



**MAN General Terms and Conditions of Purchase,  
General Procurement Division  
for planning services and services of consulting  
engineers (without construction) (version 06/2018)**



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## **1 Validity of the contractual conditions/contractual components**

### **1.1**

These conditions supplement:

- the MAN General Terms and Conditions of Purchase, General Procurement Division. They do not apply to planning and consulting services for building objects.

### **1.2**

The contractual components appear in the following order, where available and unless otherwise agreed:

#### **1.2.1**

- the MAN order letter

#### **1.2.2**

- the minutes of negotiation meetings in chronological order

#### **1.2.3**

- these Terms and Conditions of Purchase

#### **1.2.4**

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

#### **1.2.5**

- the MAN operating resources specifications

#### **1.2.6**

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

#### **1.2.7**

- the relevant, generally recognised technological rules and regulations, particularly the relevant DIN standards.

## **2 Regulations relating to service provision**

### **2.1**

The contracting party is obliged to fulfil all the required, appropriate services, duties and obligations necessary for the attainment of the planning/consulting target defined in the order. The services, duties and obligations owed by the contracting party thus also comprise all activities not listed in the order that, further to the contracting party's remit as specified in the order, are or become necessary for the attainment of the planning/consulting target defined in the order.

### **2.2**

Should it become clear that the cost limit specified in the order or the implementation costs that have been calculated or agreed with MAN cannot be complied with when further pursuing the current planning or after the result of one or several quotes provided, the contracting party is obliged to inform MAN of the reasons for this in writing without delay, and must also inform MAN of the possible effects of this deviation in writing, and make suggestions to MAN regarding all possible alternative courses of action (especially with regard to possible savings).



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### **2.3**

Moreover, the contracting party is obliged to inform MAN of all significant matters arising during the execution of its duties in writing without delay. This obligation shall not lapse when the contract expires. Should relevant legislation be in the process of being revised, or if any ambiguities arise in connection with the generally recognised technological rules and regulations which may influence the success of the planning/consulting services owed under the contract, the contracting party is obliged to inform MAN of these circumstances in writing without delay.

### **2.4**

MAN reserves the right to commission additional planners/consultants. The contracting party must inform MAN in good time if it should prove necessary to use additional planners/consultants, and advise MAN during the selection at the latter's request.

If MAN has commissioned the contracting party to coordinate the consulting services of third parties, the contracting party must coordinate these third-party services in a manner that enables them to be assimilated with its own planning/consulting services owed under the contract. The contracting party must agree on the services to be provided with MAN and the other technically involved parties prior to their final preparation, and check the contributions of other parties technically involved in the planning (documentation and plans) for correctness and plausibility, taking account of their concerns and conditions, before making these the basis of its own service provision and integrating these into its own services.

### **2.5**

The contracting party must perform the assigned planning/consulting services itself in its own offices with its own employees. Assigning the performance of services to third parties (e.g. subcontractors or freelance workers) shall only be permitted with the prior written consent of MAN.

### **2.6**

The contracting party is obliged to attend the discussions scheduled by MAN or other planning/consulting participants or commissioned specialist companies. The contracting party must absorb or incorporate the results into its planning/consulting services, with due regard to its other service obligations.

The contracting party must inform MAN of discussions scheduled by other project participants and, at MAN's request, take minutes of these to an extent commensurate with the discussion content, and submit these minutes to MAN without delay.

### **2.7**

The contracting party shall not be absolved of its responsibility to check, control, coordinate, and monitor by the fact that one of the other planning/consulting participants or another technically involved party is also obliged to control, coordinate, or monitor as part of its services to MAN.

### **2.8**

The contracting party must observe only the instructions and requirements of MAN and apply these during the provision of its services. Other project participants, or individuals representing MAN, shall only be authorised to issue the contracting party with instructions on MAN's behalf with the latter's express prior consent or authorisation. This shall also apply to any project controller appointed by MAN.

### **2.9**

The contracting party is not permitted to act as the legal representative of MAN. However, it is entitled to issue instructions that are necessary for the contractual execution of the commissioned production and supply services and to ensure a flawless project process, which do not result in any negative consequences for MAN financially or in terms of quality or deadline adherence. This also applies to any



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declarations for MAN that are objectively necessary for the fulfilment of the order to coordinate and support the production and supply services.

