

I&M BANK LIMITED

E-COMMERCE MERCHANT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions:

“**Acquiring Bank**” means I&M;

“**Credit Card**” means a valid card from a recognized credit company which includes but not limited to MasterCard, VISA, American Express and Diners Club cards;

“**Cardholder**” means the person to whom a Credit Card has been issued;

“**Card Issuer**” means a bank or any other entity that issues cards;

“**Facility Provider**” means I&M and shall in its capacity as a facility provider facilitate the transmission of Transaction Messages securely from a server maintained by the Merchant to the Acquiring Bank for processing Credit Card payments;

“**Fraudulent Transaction**” means any transaction that would constitute fraud in terms of common law (irrespective of whether I&M has issued an authorization code number to the Merchant). This includes any Credit Card purchase and/or transaction made by someone other than the authorized Cardholder and the use of a card or card account number that has not been issued by a *bona fide* card issuer;

“**Internet**” means the collection of local area networks, wide area networks and third party networks which all use the same protocol (namely TCP/IP) to form a seamless, packet-switched

network colloquially referred to as the Internet, and accessible by any person or business through an Internet service provider;

“**Merchant Certificate**” means a certificate issued by a certificate management system approved by I&M, which can be authenticated by the Merchant;

“**Merchant Discount**” means a portion of the total value of all Credit Card Transactions carried out by the Merchant and payable to I&M;

“**Message**” means an electronic communication from the Merchant’s server to the payment gateway or *vice versa*, in the format currently prescribed by I&M;

“**nominated bank account**” means the bank account nominated by the Merchant from time to time in accordance with Clause 14 and which is used by I&M to credit amounts due to the Merchant, and debit any costs and/or amounts for which the Merchant is liable, in terms of this Agreement;

“**Payment gateway**” means software used by I&M to forward and receive Messages and to adapt Messages received from the Merchant’s server in order to process Transactions; and

“**Transaction**” means the purchase of goods and/or services from the Merchant by the Cardholder via the Internet.

2. RIGHTS AND OBLIGATIONS OF THE MERCHANT

2.1 The Merchant undertakes to incorporate in its website all the details that customers will need to make an informed buying decision, including:

- 2.1.1. A comprehensive description of the goods on offer;
- 2.1.2. Details of return and refund policies;
- 2.1.3. Customer service contact details, including email address and telephone number;
- 2.1.4. The total price of the goods or services on offer, including any relevant taxes and delivery charges, with the price quoted in Kenya Shillings;
- 2.1.5. The country in which the Merchant is based;
- 2.1.6. A disclosure to the Cardholder that where the Merchant, if not the supplier of the goods or service, is the Merchant of record and responsible for the Transaction; and
- 2.1.7. The Merchant's full name and online address.

2.2 The Merchant shall make provision to record:

- 2.2.1. The Cardholder's name;
- 2.2.2. The expiry date of the Card; and
- 2.2.3. The authorization code.

2.3 The Merchant undertakes to accept and honor all valid Credit Cards, without discrimination, when properly presented, provided the Transaction is initiated by the rightful Cardholder in payment of goods and/or services.

2.4 The Merchant shall check the expiry date of every Credit Card presented; if the card is not yet valid or has expired, the Transaction may not go ahead without authorization.

- 2.5 The Merchant shall prominently and unequivocally identify itself as the Merchant at all points of Cardholder interaction (including on its Internet site, promotions and invoices).
- 2.6 The Merchant shall notify the Cardholder that the Merchant is responsible for:
- 2.6.1. Payment transactions;
 - 2.6.2. Products and services;
 - 2.6.3. Direct customer service;
 - 2.6.4. The resolution of disputes; and
 - 2.6.5. All terms and conditions of sale.
- 2.7 The Merchant shall have policies and procedures, as prescribe by the Acquiring Bank, to keep card numbers secure and confidential.
- 2.8 The Merchant shall pay the fees prescribed in Schedule 1 and 2 hereto.
- 2.9 In the event the payment gateway remains dormant (i.e. no transactions) for a period of 60 consecutive days the Merchant portal will automatically de-activate and all transactions thereafter will be invalidated. The Merchant may request re-activation of the payment gateway by giving written reasons for the dormancy and providing valid reasons for re-activation of the payment gateway.

