

General Terms and Conditions

General Terms and Conditions for “Card Not Present” acceptance and payment transaction settlement Version 07/2018

The present general terms and conditions apply for the acceptance of debit and credit cards of the credit card associations Mastercard, Visa by Merchants for “Card Not Present” transactions (as defined hereunder) between the Merchant and Ingenico Payment Services GmbH (“**Ingenico Payment Services**”, as defined hereunder). Ingenico Payment Services GmbH is authorized by the German Financial Supervisory Authority (“*Bundesanstalt für Finanzdienstleistungsaufsicht*”), Graurheindorfer Straße 108 in D-53117 Bonn to operate as an e-money institution under the supervision of the Financial Supervisory Authority.

The agreement between Ingenico Payment Services and the Merchant is subject to the following terms and conditions (hereafter referred to, jointly or individually, the “**Conditions**”), the form signed by the Merchant (the “**Individual Agreement**”) and the Ingenico Payment Services price and services sheet applicable at the time of the conclusion of the agreement (hereinafter together 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:

- **Card Not Present:** Underlying Transactions where the card and the cardholder are not physically present at the Merchant’s point of sale at the moment of such transaction and therefore the card is not read by a terminal, either because the order is placed by mail, phone, or by fax (referred to as “**MO/TO**” which is an acronym for “Mail Order/Telephone Order”) or through the Internet (referred to as “**ECOM**” which is an acronym for “e-commerce”), whereby the term “order” refers to the way in which the card number is communicated by the Cardholder to the Merchant in the Underlying Transaction.
- **Chargeable Claim:** the Merchant’s claim against the Cardholder, acquired as a result of the Underlying Transaction and submitted for settlement to Ingenico Payment Services on the basis of the present Agreement.
- **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 all related regulations and implementation measures.
- **Ingenico Payment Services GmbH:** a limited liability company incorporated under the laws of Germany (“*Gesellschaft mit beschränkter Haftung*”), having its registered office in D-40880 Ratingen, Daniel-Goldbach-Str. 17-19, Germany.
- **Money Laundering Provisions:** the provisions on the prevention of money laundering and financing of terrorism applicable to Ingenico Payment Services as an e-money institution, in particular the relevant money laundering provisions of Act of 18 September 2017 preventing money laundering and financing of terrorism and limiting the use of cash (*Loi du 18 septembre 2017 relative à la prévention du blanchiment de capitaux et du financement du terrorisme et à la limitation de l'utilisation des espèces / Wet van 18 september 2017 tot voorkoming van het witwassen van geld en de financiering van terrorisme en tot beperking van het gebruik van contanten*).
- **Underlying Transaction:** sales and/or services agreement concluded between the Merchant and the Cardholder.
- **Merchant:** an enterprise (including hotels) participating in the Ingenico Payment Services POS Network System under the Agreement.
- **Card:** debit and/or credit card of the Card Associations, used for the payment of goods and/or services.
- **Cardholder:** holder of a card, personally used by the holder for the purposes of paying for a non-cash Underlying Transaction.
- **Identification:** authentication procedure for the use of a card according to the regulations of the Card Association.
- **Card Associations:** Mastercard, Visa, Diners Club/Discover, JCB, Union Pay.
- **PCI DSS:** Payment Card Industry Data Security Standard, i.e. Card Associations requirements regarding the security of card payments.
- **Payment Services Act:** Provisions of Book VII of the Belgian Code of Economic Law (code de droit économique) relative to payment services.
- **3D Secure:** “Three Domain Secure” protocol developed by Visa International Inc. and branded as “Verified by Visa”, developed by Mastercard International Inc. and branded as “Mastercard Secure Code”, including successive versions thereof and any amendments thereto. The main principle of 3D Secure is to tie the financial authorization process with an online authentication.

1. Contents

- 1.1. The present Conditions govern the Merchant’s acceptance of Mastercard and Visa debit and credit cards (including Maestro and V-Pay brands) for Card Not Present Transactions.
- 1.2. The Merchant is entitled to accept Card Not Present payments as a non-cash means of payment and to forward the claims resulting from such transactions to Ingenico Payment Services for payment, in accordance with the provisions of the present Agreement.

