

# **Aero Tec Laboratories Ltd**

Customer Terms and Conditions  
Revision 04

### **About Aero Tec Laboratories Ltd**

Aero Tec Laboratories Ltd (ATL) was founded in 1970 as a design and testing facility for 'flexible composite' materials. Shortly thereafter, the firm broadened its scope to include the actual fabrication of end products from its own outstanding fibre/elastomer composites. This led to the development of ATL's remarkable bladder-type cells, which deform under high-energy impacts.

ATL began with offices in New Jersey and now has facilities in Ramsey (New Jersey, USA), Bend (Oregon, USA), and Milton Keynes, (United Kingdom). With over 200 employees and over 300sq. feet of manufacturing facilities, ATL is the world leader in flexible composite technologies specialising in liquid and gas containment.

From ambitious beginnings in the engineered inflatables and crashworthy fuel cell bladders, ATL has further spread its technologies into compensators, accumulators, potable water vessels, self-healing ballistic tanks, bulk storage bladders and scores of similar endeavours. The common thread among ATL's products is the remarkable toughness and durability coupled with extreme light-weight, high flexibility and compactness.

With ATL's ongoing development into high performance fabrics and complete fuel system products ATL remains the World's leader in Fuel Cell Design and Technology, and is a supplier to every Formula 1 Team as well as boasting an enviable customer list in Marine, Industrial, Military and Subsea Markets.

## **ATL Terms and Conditions**

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## **1. Definitions and Interpretations**

### 1.1. In these Terms and Conditions:

**"ATL Website"** refers to [www.atlltd.com](http://www.atlltd.com) which is the UK based website.

**"ATL"** refers to Aero Tec Laboratories Ltd. A UK company – registration number 3490552 trading from ATL Technology Centre, Denbigh Road, Bletchley, Milton Keynes, MK1 1DF, UK.

**"Cancellation"** the act of stopping an order for a service or product.

**"Conditions"** refers to the Terms and Conditions laid out in this Document.

**"Contract"** refers to the Order and ATL's acceptance of the Order.

**"Customer"** refers to the person, firm or company receiving and paying for the goods/service.

**"Delivery Note"** refers to the supporting documentation to allow the import and export of all goods and services. This includes, but is not limited to, certificates of conformity, country of origin codes, mid codes, health and safety data/sheets and any other information necessary to support declarations to and compliance with International Customs regulations.

**"Estimates"** are prices and quantities that ATL may provide to Customers to give an estimation for the Order. They are not formal Quotations and cannot be taken as formal Quotations, but the Customer may be required to pay an amount of this Estimate prior to start of Production.

**"Formal Acceptance"** refers to the formation of Contract as defined in Clause 3.

**"Order"** means the Order placed by the Customer for the Goods and/or Services incorporating these Conditions.

**"Production"** refers to any work done by ATL, including but not limited to purchases relating to the contract, procurement of materials and/or products, design work and cell build.

**"Quotation"** refers to the official item and price Quotation, and the payment terms that has been provided by ATL to the customer based upon the goods/services requested by the customer.

**"Return"** to send or deliver a part or product to ATL.

**"ROM"** refers to the Rough Order of Magnitude.

**"Writing"** includes and is limited to hand writing, e-mails, faxes and letters (only via postal service).

### 1.2. Any references in these Conditions to any provision of a statute, legislation or code shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

### 1.3. Clause headings do not affect the interpretation of these Conditions.

### 1.4. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as nor take effect as, limiting the generality of any preceding words.

## **2. What is Covered**

### 2.1. These Conditions apply to the purchase by the Customer of Production goods and services from ATL, including (a) production and service parts, components, assemblies and accessories, (b) raw materials, (c) tooling; and (d) design, engineering or other services.

### 2.2. ATL has the right to alter the content of these Conditions and any policies that are referred to within these Conditions upon Written Notice, in accordance with Clause 27, to the Customer.

## **3. When the Contract is Formed**

### 3.1. The Contract, to which these Conditions apply, can only be formed upon confirmation of the Sales Order unless Clause 3.6 applies.

### 3.2. The Sales Order can be confirmed by:

(a) ATL receiving the Purchase Order from the Customer;

(b) The Customer confirming the Order via written communication;

(c) The Customer paying a deposit for the Order, with the deposit amount having been received by ATL or the Customer providing proof of transfer.

### 3.3. Formation of Contract will be deemed as acceptance of these Conditions.

### 3.4. Unless an alteration to these Conditions has been agreed by ATL in an earlier communication, these are the only ways that a Contract can be formed. Any altered Conditions will apply in the same manner provided the alteration is agreed by ATL.

