

Terms and Conditions for Maintenance and Support Services

1. General

1.1 **ATM** undertakes, in accordance with the provisions of these Terms and Conditions, to carry out maintenance work on the electronic data processing system (hereinafter called "System") specified in the Order Confirmation for Maintenance Services, unless otherwise explicitly stated to the contrary in **ATM's** offer or order confirmation. **ATM's** "Terms and Conditions" shall take precedence over any terms and conditions issued by the **Customer** at any time and, amendments or supplements by the **Customer** to these "Terms and Conditions" as well as collateral agreements are only binding if confirmed in writing by **ATM**.

1.2 Offers expire 45 (forty five) days after the date of the offer, if not stated differently in the offer.

1.3 Offers are valid exclusively for **Customer's** country or, country of enduser if expressly stated in such offer and/or order confirmation (see clause 16 "Export Restrictions and Requirements").

1.4 Unless otherwise agreed upon, interpretation of contract terms shall be governed by the INCOTERMS 1990 (latest version), including supplements valid at the time when the contract is concluded.

2. Scope of maintenance

Maintenance and support services shall be rendered exclusively according to the specifications of **ATM's** offer or **ATM's** order confirmation for Systems and parts thereof as long as they are stationed on Contractual Locations (location agreed upon with **ATM**) according to following terms:

2.1 Preventive maintenance, e.g. adjustment, lubrication and external inspection of the equipment, and the application of appropriate diagnostic procedures to ensure that the System is free of defects, and the peripheral units are in functioning order. The regular cleaning of the equipment in accordance with the Operator's Maintenance Manual is entirely the responsibility of the **Customer**.

2.2 Repair maintenance, e.g. adjustment, small repairs which can be carried out immediately on site, temporary replacement of unsuitable or defective modules or constructional parts.

2.3 Work repairs, e.g. repair of constructional parts or modules by means of diagnostics, replacement of defective components and inspection of repaired constructional parts or modules in accordance with the acceptance test procedures of **ATM**. The work repair on system level units is not covered by these Terms and Conditions in the case of exceeding design limits or for accidental damages.

2.4 The maintenance service as per clauses 2.1., 2.2. and 2.3. includes the delivery and installation of parts which are defective or are worn out as a result of normal use. As far as these Terms and Conditions do not contain any provisions to the contrary, such deliveries are governed by the "Terms and Conditions for Supplies and Services" (issue: May 2001).

2.5 Repairs of peripheral units are executed according to the respective OEM manufacturer's conditions, and **ATM's** responsibility for the correct execution of such repairs is not affected in any way hereby. However, **ATM** cannot under any circumstance guarantee that any of these OEM manufacturers will observe the response time or have the necessary spare parts available in stock, and therefore does not accept any liability in this regard. The **Customer** assumes full responsibility for the installation and maintenance of all and any such equipment, inclusive parts thereof, which were not supplied by **ATM**, also as far as they are installed as components into the System.

2.6 In the event, that the System is to be relocated to a new location, **ATM** will offer its assistance. The reinstallation charges are not included in the monthly flat-rate maintenance charges and shall be invoiced on the basis of **ATM's** prevailing Service Price List. The **Customer** shall contact **ATM** well in advance in order to mutually agree on the time when such relocation shall take place.

2.7 **ATM** reserves the right to sub-contract any or all Maintenance and Support Services to local partners, however, such sub-contracting does not relieve **ATM** of its obligation to ensure that such services are provided in accordance with the **ATM** standard.

3. Implementation of contract

3.1 The **Customer** will afford **ATM's** maintenance personnel unhindered access to the commodities, and support and assist them as required and in accordance with their instructions. **ATM's** maintenance personnel will comply with the **Customer's** safety/security regulations.

3.2 Preventive maintenance, if expressly in writing agreed upon, shall be carried out regularly according to the agreed upon intervals and, might be done in connection with repair maintenance.



Repair maintenance is to be carried out upon specific request by the **Customer**. All preventive and repair maintenance work shall be carried out during **ATM's** normal working hours, and exclusively at the Contractual Location of the commodities. If not expressly stated to the contrary in the order confirmation of **ATM**, such services on site and all costs connected herewith shall be charged to and paid by the **Customer** separately.

3.3 Work repairs will be carried out either at the manufacturer's premises or at the **ATM** Service Centre according to **ATM's** sole discretion.