### **3 Deadlines**

#### **3.1**

Unless stipulated otherwise between the parties, the contracting party must provide the planning/consulting services owed by it based on a schedule still to be agreed upon, and above all commence, facilitate and complete its performance in good time, so as to ensure that MAN can use it to make quick planning/consulting and production progress.

#### **3.2**

The contracting party must draw up a planning/consulting schedule in the form of a bar graph no later than two weeks after receipt of the order, and pass this on to MAN. This schedule should contain details of all controllable planning/consulting steps and the finalisation of individual services and supplies required up to completion of the production project. The contracting party will agree on a planning/consulting schedule with MAN on this basis, which will subsequently become a contractual component of the order. If the contracting party does not fulfil this obligation, MAN shall be entitled to define planning/consulting deadlines as it reasonably sees fit, the expiry of which shall trigger the due date of the scheduled planning/consulting performance in each case.

#### **3.3**

Irrespective of this, the contracting party must in any event produce/provide the required planning/consulting contributions for the production services and supplies in a timely manner so that the production/supply process agreed with the executing companies is not impeded. Furthermore, the details of the invitation to tender including planning specifications that are necessary for preparing the awarding of production/supply services must be drawn up in full and in such good time as to ensure the subsequent issuing of performance descriptions for production/supply services that are as clear and exhaustive as possible.

#### **3.4**

Further non-binding deadlines and deadlines that trigger the performance due date will be agreed during project processing based on the schedule agreed between the contracting parties or defined by MAN as it reasonably sees fit based on the agreed scheduling.

#### **3.5**

The contracting party is obliged to provide all necessary services for further planning/consulting and for the execution of the production/supply service in due time so that the completion date agreed between MAN and the companies performing the production/supply service as well as the other project participants is not endangered or delayed for reasons which (also) lie within the sphere of influence or responsibility of the contracting party.

#### **3.6**

The contracting party is obliged to document the timing of the delivery of documentation and other contributions prepared by it to other project participants and, especially, to keep a schedule list including receipt and issue dates which shows the current processing status and distribution of plans.

#### **3.7**

The contracting party is obliged to place all documentation and information requiring auditing punctually at the disposal of the responsible project participants, especially authorities, to ensure that the relevant documentation audit can be carried out on time without any delays.



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### **4 Change and additional services**

#### **4.1**

The contracting party is obliged to take care of and execute any additional services requested by MAN, unless the services are not linked to previously commissioned services and the contracting party is not qualified for the purpose. In this case, the assignment of services requires the approval of the contracting party.

#### **4.2**

MAN must be notified in writing of additional services not included in the scope of delivery agreed with the order before their performance, and reasons must be given why these services are not included in the agreed scope of delivery. This does not apply if MAN expressly orders the performance of an additional service.

The contracting party is entitled to an additional fee if MAN orders or confirms the performance of these services in writing with knowledge of the notification.

#### **4.3**

The contracting party is entitled to a right of retention in respect of the required or demanded additional or changed service only if MAN conclusively refuses to acknowledge justified additional claims for remuneration. MAN is not obliged to remunerate services that are provided by the contracting party without contractual obligation. However, the contracting party is entitled to remuneration if MAN subsequently acknowledges the services. Any legal claims of the contracting party arising from agency without specific authorisation remain unaffected.

### **5 Acceptance**

#### **5.1**

Unless otherwise agreed, MAN is obliged to accept the services provided by the contracting party which include a verifiable result (outcome) and represent the performance due by the contracting party as a whole, provided that the services have been executed completely, in accordance with the contract and in a flawless manner, and the contracting party has notified MAN of the completion of the services in writing.

#### **5.2**

The acceptance certificate must be submitted in writing for reasons of proof.

#### **5.3**

Insignificant defects, especially those which do not impair the contractually agreed or required use, will not prevent acceptance readiness or acceptance.

#### **5.4**

The results of the acceptance shall take effect after MAN has confirmed the acceptance in writing. The same shall apply in the event that MAN fails to confirm the acceptance or refuses to do so, although the services provided by the contracting party are fundamentally complete, in accordance with the contract and flawless. In this case, the contracting party is entitled to draw MAN's attention to this lack of acceptance in writing, and demand the renewed issue of the acceptance certificate by a specific deadline. MAN shall be deemed to have accepted the services after the aforementioned deadline expires. Acceptance by the mere action of putting into use - or also through any other form of tacit acceptance - is expressly excluded.



