



North America Service Contract Terms and Conditions

GENERAL SCOPE

All maintenance contracts entered into by Astrophysics Inc. ("Astrophysics") and the holder of the maintenance contract are subject to and governed by these Terms and Conditions ("Terms"), which may only be varied by Astrophysics in writing. Acceptance of any purchase order by Astrophysics is expressly made conditional on assent by the Customer to any additional or different terms or conditions set forth herein.

DEFINITIONS

"ASTROPHYSICS CERTIFIED FIELD SERVICE TECHNICIAN", "CERTIFIED TECHNICIAN", "TECHNICIAN": an individual who has successfully completed an Astrophysics training program, and possesses a current and valid certification for the System in need of Services.

"BREAKDOWN": the mechanical, electrical and/or software failure of the original COVERED SYSTEM that results in the SYSTEM no longer being able to perform its intended function; which is caused by defects in materials or workmanship and NOT normal wear and tear, and that occurs during normal use of the SYSTEM.

"CLAIM": a request for SERVICES sent by the CUSTOMER, in accordance with a CONTRACT.

"CONSUMABLE": a part that is expected to wear out before the WARRANTY PERIOD expires.

"CONTRACT", "MAINTENANCE CONTRACT": the maintenance service document detailing all provisions, conditions, exclusions and limitations for the extended warranty.

"CUSTOMER": the purchaser or holder of the MAINTENANCE CONTRACT

"PARTS", "COVERED PARTS": eligible spare parts, components and accessories that are covered by the provisions of this CONTRACT.

"PROOF OF PURCHASE": the original purchase invoice provided upon completion of the sale

"SERVICES": work performed by ASTROPHYSICS for CUSTOMER pursuant to a CONTRACT.

"PROTECTION PLAN": defines the service standards that ASTROPHYSICS commits to providing under a MAINTENANCE CONTRACT

"SYSTEM", "COVERED SYSTEM": the eligible X-ray system manufactured by ASTROPHYSICS that is covered by the provisions of a CONTRACT.

"WARRANTY PERIOD": the initial manufacturer warranty, some or all of which may be extended by a MAINTENANCE CONTRACT.

SERVICES

- 1.1 **Technical Telephone Support:** "Telephone Support" consists of responding to telephone and e-mail inquiries received by the Astrophysics Service Department regarding equipment errors. During regular business hours, the Astrophysics Service Department will respond to the Customer within two (2) hours from initial contact. Additional support is available after-hours and weekends through the Astrophysics Service Hotline.
 - Astrophysics Service Department - (909) 527-6750 (Monday-Friday 7AM-5:30PM Pacific Time).
 - Astrophysics Service Hotline - (909) 461-1111 (after-hours and weekends)
 - 1.1.1. To facilitate the service process, the Customer should have the System unit serial number, along with a contact name and number at the time of a service call.
 - 1.1.2. Since many service issues can be resolved over the phone, Customer assistance is required to complete an initial phone diagnostic. To expedite the diagnostic, telephone access to an operator at the site of the unit is preferred.
 - 1.1.3. If possible, technical support will first attempt to resolve the issue remotely. Customer is expected to assist in basic troubleshooting
- 1.2. **Preventive Maintenance and Radiation Survey:** "Preventive Maintenance" consists of performing fundamental planned maintenance activity, with the goal of improving equipment life by preventing excess depreciation and impairment. At the time of scheduling Preventive Maintenance, the Customer may request Operator Refresher Training and Daily Inspection Procedures training (if applicable). The frequency of the Preventive Maintenance and Radiation Survey visits is determined by the type of System, but shall occur no less than annually.
- 1.3. **On-site Corrective Maintenance:** "Corrective Maintenance" consists of repairing defects in materials and workmanship that cause the System to fail in achieving its published performance criteria. From the date the Services are provided, Astrophysics further warrants the workmanship to be error free for an additional ninety (90) days or for the remainder of the Warranty Period, whichever is later.
 - 1.3.1. All reasonable attempts will be made to reach the Customer site in accordance with the selected Protection Plan. If the Certified Technician is unable to arrive on-site within the timeframe indicated, the Customer shall be notified twenty-four (24) hours prior to the scheduled arrival or as soon as possible.



