

between: **Atlas Weyhausen GmbH**, Visbeker Straße 35, 27793 Wildeshausen, Germany, registered in the Commercial Register of the District Court of Oldenburg/Germany under HRB 204653, represented by the Managing Director Klaus Brunkhorst

- hereinafter referred to as “**ATLAS**” -

and:

.....

.....

represented by

- hereinafter referred to as the “**Supplier**” -

Recitals

The Parties are in a business relationship on the basis of which the Supplier already supplies or will supply various products to ATLAS.

For the manufacture of the product [REDACTED], a separate tool is required. The Parties have agreed that ATLAS shall provide this – at present non-existent – tool for the production/delivery of the product concerned under the terms of this Tool Manufacture and Leasing Agreement, however the manufacture of the tool will be done under the direction of the Supplier.

Now, therefore, the Parties agree as follows:

§ 1 Subject matter of the Agreement

1. The subject matter of this Agreement is the leasing, by ATLAS, of the tool(s) specified in detail in **Attachment 1 Tool Specifications**, attached hereto, to the Supplier free of charge for the exclusive purpose of the manufacture and delivery of the product named in the Recitals to ATLAS by the Supplier.
2. The tool in question does not yet exist and has yet to be manufactured. The specifications for the tool are listed in detail in Attachment 1.

3. It is understood by the Parties that the Supplier shall manufacture the tool or have it manufactured by a third party. The costs are borne by ATLAS.
4. Furthermore, the Parties expressly agree that ATLAS is the owner of the tool.

§ 2 Contractual Implementation

1. The Supplier shall manufacture the tool or commission this task to a third party in close and prior consultation with ATLAS. Such consultation includes, in particular, an agreement on the delivery date and the selection of a suitable supplier for the tool.
2. An agreement with the tool manufacturer on the fee for the tool requires the prior written consent of ATLAS.
3. The Supplier may only use the tools within the Framework Agreement concluded with ATLAS. The tools are used exclusively in the Supplier's operational facilities in, i.e. the latter shall not transfer the tools to another location or even to third parties without the prior consent of ATLAS.
4. The Supplier shall handle the provided tools carefully until termination of the Agreement, use them professionally and only on properly operating clamping machine, and maintain and repair the tools regularly, so that both the quality of the products to be produced using the tools and the production capacity of the tools is ensured, while taking into account the normal wear of the tools. The costs of maintenance and repair of the tools shall be borne by the contracting Parties – unless otherwise agreed – whereby each Party bears half of the costs. If these costs are due to defects of items manufactured by the Supplier or due to improper use by the Supplier, the Supplier's employees or other vicarious agents of the Supplier, said costs shall be borne solely by the Supplier. The Supplier shall promptly notify ATLAS of any not inconsiderable damage to these items. Upon request, the Supplier shall return the items to ATLAS in proper condition if they are no longer required by the Supplier to fulfill the contracts concluded with ATLAS. Irrespective of the above obligations, the Supplier shall submit to ATLAS, unsolicited and by the end of the first quarter of each calendar year at the latest, a continuously updated report on the current status of each tool provided and shall do so in accordance with **Attachment 2 Model Status Report**.
5. The Supplier shall keep and maintain the tools carefully and safely until the Agreement is terminated and insure the tools against the usual risks of accidental damage and loss (such as fire, theft, water), naming ATLAS as the beneficiary of the replacement costs. The Supplier shall provide the corresponding proof of insurance upon request. The Supplier shall assign to ATLAS all claims under the insurance policy and provide ATLAS with a declaration/certification by the insurer that the insurer (a) shall make payments related to damage to the tools only to ATLAS; (b) shall not accept any termination of or amendments to the insurance policy without the written consent of ATLAS; (c) shall immediately inform ATLAS of a delay in payment of the insurance premium; (d) permits ATLAS to continue to be covered by the insurance policy in the event of a late payment of the insurance premium by the Supplier

§ 3 Tool Delivery and Payment of Costs of the Tools

1. The Parties agree that ATLAS is the owner of the tools. In this respect, a so-called indirect ownership relationship is concluded between the Parties, which is a substitute for the typical transfer that is required for property acquisition, and the Supplier receives the relevant tool on loan from the time of ATLAS obtaining actual possession in accordance with the regulations of this Agreement.
2. In order to safeguard the rights and interests of ATLAS, the Supplier hereby assigns all – present and future – rights vis-à-vis the tool supplier to ATLAS.
3. In the event that the Supplier manufactures the tool, any and all manufacturing, machining and processing of the relevant material will be carried out for ATLAS.
4. The fee for the tool, which has not yet been agreed upon in writing between the Parties and, insofar as this is necessary, is due for payment – plus the legally owed value added tax – after final completion by the Supplier or after delivery by the tool manufacturer to the Supplier and faultless acceptance by the Supplier within 30 days net or 15 days with a 3% discount after the Supplier receives a corresponding invoice.

If the Supplier requires a down payment of maximum 50% for the costs of the tools, the Supplier shall hand over a down payment guarantee to ATLAS pari passu.

