

# General Terms and Conditions

## General Terms and Conditions for the lease / purchase of a terminal Version 06/2019

The present general terms and conditions apply for lease or purchase of (a) Terminal(s) (as defined hereunder) and the services relating hereto between the Merchant and Ingenico Financial Solutions NV ("IFS").

The individual agreement concerning the lease/purchase of a Terminal between IFS and the Merchant (the "Individual Agreement") is subject to the following general terms and conditions (the "Conditions"). The Individual Agreement and the Conditions are hereinafter jointly referred to as the "Agreement".

### Definitions

Terms and expressions used in these Conditions and written with a capital letter, unless the context otherwise requires, shall have the following meaning:

- **Acquirer:** the company offering Card acceptance and payment transaction settlement services in relation to debit and credit card transactions. The Merchant shall enter into a separate agreement with the Acquirer.
- **Acquiring Services:** services provided by the Acquirer.
- **Business Day:** a working day which is not a bankholiday in Belgium
- **Card:** debit and/or credit card of the Card Associations, used for the payment of goods and/or services, and supported by the Terminal.
- **Card Associations:** MasterCard, Visa, Diners Club/Discover, JCB, Union Pay.
- **Cardholder:** holder of a Card, personally used by the holder for the purposes of paying for a non-cash underlying transaction.
- **Delivery:** has the meaning given to it in article 1.55.
- **EMV:** EMV is a worldwide standard for credit and debit payment systems, based on chip card technology.
- **General ISO 8583 Credit Card:** message format and communication flow issued by the International Organisation for Standardization allowing that different systems can exchange transaction requests and responses.
- **Ingenico Financial Solutions NV/SA:** a limited liability company incorporated under the laws of Belgium, having its registered office in Da Vincilaan 3, 1930 Zaventem with enterprise and VAT number BE 0886 476 763 (RMP Brussels). In the event that the registered address changes, the new address shall be indicated on the webpages of IFS. The webpages of IFS shall always indicate the most recent registered address.
- **Ingenico Group:** Ingenico Group S.A. with registered address at Boulevard de Grenelle 28-32, 75015 Paris, France, and/or any entity that is directly or indirectly Controlled by Ingenico Group S.A. Ingenico Group S.A. or this entity may also be designated as "member of the Ingenico Group". In the event that the registered address changes, then such change shall be indicated on the Ingenico Site. The Ingenico Site shall always indicate the most recent registered address.
- **Merchant:** the enterprise referred to in the Individual Agreement.
- **POS:** Point of sale.
- **Payment Services Act:** Provisions of Book VII of the Belgian Code of Economic Law (code de droit économique) relative to payment services.
- **Product Liability Act:** *Loi du 25 février 1991 relative à la responsabilité du fait des produits défectueux / Wet van 25 februari 1991 betreffende de aansprakelijkheid voor producten met gebreken.*
- **Privacy Act:** *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data*, as well as the Belgian law of the 30<sup>th</sup> of July 2018 relating to the protection of natural persons with regards to the processing of personal data all related regulations and implementation measures.
- **Terminal:** an EMV certified terminal, offered by IFS, which reads the Card data and routes the payment transaction to the Acquirer. The Terminal must be configured for EMV and must be initialized by IFS. Terminal also encompasses the saved or included programs, services and functions, as ordered by the Merchant in the Individual Agreement or, as the case may be, as laid down in the product specification.
- **Territory:** Benelux

### 1. Contents

- 1.1. The present Conditions relate to the lease (article 2) or the purchase (article 3) of the Terminal by the Merchant and the additional services attached thereto (article 4).
- 1.2. Whether lease or sales conditions apply to the contractual relationship, the nature of the leased or sold equipment and using additional services depends on the Merchant's decision in the Individual Agreement.
- 1.3. The Merchant is responsible for selecting the Terminal. The Merchant either has the required skills to make this selection or calls in an expert to do so. To the extent that the Individual Agreement does not provide otherwise, the Merchant shall use the Terminal only in the Territory. The Merchant may use the Terminal outside of Territory only with the prior written consent of IFS and in compliance with IFS's instructions (e.g. as regards the duration of such use). In either case, all services related to the Terminal are only rendered for locations in the Territory.
- 1.4. The Merchant leases or purchases the Terminal from IFS with a view to participating in a system of secured Card payments and the Terminal may only be used for acceptance and payment services. IFS reserves the right to claim damages from the Merchant for the use of the Terminal for initiating unsecured card payments (see article 1.5).
- 1.5. The use of a payment service provider who does not comply with the General ISO 8583 Credit Card Protocol for POS authorization specification in respect of its authorization centre is an example of

improper use of the Terminal. Unless otherwise agreed in writing, IFS shall deliver Terminals Ex-Works B-Waterloo (2010 Incoterms). A Terminal is deemed to be delivered to the Merchant at the moment it is ready for collection by the Merchant Ex-Works ("Delivery"). Upon Delivery, all risks are transferred to the Merchant. The Merchant undertakes to take out insurance required to cover the risks as of the time of Delivery until, respectively, the transfer of ownership or the proper return of the Terminal(s) to IFS. IFS may Deliver the items of an order all at once or separately. Unless stated otherwise by IFS in writing, all IFS prices are Ex-Works.

