



Mastercard Rules 5.11.2

Effective: 27 January 2013

6 June 2019

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Introduction

Mastercard modified its Standards to permit merchants in the U.S. region and U.S. territories (Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, and Northern Mariana Islands) to surcharge Mastercard Credit Card Transactions. The associated changes to the Standards are effective 27 January 2013 and incorporated into the *Mastercard Rules* manual.

Chapter 1 RE: Chapter 16 Additional U.S. Region and Territory Rules

5.11.2 Charges to Cardholders

In the U.S. Region and U.S. Territories, the Rule on this subject is modified as follows, with respect to Mastercard Credit Card Transactions, as the term Mastercard Credit Card Transaction is defined herein. For all other Transactions, the global Rule applies.

Definitions

Solely for the purposes of Rule 5.11.2 in this “Additional U.S. Region and U.S. Territory Rules” chapter, the following terms have the meanings set forth below:

1. “Cardholder” means the authorized user of a Mastercard Credit Card.
2. “Competitive Credit Card Brand” includes any brand of Credit Card or electronic credit payment form of a nationally accepted payment network other than Mastercard, specifically including without limitation Visa, American Express, Discover, and PayPal.
3. “Competitive Credit Card Brand Cost of Acceptance” is a Merchant’s average Merchant Discount Rate applicable to transactions on a Competitive Credit Card Brand at the Merchant for the preceding one or twelve months, at the Merchant’s option.
4. “Credit Card” means a card or other device that may be used to defer payment of debt or incur debt and defer its payment.
5. “Independent Consideration” means material value a Merchant receives specifically in exchange for the Merchant’s agreement to waive or otherwise restrict its right to Surcharge transactions on a Competitive Credit Card Brand.
6. “Mastercard Credit Card” means a Credit Card bearing the Mastercard brand.
7. “Mastercard Credit Card Transaction” means a Transaction in which a Mastercard Credit Card is presented for payment and that is performed in accordance with the Standards.
8. The “Maximum Surcharge Cap” shall be no less than the product of 1.8 times the sum of the system-wide average effective U.S. domestic Mastercard Credit Card interchange rate plus average network fees (defined to include network set fees to Acquirers or Merchant associated with the processing of a Transaction or with the acceptance of the network’s brand) as published from time to time.
9. “Merchant Discount Rate” is the fee, expressed as a percentage of the total transaction amount that a Merchant pays to its Acquirer or Service Provider for transacting on a Credit Card brand. For purposes of Brand-level and Product-level Surcharging, irrespective of whether the identified fees and costs are paid via the merchant discount or by check, withholding, offset, or otherwise, the Merchant Discount Rate shall include:
 - a. The interchange rate,
 - b. Network set fees associated with the processing of a transaction;
 - c. Network set fees associated with the acceptance of the network’s brand;
 - d. The Acquirer set processing fees associated with the processing of a transaction; and

- e. Any other services for which the Acquirer is paid via the mechanism of the per transaction merchant discount fee.

Other than the fees listed in (a) through (d) above, the Merchant Discount Rate excludes any fees (such as the cost of rental of point-of-sale terminal equipment) that are invoiced separately or not paid via the mechanism of the per-transaction merchant discount fee.

10. "Surcharge" means any fee charged by the Merchant for use of a Card. As set forth in this Rule 5.11.2 in this "Additional U.S. Region and U.S. Territory Rules," a Merchant located in the U.S. Region or a U.S. Territory may only require a Mastercard Credit Card Cardholder to pay a Surcharge by choosing to apply either of the following Surcharge methods:
 - a. Brand-level Surcharge—The application of the same Surcharge to all Mastercard Credit Card Transactions regardless of the Issuer.
 - b. Product-level Surcharge—The application of the same Surcharge to all Mastercard Credit Card Transactions of the same product type regardless of the Issuer.

