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 hereinafter) and the services relating hereto between the Merchant and Ingenio Financial Solutions NV/SA ("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 "General Terms and 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 bank holiday in Belgium.
- Card: debit and/or credit card of the Card Associations, used for the payment of cash underlying transaction.
- Cash machine: an automatic machine for providing cash, operated 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: European Unionʼs security standard for credit card payment systems, based on chip card technology.
- General ISO 8583 Credit Card Protocol for POS: a general standard protocol related to point of sale transactions, including the communication flow in electronic data interchange in the context of debit and credit card transactions.
- General Terms and Conditions: these terms and conditions of the Acquirer (IFS), to the extent that they concern the services relating to debit and credit card transactions.
- IFS: Ingenio Financial Solutions NV/SA or any entity that is directly or indirectly controlled by Ingenio Group S.A. (the "Group"). IFS may, in some circumstances, be referred to as "member of the Ingenio Group". In the event that IFS modifies or updates the Individual Agreement, the Merchant must accept this modification or update. The Merchant may terminate the Agreement if it is not satisfied with the modification or update. (1) The Merchant is precluded to pledge the Terminal for the purpose of securing any debt as well as to sell or transfer the Terminal.
- Installation: the initial placement of the Terminal in the Merchant’s premises.
- Installation location: the location where the Terminal is installed.
- Merchant: the entity referred to in the Individual Agreement.
- POS: Point of sale.
- Payment Services Act: a law relating to payment services, forming part of the Belgian Code of Economic Law.
- Privacy Act: Regulation (EU) 2016/679 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 10 July 2018 relating to the protection of personal data with regards to the processing of personal data and 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 Merchant must be fully aware that the Individual Agreement does not provide otherwise, the Merchant shall use the Terminal only in the Territory. IFS shall use reasonable endeavours to meet the Delivery times or other deadlines assigned. Non-compliance with such deadlines does not give rise to 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.
- 2.1. 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 separately and purchased from IFS.
- 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 la Woluwe 32-34, 1150 Brussels, Belgium, and/or any entity that is directly or indirectly controlled by Ingenio Group S.A. In case of written consent from IFS, this entity may also be designated as "member of the Ingenio Group". In the event that the registered address changes, 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: a law relating to payment services, forming part of the Belgian Code of Economic Law.
- Privacy Act: Regulation (EU) 2016/679 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 10 July 2018 relating to the protection of personal data with regards to the processing of personal data and 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 Merchant must be fully aware that the Individual Agreement does not provide otherwise, the Merchant shall use the Terminal only in the Territory. IFS shall use reasonable endeavours to meet the Delivery times or other deadlines assigned. Non-compliance with such deadlines does not give rise to 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.
- 2.2. Obligations of the Merchant

2.3.1. The Merchant uses the Terminal for the purposes of evacuating 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.
- Upon first-time operation, the Merchant checks whether the Terminal works properly.
- 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 between the Merchant and IFS terminates, the Merchant shall pay damages equaling 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.
- 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.
- Regarding the notification/description of malfunctions, the Merchant must follow the instructions provided by IFS. Incidentally, the Merchant must cooperate during the repair of the malfunction.
- 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.
- 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.
- 3.1. Sale
3.1. The object of the sale consists in one or several Terminal(s). Articles 0 and 2.1.3 apply mutatis mutandis to purchased Terminals.

3.2. The price does not cover maintenance and installation services, which require separate agreements and may be concluded in connection with the Individual Agreement.

3.3. 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.

3.4. Retention of title

3.4.1. The purchase price for the Terminal is immediately due upon Delivery.

3.4.2. The title is transferred to the Merchant when the Terminal is received in full.

3.4.3. 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 any changes of the installation location and third party exposure, it being understood that the Merchant is prohibited from using 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 (e.g. via saisie or 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.

3.5. Notice of defects

3.5.1. 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 can be notified to the Merchant in writing within eight (8) Business Days by means of written notice. The notice of defects must comprise a detailed description of the defects. Defects that cannot be detected during the aforementioned systematic examination must be communicated to IFS by registered letter within eight (8) Business Days after the reception. 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.

4. Maintenance

4.1. Installation

4.1.1. Plug & Play

4.1.1.1. 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 additional service is not included in the price “Plug&Play”.

4.1.1.2. Installation by a technician

4.1.1.3. 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 are needed in relation to the chosen Terminal (e.g. radio coverage in case of a terminalless Terminal), are available.

4.1.4. Installation and maintenance work resulting from the fact that the Merchant did not comply with his obligations under article 4.1.1, will be invoiced to the Merchant. The Terminal 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 ensure that IFS’s technical hotline service is not damaged, as most 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 is not entitled 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 at 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 recovered 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 liable according to the following reasons: the use of programs or ancillary equipment that are not authorized by IFS, operating errors or other improper handling by the Merchant or his personnel, natural calamity, 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, earthquake, 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 articles 4.2.5 or 4.2.6.

4.2.5. The following provisions apply to leased Terminals:

4.2.5.1. If 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 (if any) to the Merchant afterwards.

4.2.6. The following provisions apply to purchased Terminals:

4.2.6.1. Maintenance work to the purchased Terminal shall only be carried out after explicit instructions from the Merchant, unless otherwise provided 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 is not included in the price. IFS will therefore be invoiced a fee per transaction, which adjust the Terminal to the current requirements of the Card Associations or to other mandatory requirements related to payment transactions. To this end, downloads are made available on a Terminal management system. The IFS network operating system automatically transmits the downloading instructions 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 Merchant after having notified the Merchant hereof.

