

ATG Access Ltd – Maintenance Contract Terms & Conditions

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions the following definitions apply:-
- "**ATG Access**" means ATG Access Ltd (registered in England and Wales with company number 02643622 and with its registered office at Westhaven House Arleston Way, Shirley, Solihull, England, B90 4LH);
- "**Call Out Response Time**" means the call out response time detailed in the Contract Schedule at the "Cover Provided" section;
- "**Client**" means the person who purchases the Services from ATG Access and whose details are set out in the Order;
- "**Conditions**" means ATG Access's terms and conditions of supply set out in this document;
- "**Contract**" means the agreement between ATG Access and the Client for the supply and purchase of Services incorporating these Conditions, the Order and the Contract Schedule;
- "**Contract Price**" means the price detailed in the Contract Schedule and confirmed in the Order;
- "**Contract Schedule**" means the contract schedule pursuant to which these Conditions are attached;
- "**Data Protection Laws**" means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of personal data to which a party is subject, including the Data Protection Act 2018 and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
- "**Equipment**" means the equipment listed on the equipment schedule compiled by ATG Access and included in the Contract Schedule;
- "**Order**" means the order for the Services from ATG Access placed by the Client;
- "**Intellectual Property Rights**" means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled, and (f) in whichever part of the world existing;
- "**Services**" means the services stated in the Contract Schedule and which may include any of the following services to the Equipment:

PPM: Planned Preventative Maintenance Visits

Each visit includes the inspection, testing, lubrication and adjustment of the Equipment to the manufacturer's recommended standards. The quantity of visits required per annum will be determined by the frequency of operation and or customers requests and shall be detailed in the Contract Schedule.

RP: General Repairs required outside of PPM's

General repairs and adjustments to be made to the Equipment in accordance with the manufacturer's recommended standards.

PR: Parts Replacement

Provision of replacement parts where a repair to the original part is not possible. ATG Access reserve the right to change part specifications or suppliers without prior notice.

CO: Response to Call Out

From receipt of an official written call out request ATG Access will provide a Service Engineer to attend to the reported fault within the Call Out Response Time.

SW: Software Modification, Upgrade & Back Up

In certain cases involving repair or maintenance to system hardware it may be necessary to modify, upgrade or back up information to be taken prior to such repair or maintenance being carried out.

If required ATG Access will carry out such back up where possible and provided this provision is detailed in the Contract Schedule. In all other cases the Client must accept full responsibility for any back up required or any loss of data.

EW: Extended Warranty

To provide an extended warranty period to the Equipment. Any component which is deemed as an integral part of Equipment failing due to mechanical failure of the component (excluding items not covered under clause 4.1) will be replaced free of charge.

TS: Technical Support

ATG Access will provide telephone technical support to the Client during normal office hours (being between 0830 and 1730), unless stated otherwise in the Contract Schedule. The Client acknowledges that the Services provided by ATG Access are provided on the basis of information provided by the Client and as such ATG Access cannot be held liable for any failure to provide the Services in accordance with the Contract which arises directly from incorrect or incomplete information provision by the Client.

"**Service Engineer**" has the meaning given to it in clause 6.1.1;

"**Working Day**" means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England.

- 1.2 In these Conditions, unless the context requires otherwise:-
- 1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.5 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email); and
- 1.2.6 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.
- 1.3 In the event of any conflict or inconsistency between the terms of the Contract Schedule and these Conditions, these Conditions shall prevail.
- 2. APPLICATION OF THESE CONDITIONS**
- 2.1 These Conditions apply to and form part of the Contract between ATG Access and the Client. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Client's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that ATG Access otherwise agrees in writing.
- 2.3 No variation of these Conditions, a Contract Schedule an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of ATG Access.
- 2.4 ATG Access shall issue a Contract Schedule to the Client.
- 2.5 Each Order by the Client to ATG Access shall be an offer to purchase Services subject to these Conditions and the relevant Contract Schedule.
- 2.6 An Order may be withdrawn or amended by the Client at any time provided that notice in writing of such withdrawal or amendment by the Client is received by ATG Access before acceptance by ATG Access.
- 2.7 ATG Access may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to

supply any Services shall arise, until ATG Access's issuance of an Order confirmation (in writing).

