



General Terms and Conditions for Maintenance and Service for the ACP Group in Austria (Version: May 2016)

1. Object of the Agreement

- 1.1. The object of the agreement is the maintenance of defined hardware and its individual components. The term "components" refers to a functional unit within one piece of hardware equipment.
- 1.2. ACP shall carry out the maintenance activities for the hardware (devices and components) listed in the Maintenance and Service Agreement in accordance with provision of this agreement. The list with the maintenance number set forth in the Maintenance and Service Agreement shall be deemed an inseparable component of this Maintenance and Service Agreement and must be signed with the company signature by both parties to the agreement. It serves as proof of the contractual coverage of maintenance claims for the hardware items listed therein.
- 1.3. ACP's maintenance obligations refer exclusively to the location stipulated in the Maintenance and Service Agreement to this agreement. Should the client wish to set up its data processing system, either fully or in part, at a different location, it shall inform ACP thereof immediately. Should ACP be in agreement with the change in the location, ACP shall be entitled to adjust its remuneration (Paragraph 4) and its response and repair times (Paragraph 5) accordingly. Furthermore, ACP shall be entitled to require that the specialists appointed by ACP be consulted at the client's expense for the installation and transport services in connection with the change of location.

2. Scope of Service

- 2.1. The agreed services shall apply exclusively to the hardware listed in the Maintenance and Service Agreement. Any changes to the components covered by this agreement shall require a new maintenance and service agreement to be concluded. The changes resulting from this modification regarding the scope of services and remuneration shall then take effect as of the beginning of the month following the conclusion of the new agreement.
- 2.2. Hardware and components which are not new will only be included under this maintenance agreement if they are in impeccable condition. ACP shall retain the right to allow used hardware components to be included under this maintenance agreement only after their inspection and refurbishment subject to a fee.
- 2.3. ACP shall be obligated to provide maintenance services at the client's request, provided that the operation of the system or portions of the system is severely restricted or entirely impossible due to the hardware. The rectification shall take place either over the telephone or by means of measures carried out on-site.
- 2.4. ACP shall accept malfunction reports for further processing in accordance with the service times stipulated under Paragraph 8. Should malfunctions be reported outside of the service times, the response time shall be deemed to begin on the following working day at the beginning of ACP's service times. ACP shall undertake to process the reported malfunctions within the response times stipulated to in the Maintenance and Service Agreement (see Paragraph 5 - Response and Repair Times) and to provide the client with feedback on the status of the rectification measures.
- 2.5. ACP shall begin repair work within the time frame stipulated by the Maintenance and Service Agreement, provided that the hardware or components in question are covered by the agreement.
- 2.6. ACP shall be entitled to contract a specialized company to carry out the repair work in agreement with the client.
- 2.7. The replacement parts and components, provided free of charge by ACP in the course of repair work, shall be in impeccable and functional condition. The client must have and be able to produce valid licenses for all hardware and software components, upgrades and updates. Should no other agreement be reached on an individual basis, as a rule the upgrade and/or update of the BIOS, the firmware and the drivers shall not be covered by the maintenance agreement.
- 2.8. If the client has not concluded any agreement for Defective Media Retention Services, the replaced parts shall become the property of ACP. The client shall hereby provide assurances that the rights of third parties shall not impede the replacement of the parts and their transfer of ownership.
- 2.9. The repair work shall be carried out by ACP during the service times indicated under Paragraph 8. Services outside of these times are subject to a separate remuneration agreement between the client and ACP.
- 2.10. Should ACP determine that the damaged devices or components are not covered by the agreement, in particular because they were provided by another supplier other than ACP, the client must place a separate order for the repair work.
- 2.11. ACP shall be exempt from all of the obligations arising from this agreement, should the client itself or third parties have carried out repair work on the devices or components without ACP's prior consent.

