

Terms and Conditions for Accepting Credit Cards on Point of Sale Service

This contract (the “**Contract**”) was concluded between:

First: *Commercial Bank of Kuwait (K.S.C.P) Address, Kuwait, P.O. Box# 2861, Safat 13029, Kuwait represented herein by Mr. Yasser Abdul Mohsen Muzaffar in his capacity the Head of Merchant Relations Unit, Telephone No. 22990484 Fax No. 22990232, email: merchants@cbk.com (Hereinafter referred to as “the First Party/ the Bank”)*

Second: *The Merchant whose particulars are included in the Electronic Payment Services Application Form (Hereinafter referred to as “the Second Party / the Merchant/the Customer”).*

Article (1): (Definitions)

The following words and expressions wherever mentioned in this contract shall have the meanings indicated therein unless the context requires otherwise:

1. **Contract:** includes its schedule and any operating instructions and includes procedures manual that the Bank may notify the Merchant (Customer) from time to time.
2. **Card:** means any valid banking service card (including a debit or credit card) that is authorized by the Bank from time to time.
3. **Cardholder:** The person (The Consumer/Buyer) to whom the card has been issued for use at any time.
4. **Amount refunded to the card:** Any amount refunded in relation to the transaction on the card to be deposited in the cardholder's (Consumer/Buyer) account.
5. **Card Refund Details:** Details of the amount returned on the card after the Bank's approval.
6. **Card Transactions:** Any payments made - if authorized under the procedures manual - cash advance obtained by using the card or its number or authorization to be made in any way by the cardholder (Consumer/Buyer) deducting from his account.
7. **Card transaction details:** Details of transactions made by the card after approval by the Bank.
8. **Point of sale machines/terminals:** Machines/terminals that are installed in the sales centers for the purpose of authorization and acquisition of transactions data electronically.
9. **Tax:** Any applicable tax.

This contract is an integral part of the point of sale service contract and all its conditions and provisions shall apply hereto.

Article (2): (Accepted Cards and Fees)

The cards accepted for dealing with under this contract are as follows:

1. Visa Card
2. Master Card
3. UnionPay International
4. GCC cards

The Merchant (Customer) shall bear the commission amount designated in the Electronic Payment Service Application Form once the Merchant (Customer) accepts these cards and shall not be entitled to add such commissions to the total amount of the invoice or to ask the Cardholder (Consumer/Buyer) to pay them in cash.

Article (3): (Bank Obligations)

1. The Bank shall pay to the Merchant (Customer) the value of all transactions executed on the card and submit them in accordance with the terms of this contract by depositing them in Account mentioned in the Electronic Payment Service Application Form.
2. The Bank shall provide the Merchant (Customer) with statements explaining in each of them the value of the transactions made on the cards which the Merchant (Customer) has submitted, the value of the service charge and any applicable taxes in addition to any other amounts due to the Bank under this contract.

Article (4): (Merchant Obligations)

1. The Merchant (Customer) shall accept all the above mentioned cards as a means of payment and provide the Cardholder (Consumer/Buyer) with the goods and services normally provided by the Merchant (Customer) at the same prices prescribed for these goods and services.
2. The Merchant (Customer) shall:
 - A. Contact the Bank immediately to cancel the authorization if the sale for which the Merchant (Customer) has received authorization has not been completed.
 - B. Retain any card submitted to him based on the instructions of the Bank. The Merchant (Customer) shall send any notice received from the Cardholder (Consumer/Buyer) immediately to the Bank.
3. The Merchant (Customer) shall use the point of sale terminal in accordance with the instructions issued by Visa, Mastercard and UnionPay International, as stated on the Internet under the following link:
<https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>
4. In special cases and according to the Merchant's (Customer) request, the Bank shall activate the feature of processing transactions on point of sale terminals without swiping the plastic card by the POS terminal. In such cases, the Merchant (Customer) shall be fully responsible for any transactions that the Cardholder (Consumer/Buyer) objects against. The Merchant (Customer) acknowledges his consent for the Bank to deduct the value of all transactions immediately from the Merchant (Customer) account in addition to any due fees or fines that may be decided by Visa, Mastercard, UnionPay International or GCCNET as a result.

Article (5): (Transactions Refunds)

1. The Bank reserves the right to refrain from paying when submitting transaction data on the card and keeps its right to refund the amount of transactions on the card if the transaction value of the card has been paid to the Merchant (Customer) in the following cases:
 - a) Issue or submit transaction data on the card in contradiction with the terms of this contract.
 - b) The Cardholder (Consumer/Buyer) will file a claim associated with the transactions on the card.
 - c) The Merchant (Customer) is unable to provide proof of receiving cardholder's (Consumer/Buyer) authorization to deduct the transaction value on the card in a manner approved by the Bank or if the Cardholder (Consumer/Buyer) denies that he has given the authorization.
 - d) When a case arises that gives the Bank the right to refund the amounts, and also when any of the following cases has been materialized:
 1. Submitting an application to liquidate the Merchant's (Customer) business or to appoint a liquidator for its business.
 2. A meeting of the Board of Directors of the Merchant (Customer) is held to consider the voluntary liquidation of its business.
 3. Appointing an official receiver on any portion of the Merchant's (Customer) property or obligations.