3. RIGHTS AND OBLIGATIONS OF I&M

- 3.1 I&M will pay to the Merchant the value of all goods and/or services supplied by the Merchant after a Transaction has been electronically processed, minus the agreed commissions and fees. However, in the event of excessive charge backs, bankruptcy, fraud, suspected fraud or invalid Transactions, I&M may retain funds until such a time when the situation or dispute is resolved.
- 3.2 I&M is authorized to debit any other account of the Merchant held at I&M or any other financial institution with items listed in Clauses 8, 11, 12 and 14, in the event that debits to the nominated bank account are unsuccessful.
- 3.3 I&M shall have the right, at any time and at its sole discretion, to increase, decrease or cancel a Merchant's Transaction Limit by giving the Merchant notice in writing of such an amendment.
- 3.4 I&M will have the right to practice set-off with respect to any amount that is to be paid by I&M under this Agreement, against any such amount that the Merchant is obliged to pay I&M whether under this Agreement or otherwise, but excluding the right to set off against amounts owing by the Merchant to I&M arising from any possible commercial banking relationship that may from time to time exist between the parties.

4. CARDHOLDER DISPUTES

- 4.1 It is recorded that the Cardholder may dispute any Transaction for a period of 180 (one hundred and eighty) days following the Transaction through a final procedure initiated at the Cardholder's Issuer.
- 4.2 I&M reserves the right to charge back such dispute directly to the Merchant's account

upon receipt of the dispute.

- 4.3 The Merchant shall be liable for such amounts and will take up the resolution of disputes directly with the Cardholder. I&M will under no circumstances intervene on behalf of any of the parties and will not become involved in a dispute between a Cardholder and the Merchant.

5. TRANSACTION LIMITS

- 5.1 I&M reserves the right to impose limits on the number of purchases which may be charged on an individual Credit Card account during any time period, and reserves the right to refuse to make payments in respect of orders exceeding such limit.
- 5.2 I&M also reserves the right to refuse to make payments in respect of orders from Cardholders with a prior history of questionable charges.

6. AUTHORISATIONS

- 6.1 The Merchant shall obtain authorization from I&M for a Transaction by means of an internet gateway communication message.
- 6.2 The Merchant shall display the authorization code number to the cardholder after a Transaction has been successfully paid.
- 6.3 I&M is entitled to refuse to authorize a Transaction without giving any reasons. However, explanations of such a refusal may be provided in the form of result codes availed as internet communication messages.
- 6.4 An authorization granted by I&M merely indicates that the Cardholder concerned has sufficient funds in his/her Credit Card account and is able to pay for the purchase at the time when the Transaction is authorized. This authorization does not warrant:
- 6.4.1. That the Credit Card is valid or genuine;
 - 6.4.2. That the person presenting the Credit Card is authorized to use the Credit Card;
 - 6.4.3. That I&M will eventually pay the value of the authorised Transaction; or
 - 6.4.4. That payment by I&M of the value of the authorized Transaction will not be charged back to the Merchant.

7. MERCHANT'S OBLIGATIONS IN RESPECT OF TRANSACTION DATA

- 7.1 The Merchant shall keep all information relating to a Transaction on its database for at least 180 (one hundred and eighty) days from the Transaction date.
- 7.2 The Merchant shall retain proof of supply of the goods/services for at least 180 (one hundred and eighty) days from the Transaction date.
- 7.3 The Merchant shall be liable for the value of the sale should the Cardholder subsequently repudiate or dispute any Transaction.
- 7.4 For Transactions processed through the payment gateway, the Merchant shall, within 5 (five) days of the deposit date, query any non-reflected credits.