2. Obligations of the Merchant and conditions for the Merchant’s authorization to accept a Card as a means of payment

- 2.1. To the extent that a Cardholder uses his Card for the purposes of non-cash payment, the Merchant must accept this Card subject to the conditions of the present Agreement and may not offer his goods or services to the Cardholder at a higher price or less advantageous conditions than to clients paying cash. However, in accordance with VII, 22 of the Economic Law Code, the Merchant may offer discounts for card payments.
- 2.2. The Merchant may only accept a Card as a means of payment subject to the following conditions and/or the following duties of care. Requirements pertaining to the card:
 - a. The Card must be valid at the time of acceptance for payment.
 - b. The Merchant is not aware of the invalidity of the Card on the basis of black lists or any other notice.
 - c. On the basis of the circumstances under which the Card was used, the Merchant may not have any doubts about the Cardholder’s authority to use the card. Such doubts exist in particular:
 - i. if the aggregate amount of the claim is spread over several payment transactions or over several cards at the request of the Cardholder,
 - ii. if the Cardholder already announces potential acceptance problems when using his card,
 - j. if the same card number is used under different names and for different delivery addresses,
 - k. if the Cardholder purchases a higher number of items as compared to standard commercial practices,
 - l. if the Card number is used at a high frequency rate,
 - m. if the country code of the Cardholder (MO-TO) or the IP address (ECOM) of the Cardholder do not match the invoice or the delivery address,
 - n. if the number of purchase orders from one or several countries is higher than average
 - o. if the Merchant is requested to deliver the goods to a country of high risk according to the effective FATF High Risk Country List and under consideration of the EU Sanction and Embargo List.
- 2.2.2. Further requirements for the valid acceptance of the Card as a means of payment:
 - a. The Chargeable Claim of the Merchant is generated in the course of its activities for segments of goods or services stated by the Merchant in the Agreement or approved by Ingenico Payment Services afterwards after notification to Ingenico Payment Services by the Merchant.
 - b. The Chargeable Claim is generated in the Merchant’s activities and not in a third party business establishment. The claim must be based on a service provided by the Merchant to the Cardholder for his own account.
 - c. The Card may not be used for the payment of already existing claims, non-recoverable claims or bounced checks.
 - d. The Card may not be used for the payment of claims resulting from gambling, lottery or similar activities, for services in connection with erotic entertainment or for the payment of part-time rights of use (time sharing) or fees in connection herewith, unless Ingenico Payment Services has given its prior written consent for these commercial operations.
 - e. The Underlying Transaction, which should be paid for with the card, may not be unlawful.
 - f. The Card may not be used for cash pay-out.
 - g. For all Card Transactions, the Merchant must require the CVM Code wherever it is supported by the used payment method, except in cases where scheme rules mandate otherwise. Transactions may not be authorised without a valid CVM code. CVM Code means: 3- or 4-digit code that is printed on a Card, known as CVV2 for Visa and as CVC2 for Mastercard (collectively referred to as CVM Code).
- 2.2.3. Obligations of the Merchant during the payment transaction:
 - a. The Merchant shall deliver the purchased goods and services to the Cardholder with a notification in regard of the delivery, without any defect or error.
 - b. The Merchant shall provide the Cardholder an invoice for the purchased goods or services, at the latests at delivery. The invoice must contain the Merchant’s company name, telephone number incl. country code, E-mail address or postal address
 - c. The Merchant shall use the same company name as well as Internet domain (URL), in the webshop, catalogue, etc., as those shown on the cardholder statement
 - d. The Merchant has already delivered the goods and services, which are shown on the Cardholder statement, before Ingenico Payment Services settles the amount.
- 2.3. Irrespective of the reservation set out in Clause 21, Ingenico Payment Services is entitled to change or supplement the obligations and requirements set out in Clause 2.2, by informing the Merchant hereof with a six (6) weeks’ notice, in case Ingenico Payment Services deems these changes necessary due to potential

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abuse practices or in case such changes are required due to requirements of the Card Associations.

3. Requirements and approval of the card payment by Ingenico Payment Services

- 3.1. Technical and security requirements
 - 3.1.1. The Merchant undertakes to comply with the requirements of the Payment Card Industry Data Security Standard (PCI DSS). Should the Merchant not yet comply with these requirements upon conclusion of the Agreement, he will promptly fulfil all requirements imposed by Ingenico Payment Services with regard to the implementation of the PCI DSS requirements. For further information please consult www.pcisecuritystandards.org.
 - 3.1.2. Costs in relation to any additional implementation measures with regard to any technical and security requirements under this Clause 3.1 are borne by the Merchant. The Merchant is responsible for all technical requirements in regard of the webshop and/or online terminal for MO/TO with respect to the acceptance of debit- or creditcards Merchant will use 3D Secure technology when offering a payment method which imposes it, unless explicitly agreed otherwise.
- 3.2. Online Authorization of the card payment
 - 3.2.1. Irrespective of the amount to be paid with the card, the Merchant must request and obtain an online authorization of any payment transaction from Ingenico Payment Services. The Merchant shall, either to the operator, or upon processing, communicate the correct nature of the transaction (either MO/TO or ECOM).
 - 3.2.2. In case of a positive online authorization, Ingenico Payment Services provides the Merchant with an authorization code. The granting of an authorisation code is not a payment guarantee by Ingenico Payment Services to the Merchant. This code indicates that the card may be accepted, provided that the Merchant at the same time complies with all verification obligations w.r.t. card acceptance. The authorisation code only means that at that particular moment the card is not protested, that the limited total amount the Cardholder can spend using its card is not exceeded and that the card validity term has not yet expired.

This code does not necessarily imply that the card is valid or that the person using the card is the legitimate Cardholder. When an authorisation code is granted, it is not guaranteed that the given name and/or address of the person using the card correspond with the name and/or address of the legitimate Cardholder.
 - 3.2.3. Payment acceptance in the sense of Clause 5.1 in respect of the Chargeable Claim is not linked to the provision of the authorization code. Notwithstanding acceptance, Ingenico Payment Services remains entitled to refuse payment or to carry out a return debit regarding a claim already paid to the Merchant in accordance with Clause 9, provided that the conditions agreed in this respect are met.
 - 3.2.4. Providing or refusing to provide the authorization code always happens automatically. In case of a refusal, an error message appears.

4. Settlement principles

- 4.1. Chargeable Claims may only be submitted to Ingenico Payment Services for settlement once. At the request of Ingenico Payment Services, the Merchant must provide evidence that each submitted claim is based on an Underlying Transaction.
- 4.2. The Merchant may only submit claims in amounts and currencies that coincide with the invoice issued to the Cardholder for the relevant goods and services.
- 4.3. If goods or services are delivered/carried out at a later date (i.e. after the card payment), in case of complaints by the Cardholder, the Merchant must prove to Ingenico Payment Services in writing on the basis of appropriate documents that the claim is due and payable and undisputed, within a reasonable deadline imposed by Ingenico Payment Services.

