

## 1. General

### 1.1 Applicability

1.1.1 These ONPEX Terms and Conditions (herein referred as OTC) are applicable to all proposals and/or deliveries made by ONPEX and agreements and/or other legal relationships between ONPEX and a Customer, the resulting provisions and related activities regardless of whether or not they are based on a written agreement, unless otherwise agreed upon in writing.

1.1.2 Purchase conditions or any other conditions used by Customer will not be applicable. The applicability of purchase conditions or any other conditions from Customer or from third parties on behalf of Customer is therefore expressly rejected by ONPEX, unless explicitly accepted in writing by ONPEX.

1.1.3 ONPEX reserves the right to make alterations and/or additions to the OTC. The modified OTC will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.

1.1.4 If Customer consists of more than one legal entity or organization, each will be responsible for the entire fulfillment of the obligations that may flow forth from the agreement with ONPEX.

### 1.2 Definitions

In the OTC the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.

- Acquiring bank: A financial establishment that offers connections to payment schemes.
- Business Days: German working hours (9.00-17.00 CET) and days (Monday through Friday) with the exception of public holidays.
- Customer: A person or a legal entity trading for a profession or company that requests or orders the delivery of Services.
- Data Center: A Data Center is a facility in which servers can be connected to networks especially the internet. A part of the Infrastructure can be found in the Data Centers of ONPEX.
- End-users: The buyer or products or services of the Customer. End-users are clients of Customer.
- First Line Support: Verbal and/or written advice to End-users.
- ONPEX: ONPEX is a registered trademark by ONPEX GmbH. ONPEX and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions ONPEX applicable.
- ONPEX Infrastructure: The part of the Infrastructure which is maintained and/or supplied by ONPEX and which ONPEX can control.
- ONPEX Services: All products and services provided by ONPEX and the resulting provisions and related activities, which do not originate from third parties and whose intellectual property rights, industrial property rights and other rights are held by ONPEX.
- Identification Codes: User names, passwords, address codes and other codes.
- Infrastructure: The complete system, hardware, software, network components and connections that is used by the Services. This collection of facilities is used for storage and transportation of data among other things.
- OPXgate: Technical gateway of ONPEX including any API, software and Customer Portal related to the offered Services.
- Online Payment Service: Services that ensure that End-users can make a payment via electronic payment methods at any moment of the day as long as the internet is available.
- Permit: A written public act of a bank or other governmental body, which gives rights to ONPEX.
- Process-data: The data entered by End-user or Customer and/or data entered by third parties, including but not limited to transaction data.
- Services: All ONPEX Services and/or Third Party Services provided by ONPEX, the resulting provisions and related activities.

### 1.3 Confirmation

Agreements, assignments or other expressions of whatever nature by employees of ONPEX are only valid and binding when they have been confirmed in writing by authorized representatives of ONPEX.

### 1.4 Offers, Agreements, Dissolution

1.4.1 All offers made are without engagement, unless the offer explicitly indicates otherwise in writing. Obvious errors or mistakes of ONPEX do not bind ONPEX.

1.4.2 Offers are based on the data, information or requirements made known by the Customer.

1.4.3 If an offer by ONPEX is expressly not without engagement, the offer shall be valid for a period of 14 days after its date, unless otherwise indicated in writing in the offer. If Customer does not accept the offer within the above indicated term, the offer shall expire.

1.4.4 If the acceptance (in minor points) differs from the offer, ONPEX is not bound by such. The agreement does not come into effect after such an alternative acceptance.

1.4.5 A combined price indication does not require ONPEX to perform a part of the Service for the corresponding part of the indicated price.

1.4.6 Deals or offers are not automatically applicable to future agreements.

1.4.7 All offers and obligations to fulfill related Services, which requires an (extra) Permit, shall take place under the condition that ONPEX obtains the necessary rights or has such rights and does not lose such.

1.4.8 Unless law or regulations explicitly and compulsorily determine otherwise for a part of a Service, an agreement between ONPEX and Customer for which no further contract and/or term has been agreed, has a term of 2 (two) years if the delivery concerns a Service for which a periodic fee is charged. If this agreement is not terminated or not timely terminated, it shall be extended repeatedly in increments of 1 (one) year.

1.4.9 Termination of the agreement, occurs by means of a registered letter, whereby a 3 (three) month notice period is applicable.

1.4.10 ONPEX has the right to immediately terminate the agreement, wholly or partially, without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if Customer is a person and dies, if warranted based on information obtained about the creditworthiness or the payment behavior of Customer, if Customer, upon conclusion of the agreement was requested to provide (enough) security for the fulfillment of its obligations under the agreement and this security is not made or is insufficient, if Customer submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed from Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by ONPEX will be immediately due.

1.4.11 ONPEX has furthermore the right to dissolve the agreement if ONPEX has good reason and in any case if the Services are used or intended to be used for criminal or other illegal activities, or it is at least plausible that such use or intention exists. ONPEX also has the right to dissolve the agreement if circumstances arise of such a nature that fulfillment of the agreement becomes impossible or fulfillment can no longer be reasonably and fairly required or if other circumstances arise of such a nature that unaltered maintenance of the agreement cannot reasonably be expected.

1.4.12 After dissolution of the agreement by ONPEX, Customer is required to fulfill payment of the amounts indicated in the Price List for the Services used until the end of the agreement.

1.4.13 After the agreement has been ended, for any reason, Customer can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality and non-competition.

1.4.14 Parties shall return all information received from or on behalf of the other party that is capable of being returned (including copies or back-ups) to the other party and all information that is not capable of being returned (such as software and documents loaded into hardware) shall be destroyed for as for as possible:

- a) If and as soon as the agreement has ended, or
- b) Upon the first request of the other party.

