

MANAGEMENT

Policy MAN ES-ZA-MGMT-MDT023

Customer Terms and Conditions

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Terms Governing the Sale of Goods and Supply of Services by MAN Energy Solutions South Africa (Proprietary) Limited (“MAN Energy Solutions”)

1 In these terms and conditions-

- 1.1 **“customer”**- means any individual, company or other entity concluding a contract for the sale of goods or the rendering of services by MAN Energy Solutions to the customer;
- 1.2 **“goods”**- means all goods of whatever nature;
- 1.3 **“services”**- means all services of whatever nature;
- 1.4 **“order”**- means any order placed by the customer with MAN Energy Solution in respect of goods and services and accepted by MAN Energy Solutions in accordance with clause 3;

2 INTERPRETATION

The terms set out herein are those which govern, and are applicable to, the supply goods and the rendering of services by MAN Energy Solutions to a customer. These terms shall take precedence over any terms contained in any document issued by the customer including an order. In the event that any terms contained in any document issues by the customer is in any way applicable to the sale of goods and the supply of services by MAN Energy Solutions to such customer, then in the event of a conflict between any such terms and these terms, the provision of these terms shall apply.

3 ORDERS

- 3.1 Any order for the sale of goods or supply of services by MAN Energy Solutions to a customer shall only be binding on MAN Energy Solutions if in writing and accepted in writing on behalf of MAN Energy Solutions by a duly authorised representative of MAN Energy Solutions and signed on behalf of the customer.
- 3.2 Should a dispute arise as to whether any person was duly authorised to sign any order or contract or other document on behalf of MAN Energy Solutions, the onus of establishing such authority shall be that of the customer.
- 3.3 These terms and the provisions of an order shall constitute the entire agreement between MAN Energy Solutions and a customer relating to orders. Neither these terms nor any provisions written in any other order

shall be capable of being varied, altered or amended unless such variation, alteration or amendment is in writing and signed by a duly authorised representative of MAN Energy Solutions.

- 3.4 Any taxes or levies of whatever nature which may become payable in respect of any goods or services forming the subject matter of an order shall be paid by the customer.
- 3.5 A customer shall not have any claim against MAN Energy Solutions in the event that any goods or services which are the subject matter of an order infringe the intellectual property rights of any third party.
- 3.6 If any information given by a customer to MAN Energy Solutions in connection with an order is incorrect, with the result that there is an error in the goods or services supplied or rendered by MAN Energy Solutions to the customer, the customer shall be liable for the cost of rectifying the error.
- 3.7 MAN Energy Solutions shall not be liable to a customer in the event of any damage to the property of a customer caused during the execution of an order.
- 3.8 MAN Energy Solutions shall in no circumstances be liable to a customer for any loss or damages sustained by a customer from whatever cause arising during the course of its dealings with MAN Energy Solutions including any indirect loss or consequential damages.

4 PRICE AND PAYMENT

- 4.1 The purchase price or charges for any goods or services to be supplied by MAN Energy Solutions to a customer shall be the price/charges as reflected in an order accepted by MAN Energy Solutions in accordance with clause 3.1.
- 4.2 If between the date of an order and the delivery of the goods or the rendering of services in question, any cost or charge is incurred by MAN Energy Solutions or any circumstance arises which has the effect of increase the cost to MAN Energy Solutions of selling the goods or providing the services, MAN Energy Solutions shall be entitled to increase the price or charge by the amount equal to the cost or the charge in question.
- 4.3 The customer shall pay all costs in connection with the delivery of any goods or the rendering of any services including, without derogating from the generality of the foregoing, all freight and transport charges, insurance premiums and packaging.

- 4.4 Payment shall be made by the customer by way of electronic transfer into MAN Energy Solutions bank account as notified to the customer and if for any reason, payment cannot be made by electronic transfer, payment shall be made until the cheque honoured by the drawee bank.
- 4.5 Any amounts owing to MAN Energy Solutions by a customer in respect of an order or arising from any other cause shall bear interest at 1% (one percent) above the prime rate. The term **“prime rate”** when used in these terms shall mean the prime overdraft lending rate charged to MAN Energy Solutions bank from time to time in respect of overdraft facilities to its prime customers as certified in writing, in the event of a dispute, by any manager of such bank whose appointment and authority it shall not be necessary to prove. Such interest shall be reckoned from the date on which any amount becomes due and payable to MAN Energy Solutions and shall be calculated on a compound daily basis until such time as the amount in question has been paid.
- 4.6 Ownership in any goods supplied by MAN Energy Solutions to a customer shall remain vested in MAN Energy Solutions until such time as the purchase price payable in respect of such goods and all other amounts payable by the customer to MAN Energy Solutions in terms of these terms or in terms of an order have been paid in full.

