

Terms and conditions of Nexi Germany GmbH for the use of the Nexi Optipay service

1. Scope of application, subject of the contract

- 1.1 These provisions govern the access to and use of the Nexi Optipay service for contract partners of Nexi.
- 1.2 Within the framework of the Nexi Optipay service, Nexi provides the contract partner with technical services that enable the acceptance of payments made using a credit or debit card via a mobile card reader (hereinafter referred to as '**card reader**') and a mobile telephone. These technical services include, in particular, all services which are necessary for the routing of so-called authorisation requests for transactions carried out using credit and debit cards.
- 1.3 These terms and conditions apply exclusively for the processing of transactions for the credit and debit card organisations Mastercard, Visa and American Express (hereinafter referred to as 'cards'). Credit and debit cards of other card organisations are expressly excluded from the Nexi Optipay service, unless Nexi has notified the contract partner otherwise in writing. Publication on www.nexi.de is equivalent to written notification of the contract partner.

2. Requirements for use, granting of rights

- 2.1 The requirements for the use of the Nexi Optipay service and the acceptance of cards are as follows:
 - a) The conclusion of a separate service agreement for the acceptance and settlement of Mastercard and Visa credit and debit cards between the contract partner and Nexi and – if desired – the conclusion of a separate service agreement with American Express Payment Services Ltd., Frankfurt am Main branch
 - b) The use of a mobile card reader initialised by Nexi.
 - c) The use of a functional mobile telephone including the corresponding telecommunications contractThe contract partner is solely responsible for the fulfilment and maintenance of the above-mentioned requirements.
- 2.2 Nexi grants the contract partner – if applicable – the non-exclusive, non-transferable right to use a software application for mobile telephones (hereafter known as 'Nexi OptiPay app') for the duration of this agreement. To be able to use the Nexi Optipay app, the contract partner must download the Nexi Optipay app from the corresponding app store

- 2.3 (Apple App Store or Google Play) free of charge and install it on a mobile telephone at their own responsibility. After successful installation, the contract partner must log in to the *Nexi Optipay* app using their username (email address) and a password determined by them during the registration process. The contract partner is obliged to install in due time any updates available for the *Nexi Optipay* app to ensure the functionality of the services.
- 2.4 Nexi further grants the contract partner the non-exclusive, non-transferable right for the duration of this agreement to use the firmware on the card reader, including the encryption keys. At the end of the agreement, the contract partner undertakes to delete the keys by resetting the card reader to its factory settings. Nexi will assist the contract partner in this respect if needed.
- 2.5 When the Nexi app is used as part of the Nexi Optipay services, Nexi also enables the contract partner to use a web-based merchant dashboard which they can log in to with a username and password. The dashboard provides an overview of the transactions carried out as well as the option of adjusting various account settings. The contract partner can download the transaction overview as a file.
- 2.6 Nexi transmits the information regarding authorisation for credit and debit card requests to the credit card company (acquirer) specified by the contract partner. Amongst other things, response times depend on the line link selected, the transmission speed, the availability of the data transmission network and the response time of the operator's computer and the respective authorisation system. Nexi assumes no responsibility for the accuracy of the data transmitted to Nexi.

3. Duties of the contract partner

- 3.1 When transmitting authorisation requests via the Nexi Optipay service, the contract partner must always comply with the requirements of the terms and conditions of Nexi Germany GmbH for the submission and settlement of credit and debit cards as well as the relevant provisions of other acquirers approved by Nexi, for example American Express.
- 3.2 Additionally, the contract partner is obliged to the following:
 - a) To be registered and/or certified pursuant to the provisions of PCI DSS and, when dealing with card information, to observe the respective standards and guidelines of

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PCI DSS, which can be found at the website www.pcisecuritystandards.org

- b) To only use the Nexi Optipay service with card readers which have not undergone any changes either by the contract partner or by third parties
- c) To verify whether the serial number of the card reader matches the serial number that was communicated to them and, if the numbers do not match, to notify Nexi immediately in writing
- d) To inform Nexi of a change to the postal address, telephone number and bank account details of the contract partner immediately and in writing
- e) To report faults and defects of, damage to and the loss and/or theft of the card reader immediately to Nexi in writing
- f) To review the entry of transactions processed through the Nexi Optipay service and to inform Nexi immediately of any objections once they become known; objections may only be enforced within three months of the facts justifying the objection first being discovered
- g) To ensure that the Nexi Optipay service is not used for any purpose other than payment
- h) To store the card reader in a secure location (e.g. in a lockable cupboard) when it is not being used in order to prevent unauthorised use of the Nexi Optipay services by third parties
- i) To protect its username and password against access by unauthorised third parties
- j) If the contract partner has multiple card readers, to maintain a list with the serial numbers, types and locations of the card readers, as well as to check inventories on a regular basis to identify stolen, lost, damaged or manipulated card readers and to document the results of the inventory check and provide them to Nexi in writing

4. Prices, conditions

Nexi provides the following services at the prices specified on the registration website as well as in the contract confirmation. In addition, the prices and conditions found in the table of fees and services of Nexi Germany GmbH in its respectively valid version, which can be viewed at www.nexi.de, apply.