In the event that Customer breaches this clause, Customer will be charged, without further notification required, a fine of € 10,000 (ten thousand Euros) for each breach as well as € 5,000 (five thousand Euros) per day that the breach continues, undiminished the right of ONPEX to claim full compensation for damages incurred.

### 1.5 Fulfillment of the Agreement

1.5.1 The availability of the Services is an obligation to perform to the best of ONPEX' abilities and the quality cannot be guaranteed.

1.5.2 ONPEX shall perform the agreement to the best of its knowledge and ability, in accordance with the agreements with Customer. Performance is based upon the current state of the art.

1.5.3 ONPEX has the right to change the Services. ONPEX shall notify Customer of the changes four weeks before the changes become applicable.

1.5.4 If ONPEX makes access or identification codes available to Customer for the fulfillment of the agreement, then ONPEX can change the access or identification codes. After the change, ONPEX shall notify Customer of the new codes.

1.5.5. ONPEX is permitted at any time to use third party products and services to fulfill its own duties under this contract. In this case the Customer agrees in possible additional valid terms and conditions, which will have to be made available by ONPEX.

#### **1.6 Co-operation/Information Requirements from Customer**

1.6.1 All assignments are carried out by ONPEX on the basis of data, information, requests and/or requirements made known to ONPEX by Customer.

1.6.2 Customer shall provide all necessary cooperation to ONPEX and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.

1.6.3 If data, information and/or requirements necessary for execution of the agreement, are not provided, not timely provided and/or not provided in accordance with the agreement, or if Customer fails to meet its obligations in any other way; then ONPEX has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and ONPEX has the right to charge the costs incurred at its actual rates.

1.6.4 If changes and/or new facts arise in regards to data, information, requests and/or requirements previously provided, ONPEX will always be fully justified, to adjust the agreement to these new circumstances or to dissolve the agreement.

1.6.5 If Customer makes functional improvements or any other adjustments in the Services, Customer is obliged to report such adjustments to ONPEX.

1.6.6 In the event ONPEX performs activities in a location other than its own, Customer will be responsible for providing free of charge reasonably requested facilities, such as office space and telecommunication facilities. Customer shall indemnify ONPEX and its workers from any third party claims in connection with damages arising out of the performance of the agreement, which is the result of actions or inactions of Customer or resulting from unsafe situations at Customer's location.

1.6.7 Customer is responsible for the use and proper application in its organization of the Services as well as the tools therefor, of whatever nature and for the security thereof, such as but not limited to implementation and maintenance of the up-to-date software Services made available.

1.6.8 If the performance of the agreement is delayed due to Customer's failure to (timely) meet its obligations as indicated in this clause, the resulting extra costs are for Customer's account and ONPEX has the right to invoice any necessary additional work.

#### **1.7 Use of Identification Codes**

1.7.1 ONPEX will make Identification Codes solely available to Customer for the use of Services. Customer will use these Identification Codes with care. Customer will notify ONPEX in the event of loss, theft, and/or other forms of unauthorized use, in order to enable parties to take the proper actions.

1.7.2 Customer carries all responsibility, liability and costs related to the use of Identification Codes used and/or distributed by Customer. In no event will ONPEX be liable for the misuse and/or unauthorized use of Identification Codes.

1.7.3 If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, ONPEX can provide Customer with instructions, which must be carried out.

1.7.4 If it is determined that misuse has been made of Identification Codes or if Customer ignores instructions given as set out in this clauses, Customer will be immediately in default.

#### **1.8 Data Responsibility**

1.8.1 ONPEX does not control or have any insight in the data traffic from and/or to Customer. ONPEX is merely a passive conduit. ONPEX does not give any warranties with regard to content of data such as but not limited to reliability and completeness.

1.8.2 Customer is responsible for the content of data traffic originating from Customer.

1.8.3 Customer indemnifies and will keep ONPEX free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic or the information originating from Customer.

1.8.4 Customer shall ensure that it is not possible to abuse the card data or the electronic transmission, e.g. by manipulation of the data input, within its personnel area or on its premises, including the persons commissioned by it (e.g. Internet providers). When entering data, the manufacturer's operating instructions shall be strictly observed. Moreover, Customer shall be solely responsible towards ONPEX that data are not unlawfully transmitted (e.g. personal data of the cardholder, card data) within its personnel area or on its premises, including the persons commissioned by it (e.g. internet providers) or that data are unlawfully disclosed to third parties in any other way. Should Customer become aware of any possible abuse of the electronic transmission or the card data or any unlawful disclosure of data, it shall inform ONPEX immediately. Any legal duties of Customer shall not be affected.

1.8.5 The customer is responsible for ensuring that all data to be protected with all available security against unauthorized access by third parties. To this particular purpose the following provisions apply:

- a) the customer is required, among other things, to ensure that security patches on all its devices are installed and configured safe from third parties access;
- b) at no time sensitive data like credit card numbers or Card Verification Code (CVC/CVV) are saved on media;
- c) to protect all passwords and change them regularly, especially the password to access OPXgate;
- d) to secure the access to its servers and applications and its entire technical infrastructure, especially with firewalls and to install valid and newest anti-virus programs;
- e) to introduce methods for developing new secure applications Customer shall truthfully state at the commencement of the Agreement whether it intends to store personal data of cardholders and/or card data. Moreover, Customer shall without request annually submit to ONPEX a new written declaration as to whether it stores such data. Customer shall only be authorized to process and/or store the data if the PCI DSS requirements are met on the processing and/or storage media on the date of the respective processing or storage. Moreover, Customer shall be bound to observe the PCI DSS (Payment Card Industry Data Security Standard). Transaction data shall only be stored after obtaining such certification, however, only if and as long as this is admissible and indispensable. The data included in track 2 of the magnetic stripe of the payment card and other verification codes shall by no means be stored. Customer shall without undue delay forward a copy of the certificate without ONPEX' request. Customer shall regularly and without undue delay forward the copies of the certificates to be obtained from time to time to ONPEX. Customer shall take reasonable precautions against unauthorized use of cards and cardholder data. Customer's responsibility for the security of the personal data of the cardholders and the card data shall commence in e-commerce with the transmission of these data to the Customer's system and shall end upon the conclusion of the transmission of the data to ONPEX' system. Customer shall also be liable for the third parties commissioned by it both in relation to the transmission of the data during the payment process and in relation to the processing and storing of the data.

