a date referred as the 'Date of Receipt'.

The Reimbursement of electronic money purchased by Card by a User will occur by crediting the Card used by the User to purchase such Electronic Money.

Where applicable, the Reimbursement will be carried out by money transfer to the bank account or payment account of the User (using the details for the relevant bank account or payment account already provided by the User to the Issuer ('Date of Notification')). It is agreed between the Parties that the Reimbursement will be carried out, at the latest, on the next Business Days following the Date of Receipt or the Date of Notification as appropriate.

If the Date of Receipt is not a Business Day, the Issuer will be deemed to have received the Order on the following Business Day.

#### **4.5 Withdrawal of an Order**



An Order may not be withdrawn by the User after the date on which it is deemed irrevocable as indicated above.

## **5. Login objection, Transaction dispute and Reporting**

### **5.1 Login objection**

The User must inform the Distributor of the loss or theft of his/her Login, or misuse or unauthorised use of his/her Login or data as soon as he/she becomes aware of this fact in order to request that the Login be blocked. Such a declaration should be made:

- by telephone call to the customer service of the Distributor at the number indicated in the Special Conditions;

or

- directly by email through the contact form available on the Website.

On receipt of the notification, the Issuer, through the Distributor, will immediately block Your Account. The event will be recorded and time stamped. A time stamped objection number will be communicated to the User. A written confirmation that Your Account has been blocked will be sent to You by the Distributor by email. The Issuer is responsible for the file at an administrative level and retains all the data for 18 (eighteen) months. Upon written request by the User and before expiration of such a deadline, the Issuer will communicate a copy of this objection.

The Issuer and Distributor shall not be held liable for the consequences of any request to block Your account that is made by a person who is not the User.

An objection request is deemed to be made at the date and hour of its actual receipt by the Distributor. In case of theft or fraudulent use of the Login, the Issuer is entitled to request, through the Distributor, [a receipt or a copy of the complaint][information about the circumstances leading to the alleged theft or fraudulent use from the User who undertakes to respond as soon as possible.

### **5.2 Transaction Dispute**

For any claim concerning Payment Transactions or Reimbursements executed hereunder by the Issuer, the User is advised to consult the customer service department of the Distributor or the address indicated for this purpose in the General Conditions of the Website.

If You notify the Issuer that the Issuer has incorrectly executed an Order, the Issuer will refund the amount of the incorrectly executed Payment Transaction and the Account will be restored to its former state before the receipt of the Order without undue delay. The Order is then resubmitted correctly.

A User who wishes to dispute a Payment Transaction not authorised by him/her shall contact the customer service department of the Distributor by telephone (contact details shown on the Website) as soon as possible after becoming aware of the anomaly and within 13 months of the date of the Account registering the Payment Transaction. After validation of the legitimacy of the request, the Issuer will immediately arrange for the refund of the amount of the unauthorised Payment Transaction and restore the Account to the amount it would contain if the disputed transaction had never been executed, including any interest and related charges.

In the event of loss or theft of Your security information (Login and password), or where You have failed to keep your security information safe, You may be responsible for unauthorised transactions carried out before notification of the dispute, up to a maximum of 50£. However, You may be responsible for a greater amount if You have acted fraudulently, have not used your Account in

accordance with the Framework Contract or otherwise through Your fault. Except where You have acted fraudulently, You will not be responsible for any losses incurred in respect of unauthorised Payment Transactions arising after you have notified the Issuer of the lost, theft, misappropriation or authorised use of your Account details.

The User may dispute an authorised transaction whose exact amount is undefined or those whose final amount is not that which he/she could have reasonably expected taking into account his/her profile, previous expenditures and the Framework Contract conditions. This request must be submitted to the Issuer within 8 weeks of the execution of the Order on the Account. The Issuer must reimburse the User within a period of 10 Business Days after receipt of the request, if the latter proves justified, taking into account applicable laws, and whether the request consists of all the components necessary for examination by the Issuer. The Issuer reserves the right to refuse such a reimbursement, which will be explained and notified to the User. The latter will provide the necessary information in order to determine the circumstances of the Payment Transaction. The Issuer reserves the right not to reimburse the fees resulting from the Payment Transactions concerned. The fees indicated in the Special Conditions may be collected in the case of a non-justified Payment Transaction dispute.

### **5.3 Reporting**

The User may access, at any time, on its personal page on the Website, the indicative amount of Electronic Money available on his/her Account.

The User has, on his/her personal page on the Website, a statement of Payment Transactions carried out on the Account. The User is advised to pay careful attention to the list of these Transactions.

