



# Purchase Order Terms and Conditions

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By accepting the Purchase Order (the "Purchase Order"), referencing these Purchase Order Terms and Conditions and/or performing hereunder, the Supplier (as defined below) agrees to comply fully with the terms and conditions of purchase set forth below. Acceptance of the Purchase Order is expressly limited to the terms and conditions contained herein and none of the Supplier's terms and

conditions shall apply in acknowledging the Purchase Order or any acceptance of the Agreement (as defined below). Acceptance by ATX of the goods, services or work delivered under a Purchase Order shall not constitute any agreement to the Supplier's terms or conditions. Any terms proposed in ATX's acceptance of the Supplier's offer or in any other document, whether originating from ATX or from Supplier, which add to, vary from, or conflict with the terms of this Agreement are rejected and are not made part of the Agreement between ATX and Supplier. Any such proposed terms shall be void. The Supplier may not ship under reservation.

## 1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires,

“affiliate” has the meaning set out in section 29.1.

“Agreement” means the entire written agreement between the Parties, including these Purchase Order Terms and Conditions, all related Purchase Orders, and all other schedules listed below, and every other document specified or referred to herein as forming part of this Agreement, all as amended by agreement of the Parties from time to time;

“ATX” means, as applicable, ATX Networks (San Diego) Corp. (“ATX Networks”) and ATX Networks (Toronto) Corp. (“ATX Canada”), and/or any affiliates, subsidiaries, principals, agents or assigns of ATX Networks and/or ATX Canada, as applicable, that may order or receive the Deliverables contemplated under this Agreement;

“Business Day(s)” means any day the Parties are open for business, excluding weekends and applicable holidays;

“Deliverables” means the whole of the activities, products, goods, services, materials, equipment, hardware, software, documentation, matters and things required to be done, provided, delivered or performed by the Supplier in accordance with the terms of this Agreement;

“Invoice” means the invoice generated by Supplier at the time of shipment or provision of the Deliverables;

“Party” means ATX or the Supplier or any other signatory to this Agreement and “Parties” means all of them;

“Purchase Order” means the purchase order sent to the Supplier by ATX for the purchase of the Deliverables specified in the Supplier's Quotation, accepted by the Supplier, and made a part of this Agreement.

“Quotation” means a price quote for Deliverables, included and made a part of this Agreement; and

“Supplier” means the person or entity identified in the Purchase Order who is to supply the Deliverables to ATX under the Agreement.

1.2 The headings used in this Agreement are inserted for convenience of reference only and shall not affect their interpretation.

1.3 In this Agreement, words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine gender and the neuter.

## 2. SUPPLIER COMPLIANCE AND THE SUPPLIER CODE OF CONDUCT

- 2.1 ATX requires all Suppliers to comply with and support ATX's "Supplier Code of Conduct" as updated and amended from time to time. As required under the Supplier Code of Conduct, the Supplier shall ensure that gifts, gratuities, entertainment or any other benefits are not offered to any ATX personnel in order to obtain or retain business, direct business to any person, or otherwise gain any improper advantage. The Supplier shall ensure compliance with applicable national and international legislation, including but not limited to laws regarding anti-corruption, anti-trust, anti-bribery, anti-money laundering, fair competition and human rights. ATX's Supplier Code of Conduct currently in force can be found at: <https://atx.com/company/suppliers/code-of-conduct/>
- 2.2 ATX requires all Suppliers to be informed about, understand and comply with applicable anti-bribery laws, including but not limited to the US Foreign Corrupt Practices Act and Canada's Corruption of Foreign Public Officials Act. The Supplier represents, warrants and agrees that: neither the Supplier nor any of its principals, shareholders, directors, officers, employees or agents have or will perform any act which would constitute a violation of, or which would cause ATX to be in violation of applicable anti-bribery laws. In connection with its performance of this Agreement, the Supplier shall not, directly or indirectly, offer, pay, give, promise to pay or give, or authorize the payment or giving of any money, gift, kickback or anything of value to any public official, or to any other person for the benefit of a public official, for the purpose of influencing such public official in the course of his or her official duties.
- 2.3 Neither the Supplier nor any of its subcontractor manufacturers for the Deliverables may use, process or manufacture raw materials, components, subcomponents or any other parts that originate in any country, or from any individual or entity that is under sanctions as listed on or otherwise with the USA Office of Foreign Assets Control (OFAC), and/or the World Trade Organization (WTO) economical or war sanctions lists, or any other similarly restrictive lists maintained by the American government or the Canadian government for similar purposes, or otherwise applicable under the laws governing ATX.
- 2.4 The Supplier shall keep proper accounts and records of its compliance with the Supplier Code of Conduct and its compliance with the specific requirements of this section 2 or otherwise under the Agreement. All such accounts and records shall at all times during regular business hours and upon prior reasonable notice during the term of this Agreement and for three (3) years after the performance of the relevant Purchase Order has been completed, be open to audit, inspection and examination by the authorized representatives of ATX and/or its appointed third parties, who may make copies and take extracts thereof. ATX may perform any audit at any time in respect of the compliance required under the Supplier Code of Conduct and under the terms of this Agreement, in its sole discretion and without interference of the Supplier in any manner. The Supplier shall provide all facilities for such audits and inspections and shall furnish all such information as the authorized representatives of ATX and/or its appointed third parties may from time to time require with respect to such accounts and records and the business, practices and

conduct of the Supplier. Any breach of the requirements of this section 2, or otherwise of the matters and compliance requirements contemplated under the Supplier Code of Conduct and under this Agreement will be considered a material default of the Agreement by the Supplier allowing ATX to pursue all of its rights under the Agreement, including the immediate termination of the Agreement.

