



**MAN General Terms and Conditions of Purchase
for Facilities and Construction Works,
General Procurement Division (version: 01/06/2018)**



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1 Validity of these contractual conditions

1.1

These contractual conditions shall supplement the MAN General Terms and Conditions of Purchase, General Procurement Division.

These contractual conditions shall be supplemented by the following, according to contract type and the agreement between the parties:

1.2

MAN Special Terms and Conditions of Purchase for Facilities, General Procurement Division.

1.3

MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division.

2 Obligations during the tender phase

2.1

The tendering party shall be obliged to check the tender documentation for completeness immediately upon receipt, and to request any missing documents from MAN without delay.

The tendering party shall be obliged to draw MAN's attention to any possible loopholes and contradictions in the tender, including its various elements, which became apparent either to the tendering party or to a specialist company used by the tendering party, with reasonable care, in a separate letter upon its submission of the tender.

2.2

The tendering party shall be obliged to submit a complete tender covering all the goods and services in order to generate the desired result anticipated by the tender, taking account of the tender requirements and, in particular, recognised technological and constructional guidelines, and will do so irrespective of whether or not the goods and services are described in detail in the tender documentation.

In the event that the tendering party deviates from the tender guidelines and its various elements in its tender in any manner whatsoever, it shall be obliged to draw MAN's attention to this in a separate letter containing brief details of the reasons for this upon submitting the tender.

2.3

2.3.1

The tendering party may submit separate proposals/alternative tenders deviating from the tender guidelines for all works. However, a complete main tender pertaining to the original call for tenders must also be submitted, taking full account of the terms and conditions of tender.

Separate proposals/alternative tenders must be clearly labelled as such without exception and submitted separately from the complete calculated main tender. All items referred to in the separate proposals/alternative tenders must be numbered consecutively in accordance with the tender structure and clearly labelled as such. All deviations from the stipulated specifications must be stated.

Separate proposals/alternative tenders should, in particular, include the following in compliance with the aforementioned conditions of tender:

- Descriptions, details and constructional drawings, from which all the particulars of the separate proposal/alternative tender can be recognised in a clear, definitive and verifiable manner,
- a checkable bill of quantities for the constructional parts,
- precise and definitive service descriptions for the altered individual items with unit and overall price information. The price information shall be stated for valuation purposes only.

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2.3.2

By submitting a separate proposal/alternative tender, the tendering party shall provide an express guarantee of the comprehensive legal, technical and deadline-related equivalence of its separate proposal/alternative tender.

By submitting a separate proposal/alternative tender, the tendering party recognises that, in the event that the separate proposal/alternative tender is accepted, including the agreed remuneration, all services included in and influenced by the separate proposal/alternative tender which are required for the complete, defect-free and timely execution of the provision of services outlined in the separate proposal/alternative tender shall be satisfied. This shall not apply to the forms of expenditure to be assigned to MAN in accordance with the two paragraphs below.

In the event that the tendering party uses documentation provided by MAN as the basis for the drafting and, in the case of the contract's assignment, the execution of its separate proposal/alternative tender, it shall be obliged to check this documentation for completeness, accuracy and usability as related to its separate proposal/alternative tender with the utmost care and to revise this if necessary. The tendering party and, in the event of the contract's assignment, the contracting party, shall also be obliged to carry out all necessary research and examinations in a punctual manner.

In the case of the contract's assignment, the tendering party shall be obliged to assume all the costs incurred by a possible revision of the plans drawn up and yet to be drawn up by MAN for all works included in a separate proposal/alternative tender, which is required as a result of the separate proposal/alternative tender. MAN's authorised scheduling employees should be called upon for this purpose, and commissioned at the expense of the tendering party if necessary.

The tendering party shall be obliged to ensure that any adaptation and/or revision of MAN planning or any other documentation related to the tender required as a result of the separate proposal/alternative tender is carried out at its own expense without delay. This shall be done during the tender phase and by the submission of the tender at the latest.

2.4

The tendering party shall be obliged to specify upon its submission of the tender which elements of the goods and service obligations it wishes to assign to other contractors. These contractors must be named in a list of the respective goods and services components to be enclosed with the tender. Please see also Section 5.3. Any assignment to subcontractors shall require the express separate written consent of MAN. The latter shall not apply to the goods and services obligations which the tendering party has expressly stated in the tender as not falling within the scope of its services provided.

3 Contractual foundations

Unless expressly agreed otherwise, the contractual performance shall comprise those goods and services arising from the contract, including all its components, in a complete manner.

