1. SCOPE OF APPLICATION; ACCEPTANCE; OTHER TERMS AND CONDITIONS OF BUSINESS

1.1 These Purchasing Terms shall apply to all legal transactions between us, AVL Emission Test Systems GmbH, and the contractual partner, which shall hereinafter be referred to as “Supplier”.

1.2 With the confirmation and/or performance of our order by Supplier, these General Purchasing Terms shall be deemed recognized by Supplier.

1.3 We shall not be bound by any terms or conditions, whether written, oral or otherwise that are different, or vary from or are in addition to these General Purchasing Terms and any such terms or conditions shall be null and void and of no effect whatsoever. If Supplier does not agree to these provisions, Supplier is to notify us thereof in writing without undue delay.

This constitutes an explicit rejection of the standard notice of Supplier’s general terms and conditions.

1.4 These General Purchasing Terms shall also apply to all future orders from deliveries and/or services from us.

2. OFFERS; ORDERS

2.1 We do not pay any fee to Supplier for the drafting of offers, plans, cost estimates, etc., unless such a fee was expressly agreed upon.

2.2 Our orders and changes to them shall only be valid if they are issued or confirmed by us in writing.

2.3 Our orders may only be passed on in full or in part to third parties with our prior written approval. Any breach of this provision entitled us to revocation of this order without compensation; this shall not affect further claims on our part.

2.4 The assignment of claims and/or the transfer of the collection of receivables against us to third parties shall be excluded and shall entitle us to revocation of the order without compensation; this shall not affect further claims on our part.

2.5 If Supplier ceases making payments or if insolvency proceedings are initiated with regard to the assets of Supplier, we shall be entitled to withdraw from the contract without affecting any other rights.

3. DEADLINES FOR DELIVERY AND SERVICE; DELIVERIES

3.1 The deadlines for deliveries and services stated by Supplier – hereinafter referred to as “Deadlines” – are binding and refer to the time of receipt of the goods or the performance of the service at the agreed location, otherwise on our business premises.

3.2 The above shall apply accordingly for Deadlines stated by us and to which Supplier does not raise any objection.

3.3 If compliance with a Deadline is at risk, Supplier must inform us of this immediately (fax is sufficient).

3.4 In case of a delay in a delivery or service for which Supplier is responsible, we reserve the right to assert a claim for a contractual penalty of 1% per week of the delay that is begun, up to a maximum, however, of 5% of the entire order volume. We can request the contractual penalty even if we do not expressly reserve the right to do so upon acceptance of the delivery or service. This shall not affect further claims on our part, in particular those to compensation for damages.

3.5 Even in case of our acceptance of a postponement of a Deadline, we retain our legal and contractual claims resulting from delay.

3.6 In case of exceeding of delivery Deadlines for which Supplier is responsible, Supplier shall be obligated to use the fastest available means of transport available, irrespective of the shipping method prescribed in the order. Supplier shall be responsible for the costs of this transport.

3.7 In case of delayed delivery that is the fault of Supplier, we shall be entitled, after the end of an appropriate period, generally of no longer than 14 days, to withdraw from the contract with immediate effect.

3.8 If a fixed deadline was agreed upon, the contract shall be dissolved when the deadline is exceeded, unless we request the fulfillment of the contract within 14 days.

3.9 Partial advance deliveries and services are only permitted with our written approval, excluding deliveries and services within a maximum of 7 calendar days before the agreed Deadline. Even in case of early delivery of this kind, the payment period shall only begin on the contractually agreed Deadline.

3.10 Deliveries shall be made, unless otherwise agreed, in accordance with DDP (Incoterms 2010) to the agreed designated location. The packaging must be selected, taking into account the applicable packaging standards; in such a way that delivery without damage is guaranteed.

3.11 The period for our goods inward inspection is 14 calendar days. Supplier shall waive the objection of delayed complaints about defects for this period. This shall not apply to obvious defects; we shall make an objection about these immediately. Our payment shall not be an unconditional acceptance of the goods.

