

General Conditions of Contract (VP Automatic Systems)

1.0 DEFINITIONS

The following words and phrases, used in these Conditions, shall have the meanings given below:

- 1.1 **Purchaser** - the person, company or organization with which THE SELLER is in contract for the execution of the Works and all those for which the Purchaser is responsible or over which it has control.
- 1.2 **Works**- the works expressly described in The Seller's quotation or Confirmation Order and including any variations made to those works in accordance with these Conditions.
- 1.3 **Period** - the period for the execution of the Works described in the quotation and including any changes to that period made in accordance with these Conditions.
- 1.4 **Defects Liability Period** - the period following completion of the Works described in the quotation in which THE SELLER will repair the Works (except for Induction Loops) at no cost to the Purchaser with the exception that damage or fault caused by misuse or physical abuse will be repaired only at the Purchaser's cost.
- 1.5 **Confirmation Order** - a formal confirmation issued by THE SELLER to the Purchaser and detailing any changes agreed between these parties from the original THE SELLER quotation, where such have occurred.
- 1.6 **Contract Price** - the price to be paid to THE SELLER by the Purchaser and stated in The Seller's quotation or Confirmation Order or as calculated at the fees, rates or prices stated therein.
- 1.7 **Cancellation Costs** - Such costs that have been reasonably incurred by The Seller, but as a minimum the costs –including Overheads and profit- that have been incurred to the stage of manufacture that cancellation notice was received.
- 1.8 **Hard Dig** - Defined as requiring the use of mechanical equipment to excavate solid materials such as concrete, cement, asphalt and hard-core.
- 1.9 **The Seller** – means ATG Access Ltd.

2.0 FORMATION OF CONTRACT

No Contract shall come into effect until THE SELLER has accepted in writing the Purchaser's Order or, where the Purchaser has not issued an Order following agreement between the parties, THE SELLER has issued a Confirmation Order and its receipt and agreement thereto has been acknowledged in writing by the Purchaser.

3.0 INFORMATION

The Purchaser shall supply THE SELLER with all information, drawings, specifications and other documentation in the power or possession of the Purchaser as THE SELLER may reasonably require enabling THE SELLER to fulfill its obligations under its quotation, Confirmation Order, and these Conditions. The purchaser warrants that performance data or equipment stipulated by it is sufficient and suitable for the performance of the contract. Where the purchaser has requested specific equipment manufactured by a third party, the purchaser is deemed to have assessed this equipment as being appropriate for the proposed site, taking into account matters such as (but not limited to) the sites location and the nature of traffic in its vicinity.

4.0 COPYRIGHT

THE SELLER owns the copyright in information, drawings, specifications and other documentation prepared by it for the execution of the Works. The Purchaser shall not without the previous consent of THE SELLER disclose to a third party or use the said documentation for any purpose than the execution of the Works or the operation of the goods supplied.

5.0 PERIOD

- 5.1 Any period of time stated by THE SELLER for delivery or completion of the Works shall commence from the commencement date stated on the Confirmation Order or quotation. Such period shall, however, not commence until
 - 5.1.1 after receipt of final information provided by the Purchaser, and
 - 5.1.2 after final approval by the Purchaser of the complete package of information required for the execution of the Works supplied by THE SELLER.
- 5.2 As regards the Period, THE SELLER shall be granted by the Purchaser such extension of time as is reasonable for any delay caused by others, or outside the control of THE SELLER, including but not restricted to force majeure, adverse weather conditions, civil commotion, strikes or other industrial disputes, fuel shortages and any act of default of the Purchaser or others employed by him that affects the Works.
- 5.3 In the event that the Works cannot be commenced or completed within the Period, or goods and materials supplied by THE SELLER cannot be delivered, or not collected by the Purchaser on the dates stated in The Seller's quotation or Confirmation Order then the Purchaser shall be liable to THE SELLER for any consequential costs incurred such as, but not restricted to, storage, protection, transport, standing time.(see 14 below). The amount of such incurred costs will be added to the Contract Price and paid to THE SELLER by the Purchaser. Cancellation cost will be levied, at the level which The Seller has reasonably incurred. These will form the contract costs, becoming due in line with the contract.

