



**General Terms and Conditions of Purchase  
MAN General Procurement Division for  
Building Management Services (Facility Management)  
(Version: June 2018)**



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# General Terms and Conditions of Purchase MAN General Procurement Division for Building Management Services (Facility Management) (Version: June 2018)

## 1 Validity of these contractual conditions

These Terms and Conditions of Purchase shall supplement:

- The MAN General Terms and Conditions of Purchase, General Procurement and shall apply to infrastructural, commercial, and technical building management services. They shall be applicable subject to deviating agreements relating to individual contracts.

## 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 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.

With the submission of a separate proposal/alternative tender, the tendering party gives its assurance as to the comprehensive legal, technical and deadline-related equivalence of its separate proposal/alternative tender.

### 2.3

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 8.

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

### 3.1

All agency services, work, or other services arising from the contractual elements in accordance with Section 3.4 of these Special Terms and Conditions of Purchase on an individual basis shall be included in the scope of the services to be provided by the contracting party.

### 3.2

Unless expressly agreed otherwise, the contractual performance shall cover implementation and performance arising from the order and its constituent parts, executed and implemented in full.



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### **3.3**

Insofar as the contracting party shall be obliged to perform its own investigations, calculations, and design services for the purposes of the tender preparation and after conclusion of the contract, the tender documentation and additional documentation transferred to the contracting party shall merely constitute an indicative basis for determining the scope of services, taking account of the performance required from the contracting party. If services for pre-existing properties are put out to tender, the tendering party shall be obliged to inspect the property before submitting a tender, and to confirm the inspection, specifying the date on which it was performed, in its tender.

### **3.4**

The following contractual foundations shall constitute an intrinsic contractual component:

#### **3.4.1**

- The MAN order letter

#### **3.4.2**

- The minutes of negotiation meetings in chronological order

#### **3.4.3**

- These Special Terms and Conditions of Purchase

#### **3.4.4**

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

#### **3.4.5**

- The MAN operational resources specifications

#### **3.4.6**

- The contractual documentation in accordance with the call for tenders (in particular the specifications)

#### **3.4.7**

- The list of subcontractors

#### **3.4.8**

- The standards, specifications, regulations, manufacturer specifications, etc. and all TÜV (Technical Inspection Agency) guidelines, all industrial law guidelines and all laws, ordinances and local bylaws pertaining to the contracting party's provision of goods and services, as specified in the call for tenders

#### **3.4.9**

- All legal, official and trade association guidelines related to execution and implementation

#### **3.4.10**

- The provisions of the BGB (German Civil Code)



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## 3.5

In the event of any contradictions within the contractual documentation, its appendices, etc., the order of precedence shall be as follows. In the event of contradictions within the appendices, the order of precedence with regard to numbering shall apply (e.g. 1 precedes 2, etc.); in other cases, the most recent appendix shall take precedence.

## 4 Version

### 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 protect the rights of MAN within the context of the contract. In doing so, the contracting party must also focus its efforts particularly on continuously optimising the operation of the property in qualitative and economic terms. If the contracting party enters into contracts with third parties or subcontracts services to subcontractors, with due regard to the specifications of this contract, it must likewise give highest priority to these goals. The liability of the contracting party shall remain unaffected by this.

### 4.3

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.

### 4.4

Unless otherwise agreed, the contracting party must ensure that an employee who is authorised to take decisions and issue instructions is present at all times. This shall also apply in the case of the contracting party's assignment of services to subcontractors.

### 4.5

MAN reserves the right to reject a change in the contracting party's property management on the grounds of just cause, or to demand the replacement of the contracting party's property manager on the grounds of just cause. The contracting party shall be obliged to notify MAN in good time of any intended change in the property management in order to obtain the latter's consent. An approval application relating to the future property manager must be submitted, and must include proof of the equivalence of his/her qualifications and professional experience.

### 4.6

The contracting party shall be obliged to coordinate its services with the services of MAN or of third parties engaged by MAN in such a way as to ensure that no obstructions arise.

### 4.7

All documents that the contracting party receives from MAN or from third parties engaged by MAN must be checked by it for completeness and accuracy. MAN must be notified in writing of any omissions or inaccuracies without undue delay. Should the contracting party culpably fail to notify MAN, it must bear the full amount of any costs incurred by it, MAN or any third parties engaged by MAN, where such costs are attributable to the contracting party's failure to make this notification.



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## **4.8**

The contracting party must schedule all services where cooperation or a decision from MAN or third parties engaged by MAN is required for their implementation in such a way as to ensure that MAN or the third party engaged by MAN has sufficient time for the review and cooperation or decision – generally at least two weeks.

## **4.9**

All acts of cooperation or decisions by MAN or third parties engaged by MAN must be prepared by the contracting party with due regard to the specifications of the order and in such a way that MAN or the third party engaged by MAN must only undertake acts befitting their level of competence. This means that requests and decision papers, for example, should be presented to MAN or the third parties engaged by MAN ready for signature or containing everything needed for a decision to be taken.

## **4.10**

The contracting party shall be obliged to contact the responsible departments of MAN immediately after the contract has been awarded, in order to independently coordinate the commissioned services taking account of the regulations in accordance with the order.