- 1.3.2. If the System is deemed to be in working condition or to have failed due to factors not covered by the Warranty (see Warranty Exclusions). Astrophysics may invoice the Customer and collect payment for all labor and travel related expenses incurred.
- 1.3.3. If the initial manufacturer warranty has expired and a Maintenance Contract is not in place, Astrophysics may provide ad hoc Corrective Maintenance for a fee. On-site response times under an expired warranty or an expired Maintenance Contract are not applicable.
- 1.4. **Parts Coverage:** Parts that cause the System to fail in achieving its published performance criteria may be repaired or replaced at the option of Astrophysics. Astrophysics reserves the right to use refurbished parts for replacement, if permitted by the Contract. From the date the defective components are replaced, Astrophysics further warrants the replaced parts to be free of defects under normal usage for an additional 90 days, or the remainder of the Warranty Period, whichever is later.
 - 1.4.1. For Covered Systems or Covered Parts, Astrophysics shall arrange to return defective parts to Astrophysics or otherwise arrange for their disposal: i) defective parts may be collected by the Technician, ii) the Technician may coordinate with the Customer to ship the defective parts back to Astrophysics; or iii) disposal of the parts shall be arranged by the Technician within thirty (30) days of installing the replacement parts.
 - 1.4.2. For systems not covered by a warranty, the responsibility to dispose of the defective parts belongs to the Customer. Astrophysics may offer to collect defective parts from Customer, with Customer's permission.
 - 1.4.3. For systems or parts subject to the International Traffic in Arms Regulations and the Export Administration Regulations that are no longer covered by a warranty, Customer shall return such worn defective parts to Astrophysics or arrange for their disposal, in accordance with U.S. Regulations governing the matter.
- 1.5. **Additional Services:** If Astrophysics agrees to perform any services not covered by the initial manufacturer's warranty or Maintenance Contract ("Additional Services"), such Additional Services shall be billable at Astrophysics' then-current time and materials rate in effect for the region in which the Services will be performed.

PROTECTION PLANS

- 2.1. **Protection Plan:** The Protection Plans below describe the services offered and the types of coverage provided. Depending on the Protection Plan purchased, the following will vary: (i) Telephone Support (ii) Technician travel expenses (i.e. lodging, airfare, meals, and ground transportation) (iii) time and labor (iv) replacement Parts.

| | Platinum Plus | Platinum | Gold | Silver | Bronze | Preventive Maintenance Only |
|--|---|---|---|---|---|---|
| 24/7 Telephone and E-mail Support | 2 hour response time M-F 7am-5:30pm PT | 2 hour response time M-F 7am-5:30pm PT | 2 hour response time M-F 7am-5:30pm PT | 2 hour response time M-F 7am-5:30pm PT | 2 hour response time M-F 7am-5:30pm PT | 2 hour response time M-F 7am-5:30pm PT |
| On-Site Availability of Technician | 12 hours | 24 hours | Two (2) business days | Three (3) business days | Five (5) business days | First Available |
| Hours of Availability for On-Site Services | 24/7 | 24/7 | 8:00am-5:00pm local time, excluding weekends and holidays | 8:00am-5:00pm local time, excluding weekends and holidays | 8:00am-5:00pm local time, excluding weekends and holidays | 8:00am-5:00pm local time, excluding weekends and holidays |
| Shipment of Replacement Parts to System Location Via Air or Ground Transportation | Fastest method | Fastest method | Astrophysics' option | Astrophysics' option | Astrophysics' option | Not Included |
| Corrective Maintenance Visits for Defects in Materials and Workmanship | Included | Included | Included | Included | Up to two on-site visits per year | Not Included |
| Preventive Maintenance with Radiation Survey and Refresher Training | Annual | Annual | Annual | Annual | Annual | Annual |

- 2.2 **Excusable Delay:** Astrophysics shall not be responsible for any delay or non-performance of its obligations hereunder to the extent and for such periods of time, as such delay or non-performance, defective performance or late performance is due to causes beyond its control. Excusable delays include, but are not limited to, acts of nature, acts of any government in either its sovereign or contractual capacity, fire, explosions, sabotage, strikes, lockout, embargoes, flight delays, fuel shortages, site clearance delays or delays of suppliers or subcontractors for like causes.

