

## **fashioncheque – General Terms and Conditions resellers Denmark**

fashioncheque holding BV, Kruisweg 801-C, 2132 NG Hoofddorp, the Netherlands, (hereinafter: 'FCH') is the issuer of the fashioncheque voucher card (hereinafter: 'fashioncheque').

### **Article 1. Applicability**

- (1) These general terms and conditions are applicable to all contracts and offers from FCH to the reseller (hereinafter: "Contract").
- (2) FCH is entitled to amend these general terms and conditions, provided that such amendments do not materially affect the rights and obligations of the reseller, the core performance remains unchanged, and the amendments are necessary for the normal course of FCH's business operations.
- (3) The applicability of any general terms and conditions used by the reseller is hereby expressly excluded.
- (4) These general terms and conditions are available at [www.fashioncheque.com](http://www.fashioncheque.com).

### **Article 2. Rights and obligations of the reseller**

- (1) The reseller is entitled to arrange Contracts between FCH and customers for the issuing and crediting of fashioncheques. The reseller is free to decide whether and to whom he sells fashioncheques.
- (2) In connection with the above, FCH hereby authorises the reseller, to conclude the Contracts referred to in article 2.1 in the name and for the account of FCH. The reseller is prohibited from subcontracting.
- (3) The reseller may order fashioncheque carrier media from FCH using a website provided by FCH. Access to this website occurs by means of a username and an access code sent to the reseller after conclusion of this Contract.
- (4) If the reseller receives money for the sale of fashioncheques, the reseller is free to choose the payment method.
- (5) The reseller is free to choose additional fraud prevention procedures.
- (6) FCH can refuse orders for material reason, in particular if the reseller failed, to a considerable extent, to (fully) meet past payment obligations or if the reseller is in danger of becoming insolvent.
- (7) The reseller must ensure that only authorised persons have access to the username and access code in order to avoid their misuse.
- (8) The reseller will, at no time, become the owner of the fashioncheque carrier media and packaging supplied to it.

### **Article 3. Remuneration / invoicing / offsetting**

- (1) The reseller is only entitled to conclude Contracts for FCH if it has previously accepted payments from Purchasers owed to FCH under concluded Contracts. Payment terms and instalments may not be granted to Purchasers by the reseller.
- (2) The reseller is required to forward collected payments to FCH.
- (3) For the sale of a fashioncheque, FCH shall pay a sales commission to the reseller amounting to the percentage of the capitalised credit, as stipulated in the Contract.
- (4) Invoicing of the collected funds within the meaning of article 3.2 and sales commissions within the meaning of article 3.3 shall take place on a weekly/monthly basis by email. The payment term will be stated on the invoice and shall not exceed 30 days.

### **Article 4. Term of the Contract**

- (1) The Contract is concluded for an indefinite period and can be terminated by either party with a notice period of 6 months.
- (2) The right of the parties to extraordinary termination remains unaffected. Material reasons justifying the extraordinary termination include, in particular,
  - (a) if the reseller violates an essential provision of this Contract and, despite a reminder, the breach of Contract is not rectified after a reasonable period, or
  - (b) if enforcement actions are instituted against the reseller or if an application is filed to open insolvency proceedings, or
  - (c) if the reseller terminates a substantial part of its business.
- (3) On termination of this Contract, the reseller must return all materials and equipment provided to it or to destroy them as instructed by FCH and, in such case, to provide proof of destruction.

### **Article 5. Liability of FCH**

- (1) FCH is fully liable to the reseller for intent and gross negligence. In the event of other negligent acts, FCH is only liable for:
  - (a) personal injury;
  - (b) damages for which it is liable due to mandatory statutory provisions; and
  - (c) damages due to the breach of essential duties that jeopardise the achievement of the purpose of this Contract or whose fulfilment makes the proper implementation of this Contract possible and on which the reseller may rely (material Contractual obligations).