The Issuer shall make available to the User upon written request a monthly statement of the Account, covering the 13 previous months.

## **6. Amendment of the Contract**

The Issuer reserves the right, at any time, to amend the General Conditions of Use of Electronic Money. Such amendments will be sent by email to all Users at least two (2) months' before they take effect.

If You are not happy with any amendments that the Issuer plans to make to the General Conditions of Use of Electronic Money, You can terminate the General Conditions of Use of Electronic Money immediately and without paying a charge. If You do not end the General Conditions of Use of Electronic Money before the proposed amendments take effect, the Issuer will consider that You have agreed to the amendments. The relationship between the Parties after the date the amendments come into force shall be governed by the new version of the General Conditions of Use of Electronic Money.

It is therefore important that the User reads his/her emails and regularly reads the General Conditions of Use of Electronic Money available on the Website at any time.

## **7. Security**

The Issuer undertakes to provide its services in accordance with the applicable and professional laws and regulations. In particular, the Issuer will make every effort to ensure the security and confidentiality of the User's data, in compliance with current regulations in force.

The Issuer reserves the right to temporarily suspend access to the Account on line for technical, security or maintenance reasons, without these operations being eligible for any compensation. The Issuer will limit this type of interruption to a necessary minimum.

The Issuer cannot, however, be held liable to the User for possible errors, omissions, interruptions or



delays produced by the Website resulting in an unauthorised access to the latter. Nor can the Issuer be held liable for thefts, destruction or unauthorised communications of data arising from unauthorised access to the Website. In addition, the Issuer will not be involved in the existing legal relationship between the User and the Recipient of the Payment Transaction. The Issuer cannot be held liable for faults, wilful default or negligence of the User or Recipient towards each other.

The Distributor is solely responsible for the security and confidentiality of the data exchanged within the framework of the use of the Website, in accordance with the General Conditions of the Website. The Issuer is responsible for the security and confidentiality of the data that it exchanges with the User within the context of these General Conditions of Use of Electronic Money in respect of the creation and management of the Account, as well as the Payment Transactions associated with the Account.

### **8. Limitation of Issuer liability**

The Issuer will not intervene in any way in the legal and commercial relationships and any litigation arising between the Recipient and the User. The Issuer has no control over the compliance, security, legality, characteristics and appropriateness of the products subject to a Payment Transaction. In this respect, it is up to the User to obtain all useful information before proceeding to the purchase of a product or service, the collection of funds or any other transaction, in full knowledge of all the considerations involved. Any transaction carried out by the User gives rise to a contract directly formed between him/her and the Recipient(s) with whom the Issuer has no contact. The Issuer cannot, under any circumstances, be held liable for the non-performance or poor execution of obligations that may result, or possible damages caused to the User in this respect.

If the Issuer fails to comply with the Framework Contract, the Issuer is responsible for any loss or damage You suffer that is a foreseeable result of the Issuer breaching this contract or failing to use reasonable care and skill when providing its services under the Framework Contract, but the Issuer is not responsible for any loss or damage that is not foreseeable or which is not caused by its failures. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both the Issuer and You knew it might happen.

You acknowledge and agree that the Issuer will not be responsible to You for any loss or damage You suffer in connection with the use of the Issuer's service where such loss or damage is caused by Your acts or omissions or by those of a third party including, but not limited to:

- (a) Your failure to provide the Issuer with accurate, complete and up to date information; or
- (b) You losing or allowing third parties to gain access to your Login and password.

The Issuer will take reasonable care to ensure that any data it holds in relation to You and Your Accounts is secure. However, You acknowledge and agree that a service provided via the internet cannot be completely secure and the Issuer will only be responsible to You for loss or damage to Your data to the extent that it is caused by the Issuer's failure to take such reasonable care.

Whilst the Issuer will use its reasonable efforts to make sure that its service is available to You when You want to use it, the Issuer makes no promise or guarantee that its service will be uninterrupted or error free and the Issuer will not be responsible to You for such errors or interruptions.

The Issue will not be responsible to You for any loss of profit, loss of business, business interruption or loss of business opportunity.

### **9. User Commitments**

The User guarantees that no part of its profile on the Website will harm the rights of third parties or is contrary to the law, to public order or to accepted principles of morality.

The User undertakes not to:

- Execute the Framework Contract in an illegal manner or in conditions that are likely to damage, deactivate, overload or impair the Website;
- Assume the identity of another person or entity, falsify or conceal his/her identity or age, or create any false identity; or
- Disseminate personal data or information concerning a third party, such as postal addresses, telephone numbers, email addresses, bank card numbers etc.

