

## **Embracy CONNECT – GENERAL TERMS AND CONDITIONS**

### **1 Background, definitions etc.**

- 1.1 These general terms and conditions (the "**General Terms**") forms part of the agreement (the "**Agreement**") between Embracy AB, company registration no. 556233-9423, with its main office at Vasagatan 16, 116 20 Stockholm ("**Embracy**"), Ingenico e-Commerce Solutions Ltd, company registration no. 06787971 with office at 20 Eastbourne Terrace, London, W2 6LG ("**Ingenico e-Commerce**") and the merchant as described in the Agreement (the "**Merchant**").
- 1.2 Embracy, Ingenico e-Commerce and the Merchant are hereinafter jointly referred to as the "**Parties**" and individually as a "**Party**".
- 1.3 The Ingenico group offers inter alia, directly or indirectly through subcontractor, payment services to Merchants including but not limited to acquiring, hire and license of terminals and support services. Under this Agreement, any of the Ingenico group entities may act sub-contractor to the Ingenico entity entering into this Agreement. Invoicing may thus be performed by another Ingenico entity than the entities set out above.
- 1.4 Embracy will provide the Merchant with acquiring of transactions by Card and support services in relation thereto in accordance with the Agreement, these General Terms and the Special Terms and Conditions for the Acquiring of Card Transactions and Special Terms and Conditions for Service and Support.
- 1.5 Ingenico e-Commerce will provide the Merchant with hire and license of Terminals and support services in relation thereto in accordance with the Agreement, these General Terms and the Special Terms and Conditions for hire and license of Terminals and Special Terms and Conditions for Service and Support.
- 1.6 The Parties may agree that Embracy or Ingenico e-Commerce shall provide further payment solutions and services to the Merchant ("**New Services**"), in accordance with the Agreement (which will be updated and supplemented with such New Services) and the special terms for the New Services.
- 1.7 In case of any discrepancies between the documents constituting the Agreement the following order of priority shall apply; 1) the Instructions, 2) the Special Terms and Conditions, and 3) the General Terms.
- 1.8 Definitions in the Agreement shall have the meaning set out in Appendix 1.

### **2 PCI standards**

- 2.1 The Merchant undertakes to comply with applicable PCI standards as published from on [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org) in order to process Card Information in a secure manner.
- 2.2 The Merchant undertakes not to store any sensitive data regarding Cards or data relating to Transactions. In cases where the Merchant's business requires handling and storage of Card data, Card Information or data relating to Transactions, such handling and/or storage must be carried out in accordance with all applicable laws, regulations and rules such as the "Guidelines on the security of internet payments"(EBA/GL/2014/12)".
- 2.3 The Merchant will, and will ensure that any third party service provider utilised by the Merchant for the purpose of this Agreement (or for any service provided hereunder) will only, use technical equipment for the services that is compliant in all respects with (and, if required, approved under) the applicable standards published by PCI Security Standards

Council, and the Merchant assumes liability for the compliance of any equipment used by any such third party service provider with the standards.

- 2.4 Ingenico e-Commerce or Embracy shall at all times have the right at its request (following the giving of reasonable notice where possible) to:
- a) receive all information (and confirmations) with respect to the Merchant's and any relevant third party service provider's compliance with sections 2.1, 2.2 and 2.3;
  - b) audit, or request the audit of, the Merchant's and/or any third party's compliance with section 2.1, 2.2 and 2.3; and
  - c) have its forensics investigators of choice investigating any breach or suspected breach of, or non-compliance with, the requirements of sections 2.1, 2.2 and 2.3.
- 2.5 All costs in relation to any request made by Embracy pursuant to section 2.4 shall be borne by the Merchant.
- 2.6 The Merchant shall promptly notify Ingenico e-Commerce or Embracy in writing of any breach or suspected breach or non-compliance by it or by any third party of the requirements of section 2.1, 2.2 and 2.3 that the Merchant becomes aware of.
- 2.7 In case the Merchant suspects irregularities or fraudulent use of Card Information, the Merchant is required to report this suspicion to Embracy and Ingenico e-Commerce without delay.

### **3 Term**

- 3.1 This Agreement shall be deemed executed on the day on which Embracy grants an application for connection to Embracy's system for acquiring card transactions. Embracy shall notify the Merchant in writing (email or regular post) that the application has been granted and that the Agreement has thus entered into force. The Agreement shall remain in force indefinitely, subject to six (6) months' notice of termination by either Party.
- 3.2 In the event a Party is in material breach of its obligations under the Agreement, the other Party shall be entitled to terminate the Agreement with immediate effect. In accordance therewith, Embracy shall inter alia be entitled to terminate the Agreement with immediate effect in the event the Merchant does not reimburse Embracy in accordance with section 5.3 or payment is not made pursuant to section 5 below.
- 3.3 Embracy shall also be entitled to terminate the Agreement with immediate effect: 1) in the event there is a change in the business, character or ownership of the Merchant and Embracy considers that this has or may have a negative effect on the business of, or risks to, Embracy under this Agreement; 2) where the Merchant or a person connected to the Merchant (such as inter alia a director, officer, employee, consultant or owner) is, or becomes, registered in a Special Register (as defined in 9.4) or circumstances occur which constitute grounds for such registration; 3) where the Merchant is involved in, or otherwise associated with, criminal activity; 4) where the Merchant has provided incorrect, incomplete or misleading information; 5) where, in Embracy's reasonable opinion, the Merchant's payment ability can be called into question; 6) where, the Merchant is, or is deemed, insolvent for the purpose of any applicable law or regulation or admits its inability to pay its debts as they fall due or suspends making payments on any of its debts or commences negotiations with a view to rescheduling any its indebtedness; 7) in the event the Merchant fails (or Embracy reasonably consider it likely that the Merchant will fail) to perform any of its obligations towards the Cardholders in respect of its goods or services in any material respect; 8) where the Merchant is in material breach of the Regulations and Embracy has made Merchant aware of such breach but not rectified the breach within the time prescribed for it as communicated by Embracy; or 9) where the Merchant, in Embracy's reasonable opinion, through its behaviour or manner of conducting its business may or could damage the Ingenico group's reputation.

- 3.4 Any notice of termination of the Agreement must be in writing and the notice may be sent by email. Section 12.9 shall apply to a notice of termination.
- 3.5 In the event the Agreement is terminated, irrespective of the reason therefore, the Merchant's sales against payment by Card pursuant to the Agreement shall terminate at the same time, which means that Embracy, in its turn, shall no longer be entitled or obligated to accept Transactions from the Merchant.
- 3.6 In the event the Agreement is terminated, irrespective of the reason therefore, the Parties remain liable for any and all Transactions effected under the Agreement prior to such termination.

