



# **Merchant Scale Terms**

**United Kingdom**

1 November 2020

## MERCHANT SCALE TERMS UNITED KINGDOM

### Scale terms

- A. Clauses 1 to 11 ("**Scale Terms**") are between you and Airwallex (UK) Limited (Company No. 10103420) ("**us**"/"**we**"), together being the "**parties**" to the Scale Terms.
- B. The Scale Terms set out the terms governing the relationship that apply to our performance of the Scale Activities and how you use our related services.

### Wallet access terms

- I. Clause 12 of this document is a separate agreement between you, us and *[insert entity name]* ("**Marketplace Provider**"), together being the "**parties**" to the agreement in Clause 12.
- II. It covers how you can access your Wallet through the Marketplace.
- III. When we and you agree to the Scale Terms, we (both on our own behalf and on behalf of Marketplace Provider) will at the same time be agreeing Clause 12 with you.

## 1 INTRODUCTION TO THE SCALE TERMS

- 1.1 The Marketplace has entered into a separate agreement with us for the performance of Scale Activities. We will perform Scale Activities to facilitate the disbursement of funds where a payment is made to you by a buyer on the Marketplace.
- 1.2 These Scale Terms are supplemental to, form part of, and must be read together with, the Client Agreement.
- 1.3 Capitalised terms in these Scale Terms are as defined in the Client Agreement or in these Scale Terms.
- 1.4 You can see the most current version of these Scale Terms and the Client Agreement on our website [www.airwallex.com](http://www.airwallex.com). You can also download a copy of these Scale Terms and keep them for future reference or ask us for a copy at any time.
- 1.5 To the extent there is a conflict between the Client Agreement and these Scale Terms, these Scale Terms will prevail.

## 2 TERM

These Scale Terms shall be in full force from the Commencement Date until these Scale Terms or the Client Agreement is terminated in accordance with the Client Agreement ("**Term**").

## 3 SCALE ACTIVITIES

- 3.1 We shall perform our Scale Activities for the Term of these Scale Terms. Performance of Scale Activities shall involve us crediting funds that we receive from Acquirers to your Wallet in the form of electronic money, in accordance with these Scale Terms and the terms we have in place with the Marketplace Provider.

- 3.2 We shall only credit funds received from an Acquirer to your Wallet in accordance with the Settlement Data, and only once we've received the funds.
- 3.3 Scale Activities, insofar as they are services provided to you, form part of the Services set out in the Client Agreement.
- 3.4 [By using the Services, you confirm that you accept and agree to these Scale Terms together with the Client Agreement].
- 3.5 Except as expressly stated in these Scale Terms, we will provide the Scale Activities to you on an "as is", "as available" basis without any warranties[, conditions and terms,] whether express or implied by statute, common law or otherwise (including any implied warranties of satisfactory quality or fitness for a particular purpose or non-infringement), which are excluded to the fullest extent permitted by Applicable Law.

#### **4 CUSTOMER UNDERTAKINGS**

- 4.1 You undertake to promptly provide us with any and all information that we may reasonably require from you from time to time so that we can perform Scale Activities and comply with our obligations under Applicable Law as they relate to the Scale Activities (including, without limitation, customer due diligence information). We may (insofar as is permitted by Applicable Law) cease to provide Scale Activities immediately if you fail to provide us with the information that we request from you under this Clause.
- 4.2 You must immediately inform us of any material breach by you of or inability to comply with Applicable Law, these Scale Terms or the Client Agreement.

#### **5 SCALE FEES AND MARKETPLACE FEES**

- 5.1 **Authorisation to deduct Marketplace Fees etc.** You acknowledge and agree that we may deduct any amounts you owe the Marketplace Provider (including for Marketplace Fees) from the funds in your Wallet at the request or on the instructions of the Marketplace Provider, without the need for us to verify that such amounts are in fact owing as between you and the Marketplace Provider, and transfer them to the Marketplace Provider.
- 5.2 **Marketplace Fees.** The cost of the Marketplace Services will depend on your agreement with the Marketplace Provider and should be made clear in your Marketplace Agreement. We are not responsible for and have no control over any Marketplace Fees or other amounts that the Marketplace Provider may charge you for the Marketplace Services or require you to pay.
- 5.3 You must ensure you have sufficient electronic money in your Wallet to cover amounts you owe the Marketplace Provider. If you do not have enough funds in your Wallet for us to deduct the Marketplace Fees or other amounts, or if any such deduction would take your Wallet below zero, you must immediately load funds into your Wallet to pay the amount owing (and to restore your Wallet above zero) without requiring notice from us to do so.
- 5.4 You agree to maintain the Reserve in your Wallet at all times throughout the Term of these Scale Terms.
- 5.5 If you do not comply with Clauses 5.3 and 5.4 of the Scale Terms, we may suspend use of your Wallet or refuse to provide the Services to you. We may also take reasonable steps to recover any

amount owing including any shortfall in the Reserve, for example by taking legal action or using debt collection services, and may charge you for the reasonable cost of doing so.