5.11.2.1 Brand-level Surcharging

Definitions

Solely for purposes of this Rule 5.11.2.1, "Brand-level Surcharging," the following terms have the meanings set forth below:

1. "After accounting for any discounts or rebates offered by the Merchant at the Point of Interaction (POI)" means that the amount of the Surcharge for a Mastercard Credit Card or a Competitive Credit Card Brand is to include the amount of any discount or rebate that is applied to that card or brand at the POI but which is not equally applied to all Mastercard Credit Card Transactions.
2. "Mastercard Credit Card Cost of Acceptance" is:
 - a. A percentage of the Mastercard Credit Card Transaction amount calculated based upon the average effective interchange rate plus the average of all fees imposed by the network upon Acquirers or Merchants as applicable to Mastercard Credit Card Transactions at the Merchant for the preceding one or twelve months, at the Merchant's option, or
 - b. If a Merchant cannot determine its Mastercard Credit Card Cost of Acceptance, then the Merchant may use the Mastercard Credit Card Cost of Acceptance for the Merchant's merchant category as published from time to time on the Mastercard public website.
3. "Mastercard Surcharge Cap" is the average Merchant Discount Rate applicable to Mastercard Credit Card Transactions at the Merchant for the preceding one or twelve months, at the Merchant's option.

The following requirements apply to a Merchant that chooses to impose a Surcharge at the brand level:

1. The same Surcharge must apply to all Mastercard Credit Card Transactions after accounting for any discounts or rebates offered by the Merchant on Mastercard Credit

Card Transactions at the POI. A Merchant may choose to Surcharge all face-to-face and/or non-face-to-face Mastercard Credit Card Transactions.

2. The Surcharge assessed on a Mastercard Credit Card Transaction may not exceed the lesser of:
 - a. The Merchant's Mastercard Surcharge Cap, or
 - b. The Maximum Surcharge Cap, as published by Mastercard from time to time
3. The Merchant must comply with the Surcharge disclosure requirements set forth in Rule 5.11.2.3 below.
4. If a Merchant's ability to Surcharge a Competitive Credit Card Brand that the Merchant accepts, in either a face-to-face or non-face-to-face environment, is limited by that Competitive Credit Card Brand in any manner other than by prohibiting a Surcharge greater than the Competitive Credit Card Brand's Cost of Acceptance, then the Merchant may Surcharge Mastercard Credit Card Transactions in accordance with (1) through (3) above pursuant to either:
 - a. The same terms under which the Competitive Credit Card Brand permits a Merchant to Surcharge transactions of the Competitive Credit Card Brand in a face-to-face or non-face-to-face environment, or
 - b. The same terms under which the Merchant actually Surcharges transactions of the Competitive Credit Card Brand, in a face-to-face or non-face-to-face environment, after accounting for any discounts or rebates offered by the Merchant at the POI to the Competitive Credit Card Brand Cards.
5. The requirements outlined in (4) above are not applicable if:
 - a. The Competitive Credit Card Brand does not prohibit or effectively prohibit surcharging Credit Cards and the Competitive Credit Card Brand Cost of Acceptance to the Merchant is less than the Mastercard Credit Card Cost of Acceptance; or
 - b. The Competitive Credit Card Brand prohibits or effectively prohibits the surcharging of Credit Cards and the Merchant Surcharges the Competitive Credit Card Brand in an amount at least equal to the lesser of:
 - i. The Competitive Credit Card Brand Cost of Acceptance; or
 - ii. The amount of the Surcharge imposed on the Mastercard Credit Card Transaction to be Surcharged; or
 - c. The Merchant has entered into an agreement with the Competitive Credit Card Brand which waives or limits the Merchant's right to Surcharge transactions on that Competitive Credit Card Brand and the agreement:
 - i. Is not indefinite but is for a fixed duration;
 - ii. Is unique to the Merchant, not a standard agreement generally offered by the Competitive Credit Card Brand to multiple Merchants;
 - iii. Is not a condition to the Merchant's acceptance of the Competitive Credit Card Brand, thus the Merchant must have the ability to accept the Competitive Credit Card Brand for payment if the agreement were not in place;
 - iv. Is in exchange for Independent Consideration; and

- v. Contains a price under which the Merchant may accept Competitive Credit Card Brand transactions and surcharge those transactions up to the Merchant's Merchant Discount Rate for the Competitive Credit Card Brand after accounting for applicable discounts or rebates offered by the Merchant at the POI.

