

Service Level 3

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1 General guarantee for software

atlan-tec creates software with great carefulness and corresponding to the state of the art and aims to avoid bugs as far as this can be achieved by systematic testing at all. In addition atlan-tec is going to service the programs for installation of the software, so it will be adapted continuously to current operating systems versions, service packs and updates.

Also new faults will be corrected continually and regularly, if atlan-tec has knowledge of them. Objective faults in the operation will be fixed if they are important for a guaranteed function of the software according to the opinion of the majority of the users.

All corrections are incorporated into service updates. The service updates are identifiable by continuous numbers of versions such as for example "3.0.4", in which "4" means the fourth version of the software "3.0".

1.1 Guaranteed functions of the software

There is a guarantee for all functions which are described in the relevant software manual or a written product brief, accepted by atlan-tec in paper form and for which atlan-tec has been paid. Any further claims on certain functions for guarantees like verbal agreements do not exist. Particularly there are no claims for completion of characteristics or functions, which are not described explicitly and clearly in the actual manual of the corresponding version.

1.2 Ability to run the software

The delivered software can be run on the current operating system which is referred to in the documentation of the software and the operating environment (e.g. databases or interfaces like OPC-Server) with the latest updates, service packages and bug fixes, as they are published at the time of delivery. Not completely current operating environments, interfaces and operating systems, as well as systems without respective latest updates, service packs and bug fixes are not supported by a current version. The system buyer thus bears the responsibility, that any third party software and any operating system have to conform to the current technology level and new releases come into operation.

If the operating system, parts of it or the operating environment are changed by third party suppliers, e.g. by updates or other software, so that software delivered by atlan-tec won't run, there is no warranty claim for the function of the installed, technically, overage version. To maintain the function on current operating systems the user must install also current versions of the software.

If unusual programs which are technically not on the state of the art or are not compliant with the recommendations of the operating system producer, change the operating system or important data of the operating system, so that it does not comply with current updates any more, atlan-tec incurs no warranty claim for the function of the own software on such a changed operating system.

By integration into an "Active Directory", the limitation of the user rights on a computer or the installation or operation of third party software (like special virus scanners) can change an operating system or an operating environment, so that there is a loss of the warranty. The warranty is always forfeited, when important system files differ from an operating system with current service packs and drivers.

1.3 Faults in the software

There is no error-free software. The number of possible combinations during the compilation of a program is astronomically high. All possible combinations of problems can never be tested. Therefore no error-free programs can be created even with carefulness.

Faults are deviances from guaranteed functions as mentioned under 1.1, demonstrable calculation errors or crashes of the software which can be reproduced repeatedly and reliably on several computers with the same operating environment. Sporadic errors that can't be reproduced reliably cannot be attributed to a software unambiguously and thus are not relevant to any guarantee or warranty.

1.4 Form of a claim

For processing a complaint, following information must be provided to atlan-tec by the system buyer in a clear and precise form:

- Specific designation of the operating system version and current status of the installed service packs, data access components (MDAC) and .NET-packages
- Specific designation of the operating system version and current status of the installed service packs, data access components (MDAC) and .NET-packages of at least a second computer, where the problem can be reproduced
- Specific designation of the software version with which the problem occurs
- Specific designation of any installed additional drivers and versions of Office with an indication of the level of service/ updates
- Configuration files like NMP-files, OPT-files and NET-files as well as all data with which the problem occurs
- Screen capture and detailed description of how the error can be reproduced
- In case of a database-based application (like Prompt) atlan-tec also needs the database version as well as a dump of the database.

1.5 Response time by atlan-tec and type of reaction

In context of this agreement, a response time can be agreed upon. The response time is measured in working days. In this agreement working day means all legal working days excluding Saturdays with the exception of individual holidays or periods of company holiday of atlan-tec. The company holiday of atlan-tec is limited to a maximum of 15 working days in the year and will be announced to the system buyers at least 8 weeks beforehand. In general, the company holiday is from Sunday before December, 24th until this first Friday of the New Year.

Bridge days are days between Christmas and New Year, as well as individual working days between two legal Sundays or public holidays or Saturdays; for example, if the Thursday is a holiday, the following Friday is considered as bridge day. Standby service, if it was provided as a part of service level, is available under a special phone number at atlan-tec on working days, except holidays which are defined above, from Monday till Friday between 9:00 h and 12:00 h and Monday till Thursday between 13:00 h and 17:00 h.