- 1.6. IFS shall use reasonable endeavours to meet the Delivery times or other deadlines assigned. Non-compliance with such deadlines does not give a cause for termination of the Agreement to the Merchant, unless IFS has been duly summoned in writing, to perform its obligations in a reasonable period of time and that IFS does not perform its obligations in such period of time.

### 2. Lease and maintenance

#### 2.1. Installation location

- 2.1.1. The object of the lease consists in one or several Terminal(s). Related equipment (e.g. batteries, fittings etc.) must be ordered separately and purchased from IFS for a fee.
- 2.1.2. The Merchant entrusts to IFS the shipping of the leased Terminal(s) from the Delivery place as per article 1.6 to the Merchant's premises. IFS shall ship such Terminal(s) at the risk and cost of the Merchant.
- 2.1.3. It is not allowed to use the Terminal in another store than in the store or branch of the Merchant indicated in the Individual Agreement, unless in case of prior written consent from IFS. IFS may not withhold its consent without an objective reason. The Merchant must pay all expenses and follow-up costs in relation to the change of the installation location.
- 2.1.4. The rent comprises the maintenance services described in article 4.2.
- 2.1.5. The amount of the rent results from the price indicated in the Agreement. The calculation of the rent commences on the third calendar day after shipment of the Terminal by IFS.
- 2.1.6. The entire Terminal remains the property of IFS. Due to the retention of title, the Merchant must handle the entire Terminal with due diligence.
- 2.2. The Merchant must immediately notify IFS in writing of any changes of the installation location and third party exposure, it being understood that the Merchant is precluded to pledge the Terminal without prior written consent from IFS. Should the Terminal be attached in connection with an enforcement procedure, the Merchant must argue the third party ownership of IFS (e.g. vis-à-vis the bailiff) and immediately notify IFS of such attachment in writing.
- 2.3. **Obligations of the Merchant**
- 2.3.1. The Merchant uses the Terminal for the purposes of executing this Agreement only and handles the Terminal with diligence. He will deploy adequately qualified personnel and complies with the instructions manual provided by IFS. To the extent that the Merchant does not have the explicit written consent of IFS, he is not authorized to enable third parties to use the Terminal allocated to him. The Merchant shall immediately notify IFS in writing of any third party access and provide IFS with all required information.

- 2.3.2. Upon first-time operation, the Merchant checks whether the Terminal works properly.

- 2.3.3. In case of termination of the Agreement, irrespective of the underlying reason, the Merchant must return the Terminal to IFS at his own expenses and risk, unless such termination is due to a breach by IFS of this Agreement or if IFS terminates this Agreement without any breach of the Merchant. The merchant shall return the Terminal in proper condition and packed in such a way that it is well protected against breakage. The Merchant bears all costs arising from non-compliance with the terms of use or from damages. If IFS does not receive the Terminal within four (4) weeks after the date on which the Agreement came to end, the Merchant shall pay damages equalling two hundred and fifty Euro's (250€), without prejudice to further claims for compensation by IFS. In such case IFS shall invoice this amount to the Merchant.
- 2.3.4. In case of malfunctions, the Merchant immediately notifies IFS in writing and describes as accurately as possible, the nature and the extent of the malfunction.

- 2.3.5. Regarding the notification/description of malfunctions, the Merchant must follow the information provided by IFS. Incidentally, the Merchant must cooperate during the repair of the malfunction.
- 2.3.6. Unless otherwise agreed, the Merchant must reinstate the leased Terminal in its initial condition prior to returning it, in case he altered or modified the Terminal in violation of the Agreement.

- 2.3.7. Should the Merchant not comply with the obligations mentioned above, the Merchant must indemnify IFS for the time lost and all additional expenses. The Merchant bears the costs for all measures taken in order to prevent third party intervention and measures required as a result of third party intervention in order to reinstate the Terminal in its initial condition, to the extent that IFS cannot be held responsible for such third party intervention.