§ 4 Protection of Property Rights

1. The Supplier shall notify ATLAS immediately if third parties have access to the tools (e.g. through garnishment, etc.). Furthermore, the Supplier shall protect the availability of the tools to ATLAS, do whatever is necessary to contest such access by third parties, and coordinate the necessary measures with ATLAS as soon as possible. In the event that any such measures are taken, the Supplier shall take into account the alleged interests of ATLAS and incorporate these.
2. In whatever form third-party access occurs, the Supplier shall immediately point out the existing property rights of ATLAS. To ensure the visibility of the tool as the property of ATLAS, the Supplier shall unambiguously identify/mark each tool as the property of ATLAS by affixing the label/markings “Property of ATLAS Weyhausen GmbH, Wildeshausen” as well as the model name or drawing/inventory number.
3. ATLAS may, at any time, freely dispose of its property rights to the tools without giving reasons and/or observing notice periods.
4. ATLAS may demand the immediate surrender of the tools. A right of retention to the tools on the part of the Supplier – for whatever reason – is excluded. In the event that ATLAS requests the surrender of the tools despite a parts delivery contract that was concluded with the Supplier and that is not yet fulfilled, the Supplier shall be exempted from the fulfillment of said parts delivery contract. This applies, without prejudice, to the other provisions of the parts delivery contract.
5. In the event that an insolvency proceeding concerning the assets of the Supplier is applied for or opened in court, the tools must be returned to ATLAS immediately upon first request.

6. ATLAS or a third party commissioned by ATLAS may, giving prior notice of three working days and during normal business hours, examine and verify the proper and professional safekeeping and labeling/marketing of the tools – in particular the conformity of the actual condition of the tools with the status report pursuant to § 2.4 and the marking/labeling pursuant to § 4.2.

§ 5 Contractual Term

1. This Agreement comes into force upon signing by both Parties and ends on the date of return of the tools to ATLAS.
2. If ATLAS requires the surrender of the tools, ATLAS shall pick up the tools from the Supplier at its own expense and risk. If the Supplier returns the tools, the return will be made to ATLAS at the expense and risk of the Supplier.
3. The tools must be returned in a defect-free, serviceable condition and in their entireties.
4. Within 20 working days of the end of this Agreement, ATLAS shall review and verify the completeness and perfect working condition of the returned tools. If no written complaint is made by ATLAS immediately following the aforementioned review and verification – and no later than 30 working days after the end of this Agreement – then the tools are considered to have been accepted and the completeness and perfect working condition of the tools is considered to have been confirmed.
5. If ATLAS makes a complaint, in writing and within the aforementioned deadline, concerning any defects in the tools and/or their incompleteness, then, within a further period of 10 working days after receipt of the complaint, the Supplier may carry out a cross-check at the Supplier's own expense and, within the same 10-day period, acknowledge the complaint(s) as binding at its expense and may reach an agreement with ATLAS on the restoration of the tools to their original defect-free, serviceable condition and/or in their entirety or an agreement on adequate compensation. If such an agreement is not successful within the specified period, the Supplier shall prove the completeness and proper working condition of the returned tools. The Parties hereby agree that for the preservation of evidence ATLAS shall, at the expense of the Supplier, commission a publicly appointed expert to assess all parts of those tools for which ATLAS did not file a complaint. After being assessed by such an expert, ATLAS may freely dispose of the returned tools, in particular by immediately supplying them for further use. In the event of a legal dispute over tools that have not been returned without defects, it is agreed that the decision of the respective expert will be accepted by both Parties as binding. ATLAS may claim damages from the Supplier in the amount of the net repair costs determined by the expert or the determined lower value.

§ 6 Data Protection

1. The Supplier shall comply with the provisions of the Federal Data Protection Act and the EU General Data Protection Regulation.

2. If the Supplier collects, processes or uses personal data from ATLAS in the provision of the Supplier's services ("Order Data Processing"), the Supplier shall, at the request of ATLAS, conclude an agreement on data protection and data security in the Supplier's contractual relationships pursuant to Art. 28 (3) of the EU General Data Protection Ordinance (GDPR).
3. The Supplier shall collect, process and disclose personal data exclusively for the purpose of fulfilling this Agreement.
4. To the extent that the Supplier transmits this data to countries other than Member States of the European Union or a signatory state to the agreement on the European Economic Area, the Supplier shall conclude agreements necessary to maintain an adequate level of data protection at ATLAS. Insofar as the Supplier uses subcontractors for this purpose, the Supplier shall ensure, at the request of ATLAS, that these subcontractors also conclude corresponding agreements with ATLAS.
5. The Supplier shall ensure that the persons employed by the Supplier for the provision of the Supplier's services are trained in data protection law and are obliged to observe data confidentiality during and after their work.
6. The data protection officer of ATLAS must be provided the required information and documentation upon request.

§ 7 General Regulations

1. Changes and/or amendments to this Agreement, including these regulations as well as the Attachments to this Agreement, must be made in writing.
2. Should a provision of this Agreement be or become invalid or unenforceable or should a gap be found in this Agreement, this shall not affect the validity of the remaining provisions. In such cases, the Parties shall agree on a valid or enforceable provision or a provision to fill the gap.
3. The place of jurisdiction is Wildeshausen, Germany. The law of the Federal Republic of Germany governs this Agreement to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

Attachment 1: Tool Specifications

Attachment 2: Template – Status Report

ATLAS:

Supplier:

Wildeshausen, _____

_____, _____



(Managing Director)

(Managing Director)

Attachment 1: Tool Specifications

Attachment 2: Template – Status Report

Date Report	Inventory No.	Designation Tool	Order No.	Order Date	Agreed Service Life / Production Capacity	Condition	Expected Remaining Service Life / Production Capacity	Reason for any deviations from the previous year