#### **1.9 Delivery**

1.9.1 All (delivery) dates which may be named by and may be applicable to ONPEX are determined to the best of ONPEX' knowledge on the basis of information made known to ONPEX and will be taken into consideration.

1.9.2 (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which ONPEX shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then ONPEX and Customer will consult with each other to agree on a substitute (delivery) date.

1.9.3 Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by ONPEX. ONPEX does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

#### **1.10. Prices and Payment**

1.10.1 All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.

1.10.2 ONPEX will invoice the amount owed by Customer, appropriately itemized.

1.10.3 The Parties agree, that ONPEX could balance indebted amounts against other assets of Customer.

- 1.10.4 Customer and ONPEX agree, that ONPEX holds a lien on all assets of the customer, in possession of ONPEX including assets which may be acquired. ONPEX acquires a lien on any claims, which the customer has or will be entitled against ONPEX within its relationship (e.g. account balances). The lien serves to secure all existing, future and related claims ONPEX has or might have from the business relationship with Customer.
- 1.10.5 Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. ONPEX reserves the right to charge all incurred costs to Customer, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 500 (five hundred Euros). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate increased with 3%, on all outstanding debts starting from the date of failure to pay.
- 1.10.6 Until full payment has been made, ONPEX has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.
- 1.10.7 When customer stopped processing with ONPEX, ONPEX has the right to hold-back all collected funds for a period of 180 days. After the hold-back period the Customer needs to request in written form the settlement of the hold-back within 90 days.
- 1.10.8 If ONPEX is unable to make a settlement to Customer by reasons not depending on ONPEX, ONPEX will have the right to charge a fee of 8.00% on a monthly basis over the indebted amount.
- 1.10.9 The indebted amount may be decreased with order costs, postage costs and costs of third parties. In the event that activities need to take place outside of ONPEX' office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting time compensation amounts to 50% of the current hourly rate. The means of transportation will be determined by ONPEX. The foregoing is also applicable on services provided outside of Germany.
- 1.10.10 Above mentioned paragraphs leave all the legal rights of ONPEX unhindered, when Customer fails to meet Customer's commitments.
- 1.10.11 In case of an agreement involving periodic payments by Customer, ONPEX has the right to adjust prices and tariffs at least 3 months after the conclusion of the agreement.
- 1.10.12 ONPEX will notify Customer in writing of any price and tariff changes one calendar month before the change becomes applicable.
- 1.10.13 If Customer does not agree with a price and/or tariff change announced by ONPEX as indicated Customer may, within 7 Business Days of the announcement by ONPEX, terminate the agreement as of the date upon which the price and/or tariff change would become applicable.
- 1.10.14 ONPEX always has the right to change the transaction costs as indicated in the agreement, such as but not limited to price changes of the payment services indicated in the agreement and price increases caused by changes in or new legislation or regulations. Such price increase is applicable after Customer has been notified of such increase. If Customer does not agree with a price and/or tariff change announced by ONPEX, Customer may immediately terminate the agreement as of the date upon which the price and/or tariff change would become applicable.
- 1.10.15 The prices agreed to between ONPEX and Customer are among other things based on the costs of salaries, social premiums, materials, ONPEX Infrastructure, purchased Third Party Services, data communication lines, and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of closing of the agreement. ONPEX is also authorized, in case of changes to one or more cost items and/or increased costs due to changed or new legislation or other regulations, and/or changes in the rate of exchange, the consumer price index (CPI all households), or the CBS index for business related services (software consultancy), to adjust the prices to these changes.
- 1.10.16 If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the Deutsche Statistische Bundesamt by 10%.
- 1.10.17 In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price. Changes in interest or exchange rates may be applied immediately and without notice by ONPEX where the changes are based on the reference interest rate or reference exchange rate.
- 1.10.18 When charges are to be based on Subsequent Calculation, this means that prior to ONPEX commencing the agreed upon activities a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. Customer is, then, aware that there is a possibility that the previously made estimate could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.
- 1.10.19 ONPEX has the right to charge payments in Advance. If full payment of the Advance is not made, ONPEX has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owed by Customer will be immediately due.
- 1.10.20 ONPEX and Customer agree that ONPEX shall be conferred a lien on any claims arising from this Agreement to which Customer is or will be entitled against ONPEX. The pledge shall secure any existing, future and conditional claims to which ONPEX is entitled against Customer. In the event ONPEX enforces its pledge, it shall invest the retained amount at interest if such interest payment can be agreed with reasonable effort.
- 1.10.21 ONPEX may require provision of security in the form of a deposit of an amount of money or the creation of a bankable security interest for any claims arising from this Agreement, even if the claims to be secured are conditional. If ONPEX has initially refrained in part or as a whole from requiring the creation of security interests at the time when the claims against Customer have arisen, it may require the creation of a security interest subsequently. The creation of such a subsequent security interest shall require that circumstances occur or become known which justify a higher risk assessment of the claims against Customer. This requirement shall, in particular, be given if the financial situation of Customer has permanently deteriorated or threatens to deteriorate or the value of the provided securities has deteriorated or threatens to deteriorate. ONPEX shall grant Customer a reasonable period for creating or enhancing the security interests. If the business relationship between the parties is terminated, ONPEX is entitled to withhold the amount not used up as long as any claims against Customer may become known, however at the longest for a period not exceeding seven (7) months after the termination of the Agreement.

