

Manufacturing Services Agreement

Terms and Conditions

Last updated March 25, 2021

This Manufacturing Services Agreement (“Agreement” or “Terms”) governs Purchaser’s (defined below) placement of any order to ATL and all matters related to or arising out of such order or the fulfillment of such order. It is made effective as of the date Purchaser places an order (“Effective Date”). Notwithstanding the terms contained on any document placing an order with ATL Technology, LLC or any ATL affiliate (“ATL”), even terms that are made expressly conditioned upon the acceptance of those terms by ATL, the provisions of this Agreement shall exclusively govern the relationship between ATL and the party placing the order (“Purchaser”). This Agreement shall govern to the exclusion of all other understandings or terms, or agreements, written and oral, except for those signed by an ATL officer and except for those contained in a separate quality agreement that relate specifically to the quality of ATL’s products. If Purchaser does not agree to these Terms, it must immediately notify ATL that it rejects these Terms, and no contract shall be formed. Except for those signed by an ATL officer and except for those contained in a separate quality agreement that relate specifically to the quality of ATL’s product, ATL hereby expressly rejects the provisions of any understandings, terms, or agreements other than this Agreement.

In consideration of the mutual promises and covenants contained herein, and the valuable consideration described below, the parties, intending to be legally bound, do hereby agree as follows:

1. Term.

This Agreement shall continue for one year or until earlier terminated as provided in this Agreement.

2. Manufacturing Services.

Subject to the provisions of this Agreement, ATL shall perform the engineering or manufacturing services for the product (“Product(s)”) requested by Purchaser in a purchase order or other similar document (the “Manufacturing Services”).

3. Compensation.

For the Manufacturing Services to be performed by ATL hereunder, Purchaser agrees to pay the amounts specified in the applicable purchase order within 30 days after the date of each invoice. Monthly interest of 1.5% will be due on any payment made more than 30 days after the due date. Purchaser may withhold the portion of any invoice that is the subject of a good faith dispute that has been communicated to ATL within five days after receipt of the invoice in question. Purchaser waives any claim related to an invoice not disputed within 30 days after the date of the invoice.

4. Intellectual Property Rights.

The parties acknowledge that ATL has developed and/or may develop in connection with the Manufacturing Services, or independent hereof, certain specialized technology, including, without limitation, designs, discoveries, inventions, products, procedures, improvements, developments, drawings,

notes, documents, information and materials (“Specialized Technology”) that it is willing to use in connection with the design or manufacture of the Products or incorporate into the Products provided to Purchaser hereunder. ATL shall own all patents, copyrights, trademarks, trade secrets, know-how, inventions, improvements, and works of authorship (collectively, “Intellectual Property”) which relate to the Specialized Technology. Nothing in this Agreement shall limit in any way ATL’s right and ability to provide services and products similar to the Manufacturing Services and Products provided hereunder to any other customer or client, or to utilize ATL’s Specialized Technology in conjunction with the provision of services or products to ATL’s other customers or clients.

5. Accepted Purchase Orders.

“Accepted Purchase Order” shall mean a purchase order or similar document issued by Purchaser for Products, which has been accepted by ATL as evidenced by a written acknowledgment from ATL.

6. Packaging, Shipping, and Risk of Loss.

All Products delivered pursuant to these Terms shall be suitably packed for shipment in accordance with good shipping practices and marked for shipment to Purchaser’s dock. Delivery shall be FOB ATL dock and Purchaser is responsible for any freight, insurance, etc.

7. Delivery Date.

ATL shall use commercially reasonable efforts to deliver the Products on or before the delivery date set forth in an applicable Accepted Purchase Order, but it does not guarantee on-time delivery. ATL assumes no liability for loss, damage or consequential damage due to delays Beyond ATL’s reasonable control. Unless due to a cause Beyond ATL’s reasonable control, if ATL fails to deliver or notify the Purchaser of any delay of the Products to Purchaser on or before the applicable delivery date, Purchaser, at its option, may notify ATL of its intent to cancel the Accepted Purchase Order if delivery is not made within 30 days after the required delivery date. In such event, if the Products are not received within such 30 days, then Purchaser may immediately terminate the Accepted Purchase Order without any obligation to pay therefor.