3.12 In case of specially agreed delivery approval by us, we shall be entitled to extend the delivery period by up to 90 calendar days. In such cases, Supplier shall be obligated to store the goods carefully and free of charge until our release for delivery.

4. QUALITY AND DOCUMENTATION

4.1 The goods to be delivered must comply with the relevant, valid domestic and foreign regulations, the accident prevention regulations, applicable provisions and guidelines of the VDE regulations, the recognized most recent rules and standards of technology, as well as precisely the documents on which the order is based and of which Supplier is aware, such as diagrams, descriptions, samples, specifications, terms and conditions of acceptance, etc.

4.2 Supplier must perform quality controls that are suitable in nature and scope and correspond to the most recent state of technology.

4.3 For devices, instruments, installation sections, or installations, complete maintenance, operation, and service instructions are to be supplied in electronic form without a separate agreement and at no additional cost.

4.4 Supplier must, insofar as is reasonable, act in accordance with appropriate quality management systems, taking into account the current ISO 9001 and develop a zero-defect philosophy to the best of its ability.

4.5 Supplier is hereby informed that we are certified in accordance with ISO 14001 and ISO 9001. The QES documents to be complied with by Supplier, including the currently valid list of ingredients and substances (“AVL Materials List”), that may not be delivered to us, or that may be delivered to us only in limited amounts, can be found on the website www.avl.com under Company -> Quality, Environment and Safety.

If the goods to be delivered by Supplier include one or more of the materials in the current AVL material list, Supplier must inform our purchaser who is responsible for it, stating the relevant substances in question.
5. PRICES AND PAYMENTS

5.1 The prices stated in the offer by Supplier and/or in our order are, unless expressly agreed otherwise in writing, are fixed prices and therefore are unalterable until after the complete delivery and service in accordance with the order.

5.2 The payment shall be made, unless agreed otherwise in writing, after receipt of the goods in accordance with the contract or performance of the service in accordance with the contract and receipt of a proper, auditable invoice, after 90 calendar days net to the end of the month on the 10th day of the following month.

5.3 In case of the existence of a defect for which a guarantee obligation exists, we are entitled to withhold payment until proper rectification of the defect.

6. LIABILITY FOR DEFECTS; THIRD-PARTY INDUSTRIAL PROPERTY RIGHTS

6.1 Throughout the duration of the legal warranty, Supplier must rectify defects upon request immediately and at its own expense.

6.2 Supplier shall be responsible for all costs in connection with the correction of defects, for example transport and dismantling and installation costs. The limitation period four claims under the liability for defects shall be suspended for the duration of the rectification of defects until successful correction of the defects. A liability for defects shall apply again for parts exchanged or repaired during the rectification of defects for a duration of 24 months from the time of completion of the exchange or repair.

6.3 We shall be free to select the place of performance for the performance of the rectification, as long as this is not unreasonable for Supplier.

6.4 If Supplier does not comply with its obligation to rectify defects within an appropriate period set by us, we shall be entitled to perform the rectification of the defects ourselves all have been performed by a third party at the expense of the supplier.

The aforementioned applies accordingly in cases where we can justifiably refrain from setting a deadline, weighing up the interests of both sides or this is unreasonable for us. This shall not affect further legal provisions.

6.5 The deliveries and services of Supplier must be free of third party industrial property rights. Supplier shall be liable in particular for ensuring that the use of the delivery and services does not breach third party industrial property rights. It shall release and hold us harmless with regard to any third party claims as a result of infringements of industrial property rights for which it is responsible.

6.6 If we as the manufacturer of the final product should be liable for such damages, which result from defects in the goods supplied by Supplier or in the services performed by Supplier, Supplier shall indemnify us against liability of this kind for which it is responsible and provide full redress.

7. MEANS OF PRODUCTION AND INPUT MATERIALS

7.1 Means of production that we provide to Supplier are to be treated with care.

Means of production that are manufactured or procured by Supplier and for which we have paid manufacturing costs (tool costs) shall become our property as of the time of payment. In case of payment of at least 50% of the manufacturing costs (tool costs), we shall have a claim to transfer of proportional shared ownership.