- 3.5. After the formal acceptance of ATL's Terms and Conditions ATL will supply, on request, the full Conditions document. If the Conditions are not requested then it will be the Customer's responsibility to view the Conditions document on the ATL website and ATL cannot be held liable for any disregard of the Conditions.
- 3.6. The exception to Clause 3.2 is when the point of sale is event based. The following clauses apply:
  - 3.6.1. Formation of contract will occur when there is acceptance of the offer made by ATL. The offer can be accepted in the following ways:
    - (a) Verbal acceptance
    - (b) Physical acceptance, where the Customer has taken or used the product and/or service that ATL has provided at the event.

#### **4. Term**

- 4.1. The term of the agreement, of which these Conditions will be applicable against, will be from the time and date that the contract is formed, to the time that either ATL or the Customer has provided a Written Notice of Termination in accordance with Clause 19.

#### **5. Volume Projections**

- 5.1. The Customer has the right to provide ATL with forecasts or projections of volume and/or quantity requirements for the Goods and/or Services the Customer is requiring ("**Volume Projections**").
- 5.2. The Volume Projections must be provided for informational purposes only and ATL cannot be bound by any Volume Projections.
- 5.3. ATL's acceptance of the Volume Projections cannot be taken as ATL accepting commitment to these Volume Projections, it is merely acceptance that ATL understands the Projections and will take these into consideration for any provisional quotes, schedules and forecasts.
- 5.4. Any Volume Projections will become an Order when either;
  - (a) A Purchase Order is received; or,
  - (b) Any form of payment for the Volume Projections has been received.

#### **6. Schedule**

- 6.1. The Schedule is the target timeline for the Production of the Order that is provided by ATL after receipt of the Purchase Order.
- 6.2. ATL may provide the Customer with a proposed Schedule before receipt of Purchase Order but can only confirm that it will be the Schedule once a Purchase Order has been received.
- 6.3. The Schedule will be assigned in a way that ATL can best meet the Customer demands and ATL cannot guarantee commitment to the Schedule until an Order Acknowledgement has been provided.

#### **7. Alterations**

- 7.1. Any alterations to these Conditions must be given in Written Notice, in accordance with Clause 27, and formally accepted by ATL in express terms.
- 7.2. If the Customer requests alterations to these Conditions, the alterations will only be enforceable for future situations subsequent to ATL's acceptance of the alterations. The altered Conditions will not be applicable to situations prior to ATL's acceptance.

#### **8. Delays in Production**

- 8.1. ATL cannot be held accountable for any delays that occur, and any consequences that may arise from the delay, which did not directly originate from ATL's actions.
- 8.2. Due to ATL's high schedule demand, ATL cannot guarantee that any small delay by the Customer at any stage of the Production process will not have an effect on the delivery date.
- 8.3. ATL has the right to override the agreed Schedule and issue the Customer with a new Schedule should any delay occur though the fault of the Customer.

- 8.4. Neither ATL nor the Customer will be liable for any delay or failure to perform directly due to a Force Majeure Event (defined in Clause 25.1).

## **9. Order Changes**

- 9.1. The Customer has the right to alter the ordered product, quantity or date however the following Clauses may apply.
- 9.2. If Production of the order has already started then one of the following will apply to the Customer:
- 9.2.1. The customer will incur no additional charge for any changes requested provided that the change can be incorporated into the planned hours for the project and provided that the project can simply be put on hold and then restarted at a later date. However, the customer will be required to pay for the cost of work completed up to the point of change.
- If the change means that the work cannot be completed in the scheduled time, either because the completed work needs to be reworked or scrapped, or because the change will mean the remaining work will take longer to complete than planned, then ATL has the right to issue the customer with a new Schedule in accordance with Clause 8.3. The customer will also incur extra cost for the additional work required.
- 9.3. If Production of the order has not already started then one of the following will apply to the Customer:
- 9.3.1. If the changes will add additional time to the Schedule the ATL cannot guarantee that the agreed Schedule will still be achievable. ATL will do their best to maintain the Schedule but have the right to issue the customer with a new Schedule.
- 9.3.2. If the changes do not make any alterations to the Schedule then the agreed delivery date will remain and the Customer will not incur any extra charges for the Schedule. Additional costs may still be seen for any alteration in material or product.

