

# General terms and conditions for maintenance (01/2017)



1. **GENERAL**
- 1.1 The following terms and conditions shall apply to any maintenance work ALD Vacuum Technologies GmbH (ALD-VT) performs on the customer's equipment (GTM/General Terms and conditions for Maintenance).
- 1.2 The GTM in the version in effect at the time shall also apply as a framework agreement to future maintenance contracts with the same customer without ALD-VT having to expressly refer to them again in each individual case. ALD-VT shall inform the customer immediately of any modifications to the GTM.
- 1.3 These GTM shall govern exclusively. Deviating, conflicting or additional general terms and conditions of the customer shall become an integral part 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, performs the service for the customer without reservation. Individual contracts made with the customer in a specific case (including ancillary agreements, supplements and amendments) shall always take precedence over these GTM. The content of such agreements requires the written confirmation of ALD-VT.
- 1.4 Legally relevant statements and notifications which the customer has to submit to ALD-VT after conclusion of the contract (such as deadlines) require the written form to be effective.
2. **CONCLUSION OF THE CONTRACT**
- 2.1 ALD-VT's offers are subject to change without notice and non-binding and are simply a request to the future customer to make an offer, unless explicitly specified otherwise in the offer.
- 2.2 The customer's purchase order for the service shall be considered a binding contract offer. Unless specified otherwise in the purchase order, ALD-VT has the right to accept this contract offer within two (2) weeks following its receipt.
- 2.3 A contract shall only take effect when ALD-VT has confirmed the order in writing. If ALD-VT does not send the order confirmation within the aforementioned 2-week period, the offer is considered refused. A delayed order confirmation shall be considered a binding contract offer by ALD-VT which the future customer may accept within one (1) week. The exact scope of the maintenance services shall be specified by the parties in individual agreements.
3. **PERSONNEL REQUIREMENTS AND TIME REQUIRED FOR MAINTENANCE**
- 3.1 ALD-VT shall, at its discretion, deploy a sufficient number of qualified personnel depending on the type and extent of contracted services and the agreed duration of the service. In doing so, ALD-VT shall have the right to use an appropriate number of qualified personnel of subcontractors to perform the services.
- 3.2 ALD-VT shall estimate the anticipated time required for the contracted services based on its experience and to the best of its ability; the duration of the service estimated in this manner is non-binding unless there is a different express, written agreement with the customer. If the start date of the services is moved or their performance is delayed due to circumstances for which ALD-VT is not responsible, the duration of the service shall be extended reasonably, but at least by the time period, during which the circumstances causing such delay or move are in effect. The unavoidable cost incurred by ALD-VT or the customer due to this delay or move shall be borne by the customer.
- 3.3 If the customer's equipment on which ALD-VT is asked to perform services becomes unusable or deteriorates to an extent that it becomes impossible to perform the service required under the contract for reasons for which ALD-VT is not responsible, ALD-V shall be relieved of its performance obligation but shall retain its claim to the agreed payment less cost savings.
4. **PRICES**
- 4.1 Unless explicitly agreed otherwise, ALD-VT shall perform all maintenance services at the cost-based prices for the work in effect at the time of contract conclusion. Together with the offer, ALD-VT shall submit to the customer the price list in effect at the time including provisions regarding hardship allowances and extra pay for overtime or Sunday and night work.
- 4.2 Maintenance services shall also include travel, setup, preparation and clean-up times. The customer shall also assume travel expenses, the cost of transporting personnel, luggage and tools, per diem allowance for personnel, as well as luggage and flight insurance in reasonable amounts. Travel expenses shall be considered reasonable if they comply with ALD-VT's internal travel guidelines.