In the event of User default, the Issuer reserves the right to take any appropriate measures in order to stop the relevant actions. The Issuer will also be entitled to suspend and/or block access to the Account.

#### **10. Duration and Termination**

The Framework Contract is concluded for an unlimited period. It is applicable from the date of receipt by the User of the email from the [Issuer] confirming his/her registration with the [Issue].

The User can terminate the Framework Contract at any time on 30 (thirty) calendar days' advance notice to the Issuer. The Issuer can terminate the Framework Contract at any time on two months' advance notice to the User.

Such termination shall also constitute the termination of the entire Framework Contract and consequently the closure of the Account.

To terminate the Framework Contract, the terminating Party shall transmit a notice of termination to the other Party by registered letter with proof of delivery to the postal address indicated in the Special Conditions.

The User shall indicate his/her bank or payment account details in the termination letter enabling the Issuer to reimburse him/her with the available Electronic Money. In the absence of such information, the Issuer shall follow the Reimbursement instructions entailing the Reimbursement by credit to the Card used for the purchase of Electronic Money. The Issuer has no further obligations after having confirmed with the User the transfer to the bank account indicated or the credit to the Card of the amount of the Electronic Money.

In the event of gross default, fraud or lack of payment on the part of the User, the Issuer reserves the right, without cause or prior notice, to suspend or terminate these conditions by sending an email accompanied by a registered letter with proof of delivery.

In the event that a successor to the Issuer is nominated to issue the Electronic Money distributed on the Website, it is the responsibility of the Distributor to obtain the User's express written consent to this change, about the amount of Electronic Money available and to indicate the arrangements for the transfer of funds corresponding to the available Electronic Money to the Issuer.

It is envisaged that the Framework Contract will be automatically terminated in the event of new circumstances affecting the ability of one Party to commit to these conditions.

#### **11. Right of Cancellation**

The User has a period of 14 (fourteen) calendar days to cancel the Framework Contract, without having to either justify any reason or sustain any penalty. This deadline for cancellation shall start from the day of the User's registration.

The User must notify its decision to cancel within the prescribed deadline to the Distributor's customer service department by telephone or email and send a letter of confirmation to the address of the customer service department of the Distributor. In respect of the exercise of a right of withdrawal by

the User, the Framework Contract will be cancelled without any fees charged to the User.

In the event that a User has already benefited from the service and is in possession of Electronic Money at the date of the withdrawal, he/she must transmit his/her bank account details to the Distributor in order to allow the Issuer to reimburse the User with Electronic Money.

## **12. Anti-money laundering and terrorism financing**

The Issuer is subject to applicable legislation regarding the combating of money laundering and the financing of terrorism. As a result, the Issuer must obtain information from any User, for any transaction or business relationship, of the origin, purpose and destination of a transaction or opening of an Account. In addition, the Issuer must take all the steps necessary to identify the User and, where appropriate, the Recipient owner of the Account and/or any Payment Transactions linked to the Account.

The User recognises that the Issuer can, at any time, stop or delay the use of a Login, access to an Account or the execution of a Payment Transaction or a Reimbursement in the absence of sufficient information pertaining to its purpose or nature. He/she is informed that a transaction carried out within the framework of these conditions may be subject to the national financial intelligence unit's right to disclosure.

The User can, in accordance with the legislation, access all of the information disclosed, provided this right to access does not undermine the purpose of the fight against money laundering and terrorism financing of terrorism, where this data concerns the applicant.

No prosecutions or civil liability actions can be brought or any professional sanction taken against the Issuer, its managers or employees who have reported their suspicions in good faith to the national authority.

## **13. Personal data and professional secrecy**

The User's personal data provided in connection with the opening of the Account, is used by the Issuer for the purposes of managing his/her Account, Payment Transactions and Reimbursements.

The User agrees that his/her contact details and personal information obtained by the Issuer in connection with the Framework Contract may be transmitted to operational providers, with whom the Issuer has a contractual relationship, with the sole purpose of executing Payment Transactions and providing the services under the Framework Contract, provided that these third party recipients of personal data are subject to regulations guaranteeing a sufficient level of protection. The list of the third party recipients of the User's data is available upon request from the Issuer's compliance manager at the following address: [legal@mangopay.com](mailto:legal@mangopay.com). This information is stored by the Issuer or by any company authorised to do so in accordance with legal and regulatory rules.

