

GENERAL TERMS OF PURCHASE (10/2016)

1. General

- 1.1 The following terms and conditions of purchase shall apply to all purchase orders of ALD Vacuum Technologies GmbH (ALD-VT).
- 1.2 Purchase orders are only binding if they are issued by ALD-VT in writing. Verbal agreements – including subsequent changes and additions to these terms and conditions of purchase (TP) - shall take effect only with written confirmation by ALD-VT.
- 1.3 The TP in the version in effect at the time shall also be valid as a master agreement for future contracts for the purchase and/or delivery of goods with the same supplier without ALD-VT having to expressly refer to them again in each individual case. ALD-VT shall inform the supplier immediately of any modifications.
- 1.4 These Terms of Purchase shall govern exclusively. Deviating, conflicting or additional general terms and conditions of the supplier shall become an element of the contract only if and insofar as ALD-VT has expressly confirmed their validity in writing. This requirement of consent shall apply in each case, including, for instance, cases where ALD-VT, having knowledge of the customer's general terms and conditions, makes delivery to the supplier without reservation.
- 1.5 Individual agreements made with the supplier in a specific case (including ancillary agreements, supplements and amendments) shall always take precedence over these Terms of Purchase. The content of such agreements requires the written confirmation of ALD-VT.
- 1.6 Legally relevant statements and notifications which the supplier has to submit to ALD-VT after conclusion of the contract (such as deadlines or withdrawal) require the written form to be effective. All contract-related documents, notices and statements including invoices have to include at least the following information: Purchase order number(s), receiving point, complete name of the article/object to be delivered, quantities, units of quantity and – for delivery within the EU – the supplier's VAT ID no.

2. Conclusion of the contract

- 2.1 The supplier may accept ALD-VT's written purchase order within 14 days of receipt unless specified otherwise in the purchase order, including, without limitation, a shorter commitment period for the offer.
- 2.2 The notice of acceptance shall be given in writing. If acceptance is delayed, the offer is considered refused. In that case, a delayed order confirmation shall be considered a binding contract offer by the supplier.

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3. Notice of termination by ALD-VT

ALD-VT shall have the right to terminate a contract for work and services or a contract for the delivery of goods regarding a non-fungible item at any time. In this case, the supplier shall have the rights according to Section 649, sentences 2 and 3 German Civil Code (BGB). Further claims by the supplier are excluded.

4. Delivery time/liquidated damages

- 4.1 Delivery dates specified in the order refer to the time the delivery item is received at the delivery address designated by ALD and shall be binding. Deliveries ahead of time and partial deliveries are only permitted with ALD-VT's express consent.

The date of the written acknowledgement of receipt by ALD-VT's receiving point specified in the order shall determine receipt of the delivery item.

- 4.2 The supplier shall deliver the delivery item in accordance with DDP (Incoterms 2010) to the delivery address specified by ALD-VT in the order ("Receiving Point"). ALD-VT may, at its discretion, refuse delivery to another address. Even if ALD-VT accepts the delivery, this does not mean fulfillment and does not result in a transfer of risk unless ALD-VT expressly agrees in writing to a change of the delivery location. A simple acknowledgement of receipt shall not constitute consent. If ALD-VT accepts delivery at a location other than the Receiving Point specified in the order and does not grant permission to change the place of delivery, ALD-VT shall promptly transport the delivery item, at the supplier's expense and risk, to the specified place of delivery or retroactively give written consent to a change of the Receiving Point. This statement shall not have retroactive effect.

- 4.3 If the supplier fails to meet the agreed delivery date for reasons for which the supplier is responsible, ALD-VT may, in addition to fulfillment, claim liquidated damages amounting to 0.3% of the total order amount for each commenced working day of the delay. Liquidated damages shall not exceed 5% of the total order amount. This shall not affect assertion of further damage. If ALD-VT does not explicitly reserve the right to liquidated damages when accepting the service, it may still claim liquidated damages until final payment to the supplier.

5. Shipping/packaging

- 5.1 The supplier shall comply with any shipping specifications of ALD-VT such as packaging or container sizes.

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5.2 Packaging shall be included in the price. If requested by ALD-VT, the supplier shall take the packaging back after delivery unless the parties explicitly agree otherwise.

6. Export control and foreign trade data

6.1 Together with the order confirmation, the supplier shall provide ALD-VT with all data in text form which ALD-VT needs to comply with legal requirements including, without limitation:

- i. All applicable export list numbers including the Export Control Classification Number (ECCN), if applicable;
- ii. The statistical commodity code according to the current "Directory of goods for foreign trade statistics";
- iii. The country of origin (non-preferential origin), and, if requested by ALD-VT, supplier declarations regarding the preferential origin.

6.2 If the supplier breaches his duties according to 6.1, the supplier shall bear all costs and damage which ALD-VT incurs as a consequence of such breach, unless the supplier is not responsible for such breach.