#### **4 Prices**

- 4.1 In consideration of the services which Embracy and Ingenico e-Commerce provides pursuant to the Agreement, the Merchant shall pay the prices and fees generally applied from time to time and which are available in the application for connection to Embracy's system for acquiring card transactions or in Embracy's written grant of the application.
- 4.2 The hire fee for the Equipment, which includes the hire fee for the Hardware, the license fee to use the Software and the fee for the Support Services (the "**Terminal Fee**"), is set out in the Application.
- 4.3 Embracy may, at any time, change its prices and fees. Such changes shall enter into force not earlier than thirty (30) calendar days after notice to the Merchant. If the Merchant has not informed Embracy that it does not accept the changes before the effective date, the Merchant shall be considered to have accepted the changes.

#### **5 Payment terms and conditions**

- 5.1 Payment by Merchant to Embracy of agreed prices and fees shall take place through Embracy making a deduction for the amount in connection with the payment routines terms that apply between the Parties. In case the net value is less than zero (0), the Merchant shall, upon Embracy's request, settle the amount by crediting Embracy's bank account. Should none of the above payment options be possible for whatever reason, Embracy has a right to invoice the Merchant for any outstanding amount payable by Merchant, including the Recourse Claims.
- 5.2 Any damage to, or any loss of, the Equipment, which will decrease or negatively affect the Merchant's ability to use the Equipment, shall not relieve the Merchant from its obligation to pay the Terminal Fee.
- 5.3 Ingenico e-Commerce is entitled to close down the payment function of the Terminal should the Merchant not make its payment of the Terminal Fee on due time, until full payment of the Terminal Fee has been made by the Merchant. In addition to this, Embracy or Ingenico e-Commerce is entitled to terminate the Agreement with immediate effect in accordance with section 28 below, should Ingenico e-Commerce be forced to close down the payment function of the Terminal on several occasions for the above-mentioned reason, or should the Merchant fail to pay its Terminal Fee for more than thirty (30) consecutive calendar days.
- 5.4 If Embracy notices, at any given time, that Embracy's Financial exposure or its credit risk in relation to the Merchant has increased, Embracy is entitled to change the payment terms with immediate effect for them to correspond to the higher Financial exposure or credit risk. Embracy shall furthermore be entitled to request additional security if Embracy deems it necessary.

#### **6 Limitation of liability**

- 6.1 Embracy and Ingenico e-Commerce shall only be liable towards the Merchant for any loss it

has directly suffered, if it is finally judicially determined that Embracy or Ingenico e-Commerce has acted with gross negligence. However, neither of Embracy nor Ingenico e-Commerce shall be liable under any circumstances for indirect loss or consequential loss.

## **7 Force majeure**

- 7.1 Neither Party shall be liable for the failure to perform any obligation pursuant to the Agreement where such failure is due to a Force Majeure Event where such circumstances are beyond such Party's control which prevents or renders materially more difficult timely performance of its obligations.
- 7.2 Force Majeure Events shall include, inter alia, war, acts of war, terrorist actions, import or export prohibitions, natural disasters, restrictions on general public transport, deficiencies or delays in energy supplies or telephone connections, the actions or omissions of public authorities, new or amended legislation, orders or actions of public authorities, labour conflicts, blockades, fire, flooding, extensive losses or destruction of property or major accidents, as well as defects or delays in products or services from subcontractors as a consequence of circumstances stated above (each a "**Force Majeure Event**"). Labour conflicts shall be deemed to be Force Majeure Events irrespective of a Party's role in such conflict.
- 7.3 In the event that a Party wishes to be released from its obligations under the Agreement by relying on section 7.1, such Party shall, where possible, notify the other Party thereof without undue delay.
- 7.4 In the event the performance of the Agreement is materially impeded for a period in excess of fifteen (15) Business Days due to a Force Majeure Event, either Party shall, without liability, be entitled to terminate the Agreement by giving thirty (30) calendar days' written notice to the other Party.

## **8 Personal data**

- 8.1 Within the scope of this Agreement, Embracy and/or Ingenico e-Commerce may process personal data. Such personal data may either relate (i) to the Merchant and be collected for KYC purposes when the Merchant is boarded by Embracy, or (ii) to the Card Holder as Card Information, when handling a payment transaction. Irrespective of the type of personal data, Embracy and/or Ingenico e-Commerce will process such personal data as data controller and will therefore be responsible and liable for the lawfulness of such personal data processing.
- 8.2 To the extent the Merchant conducts any personal data processing for its own purposes, the Merchant shall be considered data controller and be solely responsible and liable for the lawfulness of its personal data processing, including any disclosure to Embracy and/or Ingenico e-Commerce.
- 8.3 Each Party undertakes to comply with its obligations under applicable data protection laws, including but not limited to the General Data Protection Regulation (Regulation (EU) 2016/679) when processing personal data. All Parties hereby also confirm that all personal data will be handled with care and in a confidential manner. Neither Party shall assume any responsibility for the other Party for any breach of such Party's obligations under applicable data protection laws.

## **9 Confidentiality and registration**

- 9.1 The terms and conditions of the Agreement and any information about the Merchant shared

with Embracy and/or Ingenico e-Commerce are confidential, except for any information accessible on Embracy's website including these general terms and conditions, and the Parties shall not be entitled to disclose such information to any third party. Nor may either Party disclose to any third-party information regarding the other Party's business which may be considered a business or trade secret.

- 9.2 However, the Merchant consents to Embracy, in accordance with the duty of confidentiality of payment institutions, transferring such information as referred to in 16.1 to 1) companies within the Ingenico group; 2) Card Schemes; 3) service providers with which Embracy co-operates, in order to improve Embracy's services and to ensure the performance of the Agreement in respect of, e.g. PCI DSS and other security issues; and 4) companies with which Embracy co-operates which have solicited the Merchant to Embracy. The Merchant consents to that Embracy may disclose such type of information about the Merchant that Embracy deems necessary, including data relating to Transactions, in relation to paragraphs 1) and 3) above. The Merchant also consents to that Embracy may disclose information which is necessary in order to connect the requested service, such as the company name, registration number, contact details, customer number and Merchant Category Classification (MCC) code, to terminal suppliers, Payment Service Providers and other payment service suppliers.
- 9.3 Section 9.1 above shall not prevent Embracy and/or Ingenico e-Commerce from disclosing such information as Embracy and/or Ingenico e-Commerce, under law, government regulation or regulation, as well as due to order of a competent authority or court, is obliged to disclose. Nor shall the first paragraph prevent Embracy and/or Ingenico e-Commerce from sharing such information to other companies in the Ingenico group in order to promote other Embracy and/or Ingenico e-Commerce products or services.
- 9.4 The Card Schemes may, from time to time, maintain registers (including monitoring systems) ("**Special Registers**") with respect to breaches of the type of agreement concluded by the Parties hereunder and/or which have been terminated due to breach of contract or for other similar reasons and the Merchant is aware that registration in Special Registers may take place in the event this Agreement is terminated due to the Merchant's breach of contract or due to the Merchant having provided incorrect, incomplete or misleading information.

