

UPS Maintenance Contract Agreement

Terms and Conditions of Purchase v.1.1

By purchasing Verve Distribution Services UPS Maintenance Contract, you agree to the following terms:

1. Definitions.

“UPS” means Uninterruptible Power Supply.

“Hardware” means the hardware originally provided by the manufacturer to the customer.

“UPS System” means any component that is required to allow full functionality of the UPS. This may include: -

The UPS itself:

- External batteries and cabinets
- Breakout panels and associated switches
- Environmental equipment

“Consumables” means replaceable components with an expected lifetime, as indicated, and are therefore considered a consumable item (approx. hours).

- I. Fans: 30,000
- II. Electrolytic Capacitors: 50,000
- III. Filter Capacitors: 60,000
- IV. Lithium Batteries on PC Boards: 80,000
- V. UPS Battery (internal or external): dependent on battery life

“UPS Maintenance Services” means the UPS Maintenance Services provided by Verve Distribution Services Limited pursuant to this Agreement.

“Agreement” means this agreement for the provision of the UPS Maintenance Services.

“Confidential information” means all confidential information relating to the Hardware Verve Distribution Services Limited’s and MB Technology Services Limited Intellectual Property Rights, together with all confidential information (in whatever media) related to Verve Distribution Services Limited’s businesses.

“Documentation” means written and/or online material provided by Verve Distribution Services Limited or MB Technology Services Limited

“Customer” means the company that purchased the UPS Maintenance Package

“UPS Maintenance Package” refers to the UPS Maintenance Package the customer purchased, either ‘Gold’ or ‘Platinum’ packages detailed on purchase.

“UPS Maintenance Package Services” refers to the Maintenance Inclusions Schedule of items included in the UPS Maintenance Package, ‘Gold’ or ‘Platinum’.

“Effective date” means the date the customer purchased the UPS Maintenance Service for the Hardware, or such other date as may be stipulated by Verve Distribution Services Limited.

“Expiration date” means the date the customer purchased UPS Maintenance Service expires. The Expiration Date corresponds with the date the UPS Maintenance Package was purchased plus 1 calendar year.

“Normal business hours” means Monday to Friday excluding public holidays, 9am to 5pm.

“Normal load” means where the normal day to day service is present on the UPS System.

“Maintenance window” means the time frame the required maintenance will take place. This includes possible shutdown of the UPS System and sufficient time to return the UPS System to functionality.

“Response Time” means the time taken for Verve Distribution Services Limited and/or partner(s) to respond after the fault/issue has been logged.

“Intervention” means an involvement by Verve Distribution Services Limited and/or partner(s), agreed and on the behalf of the customer.

“Fault Ticket” is a unique number issued by Verve Distribution Services Limited and/or partners to the customer.

“Repair” means to return the UPS System to functionality with normal load using the customers equipment.

“Substitute” means to substitute the UPS as per agreement.

“Excluded Services” are chargeable services not within the parameters of the agreement, that maybe required that are and/or not envisaged, that are required to be completed to return the system to functionality.

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar

or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

“Partner(s)” means any third-party, supplier or sub-contractor that has the applicable certifications/licenses and insurances to provide the required service(s) at customer site on behalf of Verve Distribution Services Limited.

“Service(s)” means any action(s) required to maintain specific equipment listed within the agreement.

2. Terms.

During the term of this Agreement, Verve Distribution Services Limited will provide the customer with the following UPS Maintenance Services consistent with the UPS Maintenance Package that was purchased:

- 2.1. Verve Distribution Services Limited reserves the right, at its sole discretion to use any qualified third-party supplier with the necessary applicable and current certifications, to maintain the UPS hardware defined by serial number, under the specific UPS Maintenance Package purchased by the customer.
- 2.2. Verve Distribution Services Limited will use reasonable endeavours to provide the customer with the UPS Maintenance Package services as purchased e.g., ‘Gold’ Or ‘Platinum’.
- 2.3. Excluded Services are services not covered under contract by Verve Distribution Services Limited and/or partners, or any other subcontracted enterprise approved by Verve Distribution Services Limited. Excluded Services may be required to complete the required maintenance and will be charged separately after completion.
 - I. Maintenance or repair of electrical installations, accessories, additional equipment, or machines outside of the parameters of the agreement listed.
 - II. Maintenance or repair after external short circuits, improper usage including control settings, environmental negligence including ventilation and soiling. Fire, theft, water, or anything other beyond the control of Verve Distribution Services Limited and partners.
 - III. Maintenance or repair after issues and incidents pertaining to substandard maintenance previously carried out. This includes missed maintenance and incorrect scheduling of maintenance or maintenance by non-qualified or non-certified individuals and providers.
 - IV. Intervention specifically requested by the customer other than planned by Verve Distribution Services Limited and/or partner(s).
- 2.4. Routine maintenance will be completed annually on a date that is mutually convenient to Verve Distribution Services and/or partner(s). This will be within normal business hours.
- 2.5. Verve Distribution Services Limited and/or partner(s) reserves the right to temporarily substitute any faulty UPS that is subject to the UPS Maintenance

Package, with a functioning equivalent, regardless of make, model, age, or condition.

