

# GENERAL TERMS OF PURCHASE (01/2002)

## 1. Purchase Orders

- 1.1 Only purchase orders in writing are binding. They are deemed to have been accepted if the Supplier does not contradict them within 14 days of the date of order. Deviations will only be included in the purchase order terms, if such deviations are accepted in writing by the Buyer.
- 1.2 The documents referred to in the purchase order, which will be made available to the Supplier on request, constitute an integral part of the order. Only as soon as all terms and conditions stated in such documents have been met, will the delivery be deemed to have been duly and properly effected.
- 1.3 Details in the order text, in drawings, and other documents are to be checked by the Supplier for material correctness before the order is being processed. The Buyer is to be informed immediately in writing of any errors found and/or changes requested by the Supplier.  
Any changes, amendments, including any consequences thereof, made without the written approval of the Buyer, shall be on Supplier's account. The same applies in the event that errors found are not reported to the Buyer.
- 1.4 The Supplier is prepared to execute any changes in the scope of delivery requested by the Buyer; any such order change requires an order supplement in writing issued by the Buyer. Such order supplement shall be deemed to be an integral part of the order.
- 1.5 Buyer's General Terms of Purchase shall apply to all present and future business relations. Any deviating, contradictory, or supplementary general terms and conditions, even if known by the Buyer, shall not become an integral part of the purchase contract, unless the Buyer has expressly agreed to such terms and conditions in writing.

## 2. Cancellation by the Buyer

The Buyer shall be entitled to cancel the purchase contract at any time, if such a contract covers either work and services or work and materials pertaining to non-fungible movable goods. Any further claims, in particular for loss of profit, are excluded.

## 3. Delivery Time / Penalty

- 3.1 Delivery dates stated in a purchase order shall be legally binding and are to be understood as the date of receipt of the goods to be delivered to the delivery address stated by ALD. Early deliveries and partial deliveries are only permissible after Buyer's prior consent in writing.
- 3.2 If the Supplier has reason to assume that a delivery cannot be made in full or in part at the delivery date agreed, he must immediately inform the Buyer thereof, stating the duration of the delay and the reasons for the same.
- 3.3 If due to reasons imputable to the Supplier, the agreed delivery time is exceeded, Buyer shall be entitled – in addition to his claim for contractual fulfillment - to claim a penalty of 0.3% per commenced working day of delay, up to a maximum of 10% of the total order amount. If no penalty claim was made by Buyer at the time of receipt or take-over of the Goods or services, such claim can still be lodged until the final payment has been made by the Buyer.

## 4. Shipment

- 4.1 To the extent that the Buyer provides shipping details, shipment is to be effected as specified in such details.
- 4.2 Within the city districts of Erlensee and Hanau, the Goods are to be delivered free to the Buyer's address and without any charge for packaging.

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### 5. Transfer of Risk

The risk of loss shall pass to the Buyer upon Buyer's receipt of the delivered goods. This also applies for sale to destination according to Buyer's instructions.

### 6. Insurance

The Buyer takes out transportation insurance for all deliveries and services. In the event that transportation is to be arranged by the Supplier, the following instruction must be included in the transportation order to the relevant service provider: "Our Buyer declares that he waives the conclusion of a damage insurance policy (Schadensversicherung (SLVS)) within the meaning of the amendment of the ADSp in 1998."

### 7. Receipt of Goods

Goods received by the Buyer are accepted subject to quality, property, and quantity. Complaints due to material defects, to the extent that there are no obvious material defects, can be made within four weeks after delivery of the goods.

### 8. Invoicing and Payment

- 8.1 Invoices are to be sent separately to the Buyer, duplicates are to be specially marked. Invoices must not be attached to the deliveries and must correspond to the order in terms of designation and sequence. Invoices that do not state the order number will not be accepted.
- 8.2 If nothing to the contrary is agreed, payment is made within 14 days less a 3% cash discount, within 21 days less a 2% cash discount, or within 30 days net, respectively after receipt of invoice and receipt of the goods by the Buyer. The Buyer is entitled to pay by means of bills of exchange.
- 8.3 The cession of Supplier's claims out of this contract to third parties requires the Buyer's prior written agreement.

### 9. Packaging

If not provided on a loan basis, packaging is to be charged at cost price (proof to be provided) and must be shown separately in the quotation and invoice. Unless otherwise agreed-upon in writing, on Buyer's request, Supplier shall accept returning the packaging at his own cost.

### 10. Reservation of Title

- 10.1 Documents passed to the Supplier or prepared by the same as a result of an order by the Buyer, or with his approval, remain or shall become the property of the Buyer.
- 10.2 Materials provided by the Buyer must be stored separately by the Supplier and marked as the property of the Buyer. This also applies when order-specific materials are provided. Processing of materials provided by the Buyer shall be effected on behalf of the Buyer. Goods manufactured due to downpayments or provisions made by the Buyer shall become the property of the Buyer, or pass into his ownership. If the Supplier acquires a claim to co-ownership due to combination or mixing, the Supplier shall cede to the Buyer at the time that such ownership is acquired a co-ownership share corresponding to the value of the provision or the material.  
  