## **10. Order Cancellations**

- 10.1. ATL understands that demands may change after the contract is made and so the following cancellation clauses apply;
- 10.1.1. If Production has not started then the Customer has the right to cancel the order free of charge as long as it is given by Written Notice seven (7) working days before Production begins and one of the following situations is satisfied but provided Clause 10.2 does not apply:
- (a) The Customer no longer has any demand for the goods/services to be provided by ATL.
- (b) The Customer no longer has the funds to finance the Project to the end.
- 10.1.2. If Production has started then the Customer has the right to cancel the order but a cancellation fee will apply on top of the payment for the work completed. ATL has the right to waiver the fee depending on the Customer's circumstances.
- 10.2. ATL will not accept Order Cancellations if the reason for cancellation is that the Customer has found the Goods/Services that ATL is providing cheaper elsewhere. If this is found to be the case then the Customer may be liable for the full price that was originally agreed between ATL and the Customer.

## **11. Payment Terms**

- 11.1. If the Customer has a credit account with ATL then the following terms of payment will apply;
- (a) The Customer will be required to pay the invoice amount in full within the agreed timeframe after the invoice date.
- (b) If payment is not received by the end of the agreed timeframe, then it will be regarded as being late. Late payments will mean that the account will be put on hold and this may affect the shipping of future orders that have been made.
- 11.2. If the Customer does not have a credit account with ATL then the payment terms will be agreed at the point of Quotation or Estimate.

## **12. Quality Assurance**

- 12.1. ATL will ensure that every product manufactured and sold by ATL meets the Quality Standards set out in the Quality Assurance Policy which can be supplied to the Customer upon request. Alternatively, it can be found on the ATL website.

### **13. Shipping, Packaging and Delivery**

- 13.1. Title and risk of loss or damage will pass at the time and place of delivery in accordance with the delivery term on the Purchase Order for the Goods and if none is so stated then ExWorks (named place) shall apply.
- 13.2. If requested by the Customer, ATL will provide a Delivery Note with the Goods.
- 13.3. Some or all of the goods supplied by ATL may be subject to export control regulations. Such goods may not be exported by the Customer without prior approval of the relevant authorities. It is the responsibility of the Customer to obtain such approval. Under no circumstances shall ATL be liable for any loss or damages incurred by the Customer as a result of the Customers contravention of any export control regulations.

### **14. Delivery of Non-Conforming Goods**

- 14.1. ATL has an effective and rigorous Quality Check process in place and does it's utmost to ensure that all products leaving the factory will be defect free and meet all of the requirements requested by the Customer on the Purchase Order and Sales Order.
- 14.2. If the Customer does receive defective Goods, the Customer should notify ATL of any Goods that do not conform to all of the requirements agreed (the "**Non-conforming Goods**") as soon as reasonably possible after the Customer has discovered it.
- 14.3. The Customer is required to give ATL the option to rework, replace or otherwise remedy a non-conformity in the Goods as long as:
  - (a) ATL can perform the remedial work at the location of the non-conforming cell, or at the Customer's site (subject to the discretion of the Customer), without disruption to the Customer's operations;
  - (b) The remedial work will not cause any delay in the Customer's operations, including its production process, or cause the Customer to incur any additional costs; and
  - (c) The cure can be completed by a reasonable deadline established by the Customer.
- 14.4. If the Customer determines in good faith, after consulting with ATL, that the remedial work cannot be done within the limits of Clause 14.3, the Customer is entitled to do one of the following:
  - (a) Reject the Non-conforming Goods and, at the Customer's discretion, request redelivery of conforming Goods which ATL will supply as soon as reasonably possible. If the Non-conforming Goods are rejected in accordance with this Clause 14.4, the Customer has the option to either return them to ATL or to scrap the Non-conforming Goods, both will be at the cost of ATL. The Customer may scrap the Non-conforming Goods if they are not collected within thirty (30) working days of the Customer informing ATL which option has been chosen; or,
  - (b) If the Non-conforming Goods have been fitted onto the vehicle it was intended to be fitted into by the time notice has been given to the ATL in accordance with Clause 14.2, the Customer shall at its own discretion, carry out or engage others to carry out remedial works on the Non-conforming Goods. ATL shall reimburse the Customer for all reasonable costs, losses, expenses or damages incurred by the Customer in carrying out the remedial works or engaging others to carry out the remedial works provided there is prior written agreement by ATL.
- 14.5. Without prejudice to the Customer's rights under Clause 14.4 (a) and (b), ATL may request that the Customer holds and makes available to ATL, at ATL's expense, any Non-conforming Goods for up to five (5) working days. After this period, the Customer may, at its option, scrap the Non-conforming Goods at the cost of ATL.
- 14.6. ATL is not liable for damage to the Goods after delivery due to actions directly taken by the Customer or third parties. Neither collection nor payment by or on behalf of the Customer will constitute acceptance of Non-conforming Goods, nor will it limit or affect any of the Customer's rights.