## **10 Assignment and subcontractors**

- 10.1 Neither Party may assign any of its rights and/or obligations pursuant to the Agreement to any third party without the other Party's written consent, which shall not be unreasonably withheld, delayed or made contingent on conditions. Embracy and/or Ingenico e-Commerce may, however, without the consent of the Merchant, assign its rights and/or obligations to companies within the Ingenico group.
- 10.2 Subject to the below sections, a Party may retain subcontractors without the other Party's prior consent. The Merchant shall, however, notify Embracy or Ingenico e-Commerce immediately in the event such retention affects or could affect the Parties' co-operation pursuant to this Agreement.
- 10.3 If the Merchant intends to retain a subcontractor that may get access to Card Information in connection with Transactions, such subcontractor must be approved by Embracy in writing and in advance.
- 10.4 Each Party is responsible and liable with respect to all acts and omissions of its subcontractors or even if such subcontractor is also responsible towards the other Party.

## **11 Reporting**

- 11.1 The Merchant shall notify Embracy immediately in writing regarding changes relating to the composition of its company name, ownership structure, address, telephone and e-mail address, relevant account numbers, changes in branch affiliation and other circumstances which may be of significance under the Agreement.
- 11.2 A Party shall also notify the other Party immediately of events which may be assumed to affect, or will affect, all or parts of the co-operation pursuant to the Agreement. It is of particular importance that all planned changes in a Party's IT system which in any respect may be assumed to affect the co-operation are notified to the other Party immediately upon commencement of planning with respect to the changes.
- 11.3 Embracy shall regularly verify how the information which the Merchant has provided to Embracy, e.g. regarding the time which elapses between the date of payment by Card at the Merchant and the date for delivery/performance of the product/service to which the payment relates accords with the circumstances actually prevailing from time to time. The Merchant shall be obliged to assist, to a reasonable extent, in order to facilitate such verification.
- 11.4 The verification referred to in the preceding paragraph shall take place primarily to ensure that the payment terms and conditions and any security provided to secure Embracy's right to payment, etc., from time to time 1) correspond to the actual circumstances; and 2) are otherwise also in accordance with Embracy's guidelines and policies.

## **12 Other**

- 12.1 The current general terms and conditions and Instructions are available on Embracy's website (test.embracy.com). Embracy has the right to amend these general terms and conditions and/or Instructions at any time without the prior approval of the Merchant. The Merchant is responsible for keeping itself updated with the current version. In case of significant changes, Embracy shall promptly and at least thirty (30) days prior to the change takes effect, provide the Merchant the new version of the general terms and conditions and or inform the Merchant of where they can be found. If the Merchant has not informed Embracy that it does not accept the changes before the effective date, the Merchant shall be considered to have accepted the changes.
- 12.2 In respect of the day-to-day co-ordination pursuant to the Agreement, each Party shall appoint a contact person whose name and contact details shall be notified to the other Party. On Embracy's behalf, this means Embracy Customer Support.
- 12.4 In the event the Agreement does not state the manner in which costs incurred as a consequence of the co-operation are to be borne or allocated, the Parties shall, upon taking a decision to carry out such a measure, also decide on the manner in which the measure shall be defrayed. In the absence of such a decision and where the Parties are unable to agree on the manner in which the costs shall be borne or allocated, and in the event the measure is nevertheless carried out the Party that chooses to carry out the measure shall also be solely liable for the cost thereof.
- 12.5 Other than as stated in the Agreement, the Parties shall not be entitled to represent each other or to use each other's trademarks, company names or know-how without the other Party's written consent. Such right of use does not create any rights and shall cease

immediately upon the termination of the Agreement.

- 12.6 Headings in the Agreement are for ease of reference only and shall not affect the interpretation of the Agreement.
- 12.7 Each Party confirms that the Agreement (and any document referred to herein) constitutes the Parties' entire agreement on the issues to which the Agreement relates. All oral or written undertakings or representations made prior to the Agreement are replaced by the Agreement.
- 12.8 Unless otherwise stated herein, this Agreement may not be amended or modified except by written agreement signed by both Parties.
- 12.9 Each Party shall ensure that those of its employees who are required to have knowledge of the Agreement are informed of the content of the Agreement.

### **13 Applicable law and disputes**

- 13.1 Disputes relating to the Agreement, its execution, interpretation and/or application or other legal relations connected to the Agreement shall preferably be resolved through negotiations between the Parties.

## Appendix 1 to the General Terms and Conditions

### **Definitions**

All the definitions should apply 1) in the singular and the plural, and 2) in the definite and indefinite forms of the respective definition. There are also definitions in other places in the Agreement.

<b>Agreement</b>	means the Merchant's application for the acquisition of Card transactions, Embracy's written grant of the application, these general terms and conditions, including any appendices, as well as Instructions in force from time to time which are expressly stated as relating to these general terms and conditions and/or the application.
<b>Business Day</b>	means a day (excluding Saturdays and Sundays) on which the banks are open for general business in Stockholm.
<b>Card</b>	means a card or another form of payment instrument correctly issued by an authorised and/or licensed card issuer, bearing a trademark and of a card type which the Parties have agreed shall be covered by the Agreement. The agreed trademarks and card types are set out in the application.
<b>Card Information</b>	means information embossed or printed on the front or back of the Card and/or information stored in the Card's magnetic stripe, chip or equivalent technology.
<b>Cardholder</b>	means a natural person in whose name a Card has been issued.
<b>Chargeback</b>	means any claim for the return of funds to a Cardholder, issuer of a Card or Merchant related to a Transaction as applicable (irrespective of the reason for such claim) in accordance with the Regulations.
<b>Collateral</b>	means all of the Merchant's present and future rights, title and interest in: <ul style="list-style-type: none"><li>a) the aggregate amount of all proceeds, including any claim the Merchant may have against Embracy with respect to any proceeds, derived from the sale of Merchant's goods or services to Cardholders, as held from time to time by Embracy on behalf of the Merchant (redovisningsmedel) on any client fund account or otherwise pursuant to this Agreement, and/or</li><li>b) the Security Deposit, if any.</li></ul>
<b>Contactless Payment</b>	means a payment where the Card is held very close to the Terminal to let the Terminal capture the information stored on a Card.
<b>DCC – Dynamic Currency Conversion</b>	means an additional functionality where the Cardholder is offered to execute the payment in the Card's billing currency.
<b>Delivery Date</b>	shall have the meaning ascribed hereto under section 21 of the Special terms and conditions for hire and license.
<b>Designated Account(s)</b>	means the account(s) for payment under this Agreement established and maintained by the Merchant at financial institution(s) acceptable to Embracy and set out in the application.
<b>Equipment</b>	means the Software and the Hardware.



