

General Terms and Conditions for the lease / purchase of a terminal - version 04/2020

The present general terms and conditions apply for the lease or purchase of (a) Terminal(s) (as defined hereunder) and the services relating thereto between the Merchant and Ingenico 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 “**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.
- **Additions:** has the meaning given to it in article 6.1.
- **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, who personally uses the Card for the purpose of paying for a non-cash underlying transaction.
- **Delivery:** has the meaning given to it in article 1.56.
- **EMV:** 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 public limited liability company incorporated under the laws of Belgium, having its registered address 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 registered 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.
- **Modifications:** has the meaning given to it in article 6.1. and article 6.2.
- **POS:** Point of sale.
- **Product Liability Act:** the Belgian *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 30th 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 type of the leased or sold Terminal and the use of 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 Card 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 that 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 unauthorized use of the Terminal.
- 1.6. 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.
- 1.7. 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).
- 2.1.2. Related equipment (e.g. batteries, fittings etc.) must be ordered separately at an agreed price.
- 2.1.3. 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.
- 2.1.4. 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.
- 2.1.5. The rent comprises the maintenance services described in article 4.2.
- 2.1.6. The calculation of the rent commences on the third calendar day after shipment of the Terminal by IFS.
- 2.1.7. The entire Terminal remains the property of IFS. Due to the retention of title, the Merchant must handle the Terminal with due care.
- 2.1.8. 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 that IFS is the owner (e.g. vis-à-vis the bailiff) and immediately notify IFS of such attachment in writing.

2.2. Obligations of the Merchant

- 2.2.1. 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 prior 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.
- 2.2.2. Upon first-time operation, the Merchant checks whether the Terminal works properly.
- 2.2.3. 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.
- 2.2.4. In case of defects, the Merchant immediately notifies IFS in writing and describes as accurately as possible, the nature and the extent of the defect.
- 2.2.5. Regarding the notification/description of defects, the Merchant must follow the information provided by IFS. Incidentally, the Merchant must cooperate during the repair of the defect.
- 2.2.6. 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.
- 2.2.7. 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. Purchase of the Terminals

3.1. Purchase

- 3.1.1. The object of the purchase consists in one or several Terminal(s). Articles 2.1.1, 2.1.3 and 2.1.4 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.

3.2. 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 care.
- 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 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. 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 mail 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

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.

4.1.3. Installation and maintenance work resulting from the fact that the Merchant did not comply with his obligations under article 4.1.2, 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 defects of the Terminal and precisely describe the nature and degree of the defect 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 defect.

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 defective 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 defect turns out to be based on one of the grounds stated in article 4.2.4, IFS shall use reasonable endeavours to eliminate the defect and IFS shall 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 Acquirer and the Acquirer 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. The Merchant solely uses Terminals with a view to participate in the Card-based money transfers.

5.3. Fees for the data communication from the Terminal to the interface of the Acquirer, if any, are borne by the Merchant.

5.4. The Merchant understands that the Terminal will be configured only for those Cards that IFS supports under this Agreement.

5.5. 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 responsible for outages of Acquirer centres, neither for any impact on the turnover of the merchant caused thereby. 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, neither for any impact on the turnover of the merchant caused thereby.

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 defects 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 and to claim a pro-rata restitution 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 transaction that was successfully 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 agreement or the Individual Agreement and depending on the age of the relevant devices.

7.3. In case of defects 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 defective 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 and to claim a pro-rata price restitution.

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 mail to IFS within three calendar 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.
- 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, as set out in this Agreement.
- 9.7. Moreover, IFS is entitled to terminate the Agreement with immediate effect for cause, 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;
 - the cessation of the Merchant's business activities in the Territory;
 - 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, 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,
 - the cessation of the Merchant's business activities in the Territory
 - 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. In application of article 9, 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, 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 that IFS paid to the Card Associations.

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 cumulative provisions:
- a. IFS is only liable for gross negligence ("*manquement grave*"), not for simple negligence ("*manquement léger*").
 - b. 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.

c. In addition, the total liability of IFS, for claims made under this Agreement during one 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

d. The aforementioned restrictions and exclusions also apply to possible claims for compensation of the Merchant or third parties.

For the avoidance of doubt, 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.