3. Special Services

- 3.1. Not included in ACP's service catalog are the following:
 - 3.1.1. Any work on the power supply outside of the devices, which may only be carried out by an officially licensed electrician;
 - 3.1.2. Any work that is attributable to any changes in the electrical conditions, the failure of the electrical power supply (e.g. voltage fluctuations) or deviations from the installation specifications of the manufacturer;
 - 3.1.3. Any work arising from the use of new programs, including the testing thereof, as well as any work caused by the connection of additional installations;
 - 3.1.4. Any measures aimed at eliminating malfunctions due to user error, or any improper handling, technical interventions on the part of the client or third parties or to external influences not caused by ACP;
 - 3.1.5. Repair work made necessary by the use of data media, forms and accessories, which are not authorized by the manufacturer;
 - 3.1.6. The cost of replacement parts subject to particular wear and tear (such as daisy wheels, magnetic heads, printing heads), of consumables (such as paper, filters, printer ribbons, toner, cleaning agents) and of data media;
 - 3.1.7. Repair work outside of ACP's service times listed under Paragraph 8;
 - 3.1.8. Repair work on accessories not included under this agreement, modifications, additions and other installations.
- 3.2. Provided that ACP agrees to carry out services listed under Paragraphs 3.1.1. – 3.1.8., it shall invoice these to the client as additional services independent from the remuneration stipulated under Paragraph 4. Furthermore, separate invoicing shall be carried out for services performed on-site deemed superfluous, if ACP could have provided telephone support in order to rectify the malfunctions instead.

4. Remuneration and Payment

- 4.1. The client shall pay the yearly net fee listed in the Maintenance and Service Agreement as a flat-rate fee along with the prevailing value-added tax. The annual fee shall be paid in advance at the beginning of the business year, or will be invoiced at the start of each month on a pro rata basis.
- 4.2. Furthermore, the client shall remunerate ACP for any special services carried out in accordance with Paragraph 3.2 of this agreement.
- 4.3. The maintenance fee is to be indexed according to the agreement. The monetary amounts in the agreement shall be adjusted in accordance with changes to the consumer price index (according to the Statistics Austria http://www.statistik.at/web_en/statistics/index.html, for the current year as indicated by the invoice date). Should this index no longer be published, the index most closely corresponding to this index shall be used as the basis for the indexation. The basis for indexation calculation shall be the index figure published for the month of the commencement of the agreement. Changes shall not be taken into account until they exceed 3% of the currently prevailing indicative amount. Once this threshold has been exceeded, the full scope of the changes shall be taken into consideration, and the new index figure shall be used once again as the basis for calculating any further changes. Notification of price increases shall be provided at least 30 days before taking effect and shall entitle ACP to adjust the maintenance fee during the current contractual year, whereby the adjustment shall be applied on a pro rata basis for the remaining period of the contractual year.
- 4.4. ACP shall be entitled to terminate the contractual relationship without prior notice, should the client fail to make the annual payment within a 14 day time period subsequent to the agreed on payment date and following one written reminder. Should ACP refrain from exercising its rights to termination despite payment default, it shall be entitled to deny the rendering of services until all outstanding accounts receivable have been paid in full.

5. Response and Repair Times

The response and repair times shall always be calculated from the reporting of the malfunction within the framework of the service times provided:

a) Response time:

If malfunctions are reported within the agreed on service times, ACP shall arrive at the location for rectifying the malfunction within the time indicated in the Maintenance and Service Agreement (e.g. 4 hours). For malfunctions reported outside of the agreed on service times, ACP shall arrive within the time indicated in the Maintenance and Service Agreement starting from the beginning of its service times. In exceptional cases (accident, unforeseeable catastrophes...) ACP shall at the very least present an action plan within the stipulated response time and undertake to carry out repairs as soon as possible.

b) Repair time:

ACP shall repair or replace the hardware within the time period stipulated by the Maintenance and Service Agreement (e.g. 6 hours) beginning from when the malfunction was reported. ACP shall undertake all appropriate efforts to repair the hardware in question within this time period. ACP shall be entitled to replace defective hardware with functional hardware, whereby the replacement can be on a temporary or permanent basis. For complex malfunction situations, a time line for rectifying the malfunctions, complete with corresponding activities, shall be drawn up in coordination with the client.