4. Submitting any proposal for a settlement to honor the Merchant's (Customer) debt or to apply a settlement plan.
 5. The Merchant (Customer) dies or his creditors request declaring his bankruptcy.
 6. If the amount is deducted from the card-issuing bank, and in case this deduction is delayed for more than 25 days, the amount will be deducted from the Merchant's (Customer) account.
- e) The occurrence of any of the cases described in clause (b) of this Article or the Bank considers this case to be probable - at its absolute discretion.
 - f) The Merchant (Customer) conducts more than one transaction on the same card for one purchase (retail sale).
2. Upon instructions from Visa Card, MasterCard, UnionPay International, a copy of the transaction that has been done by the card must be sent within 3 business days from the date of the Bank's request of such documents. In case of delay, the amount will be deducted from the Merchant's (Customer) account.

Article (6): (Fees)

The Merchant (Customer) shall pay the fees specified in the Electronic Payment Service Application Form plus applicable taxes in consideration of the Bank's provision of the services under this contract. The Bank shall be entitled to modify the value of the fees or the reason for fees imposition provided the Merchant (Customer) is so notified in writing not less than one month before the date set for the amendment.

Article (7): (Promotion of the Card)

The Merchant (Customer) shall display the promotional signs or advertising materials provided by the Bank in each building in an appropriate manner. The Merchant (Customer) may use the names or designs approved by the Bank only to indicate that the card is acceptable for this service. The Merchant (Customer) undertakes not to use any advertising material or other promotional items belonging to the Bank or any other name associated with the cards without the prior approval of the Bank.

Article (8): (Set-off)

The Bank shall have the right to make a set-off between any amounts that may become due to the Merchant (Customer) on the Bank for any reason whatsoever, and the amounts due to the Bank from the Merchant (Customer) arising from the Merchant's (Customer) obligations under this contract; or if any of the cases specified in Article 5 is materialized in any way. The set-off shall be done by the Bank without need for any other action. However, if the Bank considers that such obligation is likely to arise on the Merchant (Customer), the Bank shall be entitled to withhold payments due to the Merchant (Customer) under this contract until such obligation is incurred or it is immediately paid to the Bank, provided however that the Bank's retention of payment shall not exceed 120 business days.

Article (9): (Interest on Late Payments)

The amounts payable to the Bank under this contract shall be due and payable on maturity. The Bank shall be entitled to compute fees at a rate of (2%) per month on a daily basis for each amount that the Merchant (Customer) does not repay, provided that interest due shall be paid at the end of each month.

Article (10): (Change and Amendment)

The Bank reserves the right to change or amend the terms of this contract provided that the Merchant (Customer) is so notified and such notice shall be served by the Bank in any means it deems appropriate.

Article (11): (Termination of contract)

The Bank may terminate this contract immediately for any reasons deemed necessary by the Bank. The Bank may also terminate this contract on the occurrence of any of the cases specified in this contract. The Merchant (Customer) shall notify the Bank immediately upon becoming aware of the occurrence of any such cases or the possibility thereof. The contract may be terminated by the Merchant (Customer) after serving a notice to the Bank at least one month prior to the termination date. In either case, the transaction data and the refund data on the card shall be submitted to the Bank within three business days from the date of execution of the transaction or refund of the amounts on the card. In any case, the termination of the contract shall not affect the obligations that have already arisen. The articles governing such obligations and this Article will remain in full force until such obligations are satisfied.

Article (12): (Notices)

All correspondences and legal & judicial announcements (as served by any of the parties to the other on the addresses set out in this contract or to the latest address provided via a registered letter with acknowledgement of receipt, SMS, e-mail or by any other modern means of communication that can be saved and retrieved) shall be valid, enforceable and legally binding, from all aspects, towards the other party. However, any change to the address of any party shall only be effective or valid from the date when the other party receives a written notification of the change of the address.

Article (13): (Previous Contract)

Once the Electronic Payment Services Application Form has been signed by the parties, the previous contract concluded with the Merchant (Customer) and any attached contract shall be null and void. Cancellation of the previous contract and any relevant attachments pursuant to this Article shall not prejudice the Bank's rights arising therefrom which remain an obligation to be satisfied by the Merchant (Customer).

