

## Atomic Tracking Solutions Inc. Delivery terms

Applicable to Atomic Tracking Solutions inc. and Atomic reaction LTD business relationships

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### GENERAL

#### 1. Offer And Agreement

1. These ATS Delivery terms ('Delivery terms') shall apply to all offers, legal relationships and agreements under which Atomic Tracking Solutions inc. (hereinafter: '**ATS**') provides goods and/or services of whatever nature to the customer.
2. All offers and other statements by ATS shall be without obligation, unless ATS expressly indicates otherwise in writing. The customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which ATS bases its offer and which have been stated by or on behalf of the customer to ATS.
3. The application of the customer's purchasing or other terms and conditions is expressly rejected.
4. The data carriers with ATS' proposals and offers, the corresponding documentation and all test and demonstration computer programs made available by ATS are the property of ATS; the intellectual property rights relating thereto belong exclusively to ATS. The customer will not copy or have copied, said proposals, offers, documentation and/or programs nor submit them for inspection nor make them available to third parties. If no agreement is effected between ATS and the customer, the customer will return to ATS all proposals, offers, any software or other third party products and further documentation already supplied or made available by ATS, not keep copies thereof and not make further use of them.
2. All offers of ATS are valid for 4 weeks.

#### 3. Price and payment

- 3.1. All prices, rates and amounts referred to in these Delivery terms and agreement(s) to which these Delivery terms apply, do not include tax and any possible other present or future government levies.
- 3.2. If the customer must make payments on a regular periodical basis, ATS shall be entitled to adjust the applicable prices and rates by providing written notice at least three months in advance. If the customer does not wish to agree to such an adjustment, the customer shall, within seven workdays after the notice, be entitled to terminate the agreement before the date on which the adjustment would have become effective.
- 3.3. The customer will pay the invoice within 14 days after the invoice date without any deduction, discount or set-off.
- 3.4. The customer will be obliged to make immediate payment of interest invoices which will be sent after expiry of the payment period as mentioned above without any written demand or notice of default being required. Interest will be based on the full amount of the invoice.
- 3.5. If the customer still does not pay the claim after a written demand or notice of default, ATS can pass on the claim for collection, in which case the customer shall, in addition to the total amount then owed, be obliged to pay for all in-court and out-of-court expenses, including expenses charged by external experts in addition to the costs determined at law. The out-of-court expenses will be considered to amount to 15% of the amount claimed.
- 3.6. If no payment is made within 14 days after the date referred to in article 2.3, ATS will be entitled to suspend the performance of its obligations.

4. **Confidential information, taking over employees and privacy** Each of the parties warrants that all of the information received by the other party which is known to be or should be known to be confidential in nature shall remain secret, unless a legal obligation mandates disclosure of that information. The party receiving the confidential information shall only use it for the purpose for which it has been provided. Information shall in any event be considered confidential if it is designated by either of the parties as such.

- 4.1. During the term of the agreement and for one year after its termination, without any explicit written consent of the other party, the customer will refrain from employing ATS' staff or otherwise cooperate with ATS' employees or have them render any services, both paid and unpaid. Upon breach of this obligation the customer will immediately and without any judicial intervention forfeit a penalty of \$ 100,000 to ATS per employee concerned.
- 4.2. The customer shall indemnify ATS against claims by persons whose personal data has been recorded or processed in connection with a register of persons maintained by the customer or for which the customer is responsible under law or otherwise, unless the customer proves that the facts underlying the claim are solely imputable to ATS.

#### 5. Retention of title and rights

- 5.1. All objects delivered to the customer shall remain ATS' property until all amounts owed by the customer for the objects delivered or to be delivered or work performed or to be performed under the agreement, as well as all other amounts which the customer owes due to a breach of its payment obligation, have been paid in full to ATS.
- 5.2. As the occasion arises, rights shall always be granted or transferred to the customer on the condition that the customer pays the agreed fees fully and in a timely manner.

#### 6. Risk

- 6.1. The risk of loss or theft of or damage to objects, products, software or data which are the subject of the agreement shall pass to the customer at the time they have been placed at the actual disposal of the customer or an assistant used by the customer.

#### 7. Intellectual or industrial property rights

- 7.1. All intellectual and industrial property rights to software, databases, equipment or other materials developed or provided under the agreement, such as analyses, designs, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by ATS, its licensors or its suppliers unless otherwise agreed in writing. The customer shall only acquire the rights of use expressly granted in these Delivery terms or by law. Any other or more extensive right of the customer to reproduce or to modify software, databases or other materials shall be excluded. A granted right of use to the customer shall always be non-exclusive and non-transferable to third parties.
- 7.2. The customer shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the software or databases.
- 7.3. ATS shall be allowed to take technical measures to protect the software or with a view to agreed restrictions in the duration of the right to use the software. The customer shall not be allowed to remove or evade such a technical measure. If security measures result in the customer being unable to make a back-up copy of software, ATS shall provide the customer with a back-up copy upon request.
- 7.4. ATS shall indemnify the customer against any third-party cause of action based on the claim that software, databases, equipment or other materials developed by ATS itself infringe an intellectual or industrial property right applicable in Canada, on the condition that the customer immediately inform ATS in writing about the existence and substance of the cause of action and let ATS handle the matter completely, including with respect to agreeing to any settlements. To that end, the customer shall provide the necessary powers of attorney, information and cooperation to ATS to defend - if necessary, in the customer's name - against these causes of action. This indemnification obligation shall be extinguished if the alleged infringement relates (i) to materials provided by the customer to ATS for use, adaptation, processing or incorporation, or (ii) to changes the customer has made or caused third parties to make to the software and databases. If it has been established in court as an incontrovertible fact that the software and databases, developed by ATS itself infringe any intellectual or industrial property right held by a third party or if, in ATS' judgment, it is likely that such infringement will occur, ATS shall, if possible, ensure that the customer can continue to have undisturbed use of the delivered objects, or functionally equivalent other software or other materials concerned, for example, by modifying the infringing parts or by acquiring a right of use for the customer. If, in its exclusive judgment, ATS cannot ensure or cannot ensure except in a manner that is unreasonably

