

Tabby - General Terms and Conditions

You ("**Merchant**") acknowledge and agree that these terms apply to your use of the Tabby Payment Method.

1. Definitions

- 1.1. "Acquired Claim" means a Guaranteed Payment and/or Authorised Credit.
- 1.2. "Authorised Credit" means the acceptance of a customer's request for instalment payments by Tabby whereby a Claim is transferred from the Merchant to Tabby, including any credit and other (fraud) risks.
- 1.3. "Claim" means the right of the Merchant to fulfilment of a payment obligation by a customer that made a Payment with the Merchant.
- 1.4. "Confidential Information" means any information which is marked as "Confidential" or "Proprietary" or should be reasonably expected to be confidential having regard to the context of disclosure or the nature of the information; including, without prejudice to the generality of the foregoing, the terms of this Agreement as well as KYC documentation, business plans, data, strategies, methods, customer and client lists, technical specifications, Transaction data and customer data. Confidential Information does not include information which is or becomes: (i) publicly available otherwise than through a breach of this Agreement; or (ii) available to the receiving party otherwise than pursuant to this Agreement and free of any restriction as to its use or disclosure.
- 1.5. "Guaranteed Payment" means the transfer of a Claim from the Merchant to Tabby (or Airwallex), including any credit and other (fraud) risks.
- 1.6. "Failed Claim" means any Guaranteed Payment or Authorized Credit that no longer fulfils the conditions as set forth in Business Rules and for which reason Tabby withdraws its guarantee or credit, resulting in the Merchant becoming/ remaining liable (again) for any Claims.
- 1.7. "Liabilities" – shall refer to any and all fees charged by Tabby, any Failed Claims and any and all actual and reasonably anticipated losses incurred by Tabby as a result of: (i) negligence, fraud, dishonesty or willful misconduct by the Merchant or its affiliates, officers, directors, employees, agents, representatives or customers of the Merchant; and/or (ii) any breach of the Agreement, including but not limited to any Payments that are refunded, reversed, withdrawn or refused for any reason.
- 1.8. "Payment" means a purchase of a good and/or service by a customer from the Merchant, with a Payment Method provided by Tabby.
- 1.9. "Payment Method" means the payment after delivery and instalment payment options offered by Tabby, named Tabby after Delivery and Tabby Instalments.
- 1.10. "Sales Channel" means either the online website(s) or the physical store(s) of the Merchant, or both, which have been approved by Tabby for integration with the Payment Methods which are initially set in the Cover Letter, as may be amended from time to time upon Tabby's explicit written approval (via email).
- 1.11. "Services" means the related payment processing services in relation to the Payment Methods, including execution, collection and settlement of the Payments.
- 1.12. "Tabby" means Tabby FZ LLC, a company incorporated in Dubai, UAE with registered office at In5, Dubai Internet City, Dubai, UAE and CR# 1010614810;
- 1.13. "Transaction Evidence" means such evidence as Tabby reasonably requires, including the names and prices of the good(s) sold, together with relevant proof that the good(s) have been properly delivered to the customer, and the transaction receipt and the name and contact information of the customer who made payments for the product(s).

