

YARD / LAYDOWN STORAGE TERMS

ATS INTERNATIONAL SERVICES, INC.

These yard / laydown storage terms (these “Terms”) govern yard and facility access and storage services provided or arranged by ATS International Services, Inc. (“ATS”), including outdoor storage in open yard facilities owned by or leased to ATS (collectively, the “Services”). ATS may also arrange indoor warehouse storage through independent third-party operators, with such services also being Services subject to these Terms.

ATS may amend these Terms at any time without prior notice. Amendments shall be effective immediately upon posting to ATS’s website at <https://www.atsinc.com/international-rules-tariffs> with respect to Quotes issued or Goods tendered after the date of such posting. For avoidance of doubt, the version of these Terms in effect when a Quote is issued shall apply with respect to Services for Goods tendered pursuant to such Quote, and any amendment will only apply with respect to Quotes issued and Goods tendered after the posting of such amendment. The current version of these Terms are available at <https://www.atsinc.com/international-rules-tariffs> and prior versions are available upon request.

1. **ACCEPTANCE OF TERMS; AGREEMENT.**

Agreement to Terms. By accepting any Quote for Services or otherwise tendering Goods to ATS for Services, Depositor agrees that these Terms govern such Services. These Terms, together with any applicable rate confirmation, quotation, or other pricing document issued by ATS (each, a “Quote”), and any other written agreement executed by both parties, collectively constitute the entire agreement between ATS and Depositor with respect to the Services (the “Agreement”). Except to the extent of any written agreement signed by authorized representatives of ATS and Depositor which expressly identifies and supersedes specific provisions of these Terms, these Terms supersede and negate any claimed, alleged, or asserted oral or written contract, promise, representation, or understanding between the parties with respect to the Services. Any additional, different, or conflicting terms proposed by Depositor, whether in a purchase order, request for proposal, quotation, acknowledgment, or otherwise, are hereby objected to and rejected and shall be of no effect.

2. **SCOPE OF SERVICES.**

- 2.1. **Services.** The scope, extent, and duration of the Services to be provided to Depositor shall be as set forth in the applicable Quote.
- 2.2. **Service Providers.** Services may be performed directly by ATS or by independent contractors, warehouse operators, yard operators, carriers, or other non-agent third parties engaged by ATS (each, a “**Service Provider**”). These Terms apply equally whether Services are performed by ATS or by a Service Provider.

3. **TERM AND TERMINATION.**

- 3.1. **Term.** These Terms become effective upon the earlier of Depositor’s acceptance of a Quote or tendering of any Goods into storage. These Terms shall remain in effect for so long as any Goods are stored by or through ATS.
- 3.2. **Termination for Convenience.** Either party may terminate Services, in whole or in part, by providing not less than thirty (30) days’ prior written notice. Partial termination may apply to a specific batch of Goods or a particular facility and shall not affect the continued application of these Terms to any other Goods remaining in storage. These Terms shall terminate in full only when no Goods remain in storage and all obligations under the Agreement have been fully satisfied.
- 3.3. **Termination for Cause.** Notwithstanding Section 3.2, either party may terminate the Agreement immediately upon written notice if:
 - (i) all or a substantial portion of the other party’s assets are assigned for the benefit of creditors;
 - (ii) a receiver, trustee in bankruptcy, or similar official is appointed with respect to the other party;
 - (iii) the other party is generally not paying its debts as they become due; or
 - (iv) in the case of Depositor, it fails to pay any amounts within forty-five (45) days of the original due date.
- 3.4. **Effects of Termination.** Upon termination for any reason, Depositor shall promptly arrange for the removal of all Goods subject to termination from the applicable facility. Such removal is subject to prior payment in full of all



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fees, charges, and other amounts due under the Agreement. ATS's lien and other rights hereunder shall survive until all such obligations have been paid in full.