burdensome (financially or otherwise) for it that the customer can continue to have undisturbed use of the delivered objects, ATS shall take back the delivered objects, with crediting of the acquisition costs minus a reasonable user's fee. ATS shall not make its choice in this regard until after the customer has been consulted. Any other or more extensive liability or indemnification obligation on ATS' part due to the infringement of a third party's intellectual or industrial property rights shall be completely excluded, including liability and indemnification obligations on ATS' part for infringements caused by using the software and databases delivered (i) in any form not modified by ATS, (ii) in connection with objects or software not delivered or furnished by ATS or (iii) in another manner besides that for which software, websites and databases and/or other materials were developed or intended.

- 7.5. The customer warrants that there are no third-party rights which are inconsistent with providing ATS with equipment, software, databases, or other materials, including draft material, intended for use, adaptation, installation or incorporation. The customer shall indemnify ATS against any action based on the claim that such provision, use, adaptation, installation or incorporation infringes a third-party right.

#### 8. **Cooperation by the customer**

- 8.1. The customer shall bear the risk of selecting, using and applying in its organization the equipment, software, websites, databases and other products and materials and the services to be provided by ATS, and shall also be responsible for the monitoring and security procedures and proper system management.
- 8.2. If the customer does not provide ATS with the data, equipment, software or employees necessary to execute the agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if the customer otherwise does not fulfil its obligations, ATS shall be entitled to suspend execution of the agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to ATS' right to exercise any other legal right.
- 8.3. In the event that employees of ATS perform work on-site at the customer's, the customer shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. The customer shall indemnify ATS against claims by third parties, including ATS' employees, who, in executing the agreement, suffer injury which is the result of acts or omissions by the customer or of unsafe situations in its organization. The customer shall provide timely notice to ATS' employees to be utilized of the company and security rules applicable within its organization.
- 8.4. The parties will keep each other informed in writing of any developments and/or changes regarding reorganization and/or staff within their organizations which are relevant to the execution of an agreement.

#### 9. **Delivery periods**

- 9.1. All delivery and other periods stated or agreed by ATS have, to the best of its knowledge, been determined based on data known to ATS when it entered into the agreement and on the basis of the information provided by customer. In no event are such delivery periods to be considered as strict deadlines. ATS shall properly exert its best efforts to observe agreed delivery and other periods as much as possible. Exceeding delivery dates will not constitute default by ATS. ATS is furthermore not bound by delivery dates if parties have agreed a change of content or scope of the agreement. If any period threatens to be exceeded, ATS and customer shall consult with each other as soon as possible. ATS is not bound by delivery dates that can no longer be observed as a result of circumstances that have arisen beyond its control after entering into the agreement. If any date is likely to be exceeded, ATS and the customer will consult with each other as soon as possible. If ATS has to wait for cooperation or information from the customer, the (delivery) dates will be extended if necessary by the length of such waiting period. ATS will notify the customer thereof.

#### 10. **Termination of the agreement**

- 10.1. Each of the parties shall only be entitled to rescind the agreement if the other party imputably fails to perform material obligations under the agreement - in all cases, after having received a proper written notice by registered letter of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.
- 10.2. If an agreement which, by its nature and substance, will not end when certain conditions, acts or the like are fulfilled, has been entered into for an indefinite period of time, each of the parties may terminate the agreement by written notice after proper consultation, with a statement of reasons and with due observance of the applicable provision(s) regarding maintenance. If the parties have not agreed on an express notice period, a notice period of at least three (3) months must be observed in terminating the agreement. The parties shall never be liable for damages for such termination.
- 10.3. In deviation from what has been provided for by statute in this regard through directory law, the customer may only terminate a services agreement under the provisions of these Delivery terms.
- 10.4. Each of the parties may partly or completely terminate the agreement in writing with immediate effect and without a notice of default if the other party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the other party or if the other party's business is wound up or terminated for other reasons than a business reconstruction, merger or change in the ownership. ATS shall never as a consequence of this termination be obliged to refund funds already received or to pay any kind of damages. In the event of the customer's bankruptcy, the right to use software provided to the customer shall be extinguished by law.
- 10.5. If, at the time of the rescission referred to in article 9.1, the customer has already received performance in connection with execution of the agreement, this performance and the related payment obligation shall not be cancelled, unless the customer proves that ATS is in default with regard to that performance. Amounts which ATS has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.
- 10.6. Obligations which by their nature are intended to continue after dissolution of this agreement will continue to exist after dissolution of an agreement. These obligations inter alia include: indemnification from infringement of intellectual (property) rights, confidentiality, settlement of disputes, applicable law and choice of domicile.

