

**1. Exclusivity**

- 1.1 These General Conditions of Purchase shall apply to all our purchases, unless we have expressly agreed otherwise in writing.
- 1.2 Supplier's general conditions of supply shall not apply to our purchases, unless we have expressly accepted them in writing. These General Conditions of Purchase shall even apply if we have accepted the delivery of the supplier without reservation knowing that the supplier's general conditions are in contradiction to our General Conditions of Purchase.
- 1.3 Separately agreed trade terms like FOB, CIF, DDP etc. shall be interpreted in accordance with the latest issue of Incoterms. In case of any inconsistency the latter shall prevail over these General Conditions of Purchase.

**2. Offers**

All offers are to be submitted without cost. Unless otherwise instructed in writing by us or by the supplier, offers shall be binding for a period of 90 days from the day we receive them. All offers shall be without cost for us, even if they have been submitted upon our request.

**3. Form of Orders**

- 3.1 Orders shall only be valid, if they are placed in writing through our official form, by telefax, mail or computer. Any oral agreement, amendment or change has to be confirmed by us in writing in order to be valid. The same shall apply to supplementary orders, sketches, drawings, comments, specifications, etc. shall form an integral part of our orders to the extent they are expressly mentioned as such therein and are dated and initialed by us.
- 3.2 The contract shall be deemed to have been entered into upon receipt of our order without objection in writing within 14 working days or upon beginning of its execution.
- 3.3 The supplier has an obligation to return and refund, in case he commits an error or a misinterpretation with respect to essential parts of the contract such as quantity, price or term. He is responsible to make himself familiar with all essential dates, circumstances and the intended purpose and for knowing the time limits of supply of third parties.

**4. Subcontracting**

- 4.1 Supplier shall be liable for the components procured by his subcontractors. He shall endeavour wherever feasible, to cooperate with subcontractors which maintain a quality assurance system and are able to provide an adequate declaration.
- 4.2 If the supplier intends to have the units or components, which are usually manufactured in his facility, made by a third party, he shall ask in advance for our prior written approval. The same applies in the case the supplier has its registered office in the EU or in the European Economic Area (EEA), but not his subcontractor, branch or subsidiary providing parts of the supply. Our approval shall be without prejudice to the supplier's exclusive responsibility for the entire order.
- 4.3 Any subcontractor has to undertake the same secrecy obligations as imposed upon the supplier.

**5. Prices**

- 5.1 The prices agreed shall be deemed to be firm fixed prices and remain unchanged during the whole execution of the order. Any value added tax (VAT) shall be identified separately.
- 5.2 We reserve the right to return the goods as long as the price is not fixed.
- 5.3 Furthermore we reserve the right to extend any agreed payment period appropriately respectively to offset with possible penalties if the requested certificates of material, manuals or other quality documents are delayed.

**6. Furnished Items**

The property of materials supplied by us for the execution of a supplier order shall remain ours

even after machining or otherwise treating by the supplier. Such materials shall be marked accordingly and shall be stored separately until machined or otherwise treated. Material waste shall be returned to us on demand. The supplier has to notify us immediately of any faulty or insufficient material. Failing such immediate notification shall be borne by the supplier.

**7. Delivery Period, Consequences of Delays**

- 7.1 The delivery period shall be deemed to have been observed:
  - a) for ex-works deliveries, provided readiness for shipment of the agreed consignment has been notified to us before expiry of such period.
  - b) in all other cases, provided the agreed consignment has arrived at destination before expiry of such period.Should a supplier foresee that part or all of a consignment cannot be made within the delivery period, he shall notify us immediately, by providing the reasons and the expected duration of the delay.
- 7.2 In cases of delay to the agreed delivery time, we reserve the right to enforce our legal remedies, irrespective of whether supplier has notified the delay and of whether liquidated damages have been agreed.
- 7.3 Supplier shall not be entitled to use the non-arrival of essential documents, components or other objects to be provided by us as an excuse, unless the same has been demanded in good time or, where supply dates have been agreed, a reminder has been sent by the supplier.
- 7.4 If delivery is executed more than two weeks after the agreed date, supplier shall pay a penalty in addition to the damages caused by the delay of delivery. This penalty is 0.5 percent per week of the agreed purchase price of the whole delivery. The penalty of delay shall not exceed 5% of the entire purchase price. In case the whole delivery is delayed more than 3 months, we are in any case entitled to terminate the contract by unilateral written notice, without prejudices to any other right.
- 7.5 The supplier is obliged to fulfil his contractual obligations even if he paid a penalty. Our right to claim for additional damages is expressly reserved.

**8. Packing, Documents, Shipment, Insurance, Assumption of Risk**

- 8.1 Failing shipment instructions from us, consignments shall be shipped FCA. The supplier shall be liable for the workmanlike and appropriate packaging.
- 8.2 Packaging shall be executed in order to protect goods effectively from damage and corrosion during shipment and during any subsequent storage. Suppliers shall be liable for damage caused by improper packing. Our instructions have to be observed if special packaging has been agreed (seaworthy or long-term packaging).
- 8.3 Suppliers shall bear all costs and consequences arising from failure to follow our shipment, customs clearance or similar instructions.
- 8.4 Transportation insurance will be borne by us.
- 8.5 Where special care is needed during unpacking, we shall be notified appropriately in due time for instance by an indication on the packaging.
- 8.6 We reserve the right to return packing material offsetting the amount charged to us. The cost of return shipment shall be borne by us.