Article (14): (Use of other point of sale terminals)

The Merchant (Customer) may use the point of sale terminals provided by the Bank to pass the authorized card transactions according to the Bank procedures. The Merchant (Customer) agrees that the Bank shall be the sole party to provide transaction services on the card.

Article (15): (The Currency Used)

Any amounts under this contract shall be payable in Kuwaiti Dinars. The Merchant (Customer) shall ensure that the financial limits in Kuwaiti Dinars are equal to their values in any foreign currency used.

Article (16): (Jurisdiction and Applicable Law)

1. The Merchant (Customer) shall hereby comply with all the laws in force in the State of Kuwait and the terms and conditions of Commercial Bank of Kuwait, the terms and conditions of both Visa and MasterCard Worldwide and shall not use the service for any purchase transaction, getting services or any objectives that are in violation of the law. The Merchant (Customer) shall bear the full responsibility for any violation thereof. In this case, Commercial Bank of Kuwait has the right to stop dealing, withdrawals and blocking all Merchant (Customer) accounts.

2. These terms and conditions shall be subject to and interpreted by the laws in force in the State of Kuwait and all disputes and conflicts that may arise between the Merchant (Customer) and the Bank shall be subject to the exclusive jurisdiction of the courts of the State of Kuwait without prejudice to the Bank's right to take any legal action against the Merchant (Customer) before any court or judicial authority whether inside or outside the State of Kuwait.
3. In case of conflict between the Arabic text and the English text, the Arabic text shall prevail.

Article (17): (Transactions processed as per EMV standards)

The distinguishing feature of EMV standards is that the cardholder's (consumer/buyer) payment order is made through a secure smart chip that is built-in the plastic payment card, often known as smart chip backed card or smart card in a personal device such as a mobile phone. The smart chip offers three basic advantages: the ability to store information, the ability to process and pass information, and because it provides security, it is able to store confidential information securely, as well as process and pass transactions in an encrypted manner. These features provide protection and security for cardholder (consumer/buyer) payments. In order to implement the payment process, the smart chip needs to be connected to the smart chip reader built in special machines for transaction acceptance.

EMV standards are designed to significantly improve the security of payments made using the cards by the cardholder (consumer/buyer) by providing security features and useful advantages that reduce fraudulent payments that result from cards fraud, loss or theft.

Article (19): (Transactions Transmitted Without Compliance with EMV Standards)

Fallback to magnetic tape system: This term is used in cases where the transaction between the smart card and the machine equipped by smart chip is initiated and processed but the smart chip technology is not used where the transaction is completed through the magnetic tape or the main insertion point. There are several reasons for this, such as a problem with the operation or failure of the smart chip reader, inappropriate use of the card, or a forged card.

Magnetic tape: A magnetic tape of information on the back of a plastic card or credit card. The tape is black, brown or silver, and the magnetic tape containing information about the cardholder's (Consumer/Buyer) account, such as credit card number, full name, expiry date and country code, is encrypted.

Article (19):

The Bank has the right to refrain from releasing any amounts due to the Merchant (Customer) arising from transactions passed using known protocols other than EMV standards. The Merchant (Customer) shall provide the Bank with supporting documents on the validity of the transaction, including but not limited to a copy of the transaction voucher and a copy of the personal identity of the Cardholder (Consumer/Buyer). At the internal level, the Bank verifies the validity of such transactions with the issuing banks within a maximum of 120 days. In the absence of any dispute on such transactions, the amounts retained shall be released and paid to the Merchant (Customer).

Article (20):

The Bank shall close or stop any accounts in case of suspicion of a legal violation, financial crime or suspicious transactions. The Bank is also entitled to withdraw and seize any account belonging to customers without need for serving notice or warning.

Article (21):

The Bank shall have the right to take legal actions against the Merchant (Customer) in accordance with Law No. 106/ 2013, Central Bank of Kuwait Instructions No. (2/BS/IBS/432/2019) and their subsequent amendments in the event of having any suspicion of money laundering and terrorist financing without the least responsibility on the Bank. The Bank may immediately set aside any transferred funds in the event that there are suspicions that such funds are associated with money laundering and terrorist financing transactions. The Bank may also delay the transfer of the funds for the purpose of verification, or refrain from enforcing the transfer due to suspicions that the transactions may be associated with money laundering or terrorist financing, or that the transfer is intended to individuals or companies that are included on the blacklist of any country or are subject to any internationally imposed sanctions, or that the transfer is to any fictitious name or entity.

Article (22):

The Bank shall have the right to amend, add or cancel any of these terms and conditions without notice to the merchant (Customer) in accordance with the Bank's applicable policies and procedures and as per the Central Bank of Kuwait's instructions.

Article (23):

The Bank reserves the right to refuse opening or to close any account without giving reasons.

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