

UPS Power Services Ltd - Service and Maintenance Terms and Conditions

1. Definitions

In these terms and conditions, the following terms have the meaning set opposite them (or where not set out below, defined terms will have the meaning given in the Terms and Conditions of Sale):

"Additional Fees"	Any fees for the provision of goods and/or services outside the scope of the Services, including but not limited to those set out in clause 14, at such rates as set out in clause 17;
"Care Plan"	The care plan set out in the Contract Document, which specifies the Services to be provided;
"Commencement Date"	The commencement date of the Services, as specified in the Contract Document;
"Consumables"	Any consumable items, including but not limited to batteries transformers, chokes, capacitors, cooling fans and any other components which have a service life shorter than the design life of the Equipment;
"Contract Document"	The document to which these terms and conditions are attached which sets out details of the Services to be provided to the Customer;
"Customer"	UPSL's customer for the Services, as detailed on the Contract Document;
"Equipment"	The UPS, generator or equipment specified in the Contract Document;
"Fees"	Means the Maintenance Fee and the Additional Fees;
"Maintenance Contract"	The contract for the supply of the Services in respect of the Equipment between UPSL and the Customer, governed by the Contract Document, these Special Conditions and the Terms and Conditions of Sale;
"Maintenance Fee"	The fee for the Services specified in the Contract Document;
"Parts"	Any spare parts for the Equipment (not including Consumables) which are used as part of the Services;
"UPSL"	UPS Power Services Limited (company number: 10853351, registered at Bentley Bridge House, Matlock, DE4 5LE

"UPSL Personnel"	The employees, agents and sub-contractors of UPSL, which UPSL may engage to provide the Services;
"Preventative Maintenance"	Any scheduled maintenance to the Equipment, comprising the first service and annual services, as more particularly described in clause 5;
"Remedial Maintenance"	Any remedial or emergency maintenance to the Equipment, as more particularly described in clause 6;
"Services"	The Preventative Maintenance and Remedial Maintenance services to be provided by UPSL pursuant to the Contract Document;
"Site"	The Customer's site where the Services will be provided, as set out in the Contract Document;
"Special Conditions"	The Special Terms and Conditions set out in this document;
"Term"	Has the meaning given in clause 3.1;
"Terms & Condition of Sale"	UPSL's Terms and Conditions of Sale, attached to these Special Conditions;
"Visit(s)"	Visit(s) by UPSL Personnel to the Site for the purpose of carrying out the Services.

2. General

- 2.1. Entire Agreement - These Special Conditions along with the Terms and Conditions of Sale and the Contract Document shall apply to the Maintenance Contract for the supply of Services by UPSL to the Customer and shall apply to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply). They shall apply in place of and prevail over any terms or conditions contained or referred to in any documentation submitted by the Customer, in correspondence or elsewhere, or implied by trade custom, practice or course of dealing and shall constitute the entire agreement between UPSL and the Customer in respect of the Services.
- 2.2. Variations - No variation or addition to the Maintenance Contract shall be effective unless in writing and signed by or on behalf of both parties.
- 2.3. Conflict - In the event of any conflict between these Special Conditions and the Terms and Conditions of Sale, these Special Conditions shall take precedence.

2.4. Clause references – any references in these Special Conditions to ‘clauses’ shall be to clauses of these Special Conditions, unless expressly stated otherwise.

3. Term

3.1. Term - The Maintenance Contract shall commence on the Commencement Date and shall continue in force for an initial term of 12 months (or such other period as may be set out in the Contract Document) (“Initial Term”) and shall continue thereafter for successive periods of 12 months (each a “Renewal Term”) unless terminated by either party giving the other party no less than 30 days’ notice to expire at the end of the Initial Term or the then current Renewal Term (as applicable), unless terminated earlier in accordance with the terms of the Maintenance Contract (“Term”).

3.2. Renewal - UPSL will contact the Customer no less than 45 days before the Maintenance Contract is due for renewal and will advise the Customer of any changes to the terms, Services and/or Fees. In the event the Customer does not wish to continue with the Maintenance Contract, it shall notify UPSL in accordance with clause 3.1, otherwise the Customer will be deemed to have accepted any changes to the terms, Services and/or Fees.

4. The Services

4.1. Standard of Services - The Services provided by UPSL under the Maintenance Contract shall be to keep the Equipment in proper working order by providing Preventative Maintenance and Remedial Maintenance, in each case using sufficiently qualified competent employees, agents and sub-contractors in accordance with the Maintenance Contract.