**9. Delivery**

- 9.1 Before shipment the goods have to be checked if they comply with quality and quantity of our order. The inspection has to be confirmed on the delivery note (e.g. with a stamp). Only material, which has passed successfully the inspections shall be shipped.
- 9.2 Part deliveries and deliveries prior to the delivery date shall only be allowed with our prior written approval.

- 9.3 Each consignment has to include a detailed delivery note (dispatch note) including our references (such as purchasing order number, etc.). For consignments to different delivery addresses separate delivery notes are required. The invoice, in duplicate, has to be sent to us by separate mail. Any additional costs due to non-compliance shall be borne by the supplier.
- 9.4 All correspondence (letters, delivery notes, invoices etc.) must show our purchasing order number, order date, article designations with indication of gross and net weight. The consignment note must indicate our delivery address according to the order.
- 9.5 The supplier guarantees the availability of original spare parts for a period of 10 years after the delivery of the corresponding product.

**10. Transfer of Title and Risk**

Unless otherwise agreed in writing, risk and title shall pass to us upon transfer of property of the goods. The transfer of property shall take place upon delivery, i.e. upon arrival at the place of destination after the successful conclusion of the incoming inspection. Should the required shipment documents for a consignment not be supplied in accordance with instructions, the consignment shall be stored at supplier's charge and risk until arrival of the full documentation.

**11. Cancellation by the Customer of the Purchaser**

- 11.1 If our customer cancels his order, for which the supplier's delivery was intended, for reasons not attributable to us, we shall be entitled to cancel the contract.
- 11.2 In case of cancellation we shall reimburse the Supplier's proven expenses, which have been necessarily incurred for the appropriate execution of the placed order until the cancellation. These shall not include any profit, royalties, development costs for serial production and other similar cost of the supplier.

**12. Production Control**

We or our representatives shall be entitled to carry out inspections and permanent examinations of the production, respectively to reject faulty parts during manufacturing. Inspections or examinations shall not exempt the supplier of his exclusive responsibility for the whole consignment / performance of the order. During the execution of the order the supplier shall allow free access at any time to the manufacturing site (as well as to those of his subcontractors). Furthermore we reserve the right to audit the supplier as well as the supplier's subcontractors.

**13. Acceptance, Guarantee**

- 13.1 We reserve the right to inspect the goods prior to dispatch at the supplier's site.
- 13.2 Unless otherwise agreed, acceptance shall take place after delivery to the place of destination.
- 13.3 Supplier guarantees that the items supplied are free of any defects which might affect their value or their suitability for the intended use, that they fulfil the guaranteed characteristics and that they comply to the specifications and the applicable laws and regulation (including those of industrial associations). Should it emerge during the guarantee period that the consignment/ performance or parts thereof fail without our fault to conform to the guarantee provided, the supplier shall at our discretion remedy the defects or cause them to be remedied at his own expense or shall supply free of charge a non-defective substitute. The supplier shall be liable for all consequences and damages arising out of any failure to comply with the guarantee clause. A right of recourse is herewith expressly reserved.
- 13.4 Supplier hereby guarantees that he and his subcontractors in executing the order have applied the principles of quality assurance according to the relevant standards ISO 9001 and

if applicable the corresponding laws and regulation of the European Union.

13.5 If the supplier fails to remedy defects in due time or in any other urgent case, we shall have the right at supplier's (charge) and risk to remedy the defects by ourselves or cause them to be remedied.

13.6 We shall not be obliged to inspect the consignment immediately. Defects will be notified after detection. Supplier hereby waives the right of late notice of defect. If certificates, test reports or similar documents are part of the agreed scope of delivery, the data contained therein shall be deemed as guaranteed, even if such certificates etc. originate from subcontractors of the suppliers.

13.7 Items found to be defective in the course of processing, use or machining by us or our clients shall immediately be replaced free of charge within 5 years after delivery.

13.8 Unless otherwise agreed between the parties in writing the guarantee period shall extend 1 year from the commissioning (evidence by a protocol), however, at least 2 years from the date of dispatch. The guarantee period shall be extended by the time during which a plant is out of service for repair.

13.9 If we can prove after the expiry of the guarantee period, that a defect is due to a manufacturing defect, the supplier shall remedy this defect or supply a non-defective substitution free of charge. In this context defects resulting from deviations of our design drawings and documents are considered to be manufacturing defects.

13.10 In the event of disputes on quality parameters, expert opinion will be obtained. If the parties cannot agree on an expert, the opinion of the Swiss Federal Laboratories for Material Testing & Research (EMPA) or TÜV will be requested. The parties undertake to accept the result of the agreed expert or the EMPA or TÜV. The cost of the expert opinion shall be borne by the party cause the default.