### **15. Returns**

- 15.1. If the Customer requires a fuel cell to be repaired, modified or recertified, then the Customer must follow the guidelines set out in the Returns Policy, which can be found on the reverse side of the Safety Information and Instruction Guide or the ATL website, and the following clauses may apply;
  - 15.1.1. If the defect arises from a fault that is not material or human error then the Customer will have to pay for the full cost of the repair.
  - 15.1.2. If upon inspection, the fault is found to arise from a material fault or human error then the costs that the Customer has incurred for the return will be reimbursed by ATL.
- 15.2. For all goods returned, the following will apply:
  - 15.2.1. Returned goods must have prior approval within thirty (30) days of purchase;

- 15.2.2. A copy of the original delivery note must be sent back with the goods;
- 15.2.3. The customer needs to pay freight back to ATL;
- 15.2.4. A 20% re-stocking charge will be deducted from the Credit Note or Refund unless otherwise agreed;
- 15.2.5. The product must be new and in a saleable condition;
- 15.2.6. Claims for shortages must be made within five (5) working days of receipt.

## **16. Intellectual Property**

- 16.1. If seven (7) years pass from delivery of the last fuel cell without any Purchase Order the Intellectual Property rights relating to "Production Tooling" will be transferred to ATL.
- 16.2. "Production Tooling" refers to the physical or electronic patterns used in the manufacture of the fuel bladder.

## **17. Confidentiality & Data Protection**

- 17.1. The Mutual Confidentiality Agreement (**MCA**) is the document that both ATL and the Customer, at ATL's option, will sign to at the start of any communication to ensure confidentiality at all time.
- 17.2. Any deviation from the conditions set out in the MCA will provide ATL with the right to terminate, in full or in part, any contract that the breached confidentiality agreement applies to, at any time after notice of the breach has been served in writing to the Customer.
- 17.3. In these Conditions, "**Confidential Information**" means any and all information in whatever form, whether disclosed in writing, orally, visually, electronically or in any other media format, including without limitation, Volume Projections, future product plans, the form, materials and design of any relevant plant and equipment or any part thereof, methods of operation and applications, processes, formulae, plans strategies, data, know-how, designs, trade secrets, patent applications, software, market opportunities, photographs, drawings, specifications, technical literature and any other material gained or made available by either Party (or any of its representatives or advisors) to the other (or any of its representatives) as a result of the relationship of the Parties under the Purchase Order.
- 17.4. The Parties acknowledge that as part of their relationship they may from time to time share confidential information that is outside the scope of a specific Purchase Order. In order to facilitate the successful collaboration of the Parties, both Parties acknowledge that such information shall be deemed to fall within the scope of "Confidential Information".
- 17.5. ATL expects certain obligations and standards of care when dealing with Confidential Information. The following clauses must be adhered to:
  - (a) The Customer shall keep and intend to be kept secret and confidential all Confidential Information provided by ATL by using at least the same degree of care as the would use to protect its own Confidential Information, but in any event no less than a reasonable degree of care, to prevent the unauthorised use, disclosure, dissemination or publication of ATL's Confidential Information.
  - (b) Neither ATL or the Customer shall use nor disclose Confidential Information, save for the purposes of the Approved Performance or with the prior written consent of the other Party.
- 17.6. The obligations under Clause 17.5 do not apply to the receiving Party with respect to Confidential Information that the receiving Party can show by evidence was:
  - (a) in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations under these Conditions;
  - (b) disclosed with the prior written approval of the disclosing party by Written Notice;
  - (c) rightfully obtained from a third party entitled to disclose the same;
  - (d) in its possession or already known by it prior to entering into the Purchase Order;
  - (e) independently developed by it; or,
  - (f) required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction – this exception shall only apply if the receiving party has, to the fullest extent permitted by law, provided the disclosing party with a Written Notice of the court order, and has fully cooperated with the disclosing party in seeking confidential treatment for the disclosures.
- 17.7. The Customer and ATL may share Confidential information of the other Party with their:
  - (a) Group Companies; and
  - (b) consultants, contractors, experts and agents;



Provided, that the person or entity with whom or which the information is being shared has agreed in writing to be bound by confidentiality provisions comparable to those specified in this Clause 17.

Both Parties must first obtain the written consent of the other Party if they or any of their Group Companies want to share the Confidential Information with any party (including any of its Group Companies) that is a motor vehicle manufacturer or distributor. Both Parties shall procure that its employees and contractors shall comply with this Clause 17.

