

STANDARD TERMS AND CONDITIONS

These standard terms and conditions are to be read as incorporated with the Application form and terms relating thereto.

1. DEFINITIONS AND INTERPRETATION

In the Agreement unless the context otherwise indicates:

- 1.1. **“Accessories”** means motor vehicle accessories and parts;
- 1.2. **“Business day”** means any day other than a Saturday, Sunday or an official public holiday in the Republic of South Africa;
- 1.3. **“Card”** means a debit, credit or other card(s) (including Med-cards, Garage/Petro/Fleet cards and chip cards) as envisaged in the Payment Clearing House Agreements and Clearing Rules and/or VISA or MasterCard Service Agreement and/or VISA or MasterCard manuals, by-laws, rules, directives and procedures to which Mercantile Bank is a party from time to time or to which Mercantile Bank is otherwise bound and as selected by the Merchant as provided in this Agreement;
- 1.4. **“Cardholder”** means a person or an entity to whom or which a Card has been validly issued;
- 1.5. **“Card issuer”** means any entity which validly issues Cards, including Mercantile Bank;
- 1.6. **“Chip card”** means a plastic Card with an electronic processor (chip) embedded into the Card that complies with the Eurocard, MasterCard International and Visa International (EMV) Integrated Circuit Card Specifications;
- 1.7. **“Code 10”** means the code used by a Merchant to notify the authorization centre of Mercantile Bank of a suspicious Card, Cardholder or Card transaction;
- 1.8. **“Debit card(s)”** means a plastic Card providing online access to the Cardholder’s account with a bank via an electronic data capture terminal, allowing Debit card transactions against the said account, resulting in the immediate debiting of the Cardholder’s account with the total amount of the debit card transactions effected;
- 1.9. **“Debit card transactions”** means the purchase/obtaining of goods and/or services, balance inquiries and cash withdrawals effected by a Cardholder with a Debit card;
- 1.10. **“Electronic authorisation function”** means a facility whereby an authorisation for a Card transaction may be obtained from Mercantile Bank by means of electronic linkage with the computer network of Mercantile Bank by using the Equipment;
- 1.11. **“Electronic transaction”** means a transaction effected by the use of the Equipment and resulting in the electronic transfer of funds;
- 1.12. **“Equipment”** means the electronic data capture terminal at the point of sale or delivery of service, which is linked by electronic interface to Mercantile Bank’s computer network and which must be supplied by EFTPOS to the Merchant and must be approved by Mercantile Bank;
- 1.13. **“Facilities”** means the clearing of payment instructions and settlement of payment obligations in respect of Card transactions as envisaged in the Payment Clearing House Agreements and Rules to which Mercantile Bank is a party from time to time;
- 1.14. **“Floor limit”** means the total value including any part of the value of sales or services paid for by means other than with a Card, which the Merchant may permit a Cardholder to pay with a Card on any one occasion without obtaining prior authorisation from the Card issuer;
- 1.15. **“Garage/Petro/Fleet card”** means a plastic Card providing online access to the Cardholder’s garage/petro/fleet card account via an electronic data capture terminal, allowing Garage/Petro/Fleet card transactions against the said account;
- 1.16. **“Garage/Petro/Fleet card transactions”** means a transaction for the sale of Petroleum products, spares and/or Accessories and/or the provision of service, repairs and maintenance in respect of vehicles which results in the creation of a Petrol voucher and/or a Workshop voucher;

