

# MAN Truck & Bus SE

## Conditions of Purchase for Production Material and Spare Parts

April 2019



### 1. Decisive conditions

The legal relations between Supplier of production material or spare parts for commercial vehicles and MAN Truck & Bus SE, Munich, (hereinafter referred to as "MAN") shall be governed by these conditions and possible other agreements. Modifications and supplements hereto must be made in writing. General terms and conditions other than these shall not apply even if they have not been expressly contradicted in individual cases.

### 2. Orders

- 2.1 Supply agreements (order and acceptance) and call-off orders as well as modifications and supplements to these must be made in writing. Call-off orders may also be effected by means of data transfer.
- 2.2 If Supplier does not accept the order within three weeks as of date of arrival, MAN shall have the right of revocation. Call-off orders shall be deemed binding if Supplier does not contradict within two weeks as of date of arrival at the latest.
- 2.3 Within the context of what can be reasonably expected from Supplier, MAN may request modifications to the item delivered in respect of design and workmanship. The implications, particularly with regard to extra and reduced costs and to delivery dates, shall be settled by mutual agreement.

### 3. Invoicing and payment

- 3.1 Unless otherwise agreed, the payment will be made within 30 days after delivery or performance or, if the purchaser receives an invoice only after receipt of the delivery/service, 30 days after the access of the receipt net. The payment takes place conditionally to the invoice auditing. In case of acceptance of early deliveries, the due date depends on the agreed delivery date.
- 3.2 Payments shall be made exclusively by credit transfer.
- 3.3 In general, the purchaser will settle the invoices according to the invoicing procedure. Invoices must be sent by the supplier exclusively in electronic form as follows:
  - a) Direct submission of invoice via EDI in the valid VDA format
  - b) Submission of invoice in PDF/A2 format (ZUGFeRD)
  - c) Submission of invoice via a specified providerInformation about the electronic submission of invoices and the current EDI guidelines can be obtained from [invoice\\_verification@man.eu](mailto:invoice_verification@man.eu).
- 3.4 In justified exceptional cases, after consultation the purchaser's accounts payable department, the supplier shall submit his invoices in paper form to the address indicated in the purchase order
- 3.5 The auditable invoices must be submitted to the purchaser including the MAN supplier number, purchase order number, delivery note number, MAN material number and the name of the contact person on the purchaser's side. All necessary invoicing documents must be attached. The invoices must be issued in accordance with the valid value-added tax (VAT) law. Accounting documents in the form of credit notes, direct debits and payment notices are provided to the supplier electronically via EDI or e-mail or as a download at [www.vwgroupsupply.com](http://www.vwgroupsupply.com) => Login => Applications => Financial Application (FIN). In exceptional cases, they will be sent by post or fax.
- 3.6 In case of an incorrect delivery, the purchaser shall be entitled to withhold the payment on a pro-rata basis until the proper fulfillment.
- 3.7 The supplier is not entitled to assign his claims against the purchaser, which can not be unreasonable denied, or to have them collected by third parties without the prior written consent of the purchaser. If an extended retention of title exists, the consent is considered granted. If, contrary to sentence 1, the supplier assigns his claims against the purchaser to a third party without obtaining consent, the assignment is nevertheless effective. However, the purchaser can optionally make payments to the supplier or the third party at his own discretion with the effect of discharging his obligations.

### 4. Notice of defect

MAN must without delay report to Supplier in writing any delivery defect as soon as said defect has been established in the course of normal business procedure. Supplier shall insofar forgo to raise the objection of the respective complainant's having been made too late.

### 5. Secrecy

- 5.1 The parties to the agreement undertake to treat as business secrets all non-obvious commercial and technical details of which they gain knowledge through their business relations.
- 5.2 Drawings, models, templates, samples and similar items must not be handed over or be otherwise made accessible to unauthorized third parties. Reproduction of such items shall be permitted only within the framework of business requirements and copyright stipulations.
- 5.3 Subsuppliers shall be legally bound to this effect.
- 5.4 The parties to the agreement shall be allowed to use their business relationship for advertising purposes only with prior written consent.

