

# SURFACE GUARD: TERMS & CONDITIONS OF SALE

**Clause 1: General** 1. All supplies of goods and/or services by ATG ACCESS LIMITED ('ATG ACCESS LIMITED' or 'the Company') and the party taking delivery of goods sold or hired by ATG ACCESS LIMITED ('the Client') are subject to the following terms and conditions which shall apply to the exclusion of any terms or conditions whatsoever whether express, implied by law or otherwise including but not limited to the terms of specification in whole or in part.

2. The acceptance by the Client of the quotation provided by the Company constitutes an offer by the Client to purchase or hire the goods in accordance with these conditions. The contract in relation to the purchase or hire of the goods ('the Contract') shall be concluded when such acceptance is acknowledged by the Company. The Contract comprises these terms and conditions together with the provisions set out in the Company's quotation, the Client's acceptance and the Company's acknowledgement.

**Clause 2: Advice** Any advice or recommendation given by the Company or its employees or agents to the Client or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Client's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not confirmed.

**Clause 3: Quotation** 1. Each acceptance of a quotation for goods and/or services by the Client from the Company shall be deemed to be an offer by the Client to purchase goods and/or services subject to these conditions. 2. No quotation shall constitute an offer or tender but shall be deemed to be an invitation to treat. 3. Any quotation is given on the basis that no contract shall come into existence until the Company despatches an acknowledgement of the order to the Client. Subject to Clause 4 sub-paragraph 2 any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

#### **Clause 4: Prices**

1. Unless otherwise specified in the quotation, all prices quoted are exclusive of value added tax, excise duties and import duties where applicable, and all costs or charges in relation to delivery and unloading, collection and dismantling, and insurance, all of which the Client shall pay in addition when it is due to pay for the goods or services. 2. Notwithstanding Clause 3 sub-paragraph 3 the Company reserves the right in its absolute and unfettered discretion to vary the price from that quoted in the event of any variation in the cost of materials, labour, services, interest rates, transport and statutory charges between the date of contract and the date of despatch.

3. Where the Contract involves hire of goods, all invoices shall contain an additional amount of 5% of the Contract Price (being the amount to be paid by the Client to the Company for the hire of goods) for damage waiver unless otherwise agreed in writing ('Damage Waiver').

4. Prices are based on Monday to Friday working day or night as defined in the quotation. Prices for weekend working will incur an increase of 20% on delivery and installation / dismantling and collection prices. Charges for bank holiday working will need to be agreed prior to any work being undertaken.

5. Prices for rental rates per unit per week apply to per week or part week of hire.

#### **Clause 5: Payment**

1. Unless otherwise agreed in writing between a duly authorised representative of the Company and the Client, payment for any goods shall be made by the Client to the Company in pounds sterling within 30 days of the end of the month in which an invoice is delivered or deemed to be delivered. 2. Time for payment shall be of the essence. 3. No payment shall be deemed to have been received until the Company has received cleared funds. 4. All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision. 5. The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Client. 6. The Company reserves the right to charge the Client interest upon any overdue payment or part thereof at the rate of 4% per annum above the base rate of Lloyds Bank Plc from time to time in force until the date of actual payment.

7. All retention monies are to be paid in full upon completion of ATG ACCESS LIMITED work.

#### **Clause 6: Delivery and collection**

1. Although the Company will endeavour to meet any date or time quoted or given for delivery or collection of goods, such date or time is an approximate estimate only. In respect of delivery time and collection time it shall not be of the essence. 2. Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery or collection of the goods, nor shall any delay entitle the Client to terminate or rescind the contract unless such delay exceeds 21 days.

