

## **GENERAL CONDITIONS ATS ALL TAPE SUPPLIES B.V.**

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### **1. Definitions**

The following definitions are used in these Conditions:

- Purchaser: the counterparty of ATS. This party may be the purchaser of goods and/or a client, or a party of ATS based on another legal relationship.
- Consumer: a Purchaser who is a natural person and does not act in the exercise of a profession or business. ATS does not conclude contracts with Consumer.
- Delivery: the actual provision of the goods to the Purchaser.
- In writing: including by fax or e-mail.
- ATS: All Tape Supplies B.V.

### **2. Extension of protected persons – third-party clause**

These Conditions have also been stipulated for the benefit of legal entities affiliated with ATS, the (indirect) directors and shareholders of ATS, including their affiliated legal entities, as well as for the benefit of all persons working for the benefit of ATS and its affiliated legal entities, including any hired third parties. They can invoke these Conditions as if they were ATS.

### **3. Quotations and conclusion of an agreement**

- 3.1. A quotation submitted by ATS is valid for 30 days. An agreement will be concluded between ATS and the Purchaser once ATS has informed the Purchaser of this in writing, or when ATS has started with the implementation of this agreement. The Purchaser can only submit evidence of a later amended agreement by submitting a detailed agreement approved in writing by the Purchaser and an authorised representative of ATS as listed in the Commercial Register. If ATS accepts a proposal of the Purchaser to amend an agreement, the Purchaser will be held to compensate all financial damage suffered by ATS, such as losses, loss of profit, and incurred costs.
- 3.2. The conditions have been drawn up in Dutch and subsequently translated. If any differences exist in the interpretation of any translated text, such as a translated version of these conditions, the meaning of the Dutch text will always prevail. If no Dutch text exists, the English text will prevail.
- 3.3. If the order value is less than € 1000, the Purchaser will owe an additional order fee of € 40,00 to ATS.

### **4. Technical requirements – delivery area**

- 4.1. ATS will provide a technical data sheet to the Purchaser which lists the technical properties of the goods to be delivered and/or created. Deviating technical requirements of the Purchaser must be explicitly stated by the Purchaser when the agreement is concluded and explicitly accepted by ATS. Technical requirements imposed by the Purchaser that deviate from the requirements that are customary in the sector in the Netherlands must always explicitly be stated by the Purchaser and explicitly accepted by ATS.
- 4.2. The Purchaser or a third party may not forward any products of ATS to the United States of America and Canada based on **Article 17.1** (Liability).

## 5. Samples, models and examples

If ATS has shown or provided a model, sample or example, this will be presumed to only have been shown or provided as an indication: the qualities of the goods to be delivered or created may deviate from the sample, model, or example unless it was explicitly stated that the goods would be delivered or created in accordance with the shown or provided sample, model, or example.

## 6. Implementation of the agreement

- 6.1. The Purchaser will ensure that all data designated by ATS as necessary for the implementation of the agreement, or of which the Purchaser should reasonably understand this necessity, will be made available to ATS in a timely fashion. If information necessary for the implementation of the agreement has not been provided to ATS in a timely fashion, ATS will have the right to suspend the implementation and/or charge the costs resulting from the delay to the Purchaser.
- 6.2. ATS will not be liable for damage of any nature whatsoever resulting from inaccurate and/or incomplete information provided by the Purchaser unless ATS was aware of such inaccuracies or incompleteness.
- 6.3. If it is agreed that the agreement will be carried out in phases, ATS may suspend the implementation of parts belonging to a later stage until the Purchaser has approved the results of the preceding stage in writing and/or has paid the corresponding invoice.
- 6.4. All orders placed by the Purchaser will be considered to have exclusively been granted to and accepted by ATS, by way of deviation from Article 7:404 and 7:407(2) DCC. ATS determines which person or persons, including third parties, will implement the agreement. ATS also determines how and by what means the agreement will be implemented. The reasonable wishes and instructions of the Purchaser will be taken into account as much as possible, provided that ATS believes that this benefits the timely and correct implementation of the contract. ATS will observe the care of a good contractor when implementing the agreement.