#### 11. **ATS' liability; indemnity**

- 11.1. ATS' total liability for imputably failing to perform the agreement or other shall be limited to compensating direct damage, up to at most the amount of the price stipulated for that agreement. If the agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the agreement shall be set at the total of the fees stipulated for six (6) months. The total compensation for direct damage shall not, however, in any case exceed Euro \$5,000. "Direct damage" shall solely mean:
- Reasonable expenses which the customer would have to incur to make ATS' performance conform to the agreement; this alternative damage shall not be compensated, however, if the agreement is rescinded by or at the suit of the customer;
  - Reasonable expenses which the customer has incurred out of necessity to keep its old system or systems and related facilities operating longer because ATS did not provide delivery on a firm delivery date which was binding for it, minus any savings resulting from the delay in delivery;
  - Reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Delivery terms;
  - Reasonable expenses incurred to prevent or mitigate damage, insofar as the customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Delivery terms.
- 11.2. ATS' total liability for damage to property or persons will in no event exceed \$ 50,000 per claim, whereby a series of related claims following from each other or from the same act or omission will be regarded as one claim.
- 11.3. ATS' liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business and/or operational interruptions, damage ensuing from claims by the customer's customers and or suppliers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by the

- customer for ATS, damage relating to engagement of suppliers prescribed by the customer for ATS and all other forms of damage or injury besides those mentioned in article 10.1 and 10.2, on any account whatsoever, shall be excluded.
- 11.4. ATS' liability because of an imputable failure to perform an agreement shall in all cases only arise if the customer immediately and properly provides a written notice of default to ATS, with a reasonable time period for remedying the failure being given and ATS still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that ATS can respond adequately.
- 11.5. For any right to damages to exist, the customer must always report the damage or injury to ATS in writing as soon as possible after it occurs. Any claim to damages against ATS shall be extinguished by the mere lapse of 2 months after the claim arises.
- 11.6. The customer shall indemnify ATS against all third-party claims regarding product liability ensuing from a defect in a product or system which has been delivered by the customer to a third party and which partly consisted of equipment, software or other materials delivered by ATS, except if and insofar as the customer proves that the damage or injury was caused by that equipment, software or other materials.
- 11.7. ATS will in no event be liable for any damage or loss which arises from the fact that the customer does not have adequate back-ups at its disposal. The customer will remain responsible for an adequate back-up procedure, in which back-ups are made in a frequency which is common practice in the customer's line of business and which guarantees that loss of business data is minimized by replacing the back-up.
- 11.8. Save for the provisions expressly laid down in these Delivery terms and/or agreements to which these Delivery terms apply, ATS does not accept any other obligations, nor does it provide any guarantees with respect to executing the commission(s) and rendering services that the customer will reach its aim or result set.
- 11.9. The provisions in this article shall also apply for the benefit of all legal entities and natural persons involved by ATS in executing the agreement.
12. **Force majeure**
- 12.1. In the event of a force majeure situation as a result of which full or partial execution of the agreement by ATS is impossible or so inconvenient that ATS cannot reasonably be required to perform, the obligation to further execution of an agreement will be suspended for the duration of the force majeure situation, without the parties being liable vis-à-vis each other to pay any damages in this respect.
- 12.2. The parties may vis-à-vis each other only claim force majeure, if the party concerned as soon as possible notifies the other party in writing of such reliance on force majeure while submitting the required documentary evidence.
- 12.3. If one of the parties due to force majeure is definitively prevented from having ATS execute the agreement in whole or in part, or if the force majeure period has lasted longer than three months or as soon as it has reasonably been established that this will last at least three months, the other party which claims force majeure may with immediate effect terminate the said agreement in whole or for the relevant part, this entirely at the other party's discretion, confirmed by registered letter with immediate effect, without being liable to pay damages.
13. **Miscellaneous**
- 13.1. In conjunction with the provisions of the relevant agreement these Delivery terms comprise all rights and obligations of the customer and ATS.
- 13.2. ATS may change or supplement these Delivery terms by written notification to customer. The need for such a change may for instance arise as a result of Microsoft Corporation amending their general conditions.
- 13.3. ATS and customer agree that if any provision or part of a provision of any agreement shall under any circumstances be deemed invalid, inoperative or otherwise not enforceable by any court or administrative body of competent jurisdiction, the agreement as a whole shall remain valid and the invalid or inoperative provision or part of a provision shall be replaced by a provision which ATS and customer would have agreed on in good faith if they had been aware of the invalidity of the respective provision.
14. **Applicable law and disputes**
- 14.1. These Delivery terms, all agreements to which these Delivery terms apply and all rights and obligations arising therefrom are governed by the laws of British Columbia, Canada; even if ATS has agreed with the customer to supply and implement the software outside Canada. The Vienna sales convention of 1980 shall not apply.
- 14.2. The court of Vancouver, Canada will have exclusive jurisdiction to take cognizance of any disputes arising from an agreement or these Delivery terms.

## SERVICES

In addition to the general provisions in these Delivery terms, the provisions set forth in this chapter "services" shall apply if ATS provides services, such as giving advice, feasibility studies, consultancy, education (such as study programmes, courses and/or training sessions), support, secondment, hosting, the design, development, implementation or management of software, websites or information systems and services regarding networks. These provisions shall not affect the provisions included in these Delivery terms concerning specific services, such as development of software and maintenance.

### 15. Performance

- 15.1. ATS shall, to the best of its ability, do its utmost to perform the services with due care and, where appropriate, in accordance with the agreements and procedures agreed in writing with the customer. All of ATS services shall be performed on the basis of a best efforts obligation, unless and insofar as ATS has expressly promised a result in the written agreement and the result concerned has also been described with sufficient definiteness and completeness. Any agreements concerning a service level must always be expressly agreed in writing.
- 15.2. If it has been agreed that the services shall be provided in stages, ATS shall be entitled to postpone the start of the services which are part of a stage until the customer has approved the results of the preceding stage in writing.
- 15.3. In performing the services, ATS shall only be obliged to follow timely and reasonably sensible instructions of the customer if this has been expressly agreed in writing. ATS shall not be required to follow instructions which change or supplement the substance or scope of the agreed services; if such instructions are nevertheless followed, however, the work in question shall be compensated.
- 15.4. If a services agreement has been entered into with a view to performance by a particular individual, ATS shall always be entitled to replace this person after consultation with the customer with one or more other persons with the same qualifications.