### 1.11 Intellectual Property Rights

- 1.11.1 Customer is granted the non-exclusive right to use the ONPEX Services and corresponding documentation.
- 1.11.2 ONPEX has the exclusive right to further develop the ONPEX Services and place them at the disposal of third parties.
- 1.11.3 Except where Third Party Services are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by ONPEX, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Service or Service to be developed in the future, reside with ONPEX.
- 1.11.4 Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to ONPEX.
- 1.11.5 Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks, or trade names from the Services, or to have such changes made by third parties.
- 1.11.6 The intellectual property rights, industrial property rights or other rights of a Service, or a part thereof, can only be transferred to Customer by means of a written deed, if ONPEX has these rights.
- 1.11.7 In the event that ONPEX, Customer or a third party makes functional improvements or other adjustments in the Services; the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Service will remain unchanged with ONPEX or the rightful third party. If the above mentioned rights do not belong to ONPEX or the rightful third party, Customer will cooperate in transferring the above mentioned rights to ONPEX or the rightful third party.
- 1.11.8 All intellectual property rights, industrial property rights or other rights of documentation, such as offers and accompanying documents, will remain with ONPEX. Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply with the foregoing obligation.
- 1.11.9 Customer is prohibited from directly or indirectly (through a third party) copying, duplicating or altering the mentioned Services in any way, without the prior written approval from ONPEX. Customer does not have the right to make the Services available, under any title or in any way whatsoever, to any third party (third parties also include affiliated and/or subsidiary companies). Reverse engineering or de-compilation of the Services is not permitted by Customer, unless such is explicitly permitted by law.
- 1.11.10 Customer is not allowed to use the name and logo of ONPEX or of an Acquiring Bank if not otherwise agreed in writing.

## 1.12 Confidentiality/Non-competition

1.12.1 ONPEX and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files, financial information and services, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.

1.12.2 ONPEX is authorized to place the name and logo of Customer on the ONPEX website and/or reference list and to make them available to third parties for information.

1.12.3 Customer will not enter into any direct or indirect commercial, employment, or other such relation with employees from ONPEX during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of ONPEX.

## 1.13 Complaints and Time Limitations

1.13.1 Complaints must be made by Customer in writing or electronically to ONPEX within 8 days after the complaint is discovered or reasonably should have been discovered. If such does not happen, Customer shall be deemed to have unconditionally accepted the Service.

1.13.2 Complaints shall not be taken into consideration if it appears that Customer or an unauthorized third party has made a change to the Service, which is directly or indirectly related to the complaint, except in the event that such occurred with ONPEX' foreknowledge or in emergencies where it was not possible for Customer to notify ONPEX but nonetheless should have notified ONPEX.

## 1.14 Liability

1.14.1 ONPEX' liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost files and/or data, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Customer, is expressly rejected. ONPEX shall in no event be liable for damage resulting from Customer's use of the Services for another purpose than that for which the Services have been delivered.

1.14.2 With the exception of the cases named ONPEX has no liability for damage compensation regardless of what an action towards compensation could be based upon.

1.14.3 ONPEX' liability exists solely when Customer immediately and appropriately notifies ONPEX of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and ONPEX then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that ONPEX is able to react adequately. The condition for the existence of any right to compensation is always that Customer notifies ONPEX in writing by registered mail within 1 (one) month after the damage came into existence and takes the necessary measures to limit the damage as much as possible.

1.14.4 Customer indemnifies ONPEX from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by ONPEX.

1.14.5 ONPEX' total liability shall be limited, to compensation for direct damage and to a maximum of the amount of the price stipulated in the agreement (excluding VAT) to a maximum of € 100.000,- (one hundred thousand Euros), whereby a sequence of events is regarded as one event. If the agreement also includes an agreement over time with a term of more than 1 (one) year and ONPEX' liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to ONPEX on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 100,000 (one hundred thousand Euros). ONPEX' total liability for damage resulting from death or physical injury will in no event amount to more than € 1,000,000 (one million Euros), whereby a sequence of events is regarded as one event.

1.14.6 Direct damage is exclusively understood as:

- a) The reasonable expenses which Customer would have to incur to make ONPEX' performance conform to the agreement; this alternative damage shall not be compensated, however, if the agreement is dissolved by or at the suit of the Customer;
- b) The reasonable costs made in determining the cause and extent of the damage;
- c) The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.

1.14.7 If the customer has insured itself against damage, ONPEX is in that case not liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement.

1.14.8 ONPEX ensures the provision of services within the contractually agreed availability. A non-availability of the service is not given where it is based on a bug on OPXgate, which could have been identified easily by the Customer. The liability of ONPEX and their legal representatives or their agents for damages is limited to breach of material contractual obligations (cardinal obligations), unless the damage is due to a grossly negligent breach of duty of ONPEX, their legal representatives or agents. ONPEX is not liable for

- a) defects in products and services of third parties, such as software or data by third parties, even if ONPEX insofar has acted as intermediary between the parties and the third party;
- b) defects and incompleteness of the provided interfaces;
- c) shortages, defects or failures which are caused by the Customer or by his telecommunications provider;
- d) any loss on interest of the Customer.

1.14.9 ONPEX is not liable for any damage regardless of its nature, which is the result of a failure to provide Services on time and ONPEX is not liable for any damage whatsoever which is the result of the fact that ONPEX must comply with certain, changed, and new legislation or other regulations.

1.14.10 ONPEX is not liable for any damage as a resulting from the failure of payments to Customer.

1.14.11 If telecommunication facilities are used for the performance of the agreement, ONPEX is not liable for damage or loss of data or processing results during the transmission of data using the telecommunication facilities. ONPEX shall handle the access codes provided by Customer with care but is not liable for misuse thereof. ONPEX cannot be held liable for technical disturbances which occur with the telephone companies whereby certain telephone transmission is not possible.