### **3. CONDUCT IN RESPECT OF DELIVERABLES**

3.1 The Supplier represents and warrants that;

3.1.1 it is competent to perform the Deliverables; and

3.1.2 it has the necessary qualifications, including knowledge, skill and experience to perform the Deliverables, together with the ability to use those qualifications effectively for that purpose.

3.2 The Supplier shall supply everything necessary for the performance of the Deliverables, including all the resources, facilities, labor and supervision, management, services, equipment, materials, drawings, technical data, technical assistance, engineering services, inspection and quality assurance procedures, and planning necessary to perform the Deliverables.

3.3 The Supplier shall be fully responsible for performing the Deliverables and ATX shall not be liable for any negative consequences or extra costs arising out of the Supplier's following any advice given by ATX, whether given without or upon invitation by the Supplier, unless the advice was provided to the Supplier in writing by ATX and was accompanied by a statement specifically relieving the Supplier of any responsibility for negative consequences or extra costs that might arise from following the advice.

3.4 Material will be new production of current manufacture conforming to the current issue of the specifications, standards, drawings or part numbers as applicable, unless otherwise indicated in this Agreement.

### **4. PURCHASE ORDERS**

4.1 All orders for Deliverables submitted by ATX shall be initiated by written Purchase Orders accepting the terms of the applicable Quotations and sent to the Supplier by email or otherwise, and are binding upon the Supplier upon receipt. Purchase Orders may not be cancelled by the Supplier.

4.2 For each Purchase Order, the Supplier shall provide all shipping documents in English including but not limited to: a Commercial Invoice with Purchase Order number, part number, description and unit price declared as per the Purchase Order document between the Parties; Packing List, Certificate of Origin, USMCA, or any applicable FTA Certificate, Uyghur Forced Labor Prevention Act (UFLPA) Statement, Insurance Certificate, Industrial License, Export License, Certificate of Compliance or Manufacturer's Responsible Declaration and any other documents required for importing by the relevant authorities for verification and approval, before the Deliverables are shipped to ATX.

## 5. DELIVERY

- 5.1 The Delivery schedule for all the Deliverables shall be as identified in this Agreement.
- 5.2 Delivery of all or part of the Deliverables, excluding services, provided under this Agreement shall be deemed to have occurred upon delivery and, for products, unloading by the Supplier, at the destination identified in this Agreement.
- 5.3 For services, delivery shall be deemed to have occurred upon execution by ATX of a document or documents acknowledging same.

## 6. SHIPPING TERMS

- 6.1 As applicable under the relevant Purchase Order, the following shipping terms apply:
  - 6.1.1 For Air/ Inland modes of transportation shipments: INCOTERMS 2020 FCA (Free Carrier) to the place/ airport/ port named by ATX. The Seller pays from origin to place, or airport named by ATX. The Supplier must pay all costs relating to delivery of the relevant Deliverables, which are incurred until such Deliverables are delivered at the ATX nominated place. The Supplier selects the carrier and is responsible for the risk of transportation from origin to port nominated by ATX. The Supplier must pay all government duties and taxes required by the relevant government authorities to export/import the Deliverables. The Supplier must pay all costs for the documents required by the relevant government authorities: Commercial Invoice, Packing List, Certificate Of Origin or any other FTA (Free Trade Agreement) Certificate as applicable, Insurance Certificate, Industrial License, Export License, Certificate of Compliance or Manufacturer's Responsible Declaration. The Supplier shall provide these documents to ATX free of charge.
  - 6.1.2 For Ocean shipments: INCOTERMS FOB (Free On Board) to the port/place named by ATX. The Supplier retains title and control of Deliverables until such Deliverables are delivered at ATX's port or nominated place. The Supplier selects the carrier and is responsible for the risk of transportation from origin to ATX's port or nominated place, including Origin Terminal Charges and Loading on Carriage, as applicable. The Supplier must pay all government duties and taxes required by the relevant government authorities to export the Deliverables. The Supplier must pay all costs for the documents required by the relevant government authorities: Commercial Invoice, Packing List, Certificate Of Origin or any other FTA (Free Trade Agreement) Certificate as applicable, Insurance Certificate, Industrial License, Export License, Certificate of Compliance or Manufacturer's Responsible Declaration. The Supplier shall provide these documents to ATX free of charge.

