Ingenico Standard Terms and Conditions – Canada

Ingenico Canada Ltd. ("Ingenico") and the party placing the order with Ingenico ("Buyer") (each a "Party" and collectively the "Parties") agree that the standard terms and conditions contained herein (the "Agreement") shall govern all purchase orders submitted by Buyer and accepted by Ingenico for the equipment and hardware ("Physical Products"), software components and object code licensed by Ingenico and services provided by Ingenico (collectively with Physical Products, the "Products"). This Agreement shall govern the purchase of Products by Buyer and shall supersede any and all other terms and conditions unless agreed to in writing and executed in pen and ink by the parties.

1. PAYMENT TERMS.

1.1. Pricing; Offers. The prices for the Products are those quoted by Ingenico to Buyer from time to time. Advertisements from Ingenico are informational only and not offers to contract. Buyer's orders are offers to contract which Ingenico may either reject or accept. Acceptance shall be either through Ingenico's written acceptance or fulfillment of such order which will be subject to these terms and conditions.

1.2. Changes. Ingenico may modify its price quote at any time, including changes to the Products or their corresponding prices; provided that only purchase orders placed after the effective date of such change shall be affected.

1.3. Delivery. Delivery shall be as mutually agreed between the parties and indicated on the face of the purchase order. If no term is indicated on the purchase order, all stated prices are FOB (Freight on Board) at Ingenico's warehouse and exclude any excise, sales, use or other taxes, and therefore are subject to increase in the amount of any such taxes that Ingenico may be required to collect or pay upon the sale or delivery of the Products. While Ingenico shall make reasonable efforts to meet any acknowledged delivery date, these delivery dates remain estimates and Ingenico shall not be liable to Buyer for its failure to meet any such delivery dates. Ingenico and Buyer agree that time is not of the essence.

1.4. Payment. Ingenico shall be entitled to invoice Buyer at the time each shipment of Products is delivered to a common carrier for shipment to Buyer. Full payment for all Products shall be due within thirty (30) days after the date of invoice. All payments are to be made in Canadian dollars, or in other applicable currency as quoted. Buyer shall make all payments due without regard to whether Buyer has inspected the delivered Products. Overdue payments shall bear interest at the lesser rate of one and one half percent (1½%) per month, or the highest rate allowed by applicable law. In the event of any default in any payment, Ingenico shall have no obligation to ship any undelivered Products, regardless of their relation to the transaction giving rise to the payment obligation, until all outstanding invoices are paid, regardless of whether other outstanding invoices are not yet past due. Ingenico has the right to make partial shipments of Buyer's order and invoice Buyer for Products shipped at that time. Ingenico shall have no obligation to warrant to, service or support Buyer until Ingenico has received full payment for the applicable Products.

2. INSTALLATION.

Unless specified otherwise in writing, Buyer and/or its designee shall be responsible for the installation of all Products in accordance with any instructions provided by Ingenico. Ingenico shall be under no obligation to perform any acceptance test procedures and the date of Buyer's acceptance of the Products shall be the date Ingenico delivered the Products to a common carrier.

3. TITLE AND RISK OF LOSS.

Title and risk of loss to the Physical Products passes from Ingenico to Buyer upon the Physical Products being delivered to a common carrier.

4. SOFTWARE.

4.1. Ownership. Buyer acknowledges that certain Products contain proprietary electronics, software and technical information of Ingenico or its licensor and that ownership of all patents, copyrights, mask work rights, trademarks, trade names and other intellectual property rights relating to or residing in the Products (collectively, the "Intellectual Property Rights") shall remain with Ingenico or its licensor.

4.2. Limited License. Without limiting the generality of Section 4.1 above, with regard to any Intellectual Property Rights provided by Ingenico at any time (whether contained in a Physical Product, provided on a diskette or other media, downloaded remotely or otherwise transferred), the terms "purchase" and "sale" and similar terms used in this Agreement shall mean the grant to Buyer of a non-exclusive, non-transferrable limited license (i) to use such Intellectual Property Rights together with the Products in Canada for the sole purpose of using the Products, subject to the provisions in any separate license agreement or other document supplied by Ingenico to Buyer, and (ii) in connection with any resale of Products, to grant to the first purchaser thereof a sublicense to use such Intellectual Property Rights solely as provided for in this Section 4.2.

4.3 Restricted Use. Buyer may not reverse engineer, decompile, disassemble, translate, copy, modify, alter or otherwise change any Product, in whole or in part, or otherwise obtain the source code for any software provided by Ingenico by any means, without Ingenico's prior written consent. Buyer may not remove from the Products (or their packaging or documentation), or alter any of Ingenico's trademarks, service marks, trade names, logos, patent or copyright notices or other markings, or add any other notices or markings without Ingenico's prior written consent.

5. WARRANTY.

5.1. Limited Warranty for Physical Products Manufactured by Ingenico. For Physical Products manufactured by Ingenico only, Ingenico warrants to Buyer that for a period of one (1) year from the date Ingenico delivered the Physical Products to a common carrier (the "Physical Product Warranty Period") such Physical Products will be free from defects in material, workmanship and design. If, during the Physical Product Warranty Period, it is determined that such Physical Product is defective due to faulty workmanship or defective materials, then Buyer shall obtain from Ingenico a Return Material Authorization (RMA) and return such Physical Product to Ingenico. Upon receipt of any such Physical Product during the applicable Physical Product Warranty Period, Ingenico shall, at its expense: (a) at Ingenico's sole discretion, repair or replace such Physical Product, and (b) ship such Physical Product to return it to its original location. Ingenico shall not be obligated to pay for any labour or other costs

associated with the removal of defective Physical Products, the shipping of defective Physical Products from Buyer to Ingenico or the reinstallation of Physical Products, unless otherwise agreed by Ingenico. No warranty coverage will be provided for Physical Products (i) that have been altered, misused, modified, repaired or serviced in any respect except by Ingenico or its authorized agent, used for a purpose other than as set forth in the Physical Product documentation or installed contrary to the specific installation instructions, or (ii) to the extent the claimed defect is not otherwise reproducible or was caused by environmental factors.

