General Terms and Conditions of PayMail

§ 1 Preamble

1.1. The PayMail GmbH (hereinafter referred to as "PayMail"), Freihamer Straße 4b, 82166 Gräfelfing, is the owner of all copyrights and other rights of use and exploitation of the online payment and invoice dispatch solution " PayMail " (hereinafter referred to as "software"). This software is used for the dispatching and management of invoices to the end customer incl. payment function for the end customer, which enables the additional accessibility of related functions and services such as customer administration, billing, etc. PayMail provides this software via remote access over the Internet ("Software-as-a-Service", abbreviated to "SaaS").

1.2. The General Terms and Conditions of PayMail GmbH related to concluding contracts with companies (hereinafter referred to as "GTCs") govern the relationship between PayMail and companies that use the software offered by PayMail (hereinafter referred to as "user"). PayMail 's offer consists of software provided for exclusive utilization over the Internet. The users organize their company account via the software while at the same time keeping all their employees informed.

1.3. If additional or supplementary conditions are agreed on for other services beyond the use of the software, these conditions shall take precedence over these GTCs. For the use of additional services, separate additional contracts as well as the user's consent to a respective user agreement are necessary, which does not affect the contract concluded between PayMail and the user based on these terms and conditions. In order to make use of PayMail 's software to the best possible extent, the user will regularly sign a contract with a payment service provider ("Payment Service Agreement"). The payment service provider is not a vicarious agent of PayMail.

1.4. General contract terms as well as conditions of the user, even if calls for tender, orders, acceptance declarations, and the like are attached thereto, are not contract contents, even if PayMail has not objected to these conditions.

§ 2 Subject matter of the contract and specification of services

2.1. The subject matter of the contract is the provision of the software in a data center to access and use as a SaaS solution via the Internet, as well as enabling the storage of data by the user on servers that are operated at the behest of PayMail ("hosting"). Individual extensions and modifications to the functionality of the software are not part of the scope of services and this contract, unless otherwise expressly agreed.

2.2. The contractual services and the prices are in accordance with the respective offer made to the user.

2.3. The offer made to the user depends on the specific utilization interests of the user. With annual payment, PayMail can offer the user a price reduction. The utilization period is determined by the term of the contract.

This is a minimum period of one year. The term of the contract is extended by one further year if the contract is not terminated three months before the end of the term.

2.4. For certain characteristics (nature/quality) to be guaranteed, written confirmation by PayMail is required.

2.5. The offered application is a standard software. PayMail is not responsible for the fulfillment of user-related legal and regulatory requirements or for the services of payment service providers. The user is responsible for reviewing PayMail regarding the suitability for data processing according to the legal and regulatory requirements relevant to said user.

2.6. PayMail is entitled to perform the services governed here, in whole or in part, by means of third parties as subcontractors in accordance with the data protection agreement. Documents, information, and data belonging to the user and its employees may be disclosed by PayMail to the subcontractors to fulfill the services – if necessary.

2.7. PayMail does not assume, even partially, the customer management for the client; the client is solely responsible for this.

§ 3 Contract conclusion

Companies which are interested in concluding a contract can contact PayMail by email or can register as a user by entering their company's contact details on PayMail 's website at www.ThePayMail.com. After receiving the expression of interest and after acceptance of the user, PayMail sends an email as an offer to conclude the contract with the user, which may also include a confirmation link. With the express acceptance of the offer received by mail or the activation of the confirmation link by the user, the contract between the company and PayMail is concluded.

§ 4 Support services

Support requests can be made by phone or email. PayMail can provide additional support channels. Support inquiries are questions about the software aimed at the support staff of PayMail. Support, when using PayMail, is limited to a support staff member answering questions about the correct implementation and setting, as well as assistance with technical problems that may be encountered with the software.

§ 5 Contractual obligations of the user

5.1. The user will fulfill all obligations required to ensure the performance and execution of this contract in a timely, complete, and professional manner. The user is responsible for the utilization of PayMail's services, the proper processing of his data, and the results achieved. This also includes the fulfillment of legal and regulatory requirements for the use, storage, and archiving of user data.

