

# Terms and Conditions of Use and Purchase for the ATS Supplier Portal

## A. General provisions

### 1. Scope of application

- 1.1. ATS Automation Tooling Systems, Inc. ('ATS') is the provider of the ATS Supplier Portal currently available under <https://supplierportal.atsautomation.com>. The Supplier Portal is a web-based platform via which authorized suppliers can submit offers for the sale of products and services to ATS or its affiliates. For the purposes of these Terms and Conditions of Use and Purchase (hereinafter "Terms and Conditions"), "affiliates" are all companies with which ATS is affiliated.
- 1.2. These Terms and Conditions govern the use of the Supplier Portal by the supplier (particularly Section B) as well as the terms and conditions of the contracts and agreements entered into electronically based on the Supplier Portal (particularly Section C).
- 1.3. Contracts and agreements entered into based on the Supplier Portal are deemed to come into existence exclusively between the supplier and the party placing the order in each case, meaning ATS or one of its affiliates, and are subject to these Terms and Conditions. ATS hereby declares, for and on behalf of its affiliates, that these Terms and Conditions apply and are accepted. ATS and its affiliates are hereinafter also referred to individually as "Customer" and collectively as "Customers."
- 1.4. By registering individual users of the supplier in the Supplier Portal, the supplier accepts the exclusive applicability of these Terms and Conditions with regard to the use of the Supplier Portal as well as with regard to the sale of products and services to the Customers based on the Supplier Portal.

## B. Terms of use for the Supplier Portal

### 2. Authorization, registration, and login information

- 2.1. Only suppliers authorized by ATS are permitted to access and use the Supplier Portal. ATS notifies a supplier of its authorization via email; this email notification also includes a link for registering individual users. There is no legal claim to authorization. ATS is free to revoke an authorization retroactively, stating the grounds for such action, or to block associated user accounts.
- 2.2. The sole right conferred by authorization is the supplier's right to register individual employees of the supplier's company as users of the Supplier Portal. The supplier is responsible for ensuring that the users provide complete, truthful information within the scope of the registration process. Supplier is responsible for ensuring up to date email addresses for authorized users. Should a user's email change re-registration is required. The supplier shall, in particular, provide notice without delay if the users' right to represent the supplier for their access to the Supplier Portal should lapse.

- 2.3. Within the scope of the registration process, each user is required to set a password for his or her login name (login name and password hereinafter collectively "Login Information").
- 2.4. The supplier is responsible for ensuring that the users' Login Information is not disclosed to third parties. The supplier shall also ensure that third parties are not given any opportunity to view the Supplier Portal, including in the form of screenshots or printouts.
- 2.5. The supplier shall take reasonable action to protect all Login Information for users provided to it against unauthorized access by third parties. The supplier is liable for all activities performed on the Supplier Portal under the users' Login Information, unless the supplier can prove that the information has become known to third parties without any fault on the supplier's part. After every use, users must log out of the password-protected area. If and insofar as the supplier becomes aware that third parties are abusing the Login Information, the supplier shall notify ATS thereof without delay.
- 2.6. After receiving a notice pursuant to Sec. 2.5, ATS shall block access to the password-protected area using this Login Information. A block cannot be removed until after the supplier makes a separate request to that effect with ATS, or after re-registration takes place.

### 3. Rights of use of content, information, documentation

- 3.1. On the Supplier Portal, ATS provides various items of content of its own, for example in the form of texts, graphics, information, and documentation (hereinafter "ATS Content"). ATS grants the supplier a non-exclusive, non-transferable right to utilize ATS Content for using the Supplier Portal for ordering processes with ATS or its affiliates. Any other intended uses are ruled out.
- 3.2. ATS Content must not be changed, copied, reproduced, sold, rented, used, appended, or otherwise exploited without the prior written consent of ATS. The supplier is allowed, in limited circumstances, to provide ATS Content to third parties for their use, such as technical drawings used by sub-suppliers for finishes.

### 4. Supplier's duties and obligations

- 4.1. The supplier shall refrain from engaging in any of the following activities when using the Supplier Portal through its users:
  - Transmitting content with viruses, Trojan horses, or other malware;
  - Infringing industrial property rights and copyrights or other property rights of third parties; and
  - Entering, saving, or transmitting hyperlinks or content without authorization, particularly if such hyperlinks or content is unlawful.
- 4.2. For its own protection and to prevent the Supplier Portal from being infected with viruses or other malware, the supplier shall ensure internally that reasonable security precautions and virus scanners are in place. This applies accordingly to ATS.
- 4.3. The supplier is obligated to ensure, at its own expense, that it has a properly functioning computer configuration and internet access that enable the supplier to use the Supplier Portal. Please contact ATS for information on the optimum version. It may not be possible to use the Supplier Portal with some web browsers, or the use of some features may be limited.
- 4.4. The supplier grants ATS a non-exclusive right, not subject to compensation and unrestricted in space and time, to use, reproduce, edit, execute, and display any and all content transmitted by the supplier to ATS and intended for use on the Supplier Portal, particularly prices for products and self-reported information (hereinafter collectively "Supplier Content") in whole or in part, provided that so doing serves to implement and execute ordering processes with the supplier. ATS

is authorized to sub-license or transfer the foregoing rights to affiliates to the extent necessary. The supplier warrants that it is authorized to grant the rights to Supplier Content that are listed in this subsection to ATS.