5. Settlement of the Chargeable Claims by Ingenico Payment Services

- 5.1. If all of the following requirements are fulfilled, Ingenico Payment Services will pay to the Merchant the claims resulting from the submitted credit card sales, based on the use of a Card, less the agreed fees (Clause 18.2), refunds (Clause 9), the legal value added tax or all other fees, penalties or charges which arises in according to the present Conditions, potential other agreements concluded between Ingenico Payment Services and the Merchant, and, possibly, the security amount (Clause 5.8).
- 5.2. Payment conditions:
 - a. The acceptance of the Card as a means of payment was permitted and the Merchant complied with all obligations in accordance with Clause 2,
 - b. The Merchant fully complied with the authorization requirements in accordance with Clause 3,
 - c. The Merchant complied with the settlement principles laid down in Clause 4,
 - d. According to the provisions of this Agreement, the use of the Card is not visibly restricted,
 - e. The card sales pertaining to the Chargeable Claims are submitted to Ingenico Payment Services electronically within five (5) calendar days as of the payment date (by using the end-of-day functionality). As an exception to the previous rule, card sales relating to Chargeable Claims generated by Maestro and Visa Electron, V PAY card payments must be submitted electronically to Ingenico Payment Services within two (2) calendar days following the payment date.
- 5.3. The Merchant assigns his claims against the Cardholder resulting from the Underlying Transactions to Ingenico Payment Services. For the purposes of fulfilling these claims, the Merchant has accepted a card payment and the claims have been submitted to Ingenico Payment Services for settlement in accordance with Clause 4.1

paragraph 1. Ingenico Payment Services herewith accepts the assignment. In case of a return debit in accordance with Clause 9, Ingenico Payment Services reassigns the claim to the Merchant upon full discharge of the relevant return debit claim by the Merchant. The assignment is effective upon receipt by Ingenico Payment Services of the card sales pertaining to the Chargeable Claim.

- 5.4. The minimum payment amount is EUR 50.00. Amounts below this payment threshold accrue and will only be paid as soon as the payment threshold is exceeded, unless otherwise agreed in writing. Upon termination of the Agreement, all outstanding claims will be paid, irrespective of the amount. Payments will be made within the agreed payment deadlines on the basis of the duly and completely transmitted card sales via bank transfer and subject to the return debit rights in accordance with Clause 9.
 - 5.5. Regardless of the reservation set out in Clause 21, Ingenico Payment Services is entitled to change or supplement the requirements set out in Clause 5.1 lit. a)-i), by informing the Merchant hereof with a six (6) weeks' notice, if Ingenico Payment Services deems these changes necessary due to potential abuse practices or in case such changes are required due to requirements of the Card Associations. In case one or several payment conditions set out in Clause 5.1 is/are not fulfilled, Ingenico Payment Services is not obliged to pay the Chargeable Claims submitted by the Merchant. Any payments made to the Merchant despite such non-fulfilment are subject to return debit or set-off in accordance with Clause 9. Ingenico Payment Services will only retain the amount of Chargeable Claims that are affected by non-compliance with the requirements set out in Clause 5.1.
 - 5.6. The Merchant must verify all statements provided to him without delay and inform Ingenico Payment Services promptly, but at the latest within a cut-off period of six (6) weeks following receipt of the relevant statement, of any objections he may have.
 - 5.7. The burden of proof as to the fulfilment of the conditions set out in Clause 5, lies with the Merchant.
 - 5.8. Ingenico Payment Services may retain as security, an amount as agreed in the Individual Agreement, it being understood that should this amount be set off pursuant to Clause 5.1, Ingenico Payment Services will be entitled to reconstitute the security amount in accordance with the above principles.
 - 5.9. In case of a change of ownership of the Merchant, Ingenico Payment Services is entitled to withhold the payment of the Chargeable Claims until the new owner has been fully reviewed.
 - 5.10. If there are indications for an event that would entitle Ingenico Payment Services to terminate the Agreement, Ingenico Payment Services may suspend the execution of this Agreement, including the payment of the Chargeable Claims, until the situation is clear.
6. **Reimbursement of card sales due to cancellation of the Underlying Transaction**
 - 6.1. The Merchant will only issue credit notes pertaining to card sales regarding cancelled Underlying Transactions by instructing Ingenico Payment Services to credit the Cardholder's account. Ingenico Payment Services will credit the Cardholder's account. The Merchant must reimburse the credit amount. The Merchant is not entitled to initiate a credit note if he did not submit the corresponding claim to Ingenico Payment Services for settlement in advance or if the submitted claim was not based on a sale. The credit note may not exceed the initial transaction amount. The initial transaction must have been carried out with the same Card and with the same Merchant.
 - 6.2. The Merchant must compile an electronic credit note. This data set must be submitted to Ingenico Payment Services within two (2) calendar days following issuance of the credit note. Simultaneously, the Merchant must electronically compile a credit note statement with the Card information and the amount of the credit note. The original statement must be delivered to the Cardholder.
 - 6.3. Should it not be possible to compile an electronic credit note data set due to technical reasons, the credit note must be issued by filling out and submitting a credit note form, to be applied for by the Merchant at Ingenico Payment Services. The Merchant must fill out this form and sign it. The original form must be delivered to the Cardholder. The copy of the credit note form must be submitted to Ingenico Payment Services within five (5) calendar days following issuance.
 - 6.4. In case of non-compliance with the submission deadlines set out in Clauses 6.2 and 6.3, the Merchant must reimburse Ingenico Payment Services (e.g. if a Card Association refuses to process the credit note vis-à-vis the Cardholder due to a delayed submission by the Merchant, as a result of which there is a return debit at Ingenico Payment Services).
 7. **Cardholder complaints**

