



Hardware Supply Terms



PART B

HARDWARE SUPPLY TERMS

Where, pursuant to the Master Services Agreement, the Customer requests or requires the supply of Hardware and/or Software from ATSG, the terms of this Part B shall also apply.

AGREED TERMS:

1	Interpretation		only and they do not form part of the Order or the contract for sale of the Hardware.
	The definitions and rules of interpretation in the Master Services Agreement and in the terms set out in this Order shall apply.	3.3	Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by ATSG shall be subject to correction without any liability on the part of ATSG.
1.1	Definitions specific to this Part B:		
	Contract: means the Customer's Order and ATSG's acceptance of it in accordance with these terms and incorporating the Master Services Agreement and these terms.	3.4	ATSG reserves the right (but does not assume the obligation) to make any changes in the specification of the Hardware which is required to conform with any applicable legislation or, where the Hardware is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where ATSG is not the manufacturer of the Hardware, ATSG shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to ATSG but does not promise or warrant that this will be provided.
	Hardware: means the Hardware referred to in the Order and agreed to be purchased by the Customer from ATSG (including any part or parts of them).		
	Software: any operating system or other applications installed on the Hardware.		
2	Basis of sale	3.5	ATSG's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Hardware.
2.1	ATSG may deliver the Hardware by separate instalments (where multiple Hardware products are to be supplied). Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Order. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.	4	Charges
		4.1	All Charges for the Hardware shall either be as stated in the Order or as specified by ATSG at the time of Order. All Charges are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
2.2	No Order which has been acknowledged and accepted by ATSG may be cancelled by the Customer, except with the agreement in writing of ATSG and provided that the Customer indemnifies ATSG in full against all loss (including loss of profit), costs (including the cost of all labour and materials used and any unavoidable third party costs and charges), damages, charges and expenses incurred by ATSG as a result of cancellation.	4.2	The Charges for the Hardware shall be ATSG's quoted Charges or, where no Charge has been quoted (or a quoted Charge is no longer valid), the Charges listed in ATSG's price list current at the date of acceptance of the Order. ATSG's published export Charges list shall apply to exports of the Hardware as appropriate.
		4.3	ATSG reserves the right, by giving notice to the Customer at any time before delivery, to increase the Charges of any Hardware that has not been delivered to reflect any increase in the cost to ATSG which is due to market conditions or any factor beyond the control of ATSG (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials (including oil and gas) or other costs of manufacture), any change in delivery dates, quantities or specifications for the Hardware which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the
3	Quantity and description		
3.1	The quantity and description of the Hardware shall be as set out in the Order as accepted by ATSG.		
3.2	All samples, drawings, descriptive matter, specifications and advertising issued by ATSG, and any descriptions or illustrations contained in ATSG's catalogues, brochures or online marketing materials (including on the Online Ordering Tool) are issued or published for illustrative purposes		

Customer to give ATSG adequate information or instructions.

14 days' notice in writing, to dispose of such Hardware or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

5 Payment

5.1 Subject to any special terms agreed in writing between the Customer and ATSG in the Order or otherwise, ATSG may invoice the Customer for the Charges of the Hardware on or at any time after:

- a) the delivery of the Hardware including where the Customer has requested a phased delivery of the Hardware; or
- b) the Hardware is available for use by the Customer.

5.2 The terms of payment shall be:

- (a) in the case of Hardware delivered in the United Kingdom, within 14 days of the invoice date, whether or not delivery has taken place or title in the Hardware has passed to the Customer ("**Due Date**"); and
- (b) in the case of export sales, in accordance with clause 10 of the terms set out in this Order.

5.3 If the Customer fails to make payment in full on the Due Date, the whole of the balance of the Charges for the Hardware then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to ATSG as set out in the Master Services Agreement, ATSG shall be entitled to:

- (a) terminate the Contract for the provision of the Hardware in question or suspend any further deliveries of the Hardware (whether ordered under the same Contract or not) to the Customer;
- (b) appropriate any payment made by the Customer for the Hardware (supplied under any other Contract between the Customer and ATSG) as it thinks fit (despite any purported appropriation by the Customer);
- (c) suspend all further manufacture, delivery, installation or warranty service until payment has been made in full;
- (d) make a storage charge for any undelivered Hardware at its current rates from time to time;
- (e) stop any Hardware in transit; and
- (f) a general lien on all Hardware and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to ATSG. ATSG shall be entitled, on the expiry of

5.4 All Charges payable to ATSG under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This clause 5.4 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

5.5 ATSG may, without prejudice to any other rights it may have, set off any liability of the Customer to ATSG against any liability of ATSG to the Customer.