17.8. Subject to Clauses 17.2 and 17.4, neither the Customer nor ATL will share any Confidential Information of the other Party with any third party, including any competitor of the other Party, without the prior written agreement of the other Party, except as may otherwise be permitted under the Purchase Order, these Conditions or in writing between the Parties.

17.9. Clause 17 does not apply to Personal Data, for further information on how ATL and its suppliers control Personal data please refer to ATL's Data Protection, Privacy and Data Retention Policies which are available upon request.

ATL will only process personal data for the specific purposes set out in our Data Retention Policy for any other purposes specifically permitted by the Data Protection Requirements. By accepting these Terms & Conditions you are accepting that ATL may collect this data.

ATL are committed to ensuring all business is conducted in accordance with all applicable laws and requirements of the Data Protection Act, the General Data Protection Regulation 2016 and the Data Protection Bill (once enacted into English Law).

## **18. Indemnification Obligations of the Customer**

18.1. For the purposes of this Clause 18, an "**Indemnified Person**" includes the Buyer, its Group Companies and their directors, officers, and employees. "**Litigation Costs**" includes all costs, damages, losses, claims and expenses (including actual fees for legal representatives, experts and consultants, settlement costs and judgments) incurred in defending against a claim.

18.2. ATL shall keep the Customer indemnified in full against all direct, indirect or consequential liabilities, loss, damages, injury, costs and expenses awarded or incurred ("**Loss**") against the Customer as a result of or in connection with:

18.2.1. Defective workmanship, quality or materials;

18.2.2. Any breach by ATL of any infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods and the performance of the Services;

18.2.3. Any claim made against the Customer in respect of Loss sustained by any of the Customer's employees, officers, against, consultants, contractors, sub-contractors, staff and/or other representatives to the extent that such Loss was caused by, relates to, arises from or was contributed to ATL's provision of the Goods and/or Services or as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by ATL; and,

18.2.4. Any recall of the Goods or any products incorporating or sold together with the Goods, which is directly or indirectly due to a defect in the Goods; and

18.2.5. Any breach by ATL of these Conditions.

18.3. ATL will indemnify and hold an Indemnified Person harmless against all Litigation Costs occasioned by, resulting from, or arising out of any claim by a third party for death, personal injury, or property damage which results from:

(a) any defect or alleged defect in the Goods supplied by ATL;

(b) any noncompliance or alleged noncompliance by ATL with any of its representations, warranties or obligations under a Purchase Order; or

(c) any negligence or fault or alleged negligence or fault of ATL in connection with the design or manufacture of the Goods.

18.4. Upon the filing of any third-party claim against an Indemnified Person that is subject to Clauses 18.2 and 18.3, ATL and the Customer will, in good faith, attempt to reach agreement concerning whether, notwithstanding the provisions of Clauses 18.2 and 18.3, it is appropriate under the circumstances of the particular case to apportion Litigation Costs between ATL and the Customer.

18.5. In determining whether and to what extent Litigation Costs should be apportioned between ATL and the Customer under Clauses 18.4, all relevant factors should be considered, including the relative strength of the claim, whether the claimant alleges solely that the Indemnified Person is vicariously liable for ATL's fault (or a defect in the Goods for which ATL is primarily responsible), and whether any independent fault alleged on the part of an Indemnified Person consists of a mere failure to discover or guard against ATL's negligence or an alleged defect in the Goods. Absent an agreement on apportioning Litigation Costs, the terms of Clauses 18.2 and 18.3 will apply.

18.6. If ATL performs any work on an Indemnified Person's premises or utilises the property of an Indemnified Person, whether on or off the Indemnified Person's premises, ATL will indemnify and hold the Indemnified Persons

harmless from and against any liability, claims, demands or expenses (including actual fees of legal representatives and other professionals) for damages to the property of or injuries (including death) to Indemnified Persons, their employees or any other person arising from or in connection with ATL's performance of work or use of the Indemnified Person's property, except for such liability, claim, or demand arising out of the sole negligence of an Indemnified Person.

## **19. Termination**

19.1. ATL may terminate a Purchase Order, in whole or in part, upon Written Notice to the Customer if the Customer fails to comply with any of the requirements in these Conditions, the "**Non-Compliance**". If the Non-Compliance relates to an obligation of the Customer that is, in the opinion of the Customer, capable of cure, ATL may only terminate the contract under this Clause 19.1 if the Customer has failed to either:

- (a) Timely cure the noncompliance; or
- (b) Provide ATL with adequate assurances of performance acceptable to ATL.