Grievances and complaints of a Cardholder relating to the Underlying Transaction are dealt with by the Merchant directly. In case of a permitted return debit, the Merchant must direct any payment claims he may have directly to the Cardholder.
 8. **Acceptance notice**

The Merchant must put up the Mastercard/Maestro/Visa/Visa Electron/ acceptance logo in a visible place in his webshop (homepage and payment page). Moreover, the Merchant may only use the denominations "Mastercard" respectively "Visa", "Maestro", for publicity purposes with the prior written consent of Ingenico Payment Services.
 9. **Return debit**
 - 9.1. Ingenico Payment Services is entitled to carry out a return debit with respect to claims that have already been paid within eighteen (18) months following the payment date, to the extent that one of the conditions set out in Clause 5.1 was not fulfilled at the time of the

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- card payment (even if this was unknowable to Ingenico Payment Services at the time of the payment to the Merchant) and if the Card issuer charged the card sales/ the amount of the claim back from Ingenico Payment Services (so-called charge-backs). In addition to the return debit, a service fee relating to the return debit is charged.
- 9.2. Moreover, the Merchant must reimburse Ingenico Payment Services if the Underlying Transaction was null and void or ceased to exist due to objection, termination or cancellation of the Cardholder.
- 9.3. To the extent that Ingenico Payment Services already paid out in one of the aforementioned cases, it may claim a refund or set-off the payments with its own payment obligations vis-à-vis the Merchant. In the first case, the refund claim is immediately payable.
- 9.4. The provisions of this Clause 9 will survive the termination of this Agreement during a period of eighteen (18) months. The return debit rights of Ingenico Payment Services vis-à-vis the Merchant are not limited by the issuance of the authorization code.
- 10. Information obligations of the Merchant, auditing rights**
- 10.1. Upon conclusion of the Agreement, the Merchant must provide a full and true overview of the master data. Any changes occurring during the term of the Agreement must be reported to Ingenico Payment Services in writing without any delay. Such changes include:
- Changes with respect to the corporate purpose and/or the nature of the product range,
 - Sales or lease of the company or any other change of ownership,
 - Changes with respect to the legal form or the company,
 - Change of address or bank account,
 - Change of the beneficial owner.
- 10.2. At the request of Ingenico Payment Services, the Merchant must provide Ingenico Payment Services without delay with the documents regarding the Merchant's business operations (e.g. trade register excerpt, other register excerpts, business licences, articles of association, passport copies of the authorized representatives). At the request of Ingenico Payment Services, the Merchant must reimburse all expenses incurred by Ingenico Payment Services and resulting from the changes set out in Clause 10.1 or as a result of a violation of the obligations set out in this Clause 10.
- 10.3. At the beginning of the term of the Agreement, Ingenico Payment Services allocates one or several Merchant categories to the Merchant. In this respect, Ingenico Payment Services must consider the requirements of the Card Associations. Ingenico Payment Services may at all times change an allocated Merchant category if and to the extent that Ingenico Payment Services deems this necessary on the basis of a new evaluation of the Merchant.
- 10.4. At the request of Ingenico Payment Services and after due notification, the Merchant must grant Ingenico Payment Services access to his business premises, in order to allow Ingenico Payment Services to verify whether the contractual provisions are complied with. Moreover, the Merchant undertakes to fully cooperate and to facilitate security verification procedures (e.g. PCI Audit) introduced by the Card Associations.
- 11. Data storage, retention of receipts**
- 11.1. The Merchant must retain all transaction receipts and evidence and documents regarding the Underlying Transaction during a period of minimum eighteen (18) months following the date of issuance in due form and in order to avoid destruction. The retention obligation survives the termination of the Agreement during a further period of minimum eighteen (18) months, without prejudice to longer retention periods legally applicable.
- 11.2. The Merchant undertakes to protect the information collected and stored in relation to the cardholder against unauthorized access by third parties. The Merchant may only store the card information in his own system for the purposes of authorization and submission of the claims.
- 11.3. The Merchant must inform Ingenico Payment Services without any delay about an unauthorized attempt to access his card related electronic data processing systems or of any fact potentially compromising card information and must take the required measures in order to prevent such events in the future in consultation with Ingenico Payment Services.
- 12. Collateral**
- 12.1. Ingenico Payment Services is entitled to require collateral for all claims resulting from the Agreement, even if it concerns conditional claims (e.g. return debit rights in the sense of Clause 9).
- 12.2. Should Ingenico Payment Services initially not (entirely) have used its right to require (the extension of) collateral as a result of the claims, Ingenico Payment Services can still require new collateral or the extension of existing collateral afterwards, as well as an increase of the amount withheld in accordance with Clause 5.8, paragraph 2. However, this is subject to the condition that circumstances occur or become public, which justify an increased risk evaluation of the claims against the Merchant. This may, for instance, be the case if:
- the economic conditions of the Merchant have adversely changed or are threatened to adversely change, or
 - the value of the existing security has deteriorated or is threatened to deteriorate.
- 12.3. Ingenico Payment Services cannot assert this claim if the Individual Agreement explicitly states that Ingenico Payment Services – save for the security set out in Clause 5.8 – cannot require any further security.
- 12.4. Ingenico Payment Services will grant the Merchant an appropriate period of time for the establishment or the extension of collateral. If Ingenico Payment Services intends to use its right to terminate the Agreement without notice in accordance with Clauses 16.6 and 16.7, in case the Merchant does not comply with his obligation to create or extend security in due time, Ingenico Payment Services will notify the Merchant hereof.
- 13. Changes of procedural provisions of Mastercard Worldwide, Visa Europe/International, Diners Club/Discover, JCB and UnionPay**
- The Merchant will observe and implement changes of the procedural provisions of Mastercard Worldwide and Visa Europe/International regarding the acceptance and the submission of card sales after notification by Ingenico Payment Services within the deadlines indicated by Mastercard Worldwide, Visa Europe/International. Ingenico Payment Services will inform the Merchant hereof in due time, in particular in respect of the deadlines to be observed, and will advise the Merchant with respect to the implementation of these changes. Costs in connection herewith shall be borne by the Merchant.
- 14. Information obligations of Ingenico Payment Services**
- In accordance with article VII.26 of the Code of Economic Law, the information obligations of Ingenico Payment Services resulting from articles VII.6 to VII 20 of the Economic Law Code are waived and therefore do not apply to the services to be rendered by Ingenico Payment Services.
- 15. Trust agreement**
- Ingenico Payment Services (the "Trustee") will credit the counter value received from the Card issuers for the cleared card sales and the counter values for the cleared card sales from cancelled transactions received from the Merchant after return deposits in trust for the Merchant as the trustor to an Ingenico Payment Services trust account with a German financial institution. These accounts are kept at one or several financial institutions as open collective trust accounts § 13 Par. 1 Sentence 2 Nr. 1b of the German Supervisory Act for Payment Institutions (ZAG). Ingenico Payment Services will inform the financial institution of the trust relationship. Furthermore, Ingenico Payment Services will ensure that, in terms of accounting, the payment amounts accepted in accordance with the first sentence are attributable to the Merchant and shall at no time be mixed with funds of other individuals or other legal entities than the Merchant, for whom the funds are held, in particular not with own funds. Ingenico Payment Services is entitled to withdraw fees and interests accrued for the benefit of Ingenico Payment Services from the trust account. At the request of the Merchant, Ingenico Payment Services must inform the Merchant without delay with which financial institution and on which account the received counter values for the cleared card sales are kept and whether the institution where the client funds are held is a member of an organization for the protection of deposit and investment claims and to which extent the received counter values for the cleared card sales are secured by that organization. Ingenico Payment Services is also entitled to secure the received counter values for the cleared card sales otherwise, as defined in § 13 Par. 1 Sentence 2 Nr. 1b (ZAG). Ingenico Payment Services will inform the Merchant hereof well in advance.
- 16. Term - Termination**
- 16.1. The Agreement enters into force upon the acceptance by Ingenico Payment Services of the Merchant's order. Ingenico Payment Services is deemed to have accepted the Merchant's order by issuing a "welcome letter" to the Merchant.
- 16.2. Depending on the provisions of the Individual Agreement, the Agreement can be concluded for an unlimited period of time or for a fixed period of time (the "Initial Term"). Unless otherwise agreed in the Individual Agreement, the Initial Term is sixty (60) months.
- 16.3. Following the Initial Term or any subsequent term, the contractual term is automatically renewed, in accordance with Clause 16.5, unless one of the parties has terminated the Agreement.
- 16.4. 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, subject to a notice period of thirty (30) calendar days.
- 16.5. 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 to the Agreement three (3) months prior to the expiry of the Initial Term, or, as the case may be, of a Subsequent Term. During the Initial Term and/or any Subsequent Term, the Agreement may only be terminated for cause in accordance with Clauses 16.6, 16.7 or 23.
- 16.6. Clauses 16.4 and 16.5 do not affect the right of each party to terminate the Agreement without notice, for cause. A cause is, inter alia, the cessation of the Merchant's business activities in Belgium.
- 16.7. Moreover, Ingenico Payment Services is entitled to terminate the Agreement without notice for cause, for instance, in the following situations:
- if, after the Agreement has been concluded, Ingenico Payment Services becomes aware of circumstances illustrating that the Merchant misrepresented his business operations, in particular his range of goods or services, and submits claims resulting from Underlying Transactions that he did not declare before, for clearing,
 - 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 ("reorganisation 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, within six (6) months after the conclusion of the Agreement does not submit Chargeable Claims,