- 2.6. If an agreed intervention is completed 8 weeks before scheduled maintenance. Maintenance and the intervention will be completed in the same visit.
- 2.7. The customer is required as a prerequisite to allow full access to the UPS System to complete any scheduled maintenance or repair. If not, and the work cannot be completed, then the visit will be charged accordingly.
- 2.8. In the likelihood a shutdown is required, the customer must schedule this in conjunction with the repair or maintenance window. If adequate time is not scheduled, then the visit will be charged accordingly and a further visit will be rearranged at Verve Distribution Services Limited's discretion.
- 2.9. Verve Distribution Services Limited and/or partner(s) will respond to the customer within the agreed response time stated within the specific UPS Maintenance Package Services listed in the Maintenance Package Services.
- 2.10. Verve Distribution Services Limited and/or partner(s) will resolve the requested fault within the designated response time. Verve Distribution Services Limited and/or partner(s) will not be responsible for delays that are outside reasonable control.
- 2.11. Consumables that require changing will be chargeable items.
- 2.12. Verve Distribution Services Limited and/or partner(s) will attempt to repair the UPS within normal office hours unless otherwise agreed with the customer once a fault ticket has been raised.
- 2.13. If Verve Distribution Services Limited and/or partner(s) deem the UPS or one of its components irreparable, then Verve Distribution Services Limited and/or partner(s) will substitute the UPS as per agreement until Verve Distribution Limited and/or partner(s) can repair if feasible.
- 2.14. Consumable items are excluded from the UPS Maintenance contract and are therefore chargeable.
- 2.15. If a repair of the UPS is deemed not feasible for any reason by Verve Distribution and/or partner(s), then an alternative will be sourced by Verve Distribution Limited.
- 2.16. If Verve Distribution Services Limited and/or partner(s) cannot complete the scheduled maintenance as planned due to access issues, denial of UPS shutdown or any other such reason or waiting time, then the visit will be charged accordingly.
- 2.17. Any recommendations given by Verve Distribution Services Limited and/or partner(s) with regards to component/part replacement, related or accepted

good practice, that is not fulfilled by the customer, then future site visits due to faults related will be charged accordingly.

- 2.18. The customer must provide adequate opportunity to place normal load over the UPS system once the maintenance has been completed. Failure to do so will result in a chargeable revisit to re-test the UPS system.
- 2.19. It is the customer's responsibility to provide qualified personnel to oversee and perform safety procedures whilst work is carried out by Verve Distribution Services Limited and/or partner(s).
- 2.20. The UPS Maintenance Contract Package

Change of Location The rates established in this contract are valid as long as the system is operating where it was initially installed.

3. Warranties & Disclaimers

- 3.1. Verve Distribution Services Limited and/or partner(s) shall not be liable for any issues including downtime or damage, if the customer declines or cannot provide a certified individual to carry out any onsite safety procedures.
- 3.2. Replacement Hardware provided by Verve Distribution Services Limited and/or partner(s) to the customer as part of the UPS Maintenance Services Package where the original Hardware is deemed defective by Verve Distribution Services Limited and/or partner(s) as a result of:
 - (i) fair wear and tear, wilful damage or negligence, failure to upgrade firmware as recommended by manufacturer, damage caused during transportation, damage caused by accident, abuse, or misapplication,
 - (ii) power surges, water exposure, or acts of nature (including but not limited to lightning or flooding),
 - (iii) the operation of the Hardware in environmental conditions or configurations outside those prescribed in the Documentation,
 - (iv) the customer's material failure to maintain or store the Hardware in accordance with the Documentation provided to the customer with the Hardware or provided during the term of this Agreement,
 - (v) maintenance of the Hardware by non-authorized suppliers; and
 - (vi) causes unrelated to the Hardware as delivered to the customer, including without limitation, modifications to the Hardware, made by the customer or by a third party on the customer's behalf.
 - (vii) The hardware is non-functional or not fit for purpose at purchase of the UPS Maintenance Package.
- 3.3. The UPS Maintenance Services are subject to satisfaction of the following conditions:

- (i) receipt by Verve Distribution Services Limited of the applicable service fee(s).
- (ii) verification to the satisfaction of Verve Distribution Services Limited and/or partner(s) that the Hardware is functional as at the Effective date.
- (iii) receipt by Verve Distribution Services Limited and/or partner(s) of a written description of the failure of the Hardware alleged or found to be defective as soon as practical following discovery of such defect(s)/failure(s) and confirmation that the Hardware has not and shall not be operated from the date of discovery of the defect(s)/failure(s).
- (iv) verification of the defect(s)/failure(s) by Verve Distribution Services Limited and/or partner(s).
- (v) that the UPS, UPS System, hardware, or any other component that is covered in the UPS Maintenance Service Agreement has been relocated without prior consent from Verve Distribution Services Limited.
- (vi) Verve Distribution Services Limited's and/or partner(s) entire liability and the customer's exclusive remedy under this Agreement for shall be the provision of the UPS Maintenance Package Services in accordance with this Agreement. The UPS Maintenance Package Services are non-transferable.