### 3. Sale of the Terminals

#### 3.1. Sale

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- 3.1.1. The object of the sale consists in one or several Terminal(s). Articles 0 and 2.1.3 apply *mutatis mutandis* to purchased Terminals.
- 3.1.2. The purchase price does not comprise maintenance and installation services, which require separate agreements and may be concluded in connection with the Individual Agreement.
- 3.1.3. The price amount results from the price sheet at the time of the shipment or of the Delivery, to the extent that the Individual Agreement does not provide otherwise.
- 3.2. **Retention of title**
- 3.2.1. The purchase price for the Terminal is immediately due upon Delivery.
- 3.2.2. The entire Terminal remains the property of IFS until payment is received in full.
- 3.2.3. Due to the retention of title and until the Terminal entirely becomes the property of the Merchant:
- the Merchant has to handle the Terminal with due diligence.
  - the Merchant must immediately notify IFS in writing of any changes of the installation location and third party exposure, it being understood that the Merchant is prohibited from pledging the Terminal without prior consent from IFS. Should the Terminal be attached in connection with an enforcement procedure, the Merchant must argue the third party ownership of IFS (e.g. vis-à-vis the bailiff) and immediately notify IFS of such attachment in writing. Prior to the transfer of ownership, the Merchant is not entitled to dispose of the Terminal.
- 3.3. **Notice of defects**
- The Merchant examines the Terminal within eight (8) Business Days following the reception of the Terminal, in particular with respect to its completeness and functioning. Defects that have thus been detected or can thus be detected must be communicated to IFS within eight (8) Business Days by means of a written notice. The notice of defects must comprise a detailed description of the defects. Defects that cannot be detected by the aforementioned systematic examination must be communicated to IFS by registered letter within eight (8) Business Days after their detection. In case of non-compliance with the obligation to examine and communicate defects within the aforementioned deadline, claims in respect of such defects are excluded.
- 3.4. **Maintenance**
- At the Merchant's written request, IFS carries out maintenance work, repairs and software updates at the Terminal. The costs resulting from such work are borne by the Merchant. If requested in writing, IFS can render additional services related hereto as part of the Individual Agreement. These services are described in article 4 of the present Conditions.
4. **Additional related services**
- Additional related services requested by the Merchant in writing and accepted by IFS will become part of the Agreement. In respect of the maintenance and installation services, the Merchant shall actively support IFS by selecting skilled personnel.
- 4.1. **Installation**
- 4.1.1. **Plug & Play**
- To the extent that the Merchant selected "Plug&Play" in the Individual Agreement, IFS shall provide the Merchant with a preconfigured Terminal. Should the Merchant, after receipt of the Terminal, nevertheless require that the installation is carried out by a technician in accordance with article 4.1.2, this service is not included in the price of "Plug&Play".
- 4.1.2. **Installation by a technician**
- 4.1.3. If the Merchant selected the installation by a technician in the Individual Agreement, he must ensure in due time prior to the Delivery of the Terminal that the necessary premises are available and that free access to functioning power supply and communication connections that are needed in relation to the chosen Terminal (e.g. radio coverage in case of wireless Terminals), are available.
- 4.1.4. Installation and maintenance work resulting from the fact that the Merchant did not comply with his obligations under article 4.1, will be invoiced to the Merchant. The amount invoiced will be the installation cost foreseen in the Individual Agreement, which will therefore be invoiced a second time.
- 4.2. **Maintenance**
- 4.2.1. In the context of maintenance services, the Merchant shall first of all promptly call IFS's technical hotline and inform IFS, of any technical malfunctions of the Terminal and precisely describe the nature and degree of the malfunction by phone. In this respect, the Merchant follows the reasonable directions of IFS in relation to the analysis of the problem and the troubleshooting, given by phone. As for the rest, the Merchant shall cooperate in order to eliminate the malfunction.
- 4.2.2. Should the troubleshooting not be successful, IFS will provide the Merchant with a replacement Terminal by mail or courier.
- 4.2.3. Recovery of the malfunctioning Terminal and handover of the replacement Terminal takes place at the Merchant's premises. In case there is no employee of the Merchant present at the agreed address and the Terminal can therefore not be recuperated or delivered, another attempt shall be made after consultation with the Merchant, which will be charged to the Merchant.
- 4.2.4. Maintenance by IFS does not comprise damages for which the Merchant can be held responsible, *inter alia* due to the following reasons: the use of programs or ancillary equipment that are/is not authorized by IFS, operating errors or other improper handling by the Merchant or his personnel, vandalism, sabotage, fire damages, water damages due to any kind of humidity or damages caused by calamities for which IFS cannot be held responsible, such as war, earthquakes, civil commotions, lightning etc. In respect of both kinds of maintenance, the Merchant reimburses the costs incurred by IFS resulting from the diagnosis and the installation works in accordance with article 4.2.5 or article 4.2.6.
- 4.2.5. The following provisions apply to leased Terminals:
- If, at the occasion of the maintenance work, the malfunction turns out to be based on one of the grounds stated in article 4.2.4, IFS shall use reasonable endeavours to eliminate the malfunction and invoice the repair costs to the Merchant afterwards.
- 4.2.6. The following provisions apply to purchased Terminals:
- Maintenance work to the purchased Terminal shall only be carried out after written instructions from the Merchant, unless such maintenance was included in the Individual Agreement. The costs related to remedial action will be invoiced separately to the Merchant at pre-agreed costs.