### 16. Modification and additional work

- 16.1. If, at the request of or with prior consent from the customer, ATS has performed work or rendered other performance which goes beyond the substance or scope of the agreed services or if one or more of the assumption(s) as communicated to the customer no longer are/is valid and customer has not immediately resolved that situation, the customer shall pay for that work or performance according to ATS' then current rates. Expanding or modifying a system analysis, a design or specifications shall also constitute additional work. ATS shall never be obliged to meet such a request, and it may require that a separate written agreement shall be concluded.
- 16.2. The customer accepts that work or performance as referred to in this article may affect the agreed or expected time of completion of the services and the mutual responsibilities of the customer and ATS. The fact that additional work (or the demand for it) arises during execution of the agreement shall never be a ground for the customer to rescind or terminate the agreement.

- 16.3. Insofar as a set price has been agreed for the services, ATS shall, upon request, inform the customer in writing in advance about the financial consequences of the extra work or performance.
- 17. Acceptance**
- 17.1. The customer cannot withhold acceptance of the services on the basis of the fact that the services do not comply with not explicitly agreed specifications and/or minor errors which do not interfere with the productive use of the results of the services (such as system).
- 17.2. If the customer does not want to accept the system, the customer must submit a written test report to ATS before the end of the test period in which the errors have been specified in such a way that these are reproducible for ATS, without prejudice to the provisions made in the previous sentence.
- 17.3. The results of the services are considered to be accepted:
- If the customer actively takes the system into production. Taking the system into production is entirely at the risk and for the account of the customer.
  - At the time the errors reported in writing in the test report have been corrected.
  - If no acceptance test has been agreed upon, at the time of delivery.
  - If no acceptance test has been agreed upon, but only installation, upon completion of the installation
18. **Education**
- 18.1. Insofar as the services by ATS consist of providing a study programme, course or training session, ATS may always demand payment of the amount owed before it begins to provide these services. ATS' normal rules shall govern the consequences of cancellation of participation in the study programme, course or training session.
- 18.2. If in ATS' sole judgment the total number of registrations justifies doing so, ATS shall be entitled at its discretion to alter the (start date of the ) study programme, course or training session.
- 18.3. The customer is entitled to annul the participation to a study programme, course or training within 10 workdays prior to the commencement thereof. After that an amount of 50 % of the agreed payment shall be invoiced. In the event of an annulment within 5 workdays prior to the commencement, the full agreed payment shall be invoiced.
19. **Secondment**
- 19.1. There shall be secondment within the meaning of these Delivery terms if ATS makes an employee (hereinafter: "the seconded employee") available to the customer in order to have this employee perform work under the customer's supervision, management and/or direction. For the avoidance of doubt, the seconded employee shall not be considered as an employee of ATS.
- 19.2. ATS shall exert its best efforts to ensure that the seconded employee remains available for the term of the agreement, notwithstanding the provisions in article 18.3 concerning replacement.
- 19.3. The customer shall be entitled to request replacement of the seconded employee (i) if the seconded employee demonstrably does not meet expressly agreed quality requirements and the customer provides written notice of this to ATS within three working days after the work commences, or (ii) if the seconded employee experiences a long-term illness or leaves ATS' employment. ATS shall immediately address the request, making it a priority. ATS does not warrant that replacement shall always be possible. If replacement is not or not immediately possible, the customer's claims to further performance of the agreement as well as all claims of the customer on account of non-performance of the agreement shall be extinguished. The customer's payment obligations concerning the work performed shall continue to exist.
- 19.4. ATS shall be obliged to make timely and complete payment of the wage tax and social security contributions (including advance contributions) to be paid for the seconded employee in connection with the agreement. ATS shall indemnify the customer against all statutory claims by the tax authorities or social insurance agencies regarding taxes and social security contributions directly relating to ATS' making the seconded employee available ("liability for using external personnel"), provided the customer allows ATS to handle the claims concerned completely, cooperates fully with it and furnishes it with all necessary information and, if ATS desires, powers of attorney to conduct legal proceedings.
- 19.5. ATS shall not accept any liability for the selection of the employee or for the results of the work arising under the customer's supervision, management and/or direction.

#### **MANAGED OPERATIONS, HELPDESK SERVICES, SERVICEDESK SERVICES, END USER SUPPORT, SYSTEM MANAGEMENT SERVICES AND HOSTING SERVICES**

In addition to the general provisions of these Delivery terms and the special provisions laid out in the articles on services, the provisions in the articles below with regard to managed operations, helpdesk services, servicedesk services, end user support, system management services and hosting services (hereinafter: 'support service') shall also apply if ATS performs services within the meaning of this chapter, by order of the customer.

