

**INFRASYS STANDARD TERMS & CONDITIONS  
SOFTWARE AS A SERVICE (SAAS)  
(EUROPEAN VERSION)**

**ZELL AM SEE, 2018-05-25**

**PREAMBLE**

P.0 AC-Project GmbH is a subsidiary of Shiji Hong (Kong Limited) and a Part of the Shiji Group [www.shijigroup.com](http://www.shijigroup.com) AC-Project GmbH and its subsidiaries are representing the Shiji Group within Europe.

P.1 Scope: These Terms and Conditions apply for all legal transactions, which AC Project GmbH, Auerspergstraße 8, 5700 Zell am See, Re.Nr. FN 444607i, (hereinafter referred to as Infrasys), will conclude with the customer, using the „Infrasys Subscription Agreement“. These Terms and Conditions also apply for other legal transactions if it is agreed between the contractual parties. If any individual agreements have been made in writing between the contracting parties, those individual agreements have priority over these general agreements on a case-by-case basis. The customer’s contractual conditions shall not apply. We hereby expressly object to any counter provisions by the customer, referring to his own Terms and Conditions.

P.2 Solution / Software: “Infrasys Cloud POS - Software as a Service” extends the application possibilities of already existing and compatible POS-Systems. The “Infrasys Cloud POS - Software as a Service” is described in Appendix ./A. The Software consists of an offline component and an online component. The offline component is installed locally on the POS-System. This component establishes the connection between the POS-System and the data centre of Infrasys. The online component is executed at the data centre of Infrasys. The customer is able to use the software, which is stored and hosted on the provider’s servers or on servers of contracted providers commissioned by Infrasys, for his own purposes and to process and store data by using the software, via an internet connection, for the duration of this contract. If nothing else was agreed in the “Infrasys Subscription Agreement”, the local installation and configuration of the software at the customers location is not subject matter of this contract.

P.3 Modification: Infrasys is entitled, through simple notification, to change or supplement these terms and conditions if the changes or supplements are necessary and if the changes or supplements will not inflict a substantial disadvantage on the customer. A Change is necessary if it is necessary to comply with the legal requirements. The customer notes this with approval. The

currently valid version of this document is available online under: <https://www.ac-project.net/legal/infrasys/saas>

P.5 Structure of this document:

- Paragraph I - Administrative
- Paragraph II - Data Protection
- Paragraph III - Specific obligations of the contractor
- Paragraph IV - Specific obligations of the customer
- Paragraph V - PCI-DSS / Use of the POS-System
- Paragraph VI - Miscellaneous

- P.6 Related Documents:
- Product Description (Appendix A)
  - SLA (Service Level Agreement)
  - Data Protection Agreement (Art. 28 GDPR)
  - Data Protection Declaration

## I. ADMINISTRATIVE

**I.1 CONTRACTUAL OBJECT:** The subject of this contract is, depending on which software was ordered via the „Infrasys Subscription Agreement“, the use of the software “Infrasys Cloud POS - Software as a Service” by the customer. The operation of those SaaS-Services is based on this contract.

Infrasys grants to customer and customer accepts from Infrasys and for the duration of the Term, a limited, non-exclusive, non-transferable, right to access and use and permit Authorized Users to access and use the Services solely for customers internal business use. The customer may allow Authorized Users to use the services for this purpose and is responsible for Authorized Users’ compliance with the agreement.

### I.2 Terms (Duration, Cancellation)

- a. If nothing else has been agreed in the Orderform, the contract shall enter into force on the day on which the Orderform (subscription agreement) has been received by Infrasys. The contract is concluded for the duration of 36 months. The contract ends after the expiration of the 36 months.
- b. The contracting parties waive their right of ordinary termination during the duration of this contract.

### I.3 ACCOUNTING

- a. Invoice recipient. The invoice recipient is the customer. (All services are invoiced to the customer directly).