3. Any liability of the Company for non-delivery or non-collection of goods shall be limited either (at the Company's sole discretion) to replacing (or as necessary removing) the goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such goods. 4. The Company reserves the right to despatch and invoice any part of an order when available. 5. Where the goods are to be delivered by instalments each delivery shall constitute a separate contract and any failure by the Company to deliver or any claim by the Client in respect of any one or more instalments shall not

entitle the Client to treat the Contract as a whole as repudiated. 6. Upon receipt of the goods the Client, its employee or agent shall sign a delivery note provided by the Company. Such delivery note shall be confirmation by the Client to the Company that the goods have been visually inspected and found to be satisfactory. 7. Should a Client postpone or cancel a delivery without at least 1 working days' notice (i.e.: a minimum of 1 full working day not including weekends or bank holidays) then the Client agrees to pay for all consequential loss and costs suffered by ATG ACCESS LIMITED.

8. If the Client fails to take delivery of the goods within [three] business days of the Company notifying the Client that the goods are ready, then, except where such failure is caused by a force majeure event under Clause 17 or the Company's failure to comply with its obligations under the Contract:

(a) delivery of the goods shall be deemed to have been completed at 9.00am on the third business day after the day on which the Company notified the Client that the goods were ready; and

(b) the Company shall store the goods until delivery takes place, and charge the Client for all related costs and expenses (including insurance).

9. If 10 business days after the day on which the Company notified the Client that the goods were ready for delivery the Client has not taken delivery of them, the Company may, without prejudice to any other claim arising under the Contract, resell or otherwise dispose of part or all of the goods.

#### **Clause 7: Quality**

1. The Company warrants that on delivery the goods shall:

(a) conform in all material respects with their descriptions;

(b) be free from material defects in design, material and workmanship; and

(c) be fit for any purpose held out by the Company.

2. Subject to Clause 7 sub-paragraph 3, if:

(a) the Client gives notice in writing to the Company within a reasonable time of discovery that some or all of the goods do not comply with the warranty set out in Clause 7 sub-paragraph 1;

(b) the Company is given a reasonable opportunity of examining such goods; and

(c) the Client (if asked to do so by the Company) returns such goods to the Company's place of business at the Company's cost,

the Company shall, at its option, repair or replace the defective goods, or refund the price of the defective goods in full.

3. The Company shall not be liable for the failure of the goods to comply with the warranty set out in clause 7 sub-paragraph 1 in any of the following events:

(a) the Client makes any further use of the goods after giving notice in accordance with Clause 7 sub-paragraph 2;

(b) the defect arises because the Client failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the goods or (if there are none) good trade practice regarding the same;

(c) the defect arising as a result of the Company following any drawing, design or specification supplied by the Client;

(d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(e) the goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4. Except as provided in this Clause 7, the Company shall have no liability to the Client in respect of the failure of the goods to comply with the warranty set out in Clause 7 sub-paragraph 1.

5. The terms implied by sections 9 to 11 of the Consumer Act 2015 are, to the fullest extent permitted by law, excluded from the Contract.

6. These conditions shall apply to any repaired or replacement goods supplied by the Company.

#### **Clause 8: Risk**

The risk in the goods shall pass from the Company to the Client on delivery of goods to site, whether the Client is hiring or purchasing the goods.

#### **Clause 9: Title**

1. Where the Contract involves hire of goods and notwithstanding delivery and passing of the risk in the goods supplied by the Company the title and ownership of goods remains with the Company at all times.

2. Where the Contract involves sale of goods and notwithstanding delivery and passing of the risk in the goods supplied by the Company to the Client pursuant to Clause 8 hereof the property and title in the goods shall not pass to the Client and shall remain with the Company until the Company shall have received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Company to the Client for which payment is then due. 3. Until the property and title in the goods passes to the Client pursuant to the provisions of sub-paragraph 2 hereof the Client shall keep the goods as Bailee of the Company and in this connection shall set aside the goods separately from other goods in the Client's possession and ensure that the goods are carefully stored and remain identified as the property of the Company. 4. If at any time before the property and title in the goods passes to the Client pursuant to the provisions of sub-paragraph 2 hereof, the Client sells the goods or any part thereof he shall do so as Bailee and shall account to the Company as agent of the Company for the proceeds of sale thereof. 5. The Company shall be at liberty at any time before the property and title in the goods passes to the Client pursuant to the provisions of sub-paragraph 2 hereof to require the goods to be returned to it and if the requirement is not immediately complied with by the Client the Company may re-take possession thereof and may enter any premises or sites of the Client or any other