## **6 REPRESENTATIONS AND WARRANTIES**

In addition to the representations and warranties in the Client Agreement, you represent and warrant that you:

- a) have the right, power and authority, including under Applicable Law, to enter into these Scale Terms and to perform all of your obligations under them; and
- b) will provide us with accurate, up-to-date and complete information at all times.

## **7 SHARING OF DATA**

- 7.1 You acknowledge and agree that we and the Marketplace Provider may share your Customer Data, including your personal data, with each other. When we receive any of your Customer Data from the Marketplace Provider, we will use it in accordance with the Client Agreement and our Privacy Policy (as referred to in [Clause 1.4] of the Client Agreement).
- 7.2 For the purposes of these Scale Terms, the 'Agreed Purposes' for us to collect, use, store or otherwise process such personal data under these Scale Terms are:
  - a) provide Scale Activities to you and manage our relationship with you;
  - b) to enable us to comply with all Applicable Law, including conducting anti-money laundering, financial crime and other screening checks; and
  - c) to enable us to comply with these Scale Terms, the Marketplace Client Agreement, the Client Agreement, Marketplace Scale Terms and our Privacy Policy (as referred to in [Clause 1.4] of the Client Agreement).

## **8 DISPUTES WITH MARKETPLACE PROVIDER AND ACQUIRER AND RELATED LIABILITY**

- 8.1 You acknowledge that we have no control over or responsibility for the actions or failures of the Acquirer and Marketplace Provider. This means, for example, that we are not liable if:
  - a) an Acquirer fails to send us any money due to you, or fails to send the money on time; or
  - b) the Marketplace Provider gives us incomplete, inaccurate or otherwise inadequate Settlement Data, or delays giving us Settlement Data, relating to amounts due to you.
- 8.2 In the event of any complaint or dispute between you and the Marketplace Provider, you must settle the dispute directly with the Marketplace Provider in accordance with your Marketplace Agreement. Such disputes cannot be dealt with under these Scale Terms.
- 8.3 We are not liable for the Marketplace Services, Acquirers or the Marketplace Provider. The Marketplace Provider is solely responsible for the Marketplace Services. We are not responsible for and do not guarantee the performance of the Marketplace Services or any transaction you enter into with your customers. We are not responsible for the acts or omissions of the Marketplace Provider or Acquirers and we will not be liable for any loss caused by a Marketplace Provider or Acquirer. We

are also not responsible for any payment that may be due to you for the sale of your goods or services through the Marketplace Provider.

8.4 We are not liable for your goods or services. You are solely responsible for, and we have no responsibility or liability for:

- a) any goods or services that you sell through the Marketplace Provider;
- b) any obligations that you owe to the Marketplace Provider, or your customers or users; or
- c) your compliance with Applicable Law.

## **9 INDEMNITY**

9.1 In addition to the indemnities set out in the Client Agreement, you will indemnify us and keep us indemnified on demand against all losses, damages, costs (including legal fees) and expenses incurred or suffered by us in connection with or as a result of:

- a) any transaction you enter into with your customers;
- b) us acting on any of your instructions which we reasonably believe to have been given by you or by the Marketplace Provider acting with your authority;
- c) you having insufficient funds in your Wallet to cover the full amount of the Marketplace Fees or any other amounts (including any chargeback, reversal of a transaction, or deduction of fees) due to the Marketplace Provider or us;
- d) you failing to maintain the Reserve in your Wallet;
- e) your breach of your obligations to the Marketplace Provider or your customers or users;
- f) your breach of Applicable Law;
- g) your breach of these Scale Terms;
- h) your use or misuse of our Scale Activities;
- i) any chargebacks, refunds, fines, reversals of a transaction, or deduction of fees;
- j) your breach of the Marketplace Agreement; or
- k) any disputes between you and Marketplace Provider.