19.2. ATL shall be entitled to terminate the Contract immediately by written notice to the Customer, without prejudice to any other rights or remedies of ATL, if any of the following apply:

- (a) The Customer is in material breach of these Conditions; and/or,
- (b) The Customer is dissolved or struck off the register of companies maintained by the Companies Registration Office or a winding up order is made against the Customer or a meeting is convened, resolution passed or any step taken by the Customer with a view to the winding-up of the Customer except for the purpose of a solvent reconstruction, reorganization, merger or consolidation; and/or,
- (c) A receiver (including fixed charge or court appointed), administrative receiver, manager, insolvency practitioner or similar officer shall be appointed over the whole or a substantial part of the undertaking, property or assets of the Customer; and/or,
- (d) The Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; and/or,
- (e) The Customer enters into (or proposes to enter into) a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise or a moratorium is agreed imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the Customer; and/or,
- (f) Notice of intention to appoint an administrator is given by any person (including the Customer's directors, the Customer or any qualifying floating charge holder as defined in the Insolvency Act 1986) or any step is taken by any person with a view to placing the Customer into administration as defined by the Insolvency Act 1986; and/or,
- (g) The Customer (being an individual or firm) becomes bankrupt; and/or,
- (h) Control of the Customer is transferred to any person or persons other than the person or persons in Control of the Customer at the date hereof; and/or,
- (i) Any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the events listed in the above sub-conditions in relation to the Customer; and/or,
- (j) The Customer ceases or threatens to cease to carry on business; and/or,
- (k) ATL reasonably believes that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; and/or,
- (l) Termination or expiry of the Contract for any reason, whether under this Clause 19 or not, shall be without prejudice to the accrued rights and liabilities of ATL on the date of such termination or expiry.

## **20. Customers Obligations upon Expiration or Termination**

20.1. Upon the expiration (i.e. when the Customer ceases to purchase Goods under the Purchase Order) or termination of the Purchase Order, both Parties will:

- (a) Take all actions necessary to protect any of the other Party's property (including Intellectual Property rights and confidential information) that they, or their customers or subcontractors, have in their possession;
- (b) Cooperate with the other Party to help avoid production disruptions while the production of the Goods is being transferred to either another Supplier or another Customer;
- (c) Transfer title and possession of the Goods, Supplier-Owned Tooling, work-in-progress and raw materials if the Customer has agreed to acquire from ATL and return Tooling and other property of ATL to ATL or a third party nominated by ATL; and,
- (d) Cease all work under the Purchase Order.

## **21. Subcontracting**

- 21.1. ATL has the right to subcontract parts needed for Production where it deems necessary, to either meet the Customer's demand or for economic benefit, and ATL will inform the Customer of any subcontracts that may occur.
- 21.2. If the Customer does not agree to the subcontracts and ATL cannot meet the Customer's requirements without the subcontracts, then ATL has the right to provide the Customer with a new Schedule which the Customer must accept.

## **22. Insurance**

- 22.1. ATL can supply evidence of the appropriate Insurance Policies upon request by the Customer.

## **23. Protection of Supply**

- 23.1. ATL will provide the Customer with Written Notice:
- (a) at least thirty (30) days in advance of the expiration of any labour contract; or,
  - (b) concerning any potential labour dispute involving ATL that could affect the Customer's operations or the supply of the Goods under the Purchase Order.
- 23.2. Upon the Customer's request, ATL will provide the Customer with its plan to avoid adversely affecting the Customer's operations or to ensure that the Customer's requirements for the Goods will be met without disruption for at least a thirty (30) day period after the expiration of the labour contract or the commencement of a labour dispute affecting ATL. ATL will keep the Customer informed of any changes to the plan, its implementation and ATL's efforts to resolve the labour dispute. The Customer shall treat information provided by the ATL under this Clause 23 as confidential in accordance with its obligations under Clause 17.