6.0 FREE ISSUE MATERIALS

If the Purchaser requires THE SELLER to incorporate materials, fittings or instruments to be supplied free by the Purchaser, then such free issue items:

- 6.1 Shall be provided at the locations and at the quantities and times required by The Seller.
- 6.2 Shall be deemed to be in good condition only if confirmed as such, in writing, by THE SELLER, following receipt; thereafter they will be the responsibility of THE SELLER as regards loss or damages (Subject to 7 below).
- 6.3 Shall be deemed to be fit for the intended purposes; in the event that they are not then the Purchaser will be liable for all costs associated with replacement including The Seller's costs.

7.0 RISK OF LOSS OR DAMAGE

- 7.1 The risk of loss or damage to all materials and goods supplied by THE SELLER

shall pass to the Purchaser once such items have been delivered to their destination as required by the Purchaser, or when collected from THE SELLER by the Purchaser.

- 7.2 The risk of loss or damage to materials and goods installed by THE SELLER at the site of the Works shall pass to the Purchaser immediately following whole or partial installation.

8.0 TRANSFER OF TITLE

- 8.1 Title in any materials and goods supplied by THE SELLER shall not pass to the Purchaser, notwithstanding that they may have been wholly or partially installed as part of the Works, unless and until the Purchaser has discharged all outstanding indebtedness to THE SELLER. In the event of any of the said prices and costs increasing before completion of the Works then THE SELLER shall be entitled to adjust the fees, rates or prices to be paid by the Purchaser by a reasonable amount in respect of such increase, such adjustment to include an addition for profit and overhead.
- 8.2 All title in the Contract Goods shall remain vested in the Seller until all money due to the Seller from the Buyer has been paid in full. The Buyer has no right to or sell the Contract Goods until all debts have been discharged to the Seller in full.

9.0 INSURANCE AND LIABILITY

THE SELLER shall indemnify the Purchaser against any liability for injury or damage to any person or any property when caused by its negligence or that of its agents or servants, subject to the following restrictions

- 9.1 The Seller's liability for damage shall not exceed £5,000,000 for any one event, or £5,000,000 for the aggregate of all events related to, or arising from the same Works.
- 9.2 THE SELLER shall not be liable for indirect or consequential loss arising from such injury or damage

10.0 FLUCTUATIONS

Unless otherwise stated all fees, rates or prices quoted by THE SELLER are based on prices and costs ruling at the date of the quotation or Confirmation Order, whichever is the later. In the event of any of the said prices and costs increasing before completion of the Works then THE SELLER shall be entitled to adjust the fees, rates or prices to be paid by the Purchaser by a reasonable amount in respect of such increase, such adjustment to include an addition for profit and overhead.

11.0 PURCHASER'S FACILITIES AND ATTENDANCE

- 11.1 The Purchaser shall be responsible for unloading, distribution, storage and hoisting of all goods and materials at the site of the Works whether delivered by THE SELLER or collected by the Purchaser.
- 11.2 The Purchaser shall provide at the site of the Works, free to THE SELLER, the following:
 - 11.2.1 Required exclusively for the Works, accommodation, toilets and welfare facilities as are required by any legislation, Health & Safety requirements, or as reasonably required by THE SELLER.
 - 11.2.2 All necessary builder's work in connection with the Works, all cleaning, removal of rubbish and protection of the Works.
 - 11.2.3 Free and uninterrupted access to the site of the Works at all reasonable times as required by THE SELLER.
 - 11.2.4 Indemnification of THE SELLER against all claims, loss, damage, costs or expenses incurred by THE SELLER arising out of any negligence or other act by the Purchaser affecting The Seller's statutory or common laws duties owed to its employers, agents or servants in respect of Health & Safety at Work or any other matter.
 - 11.2.5 Road closures, traffic control system, barriers and the like.
 - 11.2.6 Connections to permanent drains.
- 11.3 The Contract Price assumes that the ground within which the Works are to be installed on site is soil or other similar material that will enable excavation by hand tools
- 11.4 **HARD DIG** - In the event of the Site surface being of "vibrated concrete", or of the Site necessitating a Hard Dig of more than 12 inches (300 mm.), the Seller shall reserve the right to make a surcharge after a quotation and written acceptance. The Seller cannot be responsible for unique site conditions

12.0 WORKING HOURS

Unless otherwise specifically noted in a Quotation or Confirmation Order all prices offered by THE SELLER, and all programme periods, are based on working hours being between 8.30am and 5.00pm Mondays to Thursdays and 8.30am and 4.00pm Fridays only (excluding Bank or statutory holidays). In the event that THE SELLER works outside those hours, by reason of agreement to a request in writing, or as a necessary consequence of any act or default by the Purchaser, or of any person, firm or organisation not employed by THE SELLER, then the additional costs thereby incurred by THE SELLER shall be added to the Contract Price and paid to THE SELLER by the Purchaser.