- 1.17. **“Laundering”** means for purposes of Clause 5.12 hereof, the presentation of sales vouchers that did not result from a valid Card transaction between the Merchant and the Cardholder;
- 1.18. **“Merchant Supervisor Function”** means the function provided by means of the Equipment which enables the Merchant and/or an authorised employee of the Merchant to perform certain functions by using a supervisor personal identification number to be supplied with the Equipment;
- 1.19. **“Merchant discount”** means a portion of the total value of all Card transactions effected by the Merchant, as stated in the Discount Schedule attached to this Agreement marked Annexure A;
- 1.20. **“Med-card”** means a plastic Card providing online access to the Cardholder’s medical card account via an electronic data capture terminal, allowing Med-card transactions against the said account;
- 1.21. **“Med-card transactions”** means the purchase/obtaining of medical services and products from suppliers of medical services and products only, effected by a Cardholder with a Med-card;
- 1.22. **“Nominated account”** means the bank account nominated by the Merchant for all purposes of this Agreement;
- 1.23. **“Petroleum products”** means petroleum fuel and lubricants, including petrol, oil, oil additives, diesel, fuel, paraffin, power paraffin, petroleum additives and other similar products;
- 1.24. **“Petrol voucher”** means a sales voucher or receipt generated by the Equipment and evidencing the agreement entered into between the Merchant and the Cardholder for the sale of Petroleum products;
- 1.25. **“PCI DSS”** means the auditable set of payment card industry data security standards as stipulated by the Visa and MasterCard Card Schemes from time to time, details of which can be accessed via the website at <http://www.pcisecuritystandards.org> or such other website which Mercantile Bank may notify the Merchant of from time to time;
- 1.26. **“PIN”** means the personal identification number issued to the Cardholder by the Card Issuer;
- 1.27. **“Procedure manual”** means the instructions and directives issued by EFTPOS to the Merchant regarding the use of the Equipment;
- 1.28. **“this Agreement”** means this agreement read together with all its annexures and schedules.
- 1.29. **“Trade Marks”** means the registered trade marks of the trade mark applications of EFTPOS.
- 1.30. **“Workshop voucher”** means a sales voucher or receipt generated by the Equipment and evidencing the agreement entered into between the Merchant and the Cardholder for the sale of spares and Accessories and/or the provision of services, repairs and maintenance in respect of vehicles;

2. RECORDAL

- 2.1. Mercantile Bank provides the Facilities which may be accessed by using the Equipment;
- 2.2. The Merchant will render services or sell goods to or may allow cash withdrawals by Cardholders;
- 2.3. The Merchant requires payment for the services rendered or goods sold to Cardholders or to be able to allow cash withdrawals, by way of, amongst others, Cards, using the Facilities and the Equipment.

3. MERCANTILE BANK’S OBLIGATIONS

- 3.1. Mercantile Bank will, subject to EFTPOS and the Merchant complying with their obligations in terms of this Agreement:
 - 3.1.1. provide the Merchant with the Facilities;
 - 3.1.2. comply with all legal and regulatory requirements in respect of the Facilities;
 - 3.1.3. keep the Merchant informed regarding Mercantile Bank’s operational requirements from time to time as well as all legal and regulatory requirements in respect of the Facilities and the Equipment which may affect the Merchant and which are not otherwise accessible by the Merchant;

- 3.1.4. provide the Merchant with monthly statements reflecting any amounts that may be due and/or owing by the Merchant to Mercantile Bank pursuant to this Agreement.
- 3.1.5. pay to the Merchant the value of all goods sold and/or services rendered by the Merchant to Cardholders after the posting of an Electronic transaction as proved by a receipt generated by the Equipment and on condition that all other provisions of this Agreement were complied with;
- 3.1.6. comply with all its other obligations and the procedures as envisaged in this Agreement.

4. EFTPOS' OBLIGATIONS

EFTPOS will:

- 4.1. conclude a separate written agreement with the Merchant regarding the supply, installation, service, maintenance and/or use of the Equipment and issue the Merchant with the Procedure manual and a quick reference guide which will regulate the use of the Equipment including the presentation of sales vouchers, which, must all be acceptable to and approved of by Mercantile Bank (including any amendments thereof);
- 4.2. supply, install, service and maintain and keep the Equipment in a proper working condition at all times;
- 4.3. provide reasonable training to the employees of the Merchant in respect of the use of the Equipment;
- 4.4. provide the Merchant with stationary and promotional material from time to time as determined by EFTPOS and approved by Mercantile Bank;
- 4.5. comply with all legal and regulatory requirements in respect of the Equipment;
- 4.6. keep the Merchant informed regarding EFTPOS' operational requirements from time to time as well as all legal and regulatory requirements in respect of the Equipment which may affect the Merchant and which are not otherwise accessible by the Merchant;
- 4.7. comply with all its other obligations and the procedures as envisaged in this Agreement.

