



- 1 INTERPRETATION**
- 1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:
- "Buyer"** means the person, firm or company that has requested any Work identified in the Order;
- "Conditions"** means the General PrimeServ Terms and Conditions set out herein;
- "Contract"** means any contract for Work between the Buyer and MAN ES;
- "Goods"** means goods supplied by MAN ES which refer to MAN ES's product range of diesel engines and turbochargers for such engines (as defined in MAN ES's tender or order acknowledgement);
- "IPRs"** means any intellectual property rights of any nature including without limitation any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;
- "MAN ES"** means the company within MAN Energy Solutions group of companies which supply the Goods and/or Services under the Contract, which is MAN Energy Solutions SE or any of its branches or affiliates (as the case may be);
- "Order"** means an order placed by the Buyer with MAN ES for Work;
- "Services"** means services supplied by MAN ES (as defined in MAN ES's tender or order acknowledgement);
- "Site"** shall mean the place where the Services are to be performed by MAN ES together with so much of the area surrounding the said place as MAN ES shall actually use in connection therewith
- "Specialist Personnel" mean the specialists chosen by MAN ES to perform the Services;** **"Work"** means Goods and/or Services.
- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 2 FORMATION**
- 2.1 These General Terms and Conditions apply to the Contract and the Goods and Services to be delivered under this Contract to the exclusion of any other terms and conditions of the Buyer. Variations to the terms of any Contract will only be effective if agreed in writing. If any such agreed variation increases the time or cost to MAN ES of performing the Contract then the Contract price and/or programme will be adjusted accordingly.
- 2.2 Orders from Buyer are only binding on MAN ES after a written order acknowledgment has been issued and only on the conditions stated in the order acknowledgment.
- 2.3 All information on weight, dimensions, capacity, price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only binding to the extent expressly stated in the order acknowledgment or in other documents forming part of the Contract expressly referring to such information.
- 3 DELIVERY AND NON-DELIVERY AND DELAY**
- 3.1 Unless otherwise expressly agreed in writing by MAN ES
- delivery times accepted by MAN ES are given in good faith but are an estimate only; and
 - delivery of the Goods is made „Ex Works“ in accordance with Incoterms 2010, but the delivery price is exclusive of packing, which will be charged extra.
- 3.2 Performance of the Services shall be at the Site specified in MAN ES's tender or order acknowledgement.
- 3.3 MAN ES may deliver Goods in instalments and perform Services in sections in any sequence. Default by MAN ES, howsoever caused, in respect of one or more instalments and/or sections shall not entitle the Buyer to terminate the relevant Contract as a whole.
- 3.4 Where:
- (a) the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order; or
 - (b) MAN ES agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer; or
 - (c) the Buyer fails to provide any instructions consents or authorisations required to enable the Goods to be delivered on the due date;
- the risk in the Goods shall pass immediately to the Buyer, delivery of the Goods shall be deemed to have taken place and MAN ES may store or arrange for storage of such Goods and charge the Buyer for all related costs and expenses (including storage and insurance) and may sell such Goods after expiry of 28 days following such failure or refusal and deduct any monies payable to MAN ES by the Buyer from the sale proceeds and charge the Buyer for any shortfall below the Contract price.
- 3.5 Upon delivery to the Buyer, all Goods should be examined. MAN ES shall not be liable for any shortages in, damage to or non-delivery of Goods unless the same is notified by the Buyer to MAN ES (together with all specific details) in writing within 10 days of the actual or anticipated date of delivery (as relevant). Subject to such notice being provided MAN ES shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of MAN ES, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods and this shall be the Buyer's only remedy and in lieu of all other rights and remedies which might otherwise be available to the Buyer. Shortages in, or non-delivery of some or part of the Goods shall not affect the Contract in respect of the other or other parts of the Goods.
- 3.6 If the contractual delivery time for the Work or part of the Work is delayed and this delay was caused by negligence or intention of MAN ES and if the Buyer has suffered a loss caused by such delay, the Buyer shall be entitled to liquidated damages for delay. Such liquidated damages for delay shall amount to 0.5% of the Contract price of the delayed part of the Work concerned per each full week of delay considering a grace period of 2 (two) weeks. The liquidated damages for delay will be limited to a maximum of 5% (five per cent) of the Contract price of the delayed part of the Work.
- 3.7 Liquidated damages shall be Buyer's sole and exclusive measure of damages and remedy against MAN ES with respect to the failure to achieve the contractual delivery time for the Work.
- 4 TITLE**
- Unless MAN ES has been paid in full in advance, the Work will be considered as having been made with MAN ES retaining the ownership until full payment has been effected by the Buyer under all contracts between MAN ES and the Buyer. If the Buyer does not pay when due, MAN ES is entitled to take back the Goods without a court judgment in accordance with the applicable law.