5.2. The user is responsible

- o to verify and, if necessary, seek expert opinion on the extent to which the services offered by PayMail correspond to his actual and legal requirements;

- o to ensure that the minimum requirements of PayMail for the contractually required use of the software are met by the hardware and software that the user utilizes. PayMail will inform the user of the minimum requirements before the term of use begins;

- o to adhere to PayMail 's instructions to avoid errors;

- o to protect its local IT systems against infection by viruses, Trojans, and similar malware by using the appropriate software;

- o to regularly backup the data and contents transmitted to PayMail and to create their own backup copies in order to guarantee the reconstruction thereof in the event of data and information loss.

5.3. The user will not misuse the contract software in any way or allow it to be used by third parties, and, in particular, will not transmit any contents containing illegal content. The user will also refrain from any attempt, itself or by unauthorized third parties, to access information or data in an unauthorized manner or to intervene, or let third parties intervene, in programs operated by PayMail. If several of the user's employees are concerned with the personnel management, PayMail enables the creation of several administrator accounts in the software.

5.4. In the event of a serious breach by the user of his obligations according to these GTCs or in the event of a breach of statutory provisions as well as repeated breaches, PayMail shall be entitled, at its own discretion, to restrict the use of the contractual services by the user, in whole or in part, or to terminate the contractual relationship without having to give notice. If the user is responsible for the breach, he is obligated to compensate PayMail for damages resulting from said breach.

5.5. The user ensures that the contractual use and provision of data and content does not violate the rights of any third parties. The user is obligated to verify that the data and contents provided to PayMail can be used as intended, and, if necessary, must ensure that all necessary rights of use are covered or must obtain the necessary consent of third parties. The user exempts PayMail from any claims of third parties, which may arise from a breach of the aforementioned obligations.

5.6. If a third party claims a breach of the data or content provided by the user, PayMail is entitled to block the content, wholly or temporarily, if there is any doubt as to the lawfulness of the data and/or content that can be justified by objective evidence. In this case, PayMail will ask the user to remedy the breach within a reasonable period or to prove the legality of the content. If the user does not comply with this request, PayMail shall be entitled, irrespective of further rights and claims, to terminate the contract without notice. PayMail can charge the user for the expenses incurred for the abovementioned measures. If the user is responsible for the breach, he will compensate PayMail for the damages resulting therefrom. Further rights are hereby reserved.

5.7. Furthermore, the user is obligated to perform all cooperation services required for the fulfillment of the contract purpose in accordance with clause 5.2 of this agreement, immediately and free of charge, in particular if PayMail requests the user to do so and the necessary measures do not exceed a reasonable effort.

5.8. Cloud material and PayMail materials are subject to export restrictions of the respective, different countries. The user agrees not to export these materials to countries, persons, or companies to which export is prohibited by law without PayMail's prior written consent. Regarding the use of materials, the user is obligated to observe the applicable legal provisions of the country in which he is registered and the regulations of other countries.

§ 6 Access data

The user undertakes to keep the usage and access rights assigned to him, as well as other agreed identification and authentication backups, confidential, to protect them against access by third parties, and to not pass them on to unauthorized third parties. These data must be protected by appropriate and common measures. For security reasons, passwords are not only to be changed before the initial use of the software, but also at regular intervals in order to prevent unauthorized parties from using user-specific passwords or user-specific infrastructure. Passwords must be chosen that cannot easily be guessed, generated, or determined. The user will inform PayMail immediately if there is a suspicion that the access data and/or passwords may have been disclosed to unauthorized third parties.

The user undertakes to oblige all employees who also use PayMail to keep the data and passwords confidential.

§ 7 Prices and terms of payment

7.1. The user pays a monthly amount for PayMail's services according to these GTCs depending on the amount charged to the user, which can be taken from the quotation made to the user or from the Prices page on our website.

7.2. All prices are exclusive of statutory VAT.

7.3. As payment methods, the user can make use of the direct debit system or make a payment on account or by credit card (Visa/Mastercard).