5. THE MERCHANT'S OBLIGATIONS

- 5.1. This clause shall be read in conjunction with the Merchant's Obligations as set out in clause 2 of the Application terms and conditions.
- 5.2. The Merchant must allow Mercantile Bank and EFTPOS or their duly authorised agents or service provider's reasonable access to the Merchant's premises to enable Mercantile Bank and/or EFTPOS to comply with their obligations in terms of this Agreement and for all other purposes envisaged in this Agreement.
- 5.3. The Merchant must ensure that it, its agents and sub-contractors (where applicable) comply with PCI DSS and those obligations relating to data security, data compromises and the steps necessary to demonstrate compliance with PCI DSS.
- 5.4. The Merchant may not allow laundering and must take all steps reasonably required to prevent laundering.
- 5.5. The Merchant must disclose to Mercantile Bank and EFTPOS all relevant information regarding any other merchant- or similar agreements it concluded or may conclude with other financial institutions, including but not limited to, any restrictive conditions and the reasons for cancellation thereof. The Merchant hereby irrevocably authorises Mercantile Bank and/or EFTPOS to investigate the Merchant's other merchant or similar agreements and to obtain any information or documents which may be required to assist Mercantile Bank and/or EFTPOS in such investigation.
- 5.6. The Merchant may not disclose, sell, purchase, provide, dispose of or exchange a Cardholder's name or account number information in any way, including but not limited to, , mailing lists, tapes, or other media obtained pursuant to a Card transaction, to anybody, except as required by law. The Merchant must keep all system and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, , signatures of Cardholders) in a secure manner, to prevent access by or disclosure to anyone other than the Merchant's authorised personnel or Mercantile Bank. The Merchant must destroy in a manner that will render the data unreadable, all such media that the Merchant no longer deems necessary or appropriate to store.

- 5.7. The Merchant must display such marks and symbols in respect of Cards as may be determined by Mercantile Bank, in such a manner that the public will take cognisance of the Merchant's willingness to accept Cards in payment of goods and/or services.
- 5.8. **The risk of any loss, damage or claims arising out of manual transactions, suffered by the Merchant in the event that the Merchant processes manual transactions (regardless of whether the card is present or not present). For the avoidance of any doubt, the Merchant indemnifies Mercantile Bank, the Card Issuer and EFTPOS and against all risk, loss, damage or claims arising out of processing of manual transactions. Should the Merchant, for any reason, process or have the ability to process manual transactions, the User assumes all liability and all risk associated with such manual transactions.**
- 5.9. The Merchant may not in any way whatsoever state, imply or create the impression that Mercantile Bank, EFTPOS, VISA International Service Association, MasterCard International Incorporated, Diners Club, American Express or any other Card Issuer endorses or guarantees any of its goods and/or services.
- 5.10. When stating the quality or eligibility of its products, services or membership, the Merchant may not refer to Mercantile Bank, EFTPOS, VISA International Service Association, MasterCard International Incorporated, Diners Club, American Express or any other Card Issuer.
- 5.11. The Merchant must, at his own cost procure and ensure that sufficient electricity supply is available to enable the Equipment to function properly
- 5.12. The Merchant must comply with all legal and regulatory requirements as well as any applicable card scheme rules and regulations in respect of the Facilities and the Equipment.
- 5.13. The Merchant must comply with all its obligations and the procedures as envisaged in any agreement with EFTPOS regarding the supply and/or installation and/or service and/or maintenance and/or use of the Equipment;