- 5 PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS**
- 5.1 Unless otherwise agreed, quotations and tenders lapse after 30 days from their date.
- 5.2 Unless fixed prices have been agreed in writing by MAN ES, all sales are made at the prices valid at the date of MAN ES's tender or the date of MAN ES's order acknowledgement (as the case may be).
- 5.3 MAN ES shall neither be entitled nor obliged to implement changes in the scope of supply, before the Parties have reached an agreement regarding the corresponding adjustment of the Contract price and the delivery time.
- 5.4 Unless otherwise agreed in writing by MAN ES prices set out in any of MAN ES's price lists, tenders or order acknowledgement are Ex Works (Incoterms 2010) and exclusive of any taxes, duties, fees, charges or similar and any costs of carriage, package and insurance which shall be payable in addition to the price.
- 5.5 Unless otherwise agreed by MAN ES in writing, sums payable by the Buyer to MAN ES shall fall due and be effected by the Buyer net cash not later than 30 days after the date of the invoice. If any sum payable under the Contract is not paid when due then without prejudice to MAN ES's other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per annum over the rate of the main refinancing facility of the European Central Bank in force on the due date of payment.
- 5.6 MAN ES shall be entitled, upon request, to an advance payment of 50 % of the Contract price, unless another percentage rate will be agreed upon between the Parties. This advance payment shall be effected by the Customer to MAN ES's account, or, according to the MAN ES's choice for services to be rendered outside Germany, by delivery of an irrevocable letter of credit to be established by the Customer in the Federal Republic of Germany, and confirmed by a German first class bank acceptable to MAN ES, at least 21 days prior to the start of the Work.
- 6 PROVISION OF SERVICES**
- 6.1 Unless otherwise expressly agreed in writing Services rendered by MAN ES shall be charged on time basis in accordance with MAN ES's general rates for personnel valid at the date of the provision of the Services. Such rates are exclusive of board, lodging and transportation and such other facilities as are to be provided by the Buyer free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by MAN ES's personnel shall be finally borne by the Buyer. Unless otherwise agreed MAN ES's execution of Services is subject to manual assistance being rendered by the Buyer either through engine room staff or other persons made available by the Buyer.
- 6.2 The taking-over of the Works by the Buyer shall be deemed to have taken place at the latest, when the Buyer has received MAN ES's notice that the Work has been completed, provided that the Work is as required for taking-over according to the Contract. Minor deficiencies which do not affect the efficiency of the Work shall not prevent taking-over. The period, referred to in Condition 7.1 shall start to run at the latest when the Work is ready for taking-over in accordance with this Condition 6.2.
- 6.3 MAN ES shall be responsible for the adherence to legal or other regulations applicable at the Site only as far as the Customer has sufficiently informed MAN ES of such regulations in advance.
- 6.4 The daily working time shall be arranged by the Customer and the Specialist Personnel at the Site, and the actual working time shall be certified on work sheets by the Customer.
- 6.5 MAN ES reserves the right to send interim bills during longer service jobs. The final accounts shall be submitted to the Customer within a reasonable period after the completion of the Works by MAN ES.
- 7 WARRANTY**
- 7.1 MAN ES warrants for a period of 6 months (i) from the date the Goods were delivered, that such Goods are free from substantial defects in materials or manufacture; and/or (ii) from the date the Services were rendered, that such Services were carried out with reasonable skill and care.
- 7.2 All conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with Condition 7.1, are hereby expressly excluded to the fullest extent permitted by law.
- 7.3 The warranty given in Condition 7.1 will not apply:
- (a) where the defect complained of arises from any drawing, design, specification or intellectual property right supplied by the Buyer or arises from normal wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without MAN ES's approval or arises from any failure to follow MAN ES's advice (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods);



- (b) if MAN ES or its agent is not given a reasonable opportunity to safely inspect the Work;
 - (c) if the total price for the Goods or Services has not been paid by the due date for payment;
 - (d) if the Goods supplied by MAN ES are mounted in a MAN ES engine for which the Buyer has also used unoriginal parts (i.e. parts which have not been supplied through MAN ES or through a MAN ES licensee), in which case MAN ES does not assume any liability for any damage which may arise.
- 7.4 The obligations of MAN ES under the Contract are limited such that in the event of a breach by MAN ES of the warranty in Condition 7.1 or any defect in any Goods or Services MAN ES shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Goods and/or Services) at its option either to:
- (a) credit the price (if already paid) attributable to the faulty Goods or Services; or
 - (b) repair, rectify or replace the faulty Goods or Services
- provided that such Goods are returned to MAN ES in their delivered state at the Buyer's expense if so requested by MAN ES within 12 months from the date of their delivery. MAN ES shall especially not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect. Condition 7.4 shall be the Buyer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Buyer.