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- if the Merchant submits Chargeable Claims resulting from distance-selling transactions, i.e. without the physical presentation of a Card in his shop,
 - if the amount or the number of charge-backs resulting from Underlying Transactions of the Merchant in one month exceeds 0.5 per cent of the aggregate amount or of the aggregate number of the claims submitted by the Merchant in the corresponding period or if the aggregate amount of the charged back claims, resulting from the underlying transactions of the Merchant exceeds EUR 5,000.00,
 - if the ratio between the submitted monthly claims with stolen, lost or forged Cards and the submitted monthly claims with Cards non stolen, not lost and not forged exceeds one (1) %,
 - if the Merchant repeatedly violates his obligations and the conditions arising out of Clauses 2, 3 and 4, or in particular the duty of care obligations under this Agreement,
 - if Mastercard Worldwide, Visa Europe/International, Diners Club/Discover or UnionPay demands that the Merchant ceases to accept cards,
 - if the activities of Ingenico Payment Services 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 Clause 21,
 - in case of criminal conduct of the Merchant; this also applies in case of reasonable suspicion of criminal conduct of the Merchant,
 - if the Merchant does not comply with his obligation to grant or extend collateral in accordance with Clause 12 or on the basis of another agreement within a reasonable deadline set by Ingenico Payment Services,
 - in case of a breach of one of the Merchant's obligations under Clause 23 and 25 of this Agreement
 - if a Card Association imposes fines on Ingenico Payment Services, due to the Merchant's negligence.
- 16.8. Termination notices must be given in writing. Ingenico Payment Services is also entitled to terminate the Agreement in part.
- 17. Liability**
- 17.1. Liability of the Merchant
- 17.1.1. The Merchant is liable vis-à-vis Ingenico Payment Services for all direct and indirect losses or damages incurred by Ingenico Payment Services 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. In particular, the Merchant is liable for compliance with the provisions of Clause 3. Should there be chargeback of the settled claim due to a violation of the Merchant of the aforementioned provisions, Ingenico Payment Services is entitled to carry out a corresponding return debit in the sense of Clause 9 against the Merchant, without prejudice to any other rights.
- 17.1.2. Should one of the Card Associations impose penalties on Ingenico Payment Services due to the Merchant's intentional or negligent violation of one of his obligations under this Agreement, the Merchant fully holds Ingenico Payment Services harmless against this, respectively fully indemnifies Ingenico Payment Services for the corresponding amounts invoiced to Ingenico Payment Services.
- 17.2. Liability of Ingenico Payment Services
- 17.2.1. Ingenico Payment Services is liable for non-authorized or incorrect completion of payment transactions only to the extent that Ingenico Payment Services intentionally or negligently violated its obligations at the occasion of such completion. The liability of Ingenico Payment Services does not extend to unusual and/or unforeseeable events, which cannot be influenced by Ingenico Payment Services and the consequences of which could not have been prevented, even in case of due care. The liability of Ingenico Payment Services also does not extend to the non-completion of payment transactions on the basis of mandatory statutory provisions.
- 17.2.2. In case payment services are not concerned, Ingenico Payment Services is only liable vis-à-vis the Merchant for damages resulting from a serious breach ("zware nalatigheid", "manquement grave") of contractual or pre-contractual obligations or from tort, in accordance with the following provisions:
- a. In case of wilful intent and personal injury, bodily harm or damage to health, Ingenico Payment Services is, when appropriate, liable in accordance with the statutory provisions.
 - b. The Merchant must prove the existence of wilful intent.
 - c. Ingenico Payment Services is only liable for its serious breach, not for ordinary negligence ("lichte fout", "manquement léger").
 - d. Moreover, Ingenico Payment Services is not liable for loss of profit, loss of clientele and other consequential or indirect damages and expenses, in particular not for losses as a result of a business interruption.
 - e. In addition, the total liability for all claims made under this Agreement during one calendar year (from January 1st to December 31st) is limited to a maximum amount equal to the sum of amounts invoiced by Ingenico Payment Services and paid by the Merchant under this Agreement for a period of 12 months prior to the event giving rise to liability
 - f. The aforementioned restrictions and exclusions also apply to possible claims for compensation of the Merchant or third parties.
- 17.2.3. If the damages were caused by several parties, Ingenico Payment Services is only liable in proportion to its contribution to the damages and in accordance with the agreed liability restrictions.
- 17.2.4. Ingenico Payment Services accepts no responsibility relating to the Terminal and its functioning, unless expressly agreed otherwise between Ingenico Payment Services and the Merchant (in the case where the Terminal is provided to the Merchant by Ingenico Payment Services).
- 17.2.5. 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, Ingenico Payment Services is liable to the same degree as the telecommunication provider used by Ingenico Payment Services. Claims against Ingenico Payment Services are assigned to the Merchant. The Merchant herewith accepts such assignment.
- 17.2.6. Ingenico Payment Services 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.
- 17.2.7. Damage claims of the Merchant against Ingenico Payment Services become time-barred within six (6) months as of the moment that the Merchant became aware of his claim, whether under this Agreement or in tort, against Ingenico Payment Services.
- 18. Invoicing, fees and mode of payment**
- 18.1. General provisions
- 18.1.1. 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 provision relating to the value added tax applicable at the time of the services and are exclusive of other taxes, fees and charges.
- 18.1.2. The amount of the fees to be paid by the Merchant results from the price and services sheet of Ingenico Payment Services applicable at the time the Agreement was concluded and from the fees set out in the Individual Agreement between the Merchant and Ingenico Payment Services. Agreements resulting from the Individual Agreement take precedence over the price and services sheet. Charging fees for the fulfilment of secondary obligations is also allowed. The price and services sheet is provided to the Merchant prior to the conclusion of the Agreement. Ingenico Payment Services 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 in writing within fourteen (14) days following the notification. In case of an objection being raised in the aforementioned deadline, the then applicable price and services sheet shall remain applicable. Ingenico Payment Services reserves the right to adapt the prices if, after entering into the Agreement, one or several factor(s) determining the prices, such as, without it being limited to, raw materials, labour costs, etc. are subject to a modification. Any increase of one of these factors allows Ingenico Payment Services to proportionally adapt the prices up to maximum 80% of the prices initially agreed. This objective adaptation does not give the right to the Merchant to object thereto or to terminate the Agreement. This right to adapt the prices may not be exercised in the course of the first three (3) months following the entry into force of the Agreement, unless agreed otherwise.
- 18.1.3. Unless agreed otherwise, the provisions of this Clause 18 regarding invoicing on the part of Ingenico Payment Services for services agreed under this Agreement apply as follows.
- 18.1.4. For all fees to be paid by the Merchant to Ingenico Payment Services, Ingenico Payment Services is entitled to direct debiting. Hence, the Merchant grants a direct debit or a SEPA authorization to Ingenico Payment Services.
- 18.1.5. In case the fees and expenses to be paid by the Merchant as described in Clause 18.1.4 cannot be settled, the Merchant undertakes to pay the invoice immediately.
- 18.1.6. In principle, all fees are due and payable as of the invoice date.
- 18.1.7. The Merchant cannot set off the amounts it owes to Ingenico Payment Services against the amounts due by Ingenico Payment Services to the Merchant, except if Ingenico Payment Services authorizes the same in writing. In addition, the Merchant hereby waives the benefit of the exception non adimpleti contractus and can thus not invoke any (alleged) breach or tort on the part of Ingenico Payment Services to suspend or withhold payments to Ingenico Payment Services. This Clause applies without prejudice to Clause 12.
- 18.2. Acceptance and payment services
- 18.2.1. The fees and expenses, including the value added tax (if any) due on these fees and expenses, will be invoiced to the Merchant and may be deducted from the amounts to be provided to the Merchant by Ingenico Payment Services in accordance with Clause 5.1, even before these amounts are provided to the Merchant.
- 18.2.2. The Merchant must compensate Ingenico Payment Services for all expenses incurred by Ingenico Payment Services in connection with the execution of this Agreement, to the extent that Ingenico Payment Services could deem these expenses necessary under the given circumstances. Instead of compensation, Ingenico Payment Services may demand exemption of one of its obligations. Expenses in the sense of this Clause 18.2 include in particular:
- a. Fees charged by Mastercard, Visa, y for registration of the Merchant in a special Merchant program;
 - b. Interchange fees for Merchant card sales, which must be paid by Ingenico Payment Services to the Card issuer, such as Mastercard, Visa;
 - c. Fines, to be paid by Ingenico Payment Services to Mastercard, Visa, in connection with the execution of this Agreement, to the extent that the Merchant was negligent;
 - d. So-called charge-backs, caused by the Cardholder's Card issuer in respect of the payment of the Underlying Transaction.

