

General PrimeServ Terms and Conditions – Asia Version

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 as defined in MAN ES's tender or order confirmation or 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 Work.
 "Services" means services supplied by MAN ES (as defined in MAN ES's tender or order confirmation or acknowledgment);
 "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.
 "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 All tenders are made and Orders are accepted by MAN ES subject to the Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limitation those which the Buyer purports to apply under any Order. 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 confirmation or acknowledgement has been issued and only on the conditions stated in the order confirmation or 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 approximates only. Such information is only binding to the extent expressly stated in the order confirmation or 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 Performance of the Services shall be at the Site specified in MAN ES's tender or order confirmation or 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 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.
- 3.5 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 Goods will be considered as having been 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 (whether arising as a consequence of prior and or separate contractual transactions or, a series of connected transactions). 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 of issue.
- 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 confirmation or 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 confirmation or 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 prevailing rate of the main refinancing facility of the Monetary Authority of Singapore in force on the due date of payment.

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
- 7 WARRANTY**
- 7.1 MAN ES warrants for a period of 6 months from the date the Goods were delivered or Services rendered, that such Goods and / or Services are free from substantial defects in materials or manufacture and that 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:
- 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),
 - if MAN ES or its agents is not given a reasonable opportunity to safely inspect the Work;
 - if the total price for the Goods or Services has not been paid by the due date for payment;
 - 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 or Services) at its option either to:
- credit the Contract price (if already paid) attributable to the faulty Goods or Services; or
 - 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.
- 7.5 Any replacement Goods will be warranted on the terms set out in this Conditions 7.
- 8 FORCE MAJEURE**
- 8.1 In the event of an Act of God, labour disputes, riots, civil commotion, governmental or official actions or any other orders, decrees, (whether declared or not) or events which were unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from the performance of their respective obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable if any suppliers or subcontractors of MAN ES are likewise affected by such an 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 the 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 the Work or b) resulting from the 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 limitation, 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
- over in accordance with this Condition 6.2.
- becomes public through no fault of the Buyer, or disclosure of the same is compelled by applicable law, a court of competent jurisdiction 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 and indemnify 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 whatsoever arising for (i) any loss of profit, loss of anticipated profit, loss of hire, business contracts, revenues or anticipated savings, overhead recovery, loss of data, loss of production, 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, costs, expenses or other claims for consequential compensation 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 9.1 above shall not apply in case MAN ES has caused the damage to Buyer's property with intention or gross negligence or fraudulent misrepresentation. Condition 10.1 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 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.
- 11 STATUTE OF LIMITATIONS**
- The statute of limitations applicable to any other claims of each Party against the other besides warranty claims, to which Conditions 7.1 above shall apply, shall be 24 months after delivery of the Goods to the Buyer.
- 12 TERMINATION**
- 12.1 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:
- the time for performance of the Contract by MAN ES shall be automatically extended accordingly; and
 - any cost (including financial costs and storage, demurrage or other charges) thereby incurred by MAN ES shall be paid by the Buyer.
- 12.2 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:
- suspension under Condition 11.1 continues for more than 120 days;
 - 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
 - the Buyer is wound up or becomes insolvent or has a judicial manager, 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.
- 12.3 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:
- the outstanding balance of the Contract price of the Work which have been delivered or performed, and
 - 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
 - the costs reasonably incurred by MAN ES as a result of the termination.
- 12.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of Condition 9, 10, 12, 13 and 14.
- 13 BUYER'S OBLIGATIONS**
- 13.1 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.
- 13.2 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.
- 13.3 The Buyer shall be responsible for ensuring the health and safety of MAN

ES's personnel whilst on 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.

- 13.4 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 Condition 13 and MAN ES shall not be liable under the Contract for any delay in or failure of delivery in such event.
- 13.5 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.
- 13.6 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 customs and taxes.
- 13.7 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.
- 13.8 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.
- 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 an equivalent provision in so far as this is possible to give commercial effect
- 14.3 A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce any of its terms.
- 14.4 The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of the Republic of

Singapore, without giving effect to any conflict of laws principles that would cause the application of the laws of any other jurisdiction to apply to the Contract. The Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Goods shall apply, even if the preconditions of its Art. 1 (1) are not fulfilled.

- 14.5 All disputes arising out of or in connection with the Contract and these Conditions, including any question regarding their existence, validity or termination, shall be finally settled in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules"), by three arbitrators, appointed under such SIAC Rules. The arbitration proceedings shall take place in Singapore. The procedural law of this place shall apply where the Rules are silent. Each Party shall nominate one arbitrator for confirmation by the competent authority under said rules. Both arbitrators shall agree on the third arbitrator within 30 days. Should the two arbitrators fail, within the above time-limit, to reach agreement on the third arbitrator, he shall be appointed by the Chairman of the Singapore International Arbitration Centre. The language to be used in the arbitration proceeding shall be English.
- 15 **Export Control**
Notwithstanding any regulation regarding force majeure, as stated in these Conditions, 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 applicable export or re-export control regulation (including but not limited to EU and US 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 Agreement is prevented due the above reasons for a period of more than 180 days, MAN ES 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 shall be entitled to terminate the denied part of the performance immediately. As a consequence of such termination you shall pay to MAN ES the price of the supplies and services performed by MAN ES under the Contract and any cost for unavoidable commitments incurred by MAN ES with respect thereto. Any claims, rights and / or remedies with respect to such termination shall be excluded.
- 16 **Personal Data Protection.**
The protection of personal data in the course of collection, use, processing or storage in the course of MAN ES's business is undertaken in compliance with the Singapore Personal Data Protection Act 2012, EU General Data Protection Regulation (GDPR) and in accordance with such other legal Regulations of the country where the controller of data processing is located. An overview of how MAN ES processes, personal data appears at <https://www.man-es.com/data-protection-notice>.