WARRANTY



- 3.1. **Manufacturer's Warranty:** Astrophysics warrants that its Systems shall be free of defects in materials and workmanship under normal usage for the term of the warranty. If, within the Warranty Period, the Systems are proven, in Astrophysics' sole discretion, to have a fault or defect, Astrophysics will repair or replace those functional parts which cause the Systems to fail in achieving the published performance criteria. Customer will be responsible for any additional charges not covered by the manufacturer's warranty, including any applicable taxes. Astrophysics may subcontract with other service providers for the repair of the Systems. Astrophysics obligations under this warranty are not transferrable, unless written notice of such transfer is provided to, and approved by, Astrophysics.
- 3.2. **Software Warranty:** Astrophysics' warrants that its software installed on the System will perform in substantial accordance with Astrophysics' published specifications, for the period of the System's warranty. Astrophysics does not warrant that software will be bug-free or error-free.
- 3.3. **Extended Warranty Coverage:** Astrophysics' offers both Parts (materials) coverage and Labor (workmanship) coverage, under which the cost of replacement parts and/or on-site labor with travel expenses (i.e. airfare, lodging, meals, and ground transportation) may be included. Depending on the Protection Plan and Contract terms in effect, either or both of these coverages may be applicable to the Covered System.
- 3.4. **Warranty Exclusions:** In conformance with the type of warranty, parts and/or labor are provided under the condition that the Systems have been installed and operated in accordance with Astrophysics instructions. At the discretion of Astrophysics, services, to repair damage or replace components that are not covered by the Warranty, may be performed for a fee. In addition to specific exclusions set forth in the Contract and in other sections of these Terms, this Warranty will NOT APPLY TO:
 - 3.4.1. Wear and Tear - Malfunction or damage brought about by the expected decline in condition resulting from regular use and exposure over time, are excluded from coverage. This specifically excludes replacement of any lead curtains, conveyor belt, AOCB buttons and AOCB membrane, and other Consumables.
 - 3.4.2. Use of Third Party Products - Malfunction or damage that result from the use of non-Astrophysics branded or certified products, accessories, software or other peripheral equipment are excluded from coverage.
 - 3.4.3. Unauthorized Service or Modification - Malfunction or damage resulting from testing, adjustment, installation, maintenance, alteration, or modification in any way by someone other than Astrophysics or an Astrophysics Certified Field Service Technician are excluded from coverage
 - 3.4.4. Accident, Neglect and Misuse - Malfunction or damage resulting from intentional misuse, negligent acts or failure to act, when proximately caused by anyone other than Astrophysics are excluded from coverage. By way of illustration but not limitation, the warranty excludes improper storage conditions, improper operating conditions, improper operations, handling contrary to Astrophysics issued instructions, accident, corrosion, fire, moisture, theft, power failure or fluctuation.
 - 3.4.5. Force Majeure - Malfunction or damage caused by an exceptional event or circumstance which can be neither anticipated nor controlled are excluded from coverage. This includes both acts of nature (such as floods and lightning strikes) and acts of people (such as embargoes or wars) beyond or not contemplated by the warranty and which could not be reasonably avoided.
 - 3.4.6. Outside Reasonable Control - Malfunction or damage beyond or not contemplated by the Warranty and outside the reasonable control of Astrophysics, including conditions caused by movement, settlement, structural or construction defects of the installation site or defects of components adjacent or connected to the Systems, are excluded from coverage.
 - 3.4.7. Voidable Warranty - Astrophysics reserves the right to void the warranty in its entirety, and make the System ineligible for authorized repair, even for a fee (i) for any of the Warranty Exclusions listed above, or (ii) if a HOLD has been placed on Customer's account for the Customer's failure to pay any invoice. Unless the HOLD has been lifted, services to ALL machines owned by Customer shall be discontinued.
 - 3.4.8. Void Warranty - The Warranty shall be null and void, and Astrophysics shall have no obligation or responsibility to repair or replace the System:
 - if the serial plate attached to the System has been removed, defaced, or made illegible;
 - if the System has been moved from its original installed location;
 - if it has been restarted after a period of in-operation lasting longer than two (2) months without prior notification to and instruction by Astrophysics;
 - if the System has been exposed to environments below 5°C (41°F), and restarted without prior notification to and instruction by Astrophysics;
 - if the System is non-operational at the time of a Service Contract renewal;
 - if ownership of the System was transferred to another party, without notice of transfer provided to and approved by Astrophysics; and
 - if Customer is in material breach of any agreement between Customer and Astrophysics.
 - 3.4.9. Expired Warranty - Astrophysics has no obligation to honor warranty terms of a lapsed warranty. Any system with a lapsed warranty exceeding thirty (30) days is subject to a System Evaluation Visit, billable to the Customer prior to reinstating the warranty.