6. THE MERCHANT'S OBLIGATIONS IN RESPECT OF SALES VOUCHERS AND THE EQUIPMENT

- 6.1.1. The Merchant may only use sales vouchers, stationery and/or tally rolls provided by EFTPOS and approved by Mercantile Bank.
- 6.1.2. In the event of an Electronic transaction, the Merchant must ensure, by using the Merchant Supervisor Function, that the time mechanism which forms part of the Equipment, reflects the correct date and time.
- 6.1.3. The Merchant must obtain the signature of the Cardholder on all credit card sales vouchers or receipts generated by the Equipment and must provide the Cardholder with a copy thereof. The Merchant must compare such signature with the signature on the back of the Card, and should the signatures not correspond, the Merchant must report a Code 10 to Mercantile Bank irrespective of the transaction amount.
- 6.1.4. The Merchant must verify that any transaction in which a Card is used must occur between the commencement date and the expiry date indicated on the Card.
- 6.1.5. The Merchant must retain a copy of each signed sales voucher receipt generated by the Equipment ("Merchant's copy") for a period of at least 180 (one hundred and eighty) days from the date of the transaction as specified by PCI DSS.
- 6.1.6. The Merchant shall provide Mercantile Bank with the Merchant's copy of the sales voucher within 7 (seven) days from date of request, failing which Mercantile Bank shall be entitled to debit the Nominated account with the amount of the transaction.
- 6.1.7. The Merchant must provide the Cardholder with the pin pad which forms part of the Equipment if a Chip card transaction or Debit Card transaction is processed and the Equipment requires entry of a PIN. The Cardholder must then be requested to enter his/her PIN.
- 6.1.8. When a Chip card transaction is processed the Merchant must verify that there has not been any visible attempt to remove, replace or damage the chip.
- 6.1.9. When a Chip card transaction is processed the Card must be inserted into the chip card reader which forms part of the Equipment (and not swiped through the magnetic stripe reader) and left in the reader until the transaction has been finalised and the Equipment requires removal of the Card.

7. PRESENTATION FOR PAYMENT

- 7.1.1. The Merchant shall not directly or indirectly present for processing any data or document which did not originate from a transaction between the Cardholder and the Merchant.
- 7.1.2. In the case of electronic transactions, including transactions effected in terms of Clause 3.1.4 of Application terms and conditions, the following procedures shall apply:
 - 7.1.2.1. presentation for payment of a receipt generated by the Equipment shall be effected by means of interchange of electronic data between the Equipment and the computer network of Mercantile Bank. The frequency of the interchange of data shall be at the sole discretion of Mercantile Bank. The Merchant must ensure that all receipts generated by the Equipment are electronically deposited within 3 (three) business days of the transaction date.
 - 7.1.2.2. **The Merchant undertakes to immediately notify Mercantile Bank of any erroneous interchange of data occurring as a result of defects in the Equipment or communication link, in which event Mercantile Bank's liability shall be limited to correcting such erroneous interchange of data in the system.**
- 7.1.3. Mercantile Bank will have the option to credit or debit the Nominated account with the total net amount of all valid receipts generated by the Equipment.
- 7.1.4. The fact that Mercantile Bank credited the Nominated account does not detract from Mercantile Bank's right to reverse payment of sales vouchers and/or electronic transactions by debiting the Nominated account with the amount of the invalid sales voucher and/or electronic transaction in question.

8. PROCEDURES AND AUTHORISATIONS

8.1. FLOOR LIMITS

- 8.1.1. The Floor limits at each place of business of the Merchant shall be as set out in the Schedule of Floor limits annexed hereto as Annexure B.
- 8.1.2. EFTPOS shall have the right to vary the Floor limits from time to time by giving the Merchant written notice of such variation.
- 8.1.3. If Chip card transactions are processed using the magnetic stripe data or the manual entry of card data, a zero floor limit shall apply and the Merchant must obtain Mercantile Bank's authorisation in respect of all such transactions.