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- 18.2.3. The Merchant agrees to the financial statement based on the description of the price components in the contract form attached to the Individual Agreement.
- 19. Due payments by the Merchant**
- 19.1. Without prejudice to the relevant provisions of the Act of 2 August 2002 on combating late payment in commercial transactions ("Loi concernant la lutte contre le retard de paiement dans les transactions commerciales / Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelstransacties"), late payment by the Merchant will accrue interest at an annual rate of twelve per-cent (12%) without prior notice (without prejudice to any other rights and remedies of Ingenico Payment Services) as of the due date until full payment (whether before or after a court ruling).
- 19.2. In case of (partial) late payment, the Merchant owes Ingenico Payment Services a lump-sum compensation for recovery and collection costs of fifteen per-cent (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 Ingenico Payment Services.
- 19.3. In case of late payment and without prejudice to the right of termination for cause in accordance with Clause 16.7, Ingenico Payment Services 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 Ingenico Payment Services. The assertion of any claims based on the fact that the Merchant cannot use its distance selling application is excluded.
- 20. Assignment and assumption**
- 20.1. The Merchant is not entitled to transfer the Agreement to third parties without prior written consent of Ingenico Payment Services and may not assign or impose other rights and/or obligations resulting from this Agreement to/on third parties.
- 20.2. Ingenico Payment Services 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.
- 20.3. If required, Ingenico Payment Services informs the Merchant of which contractors are deployed for which operations. The Merchant's prior consent is not required. The Merchant herewith irrevocably agrees to such assignments, encumbrances or transfers.
- 21. Amendment of the Conditions**
- Ingenico Payment Services is entitled to amend these Conditions. Any amendment to these Conditions by Ingenico Payment Services shall become binding on the Merchant as of the date of its communication to the Merchant, unless Ingenico Payment Services notifies the Merchant that a later entry into force applies for such amendment.
- 22. Change of law / regulations**
- In case services under this Agreement must be adapted due to a change of law or the Card Association' regulations, Ingenico Payment Services 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.
- 23. 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, Ingenico Payment Services has the right to terminate this Agreement without any notice. In addition, in that case the Merchant must compensate Ingenico Payment Services for all damages arising out of such violation in accordance with the first sentence of this Clause, independent of any negligence on behalf of the Merchant.
- 24. Confidentiality, Data Protection**
- 24.1. Protection of personal data
- 24.1.1. By signing the Individual Agreement, the Merchant and/or his representative acknowledge that they are informed of the fact that Ingenico Payment Services will process his personal data. Such data are protected by the Privacy Act as amended from time to time.
- 24.1.2. Ingenico Payment Services processes the personal data in order to fulfil its contractual obligations under the Agreement and its legal obligations. Ingenico Payment Services may, subject to the explicit consent of the Merchant and/or his representative, revocable at all times, also process these data for the purposes of direct marketing via ordinary mail or e-mail.
- 24.1.3. Within the scope of the aforementioned purposes, Ingenico Payment Services is entitled to forward these data to other group companies and to service providers, who were selected on the basis of their services and their guarantees in connection with the protection of personal data, and to the Card Associations in the framework of the provision of services in accordance with the Agreement. Forwarding these data as described above may entail forwarding of data to countries outside of the European Economic Area, which do not offer a proper level of data protection. In that case, Ingenico Payment Services will take appropriate measures (including contractual measures) in order to ensure that the receivers of the personal data will offer sufficient guarantees in relation to data protection.
- 24.2. Confidentiality
- 24.2.1. In addition to the protection of personal data and bank secrecy, the parties to this Agreement agree to the following confidentiality undertaking:
Each party undertakes to treat any business related information of the other party in a strict confidential manner and only disclose such information to third parties to the extent that this is required for the due execution of the Agreement and solely for the purposes of the Agreement, especially in respect of information about the Merchant provided to Ingenico Payment Services by third parties (bank information, information about creditworthiness). Information about Cardholders which is not made anonymous is confidential information. Both parties must comply with all statutory provisions regarding data protection and take proper precautions to avoid unauthorized use of Card and Cardholder information. Third parties in the sense of this Agreement are companies that are not affiliated with a party to this Agreement in accordance with articles 11 et seq. of the Companies Code.
This confidentiality obligation is continuing and will survive the termination of the Agreement for an additional term of three years as of such termination.
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 and/or to the extent that the receiving party is requested by statutory or regulatory provisions or by requirements or orders to disclose the information. The confidentiality obligation does not apply to information that, at the time of disclosure, was already demonstrably public knowledge, and where the use or disclosure of such information was explicitly permitted in writing by the other party, or where the disclosure of such information is requested by statutory provisions or regulatory rules, e.g. for disclosure of the contents of this Agreement, to the extent required for the fulfilment of statutory supervisory obligations vis-à-vis the Belgian National Bank or another competent supervisory body. Any questions regarding data protection may be sent to datenschutz@ingenico.com. The data protection officer of Ingenico Payment Services will answer these questions.
- 25. Money laundering obligations**
- Due to Money Laundering Provisions, Ingenico Payment Services must obtain certain information about the Merchant. The Merchant undertakes to provide Ingenico Payment Services with the required information, which is complete and correct, and undertakes to inform Ingenico Payment Services without delay about any changes regarding this information. The Merchant undertakes to comply with any statutory Money Laundering Provisions, which are applicable to the Merchant in his capacity as a client of Ingenico Payment Services. Without prejudice to Clause 10.1, Ingenico Payment Services is entitled to terminate the Agreement if the Merchant violates this obligation or any applicable Money Laundering Provisions.
- 26. Intellectual Property**
- Unless otherwise determined by Ingenico Payment Services, the Merchant acknowledges that all intellectual and industrial property rights in and to the services provided (including, but without being restricted to surveys, plans and software programs) are and remain the sole property of Ingenico Payment Services (or, as the case may be, of third parties holding these rights). In particular, unless otherwise agreed, the Merchant is only granted access to the software, and the right to use the software for the purposes of his activities and as strictly authorised by the Agreement. This right is granted on a non-exclusive basis and does not entail the right to grant sublicenses.
- 27. Credit assessment**
- 27.1. At the request of Ingenico Payment Services, the Merchant provides Ingenico Payment Services with financial information (including, but not limited to invoices, annual reports and tax forms) and other information regarding his business, for the purposes of allowing Ingenico Payment Services to determine whether Ingenico Payment Services accepts or continues the Agreement, and for the continuing evaluation of the Merchant's financial situation and creditworthiness.
- 27.2. In connection with the credit assessment, Ingenico Payment Services reserves the right to obtain information and other data about the Merchant from commercial agencies / solvency information offices and other institutions prior to the conclusion of the Agreement and during the term of the Agreement for the purposes of allowing Ingenico Payment Services to determine whether Ingenico Payment Services accepts or continues the Agreement, and for the continuing evaluation of the Merchant's financial situation and creditworthiness, and the Merchant agrees to this.
- 27.3. Ingenico Payment Services may carry out creditworthiness checks solely within the limits of the applicable data protection provisions.
- 28. Applicable law and place of venue**
- 28.1. 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 Ingenico Payment Services conforms to 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.
- 28.2. The Merchant hereby expressly and irrevocably waives the application of its own terms and conditions with respect to the subject matter of this Agreement.
- 28.3. The Merchant is not a consumer in the sense of Article I.1 of the Belgian Economic Law Code. Parties agree that the articles VII 6 to