## 7. Delivery and contract period

- 7.1. Delivery of purchased goods will take place by making them available at the warehouse of ATS ("Ex-Works"). The transport of purchased goods to the Purchaser takes place at the risk and account of the Purchaser in accordance with the Incoterms 2020. If these Conditions or the agreement deviates from the Incoterms 2010, the agreement will prevail first, following by these Conditions. The Purchaser can take out insurance for the risks associated with the transport. ATS will never be liable for the consequences of a delayed delivery. ATS will only owe the contractual fines for late delivery to the extent **Article 7.3** has been met and exclusively up to the amount of the damage suffered by the Purchaser up to the limit defined in **Article 17**.
- 7.2. The Purchaser is required to accept the purchased goods at the moment they are delivered to him. If the Purchaser refuses the delivery or fails to provide any information or instructions necessary for the delivery, the goods will be transported and stored at ATS or a third party at the risk and account of the Purchaser.
- 7.3. The delivery and/or implementation period determined by ATS will always be indicative and will start 24 hours after the date on which ATS has confirmed an order placed by the Purchaser unless explicitly agreed otherwise. ATS assumes that it will be able to implement the agreement under the circumstances of which it is aware at that time when providing the estimate. In case of late delivery or implement, the Purchaser must always send a notice of default to ATS.

- 7.4. ATS may deliver the purchased goods in instalments. This does not apply if a partial delivery has no independent value. If the goods are delivered in instalments, ATS has the right to invoice each instalment separately.
- 7.5. Insofar a contract agreement exists, the Purchaser can prematurely terminate the agreement in writing, but only based on significant grounds as referred to in Article 7:408(2) DCC. In that case, the Purchaser will owe a reasonable part of the fees in accordance with the provisions of Article 7:411 DCC.

## **8. Changes to the goods to be delivered**

ATS has the right to deliver goods that deviate from what has been agreed if these are changes to the goods, the packaging, or the associated documents that are required to comply with applicable statutory regulations, licence conditions, or if these are minor changes that improve the goods.

## **9. Changes to the agreement**

- 9.1. If it becomes clear during the implementation of the agreement that the necessary work must be changed or supplemented to ensure it the implementation takes place in a sound manner, the parties will amend the agreement correspondingly in a timely fashion and in mutual consultation.
- 9.2. If the parties agree that the agreement must be amended or supplemented, the date on which the implementation will be completed may change. ATS will inform the Purchaser of this as soon as possible.
- 9.3. ATS will inform the Purchaser in advance if this change or supplement has financial and/or qualitative consequences. If a fixed fee has been agreed on, ATS will indicate whether and to what extent the amendment or supplement to the agreement means that this fee will be exceeded.

## **10. Intellectual property rights**

- 10.1. ATS will never transfer any intellectual property rights or parts thereof to the Purchaser unless this is explicitly stated as such in the agreement.
- 10.2. All documents provided by ATS, including reports, advice, designs, sketches, drawings, software and data carriers are exclusively intended to be used by the Purchaser in the context of the quotation and/or agreement and may not be copied, disclosed, or shared with third parties by the Purchaser without the prior permission of ATS.
- 10.3. The Purchaser guarantees ATS that instructions, information, designs and/or other documents provided to ATS by the Purchaser will not violate the intellectual property rights of third parties, and the Purchaser indemnifies ATS against all claims by third parties in this respect.

## **11. Security**

- 11.1. ATS reserves the ownership of all goods (to be) delivered by it to the Purchaser with respect to claims concerning the payment for the goods (to be) delivered to the Purchaser by ATS pursuant to such agreement, as well as any work (to be) performed for the benefit of the Purchaser, as well as for any claims related to a failure to fulfil such agreements.
- 11.2. Goods delivered by ATS that are subject to the reservation of ownership pursuant to **Article 11.1** may not be processed or resold by the Purchaser, not even as part of the normal business operations of the Purchaser.

- 11.3. If the Purchaser fails to fulfil its obligations vis-à-vis ATS or if there are reasonable grounds to fear that this will be the case, ATS will have the right to retrieve the delivered goods that are subject to the reservation of ownership referred to in **Article 11.1** from the Purchaser or third parties who hold the goods on behalf of the Purchaser. The Purchaser is required to cooperate fully on forfeiture of a fine of 10% of the due amount per day, without prejudice to the right of ATS to claim full compensation and fulfilment.
- 11.4. The Purchaser is held to label the goods delivered subject to the reservation of ownership of ATS to indicate that these goods have been delivered through and are the property of ATS, failing which it will be assumed that all of the same types of goods present at the Purchaser belong to ATS. This latter aspect is an agreement on the burden of proof.
- 11.5. The Purchaser is held to provide ATS with (additional) security for all existing and future claims of ATS on the Purchaser on whatever grounds at the first request of ATS, which security must be considered sufficient by ATS for the ongoing contractual relationship.