7.4. All invoices are to be paid within 7 days, in the case of direct debit authorization within 14 days, from the billing date. Prior information on the collection of direct debit is sent to the user, if it is not included in the invoice, at least one day before the due date by email to the email address given by the user.

7.5. The costs for direct debits of the user, which are not cashed by his bank, are to be borne by the user if he is responsible therefor. In the case of a returned direct debit, PayMail will charge a fee of €11.00. The user is entitled to prove less damage.

7.6. Even if there are contrary provisions by the user, payments for existing claims will be debited at PayMail's discretion. Set-off with unrecognized or not legally valid counterclaims of the user is excluded. The same applies to a right of retention of the user.

7.7. PayMail is entitled to suspend the contractual services if the user is in arrears and does not make payment despite an explicit deadline for settling outstanding claims.

7.8. If the user is in arears of more than one invoice, all other invoices become due immediately. In the event of default of payment, PayMail can demand interest at the rate of 9 percentage points above the respective base rate without any further proof being required.

7.9. PayMail is entitled to verify the creditworthiness of the user by customary means. If there are doubts about the creditworthiness of the user or if significant deterioration of the user's financial circumstances occurs, PayMail is entitled to perform further services only if advance payment is made.

§ 8 Terms of use

8.1. The software is protected by copyright. The copyrights, patent rights, trademarks, and all other ancillary copyrights of the software as well as of other contractual objects belong exclusively to PayMail. Insofar as the rights belong to third parties, PayMail has the respective rights of use.

8.2. PayMail grants the user the non-exclusive, contractually temporally limited, non-transferable, and not sub-licensable right to use the software in the scope of these GTCs.

8.3. The user is not entitled to let third parties use or make the software accessible to third parties; in particular, the user is not permitted to reproduce, sell, translate, edit, modify or decompile, reverse-engineer or disassemble, or use any part of the software to create a separate application or to have such acts performed by third parties, unless otherwise permitted in Articles 69d and 69e of the German Copyright Act.

8.4. If the user is a test user, PayMail grants a simple license solely for testing purposes, which may not be transferred, transmitted, or sublicensed.

§ 9 Warranty for software elements

9.1. The software is available 24 hours a day, seven days a week ("operating time"). The average availability ("average availability") during the operating time is an annual average of at least 98%, however, availability is not allowed to be impaired or interrupted for more than two consecutive calendar days. Availability refers to the possibility for the user to use the essential features of the software. Not included in non-availability is maintenance time as well as limitations or failures of the software due to circumstances beyond PayMail's control (due to third parties, disruption of telecommunication lines, force majeure, etc.).

9.2. A user's termination in accordance with § 543 para. 2 (1) (1) of the German Civil Code (BGB), regarding non-compliance with the contractually agreed use, is only permissible if PayMail was given sufficient opportunity to remedy the defect and failed, and only if the user notified PayMail immediately of the lack of functionality. Failure to remedy the defect can only be assumed if it is impossible, if PayMail refuses, if there are undue delays, if there are reasonable doubts regarding the prospects of success, or if there is unreasonableness for the user on other grounds.

9.3. The user is not entitled to reduce remuneration in the event of any defects of the software according to clause 7.1. However, any existing right of reclamation, subject to payment of compensation, remains unaffected.

9.4. PayMail points out to the customer that software limitations or impairments that are beyond PayMail's control may arise. This includes acts by third parties that are not at the behest of PayMail, technical conditions on the Internet that cannot be influenced by PayMail, and force majeure. The hardware, software, and technical infrastructure used by the user can also influence PayMail 's service performance. Insofar as such circumstances affect the availability or functionality of the services provided by PayMail, this has no effect on the validity of the services provided under this contract.

§ 10 Liability

10.1. PayMail is not liable for the user's damages, insofar as they are not a result of a breach of fundamental contractual obligations. Fundamental contractual obligations are those obligations whose fulfillment enables the proper execution of the contract in the first place and on whose compliance the user can constantly rely. Also, liability for consequential damage, loss of profit, or compensation for damages of third parties, is excluded, insofar as PayMail is not guilty of malice or gross negligence.

