

# General Conditions for the Sale of Spare Parts - Abroad (03/2002)

## 1. General Provisions

- 1.1. All supplies and services of ALD Vacuum Technologies GmbH (ALD-VT) are additionally subject to the conditions hereinafter set forth. Standard-form contract conditions of the orderer (buyer) shall not apply.
- 1.2. If a clause according to the INCOTERMS 2000 rules is stipulated this shall apply only inasmuch as not otherwise agreed upon in the present Conditions of Sale.
- 1.3. In case of any provisions not included in these General Conditions of Sale, not the standard-form contract conditions of the orderer or buyer shall apply but the statutory provisions.

## 2. Offer / Acknowledgement of Order

- 2.1. Unless a set term is expressly stated, offers from ALD-VT are without engagement and a contract is only considered as being concluded when the order is acknowledged in writing by ALD-VT.
- 2.2. Purchase orders without preceding offer according to item 2.1 do not become binding for ALD-VT unless and to such extent as acknowledged in writing by ALD-VT. The same applies where the orderer modifies the offer from ALD-VT.
- 2.3. ALD-VT will promptly confirm the receipt of orders placed by the buyer by E-mail. Such confirmation of receipt shall not yet represent a firm order acknowledgement. However, such confirmation of receipt may be issued in conjunction with the order confirmation.

## 3. Sales References

- 3.1. Data contained in catalogues, brochures and folders, as well as general information in data sheets and drawings accompanying quotations are approximate and without engagement, unless expressly stated as binding.
- 3.2. In particular cases ALD-VT reserves the right to alter the design and, where there is a shortage of raw material, to use other materials unless opposed by overriding essential concerns of the orderer known to ALD-VT.
- 3.3. Regarding all sales references and other documents made available to the customer, ALD-VT reserves the right of ownership and copyright, they must neither be used for other purposes nor copied, reproduced or made available to a third party; they do not confer title nor imply the grant of any licence for reproduction of ALD-VT products or parts.
- 3.4. All sales references and other documents made available to the buyer are to be returned to ALD-VT immediately upon request; they must be returned without being requested if the order is not placed with ALD-VT.

## 4. Prices, Packing, Insurance

- 4.1. The prices are quoted ex works or manufacturing plant, respectively (EXW, INCOTERMS 2000) - excluding packing, erection and start-up. Packing is charged at cost price.
- 4.2. The sales price does not include any sales, excise, turn-over or freight transportation tax etc. nor any export, import or other duties to be additionally charged by ALD-VT, as the case may be in accordance with official regulations at the time of fulfilment of the contract.
- 4.3. Unless the orderer (buyer) expressly determines otherwise, ALD-VT shall insure the ordered goods against the usual transportation risks including breakage and charge the cost incurred to the orderer.

## 5. Erection and Start-up

Provided that erection, supervision of erection or start-up have to be carried out, the relevant additional Conditions of ALD-VT are valid, which will be made available by ALD-VT upon request.

## 6. Passing of risk

- 6.1. Risk shall pass to the orderer (buyer) pursuant to the INCOTERMS 2000 rules agreed upon. In the absence of such agreement the risk shall pass to buyer on delivery of the goods to the first carrier. This shall also apply to partial shipment or where ALD-VT has undertaken to assume supplemental services and payments, such as the cost of dispatch, carriage and erection.
- 6.2. Risk shall also pass to the buyer as soon as he has been put on notice to take delivery of the ordered goods.

## 7. Delivery Dates

- 7.1. The delivery period commences when all commercial and technical requirements for the performance of the contract have been clarified, documents to be supplied by the orderer have been received by ALD-VT, any official authorisation or release that may be required has been issued and (advance) payments provided for in the contract have been credited to ALD-VT's bank account. Adherence to the time of delivery shall be subject to the timely fulfilment of the contractual obligations by buyer. The goods are deemed to have been delivered in time if handed over to the first

carrier or declared ready for dispatch to buyer before expiration of the delivery period agreed upon. Partial deliveries are permitted to a reasonable extent. Minor defects do not affect buyer's obligation to take delivery of the goods; in that respect the delivery period shall be deemed to have been observed.

- 7.2. If the delivery is delayed for reasons imputable to buyer or the goods are not called for in due time, ALD-VT at its discretion shall be entitled to store the goods at buyer's risk, to invoice the goods as delivered ex works and to charge buyer with the storage fees; if stored in ALD-VT's premises such storage fees are at least 0,5% of the invoiced sum for each month from the date of readiness for dispatch. ALD-VT shall furthermore be entitled, after having set a reasonable term to buyer to take delivery and after expiration thereof, to sell or to dispose of the goods in any other way and to deliver other goods to buyer after a reasonably extended period.
- 7.3. If delivery is delayed by unforeseen events beyond ALD-VT's control (Acts of God), the delivery period shall be reasonably extended, at the latest by six months, however. Acts of God are considered to be also strikes, lockouts, sabotage, material and energy shortage, operating breakdown incurred through no fault of ALD-VT, important tools or workpieces becoming useless through no fault of ALD-VT, non- or delayed issuance of official authorisations, as well as any other unforeseen events.