## **12. Defects**

- 12.1. The Purchaser must investigate the purchased goods (or have them investigated) upon the Delivery. The Purchaser must at least check whether the delivered goods comply with the agreement, in order to determine the following:
  - whether the correct goods have been delivered;
  - whether the delivered goods comply with the agreement in terms of quantity;
  - whether the delivered goods comply with the agreed quality requirements or, if these are not available, with the requirements for normal use and/or commercial/purposes.
- 12.2. Visible defects or shortages that may have been caused by or during transport must be recorded on the freight slip by the Purchaser immediately upon the Delivery and reported to ATS immediately afterwards, on pain of forfeiture of rights. The Purchaser must report non-visible defects or shortages that may have been caused by or during transport to ATS within 5 days of the Delivery, on pain of forfeiture of rights.
- 12.3. The Purchaser must report visible defects or shortages in writing to ATS immediately after discovery and at the latest within 7 days of the Delivery, on pain forfeiture of rights.
- 12.4. The Purchaser must report non-visible defects in writing to ATS within 7 days of discovery but at the latest within 1 year of the Delivery, on pain forfeiture of rights.
- 12.5. Complaints about work and services must be submitted to ATS in writing within 7 days of discovery but at the latest within 1 year after the work or services should have been completed, on pain of forfeiture of rights.
- 12.6. The Purchaser must keep the goods or (supporting) documents that are the subject of his complaint to give ATS a realistic opportunity to inspect them, on pain of forfeiture of the rights of the Purchaser.
- 12.7. If a complaint is deemed to be founded, ATS will, at its discretion, refund the purchase price or a fee; perform the work/services as agreed, or; deliver the goods/services, unless this has become pointless for the Purchaser. The latter must be substantiated by the Purchaser. If the complaint is the result of or concerns an individually invoiced performance or an individual part thereof, the aforementioned obligation of ATS will always be limited to this performance or part. ATS will always be liable for damage suffered by the Purchaser within the limits of **Article 17** (Liability).

### **13. Price and increases**

- 13.1. The prices of ATS do not include VAT and concern unpackaged or bulk goods unless otherwise agreed in writing.
- 13.2. If ATS agrees on a specific price with the Purchaser, ATS will be entitled to increase this price, for example, as a result of increased exchange rates, material prices and/or government levies. If the price increases by more than 5%, the Purchaser has right to dissolve the agreement.

### **14. Payment**

- 14.1. The Purchaser must pay any invoices of ATS within 14 days of the invoice date by bank transfer in Euro unless agreed otherwise in writing.
- 14.2. Any payments made by the Purchaser will first cover all due interest and costs, then the due invoices for which the reservation of ownership has expired, and finally invoices that have been due the longest, even if the Purchaser indicates otherwise with the payment.
- 14.3. If the Purchaser is in default concerning a payment obligation to ATS, the Purchaser will owe an interest based on the statutory commercial interest plus 4%, with a minimum of 12% per year.
- 14.4. ATS will always have the right to settle any amounts it can claim from the Purchaser with any counterclaims of the Purchaser. Without permission of ATS, the Purchaser may not settle any of his claims on ATS. The Purchaser will not have any right of suspension vis-à-vis ATS.

### **15. Claims & suspension/dissolutions**

All claims of ATS on the Purchaser will be immediately due and payable:

- if the Purchaser is in default concerning one of his obligations towards ATS;
- if ATS learns of circumstances after the conclusion of the agreement which give reasonable grounds to fear that the Purchaser will not fulfil his obligations;
- if the Purchaser is in default concerning one of his obligations towards his (house) bank.
- in case of a request for suspension of payments or bankruptcy, or a (form of) debt rescheduling of the Purchaser, or attachment levied on substantial part of the goods of the Purchaser or on goods in the possession of the Purchaser that belong to ATS or that are the subject of a right of security of ATS;

In the aforementioned cases, ATS will have the right to suspend the continued implementation of the agreement, or to dissolve the agreement, or to terminate it with immediate effect, everything without prejudice to the right to claim damages. If ATS at the time of dissolution has already started with the implementation of the agreement, the damage suffered by ATS will be considered to constitute at least the full order amount, plus the extrajudicial costs and interest, except if the Purchaser demonstrates that the damage suffered by ATS was lower.