8. Delays.

Upon learning of any potential delivery delay(s) with respect to any Accepted Purchase Order, ATL will immediately notify Purchaser as to the cause and extent of such delay and update Purchaser regarding each change in the status of such delay; and ATL shall use its best efforts to minimize the duration of any such delay.

9. Product Acceptance.

Within ten days after delivery of the Products to Purchaser, Purchaser shall inspect the Products to determine whether they comply with any specifications and the Express Limited Warranty (defined below). If the Products do not comply with the Express Limited Warranty set forth in this Agreement, Purchaser has the right to reject such Products during that ten-day period by sending written notice of rejection to ATL.

Products shall be deemed accepted by Purchaser eleven days after Purchaser's actual receipt of Products unless Purchaser has sent notice of rejection to ATL.

10. Return of Rejected Products.

Before returning any Product, Purchaser must request from ATL a return material authorization ("RMA") number for any Products rejected in accordance with this Agreement, which ATL will provide within 48 hours. Any request by Purchaser for an RMA will include an explanation of the problem. Following receipt of an RMA number, Purchaser may, at Purchaser's charge return such rejected Products, with such RMA number to be displayed on the returned shipping container. For any such returned Products, Purchaser shall be entitled, at ATL's option, to either receive a full refund or credit for the invoiced amount of such defective Products, or to receive repaired or replaced Products within 30 days, or a mutually agreed to period, (Repair Period) after ATL's receipt thereof, provided however, that if such defective Products cannot be repaired or replaced to Purchaser's satisfaction within such Repair Period, ATL shall refund or credit Purchaser the invoiced amount of such defective Products. If Purchaser elects to have the returned Products repaired and replaced, and if Purchaser also advises ATL that an emergency condition exists, ATL will use its best efforts to expedite repair or replacement to meet the needs of Purchaser.

11. Express Limited Warranty.

ATL represents and warrants that the Products, for a period of one year after delivery to Purchaser ("Warranty Term"), will (a) conform to the applicable specifications; (b) will be of good material and workmanship; (c) will be free from defects in materials and workmanship; (d) will be free and clear of all liens and encumbrances; and (e) to the best of ATL's knowledge, will not infringe upon the intellectual property rights of any third party (the "Express Limited Warranty"). Notwithstanding anything else in this Agreement, this Express Limited Warranty does not apply to, and ATL makes no representations or warranties whatsoever with respect to (a) Product that has been abused, damaged, altered or misused by any person or entity after title passes to Purchaser; (b) first articles, prototypes, pre-production units, test units or other similar products; or (c) defects resulting from specifications produced, supplied, or authorized by Purchaser, provided the Products are in compliance with those specifications. The foregoing warranty is also contingent upon the proper use of the Product in the anticipated environment and expires immediately if a modification or enhancement of the Product without the express written consent of ATL causes the problem that is the subject of the warranty claim. Upon any failure of a Product to comply with this Express Limited Warranty, ATL's sole obligation, and Purchaser's sole remedy, is for ATL, at its option and expense, to promptly repair or replace such Product and return it to Purchaser freight prepaid; provided however, that if such defective Product cannot be repaired or replaced to make it compliant with the specifications within the Repair Period of Purchaser's return of the defective products to ATL, then ATL shall refund or credit Purchaser the invoice amount of such defective products.

THIS EXPRESS LIMITED WARRANTY IS THE ONLY WARRANTY BY ATL RELATED TO THE PRODUCTS AND THE MANUFACTURING SERVICES. ATL MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND ATL EXPRESSLY DISCLAIMS ALL WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PURCHASER'S SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT, AS STATED ABOVE.

12. Termination and Survival.

This Agreement may be terminated: (a) by ATL, if Purchaser defaults in any payment and such default continues without a cure for a period of five days after the delivery of written notice thereof; (b) by either

party if the other party defaults in the performance of any other material term or condition of this Agreement and such default continues un-remedied for a period of 30 days after the delivery of written notice thereof.

