

Instance automatics limited

Terms and Conditions of Business

THIS IS A LEGALLY BINDING CONTRACT BETWEEN YOU ("THE BUYER") AND INSTANCE AUTOMATICS LIMITED ("THE SELLER", "WE", "US" ETC) FOR THE SALE AND PURCHASE OF GOODS AND OR MAINTENANCE / REPAIR SERVICES. THE SELLER'S LIABILITY TO YOU IS LIMITED AND YOUR ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 11

THE BUYER AND THE SELLER AGREE:

1 Definitions

In this Agreement, the following words shall have the following meanings:

Agreement	means this agreement, being the contract between the Buyer and the Seller that incorporates the Conditions;
Buyer's Provisions	has the meaning given in clause 3.4;
Conditions	means the terms and conditions of business set out in this Agreement, as amended from time to time where the Seller is entitled to do so;
Goods	means the machines, gaming equipment, accessories and associated goods specified in the Quote or otherwise as agreed in writing between the Buyer and the Seller from time to time;
Price	means such price as is specified by the Seller for the Goods and or Services and set out in the Quote as amended from time to time where the Seller is entitled to do so;
Quote	means the written quotation provided by the Seller to the Buyer specifying the Goods and or Services offered and the Price, as amended in writing by the Seller from time to time; and
Services	means the repair and or maintenance services provided by the Seller to the Buyer

2 Order

- 2.1 The Buyer orders, and the Seller agrees to sell / provide to the Buyer, the Goods and or the Services at the Price for delivery to the Buyer pursuant to the Conditions.
- 2.2 The Quote constitutes an invitation by the Seller to provide the Goods and or Services to you at the Price pursuant to the Conditions. Acceptance of the Quote constitutes the order for the Goods and or Services specified in the Quote. This Agreement shall come into existence upon acceptance of the order, or receipt of the deposit (where applicable) whichever is sooner. Orders placed cannot be cancelled under any circumstances unless the Seller agrees otherwise in writing. All deposits paid are, in all circumstances, non-refundable.
- 2.3 The Seller will not accept any variation to these Conditions, or a Quote or order, unless the variation is expressly agreed by us in writing and signed by a duly authorised signatory on our behalf. However, we reserve the right to vary these Conditions from time to time where it is in our best interests to do so. Such variations will become binding on you at the point of publication on our website. It is your responsibility to check these from time to time which can be found at www.maxxgrab.com.

2.4 The Buyer is responsible for ensuring that the description of the Goods and or Services in the Quote, and the order, are complete and accurate. The Seller may withdraw any Quote at any time before it is incorporated into a binding contract, and such Quote is valid for 30 days, unless a different period of time is defined in the Quote.

2.5 All orders are accepted and all Goods and or Services are supplied on the basis that you are not a Consumer as defined by the Consumer Right Act 2015 unless you state otherwise in writing before placing an order with us whereupon your statutory rights are not affected by this Agreement and no clause purporting to exclude or restrict our liability shall operate to exclude or restrict our liability where it is unlawful to do so under any legislation designed to protect consumers.

3 Conditions applicable

3.1 The sale of the Goods and or Services by the Seller to the Buyer that is constituted by and recorded in this agreement shall be governed solely, throughout the performance of this Agreement and for as long as obligations subsist under or in connection with this Agreement, by the Conditions.

3.2 It is agreed that:

3.2.1 no provision other than a Condition shall become a term of this Agreement; and

3.2.2 no provision that is not expressly set out in this Agreement shall in any manner govern or affect this Agreement or any obligation arising under or in connection with this Agreement.

3.3 Clause 3.2 shall apply regardless of:

3.3.1 the manner in which or the time at which the Buyer purports to proffer or incorporate such other provision(s) into this Agreement; and

3.3.2 whether the Buyer invokes, proffers or seeks to bring into effect such other provision(s) by way of contract term or notice.

3.4 For the avoidance of doubt, and in accordance with this clause 3 generally:

3.4.1 the reference to a provision that is not set out in this Agreement includes (without limitation or other prejudice to the general meaning of such reference) any provision emanating from standard terms or conditions routinely proffered or employed by the Buyer in the course of the Buyer's business or profession (**Buyer's Provisions**) that the Buyer invokes, proffers, or purports to bring into effect as governing this Agreement; and

3.4.2 the Buyer acknowledges and agrees that the Seller shall not be bound by any of the Buyer's Provisions.

3.5 Acceptance of the delivery of the Goods shall occur and be deemed to occur immediately on the entry or inscription of the Buyer's signature on the Seller's standard delivery note, which entry or inscription shall immediately constitute, and be deemed to constitute, conclusive evidence of the Buyer's satisfaction with and acceptance of the Goods.

