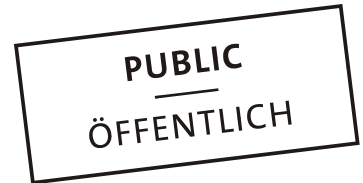




# MAN General Terms and Conditions of Purchase for the Purchase of Goods, General Procurement Division (version:06/2018)



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# **MAN General Terms and Conditions of Purchase for the Purchase of Goods, General Procurement Division (version:06/2018)**

## **1 Applicable law**

The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded, unless otherwise agreed.

## **2 Definition of terms**

The MAN contracting party shall hereinafter be referred to as the supplier.

## **3 Validity of the contractual conditions/contractual elements**

### **3.1**

These conditions shall supplement:

- The MAN General Terms and Conditions of Purchase, General Procurement Division.

### **3.2**

The contractual elements shall appear in the following order of precedence, as far as available and not otherwise agreed:

#### **3.2.1**

- The MAN order letter

#### **3.2.2**

- The minutes of negotiation meetings in chronological order

#### **3.2.3**

- The MAN General Terms and Conditions of Purchase for the Purchase of Goods, General Procurement Division

#### **3.2.4**

- The MAN General Terms and Conditions of Purchase, General Procurement Division

#### **3.2.5**

- The MAN operational resources specifications

#### **3.2.6**

- The service request or service description (with particular, but not exclusive reference to the specifications) issued by MAN

#### **3.2.7**

- The relevant generally recognised technological guidelines, particularly the relevant DIN standards.

## **4 Verification obligations of the supplier**

### **4.1**

If MAN places a service request or service description at the disposal of the tendering party, it shall be obliged to check the information contained therein for accuracy and completeness. Any contradictions, ambiguities or incompleteness, which become apparent within the context of the level of care required when drawing up tenders and calculating prices, shall be reported to MAN without delay.



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### **4.2**

Section 4.1 applies accordingly to service calls in framework contracts.

### **4.3**

In principle, the supplier shall be obliged to subject the goods to an appropriate quality assurance check prior to delivery to MAN and, in particular, to check whether the goods demonstrate the agreed properties and condition and are suitable for the purpose envisaged by the contract or customary use. The scope and content of the quality assurance check shall be determined in accordance with an individually agreed contractual arrangement, or otherwise the nature and significance of the goods, the nature of the supplier (manufacturer or intermediary), and the reasonable effort associated with a quality assurance check.

## **5 Verification obligation of MAN**

MAN shall be obliged to check the goods for any quality and quantity deviations within a reasonable period of time.

## **6 Production of the delivery item, service amendments**

### **6.1**

The supplier shall be obliged to provide MAN, at its request, with information regarding third parties from which it obtains materials, raw materials, etc. necessary for its goods or the production of its goods on the grounds of quality assurance. MAN shall be entitled to demand the replacement of any one of these third parties on the grounds of just cause after a previously determined time period has lapsed.

### **6.2**

In the event that the goods ordered by MAN are produced or generated on the grounds of the order, the following regulations shall apply:

### **6.3**

In the event that, during the execution of the contract, it becomes apparent that deviations to the agreed condition and quality of the goods are necessary for technical or other reasons, the contracting party in question shall be obliged to inform the other contracting party of this change of circumstances without delay.

### **6.4**

MAN shall be entitled to demand amendments to the contractual service even after the conclusion of the contract, if and insofar as the supplier's business or that of the approved subcontractor is capable of providing these altered services, and the amendment is reasonable for the supplier or its subcontractor.

### **6.5**

In the event that the amendment has an effect on the agreed price, the parties shall be obliged to agree a new price, taking account of additional and reduced costs and the chronological effects of the amendment.

### **6.6**

In the event that the chronological effects of the amendment of the services make it impossible to observe the originally agreed delivery date, or this is only possible using unreasonable expense and effort, the agreed delivery date shall be deemed invalid, and the parties shall be obliged to agree a new, suitable delivery date, taking account of the interests of both parties.



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### **7 Tools**

Tools placed at the supplier's disposal by MAN shall remain the property of MAN. The supplier shall be obliged to use the tools exclusively for the manufacture of the goods ordered by MAN. The tools belonging to MAN must be insured as new against fire and water damage and theft by the supplier at its own expense. The supplier shall assign all compensation claims arising from this insurance policy to MAN with immediate effect; MAN shall hereby accept the transfer. The supplier shall be obliged to carry out any required maintenance, repair and servicing work on the tools at its own expense in a punctual manner. The supplier shall inform MAN of any breakdowns without delay. If it culpably fails to do so, any damage claims shall remain unaffected.

### **8 Performance and fulfilment**

#### **8.1**

MAN shall not be obliged to accept defective goods as fulfilment. The delivery of defective goods shall also constitute the supplier's delivery of incorrect goods or an insufficient quantity of the goods.

#### **8.2**

MAN reserves the right to accept the goods in spite of their defective nature without prejudice to its contractually agreed or legal rights as regards defects.

### **9 Place of performance/transfer of risk**

#### **9.1**

The place of performance shall be the place specified in the service request 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 specified and cannot be inferred from the agreements between the parties, Munich shall be deemed to be the place of performance.