- 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 (by using regular back-up copies that were made or should have been made given the risk. If the damages/losses can be attributed to an error on the data network or a misuse of the data network, IFS is only liable to the Merchant in the same degree and for the same amount as the telecommunication provider used by IFS is liable towards IFS. For this reason IFS hereby assigns its claims against the telecommunication provider to the Merchant. The Merchant herewith accepts such assignment.
- 10.2.6. Subject to article 10.2.5. 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, other taxes or charges. As the case may be, such taxes or charges will be charged according to the Belgian statutory provisions applicable at the time of the supply of the services.
- 11.2. The amount of the fees to be paid by the Merchant results from the price 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 sheet. Charging fees for the fulfillment of secondary obligations is also allowed. The price sheet is provided to the Merchant prior to the conclusion of the Agreement. Provided it has a valid reason to do so, IFS is authorized to change the prices during the term of the Agreement, provided that the Merchant was informed hereof in advance and in due time. If the Merchant does not accept the changes of the prices then the Merchant can terminate the Agreement by means of a written notice within fourteen (14) calendar days as from the date on which IFS informed the Merchant of the change of the prices. The Agreement will end at the end of the fourteen (14) calendar 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:

$$P = P_0(0.2 + 0.8 \times \frac{L}{L_0})$$

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 Individual Agreement)

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.

The indicator that was applicable at the time that this version of the Conditions was implemented, 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/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. Unless otherwise agreed in the Individual Agreement, all fees to be paid by the Merchant to IFS will be done by direct debit. 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 cannot be settled by direct debit, 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.
- 11.8. The settlement of periodic fees occurs once a month.
This article 11 is without prejudice to the settlement provisions of the payment transactions potentially agreed between the Merchant and IFS.
- 11.9. Invoices can be issued either electronically or on paper.
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 Belgian law 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.
- 13.4 The Merchant herewith irrevocably agrees to such assignments, or subcontracting.
- 14 Amendment of the Conditions**
- Provided it has a valid reason to do so, 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 Data protection, confidentiality**
- 17.1 Data protection**
- 17.1.1. The Terminal is preconfigured to route the data from the Terminal towards an Acquirer selected by IFS and with which the Merchant separately has signed an individual agreement for card acceptance and payment services. When IFS routes the data towards such Acquirer, it acts as the controller regarding this processing of personal data as defined in the Privacy Act.
- 17.1.2. In the exceptional case where the Merchant instructs IFS to configure the Terminal in order to route, on its behalf, the data towards another Acquirer, then the Merchant acts as controller and IFS acts as processor as defined in the Privacy Act. In the event that IFS is acting as a processor, then the data processing clauses set out in Annex 1 shall apply.
- 17.1.3. In the event that a party is processing personal data as controller such party shall make sure to respect the Privacy Act.
- 17.2 Confidentiality**
- In addition to data protection, the parties to this Agreement agree to the following confidentiality undertaking:
- Each party undertakes to treat any business related information of the other party and information about Cardholders which is not made anonymous, 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. 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 Belgian 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 fulfillment of statutory supervisory obligations vis-à-vis the Belgian National Bank or another competent supervisory body.
- 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). 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 the content of this Agreement changes 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 1,1 of the Belgian Code of Economic law.
- 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 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.
- 21 Notices and request**
- Unless otherwise provided in this Agreement, all written notices and written requests from one party to the other party shall be sent simultaneously by e-mail and by ordinary mail.
- The contact details of the Merchant are set out in the Individual Agreement. The contact details of IFS are:
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 mail with acknowledgement of receipt within fifteen (15) calendar 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.
- 23 SARS-CoV-2**
- Even during the SARS - related Coronavirus 2 crisis, IFS shall provide its reasonable efforts to render the services and to do so without delay. However if supply of any of the services is delayed or otherwise disrupted as a consequence -even a partial consequence- of the SARS-CoV-2 virus crisis, IFS shall not owe any damages, indemnifications, penalties or service credits in relation to the supply of the services disrupted by the SARS-CoV-2 virus crisis. For the purpose of this article, the words "SARS-CoV-2 virus crisis" shall also include all crises relating to derived viruses.

Annex 1 – Data processing clauses

1. Description of the processing

- (i) In the situation described in article 17.2 of the Conditions, the Merchant acts as controller and undertakes to respect the Privacy Act. IFS, for its part, acts as processor of the Merchant and acts upon the documented instructions of the Merchant. IFS is not the controller of such processing;
- (ii) The purpose of the processing is set out in article 5.1 of the Conditions (hereinafter referred to as “the Service”);
- (iii) The personal data that are being processed are personal data that are received and handled during the processing of the transactions (hereinafter defined as “Personal Data”) such as transaction data, including the card number, its expiry date, the date and the amount of the transaction;
- (iv) The data subjects concerned by the processing are the Cardholders whose Personal Data are processed in the context of the Service;

