General Terms and Conditions for Software Maintenance

1) These general Terms and Conditions of contract shall be applicable to the contracts on software maintenance concluded between AUCOTEC and Customer ("Maintenance Services"). AUCOTEC shall maintain the software defined in the order confirmation ("Software"), which has been licensed to Customer under a separate agreement according to the General Terms and Conditions for Software Licensing. General Terms and Conditions of Customer shall not be included into the terms of the Contract.

2) Maintenance may be performed by AUCOTEC or third parties assigned by AUCOTEC and shall include the following Maintenance Services:

    A   Hotline consulting and support (by phone or e-mail): Basically, AUCOTEC offers hotline consulting and support for all software versions with a release date dating back not more than 4 years. Respective requests are accepted during the business hours of AUCOTEC's headquarters in Hannover (Monday to Thursday 08:00 to 17:00, Friday 08:00 to 15:00 CET- except on public holidays in the federal state of Lower Saxony). A reaction takes place after a maximum of 4 hours within the aforementioned business hours.

    B   Removal of malfunctions and defects: Basically, AUCOTEC shall deliver removal of malfunctions and defects for all software versions with release dates dating back not more than 2 years. For software supplied by other manufacturers, troubleshooting and defect rectification is only granted for the current version. AUCOTEC undertakes, at the latest within the working day following the day of receipt of the error message (Monday to Thursday 08:00 to 17:00, Friday 08:00 to 15:00 CET – except on public holidays in the federal state of Lower Saxony), to analyse the malfunction reported by Customer and to take measures with which the Software can continue to be used. The maintenance activities shall be carried out during the aforementioned periods (working time). If the defect cannot be remedied immediately in individual cases, AUCOTEC will, as far as possible and reasonable, bring about an interim solution until the cause of damage has been remedied completely requiring Customer to potentially observe special operating instructions. If AUCOTEC is unable to meet deadlines or agreed times due to force majeure or other circumstances for which AUCOTEC is not responsible, an extension corresponding to the period up to which force majeure and the above-mentioned circumstances cease to apply shall be deemed to have been agreed.

    C   Updating of all manuals and software documentations, in each case in electronic form.

    D   Supply of Updates for the Software, which is subject matter of the Contract, provided that this concerns AUCOTEC software.

    E   Modification of SW license files to re-allocate SW licenses within the given boundaries of usage, defined by the business model and selected floating or WANing rights.

    F   Insofar as agreed separately: Maintenance of integration solutions

3) The following AUCOTEC services are not covered by this Contract and are thus to be remunerated separately by Customer:

    A   Individual customisation of the Software to new requirements of Customer, upon his order.

    B   The software maintenance for individual solutions that deviate from the standard scope of services. This shall be explicitly agreed contractually. The price may differ from the "standard maintenance rate".

    C   In the case of so-called integration solutions, which couple AUCOTEC-software with other solutions (such as ERP systems), software maintenance is limited to the described standard scope of services of the components developed and supplied by AUCOTEC. Expenses incurred by AUCOTEC as a result of the further development or modification

or adaptation of an integrated product by Customer or the third party provider are not included in the software maintenance and shall be ordered separately. These services are charged according to expenditure.

D   Supply of new modules which AUCOTEC distributes after licensing the Software and the supply of which Customer requests.

E   Additional and/or more powerful HW dongles, required due to a customer request for license set-up modification. A claim to the delivery exists only with separate express agreement.

F   Removal of malfunctions caused by incorrect or improper handling of the Software; furthermore maintenance of the Software to the extent, that this was necessitated by force majeure, intent or negligence of Customer or his functional area (e.g. improper operation, modifications of the Software products, destruction of data carriers, faulty hardware components); if it only becomes apparent in the course of AUCOTEC's activities that the disruptions under this provision are not covered by the Software Maintenance Contract, AUCOTEC shall be entitled to invoice Customer for the expenses incurred to date in accordance with the usual hourly rates.

G   Removal of malfunctions of any kind ascribable to system components which have not been integrated by AUCOTEC.

4)   Shipment or transmission of services by AUCOTEC to Customer shall be performed at customer's risk and costs.

5)   Customer shall provide any and all cooperation required for the performance of maintenance without delay and at no cost for AUCOTEC. This cooperation and assistance is a cardinal obligation of Customer. If and as long as Customer does not fulfil his duties to cooperate at all, not on time and/or not sufficiently, AUCOTEC shall be exempted from its obligation to perform the Maintenance Services.

6)   Customer shall report any defects and malfunctions immediately and in writing – or in retrospect in case of initial notification by telephone – and provide AUCOTEC with information on the precise circumstances in which the defect occurred, as well as its impacts and possible causes. Customer shall provide all necessary documentations and information as well as the Software required by AUCOTEC for the diagnosis and correction of faults. AUCOTEC is granted free remote access to the involved computers and access to the premises, equipment and Software as well as computing time, if required, at least during regular office hours. Upon AUCOTEC's request, Customer or a third party assigned by him has to be present free of charge during the maintenance period at the place of maintenance. This person has to be able to present a reconstruction of the reason for maintenance. Customer shall use his best efforts to support AUCOTEC with the search for the cause of the malfunction. The transmitting of information and material is at the expense of Customer.