- 4.2.7. **Download of software**
- If required, IFS provides software updates, which adjust the Terminal to the current requirements of the Card Associations or to other mandatory requirements relating to the processing of non-cash payment transactions. To this end, downloads are made available on a Terminal management system. The IFS network operating system automatically transmits the download according to its availability to the connected Terminal. The Merchant must ensure that these software updates are transmitted to the Terminal immediately after they have been made available. IFS reserves the right to invoice the download costs to the Merchant after having notified the Merchant hereof.
- 4.2.8. If so agreed in the Individual Agreement, a SIM-card is provided during the term of the Agreement solely for the purposes of processing non-cash payment transactions at mobile Terminals. The Merchant must immediately notify IFS in writing of any loss and/or destruction of the SIM-card or damages to the SIM-card. In case of destruction or loss, the Merchant shall indemnify IFS and pay a compensation of EUR 27.50. In case of misuse of the SIM-card for other purposes than for the purposes described herein, in particular if the SIM-card is used in other devices for using web services, or if the SIM-card is used in other countries than in the Territory or other expressly agreed countries, the Merchant must indemnify IFS for damages suffered. Moreover, in these cases the Merchant is liable for any third party misuse. The SIM-card is provided during the term of the Agreement between IFS and the Merchant. The SIM-card remains the property of IFS at all times. After termination of the Agreement, the Merchant must promptly and without further request return the SIM-card to IFS. IFS shall inform the Merchant of the mobile service provider used. The availability of the GPRS network depends on the general service level of the mobile service provider used. The used mobile service provider is not acting as an agent of IFS. Article 10.2.4 applies *mutatis mutandis*. In the event that the Merchant received the written authorization of IFS to use the Terminal outside of the Territory, then the availability of the GPRS network outside of Territory depends on the mobile service provider used in the relevant country. Under no circumstances can IFS be held liable for a disruption of the mobile network service of the service provider.
5. **Functions of Card-based payment transactions – Transaction processing**
- 5.1. In case of an on-line authorization, the Terminal routes the data provided by the Merchant for verification purposes to the competent Acquirer and sends the answer to the Terminal. Depending on the requirements of the Card issuer, the authorization is carried out. The results (successful or not) of the authorization is not part of the services under the present Agreement and is not guaranteed by IFS.
- 5.2. Fees for the data communication from the Terminal to the interface of the Acquirer, if any, are borne by the Merchant.
- 5.3. The Merchant understands that the Terminal will be configured only for those Card that IFS supports under this Agreement.
- 5.4. The Merchant understands that the centres of the Acquirers must fulfil the requirements of the specification General ISO 8583 Credit Card Protocol for POS authorization and the requirements of the specification "TOC – Turn-over data format of credit card data". IFS is not liable for any delay regarding the turnover credit entry caused by such outages. If the payment and settlement services are carried out by an Acquirer that the Merchant has selected itself (so acquirer was not suggested by IFS), an additional routing fee per transaction might be payable to IFS. In such case such fee shall be agreed in writing between the parties.
6. **Modifications/additions and reinitialization**
- 6.1. If the Individual Agreement provides for maintenance, IFS is entitled to arrange for modifications of or additions to the purchased Terminal, which are required for the purposes of maintenance or improvement of the Terminal or which are required or appropriate for the continuation of the services. "Modifications" covers any deviations from mechanical, electric or electronic construction, including any modifications in respect of micro-programs. In this context, "Additions" cover any mechanical, electric or electronic connections of the relevant devices with other devices, parts or additional equipment. IFS must inform the Merchant in advance of any such measures. The Merchant must allow the execution of the Modifications or Additions. Unless agreed otherwise in the Individual Agreement, costs related thereto shall be borne by the Merchant, as set out in the Individual Agreement or as otherwise agreed between the parties.
- 6.2. Any Modifications or Additions carried out by the Merchant to the leased Terminals require the prior written consent of IFS. In this context, "Modifications" also cover the use of software programs that are not allowed by IFS at the Terminal. Should the Merchant carry out Modifications and/or repairs without receiving the written authorization of IFS in advance, the Merchant's guarantee claims expire to the extent that he cannot prove that the malfunctions are not caused by his own Modifications and/or repairs, without prejudice to injunctive relief and damage claims or other prejudice by IFS.
- 6.3. Should amended requirements of the Card Associations or legal provisions lead to a mandatory Modification at the Terminal, IFS is entitled to take appropriate action (e.g. software download) for the purposes of maintaining the Terminal's functionality. Costs related hereto shall be borne by the Merchant.
7. **Guarantee for sold Terminals**
- 7.1. As regards sold Terminals, IFS complies with its guarantee obligations for Terminals by delivering a replacement Terminal. In case the replacement Terminal shows defects as well, the Merchant is entitled to terminate the Agreement or to claim a fair reduction of the purchase price in accordance with the general provisions of Belgian law.
- 7.2. The guarantee period is twelve (12) months as of the first successful transaction processed by the Terminal. In case of used Terminals, e.g. in connection with a sales campaign, IFS will offer a shortened guarantee period or no guarantee period at all, depending on the provisions of the sales