2. Scope of Services

- 2.1. In consideration of payment of the fees as set forth by Airwallex to Merchant, Tabby hereby undertakes to make available the Payment Method(s) and to provide and perform all and any of the Services, as the same may be amended from time to time, in accordance with the terms and subject to the conditions contained in this Agreement and with applicable laws.
- 2.2. Tabby agrees to provide the Services based on the information supplied by Merchant, and Merchant's use of the Services is strictly dependent upon this information. Tabby reserves the right to amend any one or more of these provisions and other applicable conditions including - but not limited to - the risk conditions, by giving notice in writing to the Merchant.
- 2.3. Tabby will perform its obligations under this Agreement in accordance with applicable laws and it will ensure it has, at all times, all permits, licences, authorisations and consents necessary to perform its obligations under these Terms (and, in our case, necessary for us to perform the Services). Each Party shall comply with applicable consumer laws and Parties shall closely cooperate to promote the smooth conduct of operations of the Services.
- 2.4. Tabby will provide the Services and perform its other obligations with reasonable care and skill. Tabby may need and therefore reserve the right to enhance, update, change, suspend or discontinue any aspect of the Services provided at any time, including but not limited to the hours of operations or availability of the Services or any feature of the services. Tabby will endeavor to implement such changes to the Services with minimal disruption to the Merchant's use and enjoyment of the Services but will provide written notice to the Merchant if any changes may cause any such disruption. In the case of changes to the Services required to comply with applicable laws or a direction from a regulatory authority, Tabby may implement the change prior to notifying the Merchant, provided that Tabby will notify the Merchant of the relevant change as soon as reasonably practicable if Tabby reasonably believes the relevant change may adversely impact the Services.
- 2.5. Tabby may carry out planned and unplanned maintenance as notified to the Merchant.

3. **Claims, Authorised Claims and Failed Claims**

- 3.1. Under the following circumstances, Tabby may take over the Claim of a Payment from the Merchant and designate such Claim as an Authorised Credit:
- 3.2.
 - 3.2.1. A customer sends a request for instalments to Tabby through the interface of Airwallex with the Merchant's Sales Channel(s);
 - 3.2.2. Tabby performs a credit assessment of the customer and either accepts or declines the customer's request for instalments;
 - 3.2.3. Tabby shall at its own discretion determine any credit limit for each customer and it reserves the right to increase or reduce such credit limit at any time.

In the event of an Authorized Credit, Tabby shall transfer the value of the underlying Payment to Airwallex, as per the agreed settlement schedule. Tabby shall be responsible and liable for the collection of the payment from the customer, which shall be undertaken in instalments.

- 3.3. In order for a Claim to be eligible for and to remain an Authorized Claim or Authorized Credit, the following conditions apply and shall continue to apply:
 - 3.3.1. Tabby's receipt of the Transaction Evidence;
 - 3.3.2. There is no dispute between the customer and the Merchant (apart from any failure to pay by the customer), for example when the goods are claimed to be faulty or not delivered in full. In case of a dispute arising related to non-delivery of goods, proof of delivery will be required by Tabby in order for the Claim to remain Authorised

- 3.3.3. The customer does not exercise any (statutory) rights to cancel the purchase and the Merchant has not extended a right to return the good(s);
 - 3.3.4. The purchase complies with applicable laws and there is no suspicion of fraud or other illegal activity by the Merchant;
- 3.4. If any of the conditions under clause 3.3 are not fulfilled or cease to be fulfilled, Tabby reserves the right to re-transfer the Claim(s) back to the Merchant and designate any such Claims as Failed Claims. In the event of any frequently recurring failure of the conditions of clause 3.3 Tabby reserves the right to re-transfer all then-current Authorized Claims and Authorized Credits, suspend access to its Services or terminate the Agreement and Merchant will immediately cease its offer of the Payment Methods. Any incurred costs by Tabby in relation to the re-transfer of Claims shall be borne by the Merchant. Any Failed Claims and the related costs shall be deducted from any future settlement of funds to the Merchant.

4. Confidentiality

- 4.1. Each of the Parties may be a recipient of Confidential Information. The recipient of Confidential Information shall take care to prevent the publication, distribution or utilization of the Confidential Information with at least the same degree of care which the recipient takes to protect its own confidential information of a similar nature, but in any case no less than an appropriate and reasonable degree of care.
- 4.2. Parties shall be permitted to disclose Confidential Information to those of its subsidiaries, advisors and lenders who are informed of the confidential nature of the information and have agreed to be bound by confidentiality obligations at least as stringent as those under this Agreement.
- 4.3. Recipient may disclose or utilise the Confidential Information: (i) when necessary to perform the Services under this Agreement; (ii) when required by law; (iii) to solicitors, barristers, attorneys, accountants or other professional advisers.
- 4.4. The obligations of this clause will remain in full force and effect until three (3) years after the termination or expiration of this Agreement.

