



**MAN Special Terms and Conditions of Purchase
for Construction Works, General Procurement
Division (version: 06/2018)**



Contents

1	Validity of these contractual conditions.....	2
2	Contractual foundations.....	2
3	Scope of services/service amendments/additions.....	3
4	Involvement of MAN	4
5	Due dates/deadlines.....	4
6	Contractual penalty	5
7	Acceptance	5
8	Claims for defects	6
9	Securities	7
10	Industrial property rights, expertise	7
11	Payments.....	8
12	Exemption from Article 48b EstG (Income Tax Act).....	8



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

1 Validity of these contractual conditions

These contractual conditions shall supplement:

- The MAN General Terms and Conditions of Purchase, General Procurement Division
And
 - The MAN General Terms and Conditions of Purchase for Facilities and Construction Works, General Procurement Division
- They shall be applicable subject to deviating agreements relating to individual contracts.

2 Contractual foundations

2.1

All design and construction related and other services arising from the contractual elements in accordance with Section 2.4 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.

2.2

Unless expressly agreed otherwise, the contractual performance shall comprise those goods and services arising from the order, including its components, in a complete manner.

2.3

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.

2.4

The following contractual foundations shall constitute an intrinsic contractual component:

2.4.1

- The MAN order letter

2.4.2

- The minutes of negotiation meetings in chronological order

2.4.3

- These Special Terms and Conditions of Purchase

2.4.4

- The MAN General Terms and Conditions of Purchase for Facilities and Construction Works, General Procurement Division

2.4.5

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

2.4.6

- The planning permission document(s)

2.4.7

- The MAN operational resources specifications



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

2.4.8

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

2.4.9

- The list of subcontractors

2.4.10

- The draft contractual fulfilment guarantee

2.4.11

- The draft guarantee security document

2.4.12

- The German Construction Contract Procedures part B: general contractual terms and conditions for the execution of construction procedures (VOB/B) in the version current at the time when the contract is concluded.

2.4.13

- 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 construction project, as specified in the call for tenders.

2.4.14

- All legal, official and trade association guidelines related to the preparation of the construction project, in particular the regional building regulations and energy saving regulations applicable in the vicinity of the construction project.

2.4.15

- The provisions of the BGB (German Civil Code), in particular the law pertaining to contracts for work and services.

2.5

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.

3 Scope of services/service amendments/additions

3.1

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. Section 6 of the MAN General Terms and Conditions of Purchase for Facilities and Construction Works, General Procurement Division shall also apply.



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

3.2

The contracting party shall be obliged to submit its entire calculation to MAN in a sealed envelope within eight days of conclusion of the contract. This envelope shall only be opened in the presence of the contracting party in the event that these calculation documents are required for subsequent pricing purposes.

4 Involvement of MAN

4.1

The contracting party shall be obliged to create any samples that fall within the scope of its service provision, and shall do so in accordance with any separately agreed sample schedule and, in all cases, in a punctual and independent manner. These samples must be designed by the contracting party in such a way that MAN and any participating third parties are able to make a final decision regarding the specifics of the actual execution with no difficulty, subject to any more detailed descriptions of the samples. Section 5.2 of the MAN General Terms and Conditions of Purchase for Facilities and Construction Works, General Procurement Division shall apply accordingly.

4.2

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.

5 Due dates/deadlines

5.1

The contracting party shall be obliged to submit a construction schedule to MAN for approval one week at the latest after being commissioned. This schedule should take account of all contractual obligations and be subdivided according to the types of work. Thereafter, the contracting party shall be obliged to incorporate justified suggestions by MAN without delay and to update the approved construction schedule on a daily basis.

5.2

In the event that MAN stipulates a different binding construction start date to the one stated in the construction schedule, the remaining binding contractual deadlines shall be postponed by the same number of working days by which the original construction start date has been postponed, unless other express agreements have been made. This shall not apply if the contracting party is able to prove that it is unfairly burdened by this regulation.

5.3

In the event of alterations to the execution deadlines, the contracting party shall be obliged to agree an updated and new binding construction 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 construction schedule in accordance with the principles of equitable discretion (§ 315 BGB).



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

6 Contractual penalty

6.1

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 0.15% and a maximum of 5% of the net order total for every working day that the deadline is exceeded or delayed.

6.2

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 0.15% and a maximum of 5% of the net order total 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.

6.3

The total contractual penalty shall be limited to a maximum of 5% of the net order total and the maximum amounts specified in Sections 6.1 and 6.2 shall not apply individually.

6.4

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.

6.5

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. off-setting the imposed contractual penalty against the overall damages).

7 Acceptance

7.1

The contracting party shall guarantee that its service provision shall be free of material defects at the time of the final formal acceptance of the contractual service provision, i.e. that it has the contractually agreed qualities, complies with the recognised technological rules and is free of defects of title. In the event that the quality of individual characteristics of the service provision are not agreed, the service provision shall be deemed free of material defects if it is suitable for the use designated in the contract and is of a quality which is usually found in work of the same kind and which MAN can expect from that kind of work and, in all other cases, is suitable for customary use and is of a quality which is usually found in work of the same kind and which MAN can expect from that kind of work.

