ALD Vacuum Technologies North America, Inc.
General Conditions of Sale (01/2019)

1. General Provisions

1.1. All supplies and services of ALD Vacuum Technologies North America, Inc. (ALD) are subject to the conditions hereinafter set forth. Standard terms and conditions of the buyer shall not apply.

1.2. INCOTERMS 2010 rule(s) referenced herein shall apply only to terms not otherwise covered by these Conditions of Sale.

1.3. Where no provisions are included in these General Conditions of Sale, the Uniform Commercial Code shall apply.

2. Offer / Acknowledgement of Order

2.1. Unless the offer states a term of validity, offers from ALD are non-binding and may be withdrawn at any time. A contract is only concluded after the order is acknowledged in writing by ALD, or after both the buyer and ALD have signed a formal Contract.

2.2. Purchase orders placed without prior offer from ALD according to Section 2.1 do not become binding upon ALD unless acknowledged in writing by ALD. The same applies where the buyer modifies the offer from ALD.

2.3. ALD 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 non-binding unless they are expressly warranted.

3.2. In certain cases, ALD reserves the right to alter the design and, where there is a shortage of raw materials, to use substitute materials unless there is an overriding major concern on the part of the buyer which is known to ALD.

3.3. ALD reserves the right of ownership and copyright for all sales references and other documents made available to the customer. They must not be used for other purposes, nor copied, reproduced or made available to a third party without prior written approval from ALD. They do not confer title to, nor imply the grant of any licence for reproduction of ALD products or parts.

3.4. All sales references and other documents made available to the buyer are to be returned to ALD immediately upon request; they must be returned without request if the order is not placed with ALD.

4. Prices, Packing, Insurance

4.1. The prices are based on the terms stated in the offer. Where no shipping terms are stated, quoted prices are based on terms “ex works” or “ex manufacturing plant”, respectively (EXW, INCOTERMS 2010) - excluding packing, assembly and start-up. Packing is charged at actual cost.

4.2. Unless expressly stated in writing, the sales price does not include any sales, excise, value added or transportation taxes etc., nor any export, import or other duties to be additionally charged by ALD, as the case may be, in accordance with official regulations at the time of order fulfilment.

4.3. Unless the buyer expressly determines otherwise, ALD shall insure the purchased goods against the usual transportation risks, including breakage, and charge the cost incurred to the buyer.

5. Assembly and Start-up

Provided that assembly, supervision of assembly or start-up have to be carried out by ALD, the relevant additional conditions of ALD (“General Terms for Equipment Assembly and Technical Services”) are valid, which will be made available by ALD upon request.

6. Passing of risk

6.1. Risk shall pass to the buyer pursuant to the INCOTERMS 2010 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 has undertaken to assume supplemental services and payments, such as the cost of dispatch, carriage and assembly.

6.2. Risk shall also pass to the buyer as soon as the buyer 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 buyer have been received by ALD, any official authorization or release that may be required has been issued and (advance) payments provided for in the contract have been credited to ALD'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 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 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'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 shall furthermore be entitled, after having set a reasonable time for buyer to take delivery and after expiration thereof, to sell or dispose of the goods in any other way and to deliver replacement goods to buyer after a reasonably extended period.

7.3. If delivery is delayed by unforeseen events beyond ALD's control (Acts of God or Force Majeure), the delivery period shall be reasonably extended, at the latest by six months, however. Such events are considered to include strikes, lockouts, sabotage, acts of terrorism, material and energy shortage, operating breakdown incurred through no fault of ALD, important tools or workpieces becoming useless through no fault of ALD, non-issuance or delayed issuance of official authorizations, 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 stated in ALD's offer and / or acknowledgement of order. In case of partial shipments, ALD shall be entitled to issue pro rata invoices accordingly. If payment has been made in a currency other 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's account, or if ALD’S order acknowledgement confirms the price in a currency other than EUR and the payment amount equals the confirmed price.

8.2. Payments shall be made exclusively to one of ALD's accounts and shall be paid by the due date, free of any charges and/or off-sets. Fees, expenses or sundries incurring to ALD by accepting bills or cheques upon specific agreement between ALD 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 for all payments shall be that on which the sum paid is actually at ALD's disposal.

8.3. Withholding of payment because of counterclaims, or setting off payments against counterclaims, is only permissible if such counterclaims are uncontested or legally ascertained.

8.4. When buyer delays payment beyond the due date, ALD shall be entitled, without prejudice to any further claims as a result of late payment, to charge interest at a rate of 8% above the prevailing European Central Bank rate.

9. Reservation of Property Right

9.1. ALD reserves the property rights in the goods supplied until ALD has received payment in full with respect to any claims whatsoever resulting out of ALD's business transactions with buyer, including supplementary claims. If buyer is in default of payments, ALD shall without formal notice be entitled to take back the goods as security. Claiming security rights in the property and reclaiming delivered items shall not be deemed a cancellation of the contract. Where special regulations or any other provisions apply in the country of buyer or of destination of the goods in respect to the validity of the reservation of property rights, the buyer itself shall undertake to carry out the terms of such regulations or provisions to safeguard ALD's rights.

9.2. Buyer shall promptly report to ALD the filing of any liens, claims, encumbrances or any such other measures imposed by third parties.