## 7. RISK OF LOSS

In accordance with INCOTERMS 2020 FCA and FOB, the Supplier is responsible for risk of loss and damage of the Deliverables from origin to the ATX port or nominated place for delivery of such Deliverables, unless such loss or damage results solely from the active and intentional negligence of ATX. Risk of loss and damage will remain with the Supplier

until delivery to ATX in the event other INCOTERMS are ever agreed between the Parties. The Supplier is also responsible for proper packaging for the Deliverables.

## 8. INSPECTION AND ACCEPTANCE OF THE DELIVERABLES

- 8.1 ATX shall have thirty (30) days after delivery as specified in section 5 (Delivery), to inspect the Deliverables provided or performed by the Supplier. ATX at its option may reject all or any portion of the Deliverables which do not in ATX's sole discretion comply in every respect with each and every term and condition of this Agreement. ATX may elect to reject the Deliverables in their entirety even if only a portion thereof is non-conforming. ATX may require that rejected Deliverables be corrected or replaced at the Supplier's expense. If ATX elects to accept non-conforming Deliverables, ATX, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate ATX for the nonconformity. Any acceptance by ATX, even if non-conditional, shall not be deemed a waiver or settlement of any defect in the Deliverables.
- 8.2 In the event ATX does not notify the Supplier of any rejection of all or a portion of the Deliverables within the thirty (30) day period referred to above, the Deliverables shall be deemed to have been accepted by ATX.
- 8.3 If ATX notifies the Supplier that they reject all or any portion of the Deliverables, the Supplier must, within five (5) Business Days, submit revised Deliverables, at its cost.
- 8.4 Where all or a portion of the Deliverables is rejected and re-submitted, processing of the re-submitted Deliverables will be subject to the same conditions as if they were the original Deliverables.
- 8.5 The actions of the Supplier in preparing, submitting, correcting or resubmitting the Deliverables will not:
  - 8.5.1 entitle the Supplier to claim postponement of any relevant milestone date;
  - 8.5.2 relieve the Supplier from performing its obligations under this Agreement; or
  - 8.5.3 limit ATX's rights under this Agreement or otherwise.
- 8.6 Subject to the obligations and responsibilities of ATX under this Agreement, the Supplier acknowledges and agrees that, it is wholly responsible for the Deliverables and for demonstrating that the Deliverables meet the requirements of this Agreement, and that it must, at no additional cost to ATX, rectify any deficiency, error or other inadequacy in the Deliverables as advised by ATX.

## 9. RETURNS

Defective material shall be returned freight collect to the Supplier. Replacement material shall be sent freight prepaid from the Supplier, who will absorb the burden of premium transportation when the defect or replacement material places critical time or delivery schedule constraints on ATX.

## 10. WARRANTY

- 10.1 The Supplier warrants that all services performed under this Agreement will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement. If the Supplier is required to correct or replace the services or any portion thereof, it shall be at no cost to ATX, and any services corrected or replaced by the Supplier pursuant to this subsection shall be subject to all provisions of this Agreement to the same extent as services initially performed.
- 10.2 Notwithstanding inspection and acceptance of the Deliverables by or on behalf of ATX and without restricting any other provision of this Agreement or any condition, warranty or provision implied or imposed by law, the Supplier warrants that, for a period of 24 months from the date of delivery, or if acceptance takes place on a later date, the date of acceptance, the Deliverables shall be free from all defects in design, materials or workmanship, and shall conform with the requirements of this Agreement.
- 10.3 In the event of a defect or non-conformance in any part of the Deliverables during the warranty period defined in sections 10.2 and 10.4, the Supplier shall as soon as possible repair, replace, redo the Deliverables or otherwise make good at its own option and expense the part of the work found to be defective or not in conformance with the requirements of this Agreement.
- 10.4 The warranties set out in sections 10.1 and 10.2 shall apply to any part of the Deliverables repaired, replaced or otherwise made good pursuant to section 10.3, for the greater of:
- 10.4.1 the warranty period remaining under section 10.1 and 10.2, or
  - 10.4.2 90 days, whichever period is the longest.
- 10.5 All the provisions of sections 10.3 and 10.4, inclusive, apply, with such minimum changes as the context may require, to any such part of the Deliverables that is found during that period to be defective or not in conformance with this Agreement.

## 11. PRICE ADJUSTMENT

ATX will not accept shipment of Deliverable at any increase in price above that indicated in this Agreement. Any general price decrease announced by the Supplier in classification of equipment and/or materials similar to the items described on this order shall automatically reduce the price thereof by a comparable percentage.

## 12. EXTRA CHARGES

No extra charges of any kind, including charges for service, charges for boxing or cartage, will be allowed unless specifically agreed to by ATX in writing. Pricing by weight, where applicable, covers net weight of material, unless agreed to by ATX in writing.