4 Cooperation obligation

4.1

The contracting party shall be obliged to inform MAN of all significant matters arising during the implementation of the contractual activities, and shall participate in all discussions via an authorised agent.

4.2

The contracting party shall be obliged to inform MAN immediately in the event that any additional costs, including those pertaining to any other works, arise which are not included in the contractually agreed remuneration. Possible contractually agreed lump sum consolidations shall remain unaffected.



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4.3

The contracting party shall be obliged to protect the rights of MAN within the context of the contract. In particular, the contracting party shall be obliged to provide any subcontractors it commissions with the necessary instructions. The contracting party's full responsibility for the contractually agreed performance, even in the case of the use of subcontractors, shall remain unaffected.

4.4

The contracting party shall be obliged to support and promote the activities of MAN. In particular, the contracting party shall be obliged to take or bring about decisions at the request of MAN, making provision for an appropriate verification and agreement period.

4.5

The contracting party shall be obliged to ensure that an employee authorised to make decisions and issue instructions is present at the construction site at all times. This shall also apply in the case of the contracting party's assignment of services to subcontractors.

4.6

MAN reserves the right to reject a change in the contracting party's construction site or project management on the grounds of just cause, or to demand the replacement of the contracting party's construction site or project manager on the grounds of just cause. The contracting party shall be obliged to inform MAN of any intended change in the construction site or project management in a punctual manner and to obtain its consent. An approval application relating to the future construction site or project manager must be submitted, and must include proof of the equivalence of his/her qualifications and professional experience.

4.7

In the event that the contractually agreed interim dates or the overall completion date are postponed or altered, the contracting parties shall be obliged to agree on new dates.

4.8

The contracting party shall be obliged, in the context of its general cooperation obligation, to guarantee third parties (e.g. those carrying out follow-up works) prior access to the construction site for the purposes of fulfilment of their commissions. This prior access shall not affect the transfer of risk and shall not cause a decline in the performance of the contracting party.

4.9

The contracting party shall be obliged to coordinate its services with those companies carrying out prior and follow-up works in such a way that no obstructions ensue.

5 Involvement of MAN

5.1

MAN shall be entitled to monitor construction of the facility or building via an authorised representative at all times, at the contracting party's plant or that of its subcontractors, and in accordance with the applicable regulations. This shall not excuse the contracting party from its own obligations in accordance with the contract. The contracting party shall be obliged to cooperate with MAN's authorised representatives.

5.2

The contracting party shall submit all plans, drawings, etc. to be supplied in accordance with the contract to MAN and to third parties specified by MAN for inspection. MAN shall be entitled to specify an appropriate verification period. The contracting party shall continue to assume full responsibility for the contractually agreed service following the examination and approval of the plans, drawings and other documentation by

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MAN or individuals commissioned by MAN. The examination and approval by MAN and/or individuals commissioned by MAN shall not constitute any contributory negligence in terms of Article 254 BGB (German Civil Code).

5.3

MAN intends to conclude maintenance contracts for all machinery components as well as services for which maintenance contracts are envisaged in the contractual elements, in its own name in accordance with the guidelines of manufacturers and the TÜV (Technical Inspection Agency), for the duration of the warranty period. Taking this into account, the contracting party shall be obliged to present to MAN the subcontractors including their tenders for the required maintenance contracts and to obtain MAN's approval of them, prior to its commissioning of the relevant services to be provided by subcontractors. Insofar as the contracting party intends to carry out the maintenance itself, it should enclose the maintenance contracts with its tender. MAN shall be entitled to reject specific brands of machinery components and services for which maintenance contracts are envisaged in the contractual elements, within a period of four weeks from the submission of the subcontractor's tenders and the tenders for the maintenance contracts, if these will result in above average or disproportionate maintenance or cost-related expenditure.

6 Scope of services/service amendments/additions

6.1

The contracting party shall be obliged to provide all goods and services required in order to fulfil the services included in the contract in an accurate, proper and functional manner.

6.2

The contracting party shall be obliged to install only the brand in question in the event that specific brands are stipulated in the service specifications without the addition "or equivalent". The contracting party may only deviate from the specified brands with the express consent of MAN in the event that specific brands are stipulated in the service specifications with the addition "or equivalent". The equivalence of the brands must be proven by the contracting party. The consent shall be given following an examination of the equivalence, and shall not affect the contracting party's liability to ensure the unrestricted legal, deadline-related and qualitative equivalence.