4 Description

The Buyer acknowledges and agrees that any description which is given or applied to the Goods and or Services:

4.1 is solely for purposes of reference and does not constitute or afford the basis for any express or implied undertaking that the Goods and or Services correspond with or conform to such reference; and

4.2 shall not make this Agreement a sale by description; and

4.3 is not and has not been relied on by the Buyer when entering into this Agreement.

5 Sample

The Buyer acknowledges and agrees that when a sample of the Goods has been shown to or inspected by the Buyer:

- 5.1 the sole purpose of so doing was to enable the Buyer to judge the quality of the bulk; and
- 5.2 the sale does not, in consequence of the Buyer's inspection of the sample or otherwise, constitute a sale by sample.

6 Price

- 6.1 The Buyer shall pay the Price for the Goods and or Services as stated on the Seller's invoice and not (where different) as expressed in the Quote, or in any other estimate or documentation, or given orally.
- 6.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any factor beyond the reasonable control of the Seller (such as, without limitation, any foreign exchange fluctuation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

7 Payment

- 7.1 Payment for the Goods and or Services shall be made in accordance with any written instructions by provided by the Seller to the Buyer and, in default, shall be within 30 days of the date of the Seller's invoice. The Price shall be paid by the Buyer to the Seller in accordance with any written instructions of the Seller and shall be paid without any deduction or set-off whatsoever.
- 7.2 All amounts stated are exclusive of VAT and any other applicable taxes or levies, which shall be charged in addition at the rate in force at the date any payment is required from the Buyer.
- 7.3 If payment is not received by the due date, the Seller at its exclusive discretion shall (without prejudice to any other right or remedy of the Seller) be entitled:
 - 7.3.1 to charge interest on the outstanding amount at the rate of 8% per annum above the base lending rate of HSBC Bank Plc, accruing daily; and/or
 - 7.3.2 to require that the Buyer make a payment in advance of any delivery not yet made; and/or
 - 7.3.3 not to make any delivery.

8 Delivery of Goods

- 8.1 The Seller shall deliver the Goods to the address provided by the Buyer when it is able to do so.
- 8.2 The cost of delivery shall be in addition to the Price.
- 8.3 For the avoidance of doubt, any other date given under or pursuant to this Agreement is no more than an estimate, and the Seller's conformity with such date is not, and shall not in any event or circumstance be or become, of the essence of this Agreement, nor give rise to any liability on behalf of the Seller to the Buyer or any third party.

9 Risk

The risk in the Goods shall pass to the Buyer on the date of delivery.

10 Property

- 10.1 The property in the Goods shall not pass to the Buyer until the Seller has received the full amount of the Price in cleared funds and any other sums that are owed to the Seller by the Buyer.
- 10.2 Clause 10.1 shall apply irrespective of whether delivery has been made.

11 Provision of Services

- 11.1 The Seller warrants that it will use reasonable care and skill in performing the Services to the standard generally accepted within the industry. However, the Seller provides no warranty that any equipment or machine shall be restored to good working order by any particular time, nor does it warrant that any particular outcome or achievement will result from provision of the Services.
- 11.2 The Buyer will cooperate with the Seller in respect of provision of the Services and provide access to such information, location, documentation, manuals, equipment, chattels or assistance as the Seller shall reasonably require from time to time in order to provide the Services.
- 11.3 If the Seller performs the Services (or any part of the Services) negligently or materially in breach of this Agreement, then, if reasonably requested by the Buyer, the Seller will re-perform the relevant part of the Services, without prejudice to the generality of the remaining provisions of this Agreement. The Buyer's request must be made within 14 days of the date of performance of the Services in question.
- 11.4 The price for Services set out in the Quote is an estimate made in good faith based on information provided by the Buyer and may not be a true reflection of the actual cost of the Services.
- 11.5 The Seller shall provide all parts which the Seller deems necessary to maintain or repair the goods, subject to the Buyer paying the costs thereof. All parts shall be provided on an exchange basis and shall be new equivalent standard parts of equal quality. All parts removed for replacement shall become the property of the Seller. This Agreement does not cover the cost of any consumables, which shall be provided by the Buyer, or charged to the Buyer if provided by the Seller.