- (2) In the case of breach of material contractual obligations, the liability of FCH for simple negligent acts is limited to damages that are typical for this kind of contract and are foreseeable on entry into the Contract.
- (3) FCH shall never be liable for indirect damage, including but not limited to consequential damage, loss of profit, loss of savings, loss of goodwill, business interruption, or damage arising from claims of third parties.
- (4) Any liability of FCH for an attributable failure in the performance of the Contract shall only arise if the reseller has given FCH written notice of default in a proper manner, allowing a reasonable period to remedy the failure, and FCH continues to fail attributable in the performance of its obligations after expiry of such period.
- (5) If and insofar as FCH is liable for any damage, such liability shall be limited to the amount paid out in the relevant case under FCH's liability insurance.
- (6) The limitations of liability set out in this article shall not apply in the event that the damage is the result of wilful misconduct or gross negligence on the part of FCH.

## **Article 6. Confidentiality, privacy**

- (1) The parties agree to maintain confidentiality with regard to trade and business secrets and other confidential facts that become known to them in the context of the conclusion and execution of this Contract. This obligation continues to apply for a period of three years after the termination of this Contract. The parties will obligate their employees accordingly.
- (2) The parties must also comply with the applicable data protection regulations vis-à-vis the other party.

## **Article 7. Involvement of subcontractors**

- (1) FCH is entitled to make use of third parties as vicarious agents in performing this Contract.

## **Article 8. Assignment of rights and obligations**

- (1) FCH may assign or transfer its rights and obligations under this Contract, in whole or in part, to a third party. In the event of such assignment or transfer, FCH shall inform the reseller thereof within a reasonable period of time.
- (2) The reseller may not assign or transfer its rights under this Contract, in whole or in part, to a third party without the prior written consent of FCH, which consent shall not be unreasonable withheld.

## **Article 9. Intellectual Property**

- (1) All intellectual property rights of FCH relating to fashioncheques, promotional materials, logos, corporate identity, systems, software and any other materials provided or developed by FCH (hereinafter 'Materials') shall vest exclusively in FCH or its licensors, unless otherwise agreed in writing.
- (2) FCH grants the reseller non-exclusive, non-transferable licence to use the Materials solely for the performance of the Contract and for the duration thereof.
- (3) The reseller is not permitted to copy, reproduce, modify, translate, rent, sell, exploit, make available to third parties, or otherwise disclose or publish the Materials, in whole or in part, without the prior written consent of FCH.

## **Article 10. Force Majeure**

- (1) Force majeure shall mean any circumstance beyond the reasonable control of a party, as a result of which performance of this Contract becomes wholly or partially impossible, including but not limited to war and political unrest, epidemics and pandemics, natural disasters, and governmental measures. A shortage of personnel, materials, suppliers, or utilities shall only qualify as force majeure if caused by the aforementioned circumstances.
- (2) The party invoking force majeure shall notify the other party thereof in writing without undue delay and shall use reasonable efforts to mitigate the effects of the force majeure event.
- (3) During the period of force majeure, the obligations of the affected party shall be suspended. If performance has become permanently impossible, the relevant obligations shall lapse without any obligations to pay damages.
- (4) If the force majeure situation continues for more than sixty (60) days, either party shall be entitled to terminate this Contract, in writing with respect to the part not yet performed, without being liable for any damages.

## **Article 11. Final provisions**

- (1) This Contract shall be governed by, construed and enforced in accordance with Danish law except for any rules governing the choice of law and venue.
- (2) Both Parties will use their best efforts to settle all matters in a dispute amicably. All disputes, claims and differences of any kind arising out of this Contract that cannot be solved amicably by the Parties shall be referred to arbitration as described below.
- (3) Any dispute arising out of or in connection with this Contract, including any disputes regarding the existence, validity or termination, shall be settled by arbitration in accordance with the Rules of Procedure of the Danish Institute of Arbitration in Copenhagen (Danish Arbitration) and in force at the time when such proceedings are commenced. The proceedings shall be conducted in accordance with the procedural rules of the International Chamber of Commerce and in the English language. The seat of the arbitration shall be Aarhus, Denmark. Nothing in this clause shall prevent either Party from seeking injunctive relief.
- (4) Amendments or additions to this Contract, including the annexes to this Contract, must be made in writing or be submitted by e-mail.

- (5) Should individual provisions of this Contract, including the appended annexes, be or become invalid, the remaining provisions shall remain unaffected. The ineffective provisions shall be replaced or supplemented by effective provisions that most closely approximate the economic purpose pursued by the parties. This applies analogously to any omissions in the Contract.