



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



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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 manufacturing-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 and ready for operation.

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 MAN operational resources specifications

2.4.7

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



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2.4.8

- The list of subcontractors

2.4.9

- The draft advance payment guarantee

2.4.10

- The draft guarantee security document

2.4.11

- 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 project, as specified in the call for tenders.

2.4.12

- All legal, official and trade association guidelines related to the construction of the facility.

2.4.13

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

2.4.14

Applicable law

The parties hereby agree on the application of the law pertaining to contracts for work and services in accordance with Article 651 BGB, with regard to the facility contract's focus on works 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

Unless otherwise agreed, the scope of the contracting party's services shall comprise the manufacture/delivery of a complete facility containing all the parts and elements necessary for faultless, permanently failure-free operation, this in compliance with all quality-related regulations and agreements, even if these are not listed in detail in the tender documentation. Furthermore, the contracting party shall be obliged to check all MAN specifications relating to the contractual execution of its services in a punctual, independent manner and to notify MAN of any concerns it may have in writing promptly, in order to ensure that a contractually appropriate solution can be found and the agreed dates and deadlines can be upheld as far as possible.

3.2

All facility elements and parts must be designed and arranged so that they can be maintained, inspected and replaced quickly and easily.



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3.3

The contracting party shall be obliged to provide MAN employees with training and instructions in the respective national language, in order to ensure that the flawless operation of the facility is guaranteed. The contracting party shall inform MAN in a punctual manner of what prior knowledge is required by MAN employees in this regard. MAN shall thereupon appoint individual employees to receive instruction and training. The contracting party shall be obliged to submit a list of all training and instruction measures it intends to use, in terms of structure and content, to MAN for approval prior to implementation in a punctual manner, and to coordinate their implementation with MAN.

3.4

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.

4 Involvement of MAN

4.1

The contracting party shall be obliged to carry out any "works acceptances", trial runs, etc. that fall within the scope of its service provision, and shall do so in accordance with any separately agreed schedule for this and, in all cases, in a punctual and independent manner. 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 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. Thereafter, the contracting party shall be obliged to incorporate justified suggestions by MAN without delay and to update the approved schedule on a daily basis.

5.2

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).



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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 0.2% 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 0.2% 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.

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 Technical documentation

7.1

All documentation placed at the disposal of the contracting party by MAN, e.g. samples, drawings, models, software programs, etc. shall remain the property of MAN. The contracting party shall not be permitted to use this documentation for purposes other than those contractually agreed, make copies of it or make it available to third parties.

Documentation of this type should be returned to MAN without special request if it is no longer required in order to complete the commission.

7.2

Documentation placed at the disposal of the contracting party by MAN must be checked by the contracting party for completeness and dimensional accuracy in a punctual manner prior to the start of production, and must be corrected or supplemented by the contracting party following consultation with MAN as necessary.

7.3

The contracting party shall only be permitted to use the production facilities manufactured by it in accordance with MAN's information or documentation, such as dies, jigs, matrices, models, samples, tools, forms, welding moulds, software programs, etc., for executing commissions from MAN. The contracting party shall not be permitted to use these production facilities for its own purposes, or to offer them or otherwise make them available to third parties.



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7.4

All technical documentation (drawings, plans, calculations, spare parts lists, software programs, etc.), in particular that required for assembly, monitoring, operation or maintenance purposes and for the manufacture or procurement of spare parts as well as for obtaining official permits must be submitted to MAN in the desired number and design in a punctual manner, and by the contractually specified deadlines at the latest. Section 11 of these terms and conditions shall apply accordingly.

8 Acceptance

8.1

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.

8.2

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.

8.3

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, test runs or efficiency statements of all types if it is responsible for these.

8.4

If the provision of a trial run and/or efficiency statement has been contractually agreed, the contracting party shall be obliged to execute this/these in an independent manner and at its own risk in consultation with MAN, using the agreed software programs. The contracting party shall be responsible in the event that MAN places operating and/or auxiliary staff at its disposal for this purpose.

The contracting party shall bear responsibility for damage caused to MAN's machinery/facilities during the trial run, unless the contracting party is able to prove that MAN's operating staff acted with gross negligence, in defiance of the operating guidelines issued and explained by the contracting party.

MAN shall be entitled to use the facility/machinery during the trial run/efficiency statement for production purposes, as far as realistically possible.

8.5

The acceptance procedure may not be replaced by prior use, commissioning or official acceptance, nor by the contracting party's notification of the completion.

8.6

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



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9 Claims for defects

9.1

In the event that no other limitation periods have been expressly agreed, the contracting party shall be liable 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.

9.2

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.

9.3

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.

10 Securities

10.1

The contracting party shall provide MAN with an unlimited guarantee from a German or European warrantor in the form of a security for the down payment/advance payment.

The following shall be recognised as such: domestic banks or savings banks, foreign banks with a long-term rating of at least "BBB-" issued by Fitch Ratings or Standard and Poor's, or "Baa3" issued by Moody's. The guarantee must be formulated in accordance with the sample text from the call for tenders. The right to make guarantee claims may not lapse prior to the secured claims that are asserted against the contracting party.

10.2

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 10% 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 10% or an alternatively agreed percentage of the net invoice total until the contractual security has been established.

11 Industrial property rights, expertise

11.1

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.



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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.

11.2

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.

11.3

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 11.1 and 11.2.

In the event that the owner of an industrial property right demands the facility's decommissioning, and if it proves impossible to convert the facility in a manner that does not violate the industrial property rights of third parties, at the contracting party's expense, the contracting party shall be obliged to remove the facility at its own expense, and to reimburse MAN for any remuneration paid plus interest calculated at the rate of eight percentage points above the base rate. MAN's additional rights as regards the offsetting of reimbursed payments shall remain unaffected.

11.4

Regardless of the regulations set out in Sections 11.1 to 11.3, the contracting party shall be 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.

11.5

Furthermore, the contracting party shall be obliged to inform MAN of all inventions arising in connection with the execution of the commission and involving it 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 shall ensure that the rights of the inventors as regards employees and/or independent individuals are applied and transferred to MAN. MAN shall thereafter be entitled to register the invention on a national and international basis in order to create an industrial property right, and shall bear the associated costs. Each party shall be obliged to remunerate its own employees/inventors independently in accordance with the legal regulations.

In the event that the contracting party wishes to use the inventions, industrial property rights, etc. for goods and services provided to third parties, the contracting parties shall agree the details of this usage, in particular an appropriate licence fee.

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



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The contracting party shall be obliged to refrain from submitting a plea for annulment or objection in conjunction with industrial property rights arising as a result of the services provided and registered by MAN, or to support third parties in their submission of similar pleas, irrespective of the regulations set out in Sections 11.1 to 11.5 above.

12 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.