### 6. Delivery dates and periods

Dates and periods agreed upon shall be binding. The date of arrival of goods at the MAN works to be supplied shall be decisive for assessing compliance with the delivery date or period in question. If delivery "free works" has not been agreed, Supplier shall supply the goods in good time, taking into consideration the time usually required for dispatch and shipment.

### 7. Default of delivery

- 7.1 Supplier is obliged to compensate MAN for damage caused by default of delivery. This shall not apply to profits lost or damage owing to plant interruption.
- 7.2 In the event of slight negligence compensation shall be limited to additional freight costs, retrofitting costs and, after fruitless elapse of a grace period or

if delivery is no longer of interest, to additional expenses for purchases to cover the shortfall.

### 8. Force majeure

Force majeure, industrial conflicts, unrest, official action and other unforeseeable, unavoidable and serious events shall release the parties to the agreement from their contractual obligations for the duration of the disruption and to the extent to which said disruption is effective. This shall also apply if these events occur at a time at which the party affected is in default. The parties to the agreement undertake to provide, within the context of what can be reasonably expected, the necessary information without delay and to adapt in good faith their obligations to the changed circumstances.

### 9. Quality and documentation

- 9.1 Supplier shall comply for his deliveries with the general technical conditions of delivery of MAN in accordance with works standards MAN 239-1 ff., with safety regulations and with the technical data agreed upon and shall to that end set up and furnish proof of a quality-management system in line with the recognized rules (eg DIN EN ISO 9000 ff, VDA 6 or a similar system). For deliveries of truck bodies, attachments and conversions, which are based not on a master agreement but on some other agreement, e.g. one-off orders or supply contracts, MAN works standard M 3471 „General conditions of delivery for truck bodies, attachments and conversions“ applies. MAN reserves the right to convince itself in situ of the effectiveness of said quality management system, eg in accordance with VDA volume 6 "QS-System audit", or, at body manufacturers', in accordance with VDA volume 8 "Guideline to QS for trailer, body and container manufacturers." Modifications to the item delivered shall be subject to the prior written consent of MAN. As regards pilot sample testing, mention is made of VDA publication "Sicherung der Qualität von Lieferungen - Lieferantenauswahl/Produktions-prozess- und Produktfreigabe/Qualitätsleistung in der Serie" (Protection of the quality of deliveries - selection of suppliers/ clearance of production process and product/quality performance in series production), Frankfurt on Main 1998. Irrespective of this, Supplier shall constantly monitor the quality of the items delivered. The parties to the agreement shall inform each other of the possibilities of quality improvement.
- 9.2 If the nature and extent of testing and the means and methods for testing are not firmly agreed between Supplier and MAN, MAN, at Supplier's request and within the context of MAN's knowledge, experience and possibilities, will be prepared to discuss said testing with Supplier. As regards commercial-vehicle components particularly marked eg with "D" - in the technical documents or on the basis of a separate agreement, Supplier shall in addition note in special records as to when, how and by whom the items delivered were tested with regard to features to be documented and what results said testing has furnished. The testing documents shall be kept for a period of at least fifteen years and be submitted to MAN upon request. Within the framework of legal possibilities Supplier shall place in-suppliers under an obligation to the same extent. VDA publication "Nachweisführung - Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen" (Furnishing proof - guide to documentation and archiving of quality requirements), Frankfurt upon Main 1998, is mentioned as a guideline.
- 9.3 Insofar as authorities responsible for motor-vehicle safety, exhaust gas regulations etc request an insight into MAN's production process and into testing documents for checking compliance with certain requirements, Supplier at MAN's request undertakes to concede the same rights to said authorities in his company and to lend any reasonable assistance.