6.3

If a separate proposal/alternative tender submitted by the contracting party shall not be deemed feasible by MAN for unspecified reasons, the contracting party shall be obliged to develop at least one other alternative at its own expense, which equates to the unfeasible separate proposal/alternative tender in technical and economic terms and submit this for approval.

MAN shall make a decision regarding the implementation of (one of) the verifiable and assessable alternative(s) immediately. In the event that MAN decides to reject the submitted alternative(s) upon the appropriate application of the principles of justified refusal of the rectification of deficiencies on the grounds of unreasonableness, the contracting party shall be obliged to provide the service specified in the original call for tenders.

The contracting party shall also be obliged to assume any additional costs resulting from the non-feasibility of a separate proposal/alternative tender. The contracting party shall also be obliged to speed up the implementation of some or all of the services associated with this contract in order to guarantee the fulfilment of its contractual obligations if the non-feasibility of a separate proposal/alternative tender results in delays.

6.4

MAN's project or construction site manager shall not be authorised to commission additional services for MAN or to make contract-changing adjustments. This shall only be incumbent upon the specific individuals named in the tender.

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6.5

If additional services not covered by the agreed remuneration become necessary during the course of execution of the contract, the contracting party shall be obliged to inform MAN of this in writing in good time before execution, and to submit a corresponding additional tender to MAN within six working days. Each additional tender must be based on the pricing principles of the main tender in the current version of the contract.

The additional tender must include all costs, i.e. even the time-related costs associated with possible acceleration measures, etc. The contractually agreed discounts shall also be taken into account. Any additional tenders should also include at least the following information:

- Service description according to the structure and classifications of the main tender
- Labelling as additional items (e.g. N1.1, N2.1, etc.).

Additional services are to be performed without prior commissioning.

6.6

In the event that there is dispute between MAN and the contracting party as to whether a service or an instruction issued by MAN for the implementation of specific works is included in the agreed remuneration, or in the event that the contracting parties are unable to agree on the level of the remuneration, the contracting party shall nevertheless be obliged to provide the service, subject to its legal position. An agreement regarding possible additional remuneration shall follow. MAN shall expressly undertake to speed up its inspection procedures in this context.

7 Compliance with regulations

The contracting party shall be obliged to comply with the valid legal and police guidelines during its execution of the services, in particular the guidelines and ordinances issued by the building regulation authorities, the TÜV, the commercial regulatory authority and the Employer's Liability Insurance Association.

The instructions issued by the health and safety protection coordinator should also be obeyed. The construction site guidelines issued by the health and safety protection coordinator constitute a contractual component. If it fails to comply with these regulations, the contracting party shall be solely liable for all resultant penalties, as well as personal injury and material damage, even after the item has been transferred to the AG. It hereby indemnifies the AG against all claims resulting from its misconduct.

8 Employee Assignment Law (AEntG)

The contracting party shall be obliged to indemnify MAN against all claims of its employees, the employees of its subcontractors and the employees of all other subordinate subcontractors as well as any lenders and social security funds in accordance with Article 1 Employee Assignment Law (AEntG).

If the contracting party fails to fulfil its obligations arising from the AEntG, MAN shall be entitled to terminate the contract for good cause. The same shall apply if a subcontractor of the contracting party repeatedly fails to fulfil its obligations arising from the AEntG.

9 Subcontractors

9.1

The contracting party shall be obliged to perform the service on its own premises. In exceptional cases, and in accordance with Section 2.4 of these terms and conditions of purchase, the service may be assigned to a subcontractor with the prior written consent of MAN.

9.2

The contracting party may only commission expert, efficient and reliable subcontractors that comply with their legal obligations in terms of the payment of taxes and social security contributions and fulfil the commercial requirements. The contracting party may not agree less favourable contractual conditions with the subcontractors than those agreed between it and MAN.

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Moreover, the contracting party shall be obliged to comply with all regulations governing the rights of foreigners and employment rights and those pertaining to the Employee Assignment Law, both on its own premises and in the case of employees stationed at the construction site, and must encourage its subcontractors to do the same. The contracting party shall also be obliged to accept these obligations within the context of contracts with its subcontractors. It shall be obliged to provide proof of its acceptance of these obligations with submission of the relevant contracts at MAN's request. Furthermore, the contracting party shall be obliged to carry out continuous checks to ensure that its subcontractors comply with the aforementioned regulations concerning the rights of foreigners and employment rights, and to document these checks. It shall be obliged to submit the relevant proof immediately at MAN's request.

