



# Merchant Scale Terms

Hong Kong

December 2019

## MERCHANT SCALE TERMS HONG KONG

### 1 INTRODUCTION

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

### 2 TERM

These Scale Terms shall be in full force from the Commencement Date until these Scale Terms or the Payment and FX Terms are terminated in accordance with the Payment and FX Terms ("**Term**").

### 3 SCALE ACTIVITIES

- 3.1 We shall perform our Scale Activities for the Term. Performance of Scale Activities shall involve us crediting funds that we receive from Acquirers to your Global Account, in accordance with the terms of 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 Global Account in accordance with the Settlement Data, and only once we have received the funds.
- 3.3 Scale Activities, insofar as they are services provided to you, form part of the Services set out in the Payment and FX Terms.
- 3.4 By using the Services, you confirm that you accept and agree to these Scale Terms together with the Payment and FX Terms (and the additional documents referred to in the Customer 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). For the avoidance of doubt, you agree and acknowledge that we may 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 undertake to immediately inform us of any material breach by you of or inability to comply with Applicable Law, these Scale Terms or Payment and FX Terms.

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

- 5.1 **Authorisation to receive Payment instructions from the Marketplace Provider for Marketplace Fees etc.** You hereby authorise us to receive Payment instructions from the Marketplace Provider (on your behalf) for any amounts owed to it from time to time, without the need for us to verify that such amounts are in fact owing as between you and the Marketplace Provider. You must pay sufficient funds into the Intermediary Account to cover the full amount of Payment on or before the Settlement Cut-Off. If you do not have sufficient funds in your Intermediary Account to cover the full amount, we may deduct or set-off such amount against any funds collected and held for you in your Global Account.
- 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 If you do not ensure that sufficient funds are transferred to the Intermediary Account and the funds in your Global Account are insufficient to off-set a Payment instruction, we may refuse to provide the Services to you. We may also take reasonable steps to recover any amount owing to us, for example by taking legal action or using debt collection services, and may charge you for the reasonable cost of these services.

#### **6 REPRESENTATIONS AND WARRANTIES**

In addition to the representations and warranties in the Payment and FX Terms, 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 it; 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 Payment and FX Terms and our privacy policy.

- 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 Payment and FX Terms with you and the Marketplace, the Marketplace Scale Terms and our Privacy Policy.

## **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**

You will indemnify us (and Clause 18 of the Payment and FX Terms will apply) 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 not transferring sufficient funds to the Intermediary Account and the funds in your Global Account not being sufficient to cover (or set-off) the full amount of Payment for 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) your breach of your obligations to the Marketplace Provider, or your customers or users; or
- e) your breach of Applicable Law;
- f) your breach of these Scale Terms;
- g) your use or misuse of our Scale Activities;
- h) any loss related to:
  - (i) any chargebacks, refunds, fines, reversals of a transaction, or deduction of fees;
  - (ii) your breach of your obligations to a Marketplace Provider or your customers or users, or the Marketplace Agreement; or
  - (iii) any disputes between you and Marketplace Provider.

## 10 TERMINATION AND SUSPENSION

- 10.1 The Parties can terminate these Scale Terms in accordance with the Payment and FX Terms.
- 10.2 The termination of these Scale Terms will not terminate the Payment and FX Terms. The Payment and FX Terms can only be terminated in accordance with its terms. However, the termination of the Payment and FX Terms will automatically terminate these Scale Terms.
- 10.3 The termination of the Marketplace MSA will automatically terminate these Scale Terms.
- 10.4 **Termination of agreement with the Marketplace Provider.** We reserve the right to without notice immediately suspend or terminate all or any part of our agreement with the Marketplace Provider, or any of the Services, in accordance with the Marketplace MSA 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 1 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 make Payment for 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).

**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 MSA** means the master service agreement incorporating the Payment and FX Terms and Marketplace Scale 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 Provider** means the person that operates the Marketplace.

**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.

**Scale Activities** means payment 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.