3.4 The manufacturer or **ATM** has the right to incorporate technical improvements into modules, parts or equipment when sent for work repair, subject to the condition that the performance, technical reliability and operational functioning of the commodities are not adversely affected.

3.5 Latest within two weeks time **ATM** shall send the **Customer** a written short Maintenance Report, detailing all maintenance work performed and all components, modules and parts repaired or substituted, and the reasons which might have caused the defects. This obligation deemed to be fulfilled if corresponding information are supplied to the **Customer** by **ATM's** Delivery Note.

3.6 The contractual location of the commodities is the location as stated in **ATM's** Order Confirmation, or in the Contract or any other subsequent written agreement.

3.7 Statements, communications, queries and requests in connection with the Maintenance and Support Services have to be made exclusively to **ATM's** address as indicated on the "Service Order Confirmation".

4. Terms of Payment, Invoicing

4.1 Payments shall be made out of an irrevocable and transferable Letter of Credit opened at a bank acceptable to **ATM**. The Letter of Credit shall be in English, payable in EURO (EUR) or other contract currency (if agreed upon), in a formate as required by **ATM** and, confirmed by and payable by a bank acceptable to **ATM**. The Letter of Credit shall be worded in such a way that drawings against this instrument may be accomplished against sight drafts drawn on the advising bank when accompanied by copies of invoice (for flat-rate charges and other service charges), and by copies of invoice and bill of lading, or carrier's or warehouse receipt or, telefax (facsimile) or telegram informing the **Buyer** about storage as per clause 9.4 below (for supplies). Partial delivery, invoicing and payments shall be allowed. Formate of Letter of Credit shall be delivered in advance to **Customer** on request.

Should other than EURO (EUR) as currency of contract have been agreed upon and should the exchange rate of the currency of the contract to the EURO (EUR) been altered between the date of quotation and date of invoicing, **ATM** is entitled to demand retention of the original relation of values on which the quoted prices were based.

4.2 The **Customer** agrees to pay the annual flat-rate maintenance charges according to the "Maintenance Service Order Confirmation" in 4 (four) equal instalments, the first being due 30 (thirty) days after invoicing, and each consecutive 3 (three) months after the foregoing instalment has been due.

4.3 The annual flat-rate maintenance charges are fixed, and shall not be altered without mutual agreement during a period of 1 (one) year. **ATM** reserves the right to adjust such maintenance charges after a period of 1 (one) year according to **ATM's** Price Lists prevailing in that moment, even for maintenance contracts which were concluded for more than 1 (one) year, or which were extended. Additional charges which are not included in the once agreed upon flat-rate maintenance charges will be invoiced separately and have to be paid within a 30 (thirty) day period without any deductions after invoicing.

4.4 Charges do not include any taxes, dues, levies, customs duties, and other legal or official charges which might be due within the jurisdiction of the Federal Republic of Germany. Such taxes, dues, levies, fees, customs duties and other legal or official charges have to be added to the maintenance or other service charges and deliveries at rates according to the laws and regulations of the Federal Republic of Germany. Should such charges be introduced or increased during the validity of the contract, **ATM** reserves the right to adjust the same accordingly. Customs duties, dues, levies and other taxes charged in accordance with any laws and regulations outside the jurisdiction of the Federal Republic of Germany, as well as any costs connected herewith shall be paid by the **Customer** directly.

4.5 Unless otherwise stated hereinafter the maintenance charges include labour costs, travel costs, and spare parts, incurred in connection with the maintenance services contracted. Not included in the maintenance charges are any travelling costs beyond 80 (eighty) kilometres from the Service Centre of **ATM**, any hotel expenses in case of staying overnight, and any overtime labour costs. The same applies to costs which might occur according to clause 7.3. below. Any preventive or repair maintenance service carried out outside of **ATM's** normal working hours is considered to be over-time labour. Such costs will be invoiced against expenses incurred or charged according to **ATM's** list prices and labour rates prevailing in moment of invoicing.



4.6 The flat-rate maintenance charges do not include also any maintenance services which become necessary as a result of:

- 4.6.1 improper use or excessive loading of the commodities,
- 4.6.2 failure to observe **ATM's** or the manufacturer's operating and servicing instructions,
- 4.6.3 failure to clean the commodities regularly and in the manner prescribed,
- 4.6.4 failure to carry out the prescribed servicing and inspection routines,
- 4.6.5 defective installation by the **Customer** himself or any other except **ATM's** authorized personnel,
- 4.6.6 modifications to the commodities or use of additional equipment, modules or spares, or changes in the location of the commodities without **ATM's** expressly written agreement,
- 4.6.7 use of accessories or lubricants which do not comply with **ATM's** or manufacturer's specifications, and have not been authorized in writing by **ATM**,
- 4.6.8 external influences on the commodities, such as, but not limited to, collapse of the main supply, current fluctuations, accidents, violence, action of the elements, etc.

