



## **General Terms and Conditions**

**Valid for all ALS Automated Lab Solutions companies and branches worldwide (hereinafter referred to "ALS")**

**2012**

**The English translation is only for information purposes. The unique authentic wording is that of the German language.**

### **1. AGREEMENT**

The Agreement is based on the general terms and conditions between the Customer and ALS, irrespective of whether the Customer is a businessman within the meaning of the German Commercial Code (HGB), § 1 section 1 and 2, a legal person under public law or a special fund under public law. Any different provisions or additional provisions to the General Terms and Conditions will be expressly agreed upon previously in writing by ALS. Any previous terms or modifications to the Terms and Conditions in any correspondence will only be considered as and integrated part of the Agreement, provided the same are included into the Agreement.

### **2. CANCELLATION AND TERMINATION**

**2.1.** The Customer is only entitled to cancel the present Agreement with the previous authorization from ALS, provided that the Customer compensates all losses, damages, costs and expenses incurred by ALS as well any loss of profits for the same.

**2.2.** ALS is entitled to cancel a delivery, delay the manufacturing, or terminate the Agreement in the event the customer

- violates any provisions of this Agreement or of any other agreement concluded with ALS,
- commences insolvency or bankruptcy proceedings, if the Customer is put into liquidation or management of its assets has been decided, or a moratorium, quota or liquidation arrangement is applicable or in any other way, overindebtedness is existent or or
- the Customer refuses or omits to accept delivery under the Agreement.

### **3. TECHNICAL SCOPE**

**3.1.** Unless otherwise agreed in the Agreement, the products will correspond to the scope of services as determined by ALS.

**3.2.** In the event deliveries are amended to fit the instructions of the Customer

- ALS will not be liable for the appropriateness or service standards of the product and
- the Customer will provide sufficient information to ALS in order to enable the required specification, whereby the Customer will guarantee that any technical retrofitting to the service standards does not violate any copyright, design right patent or any other rights of third parties, whereby Customer will compensate any damages that arise from such violation.

#### **4. CONTRACT PRICE AND PAYMENT**

**4.1.** Unless otherwise agreed, the contract price is in Euro, being understood as ex works, plus value added tax applicable at the time of delivery as well as delivery and packaging costs. Customs duties and/or similar expenses will be paid by the Customer.

**4.2.** Payments will be made without any deduction to such bank account as indicated by ALS. ALS will only accept checks by special agreement and as conditional payment. Any bank or discount charges will be paid by the Customer.

**4.3.** Subject to any different provisions the exceeding overall price of 50,000.00 (fifty thousand) Euro will be payable as follows:

- Down payment of 40% of the overall price at the receipt of the order,
- Payment of 50% of the overall price at the delivery date as well as
- Payment of 10 % of the overall price at the acceptance of delivery.

**4.4.** The contract price is based on

- such information as provided by the Customer to ALS under the agreement, next to the instructions and description, if applicable, (including operation and commissioning), training of staff as well as the scope of services
- the delivery terms and conditions as agreed under the agreement in virtue of paragraph 7 or within any work and service scope as amended by ALS in order to justify the contractual price.

#### **5. DELAY OF PAYMENT AND PRICE MODIFICATIONS**

**5.1.** In the event of late payment a default interest from the due date at a monthly rate of 10 (ten) % above the respective total amount will be payable by Customer. ALS reserves the right to claim higher interests for damages.

**5.2.** Unless otherwise provided, ALS may adapt the contractual price, if any modifications arise with regards to costs, taxes or duties after the conclusion of the Agreement.

**5.3.** The listed price is valid for the products delivered by ALS under the reservation of

- any unannounced price modifications and
- that the price will be valid for all the deliveries after the effective date of such change of price.

## **6. EXCHANGE RATE FLUCTUATIONS**

**6.1.** Exchange rate fluctuations have not been considered in the contractual price. Therefore, ALS is entitled to adapt the contractual price in the event the exchange rate in Euro is modified by 5 (five) % or higher to the detriment of ALS between the date of the order and the date of invoicing. ALS will reduce the contractual price in the event the exchange rate in Euro is modified by 5 (five) % or higher to the advantage of ALS between the date of the order and the date of invoicing.

**6.2.** The official rate of exchange of the European Central Bank (ECB) at the time of the order or at the time of the invoicing will be applicable.

## **7. DELIVERY**

**7.1.** Insofar the present agreement includes a delivery scheme, the delivery will be made in virtue of the terms and other term plans.

**7.2.** ALS is not liable for any delay of delivery, which ALS is not responsible for, regardless of the causes thereof.

**7.3.** If the Customer rejects a delivery or refuses to accept goods, the obligation of payment for the Customer will remain unchanged, in virtue of paragraph 4 and 5. The Customer will also reimburse all costs incurred by ALS for any additional storage and freight as well as for the preparation and processing costs.

**7.4.** ALS reserves the right to make partial and follow-up deliveries. Any failure of a partial delivery does not authorize the Customer to cancel the Agreement.