4. TENDER AND CONDITION OF GOODS.

- 4.1. **Definition of Goods.** For purposes of these Terms, "**Goods**" means all tangible items tendered by or on behalf of Depositor for storage or related Services, including, without limitation, equipment, materials, dunnage, pallets, and any other physical items of any kind.
- 4.2. **Ownership and Authority.** Depositor represents and warrants that:
- (i) it is the owner, or has lawful possession, of all Goods tendered hereunder;
 - (ii) it has full right and authority to deposit the Goods with ATS for Services under these Terms and to thereafter direct their release and/or delivery; and
 - (iii) it is a merchant storing Goods under these Terms in the ordinary course of its business.
- 4.3. **Information and Instructions.** Depositor shall provide ATS, in advance of tender, with a complete and accurate description of the Goods, including any special handling, storage, or regulatory requirements. ATS may rely on all descriptions, information, marks, labels, and instructions provided by Depositor, without independent verification.
- 4.4. **Packaging and Preparation.** Depositor is solely responsible for ensuring that Goods are properly packaged, sealed, covered, crated, or otherwise prepared for the storage environment, including outdoor storage. ATS shall not be liable for loss or damage resulting from Depositor's failure to properly prepare Goods for storage.
- 4.5. **Compliance with Law.** Depositor represents and warrants that all Goods tendered for storage are lawful, properly marked and packaged, and do not violate any applicable law, rule, or regulation. Depositor shall not tender any hazardous, illegal, or unsafe Goods.
- 4.6. **Right of Refusal.** ATS reserves the right to refuse to accept or store any Goods that, in its reasonable discretion, are improperly packaged, unsafe, illegal, or otherwise unsuitable for storage.
- 4.7. **Relocation of Goods.** ATS may, without notice, arrange to move any or all of the Goods from one location within the facility to another location within the same facility.

5. RELEASE OF GOODS.

- 5.1. **Release Instructions.** Depositor shall provide ATS with not less than twenty-four (24) hours' prior written notice if it desires to order any Goods released from storage. Subject to receipt of such instructions and payment of all outstanding fees and charges, ATS shall release the requested Goods in accordance with Depositor's instructions.
- 5.2. **Reliance on Instructions.** ATS may rely, without liability, on any instructions or information contained in any written communication from Depositor.

6. CHARGES; PAYMENT; LIEN.

- 6.1. **Charges.** Depositor shall pay all charges for Services as set forth in the applicable Quote or other written agreement executed by the parties. Additional charges may apply for services outside the agreed scope.
- 6.2. **Payment Terms.** All charges are due and payable within thirty (30) days of invoice date, unless otherwise stated in the Quote. Past due amounts shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less.
- 6.3. **Taxes and Fees.** Depositor shall be responsible for all applicable sales, use, excise, or other taxes, duties, or fees relating to the Services, excluding taxes based on ATS's income.
- 6.4. **Lien.** ATS and each Service Provider shall have both a general and specific lien on all Goods in their possession, and on all proceeds thereof, to secure payment of all charges and expenses incurred in connection with the Services. Such charges include, without limitation, charges for storage, transportation, demurrage, terminal services, insurance, labor, and other present or future charges in relation to the Goods, as well as expenses necessary for preservation of the Goods or reasonably incurred in their sale, and like charges or expenses relating to any other goods deposited with ATS or a Service Provider.
- 6.5. **Enforcement of Lien.** ATS or any Service Provider may enforce its lien rights at any time in accordance with applicable law, including by public or private sale of all or any part of the Goods, in bulk or in packages, on commercially reasonable terms. Before any such sale, ATS shall notify all persons known to claim an interest in the Goods by delivery of a statement setting forth the amount due, the nature of the proposed sale, and the time and place of any public sale. Additionally, upon not less than thirty (30) days' prior written notice, ATS or any Service Provider may require removal of any Goods from a facility, and if such Goods are not removed, may sell



them in accordance with this Section. While Goods remain stored at a facility, Depositor shall remain liable for applicable storage charges.