## 13. PAYMENT

- 13.1 Notwithstanding any other provision of this Agreement, no payment shall be made to the Supplier unless and until:
- 13.1.1 an invoice, inspection notes, certificates and any other documents required by this Agreement have been submitted in accordance with the terms of this Agreement and the instructions of ATX;
  - 13.1.2 all such documents have been verified by ATX;
  - 13.1.3 with respect to all parts of the Deliverables in respect of which payment is claimed, the Supplier, where requested to do so, establishes to the satisfaction of ATX that such parts of the Deliverables will be free from all claims, liens, attachments, charges or encumbrances and same has been inspected by ATX and accepted as being in accordance with this Agreement, including the Specification; and
  - 13.1.4 in the case of payment in respect of finished work, the finished work has been inspected by ATX and accepted as being in accordance with this Agreement, including the Specifications.
- 13.2 ATX shall notify the Supplier of any inadequacy of the Invoice or of the supporting documentation and where any such notice is given the date for payment of the amount invoiced shall be postponed until the Supplier remedies the inadequacy to the satisfaction of ATX.
- 13.3 Provided the Supplier has complied with all the terms and conditions in this section 13, unless the Purchase Order states otherwise, ATX shall make payment to the Supplier within sixty (60) days of the date of acceptance of the Deliverables by ATX or the receipt of an Invoice, whichever is later.
- 13.4 Unless otherwise stated in the Purchase Order, or otherwise agreed to by the Parties, ATX will make payment through an Electronic Fund Transfer (EFT) process. The Supplier shall provide ATX the appropriate banking information to process EFT payments.

## 14. SET-OFF

ATX shall be entitled to set off any amount owing, for any reason, at any time, from the Supplier to ATX against any amount payable by ATX in connection with this Agreement.

## 15. INCOME TAX WITHHOLDING ON SERVICES RENDERED IN CANADA

- 15.1 As applicable, where a Purchase Order is issued by ATC Canada and/or an ATX affiliate in Canada, and the Supplier is a non-resident of Canada, the Supplier agrees, in accordance with Income Tax Regulation 105, that ATX may withhold Canadian income tax of 15% of the amount paid for any services of any nature whatever performed or rendered in Canada by the Supplier or by a Canadian sub-Supplier; this income tax will be remitted to the Canada Revenue Agency (CRA) on behalf of the Supplier and the appropriate



reporting forms will be prepared by ATX and given to the Supplier as proof of the payment of the said tax.

15.2 Alternatively, before any work is scheduled to be performed under this Agreement, the Supplier may apply directly to CRA to be exempt from this withholding provision and supply ATX with proof of such exemption, and such exemption will only be applied once such proof of exemption has been provided by Supplier. If the exemption is granted and confirmed by CRA, the Supplier will be exempt from the withholding tax provision under this Agreement. The Supplier shall be in possession of the CRA Tax Exemption before entering Canada to perform any Deliverables. Exemption certificates received from CRA after entry to Canada will be subject to withholding taxes.

15.3 The Supplier further agrees to identify and segregate the "Canadian portion" of the fees and other charges on the Invoice; each Invoice will separately identify:

15.3.1 Consulting, training or other fees applicable to time spent in Canada; and

15.3.2 Travel expenses (transportation, accommodation, and meals) for work in Canada. The travel should be segregated between: (a) travel amounts, such as per diem meal rates and supported travel expenses with attached original supporting documents; the reimbursement of these travel expenses may be excluded from the income tax withholding requirement; and (b) travel that has no supporting copies of documents (other than per diem rates) and is subject to the withholding tax.

## 16. COMPLIANCE WITH APPLICABLE LAWS

The Supplier shall comply with all laws applicable to the performance of the Deliverables or any part thereof including, without limitation, all laws concerning health and labor conditions, forced labor laws, the protection of the environment, all applicable anti-bribery laws, immigration laws, and tax laws, and shall require compliance therewith by all of its partners, contractors and sub-contractors. Evidence of compliance with such laws shall be furnished by the Supplier to ATX at such times as ATX may reasonably request and failure to provide satisfactory evidence of compliance as determined by ATX shall trigger the audit rights for ATX set out in section 2.4 of this Agreement.

## 17. CONFIDENTIAL INFORMATION

17.1 For the purposes of this clause, "Confidential Information" means all information disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by ATX to the Supplier whether before or after the date of this Agreement and whether identified as confidential information or not, including, without limitation, any information relating to ATX's products, designs, intellectual property, operations, processes, plans or intentions, product information, pricing, market opportunities and business affairs or those of its customers, clients or other contacts.

17.1.1 keep the Confidential Information confidential;

17.1.2 not disclose the Confidential Information to any person, other than in accordance

with section 18.3 and 18.4, unless it first obtains ATX's prior written consent, such consent not to be unreasonably withheld or delayed; and

- 17.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 17.2 During the term of this Agreement the Supplier may disclose Confidential Information to its employees but only to the extent reasonably necessary for the purposes of this Agreement.
- 17.3 The Supplier shall ensure that each person who receives Confidential Information pursuant to section 18.3 above is made aware of all the obligations of confidentiality under this Agreement, and either
  - 17.3.1 complies with those obligations as if they were a Party to this Agreement; or
  - 17.3.2 is bound by confidentiality obligations substantially similar to those contained in this clause.
- 17.4 The Supplier may disclose Confidential Information where disclosure is required by law, by a court of competent jurisdiction or by a regulatory body with authority over its business, provided that where possible, the Supplier gives ATX at least two working days' prior written notice of the disclosure.
- 17.5 The obligations contained in sections 18.2 to 18.4 do not apply to Confidential Information which:
  - 17.5.1 is at the date of this Agreement or at any time after the date of this Agreement comes into the public domain other than through breach of this Agreement by the Supplier or its employees;
  - 17.5.2 can be shown by the Supplier to the reasonable satisfaction of ATX to have been known by the Supplier before disclosure by ATX to the Supplier; or
  - 17.5.3 subsequently comes lawfully into the possession of the Supplier from a third party.