13.0 VARIATIONS

The Purchaser may without invalidating the contract order an addition to, or omission from, or otherwise change, the Works, or may order a change in the sequence, or period of the Works. Any such variation shall be valued by THE SELLER on a fair and reasonable basis and the amount thereof shall be added to the Contract Price and paid to THE SELLER by the Purchaser. Wherever possible the value of variations shall be agreed in writing between THE SELLER and the Purchaser prior to the execution of the variation by THE SELLER. THE SELLER shall have the right to refuse to accept a variation if it significantly alters the character, or the period for performance, of the Works.

14.0 LOSS AND/OR EXPENSE

If THE SELLER incurs any loss and/or expense in the execution of the Works or any part thereof due to any act, omission, delay or disturbance caused by the Purchaser the amount of such loss and/or expense shall be added to the

Contract Price and paid to THE SELLER by the Purchaser.

Storage of delayed equipment.

The Seller will store delayed equipment "free of charge" for a period of 4 working weeks. Thereafter a charge which reflects The Seller's costs will be levied on a per weekly basis, this expense shall be added to the contract price paid to ATG ACCESS.

15.0 PAYMENT

Payment of amounts within the periods stated here or in The Seller's quotation or Confirmation Order is of the essence unless otherwise stated in The Seller's quotation or Confirmation Order.

- 15.1 The full value of all goods, materials, labour installation, testing, commissioning expended on the Works by THE SELLER will be invoiced each month to the Purchaser, **or**;
- 15.2 30% of the Contract Price will be invoiced upon receipt of a direction by the Purchaser to proceed with the Works, **and**;
- 15.3 a further 45% of the Contract Price (and any Variation) will be invoiced upon completion of testing, at The Seller's premises, of pre-assembled goods forming part of the Works; provided that the tests are to The Seller's satisfaction. After which inspection can be carried out as long as it does not effect the payment period, **and**;
- 15.4 The residue of the Contract Price and Variations will be invoiced immediately upon completion of the Works, or part thereof, at site (Completion to be as determined by THE SELLER).

and

- 15.5 the Purchaser shall pay to THE SELLER, not later than **30 days** after the date of an invoice, the full value of that invoice, **and**
- 15.6 If the Purchaser fails to pay The Seller's invoice in accordance with ii) herein then THE SELLER will be entitled to charge interest at 2% per month on any amount outstanding. The amount of any such interest shall be a debt due to THE SELLER by the Purchaser and shall be added to the Contract Price, and further.
- 15.7 if the Purchaser fails to make payment in accordance with these Conditions and such failure should continue for two working days after a notice in writing from THE SELLER then without prejudice to any other rights or remedies open to THE SELLER, THE SELLER may at its absolute discretion immediately suspend the execution of any outstanding work until the Purchaser has made good its default in payment to THE SELLER.
- 15.8 **or**, alternatively THE SELLER shall return to site and remove any items supplied by it which are affixed with bolts or similar connections (and the Purchaser is deemed to have given or reserved rights of access to the site for THE SELLER for this purpose).
- 15.9 in either event any additional costs which THE SELLER may incur as a result of such suspension or action shall be added to the Contract Price and paid to THE SELLER by the Purchaser, and THE SELLER shall be granted an extension of time for the full period of consequent delay.
- 15.10 no bonds, retentions or discounts shall apply to the contract between THE SELLER and the Purchaser.

16.0 SUB-CONTRACTING OF THE WORKS

THE SELLER shall have the right to sub-let the whole or any part of the Works without reference to the Purchaser; no such sub-letting shall, however, reduce or otherwise vary The Seller's obligations to the Purchaser.