premises or sites where the goods may be for such purpose. Such return or repossession shall be without prejudice to the rights of the Company to recover all sums owing by the Client to the Company and to the Company's rights to claim damages against the Client for the breach of any obligations on the part of the Client arising under the Contract. Any expenses incurred in such return and re-possession of the goods or any damage caused to any land and/or site by the Company in exercise of its powers hereunder shall be borne by the Client. 6. Until ownership of goods passes to the Client the Company or any person nominated by it shall be entitled to enter on to the Client's site from time to time for the purpose of:- (a) Ensuring that the Client has complied with the provisions of sub-paragraph 3 hereof; and (b) Inspecting all books, accounts, records, documents and papers of the Client for the purpose of determining sums due to the Company by virtue of the provisions of sub-paragraph 4 hereof.

**Clause 10: Delivery, Installation and dismantling of goods**

- Any delays caused by factors under the control of the Client which prevent ATG ACCESS LIMITED from carrying out works as planned may result in additional charges to cover the costs incurred by ATG ACCESS LIMITED as a result, including standing time.
- All traffic management to be the Client's responsibility unless clearly agreed in writing prior to commencement of the works.
- All lighting for loading/offloading and installation/collection is to be provided by the Client.
- ATG ACCESS LIMITED does not carry Third Party Airside Liability insurance for working at airports and therefore ATG ACCESS LIMITED needs to be covered by the Client's policy (any policy excess to be paid by the Client) and any works are quoted on that basis.
- It is the Client's responsibility to ensure that the order and information contained in any quotation or specification is accurate and correct.

**Clause 11: Damage waiver**

- Where the Contract involves hire of goods, subject to sub-paragraphs 3 and 4 below, if the Client contracts to pay the Damage Waiver charge, being a sum equal to 20% of the Contract Price (where available as an option) ATG ACCESS LIMITED will waive ATG ACCESS LIMITED Terms and Conditions any further charge for rectifying or replacing accidentally damaged or lost goods.
- If the Client does not pay the Damage Waiver charge or if the Damage Waiver does not apply in accordance with sub-paragraph 4 (or otherwise was not available as an option) then the Client will be responsible for paying to ATG ACCESS LIMITED the replacement cost of the goods (being the ATG ACCESS LIMITED retail price at the time of loss, plus all ancillary costs, including but not limited to administration costs and lost hire time costs).
- Damage Waiver is provided subject to the following conditions:
  - (a) the Client must be able to demonstrate that reasonable care has been taken to prevent loss;
  - (b) theft of goods must be reported to the Police and a crime reference number obtained;
  - (c) the Client must notify ATG ACCESS LIMITED within forty eight (48) hours of the theft and obtain an ATG ACCESS LIMITED theft report form; the completed form must be returned to: ATG ACCESS LIMITED, Cobaco House, North Florida Road, Haydock Industrial Estate, Haydock, WA11 9TP;
  - (d) the maximum value of loss waived for any single Contract will be one thousand five hundred pounds (£1,500). Any loss above this value will be charged to the Client by ATG ACCESS LIMITED.
- Damage waiver does not cover and the Client shall remain responsible for:
  - (a) the first £50 of any loss of goods claim;
  - (b) loss due to the dishonesty, wilful default or negligence of any employee, sub-contractor or agent of the Client;
  - (c) loss of goods revealed only when an inventory is made or at collection;
  - (d) damage or loss caused by the Client's negligence or breach of the Contract; and
  - (e) damage or loss caused by or contributed to as a result of the misuse, neglect, alteration, mishandling or unauthorised manipulation of the goods by the Client.

**Clause 12: Entire agreement**

This Contract constitutes the entire agreement between the parties concerning its subject matter, and supersedes any previous accord, understanding or agreement, express or implied. Each party confirms that it has not relied upon any representation not recorded in this Contract inducing it to enter into this Contract.

**Clause 13: Intellectual property rights**

All intellectual property rights in all works, goods or supplies provided under this Contract shall be owned by ATG ACCESS LIMITED.