9. COMMISSION, FEES AND/OR CHARGES

- 9.1. The Merchant hereby irrevocably authorises Mercantile Bank to debit the Nominated account or any other bank account of the Merchant at any bank where it may be conducted, with:
 - 9.1.1. the value of chargebacks, reversals of invalid sales vouchers or invalid receipts generated by the Equipment;
 - 9.1.1.1. For avoidance of any doubt, "Chargeback" means a disputed transaction, initiated by the cardholder who claims they were not aware of the transaction processed on their card at the Merchant Terminal. These transactions may be disputed up to 180 days from the date of the transaction. The transaction may be reversed from the Merchants' bank account even in the event that the Agreement has terminated.
 - 9.1.1.2. **In the event of any suspicious transaction(s), EFTPOS will at its own discretion, retain the suspicious funds for a maximum of 180 days.**
 - 9.1.1.3. EFTPOS further reserves the right to withhold any transaction deemed to have been processed not in accordance with any provision of this Agreement.
 - 9.1.2. the Merchant discount referred to in clause 2.5 of the Application Terms and Conditions;
 - 9.1.3. any refund due to a Cardholder and not rectified by the Merchant;
 - 9.1.4. any overpayments due to clerical or electronic errors by either party;
 - 9.1.5. the value of disputed transactions as raised by Cardholders with Mercantile Bank;

- 9.1.6. the total value of sales vouchers and/or batches of electronic transaction not send to Mercantile Bank within 7 (seven) days of being requested to do so by Mercantile Bank, subject to the provisions of clause 6.1.6;
- 9.1.7. interest at Mercantile Bank's prime overdraft rate in respect of late payment of any amount that may be due and/or payable by the Merchant to Mercantile Bank;
- 9.1.8. any other fees, costs or amounts that may be or become due and/or payable by the Merchant to Mercantile Bank.
- 9.2. The Merchant will pay all debits upon presentation and the costs associated with any cheques drawn by the Merchant in respect thereof will be for the Merchant's account.
- 9.3. The Merchant will pay an administration fee for each payment due by the Merchant to Mercantile Bank which is returned unpaid by the Merchant's bank.
- 9.4. The Merchant will pay to Mercantile Bank an administration fee in respect of clerical errors associated with incorrectly presented sales vouchers, as may be advised by Mercantile Bank from time to time by way of notice on the statements provided to the Merchant.
- 9.5. The Merchant must immediately notify Mercantile Bank in writing of any changes in its bank account details.
- 9.6. The values referred to above will be subject to exchange rate variations where applicable.
- 9.7. The Merchant shall be liable for payment of all Value Added Tax on all fees and other amounts referred to in this Agreement where applicable.
- 9.8. Without prejudice to any of its rights in terms hereof or the law, Mercantile Bank shall be entitled to apply set-off in respect of any amounts that may be due and owing to it by the Merchant.
- 9.9. The amounts payable by the User to EFTPOS at the commencement of the Agreement will escalate annually on 1 March by an amount equivalent to the Consumer Price Index ("CPI").

10. DISPUTE RESOLUTION

- 10.1. Should any dispute arise between the parties in connection with the interpretation or application of the provisions of this Agreement excluding when a party is in breach of this Agreement, but including its termination or the validity of any documents furnished by the parties pursuant to the provisions of this Agreement, this dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.
- 10.2. Any party to this Agreement may demand that a dispute be determined in terms of this clause by written notice to the other party.
- 10.3. This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 10.4. The arbitration will be held:
 - 10.4.1. in Johannesburg;
 - 10.4.2. with only the legal and other representatives of the parties to the dispute present;
 - 10.4.3. in accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible; and
 - 10.4.4. on the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.
- 10.5. The following arbitrators will be acceptable to both parties, if the matter in dispute is principally:
 - 10.5.1. a legal matter, a practising attorney or advocate of the Johannesburg Bar Council of at least 10 (ten) year's standing;
 - 10.5.2. an accounting matter, a practising chartered accountant of Johannesburg of at least 10 (ten) year's standing;

- 10.5.3. 3 any other matter, any independent person as agreed by the parties.
- 10.6. Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter will be deemed to be a legal matter.
- 10.7. Should the parties fail to agree on an arbitrator within 14 (fourteen) days after giving of notice in terms of clause 10.2 the arbitrator will be appointed at the request of any party to the dispute by the Chairman for the time being of the Johannesburg Bar Council according to the provisions of clauses 10.5 and 10.6.
- 10.8. The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.
- 10.9. The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs on the attorney and client scale, and his own fees.
- 10.10. The provisions of this clause:
- 10.10.1. constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
- 10.10.2. are severable from the rest of this Agreement and will remain in effect despite the termination of or invalidity for any reason of this agreement.