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- agreement or the Individual Agreement and depending on the age of the relevant devices.
- 7.3. In case of defects or malfunctions at the Terminal, the Merchant provides any and all information required to eliminate the defect and supports IFS with detecting the defects. The replacement of the malfunctioning Terminal is the only remedy available to the Merchant in relation to such issue, it being understood that such replacement will only take place if the Merchant complies with the notice of defects as set out in article 3.3.
- 8. No third party rights**
- 8.1. IFS guarantees that, to its knowledge and as far as the Territory is concerned, the Terminal is not encumbered with any third party rights which could lead to injunctive relief, and the contractual use of the Terminal does not violate any intellectual property rights.
- 8.2. Should any claims be filed against the Merchant, based on the violation of intellectual property rights, the Merchant shall promptly notify IFS hereof in writing. IFS shall reimburse the Merchant for the necessary costs for his legal defence provided these are reasonable, whereby IFS is also entitled to take appropriate defensive action and to enter into settlement negotiations. In addition in case of legal defence exercised by the Merchant, the Merchant agrees not at any time to admit liability or otherwise settle or compromise or attempt to settle or compromise the claim or action except upon the written agreement of IFS. Moreover the Merchant shall act in accordance with the reasonable instructions of IFS and gives to IFS such assistance as it shall reasonably require in case IFS would start a defence action, including the transmission of all procedural documents and all relevant documentation.
- 8.3. Should the contractual use be encumbered by third party intellectual property rights, IFS is entitled to either acquire licenses or fully or partly replace the Terminal at its own expense, to the extent that this is reasonable vis-à-vis the Merchant. Should IFS not be in a position to remove the adverse effect caused by third party rights, the Merchant is entitled to terminate the Agreement or claim a price reduction.
- 9. Term - Termination**
- 9.1. The Agreement enters into force at the moment that IFS performs a first test transaction (effective date).
- 9.2. Unless otherwise specified in the Individual Agreement, the Agreement is entered into for a fixed period of one year as of the effective date (the "**Initial Term**"). The Merchant can cancel the Agreement without costs by sending a registered letter to IFS within three days as of signature of the Individual Agreement, providing the Terminal was not yet delivered.
- 9.3. Following the Initial Term or any subsequent term, the contractual term is automatically renewed in accordance with article 9.5, unless one of the parties has terminated the Agreement.
- 9.4. In case an unlimited period of time has been agreed, as set out in the Individual Agreement, each party may terminate the Agreement at all times, by means of a written notice and subject to a notice period of thirty (30) calendar days.
- 9.5. In case of a fixed term, as set out in the Individual Agreement or in the present Conditions, the Initial Term of the Agreement is automatically renewed for successive one year periods (each a "**Subsequent Term**"), unless the Agreement is terminated by one of the parties by means of a written notice three (3) months prior to the expiry of the Initial Term, or, as the case may be, of a Subsequent Term. During the Initial Term and/or any Subsequent Term, the Agreement may only be terminated for cause in accordance with articles 9.6, 9.7 or 16.
- 9.6. Articles 9.4 and 9.5 do not affect the right of each party to terminate the Agreement with immediate effect for cause. A cause is, *inter alia*, cessation of the Merchant's business activities in the Territory.
- 9.7. Moreover, IFS is entitled to terminate the Agreement with immediate effect for cause, for instance, in the following situations:
- if, after the Agreement has been concluded, IFS becomes aware of circumstances illustrating that the Merchant misrepresented his business operations, in particular his range of goods or services;
  - if the Merchant is in payment default in respect of two payments and fails to make these payments in spite of a reminder with a payment deadline,
  - if the Merchant's financial situation materially deteriorates (except if the Merchant is subject to judicial restructuring ("*réorganisation judiciaire*" / "*gerechtelijke reorganisatie*"). This can be reflected, *inter alia*, by filing a petition in bankruptcy, instituting insolvency proceedings or the rejection of initiating such a procedure due to insufficient assets to cover the costs for such proceedings ,
  - if the Merchant repeatedly violates his obligations, or in particular the duty of care obligations under this Agreement,
  - if the activities of IFS under this Agreement are or become unlawful without an administrative license or if the activities are prohibited by the supervisory authorities,
  - in case of a change of ownership in respect of the business operations of the Merchant,
  - if the Merchant objects to the changed requirements under article 14,
  - in case of criminal conduct of the Merchant; this also applies in case of reasonable suspicion of criminal conduct of the Merchant,
  - in case of a breach of one of the Merchant's obligations under article 16 of this Agreement
  - if a Card Association imposes fines on IFS, due to the Merchant's negligence.
- 9.8. Moreover, the Merchant is entitled to terminate the Agreement with immediate effect for cause, for instance, in the following situations:
- if IFS's financial situation materially deteriorates (except if IFS is subject to judicial restructuring ("*réorganisation judiciaire*" / "*gerechtelijke reorganisatie*"). This can be reflected, *inter alia*, by filing a petition in bankruptcy, instituting insolvency proceedings or the rejection of initiating such a procedure due to insufficient assets to cover the costs for such proceedings ,
  - if IFS repeatedly violates its obligations under this Agreement,