#### **9.2**

The agreement of the place of performance and the assumption of risk are based on the Incoterms in the currently valid version.

#### **9.3**

Unless otherwise agreed, the transport and shipping of the ordered goods shall be at the supplier's risk. The supplier shall be obliged to take out transport insurance.

#### **9.4**

The risk shall pass to MAN when the goods are handed over to one of MAN's authorised receiving agents.

#### **9.5**

The handover shall be confirmed by a suitably authorised MAN employee on a delivery note issued by the supplier. In addition to the delivery note and supplier numbers, the delivery note should also contain the following information:



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- In the case of individual SAP orders:
  - Order no.
  - Order amount and unit
  - Designation of goods/services
  - Unloading point and plant
  - MAN account assignment
  - MAN stock no.
  
- In the case of SAP blanket orders:
  - Order no.
  - Order amount and unit
  - Designation of goods/services
  - Unloading point and plant
  - MAN account assignment
  - MAN stock no.
  - Call-off number
  
- In the case of individual stock material orders:
  - Order no.
  - Order amount and unit
  - Material no.
  - Designation of goods/services
  - Unloading point and plant
  
- In the case of stock material blanket orders:
  - Order no.
  - Order amount and unit
  - Material no.
  - Designation of goods/services
  - Unloading point and plant
  - Order no. in accordance with call-off

### **10 Delivery time, delays**

#### **10.1**

The delivery date specified in the order shall be binding.

#### **10.2**

The supplier shall be obliged to notify the client without delay if it wishes to deliver earlier or if it cannot meet the agreed delivery date. The contractual and legal rights of MAN regarding delay and deferral shall remain unaffected.

#### **10.3**

If the supplier defaults on the delivery, it shall be obliged to pay a contractual penalty amounting to between 0.1% and a maximum of 5% of the net order amount for every working day of the delay. If partial deliveries have been agreed or if it is an order from a framework agreement, the net order value for the partial delivery or the individual order shall be used to calculate the above. The assertion of legal claims due to delay or delay in performance shall remain unaffected by the contractual penalty. The contractual penalty shall be offset against the damage caused by the delay.

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### **10.4**

If MAN is prevented from accepting the goods at the agreed place of performance due to force majeure, it shall not be obliged to issue a default of acceptance, and nor shall the supplier be entitled to make return service or compensation claims. Force majeure shall be deemed to include all unavoidable circumstances which could not be foreseen at the time of conclusion of the contract, or those which could only have been avoided with unreasonable effort and expense, in particular natural disasters, riots, strikes and lawful lock-outs. The supplier must store the goods properly for the duration of the disturbance at its own expense and risk.

### **10.5**

MAN shall immediately notify the supplier of the existence of circumstances that constitute force majeure.

## **11 Liability of the supplier for defects**

### **11.1**

If the supplier has issued a guarantee regarding the quality and condition of the goods in accordance with Article 443 BGB (German Civil Code), or regarding the goods retaining a certain quality and condition for a certain time, then the supplier shall be liable to MAN for all damages resulting from a breach of the guarantee, irrespective of fault, insofar as no alternative legal consequences have been agreed. Guarantees of third parties shall remain unaffected.

### **11.2**

In addition to the rights arising from a possible quality or service life guarantee, MAN shall be entitled to assert all legal claims relating to defects to their full extent. MAN is, in all cases, entitled to demand that the supplier rectify the defect or replace the goods at its discretion. The right to compensation, in particular to compensation instead of service provision, is expressly reserved.

### **11.3**

If the contractually agreed item is determined only by its type, the supplier shall be liable, provided that the type-specific service is not impossible for another supplier, without consideration for a fault in the procurement of the contractual goods, unless the supplier is unable to procure the goods due to force majeure. Please see also Section 10.4.

### **11.4**

If MAN sets the supplier a deadline without specifying the type of supplementary performance (rectification of defects or delivery of defect-free goods), this shall be interpreted as meaning that MAN leaves the choice regarding the type of supplementary performance to the supplier.

### **11.5**

If MAN sets the supplier a reasonable deadline for supplementary performance to no avail, MAN shall be entitled to rectify a defect itself or via a third party at the expense of the supplier and to demand reimbursement of the necessary expenditure, instead of contractual rescission or a reduction, unless a substitute performance is only possible at disproportionate costs. Here, particular consideration should be given to the significance of the defect for the buyer and the impairment of the use of the goods stipulated by the contract or the normal use of the goods and their value in defect-free condition.

### **11.6**

MAN shall be entitled, in exceptional cases and without unsuccessful expiration of the appropriate period determined by the supplier, to rectify a defect itself or via a third party at its own cost, if the defect poses a specific risk to life, limb or health or other protected legal interests pursuant to Article 823 BGB and if waiting for a rectification by the supplier is not reasonable due to this risk. The supplier is to be informed as far as



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possible of the risk and its imminent rectification, in order to give it the opportunity to rectify the defect and the associated hazardous situation without delay.

### **12 Limitation period**

The claims of MAN due to a defect in the delivered goods according to Article 437 no. 1 and 3 BGB shall expire within five years in the case of an item that has been used for construction work in accordance with its usual use and this has resulted in its deficiency, and in all other cases, within three years of the delivery of the item.

Article 438 Para. 3 – 5 BGB shall remain unaffected.