- Any replacement Goods will be warranted on the terms set out in this Condition 7 but in no case longer than the original warranty period.
- 8 FORCE MAJEURE**
- 8.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable to MAN ES if a sub-supplier of MAN ES is affected by such event and/or in case the Party concerned is already in default.
- 8.2 The Parties are committed to give each other the necessary information which may reasonably be expected without delay, and to adjust their obligations in good faith to the changed circumstances.
- 9 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**
- 9.1 The Buyer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specifications relating thereto either (a) supplied by or on behalf of MAN ES to the Buyer in connection with Work, or (b) resulting from Work, unless otherwise expressly agreed by MAN ES in writing. If the Buyer shall in any way acquire any such rights then the Buyer shall immediately inform MAN ES and shall forthwith take such steps as may be required by MAN ES to assign such rights or vest such title in MAN ES.
- 9.2 MAN ES shall have the right to apply any trademarks, trade names and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of such trademarks, trade names and/or service marks. The Buyer shall not deface, remove or obliterate any trademarks, trade names or logos applied by MAN ES on or in relation to the Goods.
- 9.3 The Buyer shall keep confidential and not use, without the prior written consent of MAN ES, all or any information including without limit, those supplied by MAN ES to the Buyer or disclosed to or obtained by the Buyer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer, or disclosure of the same is required by law or by any other governmental or other regulatory body.
- 9.4 In the event that MAN ES bases the production of the Goods on its own specifications, MAN ES shall under the exclusion of any further liability warrant that such Goods do not interfere with IPRs published in USA and/or by the European Patent Office. This shall not apply, if MAN ES has manufactured the Goods in accordance with drawings, models or other equivalent descriptions or information provided by the Buyer. As far as MAN ES is not liable pursuant to this Conditions 9.4, the Buyer shall release MAN ES from all third-party claims. In case an infringement of such third parties' IPRs appears to emerge, the Parties will enter into negotiations with due consideration of such situation and jointly agree on the consequences.
- 10 LIMITATION OF LIABILITY**
- 10.1 MAN ES shall not be liable to the Buyer in contract, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business contracts, revenues or anticipated savings, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.
- 10.2 Nothing in these Conditions shall exclude or limit the liability of MAN ES for death or personal injury caused by the MAN ES's negligence, intent or fraudulent misrepresentation. In addition Condition 10.1 above shall not apply in case MAN ES has caused the damage to Buyer's property with intention or gross negligence or by fraudulent misrepresentation.
- 10.3 Without prejudice to Conditions 10.1 and 10.2 MAN ES's total liability for each Order in contract, tort, law or otherwise arising by reason of or in connection with the Contract shall be limited to the value of that Order.
- 11 TERMINATION**
- 11.1 If the Buyer fails to make any payment when due or to perform any of its other obligations on time, MAN ES shall be entitled to suspend its performance of the Contract until the failure is remedied; and regardless of whether MAN ES elects to suspend performance:
- (a) the time for performance of the Contract by MAN ES shall be automatically extended accordingly; and
 - (b) any cost (including financial costs and storage, demurrage or other charges) thereby incurred by MAN ES shall be paid by the Buyer.
- 11.2 Without prejudice to any of its other rights MAN ES may immediately terminate the Contract if any of the following occurs or is likely to occur:
- (a) suspension under Condition 11.1 continues for more than 120 days;
 - (b) the Buyer is in breach of any of its obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from MAN ES; or
 - (c) the Buyer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any other jurisdiction or the Buyer ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due.
- 11.3 Upon termination, howsoever arising, MAN ES shall be entitled forthwith to suspend any further work under the Contract without any liability to the Buyer. Without prejudice to MAN ES's other remedies under the Contract, within 14 days of such a notice of termination, howsoever arising, the Buyer shall pay to MAN ES:
- (a) the outstanding balance of the Contract price of the Work which has been delivered or performed, and
 - (b) the costs incurred or committed by MAN ES up to the date of notice of termination in performing such work which is not yet completed plus a reasonable margin to be agreed between the Parties which shall not be less than 15% of the Contract price, and
 - (c) the costs reasonably incurred by MAN ES as a result of the termination.
- 11.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of Conditions 9, 10, 11, 12 and 14.
- 12 BUYER'S OBLIGATIONS**
- 12.1 The Buyer shall provide MAN ES's personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be carried out and ensure that they have free access to the Site.
- 12.2 The Buyer shall provide MAN ES's personnel with unobstructed and safe access to the Site to enable them to perform the Work in accordance with the Contract.