- b. Accounting period: The accounting period is equal to the chosen subscription model in the „Infrasys Subscription Agreement“. If nothing else has been agreed in the „Infrasys Subscription Agreement“ (for example: if a monthly or yearly accounting period was agreed on), the accounting period of the first settlement starts with the day of the order and ends on the last days of the quarter where the purchase was made. If the contracting parties agreed on a monthly accounting, the accounting period ends on the last day of the month. If the contracting parties agreed on a yearly accounting, the accounting period ends on last day of the calendar year. The invoices are due for payment in advance.
- c. Payment terms: 30 days from invoice date.
- d. Default interest: In case of late payment, a default interest of annually 8 percent will apply.
- e. Sales Taxes: The customer declares to be a company, which will be evidenced by a tax number. The contract will only be concluded if the customer discloses such tax number. If the customer is located in Austria, the invoice will include the statutory sales tax. If the customer is located in another European Union country, the invoice will be raised net of tax as intra community service provision and will be marked as reverse charge. If the customer is located in a non-EU-country and if the service is not tax- relevant in Austria, the invoice will not include VAT, however it will be marked as reverse charge, provided that the legal requirements are met and customer has submitted a “Certificate of Business-Registration” to Infrasys. The customer is obligated to pay VAT if a tax inspection proves that the transaction is taxable. If the customer has not submitted a valid “Certificate of Business-Registration” and/or a valid VAT-Number, the statutory sales tax will be included to the invoice.
- F. WITHHOLDING TAXES: National Withholding Taxes, also called retention taxes, will be borne by the customer in addition to the invoice amount. The customer is not entitled to deduct the Withholding Tax from the invoice amount. For example: The invoice amount is EUR 100. In accordance to the national tax regulations which are applicable for the customer, a Withholding Tax in the amount of 10% has to be paid. The customer has to pay the full invoice amount (EUR 100) to Infrasys and the Withholding tax in the amount of EUR 10 to the relevant tax authority.
- g. Setup-Fee: In case a Setup-Fee was agreed the following applies: The Setup-Fee will be due for payment within 14 days after date of invoice. Accounts are rendered after the setup process is completed and after the agreed training. The monthly costs will be due for payment from the first of the month after the installation has been performed.
- h. Account adaptations: If nothing else has been agreed in the „Infrasys Subscription Agreement“, the customer is entitled to use the ordered software with one POS-System and one technical client (Workstation, Tablet, ipad, etc.). Any changes concerning the number of POS-Systems or clients leads to adjustments of the monthly costs. If the customer raises the number of POS-Systems or Clients, the changed monthly costs will be due for payment on the first of the month following the date of changes. If the customer lowers the number of POS-Systems or technical clients, the changed monthly costs will be due for payment on the first of the month following the accounting period. The customer needs the approval of Infrasys for the reduction of POS-Systems or technical clients during the duration of this contract.

- i. Currency: The agreed invoicing currency is in Euro, unless there is a specific agreement between the parties. The Currency conversion is based on the exchange rate on the day of the invoice. EURO <-> National currency.
- j. Infrasys shall be entitled to adjust the prices above for inflation. The „Consumer price index from “Statistik Austria”, CPI 2015, counts as having been agreed as basis for the calculation. The reference month for calculation is the month of contract Signature

## **II. Data Protection, Secrecy**

- II.1 Infrasys is obligated to treat all customer data as confidential. Infrasys is obliged to ensure its employees and subcontractors adhere to the obligations of this confidentiality. Both contract parties are committed to complying with the data protection clause which applies in each case. Both contract parties know that the European and the national data protection laws are to be complied with. Storage and processing of personal data will take place under the applicable law.
- II.2 The contracting parties note with approval that they have to comply with the provisions of the EU-GDPR and the Austrian Data Protection Law (DSG). The customer expressly agrees that the EU-GDPR (Directive 95/46/EC) and the Austrian Data Protection Law will be applied.
- II.3 In the following, we distinguish between “Customer Master Data” and “Order Data”. The term “Customer Master Data” describes those data, which relate to the customer. The “Customer Master Data” will be processed in accordance with Point II.4.1. The term “Order Data” describes those data which are transferred to and processed by Infrasys, on behalf of the customer. The “Order Data” will be processed in accordance with Point II.4.2.