8. SETTLEMENTS AND PAYMENTS OF TRANSACTIONS

- 8.1 I&M will credit the total net transaction amount to the nominated merchant account. The frequency of the payment will be at the sole discretion of I&M. However, the Merchant shall ensure that all Transactions are reconciled within 7 (seven) banking days of the date of the Transaction.
- 8.2 The Merchant undertakes to notify I&M immediately if there are any errors in the data interchange arising from a defective communication link. I&M's liability will then be limited to correcting the faulty data interchange in the system.
- 8.3 I&M will credit the Merchant's nominated bank account with the total net amount of all Transactions presented for payment, subject to Clause 14 below.
- 8.4 The fact that I&M may have credited the Merchant's nominated bank account shall not in any way prejudice I&M from effecting any charge backs or cancel payment of Transactions by debiting the Merchant's nominated bank account with the amount of the invalid Transaction.
- 8.5 The Merchant acknowledges that a Transaction may not be presented for payment unless the relevant goods and/or services have been supplied.

9. WARRANTIES

By requesting and receiving payments of Transactions from I&M, the Merchant warrants that;

- 9.1 All statements of fact are true;
- 9.2 The goods and/or services concerned were supplied at the Merchant's normal cash price and that the price includes no additional charges or element of credit;
- 9.3 The Transaction between the Merchant and the Cardholder is legal and further that the Merchant has the requisite authority to enter into this Agreement;
- 9.4 The goods and/or services supplied comply with the applicable provisions of relevant Kenyan Law;
- 9.5 there has been full compliance with the terms of this Agreement;
- 9.6 it will indemnify I&M against any claim or liability that may arise from a Merchant/Cardholder dispute in respect of goods and/or services supplied, the onus is on the Merchant to provide satisfactory evidence to I&M that the debit of the Cardholder's account was authorized by the Cardholder;
- 9.7 The goods and/or services referred to in the Transactions were in fact supplied by the Merchant to the Cardholder at the agreed location and within the agreed period of time;
- 9.8 The Merchant server and the server where the Merchant's web site is hosted is Secure and the data contained therein is held securely.

10. INDEMNITY

The Merchant hereby indemnifies I&M against and waives its rights in respect of any demand, claim or action relating to, or in connection with this Agreement, whether arising directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or willful misconduct of I&M or any of its employees. Any demand, claim or action arising against I&M as a consequence of the circumstances referred to in this Clause shall be limited to direct damages only, and special or consequential damages are specifically excluded.

11. INVALID TRANSACTIONS

11.1 A Transaction will be invalid if:

- 11.1.1 The commencement date indicated on the Credit Card has not yet been reached or the
- 11.1.2 Credit Card has expired;
- 11.1.3 The Transaction does not comply with any warranty contained in Clause 9 above;
- 11.1.4 The Merchant does not present the Transaction or supply the goods/services within the agreed period;
- 11.1.5 At the time of the Transaction any provision of this Agreement has been violated;

11.2 I&M may in its sole discretion elect to treat any of the above mentioned Transactions as valid, but without prejudice to the right of I&M to treat any subsequent, similar Transaction as invalid.

11.3 In the event of an invalid Transaction as set out above, I&M will be entitled to charge back this Transaction as described in Clause 12.1.

11.4 If the Merchant has a ratio of chargebacks to total sales Transactions of 1% (one per cent) or more, or a monthly ratio of chargeback amount volume to interchange sales volume of 2.5% (two decimal five per cent) or more each month for two consecutive calendar months, then, in terms of MasterCard and VISA regulations, the Merchant may be declared an excessive chargeback candidate. In such an event I&M and the Merchant, will be entitled to terminate this Agreement with immediate effect.