5. Payments

5.1 The flat-rate maintenance charge will be invoiced yearly in advance. The payments are due according to clause 4.2. above. However, should a maintenance service contract start within a calendar year, **ATM** has the right to demand the instalments paid in such a way, that the instalments are attributable to each calendar (fiscal) year.

5.2 Additional maintenance charges will be invoiced immediately after completion of the services performed; commodities supplied shall be invoiced and payed according to the provisions of clause 4 of the "Terms and Conditions for Supplies and Services".

5.3 All charges have to be invoiced in the contract currency and paid without any deductions within a period of 30 (thirty) calendar days.

5.4 The **Customer** undertakes, at own cost and own risk, to transfer payments to the bank accounts specified by **ATM**, and invoices are considered settled as from the date on which the amounts due are credited to **ATM's** bank account. No employee or representative of **ATM** is entitled to receive payments on behalf and in the name of **ATM**.

6. Payment delays

6.1 Should the **Customer** be in delay with any payments due under or in connection with the Maintenance Service Contract for more than 30 (thirty) calendar days, whatever the reason might be, **ATM** shall have the right to stop its maintenance and support services without any further notice to the **Customer**, and without forfeiting its right to receive all outstanding instalments for the entire contract period, as well as other charges for supplies and services rendered.

6.2 The **Customer**, in the event of being in delay with any due payment under or in connection with the Maintenance Contract is obliged to pay interest at 2% (two percent) per annum above the prevailing bank rate for refinancing of the German Federal Bank or European Central Bank, whatever is the higher one, but not less than 6% (six percent) per annum, plus Value Added Tax according to the German law.

6.3 However, **ATM** is obliged to restart with the maintenance services without undue delay after having received all payments due under or in connection with the Maintenance Contract, also the instalments which might be due at a later date. In such a case all instalments due to a later date will be, after having been credited to **ATM's** account, handled and booked by **ATM** as advance payments till they will be due according to the original contract time schedule.

7. Response time

7.1 **ATM** guarantees a maximum response time of 72 (seventy-two) hours. Response time is the period between the **ATM** Service Centre having received the **Customer's** request for maintenance work and the arrival of the maintenance personnel at the Contractual Location, provided no events as per clauses 7.4 and 7.5 are hindering **ATM** to do so.

Requests for maintenance shall be made exclusively in writing, by telefax (facsimile) or telegram to **ATM's** Maintenance Service Centre. Telephone requests with an employee of **ATM** shall be reconfirmed by **Customer** within shortest possible time in writing.

7.2 Saturdays, Sundays, public holidays in the country of the Contractual Location and/or of **ATM's** Maintenance Service Centre do not fall under response time.

7.3 Should **ATM** not being advised by the **Customer** about public holidays in the country of Contractual Location of the equipment to be serviced and, **ATM's** personnel by such public holidays be hindered in the execution of the maintenance service in said country, **ATM** shall be entitled to charge the **Customer** for any additional costs incurred hereby, inclusive any waiting time which shall be invoiced as normal working time.



7.4 In the event of **ATM** being prevented from carrying out the maintenance services in due time by mobilisation, war, insurrection, strike, lock-out, interruptions of operation, fire, Acts of God, Transport hindrances, missing Export or Import Licences or visa for the country of Contractual Location for its maintenance personnel, alteration of legal provisions, administrative actions or decrees or any other unforeseeable events which are beyond **ATM's** control, the response time will be reasonably extended.

7.5 Should National Security Law and Regulations – or special instructions of the **Customer** – require the performance of the maintenance service, in whole or in part, by specifically authorized or qualified and named employees and, should said personnel be hindered in the performance by illness or other unforeseeable events, as well as by to the Customer in advance notified vacations, the response time will be reasonably extended.

8. Return time

8.1 **ATM** will use its best efforts to provide an average return time of 30 (thirty) working days for all modules and parts sent in for work repair.