1.14.12 ONPEX does not guarantee that material used to perform the agreement does not breach any patent, copyright, trade secret, or property right of a third party.

1.14.13 ONPEX will explicitly not be responsible and it will be therefore not subject to the scope of services as part of OPXgate provided by ONPEX:

- a) the connection and data transfer between client and Customer;
- b) the data transmission in telecommunication networks by third parties. ONPEX has no control on them and on the internet traffic and assumes no responsibility for their availability and reliability;
- c) the accuracy of the result of the authorization. ONPEX assumes in connection with the provision of ONPEX no guarantee of payment.
- d) the availability of the service of any used payment scheme.

## 1.15 Interruption of Service

ONPEX is entitled to suspend the service of OPXgate when

- a) ONPEX measures cannot be done without interruption of the service and such measures if possible are not performed within peak hours;
- b) the customer has unwarranted reversals of charges levied by ONPEX and the payment deadline has passed without success.

## 1.16 General Duties of Customer

To use OPXgate, the customer has to provide hardware and software suitable for the Internet, a working internet connection, a SSL-enabled browser and an interface, which allows to use OPXgate technically. In addition, the customer shall, if necessary, allow ONPEX to program the required interface as described by ONPEX. The customer is obligated to

- a) to take the necessary precautions for the security of its systems;
- b) to report faults and damages immediately to ONPEX, in the case of a telephone message later in writing, including the description of the circumstances and the damage or interference and possible causes. The customer will provide all necessary documents and information to ONPEX and give open access to the rooms and the hardware; ONPEX will not eliminate any interference or damage caused by not using the latest software releases by the customer.

### **1.17 Privacy Information**

1.17.1 Customer is responsible for protecting information, which is sent and/or processed by the equipment and/or programs of ONPEX on behalf of Customer. Customer will indemnify ONPEX against any allegation as a result of a violation of any person's privacy. Where Customer is authorized, Customer explicitly agrees with the registration of (privacy) information of users in the privacy registration of ONPEX for administrative and management purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for ONPEX. This information will not be provided to third parties unless ONPEX has a suspicion following German GWG or is obligated to do so on the basis of a court order. Contrary to the terms ONPEX will be responsible for the protection of privacy related information of which its use is necessary by ONPEX for the proper performance of its obligations under the agreement and will indemnify Customer against allegations of private individuals for violation of their privacy as a result of an act or failure to act of ONPEX. With regard to the processing of personal data, ONPEX acts on behalf of Customer. The processing by ONPEX of the personal data provided by Customer is exclusively for the implementation of the Service. ONPEX commits itself and any employees involved in the processing of personal data to maintain the confidentiality of the personal data provided by Customer. ONPEX only makes personal data of consumers available to third parties for certain services if agreement has been reached with the consumer and on behalf of Customer, or under legal obligation. In the latter case, ONPEX shall inform Customer directly of such disclosure. ONPEX can in no way be held liable for any abuse of this data by third parties. Outside of the ONPEX Infrastructure, ONPEX does not accept any responsibility or liability for the protection and security of personal data. For as far as End-users get direct access to that part of the ONPEX platform that is used for the Customer, Customer is responsible for properly informing persons over its identity, the manner in which the personal data protection is interpreted, and the manner in which persons can use their legal rights. Customer is responsible for carrying out inspection/correction rights of individuals whose personal data are collected/processed.

### **1.18 Replacement Performance**

1.18.1 ONPEX is permitted to deliver alternative Services than those Services ordered by Customer if the performance and operation of such alternative Services is essentially no different from the Services ordered.

1.18.2 If the agreement is concluded with the objective of having activities carried out by a particular individual, ONPEX will be entitled to replace this person with another person with the same qualifications.

### **1.19 Force Majeure**

1.19.1 Neither party is obligated to fulfill any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and for which a party cannot be held accountable for by law, legal act, or generally accepted practices. The aforementioned circumstances include circumstances that are beyond ONPEX' power as well as business risks of ONPEX, whether such occurs within the company of ONPEX or in the company of Customer or in the company of third parties that are involved in the agreement, such as an interconnect partner or a telephone company. These circumstances include but are not limited to failure to perform by a supplier of ONPEX, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Services and/or products delivered by a third party, bad weather conditions, fire, explosions, electricity failures, network failures, floods, illness, lack of staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or Permits and/or maintain such license and/or Permit, lack of materials, theft, traffic disruptions and/or transportation problems.

1.19.2 When force majeure is of a temporary nature, ONPEX has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation. ONPEX also has the right to invoke force majeure if the circumstance rendering (further) fulfillment impossible occurs after ONPEX should have fulfilled its obligations.

1.19.3 ONPEX reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

1.19.4 In the event that the force majeure of either party surpasses a three month period, either party has the right to dissolve the agreement without being obliged to any form of damage compensation regarding such dissolution.

1.19.5 Where ONPEX, at the time of the occurrence of force majeure, has performed a part of its obligations under the contract or will perform such, and such performed part or to be performed part has an independent value, the parties are entitled to invoice for such performed or to be performed part. Parties are obliged to invoice as if it were a separate agreement.

### **1.20 Nullity**

If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished. In regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement with in which the parties shall strive for the maintenance of this agreement (or the remainder of the term in question) in its totality.

### **1.21 Applicable Law and Dispute Resolution**

All agreements made between ONPEX and Customer are governed by the laws of Germany, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable. Disputes shall be placed before a qualified court in Munich.

## **2. Services**

### **2.1 Activities**

ONPEX offers also Services to its Customers. The following Terms will be valid for every Services provided by ONPEX, not being solely Online ePayment Services and/or Technical Services. All Services will take place without interruption on Business Days and under normal working conditions.

Activities that are performed outside of Business Days are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Business Days. The applicable rate will be increased with 100% for overtime on weekends and public holidays.

If parties agree that activities will take place in phases, ONPEX will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.