All means of production must be stored in a ready-to-use state that is available to us for 10 years from the last production time. If this storage is not possible or reasonable for Supplier, we must be informed of this immediately in writing, so that other measures can be agreed upon.

The means of production must be sent to us during the aforementioned storage period upon request without any right of retention. When the means of production in question is sent to us, the obligation of Supplier to store it shall end.

7.2 In case of damage, loss, or destruction of input materials provided by us (semi-finished products, castings, pre-processed parts, etc.), Supplier must refund us the replacement costs.

8. RIGHTS TO DOCUMENTS; CONFIDENTIALITY

8.1 All diagrams, calculations, etc. provided to Supplier for the creation of offers or performance of orders shall remain our property and must be returned after submission of the offer or the performance of the order. They may not be copied or made available to third parties without our advance written approval.

8.2 Supplier must treat as strictly confidential trade secrets the business relationship with us, orders, the resulting deliveries and/or services, as well as all technical and commercial documents and installations. It must secure these trade secrets so that unauthorized parties do not become aware of them and may not pass them on to third parties and/or use them in another way, unless we gave our express prior written permission for this. If we permit the granting of subcontracts, Supplier must ensure that its sub-contractors enter into a corresponding obligation.

9. EXPORT RESTRICTIONS; SUPPLIER DECLARATION

9.1 Supplier shall be obligated to inform us without having to be requested to do so and at as early a stage as possible about any goods-related restrictions for (re)exporting of the goods delivered or to be delivered by it in accordance with European and/or US export and/or customs regulations of the country where the goods originated. For this purpose, it shall provide at least the following information in its offers and order confirmations on the individual goods items:

- The EU military goods list number and the dual-use list of goods number.
- For US goods, the ECCN (Export Control Classification Number) in accordance with the US Export Administration Regulation (EAR).
- For US defense equipment (ITAR goods), the USML (United States Munitions List) category.
- Information on the non-preferential origin of its goods and their components.
- Information on the goods that were manufactured on the basis of controlled US technology and/or that contain controlled US components.

Supplier shall also be obligated to inform us upon request (in particular the purchaser listed on the order) all other foreign trade data in writing, as well as all of the information mentioned above.

9.2 The legally binding assumption of re-export restrictions under the title of technology transfer is limited to goods for which a proven export permit is required in the delivery country (for the USA, the currently valid version of the Export Administration Regulation of the US Department of Commerce applies). These are identified accordingly in the delivery documentation and Supplier shall bring this explicit to our attention in offers and order confirmations.

9.3 Suppliers located in the EU shall be obligated to send us the original of the (long-term) supplier declaration for goods with preferential origin in accordance with the currently valid version of Regulation (EC) No. 1207/2001 within one calendar week after a request to this effect.

If Supplier does not comply with the aforementioned obliga-
10. **FINAL PROVISIONS**

10.1 Amendments of and supplements to the agreement must be in writing to be effective. This shall also apply to the rescission of this clause.

10.2 Should one or more provisions of these General Purchasing Terms and/or any other contracts entered into by the parties be or become invalid or should an omission be found, the validity of the remaining provisions shall remain unaffected. Instead of the invalid provisions or to remedy the omission, an appropriate, permissible provision shall apply that the parties hereto wanted or would have wanted in view of the intended purpose of the provision had they been aware of the invalidity or omission.

10.3 Place of performance for the supplies and services shall be the place of designation stipulated by us. Place of performance for the payment shall be the place of our registered office.

10.4 Düsseldorf shall be exclusive legal venue for any and all disputes arising from and in connection with this contractual relationship. We shall, however, also be entitled to file complaints at the place of Supplier’s registered office.

10.5 With respect to any and all legal relations arising from this contractual relationship, the parties agree the application of the laws of the Federal Republic of Germany in exclusion of United Nations Convention on Contracts for the International Sale of Goods.