For this and for the purposes of correct execution/implementation, the contracting party shall be obliged to inform itself independently regarding the availability of constructional and other equipment, cables and wiring of all kinds, to adapt its execution/implementation to the relevant stock and to protect the stock from all damage during the execution/implementation.

Moreover, the contracting party shall be obliged to independently coordinate the execution/implementation of all services with MAN in such a way as to ensure that they do not hinder MAN's operations, nor those of a third party, more than is absolutely necessary, contrary to the order requirements.

## **4.11**

If the contracting party has concerns of any type whatsoever relating to the envisaged nature of the execution, including concerns regarding protection against risk of accidents or regarding the services to be provided by other contractors, the contracting party shall be obliged to inform MAN of these in writing without undue delay, and where possible, in good time before the commencement of its or the third party's work.

## **4.12**

In the event that the service provision has to take place on Saturdays, Sundays or public holidays, the contracting party shall be obliged to apply for any permits or authorisations which may be required in order to execute/implement the works in a punctual manner. In the event MAN's formal involvement is required for the application, the contracting party shall also be obliged to obtain this punctually.

## **5 Involvement of MAN**

### **5.1**

Unless otherwise provided for in the order, the contracting party shall receive the documents specified in the call for tenders promptly after the contract has been awarded. In the absence of different arrangements, there is no entitlement to additional documents. Section 4.7 of these terms and conditions shall apply accordingly.

### **5.2**

The contracting party shall be solely responsible for guaranteeing the correct contractual execution/implementation of its contractual services.

However, MAN shall be entitled to monitor the execution/implementation of the works via its own agents at all times. 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.

The contracting party shall submit all plans, drawings, etc. which may be required in accordance with the

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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 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).

## 6 Scope of services/service amendments/additions

### 6.1

The contracting party shall be obliged to provide all goods and services required for contractual and proper execution and for completion of its services under the contract in a functional and operational manner.

### 6.2

MAN shall be entitled to alter the scope of services, including the manner of their execution and the time of performance, and to issue alternative instructions. The contracting party shall be obliged to execute these alternative services in accordance with the terms and conditions of the contract, unless the contracting party's premises are not equipped to execute the services, and the contracting party is not reasonably able to guarantee the correct execution of the services by assigning them to a third party, or the contracting party cannot reasonably be expected to carry out the correct execution for other reasons.

### 6.3

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 at short notice. 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.

### 6.4

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 and implementation of the services, in particular the guidelines and ordinances issued by the regulatory 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 property has been transferred to the client. It hereby indemnifies the client against all claims resulting from its misconduct.



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## 8 Subcontractors

### 8.1

The contracting party shall be obliged to perform the service on its own premises. In exceptional cases, and in accordance with Section 2.3 of these terms and conditions of purchase, the service may be assigned to a subcontractor with the prior written consent of MAN.

### 8.2

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.

Moreover, the contracting party must ensure that it, those of its employees tasked with execution and implementation, and its subcontractors all comply with all German labour legislation, all regulations under German law on aliens, and all provisions of the German Posted Workers Act. 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.

## 9 Documentation

### 9.1

The contracting party shall be obliged to manage all correspondence directly or indirectly accompanying or connected to the contractual performance and all technical or other documents, including programmes etc., in a secure manner, ensuring that they are captured and systematically filed with the due diligence of a prudent businessman.

MAN shall be entitled to inspect this correspondence and these documents and programmes upon prior arrangement with the contracting party, and – in return for separate remuneration – to request the swift preparation and delivery of copies, printouts, etc. In the course of this, MAN shall show reasonable consideration for the contracting party's trade secrets, however MAN's right to information must not be restricted by this.

### 9.2

The contracting party shall additionally be obliged to prepare, maintain, update, and manage (pursuant to Section 9.1) all documentation records, inventory records, and other documents necessary for the proper, unimpeded, and where possible optimised operation of the property, and shall undertake this with the due diligence of a prudent businessman, and taking technical requirements and technical progress into consideration. This includes in particular, but is not limited to, descriptions, operating instructions, maintenance instructions, care instructions, drawings, as-completed drawings, etc.

The documents must be stored at the place of work of the contracting party's staff members; they must be updated on a daily basis.





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## **9.3**

Upon the expiration of this contract, MAN shall be entitled to the surrender of all documents, programmes, etc. in accordance with Sections 9.1 and 9.2 above – and indeed in the original, where these are available. Otherwise, it shall be given all existing transcripts, copies, and all files stored by computer on data media. The contracting party shall not be entitled to exercise a right of retention. The contracting party shall make copies of all documents or programmes that it needs in good time prior to their surrender, and at its own expense.

These provisions shall also apply in the event of any premature termination of the contract, for whatever reason, and to all documents, plans, data, programmes, etc. in the possession of the contracting party up to the time of the contract's end, including all property-related correspondence. Any deliverables not yet provided to MAN, such as the updating of documentation and inventory records in particular, must be completed without undue delay and delivered to MAN.

If the contracting party is still asserting remuneration claims, MAN may overcome any right of retention on the part of the contracting party in any case through the provision of security. Security shall be provided in the form of a bank guarantee from a German bank or savings bank (Sparkasse).

## **10 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.