If the contracting party fails to comply with this obligation, this shall constitute a serious breach of the contract and shall entitle MAN to terminate this contract, either in whole or in part, on the grounds of just cause, following reminders and deadlines designed to remedy the situation under threat of termination.

The contracting party's relinquishment of corresponding contractual conditions to subcontractors shall not result in discharge of its obligation to MAN.

The contracting party shall be obliged to produce a list of the employees assigned to this work by itself and its subcontractors. This must be submitted to MAN prior to starting the work. Should the contracting party start the works before all the aforementioned documentation has been submitted, the AG shall reserve the right to order that the work be suspended.

10 Obstructions

10.1

The contracting party shall be obliged to inform MAN in writing of any obstructions or disruptions as soon as they occur or, in the case that they become apparent beforehand, within two days at the latest. The contracting party may only assert claims on the basis of the obstruction or disruption if it informs MAN of the hindering circumstances in writing without delay, i.e. as soon as they occur or, in the case that they become apparent beforehand, within two working days at the latest, even if MAN was already aware of them and their obstructive or disruptive effect.

10.2

MAN shall not be liable to the contracting party for a fault on the part of another contractor also commissioned in connection with the physical execution of project components, in the event that their services are delayed or performed unsatisfactorily and this hinders the contracting party's activities.

11 Limitation of competition

In the event that the contracting party is proven to have made an agreement constituting an inadmissible limitation of competition as a result of the conclusion of the contract, it shall be obliged to pay MAN 3% of the net order total, unless damages amounting to a different total are proven. This shall also apply if the contract is terminated or has already been fulfilled. Other contractual or legal claims by MAN shall remain unaffected.

12 MAN supplies

12.1

In the event that some of the service provision is supplied by MAN, the contracting party shall be obliged to carry out comprehensive independent checks on the supplies provided by MAN, and to notify MAN immediately in writing of any defects or circumstances that may conflict with the fulfilment of the required function and/or to other circumstances that may conflict with the fulfilment of the contracting party's contractual obligations.

12.2

Insofar as supplies to be provided by MAN under the terms of the contract are owned by a third party at the time of their transfer to the contracting party, the contracting party shall be entitled to legally represent MAN



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for the purposes of acquiring ownership of the supplies.

It shall be agreed that the ownership of the supplies shall pass to MAN upon their transfer to the contracting party. It shall not be necessary to transfer the supplies to MAN, unless alternative agreements have been made. Instead, the contracting party shall be obliged to store the supplies with the due diligence of a prudent businessman.

The aforementioned regulations shall also be applied accordingly in the event of expectant rights.

12.3

The contracting party shall be obliged to store the supplies from the time of their transfer to the contracting party until the conclusion of the relevant project with the due diligence of a prudent businessman.

The contracting party shall not receive any separate remuneration in return for the storage of the supplies. This shall constitute a secondary obligation of the non-gratuitous services which the contracting party is obliged to provide.

The contracting party shall be obliged to store the supplies provided by MAN separately from other goods unless this conflicts with its intended use in accordance with the regulations. The contracting party shall do this on a long-term basis, and shall clearly label the supplies as property of MAN. In addition, the contracting party may not remove the supplies from the place of storage without the prior consent of MAN.

12.4

The contracting party shall be obliged to fully insure the supplies against fire and water damage and theft and/or other damage within the context of its existing operational insurance, and to keep this insurance in place until the conclusion of the relevant project.

The contracting party shall assign all claims to which it is entitled from the insurer in the case of loss or damage to MAN. MAN shall accept this assignment.

12.5

The contracting party shall be obliged to confirm in writing its ownership of the supplies at MAN's request.

12.6

In the event that the contracting party combines MAN supplies with its own goods, resulting in the creation of a movable item, MAN shall become a co-owner of the new item, and this in proportion to the value of MAN's goods to that of the contracting party's goods at the time they were combined.

In the event that the contracting party adapts goods supplied by MAN to form a new movable item, this adaptation shall be deemed to have been carried out by the contracting party on behalf of MAN as the manufacturer.

13 Place of performance

The place of performance shall be the place specified in the call for tenders or the minutes of the negotiations. This will usually be a plant, branch or other business location of MAN. If a place of performance is not expressly determined and cannot be inferred from the agreements between the parties, Munich shall be deemed to be the place of performance.

14 Invoicing

In addition to the requirements in Section 7 of the General Terms and Conditions of Purchase, a second copy of the invoice, marked as such and taking account of all the other requirements stipulated in Section 7 of the General Terms and Conditions of Purchase should be addressed to the office specified in the call for tenders.