ONPEX will only be obligated to follow timely and reasonable instructions given by Customer when performing activities if agreed upon explicitly in writing. ONPEX is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.

ONPEX is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

### **2.2 Advice**

All Services that can be considered or described as advice will only be given to the best of ONPEX' knowledge and capability.

ONPEX is not responsible and/or liable if the activities that follow forth from advice result in Customer's failure to carry out a project within allocated budgets, time schedules and other agreed upon conditions.

ONPEX will provide advice on the basis of the conditions required by ONPEX and information received from Customer as mentioned. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

### **2.3 Support**

ONPEX can offer Second Line Support to Customer.

ONPEX will only provide Second Line Support on the most current updates of the ONPEX Services. ONPEX is entitled in its sole discretion to provide Second Line Support on older ONPEX Services.

Customer is responsible for First Line Support. If ONPEX establishes that Customer does not offer sufficient possibilities to respond to questions from End-users or respond to comments from End-users, ONPEX is entitled to provide First Line Support and to invoice administrative fees to Customer for such, as further indicated in

the Price List.

#### **2.4 Additional Work**

If, in the opinion of ONPEX, a change request by Customer is in fact a request for additional work, ONPEX will notify Customer thereof prior to performing additional work. Upon Customer's request, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.

It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

### **3. Technical Services**

#### **3.1 Technical Services General**

3.1.1 The Technical Service will take place at the ONPEX Data Center and on ONPEX Infrastructure.

3.1.2 With regard to the access and use of the Technical Service, Customer has equipment and software directly or indirectly available which comply with the standards and/or requirements set by ONPEX of which Customer has been notified directly or indirectly.

3.1.3 Customer will enable ONPEX to verify if the standards and/or requirements of any agreement between the parties are met.

3.1.4 If Customer, after the verification still fails to meet the standards and/or requirements, ONPEX will have the right to terminate or dissolve the agreement wholly or partially without prior notification and/or judicial intervention.

3.1.5 Customer is required to follow instructions given by ONPEX regarding the Technical Service.

3.1.6 ONPEX is entitled to view log files and the like for purposes of analyzing the use of the Technical Service. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of ONPEX). This does not apply to figures and data with regard to the use of the Technical Service, which are not directly traceable to Customer's use.

3.1.7 In the event Customer signals a malfunction, Customer must immediately report such to ONPEX. After Customer has notified ONPEX of the malfunction, ONPEX will take the necessary steps, which will or could lead to a solution.

3.1.8 The costs for resolving the malfunction are for the account of Customer if it appears that the malfunction is the result of Customer's act or failure to act in accordance with the agreement.

3.1.9 ONPEX will inform Customer prior to the commencement of intended Maintenance with regard to the Technical Service, if Maintenance will lead to problems with regard to gaining access to the Technical Service or the non-availability of the Technical Service.

#### **3.2 ONPEX responsibilities Technical Services**

3.2.1 ONPEX shall ensure the provision of the Technical Service ONPEX will on a best effort basis and where influential by ONPEX strive for an availability of the Technical Service of 99%.

3.2.2 The percentages mentioned are measured over a calendar year. The time for Maintenance is not included.

3.2.3 ONPEX does not guarantee, amongst others, that the telephone lines, the Internet and/or other networks will offer optimal access.

3.2.4 ONPEX does not have any obligations with regard to availability, reliability and/or other performance requirements with regard to the telephone lines, the Internet and/or other networks and the resulting provisions.

3.2.5 ONPEX will strive to provide all useful and necessary measures to ensure adequate operability and continuity of the Technical Service. ONPEX makes use of the most recent and used virus protection programs in the market.

3.2.6 ONPEX will strive, in accordance with the most current technology available, to provide adequate physical and logical security measures against unauthorized access by third parties to computer systems or computer programs used by ONPEX and/or stored Process-data, in light of the provisions provided for under the agreement.

#### **3.3 Changes of the Technical Service**

3.3.1 ONPEX is entitled, after a reasonable notification period and without any compensation to Customer, to make adjustments to and/or changes in the Technical Service offered such as but not limited to:

- a) entrance procedures, such as operational rules and security procedures.
- b) changes in a third party provider/supplier, location, hardware, software and other facilities necessary for the provision of the Technical Service.

3.3.2 If any changes made have a significant negative impact on Customer's business or the functionality of the Technical Service, Customer may, after providing relevant proof of the deterioration in writing, request in writing that ONPEX provide an alternative. If ONPEX then fails to provide an alternative, Customer will have the right to terminate the use of the Technical Service, without any damage compensation required by ONPEX and/or third party or restitution of monies paid.

#### **3.4. Code of Conduct**

3.4.1 Customer will make use of the Technical Service and/or other facilities offered in a responsible manner. It is prohibited to use the Technical Service and/or other facilities offered in a manner that will result in:

- a) damage in the system of ONPEX and/or third parties; or
- b) interference with its use.

3.4.2 Customer will ensure that such damage and/or interference is not the result of misconfiguration on Customer's part.

3.4.3 It is not permitted to use the Technical Service and/or facilities, including the payment methods, offered for activities that are illegal and/or in violation of the agreement and/or in violation of the necessary security for End-users, Customers, and/or ONPEX. The foregoing includes amongst others the following activities:

- a) violation of a third party's rights or facilitating the violation of a third party rights, such as but not limited to intellectual property rights and privacy rights;
- b) noncompliance to law and other applicable regulations;
- c) spamming (unrequested distribution or creating the possibility for third parties for unrequested distribution of advertisement and/or other messages);
- d) storage/distribution of (child) pornography;
- e) sexual intimidation, racial prejudice and/or the harassment of individuals in any other manner;
- f) distribution or making available to third parties in any other manner of obscene, insulting and tormenting material and/or other material of similar nature;
- g) threats;
- h) storage and distribution of viruses, worms and/or other destructive activities;
- i) unauthorized access (hacking) of accounts, systems and/or networks of third parties and/or ONPEX and/or the performance or non-performance of any other act that makes hacking possible;
- j) Money Laundering or tax evasion;
- k) Handling of transactions requiring a permit without the corresponding permit.