7. LIMITATIONS.

- 7.1. **Standard of Care.** ATS shall not be liable for any loss or damage to the Goods, however caused, except to the extent such loss or damage resulted from ATS's failure to exercise the level of care with regard to the Goods that a reasonably careful person would have exercised under the circumstances, in which case ATS shall be liable only for such loss or damage (as limited herein). ATS shall not be liable for damages that could not have been avoided by the exercise of such care.
- 7.2. **Liability for Lost or Missing Goods.** ATS shall not be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods except to the extent Depositor establishes such loss occurred because of ATS's failure to exercise the care required under Section 7.1. Any presumption of conversion under applicable law shall not apply to a loss with respect to any Goods, and a claim for conversion must be established through affirmative evidence that ATS converted the Goods to its own use.
- 7.3. **Fire and Other Casualties.** ATS does not represent or warrant that any facility or its contents cannot be destroyed by fire or any other cause. ATS is not required to maintain a watchman or a sprinkler system, and the absence of such measures does not constitute negligence.
- 7.4. **Outdoor Storage Risks.** If Goods are stored outdoors, Depositor acknowledges that such storage is not weatherproof and may expose Goods to rain, snow, sleet, wind, temperature fluctuations, humidity, condensation, dust, corrosion, and airborne debris. Depositor is solely responsible for ensuring that Goods are properly packaged, crated, wrapped, sealed, treated, or otherwise protected against the reasonably foreseeable risks of outdoor storage. ATS shall not be liable for any loss or damage arising out of or relating to insufficient, inadequate, or improper packaging, preparation, or protection of Goods, or from inherent vice or natural properties of the Goods, including susceptibility to moisture or corrosion.
- 7.5. **Exclusions from Liability.** ATS shall not be liable for (i) any loss of information on any electronic device; (ii) losses or damages that exceed the agreed upon limitations of liability set forth herein; and/or (iii) losses or damages to Goods otherwise covered by insurance purchased by Depositor or any other third party. Liability shall be for direct actual physical loss or damage to the Goods only and shall not cover any losses, damages, costs, expenses, or liabilities arising out of any act, omission, or order of Depositor; act of God; war; act of public enemy; riots; defect or inherent vice of Goods (including susceptibility to damage because of atmospheric conditions such as temperature and humidity or changes therein); or any other matter outside of the direct actual physical loss or damage to Goods. IN NO EVENT SHALL ATS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE), REGARDLESS OF WHETHER THE POSSIBILITY OF SUCH LOSSES OR DAMAGES HAVE BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN, NO MATTER THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 7.6. **Limitation of Liability.** IN NO EVENT SHALL ATS'S LIABILITY FOR LOSS OR DAMAGE TO GOODS EXCEED THE LESSER OF: (i) THE ACTUAL COST TO REPAIR, RESTORE, AND/OR REPLACE ANY DAMAGED GOODS; OR (ii) TEN CENTS (\$0.10) PER POUND PER ARTICLE FOR THE DAMAGED GOODS. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ATS EXCEED THE TOTAL AMOUNT PAID TO ATS FOR SERVICES RENDERED HEREUNDER IN THE SIX (6) MONTHS PRECEDING THE FILING OF ANY CLAIM ASSERTING SUCH LIABILITY.
- 7.7. **Claims Process.** ATS shall not be liable for loss or damage to Goods unless a claim notice is made in writing, containing facts sufficient to identify the Goods alleged to have been lost or damaged, asserting grounds for liability, and claiming a specified amount of money. All such claims must be filed with ATS within thirty (30) days after the earlier of (i) release of the Goods by ATS or (ii) delivery of notice to Depositor that loss or damage to all or part of the Goods has occurred. No lawsuit or other action may be maintained by Depositor against ATS unless notice has been given in accordance with this Section. Depositor shall permit ATS to inspect any damaged Goods for which a claim is made.
- 7.8. **Insurance.**
- (i) **Depositor's Insurance.** Depositor shall, at its sole cost, obtain and maintain insurance covering the Goods against all risks of loss or damage, in such amounts as Depositor deems sufficient, it being understood that ATS does not provide insurance on the Goods and shall have no obligation to do so.



- (ii) Waiver of Subrogation. Depositor shall cause its insurers to waive, and Depositor hereby waives, any rights of recovery or subrogation against ATS and its insurers for loss of or damage to the Goods, except to the limited extent of ATS's liability expressly assumed under this Section 7. In no event shall Depositor or its insurers pursue recovery from ATS for amounts in excess of such stated liability limits.

7.9. **Additional Terms.** The exclusions or limitations of liability in this Section 7 shall not apply to the extent such exclusions or limitations cannot be excluded or limited under applicable law, in which case such exclusions and limitations shall apply only to the fullest extent allowed under applicable law. Any warehouse receipts issued by ATS respecting any Goods shall be deemed to include the text of this Section 7. The parties agree that the limitations of liability in this Section 7 are reasonable under the circumstances and that rates for Services have been priced in reliance on such limitations of liability.

8. INDEMNIFICATION.

8.1. **Mutual Indemnification.** Subject to the terms, conditions, and limitations set forth in Section 7, each party (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other party, together with its affiliates and their respective directors, officers, employees, and agents (the "Indemnified Party"), from and against any and all third-party claims, losses, damages, liabilities, judgments, costs, and expenses (including reasonable attorneys' fees at trial and on appeal) to the extent arising out of or caused by the gross negligence or willful misconduct of the Indemnifying Party.

8.2. **Survival.** The obligations under this Section 8 shall survive termination of the Agreement and remain in effect until any applicable claim is fully and finally barred by the relevant statute of limitations.