Verve Distribution Services Limited and/or partner(s) will not be liable for direct losses arising in relation to this Agreement and will not be liable whether based on a claim in contract, representation, misrepresentation (whether innocent or negligent), tort (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, for any for any loss of profit, loss of business opportunity, loss of goodwill, loss of sales, loss of reputation or any indirect or consequential losses. Except in relation to death, personal injury, fraudulent misrepresentation, or fraudulent misstatement or in relation to any other liability which cannot by law be limited or excluded, Verve Distribution Services Limited's liability under or in connection with this Agreement shall be limited to the total fee(s) paid by the customer under this Agreement.

4. Confidentiality.

The customer will not disclose Confidential Information other than to persons in the customer's organisation who have a need to know and who will be required to comply with this section 4. The customer will not use Confidential Information for any purpose inconsistent with the terms of this Agreement. Confidential Information does not include:

- (i) information publicly known prior to disclosure
- (ii) information coming into the customer's lawful possession without the protection of any confidentiality obligation or the breach of any confidentiality obligation; and
- (iii) information required to be disclosed pursuant to regulatory action or court order, provided adequate prior written notice of any request to disclose is given to Verve Distribution Services Limited. Upon the expiry or termination of this Agreement, the customer will upon the instruction of Verve Distribution Services Limited either delete all Confidential

Information or return all Confidential Information to Verve Distribution Services Limited.

5. Term & Termination.

- 5.1. The term of this Agreement commences on the Effective Date and expires on the Expiration Date unless terminated in accordance with its terms
- 5.2. Verve Distribution Services Limited may terminate this Agreement where:
 - a) the customer commits a breach of this Agreement which is irremediable or (if that breach is remediable) the customer fails to remedy that breach within a period of 30 days after being notified in writing to do so,
 - b) the customer fails to pay any undisputed amount due under this Agreement on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment: or
 - c) the customer suffers an insolvency event. Verve Distribution Services Limited may terminate this agreement at any time for any or no reason upon the giving of 30 days' written notice to the customer.

6. General.

- 6.1. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- 6.2. This Agreement constitutes the entire agreement of the parties with respect to the provision of the UPS Maintenance Services by Verve Distribution Services Limited and supersedes and cancels all prior agreements between the parties, written, oral, or implied with respect to the subject matter hereof. Any amendment of this Agreement will not be binding on the parties unless set out in writing, expressed to amend this Agreement, and signed by authorised representatives of each of the parties.
- 6.3. Any terms and conditions contained in the customer's purchase order, order acknowledgement, or on any other form that are inconsistent with or additional to this Agreement shall have no force or effect whatsoever. Verve Distribution Services Limited reserves the right to change the UPS Maintenance Services and/or the terms of this Agreement, including without limitation the right to discontinue offering the UPS Maintenance Services on selected or all Hardware, at any time without notice and without incurring any liability.
- 6.4. Neither party shall assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all its rights and obligations

under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

- 6.5. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- a. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - b. sent by email to the address notified by each party to the other from time to time.

Any notice shall be deemed to have been received:

- a) if delivered by hand, at the time the notice is left at the proper address.
- b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
- c) if sent by email, at the time of transmission, or, if this time falls outside working hours in the place of receipt, when working hours resume. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

Maintenance Inclusions Schedule

- Preventative measures UPS.
- Cleaning of the UPS Modules & Associated Equipment.
- Visual inspection for evidence of component damage or overheating and check external electrical connections.
- General clean and removal of accumulated dust where necessary.
- Mechanical inspection and check of all components and connections within the UPS modules and associated equipment.
- Replacement of defective parts or the preventative replacement of parts with a defined lifetime – important in the UPS operation (dependant on contract and/or any special arrangements: parts and labour will be invoiced separately).
- Updating of the equipment: measure and record output voltage, frequency and current.
- Check operation of cooling fans.
- Check and adjust parameters for correct operation of UPS.
- Check battery connections. Measure and record battery voltage and current partial discharge.
- If specifically requested, measure and record each battery cell voltage. Access permitting.
- Overall performance test including mains failure simulation (with/without load dependent on customer).
- Record ambient temperature.
- Report all defects and suggest action to fix.
- Recover UPS System to normal operation.

Maintenance Package Services Gold Schedule.

- Next business day response
- 24/7 Technical support
- Temporary UPS in the event of failure (up to 10kVA single phase)

Maintenance Package Services Platinum Schedule.

- 4 hour response
- 24/7 Technical support
- Temporary UPS in the event of failure (up to 10kVA single phase)
- One preventative maintenance visit per year (as per UPS Maintenance Agreement).
- Service report
- Emergency callout - Duty Engineer (24 hour 365 days). Telephone 0800 069 9275,