9.3. During the period of reservation of property rights, buyer undertakes, at its own expense, to fully insure the goods supplied against risks and damages, such as theft, breakage, fire and water damage and, upon request, to furnish proof thereof to ALD. In Case that buyer fails to furnish such proof within a reasonable period of time, ALD shall be entitled to take out such insurance at buyer’s expense.

10. Warranties

10.1. ALD undertakes, at its discretion, to repair or to replace any defective goods supplied or parts thereof. Excluded from the warranty are normal wear and tear, consumable materials (e.g. thermocouple elements and their protective armatures, crucibles and troughs, heating tubes, brick lining, packings, sealings, plastic parts, heat insulations). Furthermore, warranty claims for damages resulting from chemical, electrochemical or electrical factors (when not due to ALD's fault) as well as from electric arc or electron beam are excluded.

10.2. Notice of defect must be given immediately, latest within 2 weeks of its discovery. The complaint must specify the nature of the found defect or fault. ALD shall be entitled to have the defect inspected by its own staff.

10.3. After mutual consent, buyer shall grant to ALD reasonable time and opportunity to proceed with the repairs or replacement, as ALD may deem necessary at its discretion. If buyer fails to do so, ALD shall be relieved of any warranty or liability. Only in extraordinary cases, e.g. if jeopardizing safety of operation or risking excessive damages – whereupon ALD shall immediately be notified – or if ALD should be in delay of remedying the damage, shall the buyer be entitled to remedy the defect or to have it remedied by a third party and to recover the costs necessarily incurred from ALD.

10.4. ALD shall bear the direct cost arising from repair or replacement as a result of warranty claims, provided they have proven to be justified and ALD has been correctly and promptly notified of the defect. The direct costs cover 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 ALD's mechanics and assistants. Any further costs shall be borne by the buyer.

10.5. 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.

10.6. The warranty for parts replaced or repaired shall expire after three months, but not before the warranty period for the goods originally supplied.

10.7. Concerning any further claims Section 12.4 shall apply.

11. Liability for Patent Infringement

11.1. ALD warrants that, to the best of its knowledge, the goods supplied are free from third party rights. If, however, the goods supplied hereunder or any part thereof infringe a third party patent already granted and published, or if the goods supplied by ALD include a specific process right and infringe on patented process rights for which the buyer is sued in legal proceedings, ALD shall at its own expense and discretion, and within a reasonable time, procure for buyer the right to continue using the goods or part thereof or to modify or replace them with non-infringing goods or process ,or to withdraw from the contract. ALD assumes no additional liability, e.g. for processes, applications, products etc. not supplied by ALD, but developed on or derived from goods supplied by ALD.

11.2. If third party patents are infringed by a design or specification furnished by buyer, the latter shall conduct the defense of ALD against any claim and release ALD from any liability for infringement.

12. Further Liability of ALD; Buyer's Right to Cancellation

12.1. Buyer may terminate the contract if complete performance becomes impossible for ALD before passing of the risk. Buyer may demand a reduction in price in case of partial impossibility of delivery of the goods or parts therefore. If the buyer has a lawful claim for rejecting a partial delivery, buyer may terminate the contract.

12.2. In case a delay in delivery is within ALD's responsibility and ALD does not comply within 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 does not provide any legal guarantees for the properties of the ordered goods, unless expressly confirmed in writing.

12.4. ALD shall be liable for direct damages resulting from ALD's breach of its primary contractual obligations or from illicit acts to the extent that its legal representatives, agents, employees or officers have acted with malicious intent or gross negligence. ALD's liability for damages, including direct damages, shall not exceed the contract price unless such damages are covered by Seller's liability insurance. Any further liability of ALD is excluded. In no event shall ALD be responsible for any special, indirect, punitive or consequential damages, including, without limitation, loss of profits or loss of opportunities, arising out of the contract or out of the transactions contemplated hereunder.

12.5. Should the buyer be entitled to claim damages in accordance with Section 12.4 above, such rights will expire at the end of the warranty period as stated in Section 10.6, except for cases of malicious intent or gross negligence on the part of ALD.

13. Place of Fulfilment, Jurisdiction, Applicable Law

13.1. If a dispute arises out of or relating to a contract between ALD and the buyer, or the breach thereof, both parties shall make every reasonable effort to resolve their differences. If the parties fail to come to a mutual understanding, they shall submit their dispute to J.A.M.S./ENDISPUTE (or similar organization) for non-binding mediation by a sole mediator. Such mediation shall be administered under the Commercial Mediation Rules and shall take place in New York, New York (USA).

13.2. If mediation fails to bring forth a mutually satisfactory agreement, they shall submit to and be bound by the decision of a mutually accepted member of the American Arbitration Association ("AAA") who shall rule in accordance with the Association's Commercial Rules and Supplementary Procedures for Large, Complex Disputes. The arbitrator shall not be an officer, employee, director, or affiliate or either party or of its affiliates. If the parties are unable to agree on an arbitrator within 30 days of the filing of the Demand for Arbitration, an arbitrator shall be selected pursuant to the rules and procedures of the AAA.

13.3. Any such arbitration shall be held in New York, New York (USA) and the laws of the State of New York shall apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

13.4. Each party shall bear the fees and costs it incurs in preparing and presenting its case in such arbitration and/or mediation.

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