20. **Support service**
- 20.1. Any arrangements concerning support service shall always be explicitly agreed on in writing, and the customer shall only be allowed to invoke a right to these services following payment of any amounts due in connection with them.
- 20.2. The specific services to be purchased by the customer, as well as the terms and conditions thereof shall be laid down in a separate document and/or service level agreement designated for this purpose, composed of a service definition, the service levels, if any, an arrangements and procedures file, a definition of standard processes and these Delivery terms.
- 20.3. All of ATS' services shall be performed on the basis of a reasonable-efforts obligation unless it has expressly promised to achieve a specifically defined result to which a service level applies. In addition to the provisions of article 19.1, ATS commits itself to perform its other obligations under the relevant agreement with the care that can be expected from a reasonably performing, competent and expert service provider, performing as much as possible in accordance with the arrangements and procedures established in consultation with the customer, and included in the agreement and the arrangements and procedures file.
- 20.4. The customer shall be responsible for always complying in a timely manner with its obligations as expressly included in the agreement. ATS has indicated, and the customer shall be reasonably expected to understand, that such compliance on the part of the customer is necessary to enable ATS to comply with its obligations pursuant to the agreement.
- 20.5. To enable ATS to perform the service, the customer shall be responsible for providing ATS with all the data that it indicates are necessary and that the customer can reasonably be expected to understand are necessary, in a timely manner, according to the desired method and in the desired form. If the support service consists of the transfer or (temporary) storage of the customer's information, the customer shall guarantee that such information is not in violation of any rights, including intellectual property rights, of third parties, nor in any way unlawful, immoral or unethical. If such violation or circumstance occurs nonetheless, the customer shall indemnify ATS against all damages arising therefrom. If ATS is ordered by a third party to cease the transfer or (temporary) storage of such (infringing) information, ATS and the customer shall immediately enter into consultation. If the customer requests ATS to continue the transfer or (temporary) storage of the potentially infringing information nonetheless, the customer shall bear the risk, liability and responsibility. If ATS can reasonably assume that the information is infringing or otherwise unlawful or immoral or unethical, ATS has the right to stop providing the support service without being liable on the basis of default / breach of contract, unlawful action or otherwise.
- 20.6. If the customer does not comply with its obligations set forth above, ATS shall have the right to suspend the performance of the agreement, or, more specifically, to suspend the service levels, and to charge any concretely demonstrable costs arising from this to the customer at the usual rates. In such a case, however, ATS shall first offer the customer the opportunity, in writing, to comply with its obligations after all, and within a reasonable period.
- 20.7. Any agreement between the customer and ATS does not envision the transfer of a part of the customer's enterprise or personnel to ATS unless this has been explicitly agreed and the affected employees have been named in the written

agreement. The customer shall bear the cost and risk of any consequences arising from the transfer and shall indemnify ATS against claims made by employees of the customer or third parties under these laws.

20.8. Unless otherwise stated in an agreement, the customer shall be responsible for concluding contracts with suppliers for maintaining the hardware and network infrastructure and for obtaining and maintaining the software and licenses needed for ATS to perform the services required under the agreement. The aforementioned conditions can be detailed in the agreement. The customer will indemnify ATS against claims of third parties in connection with the customer not fulfilling its obligation as set forth herein.

21. **Duration**

21.1. If the agreement concerns support service to be provided during a certain period or regularly recurring periods, the duration shall be agreed between the parties. If no duration is specified, a period of one year shall apply. The duration of the agreement shall at all times be tacitly renewed for a period equal to the duration of the original period, unless the customer or ATS terminates the agreement in writing three months before the end of the period specified in the agreement.

22. **Performance of the services**

22.1. ATS shall only provide support services at the customer's instruction. If, pursuant to an authorized order from a government body, ATS provides support services relating to information of the customer or its employees, all expenses in connection with this shall be charged to the customer. ATS shall perform the support services with due care in accordance with the procedures and agreements recorded in writing with the customer.

22.2. All data to be processed by ATS shall be prepared and delivered by the customer in accordance with the conditions to be stated by ATS. The customer shall bring the data to be processed to, and pick up the results of the processing at, the location where ATS performs the support services. Transport and transmission, in whatever manner, shall occur at the customer's expense and risk, even if they have been carried out or arranged by ATS.

22.3. The customer warrants that all materials, data, software, procedures and instructions provided by it to ATS to perform the support services shall always be correct and complete and that all data carriers furnished to ATS shall meet ATS' specifications.

22.4. All equipment, software and other objects used by ATS for the support services shall remain ATS' property or the subject of ATS' intellectual and industrial property, even if the customer pays a fee for ATS to develop or acquire them. ATS may maintain possession of the products and data received from the customer and the results generated from the processing until the customer has paid all amounts due to ATS.

22.5. ATS can modify the substance or scope of the support services. If such modifications result in a change in the procedures applicable at the customer's, ATS shall inform the customer as soon as possible and the customer shall be charged with the costs of this change. The customer may terminate the agreement in that case by providing written notice no later than the date on which the modification becomes effective, unless this modification relates to changes in relevant legislation or other rules provided by competent authorities or unless ATS assumes the costs of this modification.

22.6. ATS shall, to the best of its ability, exert itself to ensure that the software used by it to perform the support services is adapted in a timely manner to amendments in the laws and regulations of Canada. Upon request, ATS shall advise the customer at its usual rates with regard to the effects of these adaptations for the customer.

23. **Security, privacy and retention periods**

23.1. ATS shall comply with the statutory obligations it has as a processor concerning its processing of personal data. ATS shall provide appropriate technical and organizational measures to protect personal and other data against loss or against any form of unlawful processing according to a separate data processing agreement.

23.2. The customer warrants that all statutory provisions concerning the processing of personal data, including provisions in or under the personal data protection act, are strictly observed and that all prescribed registrations have been carried out and all required consents and/or license to process personal data have been obtained. The customer shall provide ATS immediately in writing with all requested information in this respect.

23.3. The customer shall indemnify ATS against all third-party claims that may be filed against ATS because of a violation of the personal data protection act and/or other laws concerning the processing of personal data that cannot be imputed to ATS.

23.4. The customer shall indemnify ATS against all claims of third parties, including government bodies, which may be filed against ATS because of a violation of the laws concerning the statutory retention periods.

23.5. If and to the extent the customer provides ATS with personal data, which it causes ATS to process, ATS shall be regarded as a data processor according to the data protection act. ATS shall comply with the obligations of a data processor as laid down in the data protection act. ATS shall only process personal data on the instructions of the customer. If personal data is processed, the parties shall conclude a separate data processing agreement. Under the data processing agreement, the customer can instruct ATS to process personal data.