The phone number will be conveyed in writing. Outside of these hours messages will be received on a mobile phone number and processed as soon as possible, provided refund of operating expense.

1.6 License terms

The license terms of the atlan-tec software are part of this agreement.

1.7 Technical conditions

The current technical conditions of atlan-tec are integral part of this contract.

2 Support of application

2.1 Summary

ServiceLevel:	3
Volume of services by AT	Specifications & inclusive price
Service contract software	Contract required
Service contract complete system	No agreement
Service contract hardware	If hardware, then with contract
Service-Updates	on demand
Versions-Updates	Automatically sending
Guarantee on the entire system	legal minimum guarantee
System responsibility	System buyer & AT
Max. reaction time AT	10 working days
Guaranteed system availability	None
Online-Entrance, min. 4MBit/s	Required
One-time basic cost	Specifications & inclusive price
Annual costs	15% p.a. of the system price

ServiceLevel:	0	1	2	3	4	5	6
Volume of services by AT	No service	No service	Hourly quota	Specifications & Inclusive price	Specifications & Inclusive price	Specifications & Inclusive price	Specifications & Inclusive price
Service contract Software	No agreement	Contract required	Contract required	Contract required	Contract required	Contract required	Contract required
Service contract complete system	No agreement	No agreement	No agreement	No agreement	Contract required	Contract required	Contract required
Service contract Hardware	Without hardware	Without hardware	Without hardware	If hardware then with treaty	If hardware, then with treaty	If hardware, then with treaty	If hardware, then with treaty
Service-Updates	1 year from purchase on demand	On demand	On demand	On demand	Installation by AT	Installation by AT	Installation by AT
Versions-Updates	None	Automatic sending	Automatic sending	Automatic sending	Installation by AT	Installation by AT	Installation by AT
Guarantee on the entire system	None	None	None	Lawful minimum guarantee	Availability guarantee	Availability guarantee	Availability guarantee
System responsibility	Customer	Customer	Customer	Customer & AT	AT	AT	AT
Max. Reaction time AT	20 working days	10 working days	10 working days	10 working days	10 working days	5 days	24 hours
Guaranteed system availability	None	None	None	None	95% / a	97,5% / a	99,5% / a
Online-Access, min. 4MBit/s	Not required	Not required	Not required	Required	Absolutely required	Absolutely required	Required (redundant)
One-time basic cost	software price	software price	software price & hours	specifications & inclusive price	specifications & inclusive price	specifications & inclusive price	specifications & inclusive price & 1:1 redundancy option
Annual cost	None	15% p.a. of the software prices	15% p.a. of the software prices	15% p.a. of the software prices	15% p.a. of the system prices	17,5% p.a. of the system prices	20% p.a. of the system prices

Important: Support concerns only purely software-based questions. This support is not responsible for assistance relating to technical content, modeling and the results of a process analysis. For such questions we offer our service packages.

2.2 Description

System buyers, who haven't ordered engineering services, are not entitled to be supported in solving of technical problems or process analysis. This support is only offered by atlan-tec in the context of service contracts or system projects. Buyers of system solutions are entitled to support within the system responsibility of atlan-tec, which is financed by a quota of services ordered by the purchaser of the system.

2.3 System backup and system responsibility

Support of system is only taken by atlan-tec for systems that are completely or partly liable to the contractual responsibility of atlan-tec. atlan-tec takes only responsibility in the context of a system delivery and for systems which were looked after by atlan-tec's own authority since the delivery. atlan-tec doesn't bear responsibility for a system or a subsystem outside of the contract defined limits and outside of the volume of supply.

If atlan-tec delivers a complete system of software and hardware on the basis of functional specifications made by atlan-tec and paid by the system buyer, who orders a delivery of the system with a service level agreement with system responsibility, atlan-tec will bear a system responsibility for the time period of the SLA for delivered parts, software packages and functions as long as atlan-tec has full control over the delivered system and access by a third party is completely excluded.