- 4.5. The supplier bears full and sole responsibility for ensuring, at all times, the accuracy of the Supplier Content saved on the Supplier Portal as well as the product-related settings and parameters set within the Supplier Portal (e.g. countries of use/sale, sales regions). The supplier can manually delete or edit saved Supplier Content as well as the aforementioned settings and parameters. The supplier is obligated to check and monitor the accuracy thereof with care. This applies in particular to product-related standard settings and parameters set by default in the system (e.g. permissible countries of use/sale for the supplier's products). The Supplier Content as well as the settings and parameters are legally binding as from the time at which they are submitted.
- 4.6. By way of prior coordination with ATS (particularly with regard to the permissible format), the supplier may submit new or changed Supplier Content to ATS in collected form on the Supplier Portal.
- 4.7. The supplier shall indemnify and hold harmless the Customer against all claims and demands asserted by third parties based directly or indirectly on incorrect Supplier Content, settings, and/or parameters (e.g. incorrect prices, countries of use, product information, etc.). The supplier shall compensate the Customer for damage and/or losses based directly or indirectly on incorrect Supplier Content, settings, and/or parameters. The foregoing obligations apply even if the party against which third parties assert claims, or that suffers a damage or loss due to incorrect information provided by the supplier is not the company placing the order, but rather another ATS affiliate.

## **5. Data privacy and protection; termination by the supplier**

- 5.1. To enable the supplier to register and use the Supplier Portal, it may be necessary to save and process personal information of the supplier and/or its users. When collecting, using, and processing personal information, ATS observes the applicable laws and regulations on data protection and privacy.
- 5.2. The supplier can terminate its authorization and the registration of its users on the Supplier Portal at any time upon 30 days' notice, effective as of the end of a calendar month. ATS shall disable personal information of the supplier once there is no longer a business relationship.

## **C. Terms and conditions of purchase**

### **6. Offer, acceptance, and entry into agreement**

- 6.1. The supplier shall offer the supplier's current products or services to each of the Customers for purchase by saving the prices for products or services available from the supplier as well as the relevant settings and parameters on the Supplier Portal, or by having such information saved on the Supplier Portal by ATS (binding offer). As soon as, and as long as, the supplier's offers are saved on the Supplier Portal, they are legally binding up until the supplier validly changes or deletes them.
- 6.2. Every Customer accepts the supplier's offers for itself by selecting the products or services offered by the supplier and

confirming the purchase (acceptance). When the notice of acceptance is received by the supplier, the relevant agreement between the supplier and the Customer is deemed to have validly come into existence (entry into agreement).

### **7. Delivery time, delivery, rights of rescission**

- 7.1. When accepting an offer, the Customer shall state to the supplier a desired delivery date, which the supplier can confirm or replace with an actually feasible delivery date after receiving the notice of acceptance. The Customer is unilaterally entitled, with immediate effect, to rescind the agreement if and insofar as the delivery date stated by the supplier is later than the desired delivery date (contractual right of rescission).
- 7.2. Delivery to the end customer shall take place either directly, with the supplier delivering to the end customer mentioned by the Customer, or indirectly, via an affiliate.
- 7.3. Claims to damages or reimbursement of outlays due to the exercise of the foregoing rights of rescission (Sec. 7.1 and 7.3) are ruled out vis-à-vis ATS and its affiliates.

### **8. Sales authorization**

- 8.1. Each of the Customers shall sell and distribute products obtained from the supplier, including the relevant licenses that have been offered, to end customers.
- 8.2. Each of the Customers is entitled to sell and distribute the products offered by the supplier, including the relevant licenses that have been offered, to other affiliates, where applicable, insofar as the affiliate in question, for its part, sells and distributes the supplier's products and services to end customers.

### **9. Prices, payment terms**

- 9.1. At any time following the parties' entry into the agreement, but before invoicing, the supplier is authorized to unilaterally reduce the price already agreed with the Customer. The supplier shall notify the Customer of the reduction without delay. Confirmation from ATS is not required.
- 9.2. All agreed prices are net prices, exclusive of applicable taxes. Applicable taxes must be shown separately in invoices. The price may include delivery, transport and/or shipping to the shipping address stated in the order.
- 9.3. The supplier is not permitted to assign receivables arising out of the contractual relationship to third parties without the Customer's prior consent.