13.11 Where substitute delivery is made, the items originally delivered shall be left to us free of charge until an unobjectionable substitute supplies are made available to us ready for operation. The same shall apply in case of entire or partial cancellation of the contract due to faulty supply.

13.12 Substitution and repairs shall be guaranteed in the same manner as applied to the original supplies themselves. The guarantee period for repaired or replaced parts shall restart with the original guarantee period from the date at which they are taken into service.

13.13 Without prejudice to terms and conditions defined herein we are in any event entitled to any and all other claims provided by law.

#### **14. Product Liability, Hold Harmless and Insurance Coverage**

14.1 Provided that a third party claimed is caused by the supplied product of the supplier or is otherwise caused by the responsibility of the supplier, the supplier shall on first notice hold us or any other MAN group member hold harmless of any such claim.

14.2 Within this responsibility the supplier is also obliged to reimburse all our expenses in relation to a recall of product.

14.3 In order to cover any and all claims determined under this clause the supplier is obliged to conclude a comprehensive product and public liability insurance with coverage of at least CHF 5 Million per occurrence. Such insurance coverage shall be fully granted at least for 5 years after the conclusion of the corresponding order.

#### **15. Intellectual Property Rights**

15.1 The intellectual property rights of all documents, like drawings, sketches, calculations, models and foundry patterns etc. which are handed over to the supplier before or after the conclusion of the contract, remain with us. The supplier will use these documents exclu-

sively for the purpose of fulfilling our order. Without our prior written approval, he shall not be entitled to manufacture products based on these documents for third parties or to copy such documents or to make them available in whatever way to third parties not directly assigned with the execution of the order or parts thereof.

15.2 All documents together with all copies or reproductions shall be handed over to us on demand. If the supplies ordered are not delivered, the supplier shall return immediately all documents to us.

15.3 Publications for advertising purposes, with our reference, shall only take place after our prior written approval.

#### **16. Infringement of Third Party Rights**

The supplier guarantees that no intellectual property rights or other rights of third parties are infringed by using or disposing of the supply/performance. The supplier shall indemnify us against any and all claims and in any event he shall do everything to render the use of the supply/performance possible.

#### **17. Work Carried Out in Our Facilities**

Where work is carried out in our own facilities or on construction or erection sites, these General Conditions of Purchase shall be supplemented by our safety instructions and rules for external companies.

#### **18. Drawings, Test Certificates, Operating Instructions**

18.1 Approval by us of drawings shall not relieve the supplier of their own responsibility for their supplies. Final drawings, test certificates and the maintenance and operating instructions and spare parts lists required for the proper maintenance of the delivery shall be provided to us in the quantities and languages requested not later than after the arrival of the delivery.

18.2 Drawings, tools, models, etc. made available by us to the supplier shall remain our property and shall be returned to us after execution of the order. They shall be properly stored and insured against loss or damage of any kind.

#### **19. Terms of payment**

19.1 Unless otherwise agreed, payment shall be executed within 60 days of receipt of the goods including the agreed documents and the invoice, however, at the earliest 60 days after the agreed date of delivery respectively after the agreed completion of the installation.

19.2 We reserve the right to offset counterclaims by ourselves or other companies of the MAN Group. Suppliers shall not be entitled to assign claims against us except with our approval.

19.3 We do not accept Cash on Delivery (COD), deliveries or bills of exchange.

19.4 In case of advance payments, suppliers shall provide an irrevocable bank guarantee of a first class bank (AAA) in the amount of the advance payments.

#### **20. Order of precedence of contract documents**

In the event of contradictions among several contract documents the following order of precedence shall prevail:

- a) our order
- b) our technical specifications such as installation and/or security regulations
- c) General Conditions of Purchase

The terms and conditions of the General Conditions of Purchase have been determined in compliance to the applicable law at our domicile. If any of these terms and conditions is invalid the non-affected conditions shall remain in force and the parties commit themselves to replace the invalid one through a clause which is as similar as possible to the invalid one.

#### **21. Place of Delivery, Applicable Law, Jurisdiction**

21.1 Place of fulfilment for deliveries shall be the agreed destination. Place of fulfilment for payments shall be our domicile.

21.2 Swiss Law shall govern the order placed by us. The United Nation Convention on the International Sale of Goods (CISG) shall not be applicable.

21.3 Court of jurisdiction for the supplier and us shall be at our registered office in Zurich. However we reserve the right to pursue our claims at the supplier's registered office.

#### **22. Entrepreneurship and Sustainability**

Entrepreneurship and responsibility are part of the MAN leadership culture. Hence sustainability and entrepreneurship are also requested from our suppliers. The MAN basis for this leadership culture is the Corporate Responsibility Strategy, the Code of Conduct, the standards of the International Labour Organisation, the ten principles of the UN Global Compact as well as the industrial standards of HSE.

According to the Swiss Law of Data Protection we herewith inform the supplier that the supplier's data are stored and will be used confidentially for our purposes.  
Fre 26.11.10