

boncard payment & services ag - General Terms and Conditions (GTC)

A. GENERAL PROVISIONS

1 Area of application

These General Terms and Conditions (GTC) apply to the provision of all types of material and services by boncard payment services ag (us) for our customers (you). Our offer includes in particular the procurement and delivery of individualised gift cards, prepaid cards and customer cards in physical or digital form (cards) as well as various electronic services for processing payments with the cards and for topping up and managing credit balances (the Services).

The GTC apply exclusively. Your contradictory or deviating terms and conditions shall only apply if they are confirmed by us in writing.

2 Offers and conclusion of contract

Your orders and commissions become binding upon mutual signature (handwritten or electronic) of the framework agreement or with our written order confirmation (contract).

Unless otherwise agreed in writing, our offers to you personally shall be binding for a period of three (3) months. Our offers on our website, in brochures, catalogues, price lists and other specifications of Services and documents - also in electronic form - shall be non-binding until the conclusion of the contract.

3 Duration of the contract

Unless otherwise agreed in writing, the term of the contract shall commence upon mutual signature or upon our written order confirmation and shall end upon expiry of the third calendar year following signature or written order confirmation.

The term of the contract shall be automatically extended by a further year in each case unless one of the parties terminates the contract in writing at least three (6) months before the expiry of the contract term.

4 Scope of Services

The content and scope of the Services to be rendered by us result from the contract and the integral parts of the contract listed in the contract (e.g. specification of services, offer).

5 Performance of the Services

We perform our Services with the usual care, and they are based on the standards customary in the industry.

We endeavour to ensure that the use of our electronic services is undisturbed and uninterrupted, but we cannot guarantee this. In particular, we reserve the right to interrupt our electronic services in the event of failures, security risks or for maintenance work. Delays or interruptions do not entitle you to rescind the contract or to any other claims.

Requests for support in connection with our electronic services must be made by email or telephone during regular business hours and are subject to a charge. We will do our best to process your request as quickly as possible. We guarantee a response time of a maximum of three (3) working days, unless otherwise agreed in writing.

We will endeavour to meet the agreed delivery dates and other deadlines. Delays or postponements shall neither entitle you to rescind the contract nor to any other claims.

We are entitled to use subcontractors to fulfil the contract.

6 Place of performance and transfer of risk

The place of performance for our Services is at our place of business.

We ship our cards to the destination as agreed with you (sale by delivery to a place other than the place of performance). The manner of dispatch, in particular the carrier, the shipping route and the packaging, are determined by us. You are free to take out transport or other insurances.

Once the cards have been handed over to the carrier, the risk of accidental loss and destruction of the cards passes to you.

7 Intellectual property rights

Unless otherwise agreed in writing, we retain in full all intellectual property rights, in particular copyrights, patents, design rights or other rights to our products, irrespective of whether they were developed for you or in cooperation with you or whether they already existed.

8 Your obligations to cooperate

You must ensure that you have the necessary technical means to access our electronic services (ep2 card terminals, Internet access, etc.), that you maintain them properly, replace them at your own expense if necessary and protect them against misuse and manipulation.

In the event of a change/replacement of the technical means of access, a change of ownership of the same or in the event of misuse, you must inform us in writing within twenty-four (24) hours.

You must notify us immediately of any faults or interruptions in the availability of electronic services which we have not announced together with a relevant description of the fault which has occurred.

Cards that are issued in physical form must not be circulated more than once. Accordingly, you must ensure that the cards are withdrawn and destroyed when the credit balance has been fully drawn. This does not apply in the event that a cardholder tops up his/her card with a credit balance.

If, within the scope of our contractual relationship, you provide us with information and/or documents, you must ensure that you are permitted to possess them and that they are lawful. We are not obliged to check the content for possible legal violations. Should third parties make a claim against us for a possible infringement of rights, you are obliged to release us from any liability towards third parties and to reimburse us for the costs we incur due to the possible infringement of a right.

If our Services includes representing you in the contract negotiations with the end customer, you expressly authorise us to conclude the contracts of sale with the end customers on your behalf. No contractual relationship will be established between us and the end customer. The terms and conditions for the purchase, payment and use of the cards shall be governed by the agreements between you and the end customer. In particular, we assume no collection risk and no liability for redeemed but uncovered or uncollectible credit balances.

When using our Services, you are responsible for the correct accounting management of the card balances and for complying with the provisions of the Federal Act on Combating Money Laundering and the Financing of Terrorism. We do not manage accounts. This means that all cash flows for the sale and redemption of cards take place outside of our infrastructure.

In the event of a breach of the duties to cooperate, any liability and/or warranty on our part shall lapse. In addition, we may receive a right to early termination of the contract (cf. section 15c).

9 Prices and terms of payment

The prices are based on the contract. Unless otherwise agreed in writing, they are net prices plus value added tax (VAT).

If our costs change due to circumstances beyond our control, such as increased material costs, changed licence fees, changes in legal or official safety requirements or technical changes, we reserve the right to unilaterally adjust our prices with a period of notice of three months. Such price adjustments do not entitle you to the extraordinary termination of the contract.

All additional costs, such as for transport packaging, freight, insurance, customs duties, taxes, documents, etc., shall be borne by you.