- 4.3 ALD-VT shall bill the customer separately for wear parts exchanged during maintenance and other material cost at the list prices in effect at the time the maintenance work is performed unless explicitly agreed otherwise in an individual contract.
- 4.4 The prices listed are net prices. ALD-VT shall additionally bill for transaction taxes (VAT, etc.) according to the legal requirements in effect at the place of performance at the time of contract fulfillment.
5. **PAYMENT TERMS**
- 5.1 ALD-VT shall, at its discretion, send the customer a monthly bill for its services in pro-rated amounts which shall be agreed between ALD-VT and the customer separately or after performance of the services.
- 5.2 In the absence of a special agreement, payment shall become due immediately and shall be made in euros without any deductions to the account specified by ALD-VT in the order confirmation within 30 days from the invoice date. Any fees, expenses or other costs which ALD-VT incurs in connection with the payment, such as from separately agreed payment surrogates (check, draft) or from payments in a foreign currency, shall be borne by the customer.
- 5.3 The customer shall have the right to withhold payments or offset them against counterclaims arising from other legal relationships only to the extent his counterclaims are undisputed or confirmed by a final judgment.
- 5.4 If the customer is late with a payment or defaults on a payment, the legal provisions of Sections 288 German Civil Code (BGB), 353 German Commercial Code (HGB) shall apply.
6. **CUSTOMER CONTRIBUTION**
- 6.1 The customer shall reasonably support ALD-VT in the performance of the services including, without limitation, the provision of technical support (see Section 7.) at the place of maintenance ("Place of Performance").
- 6.2 The customer shall provide the items or equipment to be maintained in a condition which allows ALD-VT to perform the work immediately upon arrival. The customer shall also ensure that ALD-VT will not be interrupted in the performance of services by third parties or the customer.
- 6.3 The customer shall notify ALD-VT promptly, but in any case in due time before performance of the maintenance work, of any changes made to the equipment to be maintained by the customer or third parties commissioned by the customer.
- 6.4 The customer shall ensure the safety and protection of ALD-VT's employees and the items they brought with them to the Place of Performance and take any actions required therefore. The customer shall advise ALD-VT of existing safety regulations. In case of major violations of safety regulations by ALD-VT's employees, the customer shall have the right to expel the perpetrator from and refuse further access to the Place of Performance in consultation with ALD-V.
- 6.5 The customer shall track the working hours and work performed by the personnel deployed by ALD-VT and certify them weekly using the accounting forms provided by ALD-VT.
- 6.6 To the extent necessary, the customer shall support ALD-VT's personnel assigned to the performance of services in finding suitable lodging and meals in the vicinity of the Place of Performance. The customer shall inform ALD-VT's personnel of all obligations they have to fulfill for local authorities (such as notifications, reports). The customer shall also support ALD-VT's personnel in dealing with local authorities and help them obtain the required certificates. If the Place of Performance is located outside Germany, the customer shall also represent ALD-VT towards authorities and take care of the necessary formalities.
- 6.7 The customer shall be responsible for the charges ALD-VT has to pay at the Place of Performance for the personnel deployed there (taxes, social insurance contributions, fees, etc.).
- 6.8 The customer shall notify ALD-VT promptly if an ALD-VT employee deployed at the customer site gets sick, dies or has an accident. The customer shall ensure the provision of medical care, transfer to the hospital or home, if necessary, or any other necessary actions, and shall advance the cost incurred therefore. ALD-VT shall reimburse the customer for these costs against submission of written evidence.
- 6.9 The customer shall also reasonably support ALD-VT in transporting and sending back the maintenance tools made available by ALD-VT.
7. **COOPERATION, TECHNICAL SUPPORT BY THE CUSTOMER**
- 7.1 The parties shall cooperate at all times in a spirit of mutual trust to ensure the cost-effective and safe performance of tasks, inform each other in a timely manner to this end, and agree on actions which affect the scope of this contract.

