

Terms and Conditions Update: FAQs

Which Terms and Conditions will be changing?

We are updating the Merchant Card Processing Agreement and the ACH Agreement.

Why are there changes being made?

We are making one minor change to the Merchant Card Processing Agreement to comply with updated VISA requirements. VISA prohibits asking a cardholder to record the CVV2 on any paper form or order form. This change is merely intended to incorporate that prohibition into our existing terms and conditions.

The changes to the ACH Agreement are being made to make clear that a merchant is responsible for safeguarding their login credentials and passwords. Merchants are liable for all transactions processed with their credentials.

We are also adding a fee to the ACH Agreement for subpoenas, liens and levies. That additional fee is merely a pass-through of similar charges imposed on Base Commerce by its service providers.

Finally, the changes to the ACH Agreement pertaining to liquidated damages address issues that have appeared in recent cases. Specifically, Arizona law requires a party assessing liquidated damages to make a retrospective examination of the liquidated damages to ensure that they are reasonable under the circumstances. The changes to allow liquidated damages "up to" thirty percent, instead of equal to thirty percent, is intended to allow Base Commerce more explicit authority to reduce formulaic liquidated damages when warranted under the circumstances.

What are the changes?

In the Merchant Card Processing Agreement, the changes are as follows, as reflected by underlined text:

Section 3(b), MERCHANT'S GENERAL DUTIES, to add the underlined language as follows "(vi) not require a Cardholder to complete a postcard or similar device that includes the Cardholder Account number, Card expiration date, Card Verification Value 2 (CVV2), signature or any other Card account data in plain view when mailed;"

In the ACH Agreement, the changes are as follows, as reflected by underlined text:

Section 2.5 UNAUTHORIZED OR FRAUDULENT TRANSACTIONS. Merchant shall be liable for all transactions on its account, including fraudulent transactions processed by third parties that use the merchant's credentials or password, or who otherwise unlawfully access Merchant's account. Merchant is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Merchant represents and warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of any passwords, codes, security devices and related instructions provided by BASE COMMERCE. If Merchant believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify BASE COMMERCE immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by BASE COMMERCE or an ODFI prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

Section 4.1, FEES AND PAYMENT. Subpoenas, Liens, and Levies: If BASE COMMERCE receives any subpoena for the production of documents, including any Civil Investigative Demand, or any lien, levy, garnishment or other third-party claim pertaining to any amounts due to Merchant pursuant to the terms of this Agreement (collectively "Third Party Payment Demand"), in addition to all other rights and remedies available to BASE COMMERCE herein, including but not limited to BASE COMMERCE's right to terminate this Agreement for cause, Merchant shall pay a \$250 fee for each subpoena as well as for each and every month or partial month in which BASE COMMERCE is obligated to reply to, remit funds to, or otherwise administer such Third Party Payment Demand.

Section 4.3, LIQUIDATED DAMAGES. Notwithstanding any other provision of this Agreement, in the event that Merchant violates any applicable Regulation or Rule, or is in breach of the representations and warranties made in this Agreement regarding Merchant's compliance with all applicable Regulations and Rules, Merchant shall pay to BASE COMMERCE as liquidated damages an amount ~~equal to~~ up to 30% of the provisional or final credit for each Debit Entry that may otherwise be provided to Merchant at the conclusion of the 2-year VOLUME ANALYSIS period. Merchant acknowledges and agrees that BASE COMMERCE may deduct the amount of liquidated damages owed pursuant to this paragraph from the amount of provisional or final credit that may otherwise be provided to Merchant at the conclusion of the 2-year VOLUME ANALYSIS period. The parties agree that BASE COMMERCE'S damages for Merchant's violation of any applicable Regulation or Rule, or breach of Merchant's representations and warranties regarding Merchant's compliance with all applicable Regulations and Rules, would be uncertain and difficult to ascertain and that the liquidated damages described in this paragraph are reasonably related to BASE COMMERCE'S actual damages and are a reasonable estimate of the damages which BASE COMMERCE would in fact suffer in the event of Merchant's failure to comply with all applicable

Regulations and Rules, or Merchant's breach of its representations and warranties regarding its compliance with applicable Regulations and Rules and that such Liquidated Damages are not a penalty.

Where can I obtain a complete copy of the Merchant Card Processing Agreement and the ACH Agreement?

You can download a copy of the updated Fresno Merchant Card Processing Agreement at: <https://www.basecommerce.com/docs/fresno/merchant-agreement-v4.08.2020.pdf>.

You can download a copy of the updated ACH Agreement at: <https://www.basecommerce.com/docs/ach-terms-and-conditions-v6.08.2020.pdf>.