**Clause 14: Confidential information**

- Each party shall treat the Contract and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Contract or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this Clause 14.
- The obligations expressed in sub-paragraph 1 above shall not apply to any information which:
  - (a) is or subsequently comes into the public domain otherwise than by breach of this Clause 14.
  - (b) is already in the possession of the receiving party without an accompanying obligation of confidentiality
  - (c) is obtained from a third party who is free to divulge the same

(d) is independently and lawfully developed by the recipient or its sub-contractor outside the scope of the Contract.

3. So far as it may be necessary for the performance of the Contract or for the operation and maintenance of the subject matter of the Contract each party may divulge any information to be kept confidential under sub-paragraph 1 of this clause 14 to its employees, agents, professional advisers and sub-Contractors on a "need to know" basis but undertake that it will take all steps necessary to ensure compliance by such employees, agents, professional advisers and sub-contractors with the obligations as to confidentiality expressed in this Clause 14, including without limitation incorporating such clauses into its own contracts with such persons, and will be responsible to the other party for any failure by any employee, agent, professional adviser or sub-Contractor to comply with such obligations whether such employee, agent, professional adviser or sub-Contractor was aware of them or not.

4. Both parties shall ensure that they, their employees, agents and sub-Contractors shall observe the requirements of the Data Protection Act 1998 and any amendments or revisions thereto in the provision and use of the subject matter of the Contract and personal data processed under it and shall comply with any request made or direction given to the other which is directly due to the requirements of such Act.

5. On the conclusion or termination of the Contract both parties shall cease to use all copies of confidential information obtained from the other except in so far as the law requires the information be retained in which event it shall be kept until such period is over and in any event kept strictly confidential under the provisions of this clause.

6. The obligations relating to confidentiality shall continue notwithstanding termination of the Contract until such time as the information is no longer confidential in nature.

7. DATA PROTECTION - All personal data that ATG Access Ltd may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and The Buyers rights under the GDPR. For complete details of ATG Access Ltd collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Buyers rights and how to exercise them, and personal data sharing (where applicable), please refer to ATG Access Ltd Privacy Notice available from Upon Request.

**Clause 15: Limitation of liability**

- The Client must always rely on its own skill and judgement and recognise good civil engineering practice in relation to the goods and shall satisfy itself that goods specified are suitable for the Client's intended purpose.
- Subject to Clause 6 the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of: (a) any breach of these conditions; (b) any use made or resale by the Client of any of the goods, or of any product incorporating any of the goods; and (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- All warranties, conditions and other terms implied by statute or common law (save for the conditions implied in the Consumer Act 2015) are, to the fullest extent permitted by law, excluded from the Contract.
- Nothing in these conditions excludes or limits the liability of the Company: (a) for death or personal injury caused by the Company's negligence; or (b) under section 2(3), Consumer Protection Act 1987; or (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or (d) for fraud or fraudulent misrepresentation.

5. Subject to sub-paragraphs 3 and 4 hereof: (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and (b) the Company shall not be liable to the Client for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

**Clause 16: Termination**

- The Company shall have the right to terminate this Contract forthwith on the occurrence of any of the following events:- (a) the issue of a petition to wind up or for an administration order in relation to the Client. (b) the appointment of a receiver in relation to any property or asset of the Client. ATG ACCESS LIMITED Terms and Conditions (c) the appointment of an administrative receiver over the Client or its undertaking. (d) the Client ceasing to trade or becoming insolvent or the passing of a resolution for the voluntary winding up of the Client; or (e) the issue of a petition for bankruptcy order or if the Client shall make or offer to make any arrangement or composition with its creditors or if a statutory demand is served under the Insolvency Act 1986 or any statutory modification or re-enactment thereof or if a Trustee is appointed in relation to the Client or if any distress or execution shall be levied upon the property or assets of the Client or on the dishonour of any cheque or negotiable instrument drawn by the Client.
- If this Clause 16 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client, and if any goods have been delivered under any contract between the Company and the Client but not paid



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for, the price shall immediately become due and payable notwithstanding any previous agreement or arrangements to the contrary. If in the case of hire goods the products remain the property of ATG ACCESS Ltd and remain so throughout the term of the agreement./

## Clause 17: Force Majeure

1. For the purpose of the Contract the term Force Majeure shall mean:

- a. war and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo
- b. rebellion, revolution, insurrection, military or usurped power or civil war
- c. riot, commotion or disorder
- d. earthquake, flood, fire or other natural physical disasters
- e. a general industrial dispute not limited to the employees of ATG ACCESS LIMITED or the employees of any of its sub-contractors or sub-suppliers.