24. **Guarantee**

24.1. ATS shall not be responsible for checking the accuracy and completeness of the results of the support services. The customer shall check these results itself after receiving them. ATS does not warrant that the support services shall be provided without errors or without interruptions. If defects in the results of the support services are a direct consequence of products, software, data carriers, procedures or operating actions for which ATS is explicitly responsible under the agreement, ATS shall repeat the support services in order to fix these imperfections to the best of its ability, provided the customer notifies ATS of these imperfections in writing and in detail as soon as possible, but no later than within one week after receiving the results of the support services. Repetition shall only be done free of charge if the defects in the support services can be imputed to ATS. If the defects cannot be imputed to ATS and/or are the result of errors or imperfections on the customer's part, such as providing incorrect or incomplete information, ATS shall charge the costs of any repetition to the customer according to its usual rates. If fixing defects that can be imputed to ATS is not technically or reasonably possible, ATS shall credit the amounts owed by the customer for the support services concerned, without further or otherwise being liable to the customer. The customer shall not have any other rights because of defects in the support services apart from those described in these guarantee provisions.

**DEVELOPMENT OF SOFTWARE**

In addition to the general provisions in these Delivery terms and the specific provisions in the chapter "Services", the provisions set forth in this chapter "development of software" shall apply if ATS develops software at the customer's instruction(s) and possibly installs it. The chapter "software use and maintenance" shall also apply to this software, except insofar as this chapter provides differently. The rights and obligations referred to in this chapter shall pertain solely to computer software in a form which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to the related documentation. Where this chapter mentions "software", this shall also refer to websites.

25. **Development of software**

25.1. The parties shall in consultation specify in writing which software shall be developed and in which manner this shall occur. ATS shall develop the software with due care based on data to be provided by the customer, the correctness, completeness and consistency of which the customer shall warrant. If the parties have agreed to use a development method which is characterized by the design and/or development of software parts being subject to a further setting of priorities to be determined during execution of the agreement, this setting of priorities shall always occur in consultation between the parties.

- 25.2. ATS shall be entitled, but not required, to examine the correctness, completeness or consistency of the data, specifications or designs given to it and, if any imperfections are discovered, to suspend the agreed work until the customer has eliminated the imperfections concerned.
- 25.3. Subject to the provisions in article 6, the customer shall only acquire the right to use the software in its own company or organization.

26. **Delivery, installation and acceptance custom-made software**

- 26.1. ATS shall deliver the software to be developed to the customer and install it as much as possible in accordance with the specifications recorded in writing, with installation only occurring if installation by ATS has been agreed in writing. In the absence of express agreements in this regard, the customer itself shall install, set up, design parameters for and tune the software and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, ATS shall not be required to convert data.
- 26.2. The software shall be considered accepted by the parties upon delivery or, if an installation to be carried out by ATS has been agreed in writing, upon the completion of the installation unless an acceptance test has been agreed. If the parties have agreed an acceptance test the agreed test procedure will be followed and the software shall be considered accepted as specified in the test procedure. If the customer makes use of the software for productive or operational purposes before express acceptance the software shall be considered fully accepted from the start of that use.
- 26.3. If the software is delivered and tested in stages and/or parts, the non-acceptance of a particular stage and/or part shall not affect any acceptance of an earlier stage and/or another part.
- 26.4. Acceptance of the software in one of the ways referred to in article 25.2 shall have the effect that ATS is fully discharged for performing its obligations concerning developing and providing the software and, if installation by ATS has also been agreed in a particular case, its obligations concerning installing the software.
- 26.5. All amounts pertaining to development of the software shall be owed when the software is delivered or, if installation by ATS has also been agreed in a particular case, when the installation is completed.

**SOFTWARE USE AND MAINTENANCE**

In addition to the general provisions in these Delivery terms, the provisions set forth in this chapter "software use and maintenance" shall apply to all software provided by and or via ATS, such as but not limited to Microsoft software products. The rights and obligations referred to in this chapter shall pertain solely to computer software in a form which is readable for a data processing machine and recorded on material which is readable for such a machine, as well as to related documentation, all of this including any new versions to be furnished by ATS.

27. **Right of use**

- 27.1. Subject to the provisions in article 6 and this article, ATS shall grant the customer the non-exclusive and non-transferable right to use the software. The customer shall always strictly comply with the use restrictions agreed between the parties. Subject to the other provisions in these Delivery terms, the customer's right of use shall only include the right to load and run the software.
- 27.2. In the event ATS provides third party software to the customer, the license terms of such third party software shall apply in full to the customer. The customer shall then either directly conclude a licence agreement with the software owner or accept the license terms of such software owner upon signing the connecting supply and implementation agreement with ATS.
- 27.3. The right of use shall not be transferable. The customer shall not be allowed to sell, lease, sublicense or alienate the software and data carriers on which it has been recorded, grant restricted rights to this software or these data carriers or provide them to a third party in any manner or for any purpose whatsoever, give a third party remote or non-remote access to the software or place the software with a third party for hosting, not even if the third party in question will only use the software for the customer's benefit. The customer shall not use the software to process data for third parties ("time-sharing"). Unless otherwise agreed in writing, the software's source code and the technical documentation generated in developing the software shall not be made available to the customer, not even if the customer is prepared to pay financial compensation for making them available. The customer acknowledges that the source code is confidential in nature and that it includes ATS' trade secrets.
- 27.4. The customer shall immediately return all copies of the software in its possession to ATS after the right to use the software ends. If the parties have agreed that the customer shall destroy the copies concerned when the right of use ends, the customer shall provide written notice of such destruction to ATS immediately.