10.2. PayMail is not liable for damages resulting from any incorrect information provided by the payment service provider. This particularly concerns information that the payment service provider ("payment information") sends to PayMail and that PayMail relays to the user. The user, who always concludes a payment service contract with the payment service provider, must especially comply with the correctness of the payment information of the payment service provider. The payment service provider is not a vicarious agent of PayMail. Insofar as other services are rendered with third-party funds or by third parties, without these being vicarious agents of PayMail, PayMail is also not liable for any resulting damages.

10.3. To the extent that PayMail is liable for damages, this liability is limited to damages which it foresaw upon contract conclusion as a possible consequence of a contractual breach or should have foreseen when applying due diligence. Indirect damage and consequential damage, which are the result of defects in the contractually owed service, are also only compensable insofar as such damage is typically to be expected from contractually stipulated behavior.

10.4. The aforementioned limitations of liability do not apply to liability for damage resulting from injury to life, limb, health, or liability under the

Product Liability Act, which is based on at least a negligent breach of duty by PayMail or an intentional or negligent breach of duty by a vicarious agent of PayMail. Likewise, the aforementioned liability limitations do not apply to liability for other damages which are based on at least a grossly negligent breach of duty by PayMail or on an intentional or grossly negligent breach of duty by a vicarious agent of PayMail.

10.5 The strict liability of PayMail for initial material defects in the software is excluded.

§ 11 Termination

11.1. The contractual term is at least one year. The term of the contract is extended by one further year if the contract is not terminated three months before the end of the contractual term.

11.2. The right to terminate the contract for good cause remains unaffected. PayMail reserves the right to terminate an account with four weeks' notice, in the event of non-use or inactivity of said account.

11.3. An extraordinary right of termination for PayMail particularly exists if the payment service provider terminates the user's payment service contract that is linked to this service.

11.4. According to this contract, all terminations must be in writing to be effective.

§ 12 Ancillary agreements, written form requirement

12.1. These GTCs conclusively and entirely regulate the mutual contractual obligations.

12.2. The notifications and declarations, foreseen under contractual regulations as well as other business developments, of a contracting party of these GTCs may, in principle, also be transmitted to the online address of the other contracting party.

12.3. PayMail is entitled to change the GTCs as well as other regulations. PayMail will inform the customer of any changes by email and two weeks in advance. PayMail will only make such changes for valid reasons, in particular due to new technical developments, changes in case law, or other equivalent reasons. If the change significantly alters the contractual balance between the parties, then the change requires the user's consent.

12.4. Unilateral changes to these GTCs by PayMail will be deemed content of the contract if the user has been notified thereof in writing, the user has not expressly objected to the change within two weeks of receipt of the notification of change, and has been informed of this result in the notification of change.

12.5. PayMail reserves the right to change the costs of its services, in whole or in part, in the future; a change in GTCs relating thereto will, of course, not be made by PayMail unilaterally, but will always only be done with the consent of the user.

§ 13 Collection, processing, and use of data

Information regarding data protection and data security can be found here in the data protection agreement.

§ 14 Applicable law and jurisdiction

14.1. The law of the Federal Republic of Germany applies, excluding the conflict of laws in private international law and the exclusion of the UN Sales Convention (UN sales law).

14.2. The place of jurisdiction is Munich, Germany if the user is a merchant and the contract belongs to his commercial enterprise or the user has no general jurisdiction in the Federal Republic of Germany and if no exclusive jurisdiction is defined. However, PayMail is entitled to sue the user at any other legal place of jurisdiction.

§ 15 Severability clause

In the case of invalidity of individual clauses of these GTCs of the contract concluded with PayMail, the validity of the remaining provisions shall not be affected. A wholly or partially invalid provision shall be replaced by one whose economic success comes as close as possible to the invalid provision and intention of the parties. The same applies in the case of a regulatory gap.

Dated: 12/2018