### **II.4.1 “Customer Master Data”**

- a) Infrasys does not store personal data about the customer within the meaning of Art.4 Para. 1 GDPR in connection with its own software products. Information about the bodies authorized to represent the company or authorized staff members provided by the customer are excluded. If the customer is a natural person and no legal person personal data is processed. The storage of these data is based on Art. 6 Para. 1 lit c).
- b) Infrasys is entitled to transfer „Customer Master Data” (also if the „Customer Master Data” contains personal data) to third-parties if it is necessary in order to fulfill the contract or to safeguard Infrasys’s legitimate interests. Regardless of this Agreements, the transmission of such data is only permitted if the data is transferred in accordance with the data protections regulations. Infrasys is entitled to transfer data to its subsidiaries (for example: Customer support or invoice) in order to fulfill the contract and to transfer data to a lawyer or to a tax consultant in order to safeguard Infrasys’s legitimate interests

- c) "Customer master data" will only be stored for the duration which is legally necessary. Those data are stored due to the provisions of the Austrian Civil Code (ABGB), the Austrian Fiscal Code (BAO), the Money laundering Act (Geldwäscherichtlinie).
- d) Data processing location ("Customer master data"): The data processing is performed in the data processing center of the Amazon Web Services, located in EU-Region (Frankfurt, London, Dublin).
- e) InfrasyS does not store any personal data which is not listed in this Terms & Conditions or the Data Protection Delectation.

#### II.4.2 "Order Data"

- a) The contractual SaaS-application processes and stores data on behalf of the customer. As described in the product description, the functionality of InfrasyS Cloud POS is also based on those data which are provided by the customer via automated upload.
- b) If nothing else was agreed between the customer and InfrasyS and/or if nothing else is described in Point II, only pseudonymized data will be processed with InfrasyS Cloud POS. If InfrasyS Cloud POS are used based on the standard settings, the legal requirements are complied with. Privacy by Design / Privacy by Default (Art 25 GDPR);
- c) If a contractual SaaS-software enables the customer to create and administrate a User account, the customer hereby declares that it has all necessary consents regarding the storage of personal data of its employees in connection with the linking of the data to the User account.

LEGAL INFORMATION: If you are a current or former employee of our customer and if you assume that InfrasyS has stored Information about you (Name, E-mail address) as a contact partner, please contact us at [gdp@ac-project.net](mailto:gdp@ac-project.net). We will provide you with all relevant and necessary information and we will delete or correct the data in accordance with the GDPR (Art. 16, Art. 17, Art. 21 GDPR) or other applicable laws.

- d) Regardless of the agreed extent of transferred data, the customer is obligated to ensure that no sensitive data within the meaning of the data protection regulations is transferred to InfrasyS. Sensitive data are data of natural persons revealing their racial or ethnic origin, their political opinions, their union membership, their religious or philosophical beliefs, their health or their sexual orientation. InfrasyS is entitled to terminate all business relationships with the customer without observing a notice period, if the customer uses the technical services provided by InfrasyS, in manner that violates the GDPR or the Austria Data Protection Law. This is the case when the customer records sensitive data and uses InfrasyS to store and process such data.
- e) If the customer transfers "Order Data" to InfrasyS, which contain personal data within the meaning of the GDPR, a separate DPA (Para. 28 GDPR) has to be concluded between InfrasyS and

the customer and it must be ensured that the data is processed in accordance with the legal provision. The transmission of personal data to Infrasy without previously concluding a DPA and taking all necessary precautions to ensure the compliance with the legal provisions is not allowed. If Infrasy discovers that the customer has used Infrasy to store personal data without the knowledge of Infrasy, Infrasy is entitled to delete those data and to terminate all business relationships with the customer without observing a notice period.

f) Data Processing Location („Order Data“): The data processing is performed in the data processing center of the Centre Amazon Web Service, located in California, United States

II.5 In the event that Infrasy functions as a provider in accordance with the GDPR and the Austrian Data Protection Law (if applicable), Infrasy declares that it offers sufficient guarantee for the lawful and secure use of data. In this case Infrasy is obligated to:

- Use all data solely for the customer's orders. The transmission of used data, without a customer order, is prohibited.
- Implement all necessary data security measures in accordance with GDPR and the Austrian Data Protection Law. Infrasy only allows those employees access to data, who are obligated to maintain data confidentiality or who are bound by a legal duty of confidentiality.
- Only consult with further providers with the customer's approval. Infrasy is obligated to inform the customer about the planned consultation of the further providers in a timely manner, so that the customer is able to prohibit the consultation of the provider, if so desired.
- Transmit all processing results and documentation, which contains data, to the customer or to store or destroy that data if the customer so requests, after the completion of the provision of the Services.

II.6 Transmission of Data to Third Countries for the purpose of processing. The contracting parties agree that only European Countries or Countries, which provide an adequate level of data protection within the meaning of Art. 45 GDPR, are allowed to process those data.

If the customer's headquarter is not located in a European Country, the customer agrees that Infrasy is allowed but not obligated to transfer the data (Customer Master Data and Order Data) to the Country in which the customer's headquarter is located; however, this shall apply only if:

- the transmission of data is necessary in order to fulfill the contract.
- the transmission of data is required for the pursuit of legal claims.

II.7 Data Portability (Art. 20 GDPR): Infrasy will provide stored data in electronic readable form within the meaning of Art. 20 GDPR. Infrasy does not warrant that those provided data can be imported into other applications.

II.8 Data will be transferred to the following Sub processors

The customer gives his approval for the transfer of data to the following sub processor:

- Shiji Deutschland GmbH
- Amazon Web Services

Data will only be transferred if it is necessary to fulfill the contract.

- II.9 Right to submit a complaint to the supervisory authorities: The customer notes that he is entitled to submit a complaint to the supervisory authorities. The competent supervisory authority is:

Datenschutzbehörde der Republik Österreich  
Wickenburggasse 8  
1080 Vienna

Tel: +43 1 52 152-0  
Email: [dsb@dsb.gv.at](mailto:dsb@dsb.gv.at)  
URL [www.dsb.gv.at](http://www.dsb.gv.at)

## II.10 Secrecy

Both contracting parties agree on not passing on any business information or technical information concerning the other party to third parties. Information which is generally known or available is excluded from this contract. The transmission of information to affiliated companies or subcontractors is permitted, provided that the transmission is necessary for the proper provision of the performances agreed on and provided that the transmission is permitted by law.

Notwithstanding the agreements pursuant to Point II Infrasy is allowed to disclose information to government authorities and state authorities if the disclosure was ordered by an ordinary court or by a competent public authority.

## III. Specific obligations of Infrasy

- III.1 A prerequisite for the use of "Infrasy Cloud POS" is a suitable interface for automated data import. In the event that Infrasy will not provide suitable interfaces for the customers in the future, the customer is entitled to extraordinarily terminate this contract.

- III.2 Infrasy is entitled to delegate the services, which are necessary to fulfil this contract, to other companies. Infrasy does not need the permission of the customer to delegate the services, which are necessary to fulfil this contract, to other companies as long as those other companies are a part of the Shiji Group ( <http://www.shijigroup.com/> ). All companies in which Beijing Shiji Information Technology Co participates direct or indirect are part of the Shiji Group.

## III.3 Service Level Agreement, Accessibility to Service, Support,

a) Infrasys points out to the customer that the functionality of the SaaS-Services can be affected by factors that are beyond Infrasys's sphere of influence. Infrasys will neither be liable for lack of availability of its services nor for other restrictions or errors which arise from such factors.