2.4 Definition of the system and the system boundaries

atlan-tec grants system support or bears system responsibility only in the context of a system with exact contractual boundaries. The condition for system support by atlan-tec is the purchase of all hardware components and software packages from/ via atlan-tec and the detailed graphic documentation of the system boundaries in the written agreement.

2.5 Guarantee of the functions according to products specification

If there are inaccuracies or insufficiencies in product or performance specifications paid by the system buyer or created by atlan-tec or in a document or specification accepted by the system buyer e. g. as part of the purchasing order, at the expense of functions agreed upon, atlan-tec will take the costs for the analysis of faults. Functions which aren't described in this document are excluded because these were not intended to be part of the system or weren't specified explicitly and in detail. Functions that weren't desired by the system buyer at first, but demanded afterwards are also excluded.

But if there are inaccuracies or insufficiencies, because of missing product specifications or due to an incorrect performance specification created by the system buyer or an inadequate order without a detailed performance specification, then such seeming defects will be construed in favor of atlan-tec, except if the contestable function is described in the software manuals differently from the actual implementation. Any function which is not described explicitly and in detail is regarded as not specified and thus is not a component of a volume of supply agreed upon.

2.6 Originator is billed for costs of fault diagnostics

It happens again and again that apparent faults in a system are reported which, in fact, result from a faulty operation or other factors which atlan-tec is not responsible for.

In this case there will be costs for the reproduction of the apparent fault and the cause analysis for atlan-tec. The system buyer is billed for such costs on a regular basis in case that no reproducible fault can be found and detected on the part of atlan-tec. If the system buyer refuses the additional order and/ or payment of these costs caused by him atlan-tec has hereafter the right to suspend all support immediately until the settlement of the costs is agreed upon by contract.

If there is a malfunction of the system which arises from interferences or changes of the environment, e. g. by updates of other systems, network disturbances or network overloads, atlan-tec will carry the fault diagnosis out and also the remedying of the malfunction on request of the system buyer at the expense of the system buyer. If the cause is suspected in third party systems, atlan-tec reserves the right to involve third parties (e.g. ORACLE or SAP specialists, external IT service providers) on the terms of normal atlan-tec services at the expense of the system buyer, provided that the order size requires this for the problem solution.

2.7 Standards and the state of the art

atlan-tec and the system buyer guarantee as a condition for the system responsibility of atlan-tec to each other that the existing and the delivered systems, software versions and all relevant components of the system and its surroundings always correspond to the state of the art. Besides compliance with all valid standards, recommendations of generally known associations like the VDI or the NAMUR belong to the state of the art as well as the recommendations of all suppliers of any installed hardware and software. All software versions of the surrounding systems of the system buyer and all databases and interfaces comply with valid technical standards and are the most current versions. All standards are observed. Any OPC server is certified in principle at the www.opc-foundation.org (status „certified“).

2.8 Online Connection

The system buyer agrees to provide an online access to the system with not less than 4 Mbit/s, so that atlan-tec can work over internet without restrictions on the computer system. If travel is necessary in case of warranty claims, the system buyer will be billed for costs, if this trip would have been avoided by a functioning remote access.

2.9 Solution of inconsistencies in different documents

If there are inconsistencies between the specifications, performance specifications, software, documentation and other documents, these will be solved as follows: The specification is in the sovereignty of definition over all other documents and agreements, followed by the “TecNotes“ of the software, followed by software handbooks and finally followed by the specification of system buyer if this was part of the order for the system.

2.10 Guarantee for hardware

If there is malfunction on the computer, which is part of the system, atlan-tec will fix it within the warranty period, within 10 working days from the arrival of the computer at atlan-tec or its collection. atlan-tec bears only the costs for fault diagnostics on the computer, spare parts, labor and travel costs when the computer comes with the complete system of atlan-tec and no modifications in any form have been implemented by the system buyer and only if the computer is not older than 3 years. Important: Otherwise the system buyer has to bear these costs. Furthermore, the system buyer assumes all costs and expenses for travel and on-site service by atlan-tec, as well as for disassembling, shipping and re-commissioning of the defective computer.

The system buyer purchases and installs new system hardware by atlan-tec every three years at his own expense. After the purchase of new hardware against refund (invoice), atlan-tec is responsible for the migration of existing software and hardware systems to the new system in the context of system contracts free of charge. New hardware is covered by the SLA contract only, if that new hardware has also been purchased and integrated by atlan-tec. The costs of the hardware and the integration will not affect the costs of the SLA.