12. REFUNDS

12.1 If the Merchant is of the reasonable opinion that the Cardholder is entitled to a refund or a refund is requested by a Cardholder, the Merchant shall:

- 12.1.1 Process the refund Transaction through the applicable e-commerce facility;
- 12.1.2 Confirm the relevant refund details with the Cardholder;
- 12.1.3 Not give a cash refund to the Cardholder;
- 12.1.4 Determine the amount of the refund as at the date when the Merchant processed it, taking into account the prevailing exchange rate (where applicable), less any service fees and other charges that I&M may levy at the time.

13. PROVISIONS RELATING SPECIFICALLY TO SOFTWARE AND INFRASTRUCTURE

13.1 The Merchant may carry out Transactions only if it has an infrastructure approved by I&M and is in possession of a valid Merchant Certificate (or if such a certificate was provided as part of the payment gateway).

- 13.2 The Merchant agrees to comply with all applicable laws regarding import and export Transactions performed over the Internet.
- 13.3 I&M will not be party to any dispute between the Merchant and an e-commerce service provider appointed by the Merchant to establish its Internet infrastructure. I&M will also not be liable for any damages suffered by the merchant resulting from any failure or malfunction of this infrastructure.
- 13.4 The Merchant shall be responsible for paying any charges or additional charges levied by Telkom, Communications Commission of Kenya or other government/non-government body authorized to control any connections that the infrastructure needs to function properly.
- 13.5 I&M will not be liable for damage caused by a network breakdown, system failure or equipment malfunction, or by the destruction of or damage to facilities caused by power failures or similar occurrences. It will also not be liable for loss or damage caused by events beyond I&M's control and/or the fact that the Merchant or Cardholder is unable to gain access to the Merchant's infrastructure or to use it.
- 13.6 The Merchant agrees to implement any hardware/software prescribed by I&M to manage/reduce fraud, within a period agreed to by both parties. If the Merchant fails to do so, I&M will have the right to cancel this Agreement with immediate effect.
- 13.7 The Merchant agrees to implement security standards in the manner prescribed by I&M.

14. DEBITING THE MERCHANT'S ACCOUNT

- 14.1 I&M is entitled to debit from the Merchant's nominated bank account at whatever bank this account is held:
 - 14.1.1 Any refund due to the Cardholder in accordance with the refund procedure set out in Clause 12;
 - 14.1.2 The value of reversals of invalid Transactions;
 - 14.1.3 The Merchant commission, fees and charges as described in Schedule 1 and 2;
 - 14.1.4 Rentals for software and/or devices;
 - 14.1.5 Any refund due to a Cardholder and not attended to by the Merchant;
 - 14.1.6 The value of disputed Transactions brought to the attention of I&M by Cardholders;
 - 14.1.7 Interest at I&M's prime overdraft rate payable by the Merchant to I&M on any sum due;
 - 14.1.8 The value of Transactions performed by a cancelled or otherwise invalid card;
- and
- 14.1.9 Fees charged by VISA and MasterCard for excessive chargebacks or other disputes relating to the Merchant.
- 14.2 The Merchant shall pay an administration fee for each payment that is due to I&M and is returned unpaid by the Merchant's bank.
- 14.3. The Merchant undertakes to notify I&M immediately in writing or by electronic mail of any changes in its nominated bank account details. Such advice must reach I&M at least 10 (ten)-business days before coming into effect. The Merchant waives any right to claim

damages from I&M if such damages are the result of the non-compliance with this Clause.

- 14.4. The amounts referred to in 14.1 will be subject to exchange rate variations where applicable.
- 14.5. VAT will be payable on all fees referred to in this Agreement where applicable.
- 14.6. I&M reserves the right to terminate this Agreement immediately if any debit referred to in this Agreement is returned unpaid by the Merchant's bank.

15. FRAUDULENT TRANSACTIONS

- 15.1. The Merchant may not present records of Transactions that it knows or should have known were fraudulent or unauthorized by the Cardholder. The Merchant agrees to take responsibility for the action of its employees at all times.
- 15.2. I&M is entitled to debit the Merchant's bank account at any time with the value of all Fraudulent Transactions posted by the Merchant.
- 15.3. I&M reserves the right to terminate this Agreement immediately if the Merchant or its employees perpetrate fraud, or if the level of Fraudulent Transactions exceeds the levels defined by VISA, MasterCard, American Express or Diners Club.