2. Commitments of IFS

IFS guarantees to protect the rights of the data subjects. In its capacity of processor, IFS commits to:

- a) Only to process the Personal Data upon the instruction of the Merchant, including with regards to transfers of Personal Data to a third country or to an international organisation, it being precised that the modalities in which the Service is provided as it is herein described, constitutes the instructions of the Merchant;
- b) Ensure that its employees and the employees of its subcontractors (hereinafter referred as “Data sub-Processors”) that are authorised to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- c) Implement, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
- d) To the extent possible and taking into account the nature of the concerned processing, assist the Merchant, by appropriate technical and organisational measures for the fulfilment of its obligations to respond to requests for exercising the data subjects’ rights that are set out in the Privacy Act. To the extent permitted by law, the Merchant will be responsible for any costs resulting from the provision of such assistance by IFS;
- e) Taking into account the nature of the concerned processing and the information available to IFS, assist the Merchant in complying with its notification obligations provided for in the Privacy Act, which implies on the part of IFS that in the event of a Personal Data breach as defined in the Privacy Act, to notify the Merchant without undue delay after becoming aware of the Personal Data breach;
- f) Taking into account the nature of the concerned processing and the information available to IFS, assisting the Merchant in carrying out impact assessments relating to the protection of Personal Data, as well as for carrying out the consultation of the supervisory authority, where applicable. To the extent permitted by law, the Merchant will be responsible for any costs resulting from the provision of such assistance by IFS;
- g) Make available to the Merchant all information necessary to demonstrate compliance with the obligations laid down in this article and allow for and contribute to audits, including inspections, conducted by the Merchant or another auditor mandated by the Merchant;

In case of audits, the following principles shall be respected: the Merchant shall not ask more than one (1) audit per contractual year, unless IFS has seriously breached its obligations in which case the Merchant is entitled to request an additional audit. In order to conduct an audit, the Merchant informs IFS of the request by means of a registered mail with acknowledgement of receipt at least six (6) weeks prior to the scheduled audit date and shall include a detailed audit plan. In case of an audit that takes place following a serious breach committed by IFS, the Merchant will inform IFS forty-eight (48) hours in advance. The following principles shall apply in all circumstances: 1) the reference that applies to the audit will be the PCI reference that applies to the Service of IFS. In this respect it is expressly agreed that audits shall not include: financial data or Personal Data that do not concern the Merchant, any information of which the disclosure might affect the security of the systems and/or of data of IFS (in such case IFS shall provide legitimate motives for its refusal such as for example confidentiality or security reasons) or of other customers of IFS, and Software source code or any other tool used by IFS; 2) all costs related to such audit, including internal costs of IFS, shall be at the sole expense of the Merchant. IFS shall invoice all costs related to the audit, including Business Days of its staff to the Merchant, it being stressed that the daily rate of said Business Days is fixed at 1.400,00 EUR ; 3) the duration of the audit shall not take up more than three (3) Business Days. 4) the auditor shall not be allowed to take copies of documents, files, data or information, in total or partial, nor shall the auditor be allowed to take photos, to digitalise or to register audio video or computer records; neither can the auditor ask that all or part of such elements shall be provided or send to him; IFS may show sensible documents in a secured room (black room); 5) each auditor being a physical person, shall only be allowed at the site of IFS or at a site of its subcontractors, if the Merchant has provided information on its identity. The Merchant assures the probity of its mandated auditors irrespective whether they are employees of the Merchant or whether they are working for an external audit firm and the Merchant guarantees that the auditor shall respect the confidentiality obligations that are set out in the concluded contract; 6) the audit shall take place during office hours of IFS and shall be performed in such a manner as to not disturb the provision of the Service of IFS nor any other activity which is performed by IFS for the benefit of its other customers, which shall in any case have priority over the audit that is conducted; IFS shall be entitled at any moment to suspend the audit if the provision of the Service of IFS requires that resources and/or means used for the audit, are mobilised for other purposes.