## 10. Industrial property rights

- 10.1. The supplier shall indemnify and hold harmless ATS and its affiliates, at the supplier's own expense, against all claims of third parties that concern infringement of third-party rights and are based on standard software or services provided by the supplier infringing industrial property rights of third parties.
- 10.2. If the standard software or service provided by the supplier infringes third-party rights, the supplier shall modify or replace the standard software or service that has been provided such that it does not infringe third-party rights, but largely retains the agreed performance features and functional features, or shall procure for ATS or its affiliates, as the case may be, the rights of use of the standard software or other service such that no infringement of third-party rights takes place. If the supplier is unable to accomplish this on reasonable terms and conditions and within a reasonable time period, the supplier is required to take back the standard software or other services in exchange for reimbursement of the compensation paid by ATS or its affiliates, as the case may be, and to furnish compensation for any damage or loss in excess thereof.

## D. Final provisions

### 11. Liability

- 11.1. ATS or its affiliates, as the case may be, shall be liable for providing the Supplier Portal and for the handling of order processes based on the Supplier Portal exclusively subject to the following paragraphs.
- 11.2. ATS is not liable for liabilities of its affiliates vis-à-vis the supplier.
- 11.3. ATS or its affiliates, as the case may be, shall be liable without limitation for all damage and/or losses caused by it or any of their agents in the performance of their contractual obligations or statutory representatives through intent or gross negligence.
- 11.4. In the event of damage or loss concerning loss of life, bodily injury, or impairment of health caused by ATS or its affiliates, as the case may be, or by any of their agents in the performance of their contractual obligations or statutory representatives, the liability of ATS or its affiliates, as the case may be, is unlimited in amount.
- 11.5. If an instance of damage or loss is based on negligent, but not grossly negligent, violation of an obligation that is essential to the contract (cardinal obligation), ATS or its affiliates, as the case may be, shall likewise be liable for damages, but the amount thereof shall be limited to the amount of damage or loss that typically arises or is foreseeable.
- 11.6. Unless the provisions of Sec. 11.3, 11.4, or 11.5 apply, ATS or its affiliates, as the case may be, shall not be liable for slight negligence or for lost profit, losses due to discontinuation of business operations, consequential damage or losses due to defects, or other indirect damage or losses. The liability of ATS or its affiliates, as the case may be, for ordinary negligence is limited to \$100,000.00 per calendar year.

### 12. Side agreements, place of jurisdiction, applicable law

- 12.1. Side agreements are not valid unless set forth in written form.

- 12.2. The place of jurisdiction is Cambridge, Ontario, Canada. Canadian law applies, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.3. ATS shall operate the Supplier Portal, and be responsible for its operation globally.

### 13. Amendment of these Terms and Conditions

- 13.1. ATS is entitled to amend or append these Terms of Use upon reasonable advance notice, with effect in the future. Amendments or addenda shall be communicated to the supplier in writing, via email, or in another appropriate form.
- 13.2. If the supplier does not agree to the amendment or addendum, the supplier is obligated to issue a written objection thereto within four weeks after receiving notice thereof. If the supplier does not object to the amended terms and conditions within the allotted time, such terms and conditions shall be validly incorporated in accordance with the announcement thereof. ATS shall point this out in the notice of the amendment or addendum.
- 13.3. If the amendments or addenda are indispensable to ATS for non-waivable legal reasons, the obligation to announce them and the supplier's right to object thereto shall not apply. Amendments and addenda made based on such non-waivable legal reasons shall not give rise to any claims for damages vis-à-vis ATS.

### 14. Miscellaneous

- 14.1. ATS is entitled, but not obligated, to expand the technical services and features offered on the Supplier Portal. ATS reserves the right to change the services and features offered on the Supplier Portal and to offer them accordingly.
- 14.2. ATS has the right to commission third parties to perform its services.
- 14.3. ATS is entitled to transfer this Agreement, and all rights and obligations arising hereunder, to a company affiliated with ATS.
- 14.4. A pre-assignment to the supplier of any receivables resulting from a sale of goods from ATS to end customers is only valid after prior written approval by ATS. This particularly applies for re-assignments in association with a reservation of title in the delivered goods by the supplier.
- 14.5. Should one or more provisions of this Agreement be or become invalid or unenforceable in whole or in part, the validity of the remaining provisions hereof shall be unaffected by such circumstance. The invalid or unenforceable provision shall be replaced with a corresponding valid provision that most closely approximates the economic intent of the invalid or unenforceable provision.