16. DISCLOSURE OF INFORMATION

- 16.1. The Merchant shall advise I&M of any material change in the nature of its business and/or ownership as indicated on the application form.
- 16.2. The Merchant shall disclose to I&M information about any previous Merchant agreements concluded with other financial institutions (including but not limited to any restrictive conditions) and the reasons for cancelling those agreements, and authorizes I&M to investigate these.
- 16.3. Except where required by law, the Merchant may not disclose, sell, purchase, provide or exchange a Cardholder's name or account number to third parties, in the form of mailing lists, tapes or other media, if these details are obtained by means of a Credit Card Transaction. The Merchant shall keep securely all systems and media containing account, Cardholder or Transaction information (physical or electronic), including account numbers, to prevent access by or disclosure to anyone other than the Merchant's authorized personnel or I&M. The Merchant shall destroy all material that is no longer needed in such a way that the data is illegible.
- 16.4. I&M may disclose information concerning the Merchant to VISA International Service Association, MasterCard International Incorporated and other financial institutions for use in any fraud prevention schemes they may set up. This will help I&M and the institutions mentioned to identify merchants who are or may become involved in fraud or suspected fraud, bankruptcy or other similar situations, and assist I&M and the other financial institutions in their drive to prevent fraud.

17. INSPECTIONS

I&M has the right to conduct physical inspections and investigations at the Merchant's premises

when handling claims of Cardholders and investigating suspected fraud. The Merchant acknowledges that VISA International Service Association and MasterCard International Incorporated have the right to conduct an audit of the Merchant at any time.

18. ACCOUNT QUERIES

If the Merchant wishes to query the accuracy or any other aspect of an entry on its account, this shall be done within 30 (thirty) days of the date on which the entry appeared on the Merchant's bank statement, failing this, the Merchant will forfeit any claim against I&M in respect of this entry.

19. DISPLAY OF SYMBOLS

- 19.1. The Merchant shall display all marks and symbols provided by I&M in relation to the card in such a way that the public can clearly see that the Merchant is willing to honor the card in payment of goods and/or services. These marks and symbols shall be at least as big and prominent as those displayed for any other card.
- 19.2. The Merchant's right to use or display all such marks and symbols will continue only as long as this Agreement remains in force, or until I&M notifies the Merchant that they should no longer be used or displayed.
- 19.3. The Merchant may in no way state or create the impression that I&M, VISA International Service Association, MasterCard International Incorporated or any other card issuer endorses or guarantees any of its goods and/or services.
- 19.4. In promoting its products or services the Merchant may not refer to I&M, VISA International Service Association, MasterCard International Incorporated or any other card issuer.

20. DURATION

This Agreement shall be effective from the date on which it is accepted and remain in force for a period of 3 years from the date of going live on production; Either party may terminate this Agreement summarily by giving six (6) months notice in writing to the other.

21. SUSPENSION

I&M shall have the right, irrespective of anything to the contrary contained elsewhere in this Agreement, to suspend this Agreement at any time with immediate effect and without notice to the Merchant, provided that Transactions, for which payment instructions have already been authorized in terms of Clause 6, prior to such suspension, will be duly processed.