2.11 Exclusions

If there are malfunctions because of slow network connections of systems or other IT-related restrictions in areas that were not executed as part of the overall project under the sole management of atlan-tec, these are not covered by warranty. The system buyer bears the costs for expenditures which are incurred in this connection as part of fault diagnostics. This also applies when an error becomes apparent only by the interaction of a deficiency or defect in a system of the systems buyers with a property of the atlan-tec system that needs improvement.

2.12 Guarantee for availability

Omitted for SL 3.

3 Updates

Apart from the fault correction (bug fixes), atlan-tec always develops software technically further and keeps it on the state of the art and the current knowledge. Any new experience from projects is integrated into the software. The advanced or technically renewed features will be integrated into the software in the form of updates. Updates (service updates and version updates) contain changes or extensions of features of the software and they are indicated by the characters before the first dot or directly after the dot. For example, the version 3.2.0 represents a version-update to 3.1.4.

atlan-tec announces version-updates before the possible delivery term for promotion purposes. atlan-tec reserves the right to select the point of time for the actual shipment to the contractual license partners.

With every update atlan-tec guarantees leastwise the (downward-) compatibility for created data of the software to the last two previous versions. Every software version by atlan-tec is only compatible to current software versions of other software packages by atlan-tec and/ or third parties.

4 Costs

Agreed contract costs are to be paid before the beginning of each service period of 12 months in advance, annually.

If a trip to the system buyer - outside of the agreed upon work for the service contract – is required and agreed upon, the customer is billed for the travel time with 80% of the current daily rate the resulting legal charge allowance as well as travel expenses of € 0.75 per kilometer. This requires that the system buyer has to order a service quota or special services. As described, an entrance port for remote access is preferential and cheaper for telemaintenance by atlan-tec.

A daily rate is fixed between atlan-tec and the system buyer for engineering hours. The daily rate (8 man-hours in the period from Monday until Friday respectively from 7:00 o'clock until 7:00 pm) for engineering is € 1200 until the end of the term of the contract. If the official rate of inflation increases by more than 10%, but not later than 5 years in the contract time period, the hourly rate will be negotiated anew. If services are agreed upon with shorter durations of assignment a proportionate invoice is carried out, not less than whole working hours.

5 Value guarantee and write off of software

The Service-Level contract must be signed at the time of purchase of the software to maintain the value of a license. If a service level agreement is agreed upon later, the system buyer must update to the current version of the software and will have to refund a loss of write off for the software.

Any software which is bought from atlan-tec must be written off with current tax provisions in line of 4 years. With each year from date of purchase the software loses therefore 25% of its replacement value.

Before a service-level contract is agreed upon, atlan-tec calculates the difference between the current software version and the purchased software license less depreciation method (25% p.a.) for the new system buyer.

6 Exclusion of liability for incorrect support

atlan-tec refuses all liability for damages resulting directly or indirectly from factually or allegedly faulty support by atlan-tec and resulting procedures by any third party.

Exempt from that are only direct actions and interventions performed by atlan-tec within contractual system responsibility. The system buyer performs every action, including those recommended by the atlan-tec support, on his own initiative and at his own risk. The system buyer, who calls on support, bears the whole responsibility for his own action or failure he makes or has made by reason of atlan-tec's support.

7 Validity of the contract

The Service-Level agreement comes into effect immediately with the delivery of the software or the last update and has a duration of not less than 5 (five) years. The agreement can be cancelled by both parties with due notice at least 6 (six) months before the expiration of the five-year term. Otherwise the contract is automatically renewed for one year unless it is cancelled within a period of 6 (six) months before the end of a respective rollover period. The termination requires the written form. The right to terminate the contract for cause remains unaffected.

8 Severability clause & other

Should one or more provisions of this agreement be or become void or invalid, the validity of the remaining provisions is not affected. In place of the void or ineffective provisions, a valid and allowable agreement shall be set in that is consistent with the original intent and purpose.

Unless special provisions are not decided in this contract, lawful rules and regulations apply.

This contract is subject to the exclusive application of German law. Jurisdiction is Krefeld.

There are the statutory rules of prescription for both parties.