5.2. Limited Warranty for Ingenico Software. Ingenico warrants to Buyer that for a period of sixty (60) days from the date of delivery ("Software Warranty Period"), all software components of Products shall substantially conform to the published functional specifications designated by Ingenico for use with such Product. During the Software Warranty Period, Ingenico shall, at its expense correct any non-conforming software components. Buyer's sole and exclusive remedy under this warranty will be limited to correction of the nonconformance and Ingenico shall not be obligated to refund the license price nor pay for any labour or other costs associated with the removal of defective software components or the reinstallation of software components. No warranty coverage will be provided for software components of Products if (a) Buyer fails to notify Ingenico of the nonconformance within seven (7) calendar days after such nonconformance has become apparent or (b) the software components have been modified by any person not authorized by Ingenico, damaged or misused by Buyer or were improperly installed by Buyer or its designees. Buyer agrees to cooperate fully with Ingenico in carrying out such diagnostic and test routines as Ingenico requires.

5.3. Limited Warranty for Service and Installation. For repair and other services provided by Ingenico to Buyer, Ingenico warrants to Buyer, for a period of ninety (90) days from the date of Ingenico's provision of such services (the "Service Warranty Period"), that all repair and other services shall have been performed in a workmanlike manner. Buyer's sole and exclusive remedy under this warranty will be limited to repair or replacement at Ingenico's option.

5.4. Limitations. The warranties provided by Ingenico in Sections 5.1, 5.2 and 5.3 are the only warranties provided by Ingenico with respect to the Products, and may be modified only by a written instrument signed by Ingenico and accepted by Buyer. The express warranties of Ingenico stated in Sections 5.1, 5.2 and 5.3 above apply only to Products used in Canada; unless pre-authorized by Ingenico, use outside of Canada voids all warranties. Such warranties do not apply to Products not manufactured by Ingenico, software components not developed by Ingenico, consumable items (e.g. paper and ribbons), spare parts or services not provided by Ingenico. Any Products not manufactured by Ingenico are covered solely by the manufacturer's warranty. In addition, such warranties do not apply to any software component of a Product which is sold or licensed subject to a separate license agreement relating to such software component (including without limitation a "shrink wrap" license agreement); the warranties applicable to any such software component shall be solely as stated in such other license agreement. Ingenico makes no warranties that the use of the software components of any Product will be uninterrupted or error-free or that such software will operate in conjunction with any other software or with any equipment other than the Products.

6. DISCLAIMER.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, INGENICO MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, AS TO ANY OF THE PRODUCTS. INGENICO DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

7. LIMITATION OF LIABILITY.

IN NO EVENT WILL INGENICO BE LIABLE FOR ANY LOST PROFITS OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL PUNITIVE OR OTHER SPECIAL DAMAGES ARISING OUT OF OR RELATING TO ITS PRODUCTS REGARDLESS OF WHETHER SUCH DAMAGES ARE SOUGHT BASED OF THE CAUSE OR THE FORM OF ACTION, WHETHER BASED IN TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR BREACH OF WARRANTY, OR RESULT FROM USE OR MALFUNCTION OF THE PRODUCTS, LOSS OF PROFITS OR REVENUES OR COSTS OF REPLACEMENT GOODS, EVEN IF INGENICO IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, INGENICO'S TOTAL LIABILITY TO BUYER SHALL BE LIMITED TO THE PURCHASE PRICE, LICENSE FEE OR SERVICE FEE OF THE PRODUCT PURCHASED, LICENSED OR PROVIDED WHICH GAVE RISE TO THE LIABILITY.

8. MISCELLANEOUS.

8.1. <u>Assignment; Subcontracting.</u> Buyer may not assign, delete or otherwise transfer any right or obligation under this Agreement, whether by agreement, operation of law or otherwise, without Ingenico's prior written consent. Any attempt to assign, delegate or otherwise transfer any of Buyer's rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, this Agreement shall bind Buyer's permitted successors and assigns. Notwithstanding anything to the contrary herein, Ingenico may engage subcontractors to perform any of its obligations under this Agreement.

8.2. <u>Governing Law.</u> This Agreement is made under and shall be governed by and construed under the laws of the Province of Ontario without regard to its conflicts of laws provisions. Any action, suit, or other proceeding shall be brought by either Party against the other Party in a Provincial court of competent jurisdiction in the metropolitan area of Toronto, Ontario. Both Parties hereby submit to the exclusive jurisdiction of such courts and waive any objection to jurisdiction or venue in any such proceeding. All actions, regardless of form, arising out of or related to this Agreement or the Products sold hereunder must be brought against Ingenico within the applicable statutory period, but in no event more than one (1) year after the date of delivery.

8.3. <u>Waiver; Interpretation; Amendments.</u> Ingenico's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Ingenico's rights or remedies hereunder, nor of its right to insist upon the strict performance of any term or condition in the future. Should a court of competent jurisdiction hold that any provision of this Agreement, or portion thereof, is void, voidable, invalid, or unenforceable for any reason, that court shall replace that provision with an enforceable one most closely resembling the court's interpretation of the Parties' original intent. Should the court be unable or unwilling to do so, that provision shall be struck from this Agreement and all remaining provisions shall continue in force. This Agreement may be amended only by a written document signed by duly authorized representatives of the Parties.