  - if the activities of IFS under this Agreement are or become unlawful without an administrative license or if the activities are prohibited by the supervisory authorities,
  - in case of criminal conduct of IFS; this also applies in case of reasonable suspicion of criminal conduct of IFS,
- if a Card Association imposes fines on the Merchant, due to the IFS' negligence.
- 9.9. Termination notices must be given in writing. Each party is also entitled to terminate the Agreement in part.
- 10. Liability**
- 10.1. Liability of the Merchant**
- The Merchant is liable vis-à-vis sIFS for damages incurred by IFS due to acts or omissions of any nature whatsoever of the Merchant, his employees and other third parties engaged by the Merchant in connection with this Agreement. In this respect, the Merchant undertakes to act with due care as a diligent operator (goede huisvader/bonne père de famille). Should one of the Card Associations impose penalties on IFS due to the Merchant's intentional or negligent violation of one of his obligations under this Agreement, the Merchant fully holds IFS harmless against this, respectively fully indemnifies IFS for the corresponding amounts invoiced to IFS.
- 10.2. Liability of IFS**
- 10.2.1. IFS is never liable for non-authorized or incorrect completion of payment transactions. The liability of IFS does not extend to unusual and/or unforeseeable events, which cannot be influenced by IFS and the consequences of which could not have been prevented, even in case of due care.
- 10.2.2. IFS is only liable vis-à-vis the Merchant for damages resulting from a serious breach of contractual or pre-contractual obligations or from tort, in accordance with the following provisions:
- a. In case of wilful intent, claims in accordance with the Product Liability Act and personal injury, bodily harm or damage to health, IFS is liable in accordance with the statutory provisions.
  - b. The Merchant must prove the existence of wilful intent.
  - c. IFS is only liable for gross negligence ("*manquement grave*"), not for simple negligence ("*manquement léger*").
  - d. Moreover, IFS is not liable for loss of profit, loss of clientele and other consequential or indirect damages and expenses, in particular not for losses as a result of a business interruption.
  - e. In addition, the total liability of IFS, for claims made under this Agreement during one calendar year (from January 1<sup>st</sup> to December 31<sup>st</sup>) is limited to a maximum amount which equals the amounts invoiced to and paid by the Merchant under this Agreement for the 12 months prior to the event giving rise to liability
  - f. The aforementioned restrictions and exclusions also apply to possible claims for compensation of the Merchant or third parties.
- 10.2.3. If the damages were caused by several parties, IFS is only liable in proportion to its contribution to the damages and in accordance with the agreed liability restrictions.
- 10.2.4. Should a/the Terminal(s) break down, it is assumed on the basis of the availability of alternative methods of payment at the POS that the Merchant did not suffer any damages beyond the technical aspects. However, the Merchant is entitled to prove to IFS that he incurred damages beyond the technical aspects.
- 10.2.5. Liability for loss of information is limited to the typical recovery work, which would have had to be carried out in case regular back-up copies would need to be produced related with a certain degree of risk. If the damages/losses can be attributed to an error on the data network or a misuse of the data network, IFS is liable to the same degree as the telecommunication provider used by IFS claims against IFS are assigned to the Merchant. The Merchant herewith accepts such assignment.
- 10.2.6. IFS is not liable for interruptions or limited services due to technical infrastructure which does not fall within its liability scope, including telecommunication channels operated by the telecommunication provider or telecommunication channels of the Terminal locations.
- 10.3. Claims for damages become time-barred within six (6) months as of the moment that the party became aware of his claim, whether under this Agreement or in tort.
- 11. Invoicing, fees and mode of payment**
- 11.1 Any fees payable by the Merchant are exclusive of value added tax. As the case may be, value added tax will be charged according to the Belgian tax provisions relating to the value added tax applicable at the time of the supply of the services, and are exclusive of other taxes, fees and charges.
- 11.2 The amount of the fees to be paid by the Merchant results from the price and services sheet of IFS applicable at the time the Agreement was concluded or from the fees set out in the Individual Agreement between the Merchant and IFS agreements resulting from the Individual Agreement take precedence over the price and services sheet. Charging fees for the fulfilment of secondary obligations is also allowed. The price and services sheet is provided to the Merchant prior to the conclusion of the Agreement. IFS is authorized to change the price and services sheet during the term of the Agreement, provided that the Merchant was informed hereof in advance and in due time. The changes are deemed to be accepted if the Merchant does not object to them by means of a written notification within fourteen (14) days following the notification. In case the Merchant objects to the change of the fees than he has the right to terminate this Agreement by means of a written notice within 30 calendar days as from the day he was informed thereof by IFS. The Agreement will end at the end of the 30 days. Upon the request of the Merchant, the parties can agree another day on which the Agreement will end.
- 11.3 In addition thereto IFS shall be entitled to revise its fees without prior notice based on the trend in the AGORIA Labor Cost Indicator (as defined hereafter). Said price changes may be calculated annually, in January, based on the following formula:
- $$P = P_0(0.2 + 0.8 \times \frac{L_0}{L_1})$$
- In which:  
P = New price after revision  
P0 = Price before revision  
L0 = Most recent value of the AGORIA Labor Cost Indicator published prior to last revision (if no revision has occurred yet, most recent value of the AGORIA Labor Cost Indicator published prior to signature of the Merchant Contract)