4.2.8. If so agreed in the Individual Agreement, a maintenance service 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 failure of the SIM card or damages to the SIM card. In case of destruction or loss, the Merchant shall indemnify IFS for the consumption of EUR 25.00. 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 in the Territory or other expressly agreed countries, the Merchant must indemnify IFS for damages to the Terminal, in case 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’s network and the GSM network are termed “GPRS”. 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 disturbance 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 are 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 fulfill the requirements of the specification General IS 8533 Credit Card Protocol for POS authorization and the requirements of the specification “TCC – Turnover data format of card data”. IFS is not responsible for updates of Acquirer centres. IFS is not liable for any delay regarding the turnover credit entry caused by such outcomes. 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 realintialization

6.1. If the Individual Agreement provides for maintenance, IFS is entitled to arrange for modifications to the purchased Terminal. The modifications 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 or other information forms IFS, of any technical functionalities of the relevant devices with other devices, parts or additional equipment. IFS must inform the Merchant in advance of such changes. 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 injurious relief and damage claims or other liability 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. to modify the program or code) in such case to improve the Terminal’s functionality. Costs related thereto 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 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 type of the sale.
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 defect reports. For the replacement of a malfunctioning Terminal, IFS is 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 removal 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 affect 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 insured party agrees in writing, IFS shall reimburse the Merchant for the necessary costs for its legal defense. If these are reason avoided, whereby IFS is also entitled to take appropriate defensive action and to enter into settlement negotiations. In addition in case of legal defense 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 defense 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 infringements, 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 intellectual property infringements, IFS 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 a fixed term (the "Initial Term"). The Merchant may cancel the agreement without costs by sending a registered letter to IFS within three days as of signature of the Individual Agreement. Canceling the Terminal was provided in accordance with article 9.5, unless one of the parties has terminated the Agreement

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 of 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 five (5) months prior to the expiry of the Initial Term, or, as the case may be, of a Subsequent Term. If the Agreement is not terminated, the Subsequent Term, the Agreement may only be terminated for cause in accordance with articles 9.6 to 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. Moreover, IFS is entitled to terminate the Agreement with immediate effect for cause if: 

- it, after the Agreement has been concluded, IFS becomes aware of circumstances indicating that the Merchant misrepresented his business operations, in particular his range of goods or services;
- the Merchant is in default in respect of two payments and fails to make these payments in spite of a reminder with a payment deadline;
- the Merchant’s financial situation materially deteriorates (except if the Merchant is subject to judicial restructuring ("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;
- the Merchant does not allow IFS to conduct inspections, or in particular the duty of care obligations under this Agreement;
- 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 changes required under article 14;
- in case of criminal conduct of the Merchant; or in case of a breach of one of the Merchant’s obligations under article 16 of this Agreement;

9.7. 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 ("reorganisatie" or "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 Agreement with 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’s 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 IFS for damages incurred by IFS due to acts or omissions of any nature whatsoever of the Merchant in connection, 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 all losses as a result of the penalty.

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 willful intent, claims in accordance with the Product Liability Act and personal injury, bodily harm or damage to health, IFS is liable in accordance with civil law and the Consumer Protection Act; Moreover the Merchant shall act in accordance with the reasonable instructions of IFS and give to IFS such assistance as it shall reasonably require in case IFS would start a defense action, including the transmission of all procedural documents and all relevant documentation.

b. The Merchant must prove the existence of willful intent.

- IFS is only liable for gross negligence ("manquement léger") for simple negligence ("manquement léger")
- 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.
- In addition, the total liability of IFS, for claims made under this Agreement during any calendar year (from January 1st to December 31st) 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.
- The aforementioned restrictions and exclusions also apply to possible claims for compensation of any and all information required to eliminate the defect and supports IFS with defect reports. For the replacement of a malfunctioning Terminal, IFS is 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 removal of defects as set out in article 3.3.

10.2.3. If the damages were caused by several parties, IFS is only liable in proportion to their 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 means of payment a 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 Merchant’s telecommunication provider.

10.3. Claims for damages become time-barred after three 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 payable by the Merchant is calculated on 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 arising 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 thirty 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 revision may be calculated annually, in January, based on the following formula:

\[ P = P_0 \times \left(1 + \frac{0.2 \times 0.08 \times 1}{14}\right) \]

In which:

- \( P \) = New price after revision
- \( P_0 \) = Price before revision
- 0.2 = 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)
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 and that Ishas 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 its representative, at all times, also process these data for the purposes of direct marketing via ordinary mail or e-mail.

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 not to disclose any such information to third parties to the extent that this is required for the due execution of the Agreement and solely on a need-to-know basis. IfS undertakes to ensure that information about Cardholders which is not made anonymous is confidential information.

Both parties must comply with all statutory provisions regarding data protection and to take all reasonable steps necessary to avoid unauthorized access to Card and Cardholder information.

Third parties in the sense of this Agreement are companies that are not incorporated in the same countries as the Merchant.

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, without being restricted to, patents, designs and software programs) are and remain the sole property of the Issuer, and that the Merchant cannot, without the Issuer's prior written consent, disclose, use, reproduce, modify, distribute, translate, make derivative works of or otherwise exploit any of the Issuer's intellectual property rights in 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.

19.2 The Merchant hereby expressly and irrevocably waives the application of its own terms and conditions with respect to the subject matter of this Agreement.

19.3 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. The Merchant hereby irrevocably waives its rights to object to the jurisdiction of the above court, to settle disputes through mediation, interpretation, validness, 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, for any reason or beyond the validity of the remaining provisions of the Agreement, the Merchant shall not be affected. The invalid or unenforceable provision shall be replaced by an appropriate arrangement, which comes as close as possible to the invalid or unenforceable provision.

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.
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 requests**

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

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

22 **Force majeure**

In case of force majeure, the party concerned must inform the other party thereof 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.