7. Receiving department/obligation to give notice of defects

ALD-VT shall inspect the delivery items for obvious defects (such as shortfalls, transport damage) promptly upon receipt and shall give notice thereof within three (3) working days. ALD-VT may assert claims for non-obvious defects which can be detected by reasonable examination within four (4) weeks from delivery of the delivery items at the Receiving Point, and hidden defects also after expiration of this period within five (5) days of their discovery.

8. Billing/payment

8.1 When shipping the delivery item, the supplier shall send ALD-VT an invoice which meets the requirements under tax law and contains the information according to Section 1.6 of these PT by mail or e-mail to "E-rechnung@ald-vt.de". Duplicates must be identified as such. The supplier is not permitted to include the invoices with the shipment.

8.2 ALD-VT shall pay accurate and valid invoices within 14 days with a 3% discount, within 45 days with a 2% discount or within 60 days without any discount. The payment term shall start following the day on which ALD-VT received both the invoice and the shipment at the Receiving Point.

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8.3 The supplier may not assign receivables from ALD-VT to third parties without ALD-VT's prior consent. This shall not affect Article 354a HGB [German Commercial Code].

9. Protection of ownership

9.1 If ALD-VT provides the supplier with documents in connection with the order or if the supplier creates such documents in connection with the order at ALD-VT's request, these documents shall remain the property of ALD-VT or shall become its property upon their creation. The supplier shall offer the transfer of ownership of these documents at this time, and ALD-VT shall hereby accept this offer.

9.2 Any material or parts ALD-VT makes available to the supplier for manufacturing the ordered delivery item (Provided Items) shall be stored by the supplier separately from other property and shall be labeled as ALD-VT's property. The supplier shall undertake the handling and processing of Provided Items on behalf of and for the account of ALD-VT as the manufacturer. In doing so, ALD-VT shall acquire direct ownership or – if processing involves materials from several owners or the value of the processed item is higher than the value of the Provided Item – joint ownership (fractional ownership) in the newly created item corresponding to the ratio between the value of the Provided Item and the value of the newly created item. In the event that there will be no such acquisition of ownership by ALD-VT, the supplier shall transfer his future property or his co-ownership in the newly created item – at the aforementioned ratio – to ALD-VT at this time. If the Provided Item is combined with other items into a single item or inseparably mixed and if one of the other items has to be considered the main item and provided that the supplier is the owner of the main item, the supplier shall transfer co-ownership in the single item to ALD-VT pro-rated at the ratio specified in sentence 1.

Any transfer of possession that may be required for the aforementioned transfer of ownership shall be replaced at this time by an understanding that the supplier shall store these items for ALD-VT without charge. ALD-VT shall have the right to satisfy itself as to the proper storage and labeling of the Provided Items or processed objects at the supplier's location at any time during regular business hours.

Storage means that the supplier shall store the items professionally in a safe and dry space, protect them against theft and damage as well as adequately insure them against risks such as fire, water damage and theft, and grant ALD-VT its own right to assert claims against the insurer.

9.3 Tools, fixtures and models which the supplier produces for the purposes of this contract and for which the supplier bills ALD-VT separately, shall be transferred by the supplier to ALD-VT upon payment. Section 9.2 Paragraph 1 Sentence 1 of these PT shall apply accordingly.

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10. Warranty

- 10.1 The services of the supplier for ALD-VT, i.e. both the supplier's own services and the services of sub-suppliers engaged by the supplier shall be subject to the legal warranty provisions.
- 10.2 If the delivery item is defective, ALD-VT may require, at its discretion, delivery of a product which is free from defects or correction of the defect. All related costs including, without limitation, the removal, installation, transport and labor costs, shall be borne by the supplier. If such subsequent performance fails, ALD-VT may, at its discretion, require a decrease in the purchase price (reduction) or cancel the contract (withdrawal). However, the right to withdrawal does not apply if the defect is minor.
- 10.3 Unless longer legal statute of limitation periods apply, the statute of limitation for warranty claims shall be 30 months following acceptance of the delivery item by ALD-VT at the Receiving Point. The statute of limitation period shall be suspended by a written notification of defect by ALD-VT until the supplier has rejected the claims in writing.

11. Liability for infringement of property rights

- 11.1 If use of the delivery item results in an infringement of commercial property rights or copyrights of third parties, the supplier shall, at his expense, obtain for ALD-VT the right to further use or modify the delivery item in a manner which is reasonable towards ALD-VT so that there is no further infringement of property rights. If this is not possible under economically reasonable conditions or within a reasonable time, both parties shall be entitled to withdraw from the contract. Furthermore, the supplier shall indemnify ALD-VT from and against undisputed claims or claims established by final judgment of the respective property rights owners. A withdrawal declared by the supplier under the preceding provision shall constitute acknowledgement of the third party's claims on their merits.
- 11.2 Further claims of ALD-VT such as for compensation for lost profit shall remain unaffected.
- 11.3 If claims are pursued against ALD-VT owing to an infringement of a property right according to Section 11.1 of these PT, the supplier shall join a suit on the side of ALD-VT assuming all reasonable costs of legal action, unless explicitly agreed otherwise.