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5. Duration

- 5.1 The agreement for Nexi Optipay services is valid for an indefinite period and can be terminated by either party with a notice period of four weeks to the end of the month.
- 5.2 The right to extraordinary termination and termination without notice on serious grounds is reserved.
- 5.3 Any termination must be made in writing to be effective; termination via email is not permitted.
- 5.4 This agreement ends automatically without requiring termination if there is no valid service agreement between the contract partner and Nexi regarding the acceptance and settlement of Mastercard and Visa credit and debit cards.

6. Offsetting

The contract partner may only offset claims from Nexi with undisputed or legally established claims. Nexi is also entitled to offset its claims for payment with receivables of the contract partner from the acceptance of credit cards.

7. Liability

- 7.1 Nexi is contractually and extracontractually liable to the contract partner in accordance with statutory provisions for damage or the reimbursement of wasted expenses in the event of deliberate acts and gross negligence.
- 7.2 In other cases, Nexi is only liable – unless provided for otherwise in 7.4 – for breach of a contractual obligation, the performance of which is necessary for the proper performance of the contract and which the contract partner as a customer is generally entitled to rely on (known as an essential obligation). Liability is limited to compensation for foreseeable and typical damage and may not exceed €5,000 for each case of loss – at most, however, an amount up to €20,000 per calendar year. Notwithstanding 7.4, in particular the circumstances mentioned in 7.3, Nexi accepts no liability in all other cases.
- 7.3 Notwithstanding 7.4, further damage, especially indirect damage and liability for the inaccurate content of collected data or for errors when performing payment transactions, is excluded. This exclusion applies in particular to the following:

- a) Damage due to: inappropriate or improper use, or other use not provided for in the agreement; incorrect

operation; incorrect or careless handling; chemical, electrochemical or electronic influences; or changes or repair work performed by the contract partner or a third party without the prior consent of Nexi

- b) Missing deadlines, unless these were acknowledged by Nexi in writing as binding
- c) Loss of interest incurred by the contract partner due to late value dates
- d) Loss of profit and savings
- e) Outages or obstructions that are caused by authorisation systems
- f) The replacement of data, unless Nexi has caused the destruction of the data intentionally or as a result of its gross negligence and the participant has ensured that this data can be reconstructed from other data sources (e.g. from keeping slips or documentation or from backups) with appropriate effort

- 7.4 Nexi's liability for damage to life, limb and health and under the German Product Liability Act (*Produkthaftungsgesetz*) is not affected by the aforementioned limitations and exclusions.

8. Confidentiality and data protection

- 8.1 The contract parties mutually undertake to treat as confidential all information that the other contract party has expressly indicated as confidential, or which is recognisable as confidential based on its content, and to not make this information accessible to third parties. This obligation applies in particular to operational and commercial secrets of a contract party that become known during the performance of the contract.
- 8.2 The confidentiality obligation is waived if and to the extent that information:
- a) Is or was publicly known at the time of disclosure or becomes publicly known at a later date at no fault of one of the parties
 - b) Is or was otherwise already known by the information recipient at the time of disclosure by the provider of the information
 - c) Is disclosed or made available to the information recipient at any time by an authorised third party without the imposition of an obligation to confidentiality
 - d) Was lawfully possessed or independently developed by the information recipient prior to disclosure and the information recipient can provide evidence thereof
 - e) Is excluded in writing from this confidentiality obligation
 - f) Must be disclosed under applicable law or due to the instruction of a competent or authority; in these cases, the information recipient is obliged to inform the provider of the information immediately in writing of, and wherever possible prior to the disclosure taking place, the obligation to disclose
- 8.3 Nexi is to ensure that the companies employed by it for the processing of data observe the provisions of the applicable data protection statutes.

9. Requirements of the card organisations, statutory provisions

If the requirements of the credit card organisations Mastercard, Visa or American Express change, or if other requirements and/or legal and/or public law provisions lead to a compulsory change of the Nexi Optipay services during the term of the agreement, Nexi will endeavour to offer solutions for the maintenance of the Nexi Optipay service. Any costs that arise in relation to this can be billed to the contract partner.

10. Miscellaneous

- 10.1 This agreement regarding the use of the Nexi Optipay service is only effective in combination with a valid service agreement for the acceptance and settlement of Mastercard and Visa credit and debit cards between the contract partner and Nexi. All other rules resulting from the existing service agreement for the acceptance and settlement of Mastercard and Visa credit and debit cards are not mentioned again in this agreement. They are not affected in their applicable version, insofar as they apply to the Nexi Optipay service and they are consistent with this agreement. The rules of service agreements of other acquirers approved by Nexi, for example American Express, have no impact on this agreement and are not affected by the provisions of this agreement.
- 10.2 All amendments or additions to this agreement must be in writing to be valid. The same applies to any agreement waiving the requirement for the written form.
- 10.3 If any provision of this agreement is or should become invalid, this does not affect the validity of the remaining provisions. The parties are to replace the invalid provision with a valid provision which best achieves the desired economic result.
- 10.4 Nexi may amend or supplement the terms of the agreement, as well as the table of fees and services, by notifying the contract partner in writing. The amendments or additions are deemed to have been accepted by the contract partner if it does not object in writing within six weeks of notification. Nexi will alert the contract partner to these consequences when the notification is sent. Objections sent within the six-week period will be deemed to meet this deadline.
- 10.5 The contract is subject to the law of the Federal Republic of Germany. The place of performance is Frankfurt am Main. The place of jurisdiction for all legal disputes arising out of this agreement is Frankfurt am Main.