## **18. SUB-CONTRACTING**

- 18.1 Unless otherwise provided in this Agreement, the Supplier shall obtain the written consent of ATX prior to sub-contracting or permitting the sub-contracting of any substantial portion of the Deliverables.
- 18.2 Any consent to a sub-contract shall not relieve the Supplier from its obligations under this Agreement or be construed as authorizing any liability on the part of ATX to a subcontractor. ATX may withhold its consent to any subcontracting in ATX's sole and unfettered discretion.

## **19. INTELLECTUAL PROPERTY**

- 19.1 The Supplier hereby irrevocably and unconditionally transfers and assigns to ATX all right, title and interest in and to all patents, trademarks, copyrights and any and all other

intellectual or industrial property rights in any material created for ATX under this Agreement, and such assignment and transfer shall occur at the time of creation thereof. All such material shall incorporate appropriate notices pursuant to American law and/or Canadian law as applicable, and all relevant international treaties.

19.2 For any part of the Deliverables in which Intellectual Property is owned or licensed by the Supplier, the Supplier shall and hereby grants to ATX a world-wide, non-exclusive, fully paid, assignable, irrevocable license to use, perform, execute, transmit, copy, modify, prepare derivative works and translate and to authorize any third party to do any of the aforesaid on behalf of ATX and disclose to third parties, the Deliverables ordered under this Agreement. The provision of this section shall not apply to systems, software, documentation, tools utilities, methodologies, techniques and other know-how owned by the Supplier which do not remain in ATX's possession after the Deliverables are completed.

19.3 Copyright in any translation of the Deliverables made by ATX shall vest in ATX, but this copyright shall be subservient to the copyright of the original Deliverables. ATX may use independent contractors in the exercise of ATX's rights under this section.

19.4 ATX shall reproduce the Supplier's copyright notice, if any, on the translation of any of the material incorporated by the Supplier into the Deliverables, which the Supplier owns the Intellectual Property.

19.5 No restrictions other than those set out in this section shall apply to ATX's translated version of the Deliverables.

19.6 The Supplier agrees:

19.6.1 To defend, hold harmless and indemnify ATX and its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable lawyer's fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any American, Canadian or foreign patent, trade-mark, copyright or industrial property right by reason of the manufacture, use or sale of the Deliverables, including infringement arising out of compliance with specifications furnished by ATX for actual or alleged misuse or misappropriation of a trade secret or confidential information from a third party resulting directly or indirectly from the Supplier's action; and

19.6.2 To waive any claim against ATX, including any hold harmless or similar claim, in any way related to a claim asserted against the Supplier and/or ATX for patent, trademark, copyright or industrial property right infringement or the like, including claims arising out of compliance with specifications furnished by ATX.

## 20. INDEMNITY

20.1 The Supplier shall indemnify and save harmless ATX, its respective directors, trustees, officers, members and employees, their respective heirs, estates and assigns, and any others for whom ATX may be responsible in law, from and against any claim for damages, losses, costs and expenses (including reasonable attorneys' fees and expenses on a solicitor and his own client basis) or any claim, action, suit or other proceeding which they

or any of them may incur or suffer as a result of or arising out:

20.1.1 any breach of the provisions of this Agreement;

20.1.2 any injury (including injuries resulting in death) to persons, including Supplier's employees and employees of sub-Suppliers, loss of, or damage to, or loss of use of property that may be alleged to have been caused by or suffered as a result of the performance, (including any failure or omission to act), of the Deliverables or any part thereof; and

20.1.3 any liens, attachments, charges or other encumbrances or claims upon or in respect of any materials, parts, equipment, work-in-progress furnished to, or in respect of which any payment has been made by, ATX.

## 21. TITLE

21.1 Except as otherwise provided in this Agreement, title to the Deliverables or any part thereof shall vest in ATX upon delivery and acceptance thereof by or on behalf of ATX.

21.2 Upon any payment being made to the Supplier in respect of the Deliverables or any portion of the Deliverables, either by way of progress payments or accountable advances or otherwise, title to the Deliverables so paid for shall vest in and remain in ATX unless already so vested under any other provision of this Agreement.

21.3 Notwithstanding any vesting of title referred to in this section and except as otherwise provided in this Agreement, the risk of loss or damage to the Deliverables or part thereof so vested shall remain with the Supplier until its delivery to and acceptance by ATX in accordance with this Agreement. The Supplier shall be liable for any loss or damage to any part of the Deliverables caused by the Supplier or any authorized subcontractor after such delivery.