9. CONFIDENTIALITY.

9.1. **Definition of Confidential Information.** "Confidential Information" means all written, oral, and electronic information and documents provided by a party that a reasonable person would understand to be confidential. Confidential Information does not include information that:

- (i) is or becomes known to the public through no fault of the receiving party;
- (ii) is already known to the receiving party at the time of disclosure;
- (iii) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information; or
- (iv) is lawfully acquired from a third party that is not subject to confidentiality obligations with respect to such information.

9.2. **Obligations of Confidentiality.** Each party shall use the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information (but in no event less than a reasonable degree of care). Confidential Information shall be disclosed only to those employees, agents, or contractors of the receiving party, including ATS's Service Providers, who need to know such information to perform their duties and who are bound by confidentiality obligations no less stringent than those in this Agreement.

9.3. **Survival of Confidentiality Obligations.** The obligations of this Section 9 shall survive termination or expiration of the Agreement for a period of one (1) year.

10. FORCE MAJEURE.

10.1. **Suspension of Performance.** Either party's performance under the Agreement may be suspended if such performance is prevented by a cause beyond the reasonable control of such party. Such causes include, but are not limited to, acts of God, acts of war, riot, fire, explosion, accident, flood, sabotage, terminal holds or terminal congestion; laws or governmental actions including customs delays; national defense requirements; and injunctions or restraining orders.

10.2. **Notification and Resumption.** The party asserting a right to suspend performance under this Section shall notify the other party as soon as reasonably practicable of the suspension and its cause, and shall inform the other party when the suspending event has ended and when performance will be resumed.

10.3. **Termination Option.** Upon suspension of services by one party, the other party may terminate the Agreement or any services scheduled to be performed but not yet completed by providing written notice of termination.

11. GOVERNING LAW AND JURISDICTION; VENUE.

11.1. **Governing Law.** The Agreement and any performance hereunder, with respect to any Goods or Services, shall be governed by and construed in accordance with the substantive laws of the state where the facility is located



wherein such Goods were most recently stored or wherein such Services were most recently performed, including Article 7 of the Uniform Commercial Code as adopted in that state, notwithstanding its conflict of laws rules. In all other cases, the Agreement shall be governed and construed in accordance with the substantive laws of the State of Minnesota, notwithstanding its conflict of laws rules.

- 11.2. **WAIVER OF JURY TRIAL.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. MISCELLANEOUS.

- 12.1. **Notices.** All notices and other communications required or permitted under these Terms shall be in writing and shall be deemed given and made (i) if delivered personally, on the date of delivery, (ii) if sent by a nationally recognized overnight courier, on the next business day after deposit, and (iii) if sent by certified or registered mail, return receipt requested, postage prepaid, on the third business day after deposit in the mail. Notices shall be sent as follows:

If to ATS:

ATS International Services, Inc.
725 Opportunity Drive
St. Cloud, MN 56301
Attn: Contracts Team
Copy to: contracts@ats-inc.com

If to Depositor:

To the address specified in the applicable Quote or otherwise reflected in ATS's records.

- 12.2. **Entire Agreement.** These Terms, together with any applicable Quote or other written agreement signed by both parties, constitute the entire agreement between ATS and Depositor with respect to the subject matter hereof and supersede all prior or contemporaneous agreements, representations, warranties, statements, promises, and understandings, whether oral or written, relating to the same subject matter.
- 12.3. **Construction.** These Terms shall be construed consistently with their stated intent and without regard to any presumption or rule requiring interpretation against the drafter. Each party has had the opportunity to consult counsel of its choice and to negotiate these Terms. Headings are for convenience only and shall not affect interpretation.
- 12.4. **Severability.** If any provision of these Terms is determined to be unenforceable, such provision shall be enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.
- 12.5. **Survival.** Any provisions of these Terms that by their nature should survive termination or expiration (including, without limitation, indemnification, confidentiality, limitation of liability, lien rights, and governing law provisions) shall survive.
- 12.6. **No Waiver.** No waiver of any provision of these Terms shall be effective unless in writing and signed by the waiving party. No failure or delay in exercising any right, remedy, power, or privilege shall operate as a waiver thereof.
- 12.7. **Relationship of the Parties.** The relationship between ATS and Depositor is that of independent contractors. Nothing in these Terms shall be construed to create any agency, partnership, joint venture, fiduciary, or employment relationship. Neither party shall have authority to bind the other.