



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



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# MAN General Terms and Conditions of Purchase for Transport Services, General Procurement Division (version: 01/06/2018)

## 1 Validity of these contractual conditions

These Terms and Conditions of Purchase shall supplement:

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

Moreover, shall apply to transport, assembly, disassembly, waste disposal and other equipment-related services, including plant operation. They shall be applicable subject to deviating agreements relating to individual contracts. They shall not apply to transport services performed by carriers.

## 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.

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.

### 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 9.

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 design, construction, manufacturing and transport-related services and operational and 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 comprise those goods and services arising from the order, including its components, in a complete manner.



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### **3.3**

Insofar as the contracting party shall be obliged to provide independent 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.

### **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 procurement, execution and implementation

#### **3.4.10**

- The provisions of the BGB (German Civil Code)

### **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.



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### **4 Execution**

#### **4.1**

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.

#### **4.2**

The contracting party shall be obliged to inform MAN in writing of any concerns, irrespective of their nature, in conjunction with the anticipated nature of the service provision, including those regarding protection against risk of accidents or regarding services provided by other contractors, this without delay and, if possible, in good time before the works are commenced by it or the third party.

#### **4.3**

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 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).

#### **4.4**

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.

#### **4.5**

The contracting party shall be liable for all obligations relating to the operation of any vehicles used for the execution/implementation of its service provision. In particular, this shall concern the contracting party's avoidance of pollution and damage as far as possible and the elimination of unavoidable pollution and damage at its own expense, taking account of the current valid guidelines and instructions.

#### **4.6**

The contracting party shall be obliged to allow other companies to use access routes, facilities, etc. constructed by the contracting party, on request and, where applicable, in return for payment.



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### **5 Involvement of MAN**

Unless agreed otherwise, the contracting party shall have sole responsibility for procuring the forms of energy required in order to provide the goods and services (in particular construction water, electricity, pressure, steam, etc.) in an independent manner. The same shall apply to delivery areas, storage areas, construction site equipment, etc. The contracting party shall not be entitled to use areas and means belonging to MAN.

### **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, 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 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 item has been transferred to the AG. It hereby indemnifies the AG against all claims resulting from its misconduct.



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### **8 Due dates/deadlines**

#### **8.1**

The contracting party shall be obliged to commence the execution/implementation on the agreed dates. If no date has been agreed for the commencement of the execution/implementation, the contracting party shall be obliged to start immediately after a request by MAN to do so.

The contracting party shall be obliged to observe any interim deadlines that may have been agreed, and, in the case of the agreement of a completion date, to complete its services by this deadline in accordance with the contract.

#### **8.2**

In the event that the contracting party shall be obliged to submit a schedule to MAN for approval in accordance with the order specifications, including its various elements, it shall be obliged to do so one week at the latest after the contract has been awarded, incorporate justified suggestions by MAN without delay and update the approved schedule on a daily basis.

In the event that deviations from the schedule arise in the assembly or disassembly services by MAN, then in the absence of other express agreements, the remaining deadlines shall be postponed by the number of working days that MAN's new binding deadline is, in turn, delayed. This shall not apply if the contracting party is able to prove that it is unfairly burdened by this regulation.

#### **8.3**

In the event of alterations to the execution deadlines, the contracting party shall be obliged to agree an updated and new binding schedule with MAN within an appropriate period of time after MAN's request to do so. In the event that such an agreement is not reached within a reasonable period of time for reasons attributable to the contracting party, MAN shall be entitled to specify an updated schedule in accordance with the principles of equitable discretion (§ 315 BGB).

### **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 2.3 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. 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 involved in the execution/implementation, 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.



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

### **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/implementation of goods and services, in the event that their services are delayed or performed unsatisfactorily and this hinders the contracting party's activities.

### **11 MAN supplies**

#### **11.1**

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.

#### **11.2**

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 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.

#### **11.3**

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.

#### **11.4**

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.



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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.

### **11.5**

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

### **11.6**

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.

## **12 Contractual penalty**

The following shall apply in the event that the contracting party has agreed to the payment of a contractual penalty and subject to prior agreements regarding the level of individual rates or the overall contractual penalty amount:

### **12.1**

In the event that the contracting party is responsible for exceeding the agreed completion deadline or is in default in any other way, the contracting party shall be obliged to pay between 0.2% and a maximum of 5% of the net order total for every working day that the deadline is exceeded or delayed.

### **12.2**

In the event that the contracting party is responsible for exceeding an agreed interim deadline or delays this interim deadline in any other way, the contracting party shall be obliged to pay between 0.2% and a maximum of 5% of the net order total in proportion to the interim deadline for every working day that the deadline is exceeded or delayed. In the event that interim deadlines are exceeded or delayed, subsequent contractual penalties shall be taken into account in conjunction with contractual penalties levied for preceding interim deadlines, in order to ensure that an accumulation of individual contractual penalties is excluded.

### **12.3**

The total contractual penalty shall be limited to a maximum of 5% of the net order total and the maximum amounts specified in Sections 12.1 and 12.2 shall not apply individually.

### **12.4**

MAN shall not be obliged to assert its right to levy the contractual penalty at the time of acceptance, but may delay this until the final payment.

### **12.5**

MAN shall remain entitled to demand that the contracting party compensates it for any damages incurred above and beyond the contractual penalty imposed (e.g. offsetting the imposed contractual penalty against the overall damages).



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### **13 Acceptance**

In the event that this should be necessary for goods and services supplied by the contracting party, a formal acceptance shall take place, to which the following shall apply:

#### **13.1**

MAN shall invite the formal acceptance.

Acceptance reports should be drawn up and signed by both contracting parties. The contracting party shall bear the costs of necessary repeat acceptances and/or performance and functional checks of all types if it is responsible for these.

#### **13.2**

The acceptance procedure may not be replaced by prior use, commissioning or official acceptance, nor by the contracting party's notification of the completion. Partial acceptances may only take place insofar as this has been agreed on an individual basis for the specific construction project.

#### **13.3**

Works relating to the rectification of deficiencies also require formal acceptance.

### **14 Prices/invoicing/payment**

#### **14.1**

The prices are fixed prices. These shall constitute the remuneration for all services that must be completed in order to execute the order. Return journeys, staff travelling time to the assignment location and back, equipment downtimes and prescribed breaks shall not be remunerated separately.

#### **14.2**

The contracting party shall be obliged to document the provision of its goods and services via supporting documents (e.g. draft invoices, bulk invoices, timesheets, travel logs, weighing notes, waste disposal records, etc.). The contracting party may be required to use forms provided by MAN for this purpose.

These supporting documents should be completed on a daily basis and submitted for confirmation on the first working day of the following week at the latest.

The contracting party shall be obliged to invoice for the provided services without delay.

Invoices should be issued in an auditable manner and include references to the supporting service documents.

#### **14.3**

In the event that the parties have agreed on a payment plan, MAN shall only make advance payments proportionate to the proven defect-free provision of services; MAN's rights relating to defects prior to acceptance shall hereby remain unaffected.

### **15 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.