Unless otherwise agreed in writing, implementation and other one-off costs will be invoiced after delivery and operating costs will be invoiced quarterly. Invoices are sent by email. We reserve the right to charge CHF 1.50 per invoice for delivery by post. Unless otherwise agreed, the payment period is ten (10) days net from the invoice date. Payment must be made in Swiss francs. After the expiry of the payment deadline, you owe us – without a reminder – interest on arrears in the amount of 5% per year.

If we have to send a reminder for an invoice amount due, we are entitled to charge a reminder fee of CHF 15 per reminder.

If you are in arrears with payment, we are entitled to withhold our performance until the outstanding amount has been paid in full.

There shall be no set-off of your claims against us.

10 Warranty

We shall only be liable for defects if our performance qualifies as a purchase contract or contract for work and services.

If our performance includes the procurement of products from third-party suppliers (e.g. ep2 terminals or other hardware) we hereby assign to you, to the extent permitted by law, all rights arising from our contract with the third-party supplier. Should it transpire that this assignment is not possible, we shall take the necessary steps in our own name in accordance with your instructions and at your expense and for your account.

In the case of individualised cards, colour deviations shall not be deemed to be a defect, provided that these deviations are within the scope of the applicable tolerances of the Digital Printing Process Standard (PSD) [<https://boncard.ch/documents/psd>].

In all other respects, our liability for defects shall be limited to – at our discretion – rectifying the Service or refunding the price for the defective Service. Any further warranty and liability for defects, in particular for consequential damages (e.g. loss of profit etc.) is excluded to the extent permitted by law.

You are obliged to inspect our Service immediately after it has been rendered and to notify us in writing of any defects. Unless otherwise agreed in writing, claims arising from defects which are identifiable during a normal inspection shall be forfeited if you do not notify us of them in writing within three (3) working days of performance of the Service.

Subject to any written agreement to the contrary, your claims arising from other defects shall be forfeited if you fail to notify us of them in writing within three (3) working days of their discovery, but no later than within one (1) year of the performance of the Service. You must provide proof of the timely notification of defects.

11 Limitation of liability

Our liability for slight negligence and for the conduct of auxiliaries persons and substitutes is excluded to the extent permitted by law. Liability for intent and gross negligence remains unaffected.

12 Force majeure

We reserve the right to withhold our Services or to withdraw from the contract if a case of force majeure occurs, e.g. official orders, war, terrorism, epidemic, pandemic, strike, disruptions at the suppliers, delivery blockades, floods, fire and shortage of raw materials.

13 Data protection

Our handling of your data and any data you provide to us is described in our privacy policy [<https://boncard.ch/documents/datenschutz>] and, where applicable, in a data processing agreement between you and us.

14 Confidentiality

You are obliged to keep secret any business secrets, information and confidential documents which you have received from us, and to use them only for the purpose of fulfilling the contract. You undertake to impose identical confidentiality obligations on your employees and vicarious agents. This duty of confidentiality shall continue to apply after the contractual relationship between us has ended.

15 Premature termination

We have the right to terminate the contract with you with immediate effect and to refrain from further performance should

- a. you be in arrears with payments fourteen (14) days after we have sent you a reminder;
- b. bankruptcy or composition proceedings have been brought against you or you become insolvent;
- c. you have breached your contractual obligations under these GTC or other agreements between us and do not restore the contractually agreed conditions within fourteen (14) days after our written reminder.

16 Amendments to the contract

Amendments and supplements to the contract (including this provision) must be made in writing to be valid.

17 Notices

All notices that you send us must be in writing and sent to our postal address or email address as agreed in the relevant contract or as notified at a later time.

Written form means both communication by letter and by email.

18 Applicable law and place of jurisdiction

These GTC and all other agreements between us are governed by Swiss law, excluding the applicable conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods.

The place of jurisdiction for all disputes in connection with our performances is our place of business, currently in Fislisbach AG. However, we reserve the right to bring legal action at your place of residence.

B. SPECIAL AGREEMENTS FOR COLLECTION OF MONEY BY BONCARD

1 Subject

As a rule, the collection of money is carried out by you when the cards are sold. We do not manage accounts. This means that all cash flows for the sale and redemption of cards take place outside of our infrastructure. In exceptional cases, we shall take over the collection of money on your behalf in accordance with an express written agreement.

In this case, the following provisions shall apply in addition to the general provisions pursuant to section A above.

2 Power of attorney for conclusion and collection of money

You expressly authorise us to conclude the contracts of sale with the end customers in your name and to collect the receivables from the card sales from the end customer for your account.

No contractual relationship is established between us and the end customer.

The collection risk for uncovered or uncollectible receivables from the sale of cards and the liability for any resulting damages remains with you.

3 Contract terms

The following maximum amounts apply to issuing cards to the end customer:

- a. Maximum credit balance per card: CHF 250;
- b. Maximum amount per order: CHF 1,500;
- c. Maximum annual order amount per registered end customer: CHF 3,000.

We determine the accepted means of payment.

In all other respects, the conditions for the purchase and use of the cards are based on the agreements between you and the end customer.

4 Billing

We settle your credit balance twice a month, on the 15th and at the end of each month. Any credit balance will be paid out to the payee designated by you within 30 days at the latest, with a statement of account enclosed.

You have to bear all third-party costs, such as transaction fees or commissions of the payment service providers. We charge the third-party costs as well as our contractually agreed fees directly to your credit balance.