3. **EXCLUSIONS**

3.1 ATG Access shall be under no obligation to provide any Services to any Equipment, if repair or parts replacement is required because of:-

- 3.1.1 misuse, overuse or incorrect use as against the manufacturer's recommendations;
- 3.1.2 vandalism, vehicular impact, any forces, terrorism, or other acts of nature outside the control of ATG Access;
- 3.1.3 damage to the Equipment caused by inclement weather or incorrect installation by a party other than ATG Access;
- 3.1.4 damage to the inductive loops or any further damage arising as a result of damage to the inductive loops.

3.2 The Services do not include electrical supplies or painting or re-finishing the Equipment.

3.3 Unless otherwise stated in the Contract Schedule, cover is not provided for the weekends, Bank Holidays or the ATG Access Christmas factory shutdown, or training days, or out of standard working hours, in each case as detailed in the Contract Schedule.

3.4 The following parts are not covered by the extended warranty option under normal fair wear and tear failure: bollard sleeves, flange plates, bollard tops, paint or galvanised finish and reflective stripes.

4. **EQUIPMENT SCHEDULE**

4.1 All items intended to be listed on the "equipment" schedule must be in reasonable condition acceptable to ATG Access. Any item found not to be in such reasonable condition during the initial visit will not be entered on the "equipment" schedule and shall not be treated as Equipment for the purposes of these Conditions unless and until it has been either replaced or refurbished at no cost to ATG Access to ATG Access's reasonable satisfaction. Where possible ATG Access will submit a quotation to the Client for such replacement or refurbishment.

4.2 Items may be added to or deleted from the "equipment" schedule during the term of the Contract if required by the Client subject to ATG Access consent, which will not be unreasonably withheld, and subject to agreement between the parties of an increase or reduction in the Contract Price as appropriate.

5. **TERM**

5.1 The Contract will commence on the commencement date stated in the Contract Schedule, and subject to clause 5.2 and earlier termination in accordance with these Conditions, shall continue in full force and effect for the period stated in the Contract Schedule (such period to be no less than 12 months) (the "Initial Term").

5.2 ATG Access shall, at least 1 month prior to expiry of the Initial Term, notify the Client in writing of the upcoming expiry of the Initial Term (the "Renewal Notice"). If the Client expresses an interest in extending the Contract past the Initial Term, the parties shall negotiate an extension to the Contract (it being acknowledged that the minimum renewal period shall be 12 months). ATG Access shall issue a Contract Schedule in respect of the extended period and the provisions of clause 2 shall apply in assessing when a legally binding contract is formed in respect of any extension.

6. **ATG ACCESS'S OBLIGATIONS**

6.1 ATG Access shall:-

- 6.1.1 ensure that all service engineers employed under the Contract shall be directly employed or supervised by ATG Access staff and shall be suitably trained and qualified ("**Service Engineers**");
- 6.1.2 compile an "equipment" schedule;
- 6.1.3 report all major faults in the Equipment when discovered to the Client, and to offer full repair or replacement services where applicable (it being

acknowledged by the Client that this will come as an additional cost as against the Contract Price to the extent ATG Access is not contractually bound under the terms of the Contract to provide such repair or replacement);

6.1.4 provide a Service Engineer's report sheet for signature by the Client.

7. **CLIENT'S OBLIGATIONS**

7.1 The Client shall:-

7.1.1 use the Equipment correctly in accordance with the manufacturer's instructions and with suitable operating supplies;

7.1.2 not allow any person other than ATG Access Service Engineer/s to adjust, repair or maintain the Equipment, unless formally trained by ATG Access as an approved maintenance engineer;

7.1.3 notify ATG Access immediately if any item of Equipment needs maintenance or is not functioning properly;

7.1.4 notify ATG Access immediately if any item of Equipment is struck/hit irrelevant if the system is still functioning properly.

7.1.5 constantly maintain suitable environmental conditions as necessary, to ensure reliable operation of the Equipment;

7.1.6 not make any movement of, alteration, addition or attachment to the Equipment except with ATG Access's prior written consent, which shall not be unreasonably withheld;

7.1.7 provide and maintain free uninterrupted access to the Equipment and otherwise not cause any hindrance or unreasonable delay to ATG Access Service Engineer/s in the execution of their duties (it being acknowledged by the Client that any extra time spent on site while Equipment is not accessible or otherwise unavailable, will be charged for as an extra to the Contract Price);

7.1.8 provide adequate lighting, power, and welfare facilities (including toilet facilities and cleaning down areas) as ATG Access Service Engineer may reasonably require at no cost to ATG Access;

7.1.9 indemnify ATG Access against all claims, loss, damage, costs or expenses incurred by ATG Access arising out of:-

- (a) any negligence or act by the Client its agent or servants affecting ATG Access's statutory or common law duties owed to its Service Engineer(s);
- (b) any other failure by the Client to comply with the terms of the Contract.