7.2 The customer shall, at his expense, provide ALD-VT with reasonable and required technical support including, without limitation:

- (a) Providing the required qualified support personnel in necessary numbers and for the necessary length of time; this support personnel shall follow the technical and other functional instructions of the contact person designated by ALD-VT. Liability for the support personnel shall remain with the customer.
- (b) Performing scaffolding work including the procurement of necessary building materials;
- (c) Providing necessary fixtures and heavy tools and other necessary utensils and materials;
- (d) Providing heating, lighting, power, water including required connections and other equipment;
- (e) Providing dry and lockable rooms for storing materials and tools; if available.
- (f) Transporting tools and parts at the Place of Performance, to the extent applicable and necessary; protecting the Place of Performance and required materials against detrimental effects of any kind and cleaning the Place of Performance; especially disposing of packaging and residual waste and lubricants from maintenance work at his own expense.
- (g) Providing suitable theft-proof break and work rooms (with heating, lighting, washing facilities and sanitation) and providing first aid for ALD-VT's personnel, if required, but at least ensuring use of the customer's break and work rooms.
- (h) Providing materials and taking all other actions which are necessary if the delivery item is subject to provisions agreed separately or if testing is necessary.

7.3 If the customer fails to perform his obligations to cooperate and provide technical assistance, ALD-VT shall, without prejudice to other rights, have the right, but shall not be obligated to perform these actions which are the customer's responsibility in his stead and at his expense.

## 8. TRANSFER OF TASKS TO THIRD PARTIES

ALD-VT shall have the right to transfer the performance of some or all of the tasks it has been charged with to technically qualified third parties as subcontractors without thereby releasing ALD-VT from its performance obligation. ALD-VT shall furthermore be responsible for the performance of the third party as if it were its own performance.

## 9. DEFAULT

If ALD-VT fails to fulfill its obligation under this contract or fails to fulfill it in a timely manner, completely or properly, the customer may set ALD-VT, in writing, a reasonable deadline for the fulfillment of its contractual obligation. If ALD-VT fails to meet its obligations within this deadline, the customer shall have the right to perform the services himself or have them performed by a third party at ALD-VT's expense no sooner than after at least two rework attempts by ALD-VT. Sentences 1 and 2 do not apply insofar as ALD-VT was not responsible for the breach of duty. Other rights of the customer arising from default are excluded unless otherwise provided in the provisions set forth below.

## 10. FORCE MAJEURE

Force majeure refers to an event or to circumstances outside the control of ALD-VT including, without limitation, war or war-like conditions, riots, revolution, terrorist acts, strike and lockout, release of or contamination with radioactive radiation, natural disasters such as earthquakes, storms, lightning, tsunamis or similar events. If ALD-VT is prevented from meeting its contractual obligations on grounds of force majeure, it shall insofar be released from its performance for the duration of the impact of force majeure. ALD-VT shall in any case promptly give the customer detailed written notification thereof. Should the interruption of performance on the grounds of force majeure continue for more than six months, the customer and ALD-VT shall consult with each other regarding continuation of the project. ALD-VT shall in no case be liable for damage of any kind resulting from the interruption of performance by force majeure.

## 11. OTHER LIABILITY

11.1 ALD-VT shall be liable for damages – regardless of the legal basis – in the event of intent or gross negligence. In cases of ordinary negligence, it shall only be liable

- (i) for damage arising from injury to life, body or health,
- (ii) for damage arising from the violation of a material contractual obligation (i.e. an obligation the fulfillment 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). Notwithstanding the following paragraph, in this case, ALD-VT's liability shall however, be limited to typically foreseeable damages in all cases.

Liability according to (ii) above shall be limited to the net order value of the respective maintenance service unless ALD-VT is guilty of gross negligence according to 11.1 Sentence 1 or if the damage falls under item (i).

11.2 The limitations of liability arising from 11.1 do not apply if ALD-VT has fraudulently concealed a defect or accepted a warranty specifying the quality of performance. The parties shall agree on warranties separately and in writing.

## 12. TERMINATION

ALD-VT shall have the right to terminate the contract without notice for cause before expiration of the contract term. Termination for cause shall include, without limitation, instances where the customer

- falls into financial crisis, particularly if a request for opening insolvency proceedings has been made or the opening of such proceedings has been rejected for lack of assets;
- does not meet his payment obligation upon a written reminder and a reasonable deadline.

## 13. APPLICABLE LAW, JURISDICTION

13.1 All legal relationships between ALD-VT and the customer shall be solely governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law.

13.2 The exclusive place of jurisdiction for all disputes arising from and in connection with the relationship between the parties under this contract shall be Frankfurt am Main. However, ALD-VT shall have the right to file suit at the customer's principal place of business.