12. Liability

- 12.1 ALD-VT shall be liable for damages – for whatever legal reason – only in the event of intent or gross negligence. In the event of minor negligence, it shall only be liable for

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- (i) damage resulting from injury to life, body or health,
- (ii) damage from a breach of a fundamental contractual obligation (i.e. an obligation the fulfilment of which is essential for the proper implementation of the contract and on the fulfilment of which the contractual partner regularly relies and may rely); in this case, ALD-VT's liability shall be limited to typically foreseeable damages.

12.2 The supplier shall be liable in accordance with legal regulations.

13. Selection criteria

The ALD-VT has obligated itself to continuously improving energy efficiency, and has therefore implemented an integrated management system in accordance with DIN EN 50001 Energy Management. When purchasing energy services, products, and equipment that have or could have an effect on key areas of energy consumption, energy-related performance is a criterion for selection for ALD-VT.

14. Minimum wage obligation

- 14.1 The supplier shall warrant towards ALD-VT that he will pay all employees deployed for performing services for ALD-VT an amount at least equal to the mandatory minimum wage. The supplier is obligated to pay the respective higher applicable minimum wage, unless non-conformance with the legally required minimum wage is permitted according to Section 24 paragraph 1 Minimum Wage Act. If the supplier has to pay contributions to a communal system for parties to a collective agreement according to Section 8 AEntG (Posting of Workers Act), the supplier shall also warrant to ALD-VT the proper and timely payment of such contributions (minimum wage obligation).
- 14.2 If subcontractors or temporary workers are used, the supplier shall obligate the subcontractor or agency in the agreements with such subcontractor or agency to also comply with the minimum wage obligations.
- 14.3 Upon request, the supplier shall provide ALD-VT with all required information and make available all necessary data and documents so that ALD-VT itself can check that the supplier, subcontractor or agency complies with the minimum wage obligations.

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- 14.4 In the event the supplier or the subcontractor or agency included by the supplier in the contract fulfillment fails to comply with the minimum wage obligations, ALD-VT shall have the right to terminate the existing agreements with the supplier without notice for cause or withdraw from individual purchase contracts.
- 14.5 The supplier shall be fully liable for damage arising for ALD-VT from the fact that the supplier or the subcontractors or agency included by the supplier fail to comply with the minimum wage obligations. The supplier shall indemnify ALD-VT from and against all claims of third parties asserted against ALD-VT because of a breach of minimum wage obligations and shall assume all costs incurred by ALD-VT because of the assertion of these claims (including any incidental expenses such as interest and reasonable cost of legal action).
- 15. Accident prevention/safety**
- 15.1 The supplier shall comply with the occupational safety, accident prevention and other safety regulations in effect at his place of production, but at least with generally accepted occupational safety and health regulations.
- 15.2 The supplier shall furthermore be responsible for ensuring that the delivery item meets all legal requirements regarding safety and environmental compatibility in effect at the location of the Receiving Point or other regulations and regulatory requirements governing its intended use or intended further processing.
- 15.3 If there is reason to assume that these requirements are not met, particularly that the delivery item poses a considerable risk, ALD-VT may require the supplier to provide individual evidence. If the supplier fails to provide this evidence or fails to provide it within a reasonable time, ALD-VT shall have the right to withdraw from the contract.
- 16. Confidentiality**
- 16.1 The supplier shall keep confidential the terms of the purchase order and all information and documents provided by ALD-VT for the purpose of the contract and use them only for fulfilling the purchase order. After termination of the contractual relationship, the supplier shall return ALD-VT's records to ALD-VT without having to be asked to do so, or, if this is not possible, to delete them.
- 16.2 The supplier shall not be permitted to refer to the business relationship with ALD-VT in advertising material or other business documents and may not exhibit or display delivery items produced by ALD-VT without ALD-VT's prior written consent.
- 16.3 The supplier shall obligate his subsuppliers or other subcontractors correspondingly.



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17. Compliance obligation

The supplier acknowledges that he is obligated in general and particularly with regard to the business relationship with ALD-VT to comply with all applicable laws, ordinances and regulations, including, without limitation, those intended to fight corruption in business dealings, to protect fair competition, to prohibit insider trading, money laundering and child labor and to safeguard data protection and workplaces free of discrimination and harassment and to ensure that his upstream suppliers and subcontractors do likewise. The supplier shall furthermore indemnify ALD-VT from and against all consequences of any breach of these principles upon first request.

18. Applicable law, jurisdiction

- 18.1 All legal relationships between ALD-VT and the supplier shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of international uniform law including, without limitation, the United Nations Convention on Contracts for the International Sale of Goods.
- 18.2 The exclusive jurisdiction for all disputes arising from or in connection with the delivery relationship between the parties shall be Frankfurt am Main. ALD-VT shall, however, have the right to file suit at ALD-VT's principal place of business.