



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 Good identified in the Order;
- "**Conditions**" means the standard terms and conditions of sale set out herein;
- "**Contract**" means any contract for supply of the Goods 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 supplies the Goods 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 the Goods.
- 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 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 acknowledgement has been issued and only on the conditions stated in the order acknowledgement.
- 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 acknowledgement 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 MAN ES may deliver Goods in instalments. Default by MAN ES, howsoever caused, in respect of one or more instalments shall not entitle the Buyer to terminate the relevant Contract as a whole.
- 3.3 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 28 days after 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.
- 3.4 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.
- 3.5 If the contractual delivery time for the Goods or part of the Goods 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 Goods 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 Goods.

- 3.6 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 Goods.

4 TITLE

Unless MAN ES has been paid in full in advance, the Goods will be considered as having delivered by 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 Contract 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.

6 WARRANTY

- 6.1 MAN ES warrants for a period of 6 months from the date the Goods were delivered, that such Goods shall be free from substantial defects in materials or manufacture.
- 6.2 All conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with Condition 6.1, are hereby expressly excluded to the fullest extent permitted by law.
- 6.3 The warranty given in Condition 6.1 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), or misuse or alteration or repair of the Goods without MAN ES's approval;
 - (b) if MAN ES or its agents is not given a reasonable opportunity to safely inspect the Goods;
 - (c) if the total price for the Goods 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.
- 6.4 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 6.1 or any defect in any Goods 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) at its option either to:
- (a) credit the Contract price (if already paid) attributable to the faulty Goods; or
 - (b) repair, rectify or replace the faulty Goods 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 6.4 shall be the Buyer's only remedy and in lieu of any other rights and remedies which might otherwise be available to the Buyer.
- 6.5 Any replacement Goods will be warranted on the terms set out in Conditions 6 but in no case longer than the original warranty period.
- 7 FORCE MAJEURE**
- 7.1 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.
- 7.2 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.
- 8 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**
- 8.1 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 the Goods, or any plans, descriptions, blue-prints, designs, technical information, software, documents, drawings and/or specifications relating thereto supplied by or on behalf of MAN ES to the Buyer in connection with the delivery of the Goods, 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.
- 8.2 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.
- 8.3 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.
- 8.4 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 8.4, 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.
- 9 LIMITATION OF LIABILITY**
- 9.1 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.
- 9.2 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 9.1 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.
- 9.3 Without prejudice to Conditions 9.1 and 9.2 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.
- 10 TERMINATION**
- 10.1 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.
- 10.2 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 10.1 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.
- 10.3 Upon termination, howsoever arising, MAN ES shall be entitled forthwith to suspend any further delivery of Goods 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 Goods which have been delivered, and
- (b) the costs incurred or committed by MAN ES up to the date of notice of termination in performing such delivery of Goods 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.
- 10.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of Condition 8, 9, 10, 11 and 13.
- 11 BUYER'S OBLIGATIONS**
- 11.1 The Buyer shall collect the Goods announced as ready for dispatch in time according to the agreed delivery times.
- 11.2 The Buyer shall pay the Contract price when due according to Condition 5.5 above.
- 11.3 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.
- 11.4 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 3.5.
- 12 EXPORT CONTROL**
- 12.1 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 the Buyer with respect to such termination shall be excluded.
- 12.2 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 the 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 the Buyer.
- 13 LAW AND ARBITRATION**
- 13.1 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.



- 13.2 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 Zurich, 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 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 protection of your personal rights during the processing of personal data is of the utmost concern to companies in MAN Group (hereinafter referred to as "MAN"). 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>