3.4.4 If there is a suspicion, that through the Technical Service a violation is made of the rights of a third party; if there is a breach of these OTC or obligations have not been met wholly or partially, ONPEX has the right to block its services, to remove any data in question and/or to suspend its obligations until Customer meets its obligations.

3.4.5 ONPEX and/or third parties will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of ONPEX. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of ONPEX.

3.4.6 If the described actions fail and/or Customer continues regardless of the measures taken by ONPEX, ONPEX will be entitled to dissolve the agreement, without any damage compensation or restitution of monies paid being required.

#### **3.5 Maintenance**

3.5.1 Maintenance includes the provision of updates, including documentation, of the Services made available to Customer, which either contain a qualitative (e.g.

error fix) or a functional improvement of the Service.

3.5.2 ONPEX is not obliged to actively keep Customer up to date concerning possible updates.

3.5.3 If Maintenance results in a functional improvement, ONPEX will have the right to charge extra payment to compensate for this functional improvement.

3.5.4 ONPEX is authorized to refuse the provision of maintenance if the ONPEX Services or the environment in which the ONPEX Services operate are altered by Customer in any way or form.

3.5.5 If Customer refuses to install updates that are offered by ONPEX to Customer, then ONPEX reserves the right to dissolve the agreement or to adjust the agreement in accordance with the refusal to install updates.

3.5.6 If ONPEX performs activities with regard to the implementation of Services, this will be invoiced to Customer as additional work in accordance with the Price-List.

### **3.6 Custom Work**

3.6.1 All assignments consisting wholly or partially of custom work are billed to Customer's account.

3.6.2 Parties shall specify in writing the ONPEX Service to be developed and the manner of such development. ONPEX will carry out the ONPEX Service development activities with due care on the basis of information provided by Customer, for which information Customer ensures the accuracy, completeness, and consistency.

3.6.3 ONPEX is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to ONPEX and, if it is determined that there is any inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.

3.6.4 The development of custom work takes place according to the following primary phases:

- a) Functional design phase
- b) Technical design phase
- c) Development of modules phase

If Customer does not wish to follow the foregoing phases, this will be at the risk (and expense) of Customer.

3.6.4 Following contact between Customer and ONPEX, a report may be provided to Customer. If Customer does not explicitly notify ONPEX in writing of any incorrectness in the report within 4 (four) Business Days after the report has been sent to Customer, the report and its contents will be deemed to be approved and accepted by Customer. If the matter is urgent, ONPEX may require the Customer to immediately approve or disapprove of the report.

3.6.5 A deviation of 10% in the prices mentioned will be deemed

to be accepted by Customer and will not require further notification to and/or approval by Customer.

3.6.6 If Customer develops software or has a third party develop software on its behalf, or has the intention to do such, and Customer needs information in connection with the interoperability of the software to be developed and the software made available to Customer by ONPEX, Customer shall request such information in writing. ONPEX shall, within a reasonable term, inform Customer if it is possible to access the requested information and under which conditions, such as financial conditions for the use of third parties by ONPEX. In these general conditions interoperability shall be defined as the possibility of software to exchange information with other components of a computer system and/or software and to communicate by means of such information.

3.6.7 Taking the other terms of these general conditions into consideration, Customer has the right to correct errors in the software made available to Customer if such is necessary for the intended use of the software. In these general conditions where the right to correct errors is indicated, errors in this sense shall mean the failure to fulfill the functional specifications set down in writing by ONPEX and, in cases of developing custom work, the functional specifications expressly agreed upon in writing. An error only exists where such can be demonstrated and reproduced. Customer is required to immediately report errors to ONPEX.

3.6.8 Intellectual property rights, industrial property rights, and other rights to custom work remain at all times with ONPEX.

### **3.7 Installation and Implementation**

ONPEX will only install and/or implement the Services or have them installed and/or implemented if agreed upon in writing. Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by ONPEX have been met in order to ensure a successful installation and/or implementation. Customer will ensure and is entirely responsible for fulfilling the necessary Third Party General Conditions in order to let installation and/or implementation take place legally. If implementation and/or installation has not been performed within the agreed upon time schedule due to Customer's fault, Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of ONPEX to proceed with installation and/or implementation at a later time period.

## **4. Online Payment Services**

ONPEX provides Online Payment Services using Technical Services. The conditions of the Technical Services are applicable to Online Payment Services.

### **4.1 Third Party Fund Management**

4.1.1 ONPEX has outsourced the receipt of funds to one or more trustees. This Trustee also functions as the party that manages a representative part that is considered to be used for payment services and the trustee will pay Customer complying to the agreement and the applicable law and legislation. ONPEX insures that the trustee complies with the applicable law and legislation.

4.1.2 All payments to End-users shall be made by crediting the account of the trustee. Customer explicitly agrees that the guaranteed payment by the Acquiring Bank for the crediting of transactions occurs to the trustee. Customer agrees that it has a contractual relationship with ONPEX and for certain payment schemes with the applicable Acquiring Bank.

4.1.3 ONPEX shall provide Customer with a monthly overview of all the receivables the trustee has received in the previous calendar month on behalf of Customer, sufficiently specified to indicate those amounts under the agreement which belong to ONPEX and those which belong to Customer. This overview shall be accompanied with an invoice within which ONPEX invoices the amounts due to ONPEX out of the receivables received by the trustee.

4.1.4 Customer provides an irrevocable proxy to ONPEX by entering into the agreement to collect all amounts due to ONPEX in accordance with the overview and invoice indicated in the previous clause from the trustee.