5 DELIVERY

- 5.1 Any delivery date stipulated in any order shall not be capable of being varied or altered without the prior written consent of a duly authorised representative of MAN Energy Solutions.
- 5.2 Should any event occur which might cause any delay in the delivery of goods or services, MAN Energy Solutions shall inform the customer and effect delivery as soon as possible.
- 5.3 In the event referred to in clause 5.2, the customer shall not be entitled to cancel an order nor shall MAN Energy Solutions be liable for any costs or damages including consequential damages incurred or sustained by the customer as a result of any delay.
- 5.4 Transportation of goods to a customer shall be at the customer's risk as from the date on which transportation or delivery commences. MAN Energy Solutions shall not, unless otherwise stated in an order, be liable for any

damage to the goods during delivery to the customer's premises including any damage caused by any act or omission by the carrier. The customer shall be liable to insure any goods whilst in transit and to pay the premiums in respect of such insurance.

6 PACKAGING

Goods forming the subject matter of any order shall be packaged in MAN Energy Solutions normal and usual packaging method unless otherwise stipulated in an order. The cost of any packaging including any unusual packaging method required by a customer shall be paid for by the customer.

7 DOCUMENTATION

- 7.1 MAN Energy Solutions shall provide the customer with any documentation required for the use of the goods which are the subject matter of an order.
- 7.2 The customer shall at all times comply with and adhere to any instructions contained in any documentation furnished by MAN Energy Solutions to a customer in regard to the use of any goods.
- 7.3 All drawings, specifications, plans or other documents furnished to the customer by MAN Energy Solutions in connection with the sale of goods or the rendering of services shall remain the property of MAN Energy Solutions whenever required by MAN Energy Solutions. All documentation or information provided by MAN Energy Solutions to a customer in connection with any goods or services forming the subject matter of an order, shall be kept confidential by the customer and shall not be disclosed by the customer to any third party nor used by the customer for any purpose other than in connection with the goods or services which are the subject matter of an order.

8 QUALITY OF GOODS AND SERVICES

- 8.1 Should any fault or defect appear in any goods delivered to the customer, the customer shall advise MAN Energy Solutions in writing of such fault or defect within 6 months of delivery ("**a defect notice**"), failing which the customer shall have no claim in respect of the fault or defect.
- 8.2 Should MAN Energy Solutions receive a defect notice, MAN Energy Solutions shall, at its election, repair the fault or defect or replace any faulty or defective part, within a reasonable time and the customer shall have no

right to cancel the order in respect of the goods or services in question. Notwithstanding the preceding provisions of this clause 8.2, MAN Energy Solutions obligations to a customer in terms of any warranty provided by MAN Energy Solutions to the customer in respect of the goods or services which are the subject matter of an order.

- 8.3 MAN Energy Solutions shall not be liable to a customer for any loss or damage sustained by a customer as a result of any fault or defect referred to above, including any consequential damages, loss of profit or any other loss.
- 8.4 The provisions of this clause 8 shall not apply to any fault or defect caused by the customer for whatever reason or in whatever manner and shall also not apply to any fault or defect which is the result of fair wear and tear.
- 8.5 Notwithstanding anything to the contrary in this clause 8 or elsewhere in these terms, a customer shall have no claim against MAN Energy Solutions in respect of any fault or defect in any goods unless the claim is made by the institution of legal proceedings within 12 (twelve) months of delivery of the goods in question.

9 CESSION AND ASSIGNMENT

- 9.1 The customer shall not be entitled to cede or assign its rights or obligations in terms hereof or in terms of any order without the prior written consent of MAN Energy Solutions.
- 9.2 MAN Energy Solutions shall be entitled to cede or assign all or any its rights or obligations in terms hereof or in terms of any order without the prior written consent of the customer.

10 DISPUTES

- 10.1 Any disputes arising from or in connection with these terms and conditions or in terms of any order shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. There shall be a right of appeal as provided for in article 22 of the aforesaid rules.
- 10.2 Each party –
 - 10.2.1 Expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency;
and

- 10.2.2 irrevocably authorises the other to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent bases.
- 10.2.3 Notwithstanding 10.1 and 10.2, either party shall be entitled to approach a court of competent jurisdiction for urgent interim relief pending the outcome of arbitration.
- 10.3 This 10 is severable from the rest of these terms and shall remain in full force and effect notwithstanding any termination or cancellation of any order.
- 10.4 Notwithstanding this clause 10, if a customer defaults in the payment of any amount to MAN Energy Solutions or breaches any of the provisions of an order or any of these terms, MAN Energy Solutions shall be entitled to institute proceedings against the customer in that division of the High Court having jurisdiction in respect of MAN Energy Solutions or in that Magistrate's Court having jurisdiction in respect of the customer.