### 10. Liability for defects

- 10.1 If goods delivered are defective MAN may, if the relevant legal requirements are met and the following conditions fulfilled and nothing else has been agreed, demand the following:
  - a) Prior to start of production (machining or installation) MAN shall first grant Supplier an opportunity to sort out deficient parts and eliminate the deficiencies or to deliver replacement for the goods in question, unless this proves unreasonable for MAN. If Supplier cannot do so or does not do so forthwith MAN may insofar rescind the Agreement without granting a further period of grace and send back the goods at Supplier's risk. In urgent cases MAN may, after co-ordination with Supplier, itself eliminate the defects or have a third party do so. The costs arising from this shall be borne by Supplier. If identical goods are repeatedly delivered defective MAN shall, after having sent a written warning to Supplier, be entitled to rescind also the nonfulfilled extent of delivery if defective goods are supplied anew.
  - b) If, despite observance of the obligation in accordance with section 4 (notice of defect), any defect is found only after production has commenced MAN may - in accordance with § 439 Sections 1, 3 and 4 BGB (German civil code) demand subsequent fulfillment and reimbursement of the transport costs (not including towing costs) necessary for subsequent fulfillment and of the costs of removal and installation (labor costs; material costs as agreed) or - demand a reduction of the purchase price.
  - c) In the event of a culpable violation of an obligation over and above delivery of deficient goods (e.g. obligation to inform, advise or examine) MAN may demand reimbursement of the resulting consequential damage emanating from the fault and of the consequential damage for which MAN has reimbursed its customers under law as defined in Section 11. Consequential damage is here understood as the damage to assets other than the goods themselves which MAN has itself suffered as a result of the delivery of deficient goods. MAN shall be entitled to make claims above and beyond this for expense and compensation arising from the delivery of deficient goods under § 437 BGB or directly from the regulations mentioned therein only if this is contractually agreed. In agreements to be newly concluded section 18 shall be observed.

- 10.2 At Supplier's request and expense MAN shall without delay place at Supplier's disposal the parts to be replaced by Supplier.
- 10.3 Unless otherwise agreed, claims of liability for defects shall become statute-barred after 24 months in accordance with the legal statute of limitations.
- 10.4 Claims of liability for defects shall not arise if the defect is to be attributed to the violation of operating, maintenance and installation instructions, to unsuitable or improper use, to incorrect or negligent handling, to natural wear and tear or to interference by MAN or by third parties in the item delivered.
- 10.5 In the event of delivery of deficient goods MAN's claims under the law on product liability or for unauthorised act or management without mandate shall not be affected. Guarantees of nature and durability must be expressly described as such in writing.

#### 11. Liability

- 11.1 Unless other liability arrangements are agreed upon in another section of these Terms and Conditions, Supplier shall only as follows be obliged to make compensation for damage incurred by MAN directly or indirectly owing to defective delivery, to a violation of official safety regulations or to any other legal reasons to be attributed to Supplier. The obligation to make compensation shall apply only if Supplier is at fault with regard to the damage he has caused.
- 11.2 If on the basis of liability without fault a claim is made against MAN in accordance with a law non-modifiable in respect of a third party, Supplier shall be liable to MAN insofar as Supplier would also be directly liable. The stipulations of section 254 BGB (German civil code) shall correspondingly apply to the compensation for damage between MAN and Supplier. This shall also apply in the event of claims being made against Supplier directly.
- 11.3 The obligation to pay compensation shall be precluded insofar as MAN on its part has effectively limited liability in respect of its customers. In this context MAN shall endeavor to reach an agreement that will limit liability to a legally permissible extent also in favor of Supplier.
- 11.4 Claims made by MAN shall be null and void insofar as the damage in question can be traced back to violations attributable to MAN of operator's, maintenance and installation instructions, to unsuitable or improper use, to incorrect or negligent handling, to natural wear and tear or to faulty repair.
- 11.5 Supplier shall be liable for measures taken by MAN for the prevention of damage (eg recall action) insofar as the former is under a legal obligation.
- 11.6 MAN shall immediately and comprehensively inform and consult Supplier if MAN wishes to make a claim against Supplier in accordance with the foregoing provisions. MAN shall give Supplier an opportunity to examine the damage in question. The parties to the agreement shall reach agreement on the measures to be taken, particularly in the event of settlement negotiations.
- 11.7 The principles set forth in the section 7.1 shall apply correspondingly if Supplier is not or not sufficiently insured.