11. CONSENT TO DISCLOSE INFORMATION

- 11.1. The Merchant hereby irrevocably consents to Mercantile Bank disclosing any information relating to the Merchant to any other party for purposes of mitigating any risk (including, but not limited to reputational and credit risk) which Mercantile Bank may incur pursuant to this Agreement. Without limitation to the aforesaid, the Merchant specifically consents to Mercantile Bank disclosing any information relating to the Merchant to any credit bureau, risk- or crime monitoring institution, VISA International Service Association, MasterCard International Incorporated or other financial institutions or card issuers for use in any valid risk mitigation or crime prevention or monitoring measures or for use in any fraud prevention schemes they may set-up, including the NATIONAL MERCHANT ALERT SERVICE, the MERCHANT PERFORMANCE REPORTING SERVICE and the MEMBER ALERT TO CONTROL HIGH RISK (MATCH SYSTEM), for the purpose of assisting Mercantile Bank and the said institutions in identifying Merchants who are or may become involved in, amongst other things, fraud or suspected fraud, insolvency or any other similar proceedings and any other such matter which would assist Mercantile Bank and the other institutions in their efforts to prevent fraud.
- 11.2. The Merchant hereby irrevocably waives in favour of Mercantile Bank any rights of privacy or confidentiality which it may have or obtain as far as it may be required to enable Mercantile Bank to protect its rights in terms of this Agreement.
- 11.3. In order to keep up to date with the various services and products offered by and provided by EFTPOS and / or any of its Subsidiaries or business partners, the Merchant hereby agrees that EFTPOS may disclose the Merchant's Personal information for direct or other types of marketing and / or promotion purposes.
- 11.3.1. Notwithstanding clause 11.3, the Merchant has the right to object in the prescribed manner to EFTPOS processing your Personal information in terms of this agreement. On receipt of your objection EFTOS will place a hold on any further processing in terms of this clause 11.3.

12. FAX, TELEPHONE AND E-MAIL INSTRUCTIONS

- 12.1. The Merchant may from time to time require from Mercantile Bank to act on instructions transmitted by the Merchant to Mercantile Bank by facsimile receiver ("fax"), telephone ("phone") or electronic mail ("e-mail").
- 12.2. Mercantile Bank has informed the Merchant that it is prepared to act on instructions provided by the Merchant by way of fax, phone or e-mail which purport to emanate from the Merchant, if Mercantile Bank receives a suitable release and indemnity against any claims, losses, costs, expenses, damages, demands and actions.
- 12.3. The Merchant acknowledges and agrees that it is not practical and may be impossible for Mercantile Bank to establish the authenticity of all messages or instructions addressed to Mercantile Bank by way of fax, phone or e-mail which purport to emanate from the Merchant.

- 12.4. The Merchant agrees that all instructions, mandates, consents, commitments and the like provided to Mercantile Bank and which purport to emanate from the Merchant shall be deemed to have been given by the Merchant and the Merchant shall be bound thereby.
- 12.5. The Merchant waives and releases Mercantile Bank from all claims, demands, actions, losses and damages of whatsoever nature which may be brought by or against the Merchant or which the Merchant may suffer or incur as a result of Mercantile Bank acting or, for reasonable cause, not acting on any instructions, mandates, consents, commitments and the like provided to Mercantile Bank by fax, phone or e-mail, which purport to emanate from the Merchant.
- 12.6. The Merchant indemnifies Mercantile Bank, its directors, officers and employees and hold them harmless from all claims, demands, actions, losses, costs, expenses and damages of whatsoever nature which may be brought against them or which they may suffer or incur arising from their action or, for reasonable cause, not acting on any instructions, mandates, consents, commitments and the like provided to Mercantile Bank by fax, phone or e-mail, which purport to emanate from the Merchant or arising from or out of the malfunction, failure or unavailability of any fax, phone or e-mail equipment, the loss or destruction of any data, the failure, interruption or distortion of communication links, or the reliance by any person on any incorrect, incomplete or inaccurate information or data contained in any instructions, mandates, consents, commitments and the like provided to Mercantile Bank by fax, phone or e-mail, which purport to emanate from the Merchant. A certificate issued by a manager of Mercantile Bank, whose appointment and authority need not be proved, shall be prima facie proof of such claims, losses, costs, expenses and damages;
- 12.7. The Merchant agrees that in respect of instructions, mandates, consents, commitments and the like provided to Mercantile Bank by fax, phone or e-mail, which purport to emanate from the Merchant regarding the transfer of money, "same day" value may only be given if the message is received by Mercantile Bank a reasonable time before the close of its business to the public.