6 Delivery of the Hardware and acceptance

6.1 ATSG shall use its reasonable endeavours to deliver the Hardware on the date or dates specified in the agreed Order, but any such date is approximate only and ATSG may be delayed by receipt of the Hardware from its third party suppliers. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the Order. Time is not of the essence as to the delivery of the Hardware and ATSG is not in any circumstances liable for any delay in delivery, however caused.

6.2 Hardware may be delivered by ATSG in advance of the quoted Delivery Date on giving reasonable notice to the Customer.

6.3 Delivery shall be made during Normal Business Hours (excluding bank or public holidays). ATSG may levy additional charges for any deliveries made outside such hours at the Customer's request.

6.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If ATSG is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, ATSG may levy additional charges to recover its loss arising from this event.

6.5 The Customer shall be deemed to have accepted the Hardware when the Customer has had 3 Business Days to inspect it after delivery and has not exercised in writing its right of rejection in accordance with clause 11 of the terms in this Order.

6.6 ATSG shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to ATSG (or its carrier, if applicable) within 3 Business Days of delivery or the proposed delivery date of the Hardware and that the Hardware has been handled in accordance with ATSG's stipulations. Any remedy under this clause 6.6 shall be limited, at the option of ATSG, to

the replacement or repair of any Hardware which are proven to ATSG's satisfaction to have been lost or damaged in transit.

7 Risk and property

7.1 The Hardware shall be at the risk of ATSG until delivery to the Customer at the place of delivery specified in the agreed Order. ATSG shall off-load the Hardware at the Customer's risk.

7.2 Ownership of the Hardware shall pass to the Customer on the later of completion of delivery (including off-loading), or when ATSG has received in full in cleared funds all sums due to it in respect of:

- (a) the Hardware; and
- (b) all other sums which are, or which become due to ATSG from the Customer on any account.

7.3 Until ownership of the Hardware has passed to the Customer under clause 7.2 above, the Customer shall:

- (a) hold the Hardware on a fiduciary basis as ATSG's bailee;
- (b) store the Hardware (at no cost to ATSG) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as ATSG's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
- (d) keep the Hardware insured on ATSG's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of ATSG, ensure that ATSG's interest in the Hardware are noted on the policy, and hold the proceeds of such insurance on trust for ATSG and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 ATSG's right to possession of the Hardware before ownership has passed to it shall terminate immediately if any of the circumstances set out in this clause 7 below arise or if the Customer encumbers or in any way charges the Hardware, or if the Customer fails to make any payment to ATSG on the Due Date.

7.5 Until ownership of the Hardware is/are transferred to the Customer in accordance with clause 7.2 above, the Customer grants ATSG, its agents and employees an irrevocable licence at any time to enter any premises where the Hardware is/are or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to

remove it. All costs incurred by ATSG in repossessing the Hardware shall be borne by the Customer.

7.6 On termination of the Contract for any reason, ATSG's (but not the Customer's) rights in this clause 7 shall remain in effect.

7.7 ATSG may appropriate payments by the Customer to such Hardware as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary and may make such appropriation at any time.

8 Inspection and testing of Equipment

8.1 ATSG may:

- (a) test and inspect the Hardware on delivery to ensure that it complies with the requirements of the Contract; and
- (b) if so, requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

9 Software licence

9.1 If ATSG refers to a software licence in the acknowledgment of Order or Software is to be supplied under the Order, the Charges for the Hardware includes the licence fee for the Customer's right to use the Software.

9.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to ATSG within 7 days of installation of the Software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.

9.3 If no Software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following terms:

- (a) the Customer shall not copy (except to the extent permissible under Applicable Law which is not capable of exclusion by agreement or for normal operation of the Product(s)), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without ATSG's prior written consent;
- (b) the Customer shall not use the Software on any equipment other than the Product(s), and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
- (c) such licence shall be terminable by either party on 28 days' written notice,

provided that ATSG terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or ATSG is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and

- (d) on or before the expiry of this licence, the Customer shall return to ATSG all copies of the Software in its possession.