General terms and conditions of sale of Nexi Germany GmbH

1. Scope of application

1.1. These general terms and conditions of sale (hereafter known as 'GTCS') apply to all purchase agreements between the contract partner and Nexi Germany GmbH, Helfmann-Park 7, 65760 Eschborn, Germany.

1.2. All agreements between the contract partner and Nexi in connection with the purchase agreement ensue in particular from these terms and conditions of sale and the signed service agreement.

1.3. The GTCS apply as amended at the time the contract is signed.

1.4. Terms and conditions of the contract partner which deviate from these GTCS are not accepted. This also applies if no explicit objection is made to the other terms and conditions.

2. Conclusion of the agreement

2.1. The presentation and advertisement of articles in the Nexi online shop or in other forms and/or brochures is not a binding offer to enter into a purchase agreement.

2.2. The contract partner places a legally binding order by sending a completed fax order form, a completed service agreement or a completed online registration form. The contract partner is bound by the order for three (3) weeks after it has been placed.

2.3. A contract only comes about when Nexi accepts the contract partner's offer by a written notice of acceptance (by post or email) or by delivering the articles ordered.

2.4. If it is not possible to deliver the goods ordered by the contract partner, because they are not in stock, for instance, Nexi will not send a notice of acceptance. In this case, no contract comes about. Nexi will notify the contract partner without delay and reimburse any consideration already received without delay.

3. Delivery conditions

3.1. Nexi is entitled to make partial deliveries insofar as this is reasonable for the contract partner.

3.2. Deliveries will generally be made within ten (10) working days of receiving the order unless agreed otherwise.

4. Prices and transport costs

Unless stated otherwise, all prices are without tax. VAT at the statutory rate and any transport costs must be added.

5. Payment terms, offsetting and right of retention

5.1. The purchase price, plus VAT and transport costs, falls due in accordance with the payment terms of our invoice, which will be sent separately. If the contract partner has given us a SEPA direct debit mandate, Nexi will debit the entire amount from the contract partner's account.

5.2. The contract partner is not entitled to offset receivables against Nexi, unless the contract partner's counterclaims are undisputed or have been legally established. The contract partner is also not entitled to offset receivables against Nexi if the contract partner has given notice of defects or makes counterclaims under the same purchase agreement.

5.3. As purchaser, the contract partner may only exercise a right of retention if its counterclaim is based on the same purchase agreement.

6. Retention of title

The goods supplied remain the property of Nexi until the purchase price has been paid in full. The contract partner is to treat the goods to which title has been retained with care. The contract partner is not entitled to dispose of the goods until title has been transferred.

7. Warranty

7.1. Nexi is liable for material defects and defects of title to the goods supplied for a period of 12 months. The statutory period of limitations for defects begins with the delivery of the goods.

7.2. For batteries and mobile card readers, the warranty period does not apply to defects caused by normal wear and tear and the normal discharge of batteries or by their improper use by the contract partner.

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8. Obligation to inspect for and notify of defects

8.1 The contract partner is obliged to inspect the purchased goods within five (5) working days of delivery, to ascertain in particular that they are complete and not visibly damaged and that they are in working order. Any defects identified or identifiable at this time must be notified to Nexi in writing within a further five (5) working days (notice of defects).

8.2 The notice of defects must contain a detailed description of the defects. Defects that are not identifiable during the course of the proper inspection described must be reported within five (5) working days of their discovery. If this inspection and notification obligation is not fulfilled, no warranty for defects is accepted with regard to the defect concerned.

9. Liability

9.1 Nexi is contractually and extra- contractually liable to the contract partner in accordance with statutory provisions for damage or the reimbursement of wasted expenses in the event of deliberate acts and gross negligence.

9.2 In other cases, Nexi is only liable – unless provided for otherwise in 9.3 – for breach of a contractual obligation, the performance of which is necessary for the proper performance of the contract and which the contract partner as a customer is generally entitled to rely on (known as an essential obligation). Liability is limited to compensation for foreseeable and typical damage and may not exceed €1,000 for each case of loss. Notwithstanding 9.3, Nexi accepts no liability in all other cases.

9.3 Nexi' liability for damage to life, limb and health and under the German Product Liability Act (*Produkthaftungsgesetz*) is not affected by the aforementioned limitations and exclusions.

10. Copyright

Nexi has copyright to all the images, films and texts published in the Nexi online shop. The images, films and texts may not be used without the express written approval of Nexi.

11. Applicable law and place of jurisdiction

11.1 The sole place of jurisdiction for all disputes under or in connection with this contract is Frankfurt am Main.

11.2 German law applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG)