



#### **General Terms, Order Placement**

1. These general terms and conditions of purchase shall govern all contracts concluded by the purchaser for the performance of works and or services.
2. The purchaser shall be provided with quotations free of charge. The supplier shall expressly indicate to the purchaser in the quotation as to any deviation from the documentation upon which the quotation is based.
3. Orders, agreements and changes shall only be binding where placed and/or confirmed by the purchaser in writing. Correspondence shall be exchanged with the respective members of the purchase department. Any agreement with other departments which vary from the agreed contractual terms are subject to the requisite purchase department having confirmed the same in writing.
4. Any general terms and conditions of the supplier shall not apply, including where purchaser fails to expressly revoke the same in any individual case.
5. Where the supplier fails to confirm the order within two weeks of receipt thereof by means of an order acknowledgement, the purchaser shall be entitled to revoke the order placed and the supplier shall not be entitled to any claim in damages resulting there from.
6. Contracts of supply are concluded where the supplier confirms orders placed by the purchaser. Any call-off delivery or change or addition to supplies must be in writing. Where remote data transmission has been agreed by the purchaser and supplier the same shall satisfy the written form requirement.
7. These terms and conditions of purchase shall govern all future legal relations between the purchaser and the supplier provided that such relations are bilateral commercial transactions including where in any individual case the parties fail to make any express reference hereto.
8. The supplier shall treat the conclusion of any contract as confidential and shall not name the purchaser as a reference to a third party without having obtained the purchaser's prior written consent thereto.

#### **Scope of Performance, Execution, Changes**

1. The scope of works to be performed is set out in each individual order. Documents, reports, ideas, drafts, models, samples and all other results gained during performance are hereby deemed an integral part of the works to be performed hereunder.
2. The supplier shall perform his works with the utmost care and attention and in accordance with the latest state of state of the art, the safety regulations required by local authorities and trade associations in particular in accordance with the DIN – or ISO certification requirements insofar as works to be performed by him or any expertise gained by the supplier during or prior to performance are subject to the same. The supplier guarantees compliance with statutory provisions, the agreed technical specification and any other guidelines.
3. The supplier shall compile drawings, data and other documentation in accordance with the purchaser's requirements, provisions and guidelines or those of the purchaser's customer. In the event of any uncertainty the supplier is obliged to obtain all information required for performance of the works prior to the commencement date. This shall apply in particular to the electronic information processing system and programs to be used.
4. The supplier shall upon the request of the purchaser give all relevant particulars as to the composition of the works insofar as the latter are required to fulfill conditions imposed by local authorities or domestic or foreign statutory requirements.
5. The purchaser shall be entitled to request changes to the construction, execution, quantity and delivery date where reasonable and provided that the purchaser has not fully performed his obligations. Any consequence thereof (e.g. price increase or reduction, change in delivery date) shall be fairly and mutually resolved by the parties.
6. The supplier undertakes to inform the purchaser as to any doubts he may have as to the manner in which the works are to be performed in writing without delay and to propose changes which he considers necessary in order to comply with the agreed specification or legal requirements.
7. The supplier shall be solely responsible for the performance of his works which are performed at his risk.

#### **Right of Inspection**

The supplier undertakes to grant access to the purchaser to his business premises at any time during normal working hours upon advance notice and to provide him with an insight into any documentation which is relevant to the order. All documentation which is relevant to any order and which is not surrendered to the purchaser shall be retained for a period of 5 years after acceptance. The supplier shall ensure that the purchaser shall be entitled to the same rights of inspection vis-à-vis the supplier's sub-suppliers.

#### **Performance Deadlines, Delay and Exclusion of Performance Obligation**

1. Any agreed dates and deadlines are binding. The date upon which the works completed in conformity with the contract are surrendered to the purchaser shall be definitive in determining compliance with the delivery date or deadline. Where carriage free delivery has been not been agreed the supplier shall take into account normal transportation or forwarding times when making the works available.
2. Where the supplier fails to comply with the delivery date the purchaser shall have the option without setting a grace period of claiming a replacement delivery, damages in lieu of performance due to non-performance or poor performance or to rescind the contract. Where the supplier is in default of delivery a contractual penalty shall be payable at the rate of 0.5% of the order value per commenced week of default but not more than 5% of the agreed remuneration. The supplier retains the right to make further claims additional to those set out aforesaid. The delay penalty shall be set off against any actual damages incurred and claimed by the supplier. The purchaser shall not forfeit his right to claim the contractual penalty where he unconditionally accepts the works late.
3. As soon as the supplier becomes aware that agreed interim- or end deadlines cannot be kept he shall be obliged to inform the purchaser without delay. The purchaser's statutory rights shall not be affected by such notification.

#### **Force Majeure**

1. Acts of god, strikes, unrest, measures imposed by authorities and other unforeseeable, inevitable and severe events shall cause performance by both parties to be suspended for the duration of the disturbance. The parties are under an obligation to provide as far as is reasonable requisite information without delay and to adapt their performance obligations to the changed circumstances in good faith.
2. Where due to a force majeure event performance is suspended for a period of more than two weeks the purchaser shall be entitled to terminate the contract with immediate effect. In these circumstances the supplier shall be entitled to demand compensation of the expenditure actually incurred based on his reliance upon the existence of the contract up until suspension of performance.

#### **Remuneration**

1. The supplier shall receive the agreed remuneration for the agreed performance of works which shall include all his expenditure, e.g. material cost, use of equipment, travel expenses, transportation, insurance, packing, carriage free delivery and shall present a detailed invoice for the same. The works shall be invoiced and remunerated after acceptance of the completed works.
2. Where a payment plan has been agreed payments shall be remitted upon receipt of an invoice issued in accordance with the dates and amounts agreed and set out in the payment plan. Prior to acceptance of the completed works by the purchaser or the end customer all payments remitted are payments on account and shall not constitute an acceptance of the completion of any works. The invoice for the final payment shall in any event not be issued prior to acceptance of the completed works. The purchaser shall be entitled to retain the final installment but not more than 20% of the order value until the warranty period has expired without rendering himself liable in damages to supplier. Insignificant defects shall be left out of consideration.
3. Where the parties are unable to agree a total sum of remuneration due, in exceptional circumstances the parties shall agree remuneration on the basis of time and expenditure incurred. The aforesaid is subject to:
  - a) The parties having agreed an hourly rate in the individual contract,
  - b) the supplier having submitted to the purchaser evidence of the number of hours worked each week and the purchaser having countersigned the same and
  - c) this countersigned list of hours worked being enclosed with the invoice.The hourly rates agreed shall include all necessary expenditure, including travel expenses, disbursements and overtime surcharges.

**MAN Diesel & Turbo SE**  
**General Terms and Conditions of Purchase**  
**for the Performance of Works/Services**  
**(Version 07/2016)**



4. Invoices shall be issued threefold setting out the order number, order reference and listing all items separately. Failure to adhere to the aforesaid shall prevent commencement of the payment term.
5. Payment shall either be remitted within 14 days of receipt of invoice less a 3% discount or within 30 days of receipt of invoice net. The purchaser shall determine the method of payment. The payment term shall commence upon the occurrence of the latest of the following:
  - a) Supply or acceptance of performance.
  - b) Receipt of invoice.
  - c) The delivery date specified in the order.
6. Where the purchaser remits payment prior to the transfer of risk, the transfer of title to works shall be deemed to be agreed except where the purchaser has requested and received a surety in the sum of the payment requested and remitted.
7. The value added tax shall be itemized separately on the invoice.
8. The supplier shall not be entitled to assign his claims to third parties nor to allow third parties to collect the same. Where notwithstanding the aforesaid the supplier assigns his claims against the purchaser to a third party without the purchaser's consent such assignment shall take effect. The purchaser shall retain the right to remit payment to the supplier or the third party in discharge of his payment obligation.
9. Payments made by the purchaser shall be deemed remitted as soon as the purchaser has instructed remittance.
10. The purchaser shall be entitled to set off sums payable against monies owed by the supplier to purchaser affiliate companies. "Affiliate company" means any company that, directly or indirectly, controls, is controlled by or is under common control of the purchaser, where "control" means the possession, directly or indirectly, of an ownership interest exceeding 50% of the voting securities.
11. Where the works supplied are faulty the purchaser shall be entitled to withhold a proportionate sum of payment until proper performance has been rendered by the supplier.

**Provision of Materials, Tooling**

1. Any materials provided by the purchaser shall remain the purchaser's property and shall be marked, administered and stored separately by the supplier free of charge. Such materials shall only be used for the order placed by the purchaser. Where such materials are lost or destroyed or the value of such materials diminishes the supplier shall replace the same and shall take out insurance coverage for this purpose at his own cost. The same shall apply in relation to the surrender of order related materials which have been invoiced by the purchaser.
2. Where the materials are processed or re-formed the purchaser shall become owner of the new or re-formed good upon its creation. The supplier shall safeguard the new or re-formed good for the purchaser with the care of a reasonable businessman. Any retention of title of any kind regarding the product of the works performed and exercised by the supplier is hereby excluded.
3. Title to ancillary models, tools, models, forms etc (hereinafter referred to as tools) which are required for performance of the works shall pass to the purchaser upon their creation. Tools are thereby to be regarded in the same way as orders placed by the purchaser. The purchaser shall be entitled at its discretion to demand the surrender of the tools or to have the tools scrapped by the supplier on behalf of the purchaser free of charge. The scrapping of tools shall be subject to the written consent of the purchaser.
4. The supplier shall mark all confidential documents received from the purchaser or of which he becomes aware during the contractual relations and store the same separately. At the request of the purchaser the supplier shall surrender all confidential documents and objects without delay. The exercise of any right of retention is hereby excluded.

**Data Exchange, Process and Access to Electronic Data**

The purchaser shall remain the exclusive owner of any data conveyed to the supplier. The supplier shall be granted a non-exclusive, limited, non-transferable license to use the same for the purpose of performing the works required. Where during the performance of the works data provided by the purchaser is changed, added to or processed in any other way the purchaser shall have title to the changed data upon its creation and to any industrial property rights contained therein. The supplier shall safeguard the data provided by the purchaser including

changed or processed data from any access which has not been expressly authorized by the purchaser and shall evidence appropriate measures of protection where so requested by the purchaser. Where the supplier is given access to the purchaser's computer network system during performance the supplier shall only use his own user name or such user name as has been allocated to the supplier by the purchaser in writing and shall process and transfer data in accordance with the purchaser's instructions.

**Sub-Performance**

Any sub-contracting of works to third parties is only permitted where the purchaser has previously consented thereto in writing. Where the supplier is culpably in breach of the aforesaid the purchaser shall be entitled to terminate the contract with immediate effect. In such circumstances the supplier shall not be entitled to any compensation of any kind.

**Acceptance**

Where the scope of works to be performed by the supplier includes the installation or assembly of the works formal acceptance thereof shall be required which shall not occur until testing has been successfully completed. In any event the works shall be deemed accepted 4 weeks after they have been put into operation provided that during this period no defect preventing acceptance is notified by the purchaser. Where the works performed by the supplier are to be integrated into the works performed by the purchaser for the purchaser's end customer acceptance thereof shall occur upon acceptance of the purchaser's works by the purchaser's end customer irrespective of whether any express reference thereto has been made by the parties. Remittance of payment shall not be construed under any circumstances as acceptance of the works.

Risk of loss and destruction shall pass upon acceptance.

**Non Disclosure**

1. The supplier undertakes to treat all non obvious commercial and technical details of which he becomes aware during contractual relations as trade secrets and to safeguard the same against unauthorized access, loss or use. Any drawings, models, stencils, samples and other similar objects provided by the purchaser or manufactured at the purchaser's cost shall remain the property of the purchaser and any access thereto or surrender thereof shall not be permitted to unauthorized third parties unless the purchaser has consented thereto in writing. Any reproduction of such objects is only permitted to the extent required for performance and permitted under copyright laws. Any documents surrendered to the supplier are upon completion of the works to be returned to the purchaser without demand and without disclosure or are to be safely destroyed in consultation with purchaser. The supplier shall not retain or store any copies, duplicates etc unless he is under a statutory obligation to do so. Notwithstanding any other claim to which he may be entitled the purchaser shall be entitled to demand the surrender of the aforesaid as soon as the supplier is in breach of any of the obligations set out above.
2. Employees and sub-suppliers of the supplier shall be subject to the non-disclosure obligations set out above.
3. Except where otherwise agreed the non-disclosure obligations set out aforesaid shall remain in force for a period of 5 years after performance.

**Warranty**

1. Where the parties fail to agree a limitation period in which warranty claims are to be made the supplier warrants that the works performed by him hereunder shall be free of any defect for a period of 36 months from the date of acceptance of the completed works either by the purchaser or the purchaser's end customer but in any event for a period of not more than 48 months after delivery of the completed works to the purchaser. This warranty period shall apply irrespective of the length of period of operation. The purchaser shall notify the supplier of any defect immediately as soon as such defect has been determined during normal business operation. The supplier thereby waives to this extent any objection that notification of a defect has been made late. Notification shall suspend the limitation period for warranty claims until the defect has been remedied in full. Defects in title, in construction works and other works concerning the performance of planning and supervisory services on a construction site shall become time-barred in accordance with the statutory provisions.



2. The purchaser shall have the option to make a claim under the statutory warranty provisions as well as demand that the defect be remedied or a replacement be supplied. Where the supplier remedies the defect or supplies a replacement the supplier shall be under an obligation to remedy the defects at his cost, without delay and free to the works destination or to render performance anew. He shall bear all costs incurred thereby including any necessary travel expenses.
3. In urgent cases, e.g. where there is a risk of delay or in cases in which the purchaser's own performance obligations require immediate improvement the purchaser shall be entitled to carry out such improvement itself or through a third party for the account of the supplier without having set the supplier a deadline to carry out the same. The aforesaid shall also apply where the supplier delivers late.
4. In all other circumstances the statutory provisions shall apply additionally.

#### **Liability**

1. Where a claim is brought against the purchaser based on a mandatory strict liability claim of a third party the supplier shall be liable to the purchaser to the extent that he would be directly liable to the third party. In cases of contributory negligence purchaser and the supplier shall settle their respective compensation entitlement internally in accordance with their respective fault contribution in the occurred case.
2. In all other circumstances the supplier shall be liable to the extent provided for by law.

#### **Industrial Property Rights**

1. The supplier shall be liable for any claim based on the breach of an intellectual property right arising through the proper contractual use of the works and services supplied by the supplier. The supplier shall indemnify the purchaser and his customers against any claim based on the violation of any such industrial property rights. The aforesaid shall not apply insofar as the supplier rendered performance in accordance with drawings, models and data supplied by the purchaser and is unaware or could not have been aware that the performance of his works would violate industrial property rights.
2. In the event of a violation the purchaser shall be entitled to obtain at the expense of the supplier the requisite license to supply, put into operation, use, resell etc the works supplied by the supplier. Any additional claim of the purchaser in damages shall not be affected thereby.

#### **Rights to the Works or Services**

1. The purchaser together with any affiliated companies within the meaning of any company that, directly or indirectly, controls, is controlled by or is under common control of the purchaser, where "control" means the possession, directly or indirectly, of an ownership interest exceeding 50% of the voting securities shall receive for the whole works supplied by the supplier and for the significant parts of it an exclusive, unlimited and irrevocable right to use which shall be transferable and covered by the total sum of remuneration due.
2. In relation to the industrial property rights set out in the specification of works the following shall apply:
3. The purchaser shall have an optional right to obtain industrial property right protection in relation to all inventions which were founded by the supplier or supplier's employees alone or in conjunction with employees of the purchaser during the course of performance. The supplier shall safeguard the purchaser's right to exercise the option by offering to the purchaser in writing to transfer free of charge all inventions registered or of which he became aware during performance not later than two months after notification. Where the purchaser has no interest in obtaining sole ownership of the property rights in its own name the parties shall either agree to jointly register the invention or the purchaser shall declare in writing his consent for the supplier to register the invention in his sole name.
4. In the event that an industrial property right is registered in the sole name of the supplier or where the supplier utilizes during performance industrial property rights which accrued prior to and independent of the works performed the supplier hereby grants to the purchaser and its affiliated companies within the meaning of any company that, directly or indirectly, controls, is controlled by or is under common control of the purchaser, where "control" means the possession,

directly or indirectly, of an ownership interest exceeding 50% of the voting securities a non-exclusive, irrevocable, transferable license unlimited in terms of duration, territory and content to use the works performed and the industrial property rights relating thereto free of charge and to reproduce, disseminate, distribute, alter and process the same.

5. The supplier shall be solely responsible for remunerating his employees in accordance with the laws on remuneration of employees for inventions.
6. Where the supplier uses sub-suppliers the supplier shall ensure that the same rights shall be at the disposal of the purchaser and its affiliated companies within the meaning as already defined in 2.2. of this clause.

#### **Termination, Expiration**

1. If the purchaser terminates an individual order for good cause, any Products/Services completed by supplier until receipt of such notice of termination shall be delivered and/or performed to purchaser and will be only reimbursed according to the individual order to the extent completed and delivered and/or performed. Any Products/Services not completed by supplier until receipt of such termination notice can be taken over by the purchaser against reimbursement of supplier's direct and proven cost for such Products/Services, but no more than the part of the price as per the individual order representing such non-completed Products/Services.
2. Where the supplier suspends payment or becomes the subject of insolvency proceedings or of an out-of-court settlement the purchaser shall be entitled to terminate the contract with immediate effect in which event the provisions of sub-paragraph 1 aforesaid shall apply.

#### **Supplier's Corporate Responsibility**

1. The supplier shall observe and comply with the principles stipulated in the MAN Code of Conduct for Suppliers & Business Partners (handed out to supplier and/or can be downloaded from the internet under the following link: [http://www.man.eu/man/media/content\\_medien/doc/global\\_corporate\\_website\\_1/unternehmen\\_1/MAN\\_Code\\_of\\_Conduct\\_Suppliers\\_and\\_Business\\_Partners\\_EN.pdf](http://www.man.eu/man/media/content_medien/doc/global_corporate_website_1/unternehmen_1/MAN_Code_of_Conduct_Suppliers_and_Business_Partners_EN.pdf)).
2. If the supplier engages third parties to fulfill its duties, it shall ensure that any third party complies with the MAN Code of Conduct for Suppliers & Business Partners. Any such engagement of any third party is in all events subject to the express prior written approval of purchaser, cfr. Section "Sub-Performance" above.
3. If the supplier does not comply with the principles stipulated in the MAN Code of Conduct for Suppliers & Business Partners, purchaser has the right to terminate the contract for good cause with immediate effect.

#### **Miscellaneous**

1. Place of fulfillment for services or supplies by the supplier shall be the place of use; for payments by the purchaser, the purchaser's headquarters.
2. In the event that individual contractual provisions are ineffective, then the remaining provisions shall remain in effect. The contractual parties are obligated to replace the ineffective provision with one that approximates the intention of its predecessor to the extent possible.
3. The Contract and these terms and conditions shall be in all aspects construed in accordance with and governed by the laws of Switzerland, however, excluding the rules of conflicts of law and excluding the Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Goods.
4. If a dispute cannot be settled by the Parties themselves, the dispute shall be finally decided by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such Rules. The arbitration proceedings shall take place in Geneva, Switzerland in English language.



**REACH**

1. The REACH Regulation (Regulation (EC) No. 1907/2006) concerning the Registration, Evaluation, Authorization and Restriction of Chemicals stipulates an obligation to register, notify and inform and imposes substance bans and restrictions. Contractor is obliged to know the currently valid version of this Regulation, and when discharging its obligations under the contract to fully and in due time comply with it. In particular Purchaser refers to the obligation to inform about SVHC substances in products (Art. 33, Candidate List and Annex XIV REACH) and the restrictions of use (Art. 55 – 66, Annex XIV and XVII REACH), the relevant lists being constantly expanded. If due to the REACH Regulation and its requirements changes to MDT products occur, Contractor shall immediately notify MDT accordingly so that any substance substitutions which may be required can be prepared in due time. All the relevant information please send to the mailbox: REACH@mandieselturbo.com. For communicating please use the „REACH: Standard communication along the supply chain“ form. The relevant form is available at: [dieselturbo.man.eu/documentation/supplier-documents](http://dieselturbo.man.eu/documentation/supplier-documents).