#### 12. Industrial property rights

- 12.1 Supplier shall be liable for claims which arise in the course of the contractual use of the items delivered in MAN products from infringement of industrial property rights of third parties and applications for such industrial property rights, irrespective of the countries in which said industrial property rights exist, insofar as Supplier is responsible for such infringement.
- 12.2 In the event of a violation of industrial property rights for which violation he is liable as stated in section 12.1 Supplier shall indemnify MAN and its customers from all third-party claims derived from such violation.
- 12.3 Sections 12.1 and 12.2 shall not apply to items delivered which were manufactured by Supplier solely on the basis of technical stipulations and expertise of MAN (drawings, descriptions, other information). In such cases the duty of care to prevent any violation of industrial property rights shall rest with MAN.
- 12.4 Insofar as Supplier is not liable as described in section 12.3 MAN shall indemnify him from all claims made by third parties.
- 12.5 If the items delivered are manufactured on the basis both of expertise of Supplier and of expertise and technical stipulations of MAN, Supplier and MAN shall be jointly and severally liable in respect of claims arising in the course of contractual use of the items delivered from violation of industrial property rights of third parties and of applications for such rights, irrespective of the countries in which said industrial property rights exist.
- 12.6 In cases of joint and several liability as described in section 12.5 MAN and Supplier shall reach agreement as to how a violation of an industrial property right that becomes known is to be remedied. MAN and Supplier shall each bear half of any costs arising in this context, e.g. legal fees, costs of proceedings, court fees and/or license fees payable to third parties.
- 12.7 Each party to the contract undertakes, on noticing a risk of violation or finding that an industrial property right has been violated, to notify the other party thereof and to agree on further procedure with him. Responsibility for further handling of the problem recognized rests with that party who is liable for such cases pursuant to sections 12.1 to 12.4. In cases where sections 12.5 to 12.6 apply responsibility rests with the party who caused and contributed the major part of said violation.
- 12.8 Supplier undertakes to inform MAN upon request of the industrial property rights and applications for such rights used on the items delivered, whether they are published or non-published, his own or licensed.

#### 13. Repair and maintenance information

The supplier shall provide MAN with repair and maintenance information relating to the object of the contract (hereafter referred to as "RMI"). The supplier shall ensure that this RMI is free from third-party rights and shall renounce to be identified as author of this RMI. The RMI made available to MAN shall contain in particular drawings, specifications, instructions and any information relating to the object of the contract that is required to fulfil statutory requirements.

MAN and its associated companies according to Section 15 et seq. of the German Stock Corporation Act (AktG) are entitled to use, reproduce, process, change, and translate the RMI and/or publish it in any form. Furthermore, MAN is entitled to develop the RMI into its own RMI and/or make the contract partner's RMI as well as MAN's own RMI available to third parties. For the purposes of clarification it should be pointed out that the RMI is not subject to non-disclosure provisions and can be used free of charge by MAN

#### 14. Use of MAN's manufacturing facilities and confidential data

Models, dies, templates, specimens, tools and other means of production as well as confidential data either placed at Supplier's disposal by MAN or paid in full by MAN may be used for deliveries to third parties only with the prior written consent of MAN. In all other cases deliveries may be made to third parties only if this does not infringe industrial property rights/intellectual property rights (knowhow) of MAN. MAN is in principle prepared, subject to prior agreement with Supplier, to permit joint use of such industrial property rights/intellectual property rights (know-how) in return for payment of license fees.