12 Acknowledgments and Exclusion of Liability

The Buyer acknowledges and agrees:

- 12.1 that the Buyer has had a reasonable opportunity to inspect the Goods before signing the Seller's delivery note;
- 12.2 that the Buyer has inspected the Goods before signing the Seller's delivery note;
- 12.3 that the Buyer has satisfied itself as to the condition of the Goods before signing the Seller's delivery note;
- 12.4 that except and in so far as is provided (if at all) in otherwise in writing by the Seller **Error! Reference source not found.:**
- 12.4.1 the Seller gives no representation or undertaking, and shall be bound by no condition, warranty, innominate term or other obligation (whether express or implied, and whether imposed or implied by statute, at common law or otherwise) concerning the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with description or sample, of the Goods;
- 12.4.2 all liability on the part of the Seller in respect of the matters referred to in clause 12.4.1 is excluded; and
- 12.4.3 the Buyer undertakes not to bring any claim or resort to any proceeding in respect of the matters referred to in clause 12.4.1;
- 12.5 that the entry or inscription of the Buyer's signature on the Seller's delivery note on delivery of the Goods to the Buyer shall be conclusive evidence that the Buyer has examined the Goods and that the Goods correspond in every respect with the Goods that the Buyer is entitled to receive under this Agreement;
- 12.6 that, save where such exclusion is prohibited by law:
- 12.6.1 The Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of a consequential or indirect nature, such as (but not necessarily limited to) loss

of profit, loss of contract, loss of reputation arising under or in connection with this Agreement; and

- 12.6.2 The Seller's total liability to the Buyer in respect of all other loss or damage arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price;
- 12.7 that, without prejudice to the generality of this clause 11, all warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods and or Services, whether express or implied by statute or common law or otherwise, are excluded to the fullest extent permitted by law;
- 12.8 that the use of certain machines and equipment provided by the Seller may be regulated by the Gambling Commission and may be sold subject to any restrictions and limitations set out in the Seller's permit to supply such machines and equipment. The Buyer warrants that it has the appropriate permits and licences to use the Goods, if necessary, and shall at all times comply with all applicable legislation and law, including the Gambling Act 2005 and regulations made thereunder;
- 12.9 that the Buyer indemnifies and keeps indemnified (on a full indemnity basis) the Seller against any loss, claim, action, liability, damage or cost arising directly or indirectly from the Buyer's breach of statutory duty, negligence or breach of this Agreement, howsoever occurring, in connection with the Goods and or Services.

13 Defects

- 13.1 The Seller may, at the Seller's exclusive and unqualified discretion, make good either by repair or by the provision of a replacement, any defect which, following proper use of the Goods, appears in the Goods within a period of 30 days after the Goods have been delivered, provided that:
- 13.1.1 the Buyer notifies the Seller in writing of the claimed defect(s) immediately on their appearance; and
- 13.1.2 the Seller is satisfied that the sole cause of the defect(s) is:
- (a) faulty design (other than a design made, furnished or specified by the Buyer for which the Seller has disclaimed responsibility in writing), or
 - (b) faulty materials, or
 - (c) faulty workmanship, and
- 13.1.3 all Goods or parts claimed to be defective are returned to the Seller at the expense of the Seller within the period stipulated by the Seller, following the Seller's receipt of notice in accordance with clause 13.1.1.
- 13.2 Repaired or replacement Goods shall:
- 13.2.1 be delivered to the Buyer at the original place of delivery; and
- 13.2.2 be subject in all other respects (*mutatis mutandis*) to the provisions of this Agreement, and
- in particular, without limitation and in accordance with clause **Error! Reference source not found.** and clause 12.4, the Seller undertakes no responsibility for the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with description or sample, of such repaired or replacement Goods or any portion, part or component of them.
- 13.3 As an alternative to the discretion expressed in clause 13.1, and in the event that the Buyer has already paid the Price when the Buyer notifies the claimed defect to the Seller, the Seller may, at its exclusive and unqualified discretion:
- 13.3.1 refund the Price of the Goods to the Buyer; and thereafter
- 13.3.2 recover possession of the Goods from the Buyer.

13.4 The redress afforded by this clause 13 is without prejudice to the other provisions of this Agreement.

14 Termination

14.1 Without prejudice to any other right or remedy to which either the Seller or the Buyer might be entitled, either of those parties may in the events specified in clause 14.2 terminate this Agreement at any time by notice in writing to the other party (the **Other Party**), such notice to take effect as specified in the notice.

14.2 The events specified in clause 14.1 occur when:

14.2.1 the Other Party is in material breach of this Agreement and, in the case of a breach capable of remedy within 14 days, the breach is not remedied within 14 days of the Other Party receiving notice specifying the breach and requiring it to be remedied; or

14.2.2 the Other Party becomes insolvent, or an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or an administrator or administrative receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or the Other Party makes any composition with its creditors, or the Other Party takes or suffers any similar or analogous action in consequence of debt.