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- L = Most recent value of the AGORIA Labor Cost Indicator published prior to price revision  
AGORIA Labor Cost Indicator = The Belgian national average reference wage indicator (including social security charges), as issued by AGORIA, Federation for the Technology Industry, expressed in Eur/h for companies employing more than 10 workers.  
At the time of issuing this version of these Conditions, this indicator can be found on  
<https://www.agoria.be/WWW.wsc/rep/prg/AppContent?ENewsID=102026> in the table ("LANDSGEMIDDELDE/MOYENNE NATIONALE Contract na/après 11 07 1981") under "Referteloonkost Eur/u Coût salarial Eur/h +10 WERKNEMERS/TRAVAILLEURS".  
This indexation of the prices does not give the right to the Merchant to object thereto or to terminate the Agreement.
- 11.4 The right to adapt the fees under article 11.2 and 11.3 may not be exercised in the course of the first three (3) months following the entry into force of the Agreement, unless agreed otherwise.
- 11.5 For all fees to be paid by the Merchant to IFS, IFS is entitled to direct debiting. Hence, the Merchant grants a direct debit or a SEPA authorization to IFS.
- 11.6 In case the fees and expenses to be paid by the Merchant as described in article 11.5 cannot be settled, the Merchant undertakes to pay the invoice immediately.
- 11.7 In principle, all fees are due and payable within 15 calendar days as of the invoice date. Lease fees are principally due and collected in advance for the month in question. Invoices can be issued either electronically or on paper.
- 11.8 The settlement of periodic fees occurs once a month by direct debit. This article 11 is without prejudice to the settlement provisions of the payment transactions potentially agreed between the Merchant and IFS.
- 11.9 The Merchant receives a written invoice.  
In case the Merchant does not object within one (1) month following receipt of the invoice, the invoice is deemed to be accepted. Subject to the condition that the Merchant is informed at least four (4) weeks in advance, IFS is at all times entitled to waive a written financial statement and to comply with this obligation by submitting the wording of the debit memo only. The Merchant must review this wording in the same manner as a written invoice. In this case, an additional invoice will only be issued if so agreed in the Individual Agreement.
- 11.10 The Merchant expressly accepts that IFS sets off, at any moment and without notice, any amount IFS owes to the Merchant with the amounts owed by the Merchant to IFS. The Merchant cannot set off the amounts it owes to IFS against the amounts due by IFS to the Merchant, unless if IFS authorizes the same in writing. In addition, the Merchant hereby waives the benefit of the *exceptio non adimpleti contractus* and can thus not invoke any (alleged) breach or tort on the part of IFS to suspend or withhold payments to IFS.
- 12 Due payments by the Merchant**
- 12.1 Without prejudice to the relevant provisions of the Act of 2 August 2002 on combating late payment in commercial transactions ("*Loi concernant la lutte contre le retard de paiement dans les transactions commerciales / Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties*"), late payment by the Merchant will accrue interest at a rate of EURIBOR twelve (12) months plus five (5) percentage points from the due date of the invoice. Such interest shall accrue on daily basis.
- 12.2 In case of (partial) late payment, the Merchant owes IFS a lump-sum compensation for recovery and collection costs of fifteen per-cents (15%) of the invoiced amount, with a minimum of EUR 60 and a maximum of EUR 3,200. Such lump-sum compensation is in addition to interests for late payment, legal costs or expenses and/or other possible compensation for damages or losses suffered by IFS.
- 12.3 In case of late payment and without prejudice to the right of termination for cause in accordance with article 9.7, IFS is entitled to suspend or interrupt all or part of the services to be provided in accordance with the present Conditions if the Merchant is in default with one of his payment obligations under this Agreement and fails to fulfil his payment obligations in part or in full within a reasonable deadline imposed by IFS. The assertion of any claims based on the fact that the Merchant cannot use the Terminal is excluded. The rent for the Terminal remains due, also during the time that the Card acceptance is deactivated.
- 13 Assignment and assumption**
- 13.1 The Merchant is not entitled to transfer the Agreement to third parties without prior written consent of IFS and may not assign or impose other rights and/or obligations resulting from this Agreement to/on third parties.
- 13.2 IFS is entitled to assign or encumber all or part of the claims, resulting from this Agreement, or transfer all or part of its rights or obligations within the limits of this Agreement to third parties.
- 13.3 If required, IFS informs the Merchant of which contractors are deployed for which operations. The Merchant's prior consent is not required. The Merchant herewith irrevocably agrees to such assignments, or subcontracting.
- 14 Amendment of the Conditions**
- IFS is entitled to amend these Conditions. Any amendment to these Conditions by IFS shall become binding on the Merchant as of the date of its communication to the Merchant, unless IFS notifies the Merchant that a later entry into force applies for such amendment.
- 15 Change of law / regulations**
- In case services under this Agreement must be adapted due to a change of law or the Card Association' regulations, IFS is entitled to charge the costs arising out of such adjustment to the Merchant subject to prior notice, in order to guarantee the lawful provision of services in accordance with the provisions of the Agreement.
- 16 Public permits**
- The Merchant warrants that he holds all public permits/authorizations/licenses required, as the case may be, to lawfully carry out his commercial activities and this Agreement. In the absence hereof, IFS has the right to terminate this Agreement with immediate effect.