8.2 Return time is the number of working days elapsing between receipt of such module or part at the manufacturer's premises or **ATM's** Maintenance Service Centre where such repair shall be conducted according to clause 2.3. above, and the dispatch of the same back to the **Customer**.

8.3 Should a repair be anticipated to take a return time of more than 30 (thirty) working days, then **ATM** will use its best efforts to provide the **Customer** with such a module or part out of its own stock if and whenever possible. Such loaned modules and parts shall be returned to **ATM** upon return of the repaired ones.

8.4 The **Customer** agrees to waive the return time limit and any claim rights in such cases, where **ATM** has provided modules or parts as a loan and the system operation is substantially restored.

8.5 Should **ATM** not be in the position to provide the **Customer** temporarily with modules or parts out of **ATM's** own stock, then **ATM** will give high priority to the repairs to shorten the return time as much as possible.

8.6 **ATM** shall not be made responsible for any delays or hindrances to return time as far as these are due to strikes, lock-outs or other industrial disputes, transport delays or congestion, general shortage of raw materials, fuel, lubricants, etc., or delays of such materials, machine damage or breakdown, or disruptions, whether such eventualities originate with **ATM** or its subcontractors or other events as per clause 7.4 above. Furthermore, **ATM** shall not be made responsible for any event as per clause 7.5. above.

9. Dates and defaults of services

9.1 In general **ATM** will use its best efforts to start all maintenance and repair work at the time agreed upon with the **Customer**. Dates or deadlines for any of the works to be performed are binding only if confirmed in writing by **ATM**. Should **ATM** be in default with any work, the **Customer** is entitled to fix an extended deadline by declaring that he will refuse to accept maintenance work after the given deadline. If the extended deadline is not met, the **Customer** shall be entitled to withdraw from the maintenance service contract. As a rule, **Customer** agrees that a 50% (fifty percent) extension of the originally agreed upon execution period is considered reasonable.

9.2 Should the commencement, execution or completion of maintenance work be delayed for reasons beyond **ATM's** control, **ATM** is entitled to a payment from the **Customer** for stand-by costs for personnel (inclusive of waiting time and travel costs) and for charges for the storage and conservation of the materials.

9.3 **ATM** shall have the right to redirect personnel and material if the maintenance work cannot be carried out within a reasonable period of time as agreed upon with the **Customer** because of reasons beyond of **ATM's** control. In such event, any time schedules for the maintenance services are considered to be reasonably extended.

9.4 In the event of dispatch of components being delayed for reasons beyond **ATM's** control, **ATM** shall be entitled to store these at the **Customer's** risk and to demand reimbursement of any expenses hereby incurred. **ATM** shall be entitled to take out at the **Customer's** expense an insurance against storage risks.

9.5 **Customer** shall be advised by **ATM** at earliest possible time about any case of "Force Majeure" (incl. as per clause 7.5) as well as of any storage of the components on **Customer's** risk as per clause 9.4 above.

10. Warranty

ATM warrants that the maintenance services will be carried out professionally, and that all parts used by its personnel are free from defects, subject to the following provisions:



10.1 The **Customer** shall notify **ATM** in writing, by telefax (facsimile), or telegram of any defects or deficiencies, and its accompanying circumstances thereof. Such notification shall be made without any delay, but not later than 5 (five) working days after such defects or deficiencies are discovered. Verbally made notifications have to be confirmed in writing in same period of time.

10.2 Defects or deficiencies falling under the warranty shall be remedied; in case of deficient maintenance work, by repair or repetition or, in case of defective parts, by repair or replacement of the defective parts, in each case according to **ATM's** sole discretion. Parts replaced under the warranty shall become the property of **ATM**.

10.3 In case **ATM** fails to remedy defects or deficiencies by repair, repetition or replacement within a reasonable time as outlined hereabove, the **Customer** shall have the right either to cancel the Maintenance Contract or to equitably reduce the next due instalment of the flat-rate maintenance charges, or in the event that such work was not included in the flat-rate maintenance charge, equitably reduce the maintenance charge invoiced for such work. However, the **Customer** shall not be entitled to cancel the Maintenance Service contract if the functioning order and/or operational safety of the commodities are affected only to a minor extent by such defects or deficiencies.

10.4 The warranty period is limited to a period of 6 (six) months after the respective maintenance service has been finished or commodities being shipped. The warranty period for peripheral units are according to the respective OEM manufacturer's conditions (mostly only for a period of 3 months).