10 Export terms and compliance with policies

10.1 Where the Hardware is supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any contrary terms agreed in writing between the Customer and ATSG) override any other contrary provisions of these clauses set out in this Order.

10.2 The Customer shall be responsible for complying with any legislation governing:

- (a) the importation of the Hardware into the country of destination; and
- (b) the export and re-export of the Hardware,

and shall be responsible for the payment of any duties on it.

11 Warranty

11.1 Where ATSG provides its own Hardware ATSG:

- (a) warrants to the Customer that the Hardware is free from defects of workmanship and materials;
- (b) undertakes (subject to the remainder of this clause 11), at its option, to repair or replace Product(s) (other than consumable items) which is/are found to be defective as a result of faulty materials or workmanship within 6 months of delivery and installation.

11.2 Where ATSG provides third party Hardware it shall use reasonable commercial endeavours to obtain for the benefit of the Customer any third party warranties in respect of the Hardware but shall not be under an obligation to do so and shall have no liability to the Customer if it is unable to transfer the benefit of any third party warranty. The Customer shall be solely responsible solely responsible for the repair and maintenance of the Hardware once the original warranty has expired, and the Customer fails to order an extended warranty for any third party Hardware.

11.3 ATSG shall not in any circumstances be liable for a breach of the warranty contained in clause 11.1 or 11.2 above unless:

- (a) the Customer gives written notice of the defect to ATSG within 7 days of the time when the Customer discovers or ought to have discovered the defect; and
- (b) after receiving the notice, ATSG is given a reasonable opportunity of examining such Hardware and the Customer (if asked to do so by ATSG) returns such Hardware to ATSG and ATSG's cost for the examination to take place.

11.4 ATSG shall not in any circumstances be liable for a breach of the warranty in clause 11.1 if:

- (a) the Customer makes any use of the Hardware in respect of which it has given written notice under clause 11.3(a) above; or
- (b) the defect arises because the Customer failed to follow ATSG's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; or
- (c) the Customer alters or repairs the relevant Hardware without ATSG's written consent.

11.5 Where ATSG provides its own Hardware any repaired or replacement Hardware shall be under warranty for the unexpired portion of the six-month period.

11.6 ATSG shall not in any circumstances be liable for any damage or defect to the Hardware caused by improper use of the Hardware or use outside its normal application.

12 Remedies

12.1 ATSG shall not in any circumstances be liable for any non-delivery of Hardware (even if caused by ATSG's negligence) unless the Customer notifies ATSG in writing of the failure to deliver within 7 days after the scheduled Delivery Date.

12.2 Any liability of ATSG for non-delivery of the Hardware shall in all circumstances be limited to replacing the Hardware within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Hardware.

12.3 If ATSG's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event as defined in the Master Services Agreement), the Customer shall in all circumstances be liable to pay to ATSG all reasonable costs, charges or losses sustained by it as a result, subject to ATSG notifying the Customer in writing of any such claim it might have against the Customer in this respect.

12.4 In the event of any claim by the Customer under the warranty given in clause 11.1 of the terms in the Order, the Customer shall notify ATSG in writing of the alleged defect. ATSG shall have the option of testing or inspecting the Hardware at its current location or moving it to ATSG's premises (or those of its agent or subcontractor) at the cost of ATSG. If the Customer's claim is subsequently found by ATSG to be outside the scope or duration of the warranty in clause 11 of this Order, the costs of transportation of the Hardware, investigation and repair shall be borne by the Customer.

13 Intellectual Property Rights

13.1 In addition to the provisions set out in clause 10 of the Master Services Agreement the following provisions in respect of the IPRs in the Hardware shall apply:

- (a) the Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Hardware are and shall remain the sole property of ATSG or (as the case may be) the third party rights owner.
- (b) ATSG shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without ATSG's prior written consent.

(c) ATSG's Intellectual Property Rights in and relating to the Hardware shall remain the exclusive property of ATSG, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

(d) In relation to the Software:

- (i) the Customer acknowledges that it is buying only the media on which the Software is recorded and the accompanying user manuals;
- (ii) nothing contained in the Order, or the Agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- (iii) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence contracts, terms of use and registration requirements relating to them.