In addition, in that case the Merchant must compensate IFS for all damages arising out of such violation in accordance with the first sentence of this article, independent of any negligence on behalf of the Merchant.

## 17 Confidentiality, Data Protection

### 17.1 Protection of personal data

17.1.1 By signing the Individual Agreement, the Merchant and/or his representative acknowledge that they are informed of the fact that IFS will process his personal data. Such data are protected by the Privacy Act as amended from time to time.

17.1.2 IFS processes the personal data in order to fulfil its contractual obligations under the Agreement and its legal obligations. IFS may, subject to the explicit consent of the Merchant and/or his representative, revocable at all times, also process these data for the purposes of direct marketing via ordinary mail or e-mail.

17.1.3 Within the scope of the aforementioned purposes, IFS is entitled to forward these data to other group companies and to service providers, who were selected on the basis of their services and their guarantees in connection with the protection of personal data, and to the Card Associations in the framework of the provision of services in accordance with the Agreement. Forwarding these data as described above may entail forwarding of data to countries outside of the European Economic Area, which do not offer a proper level of data protection. In that case, IFS will take appropriate measures (including contractual measures) in order to ensure that the receivers of the personal data will offer sufficient guarantees in relation to data protection.

### 17.2 Confidentiality

In addition to the protection of personal data, the parties to this Agreement agree to the following confidentiality undertaking:

Each party undertakes to treat any business related information of the other party in a strict confidential manner and only disclose such information to third parties to the extent that this is required for the due execution of the Agreement and solely for the purposes of the Agreement and in respect of information about Cardholders which is not made anonymous is confidential information. Both parties must comply with all statutory provisions regarding data protection and take proper precautions to avoid unauthorized use of Card and Cardholder information. Third parties in the sense of this Agreement are companies that are not affiliated with a party to this Agreement in accordance with articles 1.20 et seq. of the Companies Code. This confidentiality obligation applies for the term of this Agreement and will survive the termination of the Agreement for another year.

It does not apply to information that, at the time of disclosure, was demonstrably known to the other party or was public knowledge and/or became known to the other party after disclosure other than as a result of a breach of the confidentiality obligation by the receiving party. The confidentiality obligation does neither apply where the use or disclosure of such information was explicitly permitted in writing by the other party, or where the disclosure of such information is requested by statutory provisions or regulatory rules, e.g. for disclosure of the contents of this Agreement, to the extent required for the fulfilment of statutory supervisory obligations vis-à-vis the Belgian National Bank or another competent supervisory body. Any questions regarding data protection may be sent to [privacy@fs.ingenico.com](mailto:privacy@fs.ingenico.com). The data protection officer of IFS will answer these questions.

## 18 Intellectual Property

Unless otherwise determined by IFS, the Merchant acknowledges that all intellectual and industrial property rights in and to the Terminal and the services provided (including, but without being restricted to surveys, plans and software programs) are and remain the sole property of the respective member of the Ingenico Group or, as the case may be, of third parties holding these rights) and IFS ensures that it has the necessary rights to lease/sell the Terminals and offer the services provided under this Agreement. Unless otherwise agreed in writing, the Merchant is only granted the non exclusive, non transferrable right to 1) access to the software, whether the latter is integrated in the Terminal or not, and 2) to use the software solely for the purposes of his POS activities and as strictly authorised by the Agreement. This right does not entail the right to grant sublicenses. The labels on the Terminal and the brand under which the Terminal is sold/leased may only be used by the Merchant for the purposes of identifying the Terminal.

## 19 Applicable law and place of venue

19.1 This Agreement shall be governed by and construed in accordance with Belgian law, excluding the conflict of law rules and the UN Sales Convention. The scope of services to be provided by IFS conforms with the statutory provisions, the terms and conditions of the Card Associations and other applicable rules and provisions at the time of the conclusion of the Agreement. If these terms change due to laws or the aforementioned rules and provisions, they are not included in the scope of services. The Merchant hereby expressly and irrevocably waives the application of its own terms and conditions with respect to the subject matter of this Agreement.

19.2 The Merchant is not a consumer in the sense of article I.1 of the Code of Economic law. To the extent the Payment Services Act would apply (if at all applicable), the Parties agree that articles VII.6 to VII.20 included and the provisions of articles VII.27, §3, VII.28, 36 to 38, VII 41, VII. 49 to 51 and VII 55 do not apply and are herewith waived and replaced by the provisions of this Agreement.

19.3 The Brussels Dutch-speaking Business Court, has exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement between IFS and the Merchant, including issues regarding the conclusion, interpretation, validity, performance, and termination of the Agreement.

19.3 The Brussels Dutch-speaking Business Court, has exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement between IFS and the Merchant, including issues regarding the conclusion, interpretation, validity, performance, and termination of the Agreement.

## 20 Severability

20.1 If any provision of this Agreement is held to be invalid or unenforceable, in whole or in part, (due to legal reasons and beyond the parties' control), the validity of the remaining provisions of the Agreement shall not be affected. The invalid or unenforceable provision shall be replaced by an appropriate arrangement, which comes as close as possible to what the parties would have agreed if they had been aware of the invalidity or unenforceability of

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the initial provision, within the limits of the contractual goals. The same applies to any contractual gaps in the Agreement.

20.2 Contractual changes must be made in writing. This also applies to an amendment of the written form requirement.

**21 Notices and request**

Unless otherwise provided in this Agreement, all written notices and written requests of the Merchant to IFS shall be sent simultaneously by e-mail and by ordinary mail to:

**Ingenico Financial Solutions SA/NV**, Da Vincilaan 3, 1930 Zaventem, Belgium; info.belux@ingenico.com

**22 Force majeure**

In case of force majeure, the party concerned must inform the other party hereof by means of a registered letter with acknowledgement of receipt within fifteen (15) days after the occurrence of the event of force majeure. The parties explicitly agreed on the following list of events of force majeure, including but not limited to: all state decisions, strikes, riots, war, bans on import, flooding, fire, or any other events of force majeure of the applicable Belgian case law. The parties' obligations are suspended without compensation during such an event of force majeure. In case the event of force majeure should last longer than three (3) months, both parties may automatically terminate the Agreement without compensation, by issuing a written notification to the other party.