## **24. Dispute Resolution**

- 24.1. Negotiation: In the event of a dispute between the Parties relating to the Purchase Order, the one raising the matter in dispute will notify the other by Written Notice describing in sufficient detail the nature of the dispute. Each Party will then appoint one or more representatives to resolve the dispute. These representatives will promptly meet and negotiate in good faith to reach a fair and equitable settlement. At the end of thirty (30) days, if no settlement has been reached, either Party may end discussions and declare an impasse.
- 24.2. Mediation: If an impasse is declared under Clause 24.1, the Parties will participate in non-binding mediation by a third-party mediator in good faith. Mediation will be by a sole mediator and the language of the mediation will be English. The rules and procedures to be followed will be the applicable Mediation Rules specified by ATL and in place from time to time. The Parties will promptly agree on the mediator and the cost of the mediator will be shared equally. The mediator has thirty (30) days from the date of appointment to help resolve the dispute. If the Parties fail to agree on a mediator within twenty (20) days of an impasse being declared under Clause 24.1, the Parties will seek assistance from the organisation promulgating the applicable Mediation Rules.
- 24.3. Arbitration: A Party may request the other to participate in binding arbitration following the declaration of an impasse under Clause 24.1 or the conclusion of mediation under Clause 24.2. The request will be made by Written Notice provided within thirty (30) days following the end of the applicable resolution time period, and the other Party must respond within thirty (30) days after receipt of the request. Neither Party is required to participate in any arbitration proceeding under this Clause 24.3. If both agree to do so, they will participate in good faith and each of the following requirements will apply to the arbitration:
- (a) arbitration may be required in the place of litigation based on the country where the principal place of business of ATL is located;
  - (b) the Arbitration Rules specified by ATL and in place at the time the arbitration is initiated will apply;
  - (c) the arbitration will be the sole and exclusive recourse between the Parties for any dispute not amicably resolved directly by them through negotiation under Clause 24.1 or mediation under Clause 24.2;
  - (d) the arbitration will be by a sole arbitrator, unless the Parties otherwise agree in writing. The Parties will jointly appoint a mutually acceptable arbitrator. If the Parties are unable to agree on an arbitrator within twenty (20) days after the Parties have agreed to arbitration, the Parties will seek the assistance of the organisation promulgating the applicable Arbitration Rules;
  - (e) the language of the arbitration will be English, the arbitrator must be fluent in English, and a daily transcript of the proceedings will be prepared in English;
  - (f) to the extent not prohibited by the Governing Law, equitable remedies will be available in any arbitration, and punitive or exemplary damages will not be awarded. This limitation will not, however, affect any right of

- an Indemnified Person to recover any punitive or exemplary damages under Clause 18;
- (g) any monetary award must be denominated in the currency in which payment is required to be made by the Customer under the applicable Purchase Order and must stipulate a rate of interest, deemed appropriate by the arbitrator, which will run from the date of breach until the date when the award is fully satisfied. The arbitration award must be promptly and fully satisfied by the Party against whom it is granted. An award or judgment will not be considered satisfied until the money is received by the prevailing Party in available funds in its country of its principal place of business; and
  - (h) judgment upon any arbitration award may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 24.4. Litigation: If the dispute has not been resolved within sixty (60) days after the end of the mediation period specified in Clause 24.2, litigation may be initiated, unless the Parties agree to arbitration under Clause 24.3. In any litigation, the Parties agree that the litigation will be filed only in the courts of England, regardless of where ATL may be located or the Goods may have been designed, manufactured, sold or delivered, unless otherwise provided in these Conditions.
- 24.5. Effect on Customer's Rights: The dispute resolution processes specified in this Clause 24 are not preconditions to the exercise by the Customer of any of its rights or remedies under the Purchase Order or applicable law. The Customer's exercise of its rights will not, however, affect either Party's obligations to comply with the requirements of this Clause 24.
- 24.6. Costs: The Parties will each bear the costs they incur in preparing for and conducting any negotiation, mediation, arbitration or litigation, and will share equally the costs of any mediator or arbiter (or related costs); however all costs incidental to enforcing the arbitration award (if any) will, to the maximum extent permitted by law, be charges against the Party resisting enforcement.
- 24.7. Tolling of Statute of Limitations: While the dispute resolution provisions of Clause 24 are being followed relating to a dispute, any statute of limitations, or similar time limitation on the filing of a claim or on the enforcement of a judgment or award rendered relating to a claim, under the governing law or any other law that may affect a Party's right and ability to enforce the judgment or award rendered (such as, for example, the law of the principal place of business of the ATL), relating to the dispute will be tolled and suspended until such time as the dispute has been resolved in accordance with Clause 24. The requirements of this Clause 24.7 will, however, only apply to the extent not prohibited by the governing law or such other law that may affect a Party's right and ability to enforce the judgement or award rendered, as applicable.