13. BREACH

- 13.1. Should any party commit a breach of any material provision of this Agreement which is capable of being remedied and fail to remedy such breach within 7 (seven) days after receiving written notice from the aggrieved party requiring it to do so, then the aggrieved party will be entitled, without prejudice to its other rights in terms of this Agreement or in law, to cancel this Agreement with immediate effect or to claim specific performance of all the defaulting party's obligations whether or not such obligations would otherwise have fallen due for performance, in either event without prejudice to the aggrieved party's right to claim damages.
- 13.2. Should the Merchant or EFTPOS commit a breach of any material provision of this Agreement which is not capable of being remedied, then Mercantile Bank will be entitled, without prejudice to its other rights in terms of this Agreement or in law, to cancel this Agreement with immediate effect by written notice to the Merchant and EFTPOS.

14. TERMINATION

- 14.1. Notwithstanding anything to the contrary contained in this Agreement, Mercantile Bank shall be entitled to terminate this Agreement immediately with written notice to the Merchant and EFTPOS should the relationship between the parties cause or may potentially cause reputational risk for Mercantile Bank as determined by Mercantile Bank in its sole discretion.

15. DOMICILE AND NOTICES

- 15.1. The parties choose as their respective addresses for all purposes of this Agreement and for service of all legal process, in law known as their domicilium citandi et executandi ("domicile") the following physical addresses:
 - 15.1.1. Mercantile Bank: 142 West Street
Sandown
2146
 - 15.1.2. EFTPOS: Sandhaven Office Park,
14 Pongola Crescent,
EastGate Ext. 17 Sandton, 2199
 - 15.1.3. The Merchant: Installation address as per Application Form
- 15.2. Any party may change its domicile or other particulars above with 7 (seven) days written notice to the other parties. A domicile may not be a post box number or a poste restante but must always be a physical address in the Republic of South Africa.

- 15.3. Any notice in terms of the Agreement given to a party shall be deemed to have been properly given in the absence of proof to the contrary:
- 15.3.1. if delivered by hand, on the day of delivery;
 - 15.3.2. if sent by telefax or e-mail, on the day following the transmission of the facsimile or e-mail;
 - 15.3.3. if sent by registered post, 5 (five) days after posting.