The following factors are beyond Infrasys's sphere of influence:

- Any actions of third parties who do not act by order of Infrasys
- a fault or failure of the internet or any public telecommunications network
- denial of service attacks or similar attacks or
- a fault or failure of the Customer's computer systems or networks
- any unforeseen cause beyond Infrasys reasonable control or any force majeure events set forth in this Agreement.

b) Infrasys is obligated to take all appropriate measures to avoid data loss. The customer is advised that despite this care the loss of data is possible. Only if the loss of data is due to gross negligence of Infrasys, the contractor will assume the liability directly. The same applies to the availability of the software.

c) Infrasys is obligated to exclusively use certified systems and certified data centres for the operation of its software. Infrasys seeks to guarantee a 24/7 availability of the "Infrasys Cloud POS - Software as a Service". Infrasys guarantees an annual availability of 99,5%. Infrasys is not liable for malfunctions of the system caused by force majeure or breakdowns of the customer's internet connection.

d) The customer notes that the POS-Systems and technical clients require an internet connection in order to use the "Infrasys Cloud POS - Software as a Service". In case of malfunction of the data connection, the component which was locally installed on the POS-System will initiate the change from online to offline mode. Fundamental POS functions are still available in the offline mode. Further functions (Reporting, etc.) are only available if the POS-System is connected to the internet.

e) For further information concerning Service Level Agreement, accessibility to services and support see Appendix ./A

#### **III.4 Updates, Warranty and binding commitments**

a) Infrasys shall maintain the Software and/or Services and provide all patches and fixes to the Software and/or Services at no additional cost. Provided, however, said maintenance shall not include any major releases of new versions of the Software, additional functionality, or custom programming, which Provider, at its discretion, may provide at an additional cost as otherwise agreed between the parties.

b) The customer acknowledges that complex software is never wholly free from defects, errors and bugs, security vulnerabilities and subject to the other provisions of this Agreement, Infrasys gives no warranty or representation that the Services will be wholly free from defects, errors and bugs or uninterrupted and will be entirely secure. Customer acknowledges that Infrasys does not control the transfer of data over communications facilities, including the internet, and that the service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Infrasys is not responsible for any delays, delivery failures, or other damage resulting from such problems. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings or any loss of revenue or income or any loss of use or production, or any loss of business, contracts or opportunities or any losses arising out of a Force Majeure Event or in respect of any special, indirect or consequential loss or damage.

c) In no event shall Infrasys be liable for any damages in excess of the total amount paid and payable by the customer to Infrasys under this Agreement in the 12-month-period preceding the commencement of the event or events.

d) The contractor is obligated to install and develop required hotfixes if any software errors or security holes became known. The contractor needs to inform the customer about the installation of those Hotfixes by e-mail. The contractor need to notify the customer of any defects corrected and amendments implemented.

e) Infrasys is not allowed to pass on customer data or stored data to third parties. Furthermore, he is obligated to engage his employees and providers to sign a secrecy declaration, in which they declare to keep silence about all information concerning the customer. Excluded from this are information which are in the public domain.

f) In case of termination, for whatever reason, Infrasys is obligated to delete all stored customer data without prior notice and permission from the customer immediately.

#### **Paragraph IV - Specific obligations of the customer**

##### **IV.1 Obligations of the customer**

a) The customer is responsible for punctual payment. If the customer is in full or partial default of payment for more than 30 days, the contractor is entitled to discontinue its services.

b) The customer is obligated to comply with applicable legislation during the use of the software. It is not allowed to use the software to store sensitive personal data as meant in the data protection law in particular. Example: It is not permitted to store the sexual orientation or the denomination of guests. If the contractor is sentenced to pay an administrative penalty due to such an offence, the customer is obligated to reimburse the payment and all related costs within 14 days. The

contractor is allowed to cancel the contract if the customer violates legal requirements during the use of the software