## **25. Force Majeure**

- 25.1. Neither ATL nor the Customer will be liable for a delay or failure to perform directly due to a "**Force Majeure Event**". This means a cause or event that is beyond the reasonable control of either ATL or the Customer that is not attributable to its fault or negligence. Force Majeure Events include fire, flood, earthquake, and other extreme natural events, acts of God, riots, civil disorders and war or acts of terrorism, whether or not declared as such by a Government. In every case, the failure to perform must be beyond the reasonable control and not attributable to the fault or negligence of the Party claiming the Force Majeure Event. Force Majeure Events also include delays or non-performance of a subcontractor, agent or Supplier of a Party only if and only to the extent that the cause or event would be a Force Majeure Event. Force Majeure Events exclude labour problems (including strikes, lockouts and slowdowns regardless of their lawfulness), or failure of supplies of power, fuel transport, raw materials or other goods and services, or the failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import, or other Government Requirement of which public notice has been given.
- 25.2. The Party claiming Force Majeure will be required, by Written Notice, to provide the other Party of its occurrence and its termination as soon as practicable.
- 25.3. In the event of a Force Majeure Event, the Customer will be required to acquire all finished Goods, work-in-progress, and raw materials produced or acquired for the work under the Purchase Order at a reasonable price agreed between ATL and the Customer.
- 25.4. If the Force Majeure event will cause more than a minimal delay to the Customer's Schedule, the Customer has the right to find a substitute from elsewhere for the Goods and/or Services that ATL was to provide until a time when ATL can meet the Customer's demands again. Once ATL can meet the Customer's demand, a revised Schedule will be agreed and the Customer will no longer have the right to find a substitute for the Goods and/or Services that ATL provides until termination of the agreement.
- 25.5. The Customer will have the right to terminate the agreement, in part or in full, provided a Written Notice has been given and provided that ATL cannot prove that the Force Majeure Event will cause only a minimal disruption. If ATL can prove that the Force Majeure Event will cause only minimal disruption then the Customer will still be bound by the agreement.
- 25.6. ATL will be able to prove only minimal disruption to the Customer by supplying the Customer with ATL's Business Continuity Plan which sets out the steps that ATL will take to ensure that the Customer's demands are met. Provided that ATL can prove that they are adhering to the Business Interruption Plan and only minimal disruption

will occur, the Customer will not have a right to terminate the agreement.

## **26. General**

- 26.1. No waiver of any breach of any of the provisions of these Conditions shall be effective unless set forth in a written instrument executed by the Party against which enforcement of such waiver is sought and no waiver of any such breach shall be construed or deemed to be a waiver of any other or subsequent breach.
- 26.2. These Conditions shall be binding on and inures to the benefit of the Parties and their respective heirs, representatives, successors and assigns provided that neither ATL nor the Customer may assign these Conditions or any of their rights hereunder to any person or entity without the prior written consent of the other. A person who is not a Party has no rights under the Agreements (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 26.3. These Conditions shall be governed by and construed in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the Courts of England.
- 26.4. For the duration of the Contract that these Conditions apply to, Incoterms 2010 will be applied.

## **27. Written Notices**

- 27.1. All notices between the Parties with respect to the Contract shall be in writing and signed by or on behalf of the Party giving it.
- 27.2. Any notice shall be duly served either;
  - (a) On delivery if delivered by hand;
  - (b) 48 hours after sending if sent by first class post or recorded delivery; or,
  - (c) On sending if sent by fax or email (provided that a copy is also sent by post).Provided that in each case the notice is sent to the registered office address of the addressee or such other address as the addressee may from time to time have notified for the purpose of this condition.
- 27.3. Any notice or communication given under the Contract shall not be validly served if sent by text messaging via mobile phone or solely by email.

## **28. Documents Used in Sale of Goods**

- 28.1. **"CAD Data"** means 3 dimensional computer aided design defined information in any format.
- 28.2. **"Engineering Drawing"** means a drawing defining critical dimensions, features and components of products.
- 28.3. **"Statement of Work (SoW)"** means the document used to detail additional requirements not defined in 28.1 or 28.2.
- 28.4. **"Delivery/Shipping Note"** means the document that is received with the Goods/Services.
- 28.5. **"Earlier Agreements"** means any written agreements entered into with the Customer relating to the Goods or Services.
- 28.6. **"Purchase Order"** means the document received by ATL from the Customer stipulating the full requirement of Goods and/or Services that the Customer wants to purchase.
- 28.7. **"Request for Quotation"** means a document used by ATL to provide the Customer with a Quotation for the Goods and/or Services. Any Quotation must be based on and subject to these Conditions and no other Conditions. The only exception is defined in Clause 6.
- 28.8. **"Sales Invoice"** means the document used to instruct the Customer of the value of the Goods and/or Services. The value on the document will be the agreed price between the Customer and ATL.
- 28.9. **"Schedule"** means the specified quantity of the Goods and/or Service and the specified delivery time, date and location that has been agreed between ATL and the customer. It is the schedule that ATL will be working to. Refer to Clause 6 for the complete definition.
- 28.10. **"Terms and Conditions"** means these Conditions, which shall apply to all Purchase Orders for the purchase of Goods, Tooling, Service Parts and Component Parts.
- 28.11. **"Written Notice"** means a notice given by either ATL or the Customer in accordance with Clause 27.