21.4 Any vesting of title referred to above shall not constitute acceptance by ATX of the Deliverables and shall not relieve the Supplier of its obligation to perform the Deliverables in accordance with this Agreement.

21.5 Where title to any materials, parts, work-in-process or finished Deliverables becomes vested in ATX, the Supplier shall, upon ATX's request, establish to ATX's satisfaction, that the title is free and clear of all claims, liens, attachments, charges or encumbrances and shall execute such conveyances thereof and other instruments necessary to perfect that title as ATX may request.

## 22. INSURANCE

22.1 Unless more specific insurance provisions are attached, the following shall apply hereto.

At all times during its performance hereunder the Supplier shall effect and maintain comprehensive public liability insurance on an occurrence basis against claims for personal injury, death or property damage, including products liability and non-owned automobile coverages, with reasonable exclusions and in such amount as would from time to time be carried by a prudent owner.

- 22.2 The Supplier shall obtain, where applicable, Professional Liability Insurance for professional services provided pursuant to this Agreement, in an amount not less than \$2,000,000.00 each claim and in aggregate and this insurance shall be maintained for the duration of the Deliverables and for a period of three (3) years after substantial completion of the Deliverables.
- 22.3 As applicable, the Supplier represents that they are registered and in good standing with the Workers Compensation Board or authority for the provincial jurisdiction or jurisdictions in which the work under this Agreement will be conducted. The Supplier shall provide ATX with the clearance certificates from such Workers Compensation Board (a) at the time of execution of this Agreement, (b) annually thereafter, and (c) with the Invoice for the final payment made pursuant to this Agreement.
- 22.4 Minimum insurance requirements set out in this section are intended to protect the interest of ATX and are in no way warranted by ATX as sufficient to protect the interests of the Supplier or any other party at interest.
- 22.5 The Supplier, for itself and for any party claiming through it, agrees to fully and completely release ATX, its affiliates, agents and appointed representatives, their respective directors, trustees, officers and employees, their respective heirs, estates and assigns forever from any claim for contribution for any injury, loss or damage that may be the subject of any of the insurance coverage arranged by the Supplier, including without limitation, the coverage required to be maintained by this Section.
- 22.6 All insurance policies shall be endorsed to provide not less than sixty (60) days' notice of cancellation, material reduction in coverage or non-renewal to ATX by the insurer. At the time of Agreement signing or before and annually thereafter, the Supplier shall provide to ATX a certified copy of each policy or a Certificate(s) of Insurance acceptable to ATX and signed by an authorized representative of the insurer.

## **23. SUSPENSION OF THE DELIVERABLES**

- 23.1 ATX may at any time, by written notice, order the Supplier to suspend or stop all or part of the Deliverables under this Agreement for a period of up to 180 days. The Supplier shall immediately comply with any such order in the manner that minimizes the cost of so doing. While such an order is in effect, the Supplier shall not remove any part of the Deliverables from any premises without the prior written consent of ATX. At any time prior to the expiration of the 180 days, ATX shall either rescind the order, further extend the suspension or terminate this Agreement, in whole or in part, in accordance with the terms of this Agreement.
- 23.2 When an order is made under this section, unless ATX terminates this Agreement by reason of default by the Supplier or the Supplier abandons this Agreement, the Supplier shall be entitled to be paid its additional costs incurred due to the suspension plus a fair and reasonable profit thereon.
- 23.3 When an order is made under this section and is rescinded:
- 23.3.1 the Supplier shall as soon as practicable resume Deliverables in accordance with this Agreement;

23.3.2 if the suspension has affected the Supplier's ability to meet any delivery date under this Agreement, the date for the performance of that part of the Deliverables affected by the suspension shall be extended for a period equal to the period of suspension plus a period, if any, which in the opinion of ATX following consultation with the Supplier is reasonably necessary for the Supplier to resume the Deliverables; and

23.3.3 subject to section 29 (Amendment and Waivers), an equitable adjustment shall be made as necessary to affected terms and conditions of this Agreement.

## **24. TERMINATION FOR CONVENIENCE**

24.1 Notwithstanding anything contained in this Agreement, ATX may, at any time prior to the completion of the Deliverables, by giving notice to the Supplier (in this section sometimes referred to as a "termination notice"), terminate this Agreement as regards all or any part of the Deliverables not completed. Upon a termination notice being given, the Supplier shall cease work in accordance with and to the extent specified in the notice but shall proceed to complete such part or parts of the Deliverables as are not affected by the termination notice. ATX may, at any time or from time to time, give one or more additional termination notices with respect to any or all parts of the Deliverables not terminated by any previous termination notice.

24.2 In the event of a termination notice being given pursuant to section 25.1, the Supplier shall be entitled to be paid, to the extent that costs have been reasonably and properly incurred for purpose of performing this Agreement and to the extent that the Supplier has not already been so paid or reimbursed by ATX including the unliquidated portion of any advance payment.