- c) The customer is liable for the misuse of user names and passwords. The Customer shall use reasonable endeavours, including reasonable security measures relating to account access details, to ensure that no unauthorised person may gain access to the Services.
- d) The customer undertakes to use the provided user names and passwords responsibly and to prevent abuse by employees.
- e) Viruses and Security. It is customer's responsibility to have and maintain in place virus protection software and security for all of its systems and data, which such security includes firewalls, passwords, physical security, and access control policies. If customer's systems have persistent connections to the Internet, or transmit credit card or gift card transactions over the Internet, or use Provider or 3<sup>rd</sup>-party-SSL to transmit credit card or gift card transactions, or otherwise have persistent connections to any network where there is potential for unauthorized access, customer acknowledges that the security and protection of the network and the data and applications on that network, including protections against unauthorized access, is solely and entirely customer's responsibility. A properly configured firewall is required for each site using a persistent connection to the public Internet or any private network where there is a potential for unauthorized access to the Provider Network. Customer acknowledges that, to be effective, virus protection software, system passwords, and other security software require periodic and routine updates, which customer must obtain from its supplier or the manufacturer, as appropriate. InfrasyS disclaims any warranty, express or implied, that, after the initial installation by InfrasyS of any InfrasyS-proprietary software, the software or customers data will remain virus-free. Support or services hereunder necessitated by computer viruses, or by any failure or breach of customer's security for its systems or data, including, without limitation, damage caused by persons lacking authorized access, are not covered under this agreement, and will be supplied only upon customer request and on a reasonable efforts basis, on a time-and-materials basis at standard InfrasyS rates. Customer waives any claims hereunder against InfrasyS to the extent arising from customers failure to have or maintain current virus protection, or to the extent arising as a result of a failure or breach of customers security for its systems or data, or as a result of any unauthorized access to customers systems. If requested by customer, InfrasyS shall provide, on a reasonable efforts and on a time-and-materials basis, support or services to address damage caused by, but not limited to, any of the following: Customers failure to have current virus protection; Customers failure to maintain virus protection; damage arising as a result of a failure of customers security for its systems or data; damage arising as a result of a breach of customers security for its systems or data; or damage as a result of any unauthorized access to customers systems. Such support and services shall be billed at the prevailing standard InfrasyS rates.

#### **IV.2 IPR - Intellectual Property Rights**

- a) The customer acknowledges that all right, title, and interest in and to the Services and the Software, together with its codes, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, trade secrets, proprietary information or other related materials is, and at all times shall remain, the sole and exclusive property of Infrasys. Except the right to use the software, as expressly provided herein, this Agreement does not grant to customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software.
- b) The customer shall not remove or modify any program markings or any notice of Infrasys or its licensors' proprietary rights. Customer shall not attempt, or directly or indirectly allow any Authorized User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and/or Software in any form or media or by any means.
- c) The provisions of this paragraph IV.2 shall survive termination of this Agreement.

**Paragraph V - PCI-DSS / Use of the POS-System**

**a) PCI-DSS**

"Infrasys Cloud POS - Software as a Service" does not store or transmit credit card data and has been independently audited by a PCI-DSS QSA, Trustwave who has verified the application to be out of scope, the report is available upon request. For further information concerning PCI-DSS Compliance see Appendix ./A, page 14.

**b) National laws for the use of POS-Systems**

Infrasys has explicitly pointed out that, every country has it's own legal provisions concerning the use of POS-Systems. "Infrasys Cloud POS - Software as a Service" complies with the current legal regulations. Infrasys is not obligated to adjust the System if any legislative amendments are made after the contract was concluded unless the customer informs Infrasys by email. If the customer informs Infrasys about the legislative amendments, Infrasys will adjust the System within a reasonable period of time.

**Paragraph VI - Miscellaneous**

VI.1 The contractor shall be entitled to transfer this contract to associated companies.

VI.2 As long as the applicability of the customer's rights is not mandatory, Austrian law shall apply.

VI.3 Alterations and additions to this contract agreed by the parties must be made in writing.

VI.4 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in

effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

- VI.5 Infrasys is entitled to advertise with the fact that the customer is using the software, if the customer concludes a contract with Infrasys. In this context, Infrasys is entitled to use the customer's Logo in an appropriate way. All uses beyond this must be coordinated with the customer. It is permissible that Infrasys advertises online with the customer using its software.
- VI.6 Infrasys guarantees that Infrasys is the owner of the software and that the allocation of the software does not infringe the rights of use of a third party.
- V.7 The contracting parties mutually waive the right to set-off their claim against the claim of the other party.
- V.8 Austrian Law shall apply for legal disputes which may arise from or in connection with this Agreement, unless the application of national law is mandatory.
- V.9 The application of the "UN-purchase Law" is excluded. Place of jurisdiction is the district court Salzburg, regardless of the height of the amount in dispute.