

1. General Provisions

- 1.1. All Installation/assembly, maintenance and repair work undertaken by ALD Vacuum Technologies GmbH (ALD-VT) is subject to the conditions hereinafter set forth. Start-up/commissioning of systems or plant and instruction on the operation of systems are not part of the assembly work. In case such start-up/commissioning work is done by ALD-VT, the conditions hereinafter shall apply accordingly.
- 1.2. If these General Conditions do not provide for any arrangement whatsoever, legal regulations shall apply instead of General Conditions of Buyer.

2. Offer/Confirmation of Order

- 2.1. ALD-VT's quotation and cost estimates are without obligation unless expressly stated as binding; the order shall not become binding unless ALD-VT confirms the order.
- 2.2. Orders not based on quotations pursuant to clause 2.1 above shall not become binding unless confirmed by ALD-VT. The same shall apply if Buyer modifies ALD-VT's quotation.

3. Requests for Assembly Personnel, Assembly/Maintenance/Repair, Terms, Risk Taking

- 3.1. Dependent upon the nature and extent of the work required ALD-VT will appoint qualified staff at its discretion.
- 3.2. The period of time required for assembly, maintenance or repair is estimated by ALD-VT based on its experience (subject to correction). In case of delay in the beginning or duration due to Force Majeure, terms shall be adjusted accordingly.
- 3.3. As far as terms have been agreed upon, these shall be regarded as complied with if until their expiration the installation/assembly, maintenance or repair, is ready for acceptance by Buyer. Should assembly, maintenance or repair work be delayed due to Force Majeure, the term shall be adequately extended, even if ALD-VT should be in delay at the date the case of Force Majeure occurs. The unavoidable expenses arising out of such a delay, in particular for waiting time and extra travel to be undertaken by ALD-VT personnel shall be paid by Buyer. In case of waiting time ALD-VT shall be entitled to call back and dispose otherwise of its personnel.
- 3.4. In case assembly, maintenance or repair service should perish or be deteriorated through no fault of ALD-VT, ALD-VT shall be entitled to claim the price agreed upon less saved expenses. The same applies in case performance of assembly, maintenance or repair proves to be impossible for reasons not imputable to ALD-VT. For repeated performance additional remuneration must be paid to ALD-VT based on currently valid prices.

4. Prices

- 4.1. Assembly, maintenance or repair work will be charged according to actual work performed and at the prices valid at the time of its performance. ALD-VT will invoice to Buyer all travelling expenses, hourly or daily remuneration rates for assembly, preparation maintenance or repair, daily allowance, charges for preparation and finishing work, possibly incurred difficulty allowance, as well as in the case of repairs the prices for replaced or newly installed parts and the transportation charges therefor.
- 4.1.1. Travelling expenses include fares, charges for conveyance of luggage and tools, luggage and flight insurance, the personnel expenses for the appointed staff and advance cost for goods to be used. ALD-VT shall be entitled to determine the means of transportation at its own discretion. ALD-VT may account for personnel expenses at the assembly, maintenance or repair rates.
- 4.1.2. Remuneration rates for assembly, maintenance or repair as well as the daily allowance, are based on the ALD-VT cost rates valid at the time the work is performed. These cost rates provide for extra pay for overtime work performed by the ALD-VT personnel. In case of extraordinary working conditions dangerous to health, specially dirty, in hazardous locations or under higher temperature, the cost rates provide for difficulty allowances. The amount of such allowances is determined in accordance with the current cost rates.
- 4.1.3. The prices for replaced or newly installed parts and other material costs are quoted ex works or manufacturing plant (Incoterms 2000), excluding packing, insurance and assembly. Packing is charged at cost price. Unless Buyer expressly determines otherwise, ALD-VT shall insure the replacement parts etc. required for assembly, maintenance or repair outside the ALD-VT works against the usual transport risk including breakage and will charge the cost incurred to Buyer.
- 4.2. Any levied sales, excise, turnover or freight transportation tax etc. shall be additionally invoiced by ALD-VT in accordance with official regulations effective at the place of delivery or performance at the time of fulfilment of the contract.

5. Terms of Payment

- 5.1. Payments shall be made by Buyer immediately after receipt of invoice unless otherwise provided for in the offer/contract/confirmation of order. If payment has been made in another currency than EURO, such payment shall not be deemed to have been settled until the full amount of EURO is credited to ALD-VT's account.
- 5.2. Payments shall be made exclusively to one of ALD-VT's accounts and shall be effected free of charge at the due date without any deduction; fees, expenses, interest or sundries incurring to ALD-VT by accepting bills or cheques upon specific agreement between ALD-VT and Buyer shall be at Buyer's expense. Determination when payment becomes due shall be in respect of the date of invoice or notice or readiness for

dispatch.

The date of fulfilment of any kind of payments shall be the day on which the sum paid is actually at ALD-VT's disposal.