<b>Financial Exposure</b>	means the risk for Chargeback.
<b>Hardware</b>	means the Terminal excluding the Software.
<b>Instructions</b>	means the instructions and operational routine descriptions issued by Embracy in writing from time to time, available at <a href="http://test.embracy.com">test.embracy.com</a> , to the Merchant pursuant to the Regulations or otherwise for the purposes of the services provided under this Agreement.
<b>Intellectual Property Rights</b>	means all copyright (including the right to computer programs, source codes, object codes and algorithms), trademarks, design rights, patent rights, inventions, know-how and other intellectual and/or industrial property rights under this Agreement.
<b>Merchant</b>	means the company which is granted connection to Embracy's system for acquiring Transactions pursuant to the Agreement.
<b>Payment Default</b>	means a failure by the Merchant to pay on the due date any amount payable pursuant to a Recourse Claim or any other amount payable by it under this Agreement at the place and in the currency in which it is expressed to be payable.
<b>Pledge</b>	means the first priority pledge over the Collateral created under or pursuant to this Agreement.
<b>Recourse Claim</b>	means any claim of Embracy against the Merchant in respect of any (i) Chargeback, (ii) refund, (iii) rejected, fraudulent, reversed or otherwise corrected Transaction or (iv) fees (as set out in the application), costs, handling charges or penalties, etc. that Embracy is required to pay to the Card Schemes, any regulatory authority or other third party in connection with any claim.
<b>Regulations</b>	means rules, regulations, directives, etc. issued by Card Schemes relevant to the services provided by Embracy under this Agreement, available at the respective Card Schemes' website.
<b>Sales Method</b>	means any sales method used by the Merchant in the sale of goods and/or services covered by this Agreement as set out in the application, and Instructions may be issued by Embracy for each such Sales Method.
<b>Sales of value units</b>	means, at present, 1) purchases of virtual currency, and 2) transfers to other payment solutions, including gift certificates valid for longer than thirty-six (36) months.
<b>Secured Obligations</b>	means all present and future moneys, debts and liabilities due, owing or incurred by the Merchant outstanding at any time including the Recourse Claims.
<b>Software</b>	means all the software licensed to the Merchant under this Agreement including but not limited to software in the Terminal.
<b>Terminal</b>	means technical equipment which captures information stored on a Card in order to create a Transaction, irrespective of whether the information is stored on a magnetic stripe, a chip or on any equivalent technology.
<b>Transaction</b>	means both 1) purchase transactions in which a Card is used as means of payment, and 2) returns/crediting of corresponding purchase transactions.

## **SPECIAL TERMS AND CONDITIONS FOR THE ACQUIRING OF CARD TRANSACTIONS**

The terms and conditions in this section refers to the acquiring of Card transactions.

### **14 Scope**

- 2.1 Pursuant to the Agreement, Embracy shall be able to acquire Transactions undertaken with a Card at the Merchant's. Transactions may only be made in the currencies agreed in the Agreement.
- 2.2 Embracy will provide the Merchant with unique customer numbers for each Sales Method (Merchant ID) which the Parties have agreed shall be covered by the Agreement. Such customer numbers, which must always be used in conjunction with the Merchant's reporting of Transactions to Embracy, may not be used for Sales Methods or goods or services within a stated industry, other than as agreed upon between Embracy and the Merchant.

### **15 The Merchant's transaction undertakings**

- 15.1 The Merchant undertakes:
- a) to comply with the Agreement and any directions relating to the Agreement from Embracy and/or Ingenico e-Commerce or from any party retained by Embracy, including instructions provided in responses from Terminals or other forms of authorisation systems, including automated voice response;
  - b) to treat all Cards equally (irrespective of the amount) amongst the Card types that are, from time to time, accepted by the Merchant for payment of its goods or services;
  - c) to respond to Cardholders' disputes and handle Chargebacks in accordance with the Regulations;
  - d) not to encourage the use of, or to accept, Cards 1) for any fraudulent purpose; 2) in any other manner which contravenes the permissible use of Cards; or 3) for any purpose not approved by the Cardholder;
  - e) in conjunction with payment by Card, unless otherwise agreed in writing: 1) not to dispense cash other than as may be permitted pursuant to the Instructions; 2) not to issue cheques or other payment instructions; or 3) not to secure payment for any claims other than payment for the Merchant's goods and/or services;
  - f) not to use the Embracy trademark for any purpose other than as agreed in writing between the Parties;
  - g) to comply with applicable law and public authority regulations in force from time to time;
  - h) not to create multiple purchase transactions in respect of a single purchase with the same Card; and
  - i) not to transfer to Embracy Transactions which have been carried out at a party other than the Merchant.
- 15.2 Returns/crediting shall relate to a previously undertaken purchase transaction. The return/credit amount may not exceed the amount of the purchase transaction. The return/crediting shall take place using the Card which was used for the purchase transaction. The amount may not be refunded in cash unless otherwise agreed in writing

between the Parties.

- 15.3 Where the Merchant itself possesses a Card, such card (where the Merchant is operated as a sole proprietorship, partnership, limited partnership or limited liability company which is a so called closely-held company) may not be used for payment at the Merchant. Possession of a Card means that the Cardholder and the Merchant are identical, i.e. have the same personal ID or registration number, or that the Cardholder is the owner of, or a partner of, the Merchant.
- 15.4 When offering goods and/or services, the Merchant may not apply a higher price or surcharge fee for payment made by Card than the price applied for payments made by any other form of payment, unless such higher price or surcharge is permitted by Local Law, Regulation 2015/751 on interchange fees for card-based payment transactions and the Regulations.
- 15.5 If the Merchant applies a surcharge fee or offers a reduction of a fee in conjunction with the use of a certain Card, the Merchant shall notify the Cardholder before the Transaction is executed.
- 15.6 If the Merchant wishes to charge the Cardholder in arrears for costs which arose in conjunction with a service etc. (such as a hotel visit, rental car or similar) the Merchant must inform the Cardholder and obtain the Cardholder's consent before charging in arrears. In such case, the Merchant shall, when possible, divide the Transaction into two (2) parts, whereupon the Merchant shall immediately charge the Cardholder for that part of the transaction amount which is known at the time of the Transaction, and subsequently charge the Cardholder in arrears only for that part of the transaction amount which was not known at the time of the Transaction.
- 15.7 On becoming aware of any incorrectly executed Transaction, the Merchant shall, without undue delay and no later than within forty-five (45) calendar days, notify Embracy and request rectification.