- 12.3 The Buyer shall be responsible for ensuring the health and safety of MAN ES's personnel whilst on the Site. The Buyer shall take appropriate measures to protect MAN ES's personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When MAN ES is to carry out the Work on the Site, the Buyer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies.
- 12.4 MAN ES may, at its sole discretion, refuse to perform the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/ or where the Buyer is in breach of this Conditions 12 and MAN ES shall not be liable under the Contract for any delay in or failure of delivery in such event.
- 12.5 The Buyer shall assume all responsibility for all acts or omissions of the Buyer's personnel and MAN ES shall have no liability with respect thereto.
- 12.6 The Buyer shall provide all tools, test equipment and test facilities unless specifically stated otherwise in the Contract. Where MAN ES does supply tools then the Buyer shall give all necessary assistance with the customs formalities required for the import and re-export of MAN ES's tools and equipment free of all Taxes.
- 12.7 The Buyer shall to the best of its ability assist MAN ES in obtaining all necessary information concerning such local laws and regulations as are applicable to MAN ES's performance of the Services.
- The Buyer shall specify a firm delivery address for the ordered Goods at least within 3 weeks after receipt of MAN ES's written confirmation of the date of readiness for dispatch. In case Buyer fails to do so, MAN ES is entitled to sell the Goods selected for delivery to the Buyer to a third party and to set forth a new delivery time to be forwarded to the Buyer for information. In such case the Buyer is not entitled to claim liquidated damages according to Condition 3.6.
- 12.8 On MAN ES's request the Customer shall undertake to arrange suitable accommodation for the Specialist Personnel and to assist in procuring food for the Specialist Personnel. The provision of board and lodging for the Specialist Personnel shall be at the Customer's expense.
- 12.9 If suitable accommodation cannot be obtained in the neighbourhood of the Site, the time for travelling between the lodgings and the Site will be charged as working time whenever the actual time for travelling is greater than 30 minutes. In the event of the Specialist Personnel using public transport, the costs incurred thereby shall be borne by the Customer. The same shall apply to the transportation of equipment and other utilities necessary to perform the Services.

13 EXPORT CONTROL

- 13.1 Notwithstanding any regulation regarding force majeure, as stated in these Conditions, the MAN ES reserves the right to suspend at its sole discretion its performance at any time, in whole or in part, without incurring any liability, whenever such performance would be prevented by any applicable export or re-export control regulation (including but not limited to EU and U.S.-law, as the case may be) or where an export license required by such regulations cannot be obtained. In the event the performance of the Contract is prevented due to the above reasons for a period of more than 180 days, MAN ES or Buyer shall be entitled to terminate the Contract to the extent the performance is prevented. In the event an export license has been denied by the responsible authorities, MAN ES or Buyer shall be entitled to terminate the denied part of the performance immediately. As consequence of such termination Buyer shall pay to MAN ES the price of the supplies and services performed by the MAN ES under the Contract and any cost for unavoidable commitments incurred by MAN ES with respect thereto. Any claims, rights and/or remedies of Buyer with respect to such termination shall be excluded.
- 13.2 MAN ES shall provide Buyer with a customs invoice and a packing list as standard shipping documents. Such documents are made out to the name of Buyer. The content and layout of such documents are defined by the MAN ES and cannot be adjusted or amended. The provision of any further information or documents which might be required by Buyer for import purposes, such as but not limited to countries of origin, HS codes (numeric codes according to the "International Convention on the Harmonized System", issued by the World Customs Organization (WCO)), certificates of origin, declarations of preferential origin or other certificates shall be subject to an individual agreement. All costs for such additional information or documents shall be borne by Buyer.

14 GENERAL

- 14.1 MAN ES and the Buyer shall only be entitled to assign or sub-contract any of its rights or the obligations under the Contract with the prior written consent of the other.
- 14.2 If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect. The Parties are committed to replace the invalid provision by another - with respect to the commercial effect - equivalent provision, in so far as this is possible.
- 14.3 The Contract and these Conditions shall be construed in accordance with and governed in all aspects 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.
- 14.4 If a difference of opinion cannot be settled by the Parties themselves, the dispute shall be finally decided by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such Rules. The Expedited Procedure Provisions and the Emergency Arbitrator Provisions shall not apply. The arbitration proceedings shall take place in Geneva, Switzerland in the English language. The Parties shall keep confidential the existence of the arbitration or any information or document relating thereto or disclosed therein.
- 14.5 The protection of your personal rights during the processing of personal data is of the utmost concern to companies in MAN Group. We process personal data in compliance with the provisions of the EU General Data Protection Regulation (GDPR) and in accordance with the legal regulations of the country in which the controller of the data processing is located.
You can find an overview over the processing of your personal data by us on the internet at <https://www.man-es.com/data-protection-notice>