## 8. Terms of Payment

- 8.1. Payments shall be made within 30 days from the date of invoice, unless otherwise stipulated in ALD-VT's offer and / or acknowledgement of order. In case of partial shipments ALD-VT shall be entitled to issue invoices in part accordingly. If payment has been effected in another currency than EUR the claim shall be deemed to have been settled only if the payment in the foreign currency corresponds to the stipulated amount of EUR on the date of receipt payment, i.e. the date when the amount is credited to ALD-VT's account.
- 8.2. Payments shall be made exclusively to one of ALD-VT's accounts and shall be effected post-free and exempt of charges at the date due without any deduction. Fees, expenses or sundries incurring to ALD-VT by accepting bills or cheques upon specific agreement between ALD-VT and buyer shall be at the buyer's expense. Determination when payment becomes due shall be in respect of the date of invoice or notice of readiness for dispatch. The date of fulfilment of all kind of payments shall be that on which the sum paid is actually at ALD-VT's disposal.
- 8.3. Withholding of payment because of counterclaims or setting payments off against any counterclaims is only permissible if such counterclaims are uncontested or legally ascertained.
- 8.4. When payment is delayed by the buyer beyond due date, ALD-VT shall be entitled, without prejudice to any further claims as a result of delay in payment, to charge default interest at a rate of 8% above the prevailing European Central Bank rate.

## 9. Reservation of Property Right

- 9.1. ALD-VT reserves the property rights in the goods supplied until payment in full has been made in respect of any claims whatsoever resulting out of ALD-VT's business transactions with buyer including supplementary claims. If buyer is in default of payments, ALD-VT shall without formal notice be entitled to take back the goods as security. Claiming the right of property and distraint of delivery items by ALD-VT shall not be deemed as cancellation of the contract, unless the customer Loan Act applies. Where special regulations or any other provisions are applicable in the country of buyer or of destination of the goods in respect of the validity of the reservation of property rights, buyer himself shall undertake to carry out the terms of such regulations or provisions to safeguard ALD-VT's rights.
- 9.2. Buyer is entitled to dispose of delivery items in the course of regular business. Claims arising at buyer during the period of ALD-VT's property right and resulting from such or unjustified dispositions shall even now be assigned to ALD-VT. Subject to revocation at any time, buyer shall be authorized to collect the claims.
- 9.3. ALD-VT undertakes to release on buyer's request securities it is lawfully entitled to inasmuch as their sum will exceed the unsettled claims to be secured by more than 20%.
- 9.4. Any working on the goods and any processing of the goods supplied shall be undertaken by buyer for ALD-VT without ALD-VT's engagement. In case the goods supplied are used for, connected, mixed or mingled with another equipment not owned by ALD-VT (§ 947 and following, BGB), ALD-VT shall be entitled to a co-ownership in the new equipment pro rata the value of the goods supplied to the remaining equipment which existed before the date of working, processing, connecting, mixing or mingling. If buyer acquires sole title by operation of law, he shall grant to ALD-VT a corresponding co-ownership share and thus hold the equipment in