7)   Customer shall, to the extent required for new versions of the Software, furnish adaptations of the hardware and software environment, in particular new versions of the operating system or other third party software necessary for the application of the Software at his costs, in time, and ready to operate.

8)   AUCOTEC does not provide any maintenance services if the hardware and software environment contains components that are no longer supported by the manufacturer.

9)   The Software Maintenance Contract does not provide Customer with any licence for the programmes to be maintained. Such licence shall exclusively ensue from the contract by which Customer has acquired the Software.

10)   Customer undertakes to carry out, compile and check data backups on a regular, at least daily, basis. Such data backup shall cover the entire software system and the regular backup of master and transaction data and has to be carried out according to the principles of proper data processing and to be stored separately for at least 3 months.

11)   Customer's warranty rights shall become void if modifications of the Software, which AUCOTEC had not expressly and in writing approved before, were carried out by Customer or third parties who had not been assigned by AUCOTEC. This is not associated with any entitlement of Customer, to modify the Software. The duty to perform and warranty obligations of AUCOTEC under this Contract shall become void if Customer uses the Software under conditions which

had not been approved. Customer's obligation to continue payment of the agreed remuneration for maintenance shall remain unaffected by this.

12) The following liability rules apply to the liability of AUCOTEC as well as to the personal liability of its employees, vicarious agents and assistants - irrespective of the legal basis.

13) Liability

A   The following liability rules apply to the liability of AUCOTEC as well as to the personal liability of its employees, vicarious agents and assistants - irrespective of the legal basis:

B   AUCOTEC shall only be liable

- Without limitation of the amount of damage for damages caused by intent or gross negligence of the legal representatives or executive staff of AUCOTEC or by severe corporate negligence;

- With limitation to damages which, based on the contractual Maintenance Services, are typical and foreseeable;

- for damages caused by negligent violation of cardinal contractual duties; or

- for damages which vicarious agents of AUCOTEC cause by slight negligence but without violation of cardinal contractual duties;

- without limitation for damages due to injury of life, body or health of Customer or his employees which are based on a breach of duty by AUCOTEC.

C   For each individual damage liability in case of slight negligence (amongst others for remote consequential damages) shall be limited to an amount be limited to an amount equivalent to the yearly contractual remuneration under the respective contract.

D   Liability for lack of a guaranteed feature, for fraudulent intent and for bodily injury shall remain unaffected.

E   To the extent that entitlements to compensation for damages due to slight negligence apply vis-à-vis AUCOTEC, its employees, vicarious agents or assistants, these shall become time-barred within one year from the point of time when contractual performance had been due for delivery.

F   AUCOTEC shall not be liable for the replacement of data, unless it causes their destruction by gross negligence or intent. Customer has to ensure that such data may be reconstructed from data material with reasonable expenditure and effort (backup).

G   Customer has the obligation to notify AUCOTEC in writing of any damages as provided for in above liability regulations without delay, so that AUCOTEC is informed in time in order to be able to undertake any loss minimization measures jointly with the Customer.

14) Remuneration for maintenance is due for payment every six months in advance on the 1st day of each invoicing period, plus value-added-tax and other taxes as applicable from time to time.

15) The Software Maintenance Contract shall – unless agree otherwise in writing – commence upon delivery of the complete Software to Customer and shall end twenty-four months after commencement of the Contract. It shall be automatically renewed for twelve months in each instance, unless it is cancelled by AUCOTEC or Customer by giving three months' written notice prior to the respective termination date. The maintenance fee can then be increased with a written notice of three months to the end of a year. In the event of an increase of more than 5 %, the customer is entitled to terminate the software maintenance with one month's notice before the increase takes effect.

16) The right to extraordinary termination shall remain unaffected. AUCOTEC may terminate the Contract without notice, if, in particular

A   A payment default by Customers has existed for more than thirty days,

B   Additional maintenance expenditure is caused by the fact that software products or computer systems are repeatedly handled improperly or extended despite previous warning.

C   In the event of termination without notice by AUCOTEC, AUCOTEC shall retain the entitlement to remuneration until expiry of the current Contract period.

17) This contract and its conditions do not grant the client any rights that go beyond the end user license agreements of the software supplied by other manufacturers such as Microsoft; these also apply in the relationship between AUCOTEC and the licensee and remain unaffected by these terms and conditions.

18) Oral collateral agreements do not exist. Deviating or complementing conditions or amendments of these Terms and Conditions, including this clause regarding the requirement of written form, shall only be valid if agreed in writing.

19) In case of ineffectiveness of a provision in the individual agreement or these Terms and Conditions, the remainder of the Contract shall remain unaffected. Contracting parties undertake to replace any void provision by a legally permissible provision, which comes as close as possible to the former one under economic aspects. The same shall apply mutatis mutandi in the event of a gap in the Contract.

20) Customer may only assign claims under this Contract with prior written approval by AUCOTEC. Customer shall only be permitted to perform setoffs against counterclaims or to assert any right of retention, if Customer's counterclaim is undisputed or has been recognized by final declaratory judgement.

21) Place of performance shall be the registered office of AUCOTEC.

22) If Customer is classified as merchant, the place of jurisdiction for any and all disputes arising from or in connection with this Contract shall be the registered office of AUCOTEC.

23) The Law of the Federal Republic of Germany shall be the applicable law - also for Contracts with foreign customers - with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).