## **25. DEFAULT BY THE SUPPLIER**

25.1 Where the Supplier is in default in carrying out any of its obligations under this Agreement, ATX may, upon giving written notice to the Supplier, terminate for default the whole or any part of this Agreement, either immediately, or at the expiration of a cure period not exceeding 30 days, as specified in the notice if the Supplier has not cured the default to the satisfaction of ATX within that cure period.

25.2 Where the Supplier becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or takes the benefit of any statute relating to bankrupt or insolvent debtors, or where a receiver is appointed under a debt instrument or a receiving order is made against the Supplier, or an order is made or a resolution passed for the winding up of the Supplier, ATX may, to the extent permitted by applicable law, upon giving notice to the Supplier, immediately terminate for default the whole or any part of this Agreement.

25.3 Where, subsequent to issuance of a notice pursuant to this section, ATX is satisfied that grounds did not exist for a termination under this section, the notice shall be deemed a notice of termination for convenience issued under section 25 (Termination for Convenience) of this Agreement.

25.4 Where ATX terminates this Agreement pursuant to sections 26.1 or 26.2 above, wherever it has provided notice or not, the Supplier shall not be entitled to be paid for any costs

incurred for the purpose of performing the Deliverables under this Agreement.

## **26. FREE TRADE AGREEMENTS (FTA) APPLICABLE TO ATX DELIVERABLES FOR CANADA AND USA**

### **26.1 Canada-European Union Comprehensive Economic and Trade Agreement (“CETA”).**

26.1.1 When Deliverables subject to CETA are provided pursuant to the Purchase Order and this Agreement and originate in the European Union for purposes of CETA, Supplier shall provide to ATX, prior to the export of such Deliverables, a blanket CETA Certificate of Origin in English language for all Deliverables eligible under this FTA that complies with Annex 2 of the CETA Protocol on Rules of Origin and Origin Procedure ("Origin Declaration").

26.1.2 In accordance with CETA, Supplier shall notify ATX in writing of any changes that might result in such Deliverables being ineligible for preferential tariff treatment under CETA. Supplier acknowledges that the Origin Declaration will be used by ATX for proof of eligibility for preferential duty treatment, and Supplier agrees to provide full cooperation to ATX for any inquiries into CETA claims that arise out of any of such Deliverables furnished under a Purchase Order. Upon request, Supplier shall promptly furnish to ATX all certificates of origin or declarations or documents relating to the cost and place of origin of such Deliverables and materials contained therein, as may be required by ATX to comply with all customs requirements and governmental regulations.

26.1.3 Supplier shall indemnify, defend (at ATX's option) and hold harmless ATX its subsidiaries and affiliates and their respective successors, assigns, representatives, employees and agents, from and against all liabilities, demands, claims, losses, costs, damages and expenses of any kind or nature (including fines and penalties) arising from or as a result of: (1) Supplier's delay in furnishing the Origin Declaration; (2) many errors or omissions in the Origin Declaration; and (3) any non-compliance by Supplier with the requirements of CETA.

### **26.2 United States–Mexico–Canada Agreement (USMCA)**

26.2.1 When Deliverables that are subject to USMCA are provided pursuant to the Purchase Order and this Agreement and originate in the USA, Canada or Mexico for purposes of USMCA, Supplier shall provide to ATX, prior to the export of such Deliverables, a blanket USMCA Certificate of Origin in the English language for all Deliverables eligible under this FTA that complies with Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures) of USMCA.

## **27. EXPORT CONTROL**

Supplier agrees to comply with all applicable USA, Canada, or any other WTO country members' export laws and foreign export laws, restrictions, and regulations and to not export or re-export or allow the export or re-export of any product, technology or information it obtains or learns pursuant to its relationship with ATX in violation of any such laws, restrictions or regulations. Supplier shall bear all expenses relating to any necessary licenses and/or

exemptions with respect to the export from the USA or Canada of the Deliverables to any location in compliance with all applicable laws and regulations prior to the delivery thereof by the Supplier. The Supplier shall indemnify and hold ATX harmless from all claims, damages and related expenses (including reasonable attorneys' fees) incurred by ATX that result from Supplier's breach of this provision.

## 28. GENERAL PROVISIONS

28.1 Assignment. Except as otherwise provided in this Agreement, neither Party may assign, novate, delegate, or transfer this Agreement or any of its individual rights or obligations under this Agreement, without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. Any attempted assignment, novation, delegation, or transfer without the necessary approval is void. However, ATX may, without the prior written consent of Supplier, unconditionally assign, novate, delegate or transfer any or all of its rights and obligations under this Agreement, in whole, in part, or through a splitting of the Agreement, to any affiliate or to any acquirer of a ATX business line to which this Agreement relates. As of the effective date of the assignment, novation, delegation, or transfer, the assignee entity(ies) assumes all of the relevant rights, obligations and liabilities of the Agreement and ATX is unconditionally released and discharged from all of the relevant rights, obligations and liabilities of the Agreement. ATX will work cooperatively with the Supplier and the assignee entity(ies) to ensure a smooth and orderly transition. Any ATX affiliate may, but is not obligated to, fulfill ATX's obligations under this Agreement. For purposes of this Agreement, "affiliate" means with respect to either Party, any individual or entity that is directly or indirectly controlling, controlled by or under common control with the such Party, where, "control" and derivative terms mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract or otherwise. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