- h) immediately inform the Merchant if, according to IFS, an instruction of the Merchant constitutes a breach of the Privacy Act;

3. Data sub-Processors

IFS is allowed to appoint one or more Data sub-Processors to carry out specific processing activities for Personal Data processed within the framework of the performance of the Service. The Data sub-Processors and their respective location are specified in the service description. IFS may recruit additional Data sub-Processors or replace an existing Data sub-Processor provided it notifies the Merchant thereof ninety (90) calendar days in advance in order to enable the Merchant to evaluate these changes and in the event the Merchant objects to such changes to terminate the use of the Service according to the following provisions. The Merchant shall have a period of thirty (30) calendar days as from the

notification made by IFS, to notify in writing any objections (the "Notice of Objections"). As IFS offers a shared service, and unless the parties have agreed on an alternative solution to these objections, the use of the Service may be terminated by either party by providing written notice at the latest within (30) calendar days following the Notice of Objections. This termination will be effective after a period of thirty (30) calendar days from the date of notification of the termination of the use of the Service and the Merchant will no longer be able to use the Service from that date. In the absence of a Notice of Objections within the aforementioned thirty (30) day period, the Service will continue to be provided by IFS to the Merchant with the assistance of the new Data sub-Processor.

In any event, to the extent that IFS appoints or replaces a Data sub-Processor to carry out specific processing activities of Personal Data in connection with the provision of the Service to the Merchant, obligations no less onerous than those relating to the protection of Personal Data as herein set out will be imposed on that Data sub-Processor. IFS in particular with regard to providing sufficient guarantees for the implementation of appropriate technical and organisational measures in a manner that meet the requirements of Privacy Act. Where that Data sub-Processor fails to fulfil its data protection obligations, IFS shall remain fully liable to the Merchant for the performance of that Data sub-Processor's obligations.

In case of an Emergency, as defined below, IFS is authorized by the Merchant to appoint another Data sub-Processor or to replace an existing Data sub-Processor with immediate effect, for carrying out specific processing activities. In such circumstances, IFS must notify the Merchant of such appointment or of such replacement without undue delay. The Merchant shall have a period of thirty (30) calendar days as from the date of the notification made by IFS to notify in writing any objects (the "Notice of Objections"). As IFS offers a shared service, and unless the parties have agreed on an alternative solution to these objections, the use of the Service may be terminated by either party by providing written notice at the latest within (30) calendar days following the Notice of Objections. This termination will be effective after a period of thirty (30) calendar days from the date of notification of the termination of the use of the Service and the Merchant will no longer be able to use the Service from that date. In the absence of a Notice of Objections within the aforementioned thirty (30) calendar days period, the Service will continue to be provided by IFS to the Merchant with the assistance of the new Data sub-Processor. An Emergency is described as any event that rendered the provision of the Service reasonably or commercially excessively difficult.

4. Commitments of the Merchant

The Merchant commits to respect the obligations that apply to it according to the Privacy Act.

5. Transfers

5.1. Transfers for transaction processing needs

The Merchant is informed and acknowledges that, when providing the Service, IFS or its Data sub-Processors may be required to communicate the Personal Data to third parties involved in the transaction processing chain, including the acquirers, financial institutions and international payment schemes, with which IFS or its Data sub-Processors have no contractual relationship but whose intervention is necessary for the processing of the transaction in accordance with the concluded contract and / or the instructions of the Merchant. This may lead to the transfer of Personal Data in a country outside the European Economic Area that does not have an adequate level of protection. In this case, it is the Merchant's responsibility to ensure that IFS and its Data sub-Processors may make such transfer of Personal Data in accordance with applicable laws and regulations.

5.2. Transfer resulting from the provision of Service by IFS

In the event that the use of a Data Sub-Processor by IFS requires the transfer of Personal Data in a country located outside the European Economic Area which does not have an adequate level of protection, IFS undertakes to implement a management solution for this transfer in accordance with the provisions of the Privacy Act.

To this end and to the extent that the envisaged framework solution consists of the signing of a data transfer agreement based on standard contractual clauses for the transfer of Personal Data to Data sub-Processors established in third countries which do not ensure an adequate level of data protection, adopted by the European Commission (such as these clauses could be amended or replaced), the Merchant, in its capacity as data exporter, hereby gives IFS the mandate to sign on its behalf and for its account, such data transfer agreement with the data importer(s) concerned.

In addition, if IFS is obliged to transfer Personal Data to a third country or to an international organization, under the law of the Union or the law of the member state to which it is subject, IFS must inform the Merchant of this legal obligation prior to processing, unless the right concerned prohibits such information for reasons of public interest.

6. Requests from law enforcement authorities and other legal or administrative authorities

The communication by IFS of all Personal Data, to law enforcement authorities and other legal or administrative authorities (the "Authorities"), whenever such communication is requested by such Authority shall only be done if the Merchant has instructed IFS to do so unless IFS is obliged by law to 1) provide the information to such Authorities and 2) to do so without informing the Merchant thereof. In such event IFS shall provide such information to the Authorities without having the authorization from the Merchant and without having informing the Merchant of such processing of Personal Data.