2. If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.

3. Neither party shall be considered to be in default of its obligations under the Contract to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Contract and which was not foreseeable at the date of the Contract.

4. If the performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period less than 30 days then during that period the Contract shall be considered as suspended. Upon the ending of the Force Majeure event the contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties.

5. If performance of the obligations of either party under the Contract is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Contract may be terminated by either party and, subject to sub-paragraph 6 below, neither party shall be liable to the other as a result of such termination.

6. If the Contract is so terminated then the Client shall pay to ATG ACCESS LIMITED such reasonable sum as may be agreed between the parties in respect of costs incurred and commitments already entered into by ATG ACCESS LIMITED at the date of the Force Majeure notice, less the amount of any payments already made to ATG ACCESS LIMITED at the date of the Force Majeure notice. If the amount of such advance payments made to ATG ACCESS LIMITED exceeds the sum due to ATG ACCESS LIMITED under this sub-paragraph then ATG ACCESS LIMITED shall repay the balance to the Client.

## Clause 18: Assignment and subcontracting

1. The Client shall not assign the Contract or any of its rights or obligations thereunder without first having received the written approval of ATG ACCESS LIMITED and payment of an administration charge of one hundred and fifty pounds (£150).

2. Until written approval is provided by ATG ACCESS LIMITED and the administration charge received by ATG ACCESS LIMITED this Contract remains in force with the Client.

3. The Company may assign the Contract or any part of it to any person, firm or company.

## Clause 19: Notices

1. Any notice or other communication which either party is required by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its address as specified in the Contract either (a) by hand; (b) by registered or first class post or special or recorded delivery or (c) by electronic mail transmission confirmed by registered, first class post or recorded delivery within 24 hours of transmission.

2. Notices are deemed to have been served as follows: delivered by hand; on the day when they are actually received, sent by post, special or recorded delivery; two working days after posting, sent by electronic mail; on the day of transmission if transmitted before 16.00 hours on the working day, but otherwise 09.00 hours on the following working day, provided in each case that the required confirmation is sent.

## Clause 20: Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing. Any failure or delay by ATG ACCESS LIMITED to insist at any time upon the performance of any of the terms, provisions or undertakings of the Client contained in the Contract or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the rights of ATG ACCESS LIMITED to require the future performance of any such term, provision or undertaking but the obligation of the Client with regard to the same shall continue in full force and effect.

## Clause 21: Severance

No clause, sub-paragraph or their relevant parts in this Contract may be held to be unenforceable or void except for the judgement of a court of competent jurisdiction. Should any clause, sub-paragraph or part thereof be so held to be unenforceable or void the remaining clauses, sub-paragraphs and their relevant parts shall remain in full force and effect to the extent that they are capable of remaining operative having taken account of the said court's judgement.

## Clause 22: No partnership

The parties are not in partnership with each other, nor are they agents of each other.

## Clause 23: Third parties

A person who is not a party to this Contract may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 ("the Act"), unless otherwise provided in this Contract.

Where any clause of this Contract entitles any person to enforce any term of this Contract under the Act, the parties reserve the right to vary that term or any other term of this Contract without the consent of that person.

## Clause 24: Variation

No amendment or variation of any of these terms and conditions shall be valid unless expressly agreed in writing by a duly authorised representative of the Company.

## Clause 25: Governing law and jurisdiction

The construction, performance and validity of the Contract shall in all respects be governed by the laws of England and the parties agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises ATG ACCESS LIMITED Terms and Condition out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).