5.11.2.2 Product-level Surcharging

Definitions

Solely for purposes of this Rule 5.11.2.2, the following terms have the meanings set forth below:

1. "After accounting for any discounts or rebates offered by the Merchant at the POI" means that the amount of the Surcharge for Mastercard Credit Cards of the same product type or a Competitive Credit Card Product is to include the amount of any discount or rebate that is applied to that card or product at the POI but which is not equally applied to all Mastercard Credit Card Transactions of the same product type.
2. "Competitive Credit Card Product" includes any product within a brand of Credit Card or electronic credit payment form of a nationally accepted payment network other than Mastercard, specifically including without limitation Visa, American Express, Discover, and PayPal.
3. "Competitive Credit Card Product Cost of Acceptance" means the Merchant's average effective Merchant Discount Rate applicable to transactions on the Competitive Credit Card Product at the Merchant for the preceding one or twelve months, at the Merchant's option.
4. "Debit Card Cost of Acceptance" means the amount of the cap for debit transactions established by the Board of Governors of the Federal Reserve System pursuant to 15 U.S.C. § 1690-2 and its implementing regulations or, if the Board of Governors discontinues establishing a cap for debit transactions, the merchant's average effective Merchant Discount Rate for all PIN-based debit transactions for the preceding twelve months.
5. "Mastercard Credit Card Product Cost of Acceptance" means:
 - a. The average effective interchange rate plus the average of all fees imposed by the network upon Acquirers or Merchants, expressed as a percentage of the Transaction amount, applicable to Mastercard Credit Card Transactions of a product type at the Merchant for the preceding one or twelve months, at the merchant's option; or
 - b. If a Merchant cannot determine its Mastercard Credit Card Product Cost of Acceptance, then the Merchant may use the Mastercard Credit Card Product Cost of Acceptance for its Merchant category as published by Mastercard on the Mastercard public website.
6. The "Mastercard Credit Surcharge Cap" for a product type is the average effective Merchant Discount Rate applicable to Mastercard Credit Card Transactions of that product type at the Merchant for the preceding twelve months. At any given point in time, the actual Merchant Discount Rate paid in the time period covered by the Merchant's most recent statement relating to Mastercard Credit Card Transactions may be deemed a proxy for this amount.

The following requirements apply to a Merchant that chooses to impose a Surcharge at the product level:

1. The same Surcharge must apply to all Mastercard Credit Card Transactions of the same product type (for example, Standard Mastercard, World Mastercard, World Elite Mastercard) after accounting for any discounts or rebates offered by the Merchant at the POI. A Merchant may choose to Surcharge all face-to-face and/or non-face-to-face Mastercard Credit Card Transactions of the same product type.
2. The Surcharge assessed on a Mastercard Credit Card Transaction may not exceed the lesser of:
 - a. The Merchant's Mastercard Credit Surcharge Cap for that product type minus the Debit Card Cost of Acceptance, or
 - b. The Maximum Surcharge Cap, as published by Mastercard from time to time.
3. The Merchant must comply with the surcharge disclosure requirements set forth in Rule 5.11.2.3 below.
4. If a Merchant's ability to Surcharge a Competitive Credit Card Brand that the Merchant accepts, in either a face-to-face or non-face-to-face environment, is limited by that Competitive Credit Card Brand in any manner other than by prohibiting a surcharge greater than the Competitive Credit Card Brand's Cost of Acceptance, then the Merchant may Surcharge Mastercard Credit Card Transactions in accordance with (1) through (3) above pursuant to either:
 - a. The same terms under which the Competitive Credit Card Brand permits a Merchant to surcharge transactions of the Competitive Credit Card Brand in a face-to-face or non-face-to-face environment, or
 - b. The same terms under which the Merchant actually surcharges transactions of the Competitive Credit Card Brand, in a face-to-face or non-face-to-face environment, after accounting for any discounts or rebates offered by the Merchant at the POI on the Competitive Credit Card Brand.
5. The requirements outlined in (4) above are not applicable if:
 - a. The Competitive Credit Card Brand does not prohibit or effectively prohibit surcharging Credit Cards and the Competitive Credit Card Product Cost of Acceptance to the Merchant is less than the Mastercard Credit Card Product Cost of Acceptance, or
 - b. The Competitive Credit Card Brand prohibits or effectively prohibits the surcharging of Credit Cards and the Merchant surcharges the Competitive Credit Card Brand in an amount at least equal to the lesser of:
 - i. The Competitive Credit Card Brand Cost of Acceptance, or
 - ii. The amount of the Surcharge imposed on the Mastercard Credit Card Transaction to be Surcharged, or
 - c. The Merchant has entered into an agreement with a Competitive Credit Card Brand which waives or limits the Merchant's right to surcharge transactions on that Competitive Credit Card Brand and the agreement:
 - i. Is not indefinite but is for a fixed duration;