#### 15. Social Responsibility and Environmental Protection

The supplier shall comply with the relevant legal provisions concerning employees, environmental protection and occupational health and safety and in its activities shall endeavor as best possible to reduce adverse effects on people and the environment. We expect the supplier continually to improve its environmental performance. To this end the supplier shall, within its capabilities, set up and develop an eco-management and audit system (e.g. according to DIN ISO 14001 and/or Regulation (EC) No. 1221/2009 of the European Parliament and of the Council (EMAS). The supplier shall also observe the principles of the UN Global Compact Initiative. These essentially concern protection of universal human rights, the right to collective bargaining, elimination of forced labor and abolition of child labor, eliminating discrimination in respect of employment and occupation, environmental responsibility and fighting corruption. More information about the UN Global Compact Initiative is available at [www.unglobalcompact.org](http://www.unglobalcompact.org).

#### 16. Retention of title

- 16.1 Supplier shall retain title in all goods delivered by him until full payment has been made, all deliveries thereby being deemed to be a single delivery transaction. In the event of an open account, retention of title shall be deemed to be a security for receivables.
- 16.2 If goods are combined by MAN together with other items into a unified item and if the other item is to be regarded as the principal item, MAN shall be obliged to transfer proportionate co-ownership to Supplier insofar as the principal item belongs to MAN. If MAN resells the goods delivered as intended, MAN here and now assigns to Supplier the claims that arise against its customers from the sale together with all collateral rights until full payment of all claims of Supplier has been made.
- 16.3 For well-founded reasons MAN shall, upon Supplier's request, be obliged to disclose the assignment to third-party purchasers and to provide Supplier with the information and to hand over to the latter the documents necessary for the assertion of the latter's rights.
- 16.4 Supplier shall release the securities retained by Supplier insofar as their value exceeds the total claims to be secured by more than 20 %.

#### 17. Intercompany payment clause

MAN shall be entitled to offset with and against due, non-due and future claims to which MAN SE, Munich, or a company in which has a direct or indirect holding of at least 50 %, is entitled against Supplier and to offset with and against claims which Supplier has against one of the companies described. Upon request Supplier shall if necessary be informed of the status of these holdings. Supplier agrees that all securities given to MAN by Supplier are simultaneously securities for those claims which the companies mentioned in the preceding paragraph have against Supplier. Conversely, all securities given by Supplier to these companies are simultaneously securities for claims of MAN against Supplier – irrespective of the legal grounds on which such claims may be based.

#### 18. General provisions

- 18.1 In determination of the extent of the claims for compensation to be fulfilled by Supplier in accordance with sections 7, 10, 11 and 12 hereof the economic situation of Supplier, the nature, extent and duration of the business relationship, any contributions on the part of MAN to the cause or any fault of MAN as defined in § 254 BGB and any particularly unfavourable installation situation of the part supplied shall be taken into reasonable consideration in favour of Supplier. In particular the compensation, costs and expense to be borne by Supplier must bear reasonable relationship to the value of the part supplied.
- 18.2 If one party to the agreement suspends payments or if an application is made for commencement of bankruptcy proceedings on said party's assets or for judicial or out-of-court composition proceedings, the other party to the agreement shall be entitled to rescind that part of the agreement which has not been fulfilled.
- 18.3 Should any provision of these conditions and of the further agreements reached be or become ineffective, the validity of the remainder of the agreement shall not be affected. The parties to the agreement undertake to replace the ineffective provision by one with as far as possible equivalent economic effect.
- 18.4 Unless otherwise agreed, the law of the Federal Republic of Germany shall govern. The United Nations Agreement of 11th April 1980 on agreements on the international purchase of goods shall not be applicable.
- 18.5 The place of performance for deliveries shall be the MAN works to be supplied. In all other respects the place of performance shall be Munich.
- 18.6 If the Supplier is an entrepreneur in the meaning of the German Commercial Code, a legal entity under public law or a public special fund the exclusive, also international place of jurisdiction shall be Munich, Germany. MAN is entitled to raise claims at any other court in charge.