8. **LIMITATION OF LIABILITY**

8.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 8.

8.2 Subject to clauses 8.3, 8.4 and 8.5, ATG Access's total liability shall not exceed a sum equivalent to 120% of the Contract Price.

8.3 Subject to clause 8.5, ATG Access shall not be liable for consequential, indirect or special losses.

8.4 Subject to clause 8.5, ATG Access shall not be liable for any of the following (whether direct or indirect):-

- 8.4.1 loss of profit;
- 8.4.2 loss or corruption of data;
- 8.4.3 loss of use;
- 8.4.4 loss of production;
- 8.4.5 loss of contract;
- 8.4.6 loss of opportunity;
- 8.4.7 loss of savings, discount or rebate (whether actual or anticipated);

- 8.4.8 harm to reputation or loss of goodwill.
- 8.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:-
- 8.5.1 death or personal injury caused by negligence;
- 8.5.2 fraud or fraudulent misrepresentation;
- 8.5.3 any other losses which cannot be excluded or limited by applicable law.
9. **WARRANTY**
- 9.1 ATG Access warrants that the Services will be carried out by suitably skilled and competent Service Engineers and any parts supplied as part of ATG Access' Services shall be supplied subject to the ATG Access Standard Terms and Conditions for the Supply of Goods (as amended from time to time and set out at <https://www.atgaccess.com/terms-conditions/>).
- 9.2 Any defect, which occurs within 90 days of a repair which is assessed to be relating to the original repair carried out, will be repaired or replaced free of charge, providing the Client notifies ATG within 10 Working Days.
- 9.3 The Client acknowledges that:-
- 9.3.1 there are certain daily maintenance checks relating to the Equipment which the Client should undertake (as detailed in the relevant maintenance manual provided to the Client);
- 9.3.2 failure to undertake the required daily maintenance checks will invalidate the Client's warranty in respect of the affected Equipment.
- 9.4 Any repairs required to be carried out or parts to be replaced under an EW – Extended Warranty Contract will be at no charge to the Client (excluding where the terms of clause 3 apply). Extended warranty only applies if included in the Contract Schedule.
- 9.5 Except as set out in this clause 9 ATG Access gives no warranties and makes no representations in relation to the Services and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
10. **NON-SOLICITATION**
- 10.1 The Client will not engage or employ any Service Engineer within 6 months of any Service being provided to the Client, without, subject to clause 10.1, paying to ATG Access a fee equivalent to 100% of the gross annual salary or remuneration being paid to such person by ATG Access.
- 10.2 The Client will have no liability to ATG Access under clause 10.1 to the extent the engagement or employment comes as a result of a bona fide recruitment campaign undertaken by the Client.
11. **ASSIGNMENT**
- 11.1 The Client may not assign or transfer the Contract or any of its rights under the Contract without the prior written consent of ATG Access.
- 11.2 ATG Access may assign, subcontract or otherwise transfer any of its rights under the Contract without the prior written consent of the Client.
12. **FORCE MAJEURE**
- 12.1 If either party is prevented from or delayed in performing any of its obligations under the Contract, by any circumstances beyond its reasonable control, then that party (the "First Party") shall give written notice to the other party of such circumstances, and the First Party shall therefore be excused the performance of punctual performance of such obligations, for so long as the circumstances may continue.
13. **TERMINATION**
- 13.1 Either party may terminate the Contract at any time by giving notice in writing to the other party if:-
- 13.1.1 the other party commits a material breach of Contract and such breach is not remediable;
- 13.1.2 the other party commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach.
- 13.2 Without prejudice to clause 13.1, ATG Access may terminate the Contract immediately upon written notice to the Client if:-
- 13.2.1 the Client has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after ATG Access has given notification that the payment is overdue; or
- 13.2.2 the Client has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client; or
- 13.2.3 the Client suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade.
- 13.3 ATG Access may terminate the Contract at any time by giving the Client 90 days' written notice.
- 13.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the parties at any time up to the date of termination.
14. **CALL OUT FACILITY**
- 14.1 The request for a Service Engineer to attend site must be sent to ATG Access in writing, either by letter, or email.
- 14.2 Where ATG Access is providing "CO: Response to Call Out" Services, ATG Access Engineer(s) will attend site in accordance with the Call Out Response Time, but ATG Access cannot be held responsible for attending site outside this time due to circumstances outside of its control.
- 14.3 The parties acknowledge that the Call out Response Time target commences from the point at which a request for a Service Engineer is made by the Client in accordance with clause 14.1.
15. **PRICES AND PAYMENT**
- 15.1 In consideration of the provision of the Services, the Client agrees to pay the Contract Price upfront or monthly in advance within 30 days of the date of ATG Access's invoice (if the Client has a credit account agreed). ATG Access may set and vary credit limits from time to time and withhold all further supplies if the Client exceeds such credit limit.
- 15.2 Any call out that is not covered by the terms & conditions of the Contract will be subject to a call out charge at the hourly rates set out in the Contract Schedule. The Client agrees to pay any such charge in accordance with the payment terms detailed in this clause 15.
- 15.3 A call out which results in "No Fault Found" (NFF), including power fail resets, will result in an additional call out charge at the hourly rates set out in the Contract Schedule and the Client