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- trust of ALD-VT. The provisions in Paragraph 9 shall equally apply to the co-ownership share.
- 9.5. Distraints or any other such measures imposed by third parties must be reported by buyer without delay to ALD-VT.
- 9.6. During the period of reservation of property rights buyer undertakes to fully insure the goods supplied at his own expense against risks and damages, such as robbery, breakage, fire and water and, upon request, to furnish proof thereof to ALD-VT. In Case that buyer fails to furnish such proof requested within a reasonable period of time, ALD-VT shall be entitled to take out such insurance at buyer's expense.
- 10. Warranties**
- 10.1. ALD-VT undertakes at its discretion to repair or to replace any defective goods supplied or parts thereof. Excluded are warranty claims in case of normal wear, replacement materials, which are in regard to their material quality or their application subject to more strength of wear or aggravated working conditions (e.g. thermocouple element and their protecting armatures, crucibles and troughs, heating tubes, brick lining and stamping of baths, packings, sealings, plastic parts, heat insulations). Furthermore warranty claims for damages resulting from chemical, electrochemical or electrical factors (when not due to ALD-VT's fault) as well as from electric arc or electron beam are excluded.
- 10.2. In case of failure of repair or replacement the buyer shall be entitled at his discretion to demand a reduction in price or a rescission of contract. In case of a minor contract infringement, however, the buyer cannot claim for cancellation of contract.
- 10.3. Notice of defects must be given immediately, latest within 3 weeks. The complaint must specify the nature of the found defects or faults and whether they have been discovered at once or only after subsequent treatment or processing of the supplied goods or parts. ALD-VT shall be entitled to have the defectiveness checked by its own staff.
- 10.4. After mutual consent buyer shall grant to ALD-VT reasonable time and opportunity to proceed with the repairs or replacements as ALD-VT may deem necessary at its discretion. If buyer fails to do so ALD-VT shall be relieved of any warranty or liability. Only in the event of extraordinary cases such as jeopardizing safety of operation or risking excessive damages – whereupon ALD-VT shall immediately be notified – or if ALD-VT should be in delay of remedying the damage, buyer shall be entitled to remedy the defect himself or to have it remedied by a third party and to recover the cost necessarily incurred from ALD-VT.
- 10.5. ALD-VT shall bear the direct cost arising from repair or replacement as a result for warranty claims provided they have proven to be justified and the defect has been correctly notified in due course, i.e. the cost for the replaced part including carriage as well as reasonable cost for dismantling and assembly of the part and – provided it can in so far be equitably claimed in the individual case – the cost for making available any of its mechanics and assistants. Any further costs shall be borne by buyer.
- 10.6. Any claims that may be raised - except for cases of malicious concealment - are barred by limitation within a period of one year from the date of delivery, in cases of contract for work it shall be within one year from the date of acceptance, in either case, however, such period shall start at the latest on the date the risk passes to the buyer.
- 10.7. Warranty claims in respect of parts replaced or repaired shall expire after three months, but not before the warranty period for the goods originally supplied.
- 10.8. Concerning any further claims Paragraph 12.4 shall apply.
- 11. Liability for Patent Infringement**
- 11.1. Unless otherwise indicated by ALD-VT, the goods supplied are to the best of ALD-VT's knowledge of the published prior art free from any third party rights in Germany. Should despite this the goods supplied hereunder or part thereof, at the moment of conclusion of contract, infringe a third party patent already granted and published in Germany or – if the goods supplied expressly comprise a specific process right – infringe on patented process rights for which infringement buyer is sued in legal proceedings, ALD-VT shall at its own expense and at its discretion within reasonable time procure for buyer the right to continue to use the goods or part thereof or to modify or replace them with non-infringing goods or process or to withdraw from the contract. ALD-VT assumes no additional liability, e.g. for processes, applications, products etc.
- 11.2. If third-party patents are infringed by a design or specification furnished by buyer, the latter shall conduct the defense of ALD-VT against any claim and relieve ALD-VT in case of implementation.
- 12. Further Liability of ALD-VT; Buyer's Right to Cancellation**
- 12.1. Buyer may terminate the contract if complete performance becomes impossible for ALD-VT before passing of the risk. Buyer may demand a reduction in price in case of partial impossibility of delivery of the goods or parts thereof; if he has a rightful interest in rejecting a partial delivery the first sentence shall apply.
- 12.2. In case a delay in delivery is within ALD-VT's responsibility and ALD-VT does not comply with a reasonable additional period of time which buyer allows to lapse while expressly stipulating that he will reject acceptance of the goods after expiration of such additional period, buyer shall be entitled to terminate the contract.
- 12.3. ALD-VT does not provide any legal guarantees for the properties of the ordered goods, unless expressly confirmed in writing.
- 12.4. ALD-VT shall not be liable in cases of infringement of any of its contractual obligations of minor importance due to slight negligence. Otherwise ALD-VT's liability per damage accrued for property damages and or financial losses will be limited - subject to the regulations mentioned hereafter - to the double invoice value of the goods that are affected by such damage. The aforementioned limitation of liability shall neither apply in cases of malice aforethought or gross negligence of ALD-VT, nor in cases where legal guarantees have been expressly confirmed in writing in accordance with clause 12.3.
- 12.5. Should the buyer be entitled to claim damages in accordance with Clause 12.4 above, such rights will expire at the end of the warranty period as stipulated in Clause 10.6, except for cases of malice aforethought on ALD-VT's part.
- 13. Place of Fulfillment, Jurisdiction, Applicable Law**
- 13.1. Place of fulfillment shall be Hanau.
- 13.2. Any disputes arising from any contractual relationships with buyers other than private individuals to which these General Conditions of Sale apply shall be settled before the Court having jurisdiction at the place of residence of ALD-VT. The same applies if the buyer does not have its legal venue in Germany. Notwithstanding the foregoing, ALD-VT shall also be entitled to sue the Buyer before the Court having jurisdiction over buyer's domicile. If parts of these General Conditions of Sale or the contract covering the supplied goods will be or become void, the other parts will remain in force. The parties will replace the void conditions immediately by an effective analogous term.
- 13.3. For all contractual provisions the uniform UN Law of Sales (CISG) shall govern, and on a supplementary basis, the law of Germany, including the German International Private Law.
- Note**
- Pursuant to the German Law for Protection of Data ALD-VT herewith states that ALD-VT has stored buyer's data and that such data are being processed.

## ALD Vacuum Technologies GmbH