Expiration or termination of this Agreement under any of the foregoing provisions (a) shall not affect the amounts due and owing under this Agreement as of the date of expiration or termination; (b) shall not result in the termination of Accepted Purchase Orders in process, which will continue to be processed as if the Agreement were in full force and effect until such time as the orders are completed (excluding, however, any Accepted Purchase Order that Purchaser has cancelled pursuant to this Agreement); and (c) shall not affect ATL's obligations with respect to the Express Limited Warranty set forth in this Agreement. In the event of termination of the Agreement by ATL due to Purchaser's default, Purchaser shall be obligated to purchase any unfinished goods and inventory from ATL at ATL's cost less all amounts prepaid by Purchaser applicable to such unfinished goods and inventory, and ATL, notwithstanding anything in this section to the contrary, shall have the option to terminate any outstanding purchase orders.

All other provisions that, by their nature require survival past termination or expiration of this Agreement shall survive.

13. Confidentiality.

"Confidential Information" means information learned by a receiving party during the Term that relates to the disclosing party's research, inventions, marketing, merchandising, costs, customer requirements, operations, products, methods, plans, finances, customers, and any other information that is not generally known in the relevant trade or would generally be considered confidential. Except as required by ATL's duties to Purchaser or as authorized by Purchaser in writing, neither party will ever directly, indirectly, or otherwise use, disseminate, disclose, lecture upon or publish articles concerning any Confidential Information. Upon termination of this Agreement, the receiving party will return to the disclosing party any Confidential Information in its possession, except as otherwise required by applicable law. Confidential Information shall not, however, include any information that (i) was publicly known prior to the time of disclosure by the discloser; (ii) becomes publicly known and made generally available after disclosure to the recipient through no action or inaction of the recipient; (iii) is already in the possession of the recipient at the time of disclosure as shown by the recipient's files and records immediately prior to the time of disclosure; (iv) is obtained by the recipient from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality.

14. Indemnification.

Purchaser shall defend, indemnify, and hold harmless ATL, its employees, shareholders, and agents, from and against all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, attorneys' fees, and court costs, that ATL may incur as a result of (1) the negligence, gross negligence, or intentional misconduct of Purchaser, (2) a breach by Purchaser of any representation or agreement contained in this Agreement; (3) any violation applicable law by Purchaser, its employees or agents, and (4) all third party claims alleging that Purchaser's design of any product infringes any third party patent or other intellectual property right, except to the extent such claims arise from or relate to any product or component thereof designed by ATL.

With respect to any third-party claims, ATL shall give Purchaser prompt notice of any third-party claim and cooperate with Purchaser at Purchaser's expense, provided, that a delay in providing notification of a third-party claim shall not relieve the Purchaser of its obligations under this Agreement, except and only to the extent that such failure shall have caused actual prejudice to Purchaser. ATL shall have the right to participate in the defense of any claim and to employ counsel, at its own expense, separate from the

counsel employed by Purchaser. Purchaser shall not, without the prior written consent of ATL, agree to the settlement, compromise or discharge of such third-party claim against the indemnified party.

15. Limitation of Liability.

EXCEPT FOR INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, OR BREACH OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL ATL OR PURCHASER BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, ARISING OUT OF THIS AGREEMENT OR THE SALE OF PRODUCTS, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF A PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. ATL'S LIABILITY WILL BE CAPPED AT THE AMOUNT OF THE PURCHASE ORDER.

16. Dispute Resolution, Governing Law and Jurisdiction.

Except for critically urgent issues that require immediate action, the parties agree that any dispute brought by either party will first be submitted, through delivery of a written notice setting forth the nature of the dispute and the relief sought, to the executives of each company, who will then meet, either in person or via conference call, and attempt to resolve the dispute. If, the executives are unable to reach resolution of the dispute after attempting for a period of at least thirty days after submission of the dispute for consideration, then and only then may a party seek legal relief in the courts. The parties agree that Utah law shall govern the interpretation and enforcement of this Agreement, without regard to Utah law's conflict of law provisions. They hereby submit to the exclusive personal jurisdiction of the federal and state courts of the State of Utah.

17. Binding Effect.

This Agreement shall bind and inure to the benefit of the parties, their heirs, legal representatives, successors and assigns.

18. Force Majeure.

Neither Party shall be liable for failures or delays in fulfilling its obligations hereunder owing to any cause beyond its reasonable control, including, but not limited to, acts of God, governmental orders or restriction, war, threat of war, warlike conditions, fire, hostilities, sanctions, revolution, riot, looting, strike, lockout, or interruption of transportation.