4.1.5 If any payment to the trustee on behalf of Customer is reversed or otherwise canceled, this has no effect on claims against Customer from ONPEX. ONPEX is in such a case at all times authorized to collect all amounts due to ONPEX from the trustee from other amounts received by trustee on behalf of Customer, plus administrative costs and the statutory interest. This is without prejudice to all other claims of ONPEX against Customer and subject to any remedies against Customer ONPEX may have.

4.1.6 If ONPEX cannot collect its claims against Customer by the trustee for whatever reason, ONPEX shall inform Customer thereof in writing as soon as possible. Customer shall owe, without any notice of breach being necessary, the legal interest rate over the amounts due as from the first date of the expiration of the period of 14 days after the date of the concerned invoice(s) until the date of complete payment. If Customer does not make payment within the 14 days after the written notification as indicated in the previous sentence, ONPEX can give the claim over for collection in which case Customer must pay, in addition to the amount due, all extra-judicial and judicial expenses, including any costs for external experts in addition to the court fees, related to the collection of this claim or other enforcement of rights, which amounts to a minimum of 15% of the total amount. Furthermore, ONPEX has the right to suspend its obligations flowing forth from the agreement in case of late payment.

4.1.7 A payment by Customer first satisfies the collection costs made by ONPEX then the interest and finally the principal sum.

### **4.2 Special Duties of Customer**

4.2.1 Customer is not obliged to admit payment by payment cards for performance in distance selling in general or in individual cases. Customer shall not admit payment by payment card if, due to the circumstances in which the payment card is used, it has reasons to suspect that it is being abused. Customer shall not charge the cardholder any additional fees for the acceptance of a payment card. This shall not affect the Customer's right to offer the cardholder a reduction for the use of a particular payment card or any other instrument of payment.

4.2.2 In the case of particular payment cards, the cardholder may be charged additional costs on the basis of a separate agreement between Customer and ONPEX in derogation of sentence 1 of this section. Any acceptance of payment cards used for payment and the related request of the card data from the customer may exclusively be made for the purpose of paying for Customer's performances rendered or to be rendered and on the basis of a direct contractual relation between Customer and the cardholder. Customer is obliged to use all special security processes introduced by card organizations and made obligatory for Customers by ONPEX

to prevent abuse in card transactions.

4.2.3 Customer shall take further anti-abuse measures (including the communicated measures to prevent abuse of card data) which ONPEX and/or P.O.S deem necessary in general or in individual cases according to their reasonably exercised discretion and of which they inform Customer. Customer shall bear the costs incurred for using such a process within the area of Customer, including the costs of transmission. If an obligatory Special Security Process has been introduced, acceptance of the relevant payment card shall only be admitted for payment if Customer uses this process and any other obligatory processes.

4.2.4 ONPEX has the right to refuse and shut-off any Customer at its own discretion and decline any type of transaction, especially Customer shall not be entitled to accept payments

- a) for performance not effected for its own account or effected by order of a third party (taking card payment is permissible only for own performance effected for own account;
- b) for performance not effected within Customer's ordinary course of business. Moreover, Customer shall, in particular, not use the payment card for the purpose of granting a loan;
- c) for performance which involves or is related to content subject to the applicable laws governing the protection of minors, obscene, pornographic, unlawful or immoral contents or which invoke or are related to instructions on the manufacture of weapons or explosives. Any exception shall require the prior written consent of ONPEX, which is granted only at the discretion of ONPEX and only on conclusion of an additional agreement, provided that the relevant performance is not unlawful or immoral;
- d) in discharge of uncollectible receivables or payment of a dishonored check;
- e) for performance which is unlawful according to the law which is applicable to the Customer, cardholder or performance. When using card data for payment of periodical performance (e.g. subscriptions), part payments for non-recurring performance or financing costs may not be included in the card payment amount.

4.2.5 If the cardholder makes inconsistent or incorrect statements in connection with the order process or the related request for card data, and if Customer can recognize this exercising the usual care in the ordinary course of business, it shall not be admissible to accept the payment card for payment. ONPEX can define rules and limits for accepted transactions.

4.2.6 The enumeration of the elements for an unusual order shall be deemed to be examples and is not exhaustive. ONPEX may at any time extend or amend the list of elements if such amendment is required due to any abuse according to the assessment by ONPEX. If the specified address of the customer and the delivery address are not identical, this is one of the most important indications of a possible abuse. If Customer admits payment by payment card reasons, to avoid loss of sales or for other reasons, Customer shall bear the risk arising from chargebacks for disputed instructions. This shall also apply if Customer chooses the contractual arrangement "Distance selling agreement including the undertaking to also pay in the case the instruction is disputed". This shall not affect the application of Sect. 254 BGB.

4.2.7 In case of orders which are paid by payment card, Customer shall not admit any change of the delivery address after the authorization request.

## 5. Third Party Services

5.1 ONPEX has the right to deliver Third Party Services or make use of Third Party Services in fulfilling its obligations flowing forth from the agreement. ONPEX is not responsible for Third Party Services, unless agreed upon otherwise in writing.

5.2 If ONPEX delivers Third Party Services to Customer, the Third Party General Conditions will be applicable to this OTC. ONPEX will deliver rights for Third Party Services under the same conditions as indicated in the Third Party General Conditions. The Customer has to comply with all guidelines and rules given by financial institutions, payment schemes and service providers used in Third Party Services. The Customer guarantees to update himself about his responsibilities thereof.

5.3 No Maintenance, Support or other services will be carried out by ONPEX on Third Party Services, unless agreed upon otherwise in writing.

5.4 Third Party General Conditions that are declared applicable in this OTC shall, when available to ONPEX, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by ONPEX.

5.5 The General Conditions ONPEX have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions ONPEX and Third Party General Conditions, ONPEX has the right to declare the conflicting terms of the Third Party General Conditions inapplicable or applicable.