28. **Delivery**

- 28.1. ATS shall deliver the software to the customer as has been agreed between the parties unless expressly otherwise agreed. ATS shall not be required to convert data unless expressly otherwise agreed.
- 28.2. The customer shall accept the software in the condition in which it is at the time of delivery, hence, with all apparent and non-apparent errors and other defects.
- 28.3. All amounts pertaining to making the software available and the right to use the software shall be owed when the software is delivered or, if installation by ATS has also been agreed in writing in a particular case, when the installation is completed.

29. **Maintenance**

- 29.1. If a maintenance agreement has been concluded for the software the customer shall provide detailed notice to ATS of the errors observed in the software in accordance with ATS' procedures as described in the maintenance agreement and the then current service procedure of ATS. An error shall only exist if the customer can prove it and if it can be reproduced. The customer shall be obliged to notify ATS of errors immediately.
- 29.2. ATS shall be entitled to provide temporary solutions, program bypasses or problem-avoiding restrictions in the software. In the absence of express agreements in this regard, the customer itself shall install, set up, design parameters for and tune corrected software or the new version provided and, if necessary, adjust the equipment and user environment used in this connection. Unless expressly otherwise agreed, ATS shall not be required to convert data.
- 29.3. ATS does not warrant that the software shall operate without interruption, errors or other defects or that all errors or other defects shall be corrected.
- 29.4. ATS may charge the repair costs according to its usual rates if there have been operating errors or improper use on the customer's part or other causes not imputable to ATS. Maintenance shall not include fixing mutilated or lost data.
- 29.5. If a maintenance agreement has been concluded, ATS shall provide improved versions of the software to the customer when they become available. In providing a version with new options and functions, ATS may require the customer to enter into a new agreement with ATS and to pay a new fee for this version being made available.
- 29.6. If the customer does not enter into a maintenance agreement with ATS at the same time that the agreement to provide the software is concluded, ATS cannot be required to enter into a maintenance agreement at a later time.
- 29.7. All amounts pertaining to maintaining software shall be owed before the maintenance period commences.

30. **third party software**

- 30.1. If and insofar as ATS provides software from third parties to the customer, those third parties' terms and conditions shall also apply with regard to that software. The customer shall accept the aforementioned third-party terms and conditions. Such third parties' terms and conditions shall be available for the customer's inspection at ATS and ATS shall send these third parties' terms and conditions free of charge to the customer at its request.

**SALE OF EQUIPMENT**

In addition to the general provisions in these Delivery terms, the provisions set forth in this chapter "sale of equipment" shall apply if ATS sells equipment to the customer. Insofar as the purport of the following provisions is not inconsistent with this, the term "equipment" shall also include separate equipment parts.

**31. Selection of equipment, delivery and risk**

- 31.1. The customer shall bear the risk of selecting the equipment purchased. ATS shall not warrant that the equipment is appropriate for the use intended by the customer, unless the intended uses have been clearly specified without reservation in the written purchase agreement between the parties.
- 31.2. The equipment sold by ATS to the customer shall be delivered to the customer at the site of ATS'. ATS shall deliver the equipment sold to the customer or have this delivered at a location to be designated by the customer only if this has been agreed in writing. ATS shall inform the customer before delivery in as timely a manner as possible of the time which it or the carrier used intends to deliver the equipment. The delivery times indicated by ATS shall always be indicative.
- 31.3. Equipment shall be delivered at the agreed location for the agreed purchase price. Unless expressly otherwise agreed, the equipment's purchase price shall not include the costs of transport, insurance, rigging and hoisting, leasing temporary facilities and the like.
- 31.4. The risk of loss and theft of and damage to the equipment shall pass to the customer when it is delivered to the customer. If a carrier is used for the delivery (whether or not at the customer's request or instruction), the risk of loss, theft and damage shall, however, already pass to the customer when the equipment is delivered to the carrier.
- 31.5. ATS shall package the equipment in accordance with the usual standards it applies. If the customer desires a specific manner of packaging, it shall bear the related additional costs. The customer shall handle the packaging released with the products delivered by ATS in a manner that is consistent with the applicable government regulations. The customer shall indemnify ATS against third party claims based on non-compliance with such regulations.

**32. Environment requirements and installation**

- 32.1. If the parties have expressly agreed on this in writing, ATS shall install the equipment or have it installed. Any requirement by ATS to install equipment shall not include the requirement to install software or to convert data.
- 32.2. The customer shall ensure an environment which meets the requirements specified by ATS for the equipment in a particular case (for example, concerning temperature, humidity, technical environment requirements and the like).
- 32.3. If ATS has undertaken to perform installation, the customer shall provide a suitable installation site with all necessary facilities, such as cable work and telecommunications facilities, before delivery of the equipment and follow all instructions of ATS necessary for the installation.
- 32.4. To enable ATS to perform the necessary work, the customer shall give ATS access to the installation site during ATS' normal working days and hours.