### **16. Collection costs**

- 16.1. If the Purchaser is in default concerning a payment obligation towards ATS, the Purchaser will, after one payment reminder sent by ATS, be required to pay the extrajudicial costs incurred by ATS. These costs will be determined to be 15% of the due amount with a minimum of € 500, without prejudice to the amount of an order to pay the costs when collection needs to take place judicially after a dispute.
- 16.2. The Purchaser is held to pay the judicial costs incurred by ATS to obtain payment in all instances, except insofar the Purchaser demonstrates that these are unreasonably high.

## **17. Liability**

- 17.1. ATS has taken out insurance for damage caused by and related to goods delivered by it and/or work performed by it up to an amount of € 2.5 million per claim and € 5 million per year.
- 17.2. Any right of the Purchaser vis-à-vis ATS for compensation as a result of an event, in which context a series of connected events will be considered one event, will be limited to the amount paid by the insurer of ATS plus the applicable co-payment.  
If the insurance does not provide coverage or payment for the event, any right to compensation of the Purchaser vis-à-vis ATS will be limited to the invoice value of the performance of ATS during the period in which the event took place, unless the event is the result of or concerns an individually invoiced performance or an individual part thereof, in which case the compensation will be limited to the relevant invoice value. A fine owed by ATS concerning an event will replace any other form of compensation and the fine amount will be subject to the same limitations as set out in **Article 17**.
- 17.3. The following forms of damage will never be eligible for compensation:
- commercial losses/consequential damage, including stagnation losses and loss of profit;
  - damage caused by intent or wilful recklessness of auxiliary persons or persons within the organisation of ATS who are not responsible for its management;
  - In the context of **Article 12** (Defects) by the Purchaser, costs incurred within the recovery period of ATS (e.g. inspection/shipping costs).
- 17.4. The above limitations also apply to unlawful acts of ATS and any warranties granted by ATS, whether or not implicit. The above limitations do not apply if the damage is due to intent or wilful recklessness of ATS or persons responsible for its management.
- 17.5. ATS has the right to accept limitations of liability of third parties on behalf of the Purchaser. Any liability for shortcomings of these third parties is limited to the amount that ATS can recover from them.
- 17.6. The Purchaser will indemnify ATS against all claims of third parties concerning damage related to or resulting from the agreement implemented by ATS if and insofar ATS is not liable for them vis-à-vis the Purchaser based on the provisions of these Conditions or the claim exceeds the limits set out in this article. The Purchaser is held to compensate any costs incurred by ATS in this context, including the full costs of defence.

## **18. Force majeure**

- 18.1. Force majeure is defined as a shortcoming of ATS which is (in part) caused by circumstances that cannot be attributed to ATS and were unforeseeable. These circumstances will at least include: stagnation at suppliers or other third parties, such as (maritime) carriers, on which ATS depends; strikes or work interruption; weather; major and minor acts of war; earthquakes; fire; loss or theft of tools or machines; a general lack of necessary raw materials and/or other goods or services needed to perform the agreed work; road blockades; and import or trade restrictions.
- 18.2. ATS also has the right to invoke force majeure if the circumstances that prevent (further) fulfilment of the agreement occur after ATS should have fulfilled his obligations.
- 18.3. The delivery obligations and other obligations of ATS will be suspended during the period of force majeure. If the period during which ATS is unable to fulfil its obligations due to force majeure lasts more than a month, either party is entitled to terminate the agreement without owing any form of compensation to each other.

18.4. If ATS has already partially met its obligations at the moment the force majeure occurred, or will only be partially able to meet its obligations, it will be entitled to separately invoice the already performed or possible part, and the Purchaser will be required to pay this invoice as if it were a separate agreement. However, this does not apply if the part that has already been or can be delivered does not have an independent value.

**19. Applicable law and competent court**

The legal relationship between ATS and the Purchaser is governed by the laws of the Netherlands to the exclusion of the CISG. Only the Dutch court will be competent to hear any disputes between the Purchaser and ATS. The court in Breda is exclusively competent except for the applicability of Article 93 CCP. However, ATS will reserve the right to summon the Purchaser before the court competent in the place of residence of the Purchaser.