4.2. Work not included - For the avoidance of doubt, the Services shall not include:

- 4.2.1. installation or maintenance of software;
- 4.2.2. painting or refinishing the Equipment or furnishing materials for this purpose;
- 4.2.3. Electrical work external to the Equipment or maintenance of attachments or other devices not specifically noted as part of the Equipment; and
- 4.2.4. those goods and works specified in clause 14.

5. Preventative Maintenance

5.1. Care Plan - UPSL will provide Preventative Maintenance for the Equipment in accordance with the particular Care Plan agreed which may be performed concurrently with Remedial Maintenance.

5.2. First Service - The Customer’s first service will usually be within 90 days of the Customer first taking out a Maintenance Contract. If UPSL has already carried out a first service or an annual service on the Equipment in the previous twelve

month period, it will not carry out another one. If UPSL has installed new Equipment for the Customer, the first service will be carried out as part of the installation.

- 5.3. Annual Service - One of the UPSL Personnel will Visit the Site once a year to check that the Equipment is working safely and in line with the relevant laws and regulations and manufacturer specifications. If these tests show that it is necessary to take the Equipment apart to adjust or clean it, UPSL will do so. During the Visit, the UPSL Personnel will fill in a service record.
- 5.4 Faults - If UPSL finds a problem or fault during any Preventative Maintenance Visits that needs to be fixed, UPSL will advise the Customer. This will be noted on the service record and someone from the UPSL maintenance team will follow up with a quotation.

6. Remedial Maintenance

- 6.1. Care Plan - UPSL shall provide remedial maintenance when notified by the Customer that the Equipment is inoperative in accordance with the terms in the Care Plan.
- 6.2. Logging calls - The Customer must provide a contract reference when registering a fault, and any failure to do so may result in a delayed response.
- 6.3. Response times - UPSL shall use reasonable endeavours to meet them. Calls need to be logged before 10am for contracts stating a same day response, calls logged after 10am will be attended the next Working Day. Response times are measured from the conclusion of the relevant telephone call to UPSL.
- 6.4. Parts - If the Maintenance Contract includes 'Parts', this will exclude all Consumables which will be charged in addition unless otherwise stated.
- 6.5. Maintenance Price match - UPSL will match any genuine maintenance quotation, provided that the quotation is for the same maintenance services, is a valid and genuine quotation and the Customer can provide sufficient proof of the lower price to UPSL.
- 6.6. Battery Price match - UPSL will match any genuine replacement quotation, provided that the quotation is for the same battery UPSL have originally have specified and quoted, is a valid and genuine quotation, is available on the same commercial terms and the Customer can provide sufficient proof of the lower price to UPSL.
 - 6.6.1. Resolution times - UPSL shall use reasonable endeavours to stated resolution or fix times. In the event that UPSL fails to meet a fix time, the customer will be entitled to a 20% discount from the renewal price for the Renewal Term, this will be the only compensation and total liability

UPSL will give for missing a fix time. This shall not apply in the event that any failure to meet the fix time is due to the Customer or any event outside UPSL's reasonable control.

- 6.7. UPSL Personnel - The Services will normally be carried out by a UPSL engineer however UPSL reserves the right to use sub-contractors, provided they are suitable and sufficiently qualified to provide the Services.
- 6.8. Repairs - If the fault is related to one UPSL has fixed for the Customer in the last twelve months, then the Customer will not have to pay any Additional Fees for resolving the same, subject to clause 14.1. The UPSL Personnel will use his/her expert judgement to decide whether a fault is related to an earlier fault or not and his/her decision will be final.
- 6.9. Safety advice - From time to time, UPSL may tell the Customer that the Equipment needs certain preventative repairs or improvements to keep it working safely and efficiently, which are not covered by the Maintenance Contract (for example, some Equipment at 5-6 years old will require fans and caacitors replacing in order to continue working correctly). If the Customer fails to follow UPSL's advice, this may affect the Customer's cover – but the Maintenance Contract will remain in place in accordance with its terms.