## **16 Embracy's undertakings and liabilities**

- 16.1 Subject to the terms of this Agreement, Embracy undertakes to make payment, less recoupment of fees, any credit(s), adjustments, fines or Chargebacks to the Designated Account(s) for purchase transactions made using Cards, provided that 1) the purchase transaction is received by Embracy within the period of time prescribed in the Instructions; 2) the purchase transaction fulfils the requirements prescribed in the Agreement; and 3) the Merchant has otherwise fulfilled its obligations pursuant to the Agreement.
- 16.2 The obligations of Embracy pursuant to this Agreement extends only to Transactions that are actually received by Embracy. If the Merchant engages any third party in respect of any Transaction to Embracy, then Embracy shall have no liability for any claim, action or omission relating to the co-operation between the Merchant and third party. Nor shall Embracy have any liability for any mistake, error, or similar in Transactions received by Embracy insofar as such is due to circumstances attributable to the third party.
- 16.3 Embracy shall provide the Merchant with information in relation to each Card type of the amount involved in each Transaction, the fees applied and, where applicable, any exchange rate used. The information will be provided with the frequency and in the manner separately agreed between the Parties.
- 16.4 In addition to section 6 Embracy shall not be liable towards the Merchant for loss attributable to a card issuer not consenting to the execution or implementation of a Transaction.

## **17 The Merchant's liability**

- 17.1 The Merchant shall be liable against the Cardholder for all defects and deviations in the quality, condition and performance of sold goods and services. Such defects and/or deviations, as well as the non-delivery or deficient delivery of goods/services to a Cardholder or any other party designated by the Cardholder, shall at all times be deemed to constitute a breach of the Merchant's obligations.
- 17.2 The Merchant's liability pursuant to section 17.1 above shall apply notwithstanding any agreement which may have been reached between the Merchant and the Cardholder, the purchaser or any other party. The aforesaid shall also apply where the Merchant 1) conducts operations as an agent/middleman, etc. and thereby sells/brokers a third party's goods and/or services, or 2) sells/brokers goods and/or services on behalf of a third party, and thereby a party other than the Merchant may be required to make performance (e.g. delivery of goods and/or services or the carrying out of an event, trip, etc.) to which the Transaction relates.
- 17.3 The Merchant shall be obligated, upon request by Embracy, to reimburse Embracy for all amounts, plus interest and handling charges, which Embracy has paid/refunded to an issuer of a Card, a Card Scheme, a Cardholder or any other party or any other cost incurred for Embracy or fee that Embracy may charge the Merchant at any time, as a consequence of:
- a) the Merchant's obligations under sections 17.1 above;
  - b) a card issuer's final debiting of Embracy in respect of a Transaction which is the subject of a complaint pursuant to the Regulations' provisions regarding Chargebacks;
  - c) the fact that the Merchant, without exercising normal care, has accepted an invalid or forged Card or a Card which has been used in an unauthorised manner;
  - d) the fact that the Merchant has in any respect breached its obligations pursuant to, or otherwise acted in contravention of, the Agreement;
  - e) breach of applicable law or public authority regulations; or
  - f) breach of the Instructions issued by Embracy.
- 17.4 Irrespective of whether negligence, breach of contract or any other cause of action may be imputed to the Merchant, the Merchant shall also be obliged, upon request by Embracy, to pay compensation for any amounts (e.g. fees and other economic sanctions) which Embracy is obliged to pay to Card Scheme(s) insofar as such amount is related to the Agreement and to 1) Transactions which are the subject of a complaint; or 2) fraud, bad faith or wilful conduct.
- 17.5 In the event Embracy, prior to any obligation to pay an amount pursuant to section 17.3 or 17.4 above, receives any warning, order or suchlike (e.g. from Card Schemes), Embracy shall notify the Merchant without delay of the measures or suchlike which the Merchant must take in order, if possible, to avoid Embracy incurring an obligation to pay the amount.
- 17.6 In the event Card Schemes believe that the Merchant has reached a level of complaints due to fraud, unauthorised purchases or complaints from Cardholders which is unacceptably high in relation to the total number of the Merchant's purchase transactions (assessed in line with Card Schemes' normally applied levels), Embracy shall be entitled to terminate the Agreement with immediate effect.

## **18 Embracy's right to withhold and/or delay payments and right of settlement by withdrawal**

- 18.1 Embracy shall be entitled to immediately withhold or delay payments to the Merchant until Embracy is holding an amount corresponding to the Secured Obligations, as calculated from

time to time, which corresponds to the expiration of every individual Chargeback period 1) if Embracy believes that the Merchant's credit risk or Financial exposure has increased, 2) when the Merchant fails to perform its obligations pursuant to the Agreement, 3) when the Merchant's solvency is reasonably deemed to be questionable, 4) when notice of termination of the Agreement has been given or 5) when Embracy would be entitled to terminate this Agreement pursuant to this Agreement, but has chosen not to or decided to delay such termination.

- 18.2 Payments which have been withheld or delayed pursuant to the aforesaid may be applied by Embracy in respect of all the Merchant's obligations/undertakings towards Embracy pursuant to the Agreement. The aforesaid shall also apply to obligations which arise following the termination of the Agreement until the day that Embracy pays the total withheld amount.
- 18.3 In addition to the preceding section, Embracy shall be entitled to withhold or delay payments to the Merchant in the event Embracy deems it probable that a Transaction will be subject to a Chargeback. In such situation, Embracy shall be entitled to withhold and/or delay payment of an amount equal to the anticipated Chargeback.
- 18.4 Where notice of termination of the Agreement is given, for whatever reason, the regular payments to Merchant shall cease commencing on the date notice of termination of the Agreement is given, and payment of the funds withheld by Embracy shall be made in accordance with section 18.1 above.
- 18.5 A prerequisite for Embracy to release withheld funds, is that the Merchant shall, upon Embracy's request, provide Embracy with documentation which shows the date of delivery of the sold goods and/or services. Payment of released funds shall be made on a monthly basis or as otherwise determined by Embracy and conditioned on that the Merchant has provided Embracy with documentation deemed sufficient by Embracy. Embracy shall be entitled to withhold funds corresponding to the outstanding value of the undelivered or unused goods and/or services (as determined on the basis of the information received from the Merchant).
- 18.6 Payments which have been withheld or delayed pursuant to the aforesaid may be applied by Embracy in respect of all the Merchant's obligations/undertakings to Embracy pursuant to the Agreement. The aforesaid shall also apply to obligations which arise following the termination of the Agreement until the day Embracy pays the total amount of withheld or delayed payment.
- 18.7 Settlement pursuant to sections 18.3 or 18.4 may take place through a deduction from the amount to be paid by Embracy in conjunction with the payment terms applicable between the Parties. The Merchant shall be obliged to ensure that there are sufficient funds in the Designated Account(s).
- 18.8 Embracy shall inform the Merchant, without undue delay, about the reason for the Merchant's liability to compensate. In the event the Merchant considers that it is not liable to compensate, the Merchant shall immediately notify Embracy thereof and specify the reasons therefor. This section 18.8 shall remain in force during the entire claim period applicable from time to time pursuant to the Regulations' provisions regarding Chargeback.
- 18.9 Any Collateral held by Embracy pursuant to this Agreement may be applied by Embracy in the discharge (by way of set-off or otherwise) of the Merchant's payment obligations pursuant to this Agreement (and both before and after termination of this Agreement).