15 Defences and variations

15.1 Force majeure

15.1.1 Neither party shall owe or incur any liability under or in connection with, or be deemed to be in breach of, this Agreement by reason of any delays in, revisions to, or failures in performance of this Agreement that result from circumstances beyond the reasonable control of that party.

15.1.2 The party affected by the circumstances referred to in clause 15.1.1 shall promptly notify the other party in writing:

- (a) when the occurrence of any circumstance referred to in clause 15.1.1 causes, or can reasonably be expected to cause or to threaten to cause, a delay, revision or failure in performance; and
- (b) when any such circumstance ceases to do so.

15.1.3 If such circumstances continue for a continuous period of more than 3 months, either party may terminate this Agreement by written notice to the other party.

15.2 Amendments

This Agreement may be amended only by formal amendment in writing signed by duly authorised representatives of the parties.

15.3 Waiver

15.3.1 No inaction, omission, failure or delay by the Seller in exercising or securing the enforcement or validity of any right, power, privilege or demand arising under or in connection with this Agreement, and no single or partial exercise of any such right, power, privilege or demand shall impair the existence, operation, content, effect and enforcement of the said right, power, privilege or demand, or operate as a waiver of it.

15.3.2 The rights and remedies provided in this Agreement are cumulative and (subject to clause 15.4.1) not exclusive of any rights and remedies provided by law.

15.4 No agency or partnership

15.4.1 This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties, other than, and except as provided for in, the contractual relationship expressly provided for in this Agreement.

15.4.2 Neither party shall have, nor shall either party represent that it has, any authority to make any commitments on the other party's behalf.

15.5 Co-operation

Each party to this Agreement shall, at the reasonable request of the other party and at that other party's expense, perform or abstain from any act the performance of or abstention from which can reasonably be regarded as necessary to effect or facilitate the observance, implementation, clarification or enforcement of the provisions of this Agreement.

16 Integrity, continuity, exclusivity and enforcement

16.1 Entire agreement

16.1.1 This Agreement contains the whole agreement between the parties in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

16.1.2 Nothing in this Agreement excludes or restricts the liability of any party for fraud or wilful deceit, or otherwise where it is prohibited to exclude or restrict liability by operation of law.

16.2 Severance

If any provision of this Agreement is prohibited by law, or is determined by any court of law or other binding adjudicatory authority or conceded by the parties to be unlawful, void or unenforceable, the provision:

16.2.1 shall, to the extent required and as far as possible, be severed from this Agreement and rendered ineffective without modifying the remaining provisions of this Agreement; and

16.2.2 shall not in any way affect any other particular provisions of this Agreement or the validity or enforcement of this Agreement generally.

16.3 Assignment

16.3.1 Subject to clause 16.3.2, the Buyer may not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the Seller.

16.3.2 The Buyer may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the Seller to be bound by the obligations of the assignor under this Agreement.

16.4 Interpretation

In this Agreement unless the context otherwise requires:

16.4.1 words importing any gender include every gender;

16.4.2 words importing the singular number include the plural number and vice versa;

16.4.3 words importing persons include firms, companies and corporations and vice versa;

16.4.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;

16.4.5 references in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;

16.4.6 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

16.4.7 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;

16.4.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

16.4.9 where the word **including** is used in this Agreement, it shall be understood as meaning **including without limitation**;

16.4.10 the words **working day** shall mean any day other than:

- (a) Saturday and Sunday; and
- (b) any day on which there occurs any public, national, or statutory holiday that is recognised as such within the country the legal system of which governs this Agreement.

16.5 Notices

16.5.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first-class mail or air mail to the address of the relevant party set out below, or to such other address as that party may from time to time notify to the other party in accordance with this clause 16.5. The fax numbers and email addresses of the parties are as follows:

- (a) The Seller: Instance Automatics Ltd., Crabtree Lodge, Crabtree Lane, Sutton On Sea, Lincs, LN12 2RS;
- (b) The Buyer: The delivery address as provided to the Seller under this Agreement, or to the Buyer's registered address or last known address

16.5.2 Notices sent as in clause 16.5.1 shall be deemed to have been received, in the case of inland first-class mail, 2 working days after the day of posting, in the case of air mail, 5 working days after the date of posting.

16.5.3 In proving the giving of a notice, it shall be sufficient to prove that the notice was left, that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed or acknowledged.

16.6 Law and jurisdiction

The validity, construction and performance of this Agreement and of all other rights and liabilities arising in connection with this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts, to which the parties submit.

16.7 Third parties

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not, confer on any person who is not a party to this Agreement:

16.7.1 any right to enforce any of its provisions; or

16.7.2 any right to avail itself of any defence expressed in this Agreement.