7. Visits

- 7.1. Arranging Visits - When a Preventative Maintenance Visit is due (or a Visit otherwise needs to be re-arranged), UPSL will contact the Customer to agree a date for the Visit but, if after two attempts, no date has been fixed, it shall be the Customer's responsibility to contact UPSL to re-arrange the visit. Failure in that event to contact UPSL to make such arrangements will result in the visit not being conducted, and the Customer will not be entitled to any credit or refund in this respect. In these circumstances, UPSL will still be entitled to the full Maintenance Fee.
- 7.2. Timescale for Visits - Subject to clause 7.1, UPSL will carry out any repairs or visits the customer is entitled to within a reasonable time, subject to clause 7.3.
- 7.3. Cancelled visit by UPSL – UPSL will use reasonable endeavours to meet all Visits it has arranged with the Customer, provided that if for any reason UPSL has to cancel the Visit it will let the Customer know as soon as practicable and will seek to re-arrange the Visit in accordance with clause 7.1.

8. Fees and Payment

- 8.1. Maintenance Fees - The Maintenance Fee shall be payable by the Customer to UPSL in advance on the Commencement Date in advance of renewal.

- 8.2. Additional Fees - All Additional Fees or other sums due to UPSL pursuant to the Maintenance Contract shall be payable within 30 days from the date of issue of the invoice.
- 8.3. VAT - All amounts payable to UPSL are, unless otherwise stated, exclusive of VAT which shall be paid in addition by the Customer.
- 8.4. Late payment – UPSL will have no obligation to provide any Services unless and until the Maintenance Fee has been received by UPSL in full. In the case of late payment UPSL shall be entitled to postpone the provision of the Services under the Maintenance Contract or to cancel the Maintenance Contract.
- 8.5. Quotes - Any prices quoted are net and exclude VAT and are valid for 30 days. The price shown assumes that an order is placed for the all Equipment and Services quoted. If a part order is placed then UPSL reserves the right to amend the quoted price accordingly. Quoted price(s) assume that all work is undertaken during normal working hours unless specifically stated otherwise.
- 8.6. Increase in Fees - UPSL reserves the right to increase the Maintenance Fee or any of its rates for Additional Fees by giving the Customer 45 days' prior written notice to take effect from the next Renewal Date. UPSL's rates which relate to Additional Fees will be reviewed from time to time and will be charged in accordance with the rates then in force.

9. Access to the Site and Delays

- 9.1. Access – The Customer shall grant UPSL Personnel, access to its Site for all Visits to enable UPSL to provide the Services. It is the sole responsibility of the Customer to ensure that:
 - 9.1.1. UPSL Personnel have all necessary access to the Site and the Equipment including but not limited to ensuring necessary access for (a) maintenance/repair of the Equipment; (b) removal of the Equipment or parts and (c) the delivery of replacement equipment or parts (if applicable under the Maintenance Contract); and there are clear routes for removal or siting of Equipment, to remove any obstacle hindering removal/siting, and to provide any necessary lifting equipment and operators for the same.
- 9.2. Failed Visit – In the event that UPSL Personnel are prevented or delayed, for whatever reason, from accessing the site or the equipment and as a result UPSL is unable to provide the services:

- 9.2.1. UPSL shall remain entitled to charge, and the Customer shall be obliged to pay, the applicable day rate for the engineers concerned, or if the UPSL Personnel are delayed in the commencement of the Services at the Site, UPSL shall be entitled to charge the Customer for all costs incurred as a result of the delay at its prevailing rates;
- 9.2.2 it shall be the responsibility of the Customer to arrange another Visit and any re-arranged Visit will be charged at the standard rate (and in the event the Customer fails to re-arrange the Visit, the Maintenance Contract will still continue (but the Visit will be deemed "used"); and
- 9.2.3 UPSL shall not be liable to the Customer for any failure or delay to provide the Services, or for any problem with the Equipment that would have been noticed or rectified in such a Visit.

- 9.2 Shut-Down Period - UPSL shall not be obliged to provide the Services during any specific Customer shut-down period unless agreed in advance and detailed in the Contract Document. This shall not prejudice UPSL's entitlement to the Maintenance Fee.

10. Testing, Safety and Bypass

- 10.1. Health and safety compliance - The Services shall be carried out by UPSL with full and proper regard to safety and in compliance with all relevant Health and Safety legislation.
- 10.2. Health and safety on Site - The Customer undertakes to take all reasonable precautions to protect UPSL's Personnel, while on site and to notify such UPSL Personnel of any applicable health and safety policies and security policies which apply at the Site. The Customer accepts full responsibility for and shall indemnify and hold harmless UPSL in respect of any claims, costs, demands and liabilities that UPSL may suffer as a result of failure by the Customer to comply with its obligations under this clause 10.1 or under any other applicable laws and regulations, including but not limited to the Health and Safety at Work Act 1974 in relation to UPSL Personnel whilst attending the Site.
- 10.3. Risks - UPSL will not commence work if it believes there is a health and safety risk, for example: hazardous chemicals, pest infestations, unsafe electrical installation. UPSL will not return to finish the work until the risk has been removed.