11. Liability

The liability on the part of **ATM**, its employees, or all other persons appointed by **ATM** in connection with the execution of the Maintenance Service Contract for damage or injury to person and property is limited to EURO 250.000,00 for each case, and to a total of EURO 1.000.000,00.

12. Limitation of Warranty and Liability

12.1 Further claims of the **Customer** against **ATM** are expressly excluded, in particular consequential damages, such as, but not limited to, loss of production, loss of utilisation, and loss of profit, unless the law mandatorily prescribes anything to the contrary.

12.2. Should any of the commodities serviced by **ATM** be modified or merged in any way, partially or in whole, without the express written consent of **ATM**, and/or used on or in other than by **ATM** serviced commodity, then the warranty as well as the liability cease. The same applies in the event of the Contractual Location has been changed without prior written agreement of **ATM** or in the event of original identification marks have been removed or altered.

12.3 Should any of the **Customer's** clients, contractors, subcontractors or any other by the **Customer** authorized/not authorized claim under any of the hereby expressly excluded rights, then **ATM** shall be indemnified and protected by the **Customer**.

13. Term of contract

13.1 The Maintenance Service Contract comes into force with the issue of **ATM's** Maintenance Service Order Confirmation, and enters into for a period of 12 (twelve) months.

13.2 The Maintenance Service Contract is automatically extended by subsequent 12 (twelve) month periods unless its termination is notified in writing by **ATM** or the **Customer** at least 3 (three) months prior thereto.

14. Miscellaneous

14.1 Any agreements, irrespective of whether they are entered into, at the conclusion of the contract, or after, must be in writing. Verbal statements of any kind by **ATM's** personnel are binding only if confirmed in writing by **ATM**.

14.2 **ATM** shall be entitled to rescind the Maintenance Service Contract if the fulfilment of the same becomes impossible for reasons for which **ATM** is not liable. **ATM** is furthermore entitled to rescind the Maintenance Service Contract if the conditions of the contract are so basically altered at a later date by circumstances which could not have been foreseen in moment of the conclusion of the Maintenance Service Contract that **ATM** cannot any longer reasonably be expected to fulfil the same.

14.3 The **Customer** may assign its rights and obligations under the Maintenance Service Contract only with **ATM's** prior written consent.

15. Salvation clause

In case any provision of these Terms and Conditions is or becomes invalid, the validity of the remaining provisions shall not be affected thereby. In such a case **ATM** and the **Customer** shall



jointly seek a valid arrangement having legal and economical effect which will reflect as closely as legally possible the economic purpose of the invalid provision.

16. Export Restrictions and Requirements

16.1 Supplies and services under this Maintenance Service Contract are subject to all German and United States laws and regulations related to exports and to all administrative acts of said governments pursuant to such laws and regulations.

16.2 All supplies of **ATM**, included documentation and products made therewith, are submitted to export restrictions by the German and/or US governmental authorities, wherefore **n o n e** of them shall be resold, diverted, transferred, transhipped or otherwise disposed of, in any other third country, neither in their original form nor after being incorporated through an intermediate process into other end-items, without first obtaining an Export Licence from the governmental authorities of **Customer's** country. Should on **Customer's** request supplies being exported by **ATM** to a third country, the Export Licence has to be obtained from the governmental authorities of said third country.

16.3 Any export without first having obtained such an Export Licence is hereby expressly prohibited.

17. Law and Place of Jurisdiction

17.1 Any dispute, of whatever nature, arising out of, or in connection with the contract shall be exclusively settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris/France for final verdict. The place of arbitration shall be Geneva/Switzerland; language of the arbitration procedure shall be English. The arbitration tribunal (three arbitrators, the chairman being a judge) shall decide in accordance with the Swiss Code of Obligations. Neither the 'Hague Convention to an Uniform Law on International Sale of Goods', nor the 'United Nations Convention on Contracts for the International Sale of Goods', nor any other multilateral or bilateral conventions and regulations nor, any national laws except as per clause 16 above, shall apply.

17.2 The verdict shall also include the statement regarding the costs of the arbitration procedure, indicating which Party has to bear such costs (incl. the costs of the lawyers of the succeeded Party) in total or in part.

17.3 **ATM** and **Customer** irrevocably accept such a verdict as being definitely and waive expressly the right to appeal.

17.4 Despite of the foregoing provisions, none of the Parties shall be excluded from seeking interim measures of protection by temporary injunction from any competent ordinary court.