17.0 VALUE ADDED TAX

All prices, rates, fees and costs quoted by THE SELLER are exclusive of Value Added Tax (VAT); all such prices etc to be paid by the Purchaser to THE SELLER will be increased by the addition of VAT calculated at the appropriate rate.

18.0 HIRE OF THE SELLER'S LABOUR

Where the services provided by THE SELLER comprise the supply of labour to the Purchaser, whether at the Purchaser's premises or at any other place of work, all necessary instructions, allocation of work, procurement of goods and materials, programming and supervision to effect the Works will be the sole responsibility of the Purchaser unless expressly stated otherwise in The Seller's quotation or Confirmation Order.

19.0 THE SELLER'S EMPLOYEES

The Purchaser will not engage or employ any person provided by THE SELLER to carry out services for the Purchaser within three months from the date on which such services were last provided by such a person on behalf of THE SELLER.

20.0 TESTING AND COMMISSIONING

- 20.1 Where testing and/or commissioning forms part of the Works and there is an express requirement that such tasks and/or commissioning are to be witnessed by the Purchaser, THE SELLER will apply best efforts to give not less than 2 working days notice in writing of its intention to carry out such work and the Purchaser shall arrange to witness that work.
- 20.2 If the Purchaser fails to witness any test and/or commissioning after receiving a notice, as above, then THE SELLER may carry out such testing and/or commissioning at the intended time and all such work shall be deemed to have been done in compliance with the Contract.
- 20.3 If the Purchaser fails to attend, following notice, then THE SELLER may, at its absolute discretion, defer the execution of the testing and/or commissioning until the Purchaser does attend; in such an event THE SELLER shall be granted an extension of time for the full period of the delay and the related and abortive costs arising therefore shall be added to the Contract Price and paid to THE SELLER by the Purchaser.

21.0 TERMINATION

If the Purchaser shall be in breach of any of these Conditions and such breach shall continue for two working weeks after THE SELLER has given written notice thereof to the Purchaser, then without prejudice to any other rights and remedies which THE SELLER may possess THE SELLER may terminate the Works

forthwith.

If the Purchaser, having been given notice of breach which it has remedied before THE SELLER has terminated the Works, commits any other breach then THE SELLER may terminate the Works forthwith without giving further notice.

Upon such termination as aforesaid the Purchaser will be liable to THE SELLER for any loss or damage suffered by THE SELLER in connection therewith, including the overhead and profit contribution due to THE SELLER within the price of any incomplete part of the Works.

22.0 GUARANTEE AND DEFECTS LIABILITY

- 22.1 Without prejudice to the Purchaser's statutory rights THE SELLER will pass to the Purchaser the benefit of any guarantee THE SELLER has received in respect of materials and goods supplied by THE SELLER. THE SELLER further undertakes to repair or replace (that choice being at the absolute discretion of THE SELLER) free of charge any defective materials or work where the defect occurs within the 12 months period following completion of the Works (with the exception of "Loops"); or if the works are completed in sections the completion of the relevant section; except for this undertaking THE SELLER shall have no liability for any loss whether direct, indirect or consequential.
- 22.2 Where beneficial use of the Works, or part thereof, is taken by the Purchaser, the first date of that use will be the start of the Defects Liability Period.
- 22.3 Where the work performed by THE SELLER amounts to repair or refurbishment of items provided by the Purchaser The Seller's liability under 24 (1) shall apply only to those parts replaced, or work done, by THE SELLER.

23.0 ADJUDICATION

In the event of a dispute between THE SELLER and the Purchaser concerning the whole or part of the Works that falls within the scope of the Adjudication provisions of the Housing Grants Construction & Regeneration Act and one of the parties seek resolution through those provisions then:

- 23.1 the Adjudicator may not require either party to pay or make contribution to the legal or any other costs of the party arising in the adjudication.
- 23.2 the Adjudicator shall require that his costs, fees and expenses are divided equally and paid half each by the parties, irrespective of his findings as to liability or otherwise as regards the dispute.

24.0 ARBITRATION

If at any time any question, dispute or difference whatsoever shall arise between THE SELLER and the Purchaser, in relation to, or in connection with the contract, either may give to the other notice in writing of the existence of such question, dispute, or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within thirty days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Electrical Engineers.

25.0 PROPER LAW

All Contracts pursuant of these Conditions shall be governed by and construed in accordance with the general laws of England and Wales.