- 10.4. Asbestos - If any asbestos needs to be removed before UPSL can repair the Equipment, it will be the sole responsibility of the Customer to arrange and pay for its safe removal and certify to UPSL that this has been fully completed prior to a Visit. UPSL will not be liable for any failure or delay in providing any Services whilst it is awaiting the removal of asbestos and certification.
- 10.5. Tests - During the scheduled Preventative Maintenance Visits, the Customer shall provide UPSL with an opportunity to test the performance of the Equipment.
- 10.6. Customer's attendance at Visit - The Customer shall have a competent person in attendance when the Services are being performed to ensure that all proper procedures and safety precautions are carried out and to deal with any systems and equipment not forming part of the Equipment which have to be operated to enable the Services to be performed.
- 10.7. Bypass - During the performance of the Services, it may be necessary to bypass the Equipment with the result that other systems and equipment of the Customer receive direct mains supply and become subject to any variations therein. The Customer acknowledges and agrees to the risks associated with the bypass procedure and accepts that UPSL will have no liability whatsoever in connection with the same.

11. Customer Obligations

If UPSL's performance of the Services or its obligations under the Maintenance Contract is prevented or delayed by any act or omission of the Customer or the Customer's personnel (including but not limited to any breach of its obligations under clauses 5, 6, 7, 9 and 10, any delay in granting access to the Site or Equipment, any failure to have met any or all of its preparation obligations) UPSL shall not be liable for any costs, charges, losses or other liability sustained or incurred by the Customer arising directly or indirectly from such prevention or delay, and UPSL shall be entitled to recover from the Customer any costs or expenses of whatever nature incurred by UPSL as a result of any prevention or delay.

12. Parts and Consumables

- 12.1 Exchange of Parts - All Parts shall be supplied on exchange terms and will be equivalent standard parts of equal quality. UPSL normally provides new replacement Parts, but it reserves the right to provide refurbished Parts.
- 12.2 Removed Parts - All Parts removed for replacement shall become the property of UPSL. UPSL will be free to dispose, or refurbish them at its own discretion.
- 12.3 Spare Parts - UPSL will provide replacements with similar functionality but not necessarily the same features or an identical make and model. If the UPSL personnel attending the Visit does not have the Parts he/she needs at

the time, UPSL will first try to get original Parts, or if it is unable to, will seek to obtain reconditioned Parts from the original manufacturer or an approved supplier. If UPSL remains unable to source the parts UPSL needs after that, UPSL may need to cancel the Maintenance Contract. If UPSL has agreed to cover certain equipment but warned the Customer that it might be difficult to find spare parts, UPSL will use reasonable endeavours, to repair the equipment.

- 12.4 UPSL batteries and 5-year services - Over time, Equipment batteries will degrade and need replacing, and the Customer acknowledges and agrees that these are the very items that power the Equipment in a power cut. If UPSL has advised these require replacing and this has not been completed UPSL may not attend emergency call outs until the batteries have been replaced. UPSL will tell the Customer if the Customer's system needs replacement batteries to enable the system to continue to work properly.
- 12.5 Charges- The replacement of any batteries and associated labour by UPSL will be chargeable as an Additional Fee, as batteries are not included in any cover level.
- 12.6 Third party replacement of batteries - If a third party performs a battery replacement for the Customer, the Customer may need to provide relevant information to UPSL.

13. Warranty

- 13.1. Twelve month warranty - UPSL will repair or replace any faulty parts it has supplied, or fix any faulty work that it has carried out, within the previous twelve month period, subject to clauses 11, 14.1 and 15.
- 13.2. Third party warranty - If the Customer's Equipment is covered by a third party or manufacturer's warranty, it is the Customer's sole responsibility to make sure that any work UPSL undertakes as part of the Services does not affect that warranty.