28.2 Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the State of Delaware without regard to principles of conflict of laws and as if this Agreement was applicable between parties domiciled within the State of Delaware. All disputes, claims or controversies arising out of or related to this Agreement will be brought exclusively in the federal or state courts of New Castle County, Delaware, and the parties hereby submit to the personal jurisdiction and venue therein. Notwithstanding the foregoing, ATX may in its sole discretion, bring disputes, claims or controversies in relation to this Agreement in the courts of the jurisdiction where the Supplier's main center of operations are located or otherwise where the Supplier conducts manufacturing activities. ATX and the Supplier agree that the provisions of the 1988 United Nations Convention on Contracts for the International Sales of Goods, a.k.a., CISG, shall not apply to these Agreement.

28.3 Entire Agreement, Integration, Conflicts or Inconsistencies. These Purchase Order Terms and Conditions together with all related Purchase Orders, any master purchase agreement between the parties ("MPA") and any Invoices shall constitute the Agreement, which forms the entire agreement between ATX and Supplier on the subject matter



referenced in the Agreement. ATX shall not be bound by any terms of Supplier's acceptance, which are inconsistent with the terms herein set forth. The Agreement shall not be modified, supplemented, qualified or interpreted by any trade usage or prior course of dealing not made a part of the Agreement by its express terms. In the event of conflict between the Purchase Order, MPA, and these Purchase Order Terms and Conditions, the order of precedence, with 'i)' having first order of priority, shall be i) the commercial terms contained in a Purchase Order, ii) the terms of an MPA if there is one in place between the parties for the subject matter contained in this Agreement, and iii) these Purchase Order Terms and Conditions .

- 28.4 Force Majeure. Nonperformance of either Party shall be excused, and the nonperforming Party shall have no liability to the other Party, except for payment obligations, to the extent that performance is rendered impossible by acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, fuel crises, or communicable disease epidemic, pandemic, or government, legislative, judicial, executive, or administrative agency action in response thereto that causes partial or complete restriction on the movement of individuals, capital, equipment or supplies, or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the nonperforming Party.
- 28.5 Severability. If any provision or provisions of these Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 28.6 Status of the Supplier. The Supplier is engaged as an independent contractor for the sole purpose of performing the Deliverables. Neither the Supplier nor any of its personnel are engaged as an employee, servant or agent of ATX. The Supplier is responsible for all deductions and remittances required by law in relation to its employees including those required for any relevant Social Security, Pension Plans, Employment Insurance, worker's compensation, or income tax.
- 28.7 Reservation of Rights. Notwithstanding any other provision of this Agreement, ATX expressly reserves in respect hereof all rights and remedies which are available to them under the terms of this Agreement, at law or in equity.
- 28.8 Language of Agreement. If applicable, the Parties hereto have required that this Agreement be written in English. Les parties aux présentes ont exigé que le présent contrat soit rédigé en anglais.
- 28.9 Information Security. The Supplier acknowledges it has developed, implemented, and will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to ensure security by protecting against anticipated threats or hazards, unauthorized access or inappropriate use of proprietary and/or restricted information, and ensuring the proper disposal of the aforementioned. The Supplier agrees to regularly audit and review its information security policies and procedures to ensure continued effectiveness and determine whether adjustments are necessary considering then-current circumstances including, without limitation, changes in technology, customer information systems or threats or hazards to proprietary and/or restricted information.

28.10 No Publicity. The Supplier shall not use: (i) the name, trade name, or trademarks of ATX; (ii) any information which may reasonably be seen to imply that the Supplier has entered into an agreement with or has a relationship with ATX, in any manner, in any of its advertising or marketing literature, customer lists, web sites, applications, emails, press releases or any presentation, deliverable, document or communication (in electronic or paper form) without the prior written consent of ATX.

28.11 Amendment and Waivers. No design change, variation, addition, deletion (which term includes lining out), rider, modification to the Deliverables, or amendment to this Agreement shall be binding unless it is incorporated into this Agreement by written amendment executed by ATX and the Supplier.

28.11.1 No waiver shall be valid, binding or affect the rights of the Parties unless it is made in writing and signed by both of the Parties.

28.11.2 The waiver by a Party of a breach of any term or condition of this Agreement shall not prevent the enforcement of that term or condition by that Party in the case of a subsequent breach, and shall not be deemed or construed a waiver of any subsequent breach.

28.11.3 The failure by any Party hereto to insist in any one instance upon the strict performance by the other Party hereto of its obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect. No covenant or condition of this Agreement may be waived by any Party hereto except by the written consent of that Party, and forbearance or indulgence by that Party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition and, until performed or waived in writing, that Party shall be entitled to invoke any remedy available to that Party under this Agreement or by law, despite the forbearance or indulgence.