**7.5.** Deliveries will be subject to the accesses, unloading, shunting and work areas as determined by ALS. ALS will not be liable for any damages during the delivery caused by access roads, storage areas, factory and plant facilities or equipment; the Customer will indemnify ALS against any possible claims for damages.

**7.6.** The Customer will provide the equipment and devices for the deliveries subject to the applicable provisions, laws and directives.

**7.7.** The Customer will indemnify ALS against any claims for damages in the event the legal provisions are not complied with, subject to 7.6, and for any damages or losses originated by leakage, escape, breakage or contamination.

## **8. RESERVATION OF TITLE**

**8.1.** All goods remain the property of ALS up to the complete payment of the purchase price and any demands still outstanding (delivery under reservation).

**8.2.** In the event of a partial or full delay of payment, ALS is entitled to recall and reobtain the goods and to enter the storage rooms that have been installed or accepted for the purpose of the recovery.

**8.3.** The Customer's right of ownership expires with ALS's statement of recall and recovery, as well as in the event the Customer is not a businessman (as a legal person under public law or a special fund under public law), or if he is suspected of having committed criminal offense with regards to insolvency or subvention, or in the event the Customer is a businessman within the meaning of the German Commercial Code (HGB), § 1 section 1 and 2,

- the same takes measures enabling a liquidator to seize all economic assets.
- the same takes measures leading to the commencement of an insolvency procedure or
- Customer files for a bankruptcy itself.

## **9. NOTICE OF DEFECTS**

**9.1.** Any defects must be notified in writing to ALS on the delivery certificate, the confirmation of receipt or the lading bill. If the goods are delivered or handed over without manpower, this written notice of defects must be submitted within 24 hours after the date of delivery and prior to any further action to be taken.

**9.2.** In the event such a notification in virtue of paragraph 9.1 is not provided, the Customer will recognize the delivered goods as fault-free and compliant with the agreement.

**9.3.** In the event the delivery is notified as defective, ALS is entitled to test the delivery at the Customer's site; until the conclusion of the test no other agreements may be made with regards to the delivery.

**9.4.** Should the Customer require an individual test for a delivery, Customer will pay all costs incurred by the same.

## **10. INSTALLATION AND COMMISSIONING**

**10.1.** Without prejudice to the generality of the above-stated general Terms and Conditions and unless otherwise stated in the delivery agreement, ALS will be responsible for the installation and the complete commissioning.

**10.2.** In order to enable ALS to comply with the agreed services, all technical and non-technical requirements must be satisfied according to the offer and the present General Terms and Conditions.

## **11. TRAINING OF STAFF**

**11.1.** The Customer will cooperate in the fulfillment of the Agreement by the designation of a responsible contact partner. The contact partner designated for ALS will be authorized to make all decisions as required.

**11.2.** Insofar it is applicable: The Customer will provide the appropriate staff to be trained by ALS for the commissioning onsite.

**11.3.** Insofar it is applicable: ALS is not liable for any consequences due to the failure of the specific staff and may charge further costs for any other trainings that are required.

## **12. LIMITATION OF LIABILITY**

**12.1.** ALS will be responsible for the repair or follow-up delivery in the event the delivered goods are defective, provided the same has received a notice of defects as provided in paragraph 9.1. ALS will not be liable either for the removal of any defective goods, the replacement of their installation, nor for any consequential damage or lost profit caused by a defect.

**12.2.** With regards to the provision of engineering services, ALS guarantees:

- a careful and proper solution for the task according to the state-of-the-art technology in compliance with the relevant regulations and directives,
- the timely implementation of procedures, provided there are no reasons beyond the sphere of responsibility of ALS.
- a neutral and independent processing as well as all possible professional experience and commitment.

**12.3.** ALS will not be liable for any defects, damages or infringements due to

- incompetent use and defects caused by extraordinary generally unforeseeable events, or
- the violation of user manuals, operator instructions or warnings with regards to the products.

**12.4.** ALS is entitled to limitation of liability subject to § 307 par. 1 to 3 of the German Civil Code (BGB), if any specific requirements or legal warranties are violated. Subject to the legal regulations and the trade law relating thereto, ALS will be restricted in its liabilities in the event of violation of the conditions or warranties, as ALS deems appropriate, according to the following

- measures for follow-up service or
- the repair of the defect, unless the Customer is entitled to make claims subject to §§ 374 HGB, 437 BGB.

**12.5.** In the event of material defects within the framework of a service agreement, ALS's liability will be restricted to follow-up service or repair in virtue of the above-stated provision. Should follow-up service or repair be failing, the Customer is entitled to claim a price reduction or terminate the Agreement, in virtue of § 637 par. 1 and 2 BGB without prejudice to act at its own discretion.

**12.6.** All designs, user manuals, performance, durability, installation type and method, technical drawings, data sheets, construction documents and any other documents are only provided by ALS as general directives. The Customer herewith recognizes that the suitability of a product depends on its specific use by the Customer, particularly with regards to such purpose, use or implementation as intended by the Customer, for which ALS will not be held liable.