14. Additional Services and Fees

- 14.1. The Customer shall be charged and invoiced separately for any goods or services not covered in the Maintenance Contract at UPSL's rates prevailing at the time and, where practicable, such charges shall be agreed by UPSL and the Customer before commencement of the same including but not limited to:
 - 14.1.1 any Parts (not specifically covered in the Care Plan);
 - 14.1.2 maintenance or repair of modifications or additions to the Equipment made without the prior consent of UPSL;
 - 14.1.3 peripheral items and Consumables (including but not limited to

batteries and transformers);

14.1.4 defects caused by battery failure;

14.1.5 defects arising from any foreign body entering the Equipment other than through UPSL's negligence;

14.1.6 defects arising due to vermin gaining access to the Equipment;

14.1.7 the installation and fitting of spares not supplied by or on behalf of UPSL;

14.1.8 defects resulting from misuse, neglect, wilful damage of or accident to the Equipment or failure to follow the operating and maintenance manuals for the Equipment or written or oral instructions or advice of UPSL;

14.1.9 loss or damage caused by a force majeure event (as set out in clause 14 of the Terms and Conditions of Sale), lightning, water (from sprinkler devices or otherwise) flooding, explosion, earthquake, aircraft or other devices or articles dropped on the Equipment or failure of the room ventilation; or

14.1.10 further maintenance Visits required following an abortive visit by UPSL resulting from inadequate notice unjustified or unauthorised calls, inaccurate instructions, inaccessibility of the site or unavailability of the Equipment for examination, surveillance, maintenance or repair.

14.2 All additional services and goods supplied in accordance with clause 14.1 will be subject to Additional Fees.

15. General Exclusions

The Customer acknowledges and agrees that:

15.1. no credit will be offered in lieu of carrying out an annual service;

15.2. the Maintenance Contract does not include cover for any faults or design faults that:

15.2.1. were already in existence when the Equipment system was installed or present previous to the Commencement Date;

15.2.2. arise due to issues UPSL has made known to the customer not limited to clause 6.12;

- 15.2.3. UPSL couldn't reasonably have been expected to know about (not limited to closed protocol Equipment to which UPSL have no access, or previous password locked Equipment);
- 15.2.4. UPSL will not be liable for or provide maintenance in respect of any damage caused by the customer or if anyone other than UPSL carries out any work on the equipment and damages it;
- 15.3. repair or replacement of any parts that have been deliberately damaged or misused (and it shall be at the discretion of the UPSL Personnel to use his/her expert judgement to determine how the damage was done);
- 15.4. UPSL will not repair any damage that is caused by changes in, or problems with, the supply of the Customer's electricity;
- 15.5. if the system doesn't have an external bypass switch UPSL may not be able to complete Equipment repairs without turning off the supply and shutting down the load. It will be up to the Customer to arrange a suitable time that the supply can be turned off, this will incur extra charges for re-attendance;
- 15.6. the Services do not include repairing or replacing any damage caused by extreme weather, flooding, structural issues, fire or explosions, or any other kind of damage that would typically be covered by insurance;
- 15.7. UPSL is not responsible for the Customer's network connection or for the data transmission to, or from, appliances, devices or control systems; and
- 15.8. any new Equipment added to the Maintenance Contract during the Term at the same Site, UPSL will arrange for renewal together.

16. Cancellation

- 16.1. UPSL shall be entitled to cancel the Customer's Maintenance Contract (without liability to the Customer) in the following circumstances (in UPSL's sole discretion):
 - 16.1.1. UPSL finds a pre-existing fault during the Customer's first service;
 - 16.1.2. UPSL is unable (after making reasonable attempts) to source the parts needed to repair the Customer's Equipment;
 - 16.1.3. UPSL Personnel are subject to unreasonable conditions or treatment whilst carrying out a Visit (including but not limited to being subject to health and safety at risk or subjected to physical or verbal abuse);
 - 16.1.4. the Site is unfit, unsuitable or unsafe to work in;
 - 16.1.5. Access to the site for visits is not facilitated, despite several attempts; and

- 16.1.6 The customer fails to make permanent repairs or improvements to the equipment, following advice from UPSL.
- 16.2. In the event of cancellation by UPSL in accordance with clause 16.1, UPSL will credit the Customer on a pro rata basis for the remaining period of the term less reasonable costs for administration and any costs from Visits already performed.

17. Working hours and day rate charges

Unless otherwise agreed in writing by UPSL, working hours and non-working ours are as follows:

	Hours	Hourly Rate*
Normal working hours	Monday to Friday, 09:00 – 17:00	£95.00
Outside normal working hours	Monday to Friday 17:00–09:00 Saturday & Sunday 09:00–17:00	£120.00
Outside normal working hours +	Saturday 00:00 – 09:00 / 17:00 – 00:00 Sunday & Public Holidays	On Request
*covering all travelling and mileage		