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- 20 and the articles VII.27, §3, VII, 28, VII, 36, 37 and 38, VII, 41, VII, 49, 50 and 51 and VII 55 of the Economic Law Code do not apply and are herewith waived and replaced by the provisions of this Agreement.
- 28.4. The French-speaking Brussels Commercial Court has exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement between Ingenico Payment Services and the Merchant, including issues regarding the conclusion, interpretation, validity, performance, and dissolution of the Agreement.
- 29. Severability**
- 29.1. 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.
- 29.2. Contractual changes must be made in writing. This also applies to an amendment of the written form requirement.
- 30. Notices**
- Unless otherwise provided in this Agreement, all notices of the Merchant to Ingenico Payment Services shall be sent simultaneously by e-mail and by ordinary mail to:
Ingenico Payment Services GmbH
D-40880 Ratingen (Germany)
Daniel-Goldbach-Str. 17-19
info.belux@ingenico.com.
- 31. Force majeure**
- In case of force majeure, the party concerned must inform the other party hereof by means of a registered letter with acknowledgement of receipt within fifteen (15) days after the occurrence of the event of force majeure. The parties explicitly agreed on the following list of events of force majeure, including but not limited to: all state decisions, strikes, riots, war, bans on import, flooding, fire, or any other events of force majeure of the applicable Belgian case law. The parties' obligations are cancelled 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.