- agrees to pay ATG Access such charge in accordance with the payment terms detailed in this clause 15.
- 15.4 Chargeable parts supplied by ATG Access during the term of the Contract shall be charged at 100% of their current list price and are subject to VAT at the standard rate, unless otherwise stated.
- 15.5 Without prejudice to any other remedy ATG Access may at any time by written notice to the Client, vary any or all of its charges if the cost to ATG Access of performing its obligations under the Contract are increased due to any breach by the Client of its obligations under the Contract.
- 15.6 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:-
- 15.6.1 ATG Access may, without limiting its other rights, charge interest on such sums at 3% a year above the base rate of NatWest Bank from time to time in force,
- 15.6.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment;
- 15.6.3 no call outs will be made until actual payment in full.
- 15.7 The Client shall make all payments in full and without deduction or set-off.
- 15.8 ATG Access reserves the right to pass on any congestion charges, toll, or fuel levies which it incurs in providing the Services and the Client agrees to pay the same in accordance with this clause 15.
16. **DATA PROTECTION**
- 16.1 In this clause 16, the terms "**Controller**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**Processing**" and "**Processor**" shall have the meanings given to them in Data Protection Laws, and "**Process**" and "**Processed**" shall be construed accordingly.
- 16.2 The Client and ATG Access shall each Process Personal Data in order to perform their respective obligations under the Contract (the "**Common Data**").
- 16.3 The Client and ATG Access acknowledge that the factual arrangement between them dictates the role of each party in respect of the Data Protection Laws. Notwithstanding the foregoing, both parties anticipate that, for the purposes of the Contract, in most instances, the Client and ATG Access shall each be a Controller of the Common Data in common with the other.
- 16.4 In respect of the Common Data, the Client and ATG Access shall each:
- 16.4.1 comply with their respective obligations under the Data Protection Laws;
- 16.4.2 use all reasonable efforts to assist the other to comply with such obligations as are respectively imposed on them by the Data Protection Laws; and
- 16.4.3 ensure that all fair processing notices have been given (and / or, as applicable, consents obtained) and are sufficient in scope to enable the other party to Process the Common Data as required in order to obtain the benefit of its rights, and to fulfil its obligations, under the Contract in accordance with the Data Protection Laws.
17. **INTELLECTUAL PROPERTY**
- 17.1 ATG Access shall own any and all Intellectual Property Rights created in its delivery of the Services.
- 17.2 ATG Access hereby licences to the Client, for the term of the Contract, the right to use any Intellectual Property Rights created by ATG Access in its delivery of the Services to the extent necessary for the Client to enjoy the benefit of the Services.
18. **NOTICES**
- 18.1 Any notice or other communication given by a party under these Conditions shall:-
- 18.1.1 be in writing and in English;
- 18.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 18.1.3 be sent to the relevant party at the address set out in the Contract.
- 18.2 Notices may be given, and are deemed received:-
- 18.2.1 by hand: on receipt of a signature at the time of delivery;
- 18.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
- 18.2.3 by email: on receipt of a delivery email from the correct address.
- 18.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:-
- 18.3.1 on the date specified in the notice as being the date of such change; or
- 18.3.2 if no date is so specified, fifth Business Days after the notice is deemed to be received.
- 18.4 All references to time are to the local time at the place of deemed receipt.
- 18.5 This clause does not apply to notices given in legal proceedings or arbitration.
19. **GENERAL**
- 19.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 19.2 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 19.3 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 19.4 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 19.5 No failure, delay or omission by the Contract in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 19.6 The Client shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.
- 19.7 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 19.8 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 19.9 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).