- 5.3. Withholding of payments or setting payments off against any counter-claims is not allowed.
- 5.4. When the payment is delayed beyond due date, ALD-VT shall be entitled to charge interest at a rate of 8% above the current discount rate of the ECB. In addition, without notice of default, ALD-VT shall be entitled to interrupt work, extend delivery periods and claim total payment notwithstanding its due dates.
- 5.5. If at any time after conclusion of the contract an unfavourable financial condition of Buyer should become known to ALD-VT, ALD-VT shall be entitled to demand security for the sum involved. If such security is not given, ALD-VT may as a whole or in part terminate the contract forthwith or claim damages for non-performance of the contract.

6. Cooperation of Buyer

- 6.1. Buyer undertakes to aid and assist his expense the staff of ALD-VT in carrying out its work
- 6.2. Prior to the beginning of work, Buyer undertakes to obtain all permissions by the authorities, if required, in accordance with the laws and other regulations applicable at the place of delivery and performance, to make all necessary equipment readily available on the spot and to accomplish all preparatory work to such extent that on arrival of the assembly or maintenance and repair staff of ALD-VT the work can start without delay and continue without interruption.
- 6.3. Buyer shall be responsible for all special measures required for protection of individuals and property at the site. He shall inform the personnel of ALD-VT of any special safety rules or regulations prevailing. In case of serious violation by ALD-VT personnel he may, in agreement with ALD-VT, refuse admittance of such personnel to the site. Buyer undertakes at his own expense to fully insure the personnel of ALD-VT against any risk during the work and without recourse of the insurance company.
- 6.4. Working time and work performed shall be certified by Buyer every week to the personnel of ALD-VT on accounting forms provided by ALD-VT.
- 6.5. As far as necessary, Buyer shall assist the personnel of ALD-VT to find suitable board and lodging near the working place. He shall inform the personnel of ALD-VT of all formalities (registrations etc.) to be observed towards the local authorities and shall assist them in dealing with the authorities and securing necessary documents. Buyer undertakes to pay official charges (taxes, social contributions, fees etc.) levied on the personnel of ALD-VT during performance of work on site.
- 6.6. In case of illness, accident or death of ALD-VT's personnel, Buyer shall inform ALD-VT immediately. He shall take care of medical treatment, transportation to the hospital etc., shall advance the costs arising hereof and, if necessary, also for the transport home. The accounting of such expenses shall be later agreed upon with ALD-VT. In all cases where the work place is situated outside Germany, Buyer shall represent the ALD-VT-personnel towards local authorities and shall handle the necessary formalities.
- 6.7. Until completion of ALD-VT-personnel's work Buyer shall undertake to place the entire system or plant to be erected, maintained or repaired including the required service utilities and equipment at the disposal of ALD-VT for testing and inspection.
- 6.8. Buyer shall give appropriate assistance for transport and return of all required tools and equipment as well as replacement and substitute parts made available by ALD-VT.

7. Technical Assistance by Buyer

- 7.1. Buyer undertakes at his expense to provide technical assistance, in particular :
- 7.1.1. Provision of the additionally required number of unskilled and skilled labour for the time required. The auxiliary staff shall follow the instructions of the representative designated by ALD-VT. ALD-VT does not assume any liability for the auxiliary staff.
- 7.1.2. Performance of excavation and foundation work, construction work, installation of scaffolding and procurement of required material.
- 7.1.3. Making available required appliances and heavy-duty tools as well as the necessary requisites and materials.
- 7.1.4. Supply of heating, lighting, electrical power and water including necessary connections and other service utilities.
- 7.1.5. Provision of dry and lockable rooms for the storage of materials.
- 7.1.6. Conveyance of tools and parts on the site. Protection of the site and the materials used thereon against any kind of detrimental influences. Cleaning of the site.
- 7.1.7. Providing, suitable, burglar-proof rest rooms and workrooms (with heating, lighting, lavatory, sanitary facilities, telephone, telefax) and first aid for the ALD-VT staff.
- 7.1.8. Providing the materials and taking any other actions, required for regulating the equipment supplied and carrying through its testing.
- 7.2. Technical assistance by Buyer must ensure that erection/assembly or maintenance or repair can start without delay on arrival of ALD-VT's personnel and can continue without interruption until completion. ALD-VT shall make available to Buyer, if necessary, in good time any special plants and instructions.
- 7.3. In case that Buyer fails to fulfill his commitments, ALD-VT – under reservation of any of its further rights – shall be entitled, but not bound, to perform the duties of Buyer after notification, in place of and at