7.2

The contracting party shall be obliged to provide MAN with a written guarantee certificate in accordance with specifications issued by MAN by the time of the final acceptance at the latest. Furthermore, the contracting party shall be obliged to provide MAN with all documentation falling within the scope of its service provision and including consulting, instruction and operating manuals related to all technical facilities and required for their operation and later maintenance upon acceptance, in accordance with Section 7.1 of the present conditions.



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

Furthermore, the contracting party shall be obliged to draw up a list of all technical facilities requiring regular care and/or for the maintenance contracts and a list of companies involved in the execution of the construction project, including address, telephone number and name of the authorised representative, and to submit these to MAN by the time of acceptance at the latest.

7.3

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.

7.4

The contracting party shall be obliged to undertake the execution of required trial runs and the commissioning of the technical facilities and to train MAN employees and/or future users and/or operators in how to operate the technical facilities. In the event that this employee training has not been completed by the time of the acceptance for reasons attributable to the contracting party, MAN shall be justified in its refusal to grant acceptance. However, insofar as the facilities have to be commissioned on the grounds of a mitigation of damage, the contracting party shall provide its own employees to operate the technical facilities until the required staff training has been completed.

7.5

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.

7.6

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

8 Claims for defects

8.1

In the event that no other limitation periods have been expressly agreed, the contracting party shall be liable to the extent of the provisions set out in the VOB/B (German Construction Contract Procedures), with the proviso that the limitation period shall normally constitute five years, in contrast to Article 13, no. 4 VOB/B. In all other cases, the contracting party's liability shall be in accordance with the provisions of the BGB. The legal regulations of Article 199, para. 3 BGB for the calculation of the limitation period in the case of defects that have been maliciously concealed by the contracting party or by subcontractors commissioned by it shall not be affected.

8.2

In the event that the contracting party engages subcontractors or procures materials from third-party manufacturers in order to execute its services, the contracting party shall hereby assign all its guarantee-related claims against such subcontractors or manufacturers to MAN, which hereby accepts them. The aforementioned assignment shall take place by way of security and subject to the condition precedent that the contracting party shall file for insolvency. The contracting party's guarantee obligations shall remain unaffected.

8.3

In principle, the contracting party shall be liable to MAN for the full amount of any damages caused, even if the subcontractor's liability is limited by contractual regulations or a court order.



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

9 Securities

9.1

The contracting party shall provide MAN with an unlimited guarantee for contractual performance from a major German bank or a German credit insurer which must be formulated in accordance with the sample text included in the call for tenders, within two weeks of receiving the commission. Unless otherwise agreed, the security amount should be 10% of the net order total.

The contractual performance guarantee shall extend to the fulfilment of all the contracting party's contractual obligations, in particular the contractual execution including invoicing, rectification of defects and compensation as well as the reimbursement of excess payments including interest. The right to make guarantee claims may not lapse prior to the secured claims that are asserted against the contracting party.

9.2

The contracting party shall provide an unlimited guarantee from a major German bank or a German credit insurer in the form of a security for claims for defects, which must be formulated in accordance with the appendix enclosed with the call for tenders. Unless otherwise agreed, the security amount should be 5% of the net invoice total.

The security for claims for defects shall extend to the fulfilment of all claims for defects, including compensation, and the reimbursement of excess payments including interest. The right to make guarantee claims may not lapse prior to the secured claims that are asserted against the contracting party.

MAN shall be entitled to retain 5% or an alternatively agreed percentage of the net invoice total until the contractual security has been established.

9.3

By way of derogation from Article 17, no. 8, para. 2 VOB/B, the security for claims for defects must not be returned until the deadline in accordance with Section 8.1 has expired. Any rights relating to the reduction of the security shall hereby remain unaffected.

10 Industrial property rights, expertise

10.1

The contracting party shall grant MAN the gratuitous right to use industrial property rights and expertise applied by the contracting party for the purposes of fulfilling the contract, during the operation of the project and that of its facilities.

All documentation, drawings and software 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 shall be entitled to create spare and wearing parts for the project's facilities, or to commission their manufacture and repair by third parties, on the basis of the documentation supplied by the contracting party.

10.2

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 shall provide assurances 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 or can be asserted against it.



MAN Special Terms and Conditions of Purchase for Construction Works, General Procurement Division (version: 06/2018)

10.3

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 10.1 and 10.2.

11 Payments

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.

Unless otherwise agreed, the down payments/advance payments made by MAN shall be offset against outstanding partial payment invoices until the down payments/advance payments have been offset completely. The contracting party may demand a down payment/advance payment security from MAN in return for the granting of a down payment/advance payment security reduced by the offset amount.

12 Exemption from Article 48b EstG (Income Tax Act)

The contracting party shall be obliged to provide MAN with a certificate of exemption from the responsible tax office in accordance with Article 48b of the Income Tax Act and from the social insurance agency without delay, both for itself and its subcontractors. The contracting party shall indemnify MAN from all claims made by the financial authorities and social insurance agencies, irrespective of the legal grounds for these claims (e.g. revocation of the certificate of exemption).