## **19 Pledge of Collateral**

- 19.1 The Merchant hereby irrevocably and unconditionally, on the terms and conditions set out herein, pledges to Embracy all its rights, title and interest in and to the Collateral for the

purpose of constituting security for the Secured Obligations.

19.2 The Parties agree that the Pledge created pursuant to this Agreement is legal, valid and enforceable against the Merchant upon the execution of this Agreement.

19.3 The Merchant shall promptly, at its own expense, do whatever Embracy reasonably requires:

- a) to perfect or protect the Pledge or the priority of the Pledge; and
- b) to facilitate the enforcement of the Pledge or the realisation of the Collateral or the exercise of any rights vested in Embracy by reason of the Pledge;

including executing any transfer, assignment or assurance to, or as requested by, Embracy, making any registration and giving any notice, order or direction considered necessary or desirable by Embracy.

19.4 On and at any time after the occurrence of a Payment Default or any default in paying any other amount payable by it to Embracy under this Agreement and as long as it is outstanding, Embracy shall have the right to enforce the Pledge and immediately withdraw the Collateral, or any part thereof, from the client fund account and set them off against any outstanding Recourse Claim or any amount due but unpaid or enforce the Pledge in any other way and on such terms as Embracy determines.

19.5 The Pledge shall be a continuing security and will extend to the ultimate balance of the Secured Obligations and shall continue in force, regardless of any intermediate payment or discharge in whole or in part of the Secured Obligations.

## **SPECIAL TERMS AND CONDITIONS FOR HIRE AND LICENSE OF TERMINALS**

The terms and conditions in this section refers to hire and license of terminals.

### **20 Ingenico e-Commerce's undertakings**

- 20.1 Ingenico e-Commerce undertakes to provide the Equipment for collection of, *inter alia*, Card Information from Transactions through a payment gateway, in accordance with what is stated in the Agreement.
- 20.2 The Merchant's use of the Equipment for the purpose of carrying out Transactions is subject to the Merchant, at all times, holding a valid license to use the Software. Ingenico e-Commerce undertakes to grant a license for the Merchant to use the Software in accordance with the Agreement.
- 20.3 The Software is generally available to the Merchant 24 hours a day, however, excluding time necessary for Ingenico e-Commerce's maintenance, modifications and planned interruptions of operation. The Merchant acknowledges that software can never be tested in all possible situations and that deviation from the agreed functionality and unforeseen interruptions may occur (provided that Ingenico e-Commerce compensates the Merchant in the event of any long-lasting material deviations that from both Parties' perspective has a negative effect on the Merchants business (both parties acting reasonable and in good faith when assessing the alleged negative effects)). Ingenico e-Commerce shall, however, use its best endeavors to, with a high level of professional skill and care, procure that defects in the Software that reduces the intended functionality of the Equipment are appropriately remedied as soon as manageable.

### **21 Delivery, duty of inspection etc.**

- 21.1 Delivery of the Equipment is made to the delivery address set forth in the Agreement. The Equipment is sent at the Merchant's expense.
- 21.2 The Equipment shall be deemed to be delivered on the day Ingenico e-Commerce handed over the Equipment to the Merchant or to a carrier for onward delivery to the delivery address set forth in the Agreement (the "**Delivery date**"). The risk of the Equipment passes to the Merchant on the Delivery Date. Ingenico e-Commerce shall procure that the Terminal is activated on the Delivery Date.
- 21.3 The Merchant is responsible for installing the Equipment in accordance with the accompanying installation guide. The Merchant shall, as soon as possible after the receipt thereof, inspect the Equipment in accordance with fair trading standards (including ensuring that the information regarding the Merchant's name, registration number and address programmed in the Equipment is correct). If defects are discovered during such inspection, the Merchant shall immediately notify Ingenico e-Commerce. If such notice has not been made available to Ingenico e-Commerce within forty-five (45) calendar days from the Delivery Date, or if the Merchant starts to use the Equipment, the Equipment shall be deemed to have been delivered in a non-defective condition.

### **22 The Merchant's undertakings**

- 22.1 The Merchant hires the Equipment for the purpose of allowing the Merchant to carry out Transactions and similar. The Terminal shall at all times remain Ingenico e-Commerce's (or its sub-supplier's) property and the right to sub-lease the Equipment shall at times vest with Ingenico e-Commerce (or its sub-supplier). No title in the Equipment is transferred to the Merchant by virtue of the Agreement. The Merchant is only entitled to use the Equipment for the intended purpose and at all times in accordance with the Agreement, the Equipment's user manual and the instructions and recommendations from Ingenico e-Commerce and the Equipment's manufacturers applicable from time to time (collectively the "**Regulations**").