X-RAY LIMITATIONS

- 4.1 Security X-ray Inspection Systems depend heavily on the human operators to view and interpret the images. Our X-ray systems may not make autonomous decisions for the detection of threats and contraband and are intended to be tools in a multi-tiered security strategy for the identification of illicit objects. Based on the foregoing, the Customer acknowledges and agrees that:



- 4.1.1 No X-ray system is capable of detecting every threat, and the Customer has no expectation that the covered Systems are capable of detecting, or will detect, any or all unauthorized and/or hazardous materials (this being the case whether the X-ray systems perform with or without operator supervision, and regardless of the degree of diligence with which the services of Astrophysics, if any, are or have been performed)
- 4.1.2 The Astrophysics X-ray system is intended to aid and assist in the detection of illegal and/or hazardous materials, as part of multi-tiered security screening program;
- 4.1.3 The degree of success with which the X-ray systems will fulfill their intended use is dependent on numerous factors, including, without limitation, the sophistication of efforts to conceal illegal and/or hazardous materials, the skill, diligence and qualifications of the operator and environmental conditions; and;
- 4.1.4 Astrophysics makes no guarantee or warranty as to the results that will be achieved through the use of the System and it is agreed that the sole responsibility for such results is that of the operator.
- 4.1.5 All, if any, statements, recommendations and advice given by Astrophysics or Astrophysics employees or agents to the Customer or its employees or agents as to any matter relating to the System(s) are given without responsibility and shall not give rise to any liability whatsoever on the part of Astrophysics. The Customer hereby represents and warrants to Astrophysics that no representation has been made to it by or on behalf of Astrophysics that has in any way induced the Customer to enter into the contract with Astrophysics.

DISCLAIMERS AND LIMITATIONS OF LIABILITY

- 5.1 **Disclaimer of Warranties:** TO THE EXTENT ALLOWED BY APPLICABLE LAW, THESE TERMS AND CONDITIONS CONSTITUTE THE COMPLETE AND EXCLUSIVE WARRANTY AGREEMENT REGARDING THE SYSTEM. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES ARISING BY OPERATION OF LAW, TRADE OR COURSE OF DEALING, STATUORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION. ASTROPHYSICS NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF THE SYSTEMS. NO CHANGE TO THE CONDITIONS OF THIS WARRANTY IS VALID UNLESS IT IS MADE IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ASTROPHYSICS.
- 5.2 **Exclusive Remedy:** IF THE SYSTEM DOES NOT OPERATE AS WARRANTED, THE CUSTOMER'S SOLE REMEDY SHALL BE AT ASTROPHYSICS OPTION, REPAIR OR REPLACEMENT. THESE TERMS AND CONDITIONS SUPERSEDE ANY PRIOR AGREEMENTS OR REPRESENTATIONS, INCLUDING REPRESENTATIONS MADE IN SALES LITERATURE OR ADVICE GIVEN BY ASTROPHYSICS OR AN AGENT THAT MAY HAVE BEEN MADE IN CONNECTION WITH YOUR PURCHASE OR LEASE OF THE SYSTEM.
- 5.3 **Limitation of Liability:** IF YOUR SYSTEM FAILS TO WORK AS WARRANTED ABOVE, ASTROPHYSICS' MAXIMUM LIABILITY IS LIMITED TO THE LESSER OF THE PURCHASE PRICE PAID FOR THE SYSTEM, OR THE COST OF THE MAINTENANCE CONTRACT FOR THE INDIVIDUAL SYSTEM, OR THE COST OF THE REPAIR/REPLACEMENT OF ANY HARDWARE COMPONENTS THAT MALFUNCTION UNDER NORMAL USE CONDITIONS. EXCEPT AS INDICATED ABOVE, IN NO EVENT WILL ASTROPHYSICS BE LIABLE FOR ANY DAMAGES CAUSED BY THE FAILURE OF THE SYSTEM TO PERFORM, INCLUDING ANY LOST PROFITS, SAVINGS, GOODWILL OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF ASTROPHYSICS HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. THIS LIMITATION OF LIABILITY APPLIES WHETHER DAMAGES ARE SOUGHT, OR A CLAIM IS MADE, RELATED TO OR ARISING OUT OF THESE TERMS AND CONDITIONS. ALL CONDITIONS, WARRANTIES OR OTHER TERMS WHETHER EXPRESS OR IMPLIED, STATORY OR OTHERWISE, INCONSISTENT WITH THE PROVISIONS OF THIS SECTION, ARE HEREBY EXPRESSLY EXCLUDED.
- 5.4 **Indemnification:** to the fullest extent permitted by applicable law, the Customer shall defend, indemnify, and hold harmless Astrophysics and its subsidiaries and affiliates (and its and their officers, directors, shareholders, managers, employees and agents) from and against from and against any and all liabilities, losses, damages, injuries, settlements, expenses and costs including, without limitation, attorneys' fees and court costs) which arise out of or relate to: (i) any alleged or actual breach, failure, or negligence, of the Customer to fully and completely perform and comply with its obligations hereunder, (ii) any negligence or intentional misconduct of Customer or any officer, director, employee or agent of Customer, or (iii) the negligence or intentional misconduct of any operator (or supervisor(s) of any operator) of any System.