- ii. Is unique to the Merchant, not a standard agreement generally offered by the Competitive Credit Card Brand to multiple Merchants;
- iii. Is not a condition to the Merchant's acceptance of the Competitive Credit Card Brand, the Merchant must have the ability to accept the Competitive Credit Card Brand for payment if the agreement were not in place;
- iv. Is in exchange for Independent Consideration; and
- v. Contains a price under which the Merchant may accept Competitive Credit Card Brand transactions and surcharge those transactions up to the Merchant's Merchant Discount Rate for the Competitive Credit Card Brand after accounting for applicable discounts or rebates offered by the Merchant at the POI.

5.11.2.3 Requirements for Merchant Disclosure of a Surcharge at the POI

1. A Merchant that chooses to Surcharge, either at the brand level or the product level, must prominently display a clear disclosure of the Merchant's Surcharge policy at the point of store entry or when conducting an e-commerce Transaction, on the first page that references Credit Card brands. The disclosure must include a statement that the Surcharge that the Merchant imposes is not greater than the Merchant's Merchant Discount Rate for Mastercard Credit Card Transactions.
2. The Merchant must provide a disclosure of the Merchant's Surcharging practices at the POI or point of sale and that disclosure must not disparage the brand, network, Issuer, or payment card product being used. A statement that the Merchant prefers or requests that a cardholder use a form of payment with lower acceptance costs does not constitute disparagement under this Rule. This disclosure must include:
 - a. The Surcharge percentage that is applied to Mastercard Credit Card Transactions;
 - b. A statement that the Surcharge is being imposed by the Merchant; and
 - c. A statement that the Surcharge is not greater than the applicable Merchant Discount Rate for Mastercard Credit Card Transactions at the Merchant.
3. A Merchant that chooses to Surcharge must provide clear disclosure of the Surcharge amount on the Transaction receipt.

5.11.2.4 Merchant Notification and Acquirer Registration

A Merchant that chooses to impose a Surcharge must provide Mastercard and its Acquirer with no less than 30 days' advance written notice that the Merchant intends to impose a Surcharge on Mastercard Credit Card Transactions at either the brand level or product level.

For information about how to notify Mastercard, see www.mastercardmerchant.com. The Acquirer must register the identity of the Merchant with Mastercard within 10 days of receipt of the Merchant's notification.

5.11.2.5 Transaction Requirements

The Acquirer of a Merchant that chooses to apply either a Brand-level Surcharge or a Product level Surcharge to Mastercard Credit Card Transactions must offer to the Merchant the ability

to electronically submit to the Acquirer any such Surcharge amount separately (in the defined surcharge field) from the Transaction amount in the authorization and clearing message.

The Transaction amount will include the purchase amount plus the surcharge amount. If the Merchant separately submits the Surcharge amount applied to a Transaction electronically, the Acquirer must transmit the Surcharge amount in DE 28 (Amount, Transaction Fee) of the authorization request message and in DE 54 (Amounts, Additional), subfield 5 (Additional Amount, Amount) of the clearing message. DE 54 also must contain a value of 42 (Amount, Surcharge) in subfield 2 (Additional Amount, Amount Type).

For the avoidance of doubt, a Merchant is not prohibited from applying a Brand-level or Product-level Surcharge if the Acquirer has not enabled the Merchant to electronically submit the Surcharge amount separately from the Transaction amount as set forth in this Rule 5.11.2.5. A Merchant that applies a Brand-level or Product-level Surcharge must disclose the Surcharge amount on the TID as set forth set forth in Rule 5.11.2.3.

In the event that a Merchant provides a full or partial refund of a purchase Transaction that included a Brand-Level or Product-Level Surcharge, the refund Transaction must include the full or prorated Brand-Level or Product-Level Surcharge amount.

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