- 22.2 Ingenico e-Commerce reserves the right to replace the Equipment with other equivalent Equipment at any time. In the event the Merchant would suffer from any delays or similar in connection with an Equipment replacement, Ingenico e-Commerce will give reasonable compensation. The Merchant shall be notified in advance in case of a contemplated replacement of the Equipment. The Agreement shall be applicable to the replacing Equipment instead of the replaced Equipment.
- 22.3 The Merchant is responsible for procuring that the Equipment, at all times, is in good repair and well-functioning condition and otherwise in a materially unchanged condition (excluding normal wear and tear) in comparison with the Equipment's condition on the Delivery Date. The Merchant is also responsible for taking care of and maintaining the Equipment in accordance with the Regulations. During the term of the Agreement, Ingenico e-Commerce has a right to, at any time, have the Equipment inspected and the Merchant shall grant access to its premises in connection therewith.
- 22.4 If the Merchant wishes to relocate or move the Equipment from its premises to another of its premises at a different address than where the Equipment is installed, such relocation or move shall be notified to Ingenico e-Commerce. Any costs associated to such relocation or move of the Equipment shall be borne by the Merchant. In addition to this Ingenico e-Commerce has the right to charge an administrative fee in accordance with the applicable price list.
- 22.5 The Merchant is obliged to, at its own expense, procure that the Equipment is sufficiently insured for the benefit of Ingenico e-Commerce. Such insurance shall cover, inter alia, loss and damage during the term of the Agreement. If the Merchant fails to obtain and/or maintain such insurance, Ingenico e-Commerce has the right to insure the Equipment at the Merchant's expense. The Merchant shall hold any insurance indemnification received separate from its own funds.
- 22.6 The Merchant is liable for any and all loss of (including theft) or damage caused to the Equipment or any part of the Equipment, regardless of whether or not the Merchant was at fault. In the event the Equipment has come into contact with any liquids, the Equipment will be considered damaged.
- 22.7 The Merchant shall immediately notify Ingenico e-Commerce if the Merchant discovers or suspects any defects in, loss of, damage to, manipulation of or interference with the Equipment.
- 22.8 The Merchant is not entitled to:
- a) pledge, sub-rent, sell or otherwise transfer, dispose of, lose or divest itself of the right of use of the Equipment;
  - b) do or have others to do modifications of, interfere with or make additions to the Equipment without Ingenico e-Commerce's written consent (not to be unreasonably withheld or delayed);
  - c) combine the Equipment with the Merchant's movable or fixed property in such a way that Ingenico e-Commerce's title to the Equipment could be jeopardized; or
  - d) without Ingenico e-Commerce's knowledge, connect the Equipment to any system for acquiring of Transactions belonging to another acquirer than the acquirer that was selected in connection to the entering of this Agreement or Ingenico e-Commerce (not to be unreasonably withheld or delayed).
- 22.9 The Merchant is obligated to procure that all necessary connections, communications and other required equipment for the Equipment are available at the Merchant's premises in accordance with Ingenico e-Commerce's instructions. All communication with the Equipment must comply with the Regulations which are notified to the Merchant by Ingenico e-Commerce from time to time.
- 22.10 The Equipment may only be used together with and/or connected to such accessories,



consumables, software, Internet connections and/or other connections, that meet the requirements as set out by applicable laws and governmental regulations and applicable safety and/or technical standards, and which have been explicitly approved by Ingenico e-Commerce. The Merchant shall bear all costs and expenses associated with the use of the Equipment, including costs for power supply, communications, consumables, and, if applicable, maintenance and replacement of the battery pack to the Equipment.

- 22.11 The Merchant is obligated to procure that all codes, identities, passwords and similar provided by Ingenico e-Commerce, are stored and used in a secure manner. Ingenico e-Commerce is not liable in the event a third party has taken any actions by using the Merchant's codes, passwords, identities or similar. If the Merchant has a web manager account, such account is intended solely for the Merchant's internal use and Ingenico e-Commerce is not liable for any damage incurred in the event that the Merchant has disclosed the log-in details to the web manager account to unauthorized persons.

### **23 License and software etc.**

- 23.1 Through the Agreement, the Merchant is granted a non-exclusive, non-transferable and non-grantable license, which is limited in time to the term of the Agreement, to use the Software and related documentation together with the Hardware, in the country/countries specified in the Agreement. The license is valid as long as the Merchant fulfils its obligation to pay the Terminal Fee.
- 23.2 Ingenico e-Commerce reserves the right to, at any time, have modifications made to the Software (e.g. in order to update the payment transaction functionality, or relating to the use of the Equipment in general). The Merchant may not oppose, refuse to participate in or cancel modifications to the Software.
- 23.3 If the Equipment is integrated with or connected to the Merchant's own terminal or software (e.g. a cash register system), or to terminal or software supplied by a third party, the Merchant shall, at its own expense, ensure that necessary modifications are made to such Equipment and/or software in accordance with Ingenico e-Commerce's instructions.
- 23.4 Ingenico e-Commerce reserves the right to temporarily have the Software deactivated for maintenance, modifications and planned interruptions of operation. In case of a planned interruption of operation, the Merchant shall be notified in advance.

### **24 Intellectual Property Rights**

- 24.1 All rights, titles and interests (including rights in source code, instructions, documentation and tools) in and relating to the Equipment (including Hardware and Software) shall belong exclusively to Ingenico e-Commerce, Ingenico e-Commerce's affiliates, sub-contractors and/or licensors (as the case may be). All copyright, as well as other intellectual property rights, related to the Equipment, and products included therein as well as related documentation and know-how, including such source code, specifications, documentation and similar added by request of the Merchant, constitutes Ingenico e-Commerce's property.
- 24.2 Nothing contained in this Agreement involves, and shall not be construed as involving, any assignment or transfer of any ownership, copyright or other intellectual property right in and to the Equipment except for the Merchant's limited right to use the Equipment in accordance with the terms of the Agreement.
- 24.3 The Merchant undertakes not to:
- a) Dismantle or modify the Equipment or in some other manner try to gain access to the Equipment or let someone else gain such access, or
  - b) Copy, transfer, grant, sub-license, lease or lend or in some other manner dispose of the Equipment, neither shall the Merchant let someone else in other manners or by omission gain access to the Equipment or the underlying Software or its source code in any manner

unless expressly permitted in this Agreement or otherwise follows from mandatory law.

- 24.4 Subject to the limitations as described under section 6 to the General Terms and section 27 to the Specific Terms and Conditions for Hire and License of Terminals and to the fact that the Merchant is using the Equipment in accordance with this Agreement and the Regulations, Ingenico e-Commerce will hold the Merchant harmless from any potential claims or actions brought against the Merchant for infringement in any third party's intellectual property right for using the Software. This undertaking will only apply provided (i) that the Merchant will give immediate notice to Ingenico e-Commerce of such claims or actions brought against the Merchant, (ii) that Ingenico e-Commerce is entitled to decide on the defense of such claim or action and conduct negotiations of settlements or other arrangement, (iii) that the Merchant on its own expense delivers all available information to Ingenico e-Commerce, and (iv) that the Merchant will provide Ingenico e-Commerce with all reasonable assistance to conduct said defense, settlement or other arrangement. If the Equipment is infringing or, in accordance with Ingenico e-Commerce's assessment, could infringe any third party's intellectual property right Ingenico e-Commerce may in its own discretion choose to (i) obtain approval from the Merchant to continue to use the Equipment, or (ii) change or replace the Equipment to an equivalent Equipment so that it no longer infringes any third party's intellectual property right.
- 24.5 Section 24.4 above shall be the exhaustive regulation of Ingenico e-Commerce's liability and sanctions regarding infringement of any third party's intellectual property rights in relation to the Equipment.
- 24.6 The Merchant shall hold Ingenico e-Commerce harmless from any claim or action brought against Ingenico e-Commerce for infringement in any third party's intellectual property right if (i) the Merchant is using the Equipment for purposes that are not compliant with or in conflict with the Regulations, or (ii) the claim or action is relating to any equipment, connection, software, systems, programs or materials provided by the Merchant or any third party.