To this extent, the transfer of ownership is replaced by free storage of these items on the part of the Supplier. The Buyer is entitled to check at any time that the goods are properly stored and marked.
- 10.3 Tools, devices, and models manufactured for contractual purposes and charged for separately by the Supplier, are the property of the Buyer. The Supplier must mark the same as the property of the Buyer, store them with care, protect them against damage of any kind, and use them for Buyer's purposes only.

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Natural wear is to be made known in time to the Buyer in writing. If requested, the Supplier has to hand them over in a due and proper condition.

If a tool hire agreement is concluded, such agreement shall apply on a supplementary basis.

### 11. Warranty

- 11.1 The warranty shall also cover deliveries and services of Supplier's subcontractors.
- 11.2 Warranty claims can also be made after expiry of the statutory period of limitation, if a material defect could not be found any earlier due to the property or type of the Goods supplied. However, the limitation period ends 30 months after Buyer's receipt of the Goods supplied, unless the statutory period is longer. A defect claim by the Buyer shall block the limitation period until such claims are rejected in writing by the Supplier.
- 11.3 In the case of material defects, the Buyer may demand at his own discretion the removal of the defect or the delivery of replacement goods free from any defects. Any removal, re-assembly, or rework costs shall be borne by the Supplier. In urgent cases, or if the Supplier is in default, the Buyer shall be entitled to remove the defects, or have them removed, at the cost of the Supplier.
- 11.4 If defective parts are replaced or repaired, the warranty period shall be extended by the duration of the failure period and restarts from scratch for any repaired parts or any replacement parts. Parts to be replaced remain available to the Buyer until they are replaced by a part free from defects, and shall become the property of the Supplier only after the defect has been remedied.
- 11.5 The Buyer's rescission and reduction rights shall remain unaffected.

### 12. Patent Infringements

- 12.1 The Supplier warrants that the use of the goods supplied and/or their sale does not infringe on any third party patent rights, licenses, process or other protected rights. This also applies to a subsequent sale abroad and/or use of the goods to be delivered in another country.
- 12.2 If the Buyer is subjected to a claim due to the infringement of a protected right according to Sect. 12.1, the Supplier will join the dispute, and bear all costs arising thereof.
- 12.3 In the event that third party rights are infringed, the Buyer – regardless of the Supplier's fault or liability – shall be entitled to be reimbursed for the damages and losses caused. The Buyer shall be entitled to obtain a license for the use of the goods from third parties entitled to do so, and all costs arising thereof shall be borne by the Supplier.

### 13. Prevention of Accidents

- 13.1 The Supplier is responsible for compliance with any applicable statutory regulations, all applicable accident prevention and safety regulations, and the generally recognized technical safety rules and health and safety at work regulations.
- 13.2 If there is reason to assume that a delivery of Goods or services does not comply with applicable safety requirements, or - even if such delivery of Goods or services is used within the specifications -, that there is considerable risk coming from the same, the Buyer shall be entitled to demand individual proof that the technical safety regulations for such devices are complied with. If the Supplier cannot provide such proof at all, or within a reasonable period, the Buyer shall be entitled to withdraw from the contract.

### 14. Secrecy

- 14.1 The Supplier is obliged to keep the terms of the purchase order confidential as well as all information and documentation provided for this purpose, and all knowledge and experience gained from the details provided by the Buyer, and to use the same only for the purpose of processing the order. In particular, the Supplier shall not duplicate documents and will return the same to the Buyer immediately and without special request when enquiries have been settled, or after orders have been processed.

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- 14.2 Without prior approval in writing by the Buyer, the Supplier is neither entitled to publish the business relationship in his advertising material etc., nor to exhibit Goods made for the Buyer.
- 14.3 The Supplier will make sure to obtain corresponding secrecy obligations from his subcontractors.

### **15. Place of Fulfillment, Place of Jurisdiction**

The place of fulfillment for the Goods and services to be rendered by the Supplier is the place of destination stated by the Buyer. If the Supplier is a merchant, then the place of jurisdiction for all disputes arising from this contract shall be the Buyer's place of business. The right of the Buyer to sue the Supplier before the Court having jurisdiction over Supplier's domicile remains unaffected.

### **16. Applicable Law**

- 16.1 Supplementary to all contractual provisions, all contracts shall be governed by the laws of Germany.
- 16.2 The uniform UN Law of Sales (CISG) is not applicable. for contracts with Suppliers outside Germany, the International and German Conflict Rules shall not apply either.

#### **Note:**

According to the German Law for the Protection of Data, the Buyer herewith states that he has stored the Supplier's data, and that these data are being processed.

### **ALD Vacuum Technologies AG**