9.2 Clauses [18.2 to 18.4] of the Client Agreement shall apply in respect of the obligations under this Clause 9.

## **10 TERMINATION AND SUSPENSION**

10.1 The Parties can terminate these Scale Terms in accordance with the Client Agreement.

- 10.2 The termination of these Scale Terms will not terminate the Client Agreement. The Client Agreement can only be terminated in accordance with its terms. However, the termination of the Client Agreement will automatically terminate these Scale Terms.
- 10.3 The termination of the Marketplace Client Agreement will automatically terminate these Scale Terms.
- 10.4 **Termination of agreement with the Marketplace Provider.** We reserve the right to without notice to you immediately suspend or terminate all or any part of our agreement with the Marketplace Provider, or any of the Services we provide to the Marketplace Provider, in accordance with the Marketplace Client Agreement and any other agreements between us and the Marketplace Provider.
- 10.5 **Termination of Marketplace Services and access to Scale Activities.** If you no longer wish to use the Marketplace Services you must terminate your Marketplace Agreement in accordance with its terms and immediately and in any event within one Business Day notify us in writing that you have done so and that you withdraw the authority of the Marketplace Provider to provide us with instructions on your behalf. You acknowledge and agree that we will continue to deduct all outstanding Marketplace Fees as instructed by the Marketplace Provider for your use of the Marketplace Services up until the date of termination of your agreement with the Marketplace Provider, including any Marketplace Fees that become due and payable after termination but relate to your use of the Marketplace Services before termination.

## 11 DEFINITIONS & INTERPRETATION

In these Scale Terms, the following definitions apply.

**Acquirers** payment services providers who provide acquiring services under arrangements with the Marketplace Provider.

**Commencement Date** means the date on which we confirm to you that we will provide you with Scale Activities or the date referred to in the Master Services Agreement (whichever is applicable, and where both are applicable, then the date which is earlier).

**Client Agreement** means the "Payment and FX Terms" entered into between you and us.

**Marketplace** means an online marketplace or other e-commerce platform operated by the Marketplace Provider through which you are able to sell your goods, services, content or other products.

**Marketplace Agreement** means the separate agreement(s) you have entered into with the Marketplace Provider for the provision of the Marketplace Services.

**Marketplace Client Agreement** means the "Payment and FX Terms" that we have entered into with the Marketplace Provider.

**Marketplace Fees** means the fees that are payable by you to the Marketplace Provider under the Marketplace Agreement.

**Marketplace Scale Terms** means the agreement entitled "Marketplace Scale Terms" between us and the Marketplace Provider (and which supplement the Marketplace Client Agreement).

**Marketplace Services** means the products and services the Marketplace Provider provides to you, including to enable you to receive payment for goods or services you sell through the Marketplace.

**Master Services Agreement** means the agreement entitled “Master Service Agreement” entered into between you and us (if applicable).

**Reserve** means a minimum amount of funds that we require you to hold in your Wallet, as we may specify to you from time to time.

**Scale Activities** means disbursement services provided by us in accordance with these Scale Terms.

**Settlement Data** means a data file that the Marketplace Provider undertakes to provide to us in accordance with the Marketplace Scale Terms, which contains information regarding the allocation of funds that we receive from Acquirers.

## **12 WALLET ACCESS TERMS**

12.1 The defined terms in this Clause 12 have the meanings given in the Scale Terms.

12.2 If there is any conflict or inconsistency between this Clause 12, the Client Agreement and the Marketplace Agreement, this Clause 12 shall prevail over the Client Agreement and the Marketplace Agreement, and the Client Agreement shall prevail over the Marketplace Agreement.

12.3 The parties acknowledge and agree that insofar as the Marketplace Provider agrees under the Marketplace Agreement to enable you to request initiation of a payment to or from your Wallet or to obtain information (including transactional information) on your Wallet (together the **Access Functionality**):

- a) the Marketplace Provider agrees to do so on our behalf;
- b) all powers, rights and obligations of the Marketplace Provider relating to the Access Functionality shall be powers, rights and obligations of ours;
- c) all obligations you have relating to the Access Functionality shall be obligations you have to us; and
- d) the contractual terms for the Access Functionality set out in the Marketplace Agreement shall be treated as supplementary to, and form part of, and must be read together with, the Client Agreement.

12.4 In addition to the representations and warranties in the Client Agreement, you represent and warrant to us that you:

- a) have the right, power and authority, including under Applicable Law, to enter into the agreement in this Clause 12 and to perform all of your obligations pursuant to it; and
- b) will provide us with accurate, up-to-date and complete information at all times.