22. MISCELLANEOUS

- 22.1. In respect of any account that the Merchant holds with I&M or any other financial institution, I&M may elect to set off any amount due and payable by I&M to the Merchant against any amount due and payable by the Merchant to I&M. The Merchant shall immediately pay any net amount that it owes to I&M after set-off.
- 22.2. I&M may elect to consolidate all accounts held by the Merchant with I&M. A partial consolidation will not preclude I&M from exercising its rights in respect of any accounts or amounts not included in this consolidation.
- 22.3. Any indulgence granted by I&M to the Merchant in respect of the performance by the Merchant of his obligations under this Agreement or any neglect or failure by I&M to

- enforce any of the terms of it shall not be construed as a waiver or variation of this Agreement or otherwise prejudice any of I&M's rights under it.
- 22.4 No variation of this Agreement shall be of any effect unless made in writing and signed by the parties hereto.
- 22.5 This Agreement is personal to I&M and the Merchant and may not be sub-contracted or assigned by either party.
- 22.6 Any notice required or permitted under this Agreement must be in writing and must be personally delivered or sent by [expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by fax or prepaid telegram or telex (provided that the sender confirms the fax, telegram, or telex by sending an original confirmation copy by certified or registered mail or expedited delivery service within 3 business days after transmission) to the recipient party at the relevant address shown in this Agreement or such other address as has been notified in accordance with this Clause by the party concerned as being its address for the purposes of this Clause. Any notice shall be deemed to have been given at the time of personal delivery, or in the case of fax, telegram, or telex upon transmission provided confirmation is sent as described above, or in the case of expedited delivery service or registered or certified mail 3 business days after the date and time of mailing.
- 22.7 This Agreement supersedes all previous agreements between I&M and the Merchant.

23. TERMINATION

- 23.1 Without prejudice to any remedy which I&M may have against the Merchant for any antecedent breach or non-performance of this Agreement and without prejudice to the right of either party to terminate this Agreement under the law, I&M may summarily terminate this Agreement on giving written notice to the Merchant:
- 23.1.1 if the Merchant commits a breach of any of the terms or conditions of this Agreement and the breach (if capable of remedy) is not remedied within fourteen (14) days of being notified to the Merchant in writing by I&M;
- 23.1.2 if the Merchant takes any steps (including but not limited to convening any meeting of creditors) with a view to proposing or proposes or makes or enters into any arrangement or composition with or for the benefit of its creditors, or negotiations or proceedings are commenced with a view to the general readjustment or re-scheduling of all or any part of the liabilities of the Agent;
- 23.1.3 if a receiver, or other encumbrancer takes any step with a view to taking possession of, or is appointed over, or any person takes any step to levy, enforce upon or sue on or any distress, execution or other process is levied or enforced (and is not discharged within seven days), upon the whole or any substantial part of the assets of the Merchant;
- 23.1.4 If the Merchant ceases or threatens to cease to carry on business, or is or becomes unable to pay, or suspends or threatens to suspend making payments of, its debts; and
- 23.1.5 if a petition is presented or a meeting is convened for the purpose of considering a resolution, or other steps are taken, for the making of an administration order against the Merchant and/or the winding-up bankruptcy or dissolution of the Merchant.

24. DISPUTE RESOLUTION

- 24.1 Any dispute which arises between the parties shall be referred to a joint committee of a director of each party or alternates appointed by them who will use their best endeavors to resolve the dispute within fourteen (14) days of the dispute having been referred to them.
- 24.2 Should the joint committee fail to meet within 7 days of notification of a dispute or be unable to resolve a dispute in accordance with the foregoing such dispute will be submitted to and decided by arbitration in terms of Clause 24.3.
- 24.3 Subject to Clause 24.1 and 24.2 any dispute arising from or in connection with this Agreement shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within fourteen (14) days of notification of a dispute upon the application of either Party by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom. Such arbitration shall be conducted in Nairobi in accordance with the rules of arbitration of the said Institute and subject to and accordance with the provision of the Arbitration Act 1995 or any modifications thereof. To the extent permissible by law the determination of the arbitrator shall be final and binding upon the parties.
- 24.4 Nothing in this Clause shall prevent any Party from obtaining interim relief in a court pending the outcome of the arbitration.

25. GOVERNING LAW

- 25.1 The laws of the Republic of Kenya shall govern the validity interpretation and performance of this Agreement and the courts of Kenya shall have sole jurisdiction.