The User will be informed prior to any transfer of his/her personal data outside the European Union. In such a case, the Issuer undertakes to respect the regulations in force and to put in place any measure necessary in order to guarantee the security and confidentiality of data transferred in such a way.

Certain information collected and held by the Issuer thereunder may give rise to the rights of access and correction. Any User may, at any time, obtain a copy of the information pertaining to him/her upon request addressed to the Issuer's customer correspondent at the following address: [legal@mangopay.com](mailto:legal@mangopay.com). He/she may request the deletion or correction of this information by letter to the Issuer at the address found at the beginning of this document. The User may, at any time, object to receiving commercial solicitations, amend his/her contact details or object to their disclosure by sending a notification by registered mail or e-mail to the customer service address of the Issuer.

The Issuer will store the personal information and data for a maximum legal or regulatory period applicable depending on the purpose of each type of data processing.

The conditions for the collection, possession and access to personal data obtained by the Distributor and under his/her responsibility in terms of accessing the Website, are governed by the General Conditions of the Website as well as the privacy policy, which is available on the Website.

#### **14. Inactive Accounts**

Any Account that is inactive for a period of 12 (twelve) months will receive a notification of inactivity by email from the Issuer followed by a reminder a month later.

If there is no response or use of available Electronic Money within this period, or in the event of the death of the User, the Issuer may close the Account and keep it active for the sole purpose of the Reimbursement of Electronic Money. The right of Reimbursement may be subject to time limits pursuant to the law of the residence of the User, with such time limits starting from the last transaction on the Account. In the event of death, the Electronic Money can only be reimbursed to the User's assignee.

An Account that has been closed will not permit the further use of Electronic Money.

#### **15. Events Outside The Control of a Party**

Neither Party will be liable or responsible for any failure to perform, or delay in performance of, any of their obligations under the Framework Contract that is caused by an Event Outside The Control of a Party.

An Event Outside The Control means any act or event beyond a Party's reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

#### **16. Independence of contractual provisions**

If any of the provisions of the Framework Contract is held invalid or unenforceable, it shall be deemed deleted and will not invalidate the other provisions.

If one or more of the provisions of the Framework Contract lapses or is declared as such under any law or regulation or following a final decision of a court of competent jurisdiction, the other provisions will retain their binding force and scope. The provisions considered null and invalid would then be replaced by provisions closest in scope and meaning to those initially agreed.

#### **17. Protection of funds**

The collected funds are protected against any claims from other creditors of the Issuer, including in the event of enforcement proceedings or insolvency proceedings against the institution.

The User's funds are deposited at the end of each Business Day into an account opened with a Bank and are ring fenced by the Bank.

#### **18. Non-transferability**

The Framework Contract cannot be subject to a complete or partial transfer by the User, whether against payment or free of charge. It is therefore forbidden to transfer to a third party any rights or obligations that the User owns hereunder. In the event of breach of this prohibition, in addition to the

immediate termination hereof, the User may be held liable by the Issuer.

### **19. Fees**

The services offered hereunder are charged by the Distributor on its behalf and on the behalf of the Issuer in accordance with the Financial Conditions.

The Fees due by a User to the Issuer may be paid with available Electronic Money (stored on the User Account) reimbursed at the Issuer sole discretion.

### **20. Agreement of proof**

All data held in a permanent, reliable and secure manner in the computer database of the Issuer relating, in particular, to Orders and confirmations received by the User, notices sent, access, withdrawal and Reimbursement will prevail between the parties until proven otherwise.

### **21. Complaints and arbitration**

The User is invited to send any complaint to the customer relations service indicated in the Special Conditions and on the Website.

Any complaint other than as provided in article 5.2 concerning the conclusion, execution or termination of the Framework Contract and services for the issue and management of Electronic Money shall be notified by email (and without any failure or undeliverable messages) to the following address: [legal@mangopay.com](mailto:legal@mangopay.com)

If the User believes that the response provided is unsatisfactory, or in the absence of a response within one month after sending the email, he/she may refer the complaint to the Luxembourg Financial Sector Supervisory Commission by post at 110 route d'Arlon L-1150 Luxembourg or by email: [direction@cssf.lu](mailto:direction@cssf.lu).

### **22. Applicable law and competent jurisdiction**

The Framework Contract is governed by the laws of England and Wales. You and the Issue agree to submit to the non-exclusive jurisdiction of the English courts. However, if You are a resident outside England, You may also bring proceedings in Your local courts.