**12.7.** Unless a substantial contractual obligation, or an obligation stemming from a contractual obligation with the Customer is breached due to gross negligence, liability of ALS will be restricted to five-fold the respective contractual remuneration. This restriction of liability is also applicable for any claims for damages by the Customers based on the tort of negligence.

**12.8.** In the event of negligent breach of an essential contractual obligation, ALS will only be liable for the foreseeable damages typical to the agreement. For damages to life, limb, or health, the general legal regulations, limitation of actions regulations and restrictions of liability as provided by the German law will be applicable. If ALS is guilty of intent or gross negligence, liability will apply as provided by the general legal regulations under the German law.

**12.9.** Employees, agents or vicarious agents of ALS will not personally be liable, provided their interference was not caused through willful intent or gross negligence.

**12.10.** ALS will not provide any other services for a delivery or the commissioning thereof than those that are expressly provided in the present Agreement. The Agreement includes all terms and conditions agreed by the parties.

### **13. EXTENSION OF LIABILITY**

An extended liability of ALS may be agreed, provided the Customer is willing to pay the premium as required for the extended insurance protection and the insurance company of ALS authorizes such an extended liability.

### **14. FORCE MAJEURE**

ALS will not be responsible for any damage, loss or injury as a result of events beyond its control as well as, without the reservations as above, for similar events, such as labor disputes, the unavailability of equipment or material, machine failure, civil uproar, fire, floods, natural catastrophes or government measures.

### **15. ONSITE ACTIVITIES BY ALS**

**15.1.** Insofar it is applicable: All activities performed on the site by ALS (such as installation of fittings, repair of devices or measurements), will be mutually agreed by the Customer and ALS with regards to the duration and the scope of such works.

**15.2.** Insofar it is applicable: The Customer must guarantee that no modifications may be made to any equipment to be installed by ALS at the Customer's site or within the framework of a contractual order, without the express authorization from ALS.

**15.3.** Insofar it is applicable: The Customer will be liable for any improper operation by incompetent staff of the Customer, as well as for the improper storage or transport by the Customer or by third parties and for any natural damages caused to installations of ALS, not covered by the insurance.

### **16. LIMITATION**

**16.1.** Any claims by the Customer for material damages within the framework of a service agreement will expire one year after the acceptance of the respective service from ALS by the Customer, unless such defect is due to willful misconduct and such defect has been concealed fraudulently.

**16.2.** Any claims for damages beyond the scope of a service agreement insofar these defects are not subject to the product liability law (ProdHaftG) or caused by incompetent handling, will expire one year (12 months) after the acceptance of the respective service from ALS by the Customer, unless such defect is due to willful misconduct and such defect has been concealed fraudulently.

## **17. PRODUCT NOT PER SPECIFICATION**

If ALS provides a product with the description/markings "delivery not per specification", "second delivery", "sample delivery" or similar, ALS will make no warranties or assume any liability with regards to the Customer. Regardless of the present General Terms and Conditions, ALS will not be liable for the service or use nor for any product defects at the delivery of such a product.

## **18. CONNECTION AND WORKMANSHIP**

ALS is not liable for any payment to the Customer nor to third parties if the connection collapses or no further use is made of their product.

## **19. CONFIDENTIAL INFORMATION**

The Customer will not disclose or publish to third parties any information with regards to confidential information, including confidential information on products, material, procedures, tests or equipment, regardless of their purpose, without the express written authorization from ALS.

## **20. MISCELLANEOUS**

**20.1.** Representation: The customer may not assign or otherwise transfer all or any of the rights under the present Agreement, without the authorization from ALS.

**20.2.** Application of provisions: If any provision of this Agreement shall be unenforceable or invalid, such provision will not affect the full enforceability of the other contractual provisions.

**20.3.** Modification and abrogation: ALS does not approve of any modification or cancellation of the present General Terms and Conditions, insofar such modifications or cancellations have not been confirmed in writing by the same. The General Terms and Conditions of the Customer will only be considered as and

integrated part of the Agreement after the conclusion of an Agreement, if ALS has authorized the same expressly in writing.

**20.4. Instructions:** All communication arising from or related to the present Agreement must be forwarded in writing or submitted by hand delivery to the address or domicile of the company or to its registered office, as stated in the Agreement.

## **21. CONTRACT DISPUTES**

**21.1.** All disputes arising from or related to the present contractual relationship or related to its violation, termination, or nullity, including the applicability of the General Terms and Conditions, will exclusively be submitted to the competent chamber for commercial causes at the local court Gera, free state Thüringen, Federal Republic of Germany, regardless whether the Customer is a businessman within the meaning of the German Commercial Code (HGB), § 1 section 1 and 2, a legal person under public law or a special fund under public law.

**21.2.** This Agreement is governed by the regulations and interpretations of the law of the Federal Republic of Germany.

**21.3.** The application of the German private international law or any other rules on conflict of law are expressly excluded. The CISG/UN Convention on Contracts for the International Sale of Goods is expressly excluded.