## **25 Liability for defects etc.**

- 25.1 Ingenico e-Commerce is liable for defects in the Equipment if such defect is due to a part or component of the Hardware being defective as a result of errors in manufacturing or construction. In such case, Ingenico e-Commerce will bear any and all costs relating to such defects (such as repair or exchange as described below) including giving due compensation to the Merchant if the Merchant can provide evidence of having suffered any direct loss. Ingenico e-Commerce is however not liable for inadequate functionality or defects in the Equipment caused by:
- a) incorrect or negligent use or handling of the Equipment, or use of the Equipment for other purpose than its intended purpose;
  - b) use of the Equipment in contravention with the Agreement, these terms and conditions and/or the Regulations;
  - c) use of the Equipment together with equipment, software etc. which has not been delivered by Ingenico e-Commerce or explicitly approved by Ingenico e-Commerce and updated in accordance with instructions from Ingenico e-Commerce;

- d) use of accessories or consumables which has not been delivered by Ingenico e-Commerce or explicitly approved by Ingenico e-Commerce;
- e) any battery pack not belonging to the Equipment (or defects in such a battery pack);
- f) modifications to, interference with or additions to the Equipment which has not been explicitly approved by Ingenico e-Commerce;
- g) external circumstances such as accidents, vandalism, fire, water damage, short circuit, shortage, lightning, defects or fluctuations in power supply, error, failure or interruption in communication networks, failure at network operators, processors or other third parties, or other circumstances beyond Ingenico e-Commerce's control;
- h) or loss or damage (including theft and contact with any liquids) caused to the Equipment; or
- i) otherwise caused by the Merchant, its employees or third parties.

25.2 In the event of defects in the Equipment due to any of the items listed above (a-i) the Merchant shall bear any and all costs relating to such defects.

25.3 In the event of defects in the Equipment, it shall immediately, however, not later than forty-five (45) calendar days from that the Merchant was, or should have been aware of the defect, be reported to Ingenico e-Commerce's customer support. When Ingenico e-Commerce has received the report of the defect, Ingenico e-Commerce shall, subject to that the report of the defect has been accepted, be granted the opportunity, in its sole discretion, to either remedy the defect through repairing or replacing defective Equipment or by suggesting alternative measures to remedy the defect in accordance with what is stated in the Terms and Conditions For Service and Support.

25.4 Ingenico e-Commerce's liability for inadequate functionality or defects in the Equipment is limited to what is explicitly stated in this section 26.

## **26 Limitation of liability**

26.1 Ingenico e-Commerce is in no event liable for any lost information regarding Transactions or other information stored on the Hardware, if the Equipment when carrying out the Transaction, was not connected to or did not get in contact with the payment gateway (i.e. was offline), e.g., due to any action of the Merchant, or a communication error in the Equipment or in the communication network used by the Merchant. If the Merchant loses data because of Ingenico e-Commerce's conditions, Ingenico e-Commerce will assist the Merchant in re-establishing these data on the basis of the last functioning backup.

26.2 Ingenico e-Commerce is in no event liable for compensating any damage that the Equipment has caused to any other property or to a person.

## **27 Termination**

In addition to section 3 Ingenico e-Commerce shall be entitled to terminate the Agreement with immediate effect:

- a) if the Merchant has not fulfilled its obligations under section 23.2 and 23.3;
- b) if Ingenico e-Commerce has closed down the payment function of the Equipment on several occasions due to the Merchant not having paid its full Terminal Fee;
- c) if the Merchant has failed to pay its Terminal Fee for more than thirty (30) consecutive calendar days,
- d) if the Merchant refuses Ingenico e-Commerce to possibility to inspect the Equipment without just cause;
- e) if the Merchant endangers Ingenico e-Commerce's, or others', right to the Equipment or the value thereof, e.g. by mistreatment or unauthorized disposal of

- the Equipment, or by not insuring the Equipment;
- f) circumstance according to section 5.3 is applicable; or
  - g) if the Merchant infringes or uses the intellectual property of the Equipment in an unauthorised way.

## **28 Consequences of termination etc.**

- 28.1 Upon termination of the Agreement (for whatever reason), the Equipment shall, together with any battery pack, immediately and at the Merchant's expense and risk be returned to Ingenico e-Commerce. If the Equipment, when received by Ingenico e-Commerce, is not in a materially unchanged condition (taking into account normal wear and tear) as compared with the condition as at the Delivery Date, Ingenico e-Commerce is entitled to receive compensation from the Merchant, corresponding to the Equipment's impairment (värdeminskning). The Merchant's obligations set out in this Agreement (including the obligation to pay Terminal Fee) will remain until Ingenico e-Commerce has received the Equipment.
- 28.2 Upon termination of the Agreement (for whatever reason), Ingenico e-Commerce is entitled to immediately deactivate the Equipment's payment transaction functionality.
- 28.3 In the event of the Merchant's premature termination of the Agreement, due to failure by Ingenico e-Commerce, the Merchant is entitled to receive, including without limitation, compensation from Ingenico e-Commerce as applicable corresponding to any prepaid Terminal Fee or similar cost.
- 28.4 In the event of Ingenico e-Commerce's premature termination of the Agreement (for whatever reason), Ingenico e-Commerce is not obliged to repay any Terminal Fee to the Merchant.

## **SPECIAL TERMS AND CONDITIONS FOR SERVICE AND SUPPORT**

The terms and conditions in this section refers to the service and support for the hire and license of terminals.

### **29 Support services**

- 29.1 The Merchant shall contact its ECR supplier in accordance with the ECR supplier's instructions for all kinds of support matters.
- 29.2 The "**Service & Repair**" is included in the fee for Embracy Connect. This support entitles the Merchant to limited troubleshooting of Terminals, payment gateway and known operational disturbances. If the defect cannot be remedied over phone or via email, the ECR supplier will send equivalent equipment as a replacement unit to the Merchant.
- 29.3 The defective Equipment shall promptly, at the Merchant's risk, be returned to the supplier of the Equipment upon the ECR supplier's instructions and provided address information. The ECR supplier pays for the shipping cost unless otherwise is explicitly set forth in the Agreement.
- 29.4 If the defective Equipment is not made available to the ECR supplier within fourteen (14) Banking Days following the dispatch of the replacement unit to the Merchant, the Embracy has the right to charge the Merchant with an amount equal to the market price (Sv:marknadspris) of the Equipment and for shipping costs, in accordance with the price list applicable from time to time.
- 29.5 If the ECR supplier has provided the Merchant with a replacement unit and it is shown that the ECR supplier is not liable for the defect in the Equipment, the ECR Supplier has the right to charge the Merchant for shipping costs and all expenses related to the repair of the Equipment, or, if such repair is not financially justifiable, charge the Merchant with an amount equal to the market price of the Equipment, in accordance with the price list applicable from time to time.

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