**33. Guarantee**

- 33.1. ATS shall do its utmost to fix, to the best of its ability, any defective material and manufacturing defects in the equipment, as well as in parts delivered by ATS in connection with the guarantee or maintenance within a reasonable time period and free of charge, if these have been reported, with a detailed description, to ATS within three months after delivery. If, in ATS reasonable judgment, repairs are not possible, will take too long or will entail disproportionately high costs, ATS shall be entitled to replace the equipment free of charge with other, similar, but not necessarily identical, equipment. The guarantee shall not include data conversion which is necessary due to repairs or replacement. All parts replaced shall be the property of ATS. The guarantee obligation shall be extinguished if the defective material or manufacturing defects result in whole or in part from incorrect, careless or incompetent use, from external causes such as fire or water damage, or if, without ATS permission, the customer makes changes or causes changes to be made to the equipment or to the parts delivered by ATS in connection with the guarantee or maintenance. ATS shall not withhold such permission on unreasonable grounds.
- 33.2. ATS shall charge work and repair costs falling outside the scope of this guarantee in accordance with its usual rates.
- 33.3. ATS shall not have any obligations concerning fixing errors reported after the expiry of the guarantee period referred to in article 33.1, unless the parties have concluded a maintenance agreement which includes such a duty to fix.

**34. The equipment of third parties**

- 34.1. If and insofar as ATS provides equipment from third parties to the customer, those third parties' terms and conditions shall replace the deviating provisions in these Delivery terms and shall apply with regard to that equipment, provided that ATS notifies the customer in writing. The customer shall accept the aforementioned third-party terms and conditions. Such third-party terms and conditions shall be available for the customer's inspection at the suppliers' and ATS shall send these third-party terms and conditions free of charge to the customer at its request. If and insofar as the aforementioned third-party terms and conditions are deemed or declared inapplicable to the relationship between the customer and ATS for whatever reason, the provisions in these Delivery terms shall fully apply.

**MAINTENANCE OF EQUIPMENT**

In addition to the general provisions in these Delivery terms, the provisions set forth in this chapter "maintenance of equipment" shall apply if ATS and the customer have concluded an agreement for maintenance of equipment.

**35. Duration of the maintenance obligation**

- 35.1. The agreement to maintain equipment shall be entered into for the term agreed between the parties, in the absence of which a one year term shall apply. The term of the agreement shall be tacitly extended each time by the length of the original period, unless the customer or ATS terminates the agreement in writing with due observance of a notice period of three months before the end of the period concerned.

**36. Maintenance**

- 36.1. The substance and scope of the maintenance services to be provided by ATS and any related service levels shall be recorded between the parties in a written agreement. In the absence of such an agreement, ATS undertakes to do its utmost to remedy, to the best of its ability and within a reasonable time period, malfunctions which have been properly reported to ATS by the customer. In this chapter, "malfunction" shall mean not meeting the equipment's specifications expressly made known by ATS in writing, or not meeting these specifications without interruption. A malfunction shall only exist if the customer can demonstrate it and it can be reproduced.
- 36.2. The maintenance shall be performed during ATS' normal working days and working hours.
- 36.3. ATS reserves the right to suspend its maintenance obligations during the time that, in ATS' judgment, there are circumstances at the site where the equipment is to be set up which entail risks to the safety or health of ATS' employees.
- 36.4. ATS shall ensure that its expertise concerning the equipment is kept up-to-date. ATS shall register and record in its administration all relevant data concerning the work performed on the equipment. Upon request, ATS shall allow the customer to examine the data recorded.
- 36.5. Parts shall be replaced if this is necessary in ATS' judgment to fix or prevent malfunctions. The parts replaced shall be or remain ATS' property.

**37. Maintenance and use terms and conditions**

- 37.1. The customer shall immediately inform ATS after a malfunction occurs in the equipment by having one of its employees with expertise in this area draw up a detailed description of the malfunction. ATS shall be obliged to give access to the ATS' employees or third parties designated by ATS to the site of the equipment, to provide all other necessary cooperation, and to make the equipment available to ATS for the maintenance work.

- 37.2. At ATS' request, an employee of the customer with expertise in this area shall be present during the maintenance work for consultation. The customer shall be entitled to be present during all work to be performed for the customer.
- 37.3. The customer shall not be entitled to connect equipment and systems not delivered by ATS to the equipment sold to the customer and to install software not delivered by ATS on it. The customer shall be responsible for the costs of examining and remedying malfunctions which occur through connecting equipment not delivered by the customer or installing software not delivered by ATS.
- 37.4. If, in ATS' judgement, maintenance of the equipment requires that the equipment's connections be tested with other systems or equipment, the customer shall provide these other systems or this other equipment, as well as the relevant test procedures and data carriers, to ATS.
- 37.5. Test material necessary for maintenance work which is not part of ATS' normal equipment shall be provided by the customer.
- 37.6. The customer shall arrange for the technical, spatial and communications facilities which are necessary to allow the equipment to operate. "maintenance" shall expressly not include the aforementioned facilities and terminals.
- 37.7. The customer shall bear the risk of loss or theft of or damage to the equipment during the period that ATS has the equipment in its possession for the maintenance work. The customer shall be responsible for insuring this risk. Before the equipment is provided to ATS for maintenance, the customer shall ensure that a proper and complete back-up copy has been made of all software and data recorded in the equipment.
- 37.8. ATS shall not accept any maintenance obligations for equipment not set up in Canada, unless expressly otherwise agreed in writing.
- 37.9. All amounts relating to maintenance of equipment shall be owed when the maintenance period commences.
38. **Exclusions**
- 38.1. Work to examine or repair malfunctions which arise from improper use of the equipment or external causes, such as defects in communication lines or in the power supply, or connections with and/or use of equipment, software or materials not covered by the agreement, shall not be part of ATS' obligations under the agreement, and shall be charged to the customer separately at the usual rates.
- 38.2. The maintenance price shall not include:
- Replacing consumer goods, such as, for example, magnetic storage media and printer ribbons;
  - Replacement costs for parts as well as maintenance services for remedying malfunctions which are caused in whole or in part by attempts to repair made by others besides ATS;
  - Work to service the equipment in whole or in part;
  - Equipment modifications;
  - Moving, relocating or reinstalling equipment or work resulting from this.

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