6. Obligation to Cooperate on the Part of the Client

- 6.1. The client shall follow the instructions for use issued by ACP when using the hardware and components, and reporting and limiting the scope of malfunctions. The customer shall take the required and reasonable measures to facilitate the identification and rectification of the malfunction in question.
- 6.2. The client shall provide ACP with the required time and opportunity to render its services.
- 6.3. Before devices or components are replaced, the client shall immediately remove programs, data, data media, modifications and additions at the request of ACP.

7. Effective Date and Term of the Agreement

- 7.1. The maintenance and service agreement shall enter into effect on the date defined therein. The agreement shall be concluded for an unlimited period of time.
- 7.2. The minimum term of the agreement shall come to 12 months. The client shall reserve the right to terminate the agreement in writing (by registered mail) in compliance with a three-month termination at the end of each contractual year. Agreements with a fixed term and including a customer retention discount are hereby excluded and shall be terminated once the term has expired.

8. ACP's Service Times

No explicit agreement has otherwise been reached, ACP shall render all services arising from this agreement on weekdays (with the exception of December 24 and 31) during the service times of ACP. The specific service times of the individual ACP offices can be ascertained on the following Internet page: www.acp-it.eu/locations

9. Warranty and Compensation

- 9.1. ACP shall guarantee the proper execution of services as stipulated by this agreement. Any defects shall be rectified by ACP free of charge.
- 9.2. A warranty period of six months shall apply to hardware and components replaced by ACP starting from the repair date.
- 9.3. Accordingly, ACP's liability shall be limited to the amount of a yearly fee as stipulated by the contractual remuneration under this maintenance agreement, should an event incurring damage take place, irrespective of legal grounds.
- 9.4. ACP shall not be held liable for lost profits, unrealized savings, indirect damage and/or consequential damage. Liability for the destruction or falsification of recorded data shall also be excluded. The client shall undertake to secure current data on a separate storage medium other than the hard drive (e.g. streamer).
- 9.5. ACP shall only assume liability if the damage incurred was attributable to intentional or grossly negligent actions on the part of ACP or persons hired by ACP.

10. Prohibition of Assignment

The assignment of this agreement as the result of singular or universal succession, as well as the assignment of claims arising from this agreement shall only be possible with prior approval from ACP

11. Jurisdiction

The respective competent court at the registered office of the contracting ACP branch office shall have exclusive jurisdiction to decide in the event of disputes, in particular those arising from the reaching of an agreement or on the claims arising from such an agreement. However, ACP shall also be entitled to file suit against a contractual partner in any other jurisdiction, for example its place of general jurisdiction.

12. Applicable Law

This agreement shall be governed by Austrian law, excluding those statutory provisions that refer to the laws of other states. The application of the rules of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

13. General Terms and Conditions

The General Terms and Conditions of the ACP Group in Austria, in its most recent version, shall also be applicable to this contractual relationship (see <http://www.acp-it.eu/agb>). Should applicable provisions be lacking in the General Conditions for Maintenance and Service of the ACP Group in Austria and the General Terms and Conditions of the ACP Group in Austria, statutory provisions exclusively shall apply.

14. Ancillary Agreements

Any and all changes or amendments to this agreement must be made in writing to be deemed effective. This shall also apply to a waiver of the requirement for written form.

15. Severability Clause and Interpretation

- 15.1. Should individual provisions or portions of provisions in this agreement be or become invalid, contestable or otherwise unenforceable, the validity of this agreement in its entirety, the other provisions or the remaining portions of the said provision shall remain unaffected. Clauses shall remain in effect with their permissible contents. An unenforceable provision shall be replaced by a feasible provision that comes closest to the content and purpose of the unenforceable provision. This shall also apply to the filling of contractual gaps by the supplementary interpretation of the agreement.
- 15.2. The contractual parties shall unanimously agree that they have read this agreement and understood it in detail. Uncertainty in the interpretation of this agreement shall not be to the detriment of either party. The agreement in all of its paragraphs shall be interpreted in such a way that its content shall be guaranteed, both in its entirety and individual parts, and that the services and obligations contained therein shall be rendered.