5. Data Protection

- 5.1. Tabby warrants and undertakes that it shall process personal data (including but not limited to any of its customer's personal data embedded in a transaction) in accordance with applicable data protection laws and handle such personal data with care and in a confidential manner. Tabby shall only process personal data to the extent necessary to perform its obligations under the Agreement and have in place appropriate technical and organizational measures which ensure an appropriate level of security for the processing of personal data.

6. Indemnification

- 6.1. The Merchant and Tabby shall indemnify each Party and hold each Party and its affiliates, officers, employees and agents free and harmless from any liability, loss, damage, claim or compliant, and reasonable attorney's fees and costs, arising out of: (i) Party's breach of this Agreement, including but not limited to, misrepresentation or breach of any covenants or warranties herein contained; (ii) the (contractual) relationship between each Party and its customers; and/or (iii) any fraud, negligent or willful misconduct by each Party's employees/ subcontractors.
- 6.2. In no event will either Party be liable for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this agreement.

7. Suspension and Termination

- 7.1. Provided Tabby uses its best endeavours to provide Merchant at least 10 days' Notice, it shall have the undisputed right to suspend or terminate its Services, either partially or wholly in accordance with any such rights granted under this Agreement and additionally in the event that:
 - 7.1.1. Merchant is in breach of this Agreement and/or applicable laws;
 - 7.1.2. Merchant infringes the brands or marks of Tabby or uses these other than in strict accordance with Tabby's instructions;
 - 7.1.3. a law or regulatory authority mandates suspension;
 - 7.1.4. there is suspicious activity in relation to the Merchant's use of the Services, as reasonably determined by Tabby;
 - 7.1.5. the business conducted by the Merchant would endanger or negatively impact the safety, soundness of the business, integrity, good name, brand and/or the reputation of Tabby;
 - 7.1.6. the Merchant, its directors or ultimate beneficial owners is/are wilfully dishonest, engage(s) in misconduct with respect to its/their business or affairs and/or Tabby reasonably suspects or has evidence that Merchant is conducting fraudulent activities; and/or
 - 7.1.7. any other event or series of events (including, any adverse change in the Merchant's business, assets or financial condition) or any acts or omissions by Merchant which in the sole but reasonable opinion of Tabby, may affect Merchant's ability to comply with all or any of its obligations under the Agreement.

Merchant shall be notified in the event of Tabby's exercise of its rights under this clause, unless prohibited pursuant applicable laws. Should any ground specified in the preceding clause subsists for more than ten (10) business days after any suspension, Tabby shall have the right to terminate some or all of the suspended Services or this Agreement. Tabby will have no liability for any losses Merchant may attribute to any suspension of the Services.

- 7.2. If a Party commits a material breach of this Agreement and such breach is not cured within thirty (30) days of receipt of written notice by the other Party, giving the particulars of the breach and, where appropriate, requiring it to be cured, then the other Party has the right to terminate this Agreement by written notice, which termination will be effective on the date set out in that notice.
- 7.3. If a Party is unable to pay its debts as and when such debts fall due or becomes bankrupt or insolvent, or has a receiver or manager, provisional liquidator, liquidator or administrator appointed in respect of any material part of its assets or suffers an execution in respect of any of its property, or if a petition is presented for the winding up and such petition is not released, satisfied or withdrawn within thirty (30) days, then the other Party has the right to terminate this Agreement by written notice, which termination will be effective on the date set out in that notice.
- 7.4. Upon termination, Merchant agrees to: (i) complete all pending transactions/ payment orders; (ii) stop accepting new transactions/ issuing new payment orders through the Services; and (iii) immediately remove all Tabby's logos from its website and/or store. Termination of this Agreement will not affect the liability of a Party towards the other Party, existing at such date of termination.
- 7.5. Notwithstanding any other provisions of this Agreement, either party hereto may terminate this Agreement at any time by giving thirty (30) days written notice to the other party.