- Buyer's expense.
- 8. Assembly, Maintenance and Repair of Equipment supplied by other Suppliers**
- 8.1. In case that plants or systems include parts supplied by other suppliers for which specialised assemblers of the manufacturers are required, ALD-VT undertakes on request of Buyer to arrange for assembly, maintenance or repair of said parts at the terms of the manufacturers.
- 8.2. Assembly, maintenance or repair of systems or parts thereof, not being part of the ALD-VT-delivery, will require a separate agreement in every case.
- 9. Acceptance**
- 9.1. Formal acceptance has to be pronounced immediately upon completion of erection/assembly, maintenance or repair work, should one of the contract party request it.
- 9.2. If no formal acceptance is requested, or if an acceptance so requested were delayed due to reasons not imputable to ALD-VT, the erection/assembly, maintenance or repair work will be automatically deemed accepted 10 (ten) working days after ALD-VT's written notice or invoice of completion of such work.
- 10. Warranties**
- 10.1. ALD-VT warrants that it will correct at its discretion any faulty erection/assembly, maintenance or repair work supplied by it.
- 10.2. In case of failure of correction of such work or services 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, in particular in case of minor defects, 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 defects or faults and whether they have been discovered at once or only after subsequent treatment or processing. ALD-VT shall be entitled to have the defectiveness checked by its own staff.
- 10.4. After mutual consent Buyer shall grant ALD-VT reasonable time and opportunity to proceed with the corrections 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 or 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 its correction work as a result of warranty claims provided they have proven to be justified and the defect has been correctly notified in due course, i.e. the reasonable cost for dismantling and assembly of the part which has been damaged due to faulty service work of ALD-VT, 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 the 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 acceptance pursuant to paragraph 9.1 or 9.2.
- 10.7. Warranty claims in respect of work or services corrected under warranty shall expire at the earliest three months after completion of correction.
- 11. Acts of God / Force Majeure**
- Seller shall be released from liability for partial or complete non-fulfillment of its obligations hereunder if due to:
- Acts of God, including but not limited to fire, flood, earthquake;
- Governmental acts or interferences, such as war, embargo, delay or suspension/revocation of permits or licenses required for the import/export of the work or services offered hereunder;
- Strikes, civil disturbances, or any other circumstances beyond Seller's reasonable control, provided such circumstances have directly affected the performance and execution of this contract.
- In such event, Seller shall promptly notify the Buyer in writing of the beginning and cessation of the circumstances preventing performance, and the time for fulfillment of Seller's contractual obligations shall be extended for a period of time equal to that during which such circumstances have lasted, or for such other reasonable period as Buyer and Seller may agree upon.
- Should the Force Majeure period exceed six months, both parties shall meet in order to discuss on how to further proceed with the project. No liability or penalty shall be incurred or imposed on the Seller for damages of any kind incurred or sustained by the Buyer from or relating to delays in the performance of this contract for the reasons stated above.
- 12. Further Liability of ALD-VT; Buyer's Right to Cancellation**
- 12.1. Buyer may terminate the contract if complete performance of work/services becomes impossible for ALD-VT before acceptance pursuant to paragraph 9.1 or 9.2. Buyer may demand a reasonable reduction in price in case of partial impossibility of execution of work/services; if he has a rightful interest in rejecting a partial delivery the first sentence shall apply.
- Payments already effected shall be reimbursed proportionally.
- 12.2. In case a delay in the execution of work/services 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 work/services after expiration of such additional period, Buyer shall be entitled to terminate the contract. ALD-VT does not provide any legal guarantees for the properties of the ordered work/services, 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 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 that part of ALD-VT's work done/service rendered that is 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. Indemnification by Buyer**
- In case that any parts, appliance or tools furnished by ALD-VT are damaged or lost on the site of assembly, maintenance or repair through no fault of ALD-VT, Buyer shall be liable for such damage or loss.
- 14. Place of Fulfilment, Jurisdiction, Applicable Law**
- 14.1. Place of fulfilment shall be Hanau, Germany.
- 14.2. 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.
- 14.3. Supplementary to all contractual provisions all contracts shall be governed by the law of Germany. The uniform UN Law of Sales (CISG) is not applicable. For contracts with buyers outside Germany or contracts that cover equipment to be exported the International and German Conflict Rules shall not apply. The application of the CISG regulations as well as the German and International Conflict Rules shall not apply either.
- 15. Additional Provisions for Repairs in ALD-VT Work**
- The following provisions are applicable to repair services performed in ALD-VT works. They shall have first priority over the above conditions in as much as they exclude, alter or supplement the latter.
- 15.1. Buyer undertakes, at his expense and risk, to deliver the subject to be repaired in due time.
- 15.2. The transport packing used for the subject to be repaired shall allow easy and safe handling and be suitable to be reused for return shipment. Any risks and costs resulting from nonobservance of such provisions shall be borne by Buyer.
- 15.3. ALD-VT undertakes to preserve the subject with such care as applied in ALD-VT's own affairs. The risk of accidental loss or deterioration shall be borne by Buyer.
- 15.4. ALD-VT shall dispatch the repaired subject at Buyer's expense and risk. Unless Buyer expressly determines otherwise, ALD-VT shall insure the repaired subject against the usual transport risks including breakage and charge the cost incurred to Buyer.
- 15.5. Buyer undertakes responsibility for acceptance at his expense of repair work immediately upon notice of readiness for dispatch. In case of non-compliance, acceptance shall be regarded as being effected upon expiration of two weeks from the date of return shipment or notice of readiness for dispatch, respectively.
- 15.6. In case that return shipment should be delayed due to circumstances not imputable to ALD-VT, Buyer undertakes to pay the repair charges from the date of notice of readiness for dispatch. At the same time, the risk shall pass to Buyer.
- 15.7. ALD-VT reserves the right to retain the repaired subject(s) until payment in full has been made in respect of any claims whatsoever resulting out of ALD-VT's business relations with Buyer including supplementary claims.
- 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.