16. GENERAL

- 16.1. Mercantile Bank has the right to conduct physical inspections and investigations at the Merchant's premises in handling claims of Cardholders and for purposes of investigating suspected fraud. In the event that Mercantile Bank suspects any irregularities during such investigations, Mercantile Bank shall have the right to require from EFTPOS and EFTPOS shall then be obliged to remove the Equipment.
- 16.2. EFTPOS shall from time to time, issue the Merchant with a Procedure manual and/or a quick reference guide which regulate the use of the Equipment including the presentation of sales vouchers and which shall be strictly complied with by the Merchant at all times.
- 16.3. The Procedure manual and the quick reference guide shall be deemed to form part of the agreement between EFTPOS and the Merchant, as envisaged in clause 4.1.
- 16.4. Mercantile Bank may amend the provisions of this Agreement at any time by notifying EFTPOS and the Merchant of such amendments. Such amendments shall be deemed to come into effect 7 (seven) days after dispatch of such notification by Mercantile Bank.
- 16.5. No amendment, variation, deletion, addition to or consensual cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by the parties or unless it is an amendment as contemplated in 16.4.
- 16.6. Any relaxation or indulgence or extension of time granted by Mercantile Bank to EFTPOS or the Merchant will not constitute nor be deemed to be a novation or waiver of any of the former's rights against the Merchant.
- 16.7. Mercantile Bank may in its sole discretion set off any amount which is due and payable by Mercantile Bank to the Merchant, against any amount which is due and payable by the Merchant to Mercantile Bank, in respect of any account which the Merchant holds with Mercantile Bank. The Merchant shall immediately pay to Mercantile Bank any nett amount owing by the Merchant to Mercantile Bank after set-off.
- 16.8. Mercantile Bank may in its sole discretion consolidate all accounts, which the Merchant holds with Mercantile Bank. Any partial consolidation will not preclude Mercantile Bank from exercising its rights in respect of any accounts or amounts not included in such consolidation.
- 16.9. Notwithstanding anything to the contrary contained in this Agreement, Mercantile Bank may retain funds as determined by Mercantile Bank in its sole discretion in the case of excessive charge backs, insolvency, fraud, suspected fraud or invalid transactions.
- 16.10. EFTPOS and the Merchant shall not be entitled to cede any of their rights or delegate or assign any of their obligations in terms of the Agreement without the prior written consent of Mercantile Bank.
- 16.11. The parties undertake to do all such things necessary for or incidental to the implementation or maintenance of the terms, conditions and import of this Agreement.
- 16.12. This Agreement as amended from time to time is the entire agreement between the parties in relation to the subject matter hereof and save as set out herein, no party gives any warranty or makes any representation to the other parties.
- 16.13. The Agreement is governed by the laws of the Republic of South Africa and subject to the jurisdiction of the courts of the Republic of South Africa.
- 16.14. A certificate signed by any manager or director of Mercantile Bank, whose appointment need not be proved, of any amount owing to Mercantile Bank in terms of this Agreement, shall be prima facie proof of the amount owing by the Merchant.
- 16.15. EFTPOS and the Merchant agree that Mercantile Bank has made no representations or given no warranties other than those expressly contained in this Agreement.

- 16.16. The User acknowledges that all rights, title and interest in and to each of the Trade Marks vest in Paycorp Group (Pty) Limited and that it has no claim of any nature in and to any of the Trade Marks.
- 16.17. The User shall not, at any time during or after termination or cancellation of this Agreement dispute the validity and enforceability of any of the Trade Marks or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of that right, title and interest and shall not counsel or assist any other person to do so.
- 16.18. The User shall not, at any time whether during the subsistence of this Agreement or after termination or cancellation of this Agreement, apply anywhere in the world to register any trade mark identical to a Trade Mark or so nearly resembling a Trade Marks as to be likely to deceive or cause confusion.
- 16.19. The User shall not, without the prior written consent of EFTPOS adopt or use upon or in relation to any trade marks, names or style resembling the Trade Marks or any of them.
- 16.20. The User shall not use the Trade Marks without the prior written consent of the EFTPOS and then only on terms and conditions as determined by EFTPOS in its sole and absolute discretion.

17. CONTRA PROFERENTUM RULE

- 17.1. The parties hereby agree that the rule of construction that an agreement shall be interpreted against the party who drafted the agreement in case of ambiguity (known in law as the *contra proferentem* rule) shall not apply in respect of this Agreement.

ANNEXURE B

SCHEDULE OF FLOORLIMITS

Facilities	ZIP-ZAP MACHINE		EDC		
	All transactions	Fuel	Fuel	Ordinary cards	Gold cards
CREDIT CARDS (MASTERCARD & VISA)					
** AMERICAN EXPRESS CARDS	NA	NA	NA	NA	NA
** DINERS CLUB CARDS	NA	NA	NA	NA	NA
DEBIT CARDS	NA	NA	0	0	NA
GARAGE/PETRO CARDS AND FLEET CARDS	NA	NA	NA	NA	NA

These Schedules forms part of the total agreement and will serve as a summary of the Merchant's intention of cards to be accepted at all the Merchant's outlets.