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### **6 Surrender of documentation/rights of retention**

#### **6.1**

The original documentation (drawing, plans, etc.) prepared by the contracting party for the fulfilment of the order must be handed over completely to MAN in a transparent manner as copies of the originals or, at MAN's request, as other electronic media or on data carriers. The contracting party must return MAN's documents to MAN when it no longer needs them to carry out its task, however this must occur without prompting no later than upon acceptance of the contracting party's services.

The contracting party shall be entitled to destroy all documentation that it has drawn up in connection with the fulfilment of the order after the limitation period for defect-related claims has expired. However, the contracting party must first offer to pass on this documentation to MAN and notify MAN in writing of the intended destruction. The documentation may only be destroyed if MAN is in default of acceptance.

#### **6.2**

A right of retention of the contracting party concerning the planning or other documentation or services that it has provided, which are necessary for the performance of production/supply services, is excluded. The contracting party is obliged, in this respect, to perform work in advance until completion of the services owed.

This shall not apply in the event of termination by MAN pursuant to Section 649 of the German Civil Code (BGB), or termination by the contracting party for reasons for which MAN is responsible. In these cases, the contracting party shall be entitled to a right of retention to the documentation that it has drawn up until the settlement of justified, due remuneration claims by MAN. This right of retention shall lapse if the contracting party fails to submit an auditable final fee invoice within two weeks of receipt of the notice of termination, or if MAN provides the contracting party with a security in the form of a bank guarantee for the amount of the fee claims associated with the aforementioned right of retention.

### **7 Industrial property rights, expertise**

#### **7.1**

The contracting party shall grant MAN the gratuitous right to use the industrial property rights and expertise applied by the contracting party when fulfilling the contract for project operations.

All documentation, drawings and programs created by the contracting party in conjunction with the project-related service provision shall be subject to MAN's unlimited property rights and rights of disposal. The contracting party shall not be entitled to additional remuneration for this.

MAN is entitled to produce spare and wearing parts for the project's facilities, or to commission their manufacture and repair by third parties, using the documentation supplied by the contracting party.

#### **7.2**

The contracting party shall assign to MAN the rights of use and exploitation of all copyrighted services in connection with the performance of the contract. Furthermore, the contracting party gives its assurance that it is not aware of any circumstances, particularly those pertaining to the industrial property rights of third parties, which make it difficult or inadmissible to produce the objects and processes required to fulfil the contract and that no claims for infringement of industrial property rights have been asserted or can be asserted against it.

#### **7.3**

The contracting party shall indemnify MAN from all third-party claims arising from a possible infringement of industrial property rights resulting from a breach by the contracting party of the obligations pursuant to sections 7.1 and 7.2.



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### **7.4**

Regardless of the regulations set out in sections 7.1 to 7.3, the contracting party is obliged to inform MAN without delay of all industrial property rights that could conflict with an application of the work results of the contracting party.

### **7.5**

Furthermore, the contracting party is obliged to inform MAN of all inventions arising in connection with the execution of the order involving it and/or its subcontractors, and to submit to MAN all the documentation required to use the inventions and any information on the inventions that MAN may request. The contracting party's obligation to inform shall also apply to its expertise which arises in conjunction with the execution of the contract.

The contracting party will ensure that inventor's rights vis-à-vis employees and/or independent individuals are applied and transferred to MAN. MAN can thus register the invention itself in Germany and abroad in order to create an industrial property right, and will bear the associated costs.

Each party will remunerate its own employee inventors independently in accordance with the legal regulations.

If the contracting party wants to use inventions, industrial property rights, etc. for supplies and/or services provided to third parties, the contracting parties will agree on the details of this usage, particularly in respect of an appropriate licence fee.

The contracting party is obliged to make agreements in due time with all its employees, subcontractors and other vicarious agents appointed within the context of execution of the contract with the effect that they recognise the above agreements as binding.

The contracting party is obliged to refrain from submitting a plea for annulment or objection in conjunction with the industrial property rights arising as a result of the work provided, which are registered by MAN, or to support third parties in their submission of similar pleas, irrespective of the regulations set out in sections 7.1 to 7.5 above.