

MAN Energy Solutions

Purchase Addendum to General Conditions, Orgalime S 2012

This Addendum contains conditions valid for the supply of Products and Services to MAN Energy Solutions, amending and supplementing the General Conditions for the Supply of Mechanical, Electrical and Electronic Products, S 2012, prepared by Orgalime March 2012.

Supplementary clause 1A – Formation of Contract

These terms are to govern any supply of Products or any services supplied by Supplier ("Services") to the Purchaser and shall prevail over any terms put forward by the Supplier, unless the Purchaser expressly agrees to them in writing. No conduct by the Purchaser shall be deemed to constitute acceptance of any terms forwarded by the Supplier.

Supplementary clause 4A – Publication

The Supplier is not permitted without the prior written approval from the Purchaser to publish his status as supplier to the Purchaser or to publish the entering into any supply Contract with the Purchaser.

Supplementary clause 5A – Regulations

Products and Services supplied shall be in accordance with first class engineering practice and all applicable standards and regulations. Furthermore, such Products and Services shall be in accordance with such other regulations as stipulated in the Contract and shall be delivered with all instructions necessary for proper and safe operation.

Supplementary clause 9A – Inspections

The Purchaser shall be entitled for his own account to have the quality of the manufacture of the Products and the performance of the Services inspected by his authorised representatives. Such inspection shall be carried out at the place of manufacture during normal working hours according to agreement with the Supplier as to date and time. Inspection and testing in accordance with clauses 9 and 9A shall not relieve the Supplier of any liability for the quality of the Products and Services.

Delivery. Passing of risk

Add to clause 10:

Where no indication is given in the Contract of the trade term applicable, the Product shall be deemed to have been sold on "CIP" terms.

Time for delivery. Delay

Replace clause 13 by the following:

If delay in delivery is caused by any of the circumstances mentioned in Clause 41, by an act or omission on the part of the Purchaser, including suspension under Clauses 21 and 44, the Supplier shall be entitled to extend the time for delivery by a period which is necessary having regard to all the circumstances of the case. This provision shall apply regardless of whether the reason for the delay occurs before or after the agreed time for delivery.

Replace clause 14, 2nd para by the following:

The liquidated damages shall be payable at a rate of 0.75 per cent of the purchase price for each commenced week of delay. The liquidated damages shall not exceed 10 per cent of the purchase price.

Payment

Replace clause 19 by the following:

Payment shall be made within 60 days after the date of invoice.

Retention of title

Add to clause 22:

Goods provided by the Purchaser to the Supplier for machining and/or incorporation in the Product shall remain the property of the Purchaser. The Product incorporating such goods shall become the property of the Purchaser from the date of incorporation of the goods supplied by the Purchaser.

Liability for defects

Replace clause 27 by the following:

The Supplier's liability is limited to defects that have been notified to the Supplier within 24 months from the date of delivery of the Product or Services to the Purchaser.

Replace clause 30, 3rd para and clause 32 by the following:

All dismantling and installation work, all travel costs and all costs of transportation of goods from and to the place where the plant is situated shall be for the Supplier's account.

Replace clause 37, b) by the following:

Where the defect is so substantial as to significantly deprive the Purchaser of the benefit of the Contract as regards the Product or a substantial part of it, the Purchaser may terminate the Contract by notice In Writing to the Supplier. The Purchaser shall then be entitled to compensation for his loss, costs and damages up to a maximum of 15 per cent of the purchase price.

Replace clause 39 by the following:

The Supplier shall not be liable for loss of production, loss of profit and other indirect loss. This limitation of the Supplier's liability shall not apply if he has been guilty of Gross Negligence.

Allocation of liability for damage caused by the Product

Replace clause 40 by the following:

The Supplier shall indemnify the Purchaser against
- all loss or damage to property and all claims and expenses in connection therewith caused by the Products and Services of the Supplier up to a maximum of 2.5 (two.five) million Euro.
- liability for death and personal injury and all claims and expenses in connection therewith caused by the Supplier.

Anticipated non-performance

Add to clause 44:

If the other party cannot provide adequate security for his performance under the Contract within a reasonable period of time, the party suspending his performance according to this clause 44 shall be entitled to terminate the Contract and to claim compensation.

Disputes and Applicable Law

Add to clause 46:

As an alternative to settling disputes by arbitration, the Purchaser shall be entitled to choose, at his discretion, to bring an action against the Supplier in the ordinary courts of law having jurisdiction over such case.

Replace clause 47 by the following:

The Contract shall be governed by the laws of the Purchaser's country.

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