



Delivery Conditions for Engines, Components and Parts

The following Delivery Conditions apply to the offer and sale of engines, components and parts (original equipment and not replacement parts) from MAN (MAN Truck & Bus AG) to the Purchaser, insofar as said Purchaser is an entrepreneur who in concluding the agreement acts in pursuance of its commercial or self-employed professional activities or is a legal entity under public law or a public special fund.

General Terms and Conditions of the Purchaser that conflict with the present General Terms and Conditions shall not be binding on the Seller, even if the purchase order is based on them and the Seller has not expressly rejected their content.

In accordance with section 26 of the German Federal Data Protection Act, attention is drawn to the fact that personal data may be stored.

I. Conclusion of contract

1. All quotations shall be not binding unless otherwise expressly agreed in the quotation. The Purchaser shall be committed to the purchase order for no longer than 6 weeks. The Purchase Agreement shall be deemed concluded if within the periods indicated the Seller confirms in writing the acceptance of the purchase order for the object of purchase specified in detail or effects delivery of said object. The Seller's written order confirmation shall form the authoritative basis of the Agreement. All agreements, verbal subsidiary agreements and contractual amendments shall be valid only if the Seller has confirmed them in writing. To comply with the requirement for the written form, facsimile signatures, transmission by fax, transmission of scanned original documents by email shall be sufficient for example. Transmission by email alone shall not be sufficient to comply with the requirement for the written form.

2. Technical documents shall only be binding if this is explicitly stated. MAN shall have title and copyright to cost estimates, drawings and other documents; they may not be made accessible to third parties and must be returned on request

3. Transfers of the Purchaser's rights and obligations under the Agreement shall be subject to the written consent of MAN.

II. Scope of delivery

1. The written order confirmation from MAN shall be authoritative for the scope of delivery. The MAN installation guidelines applicable in each case must be complied with by the Purchaser.

2. The provisions of the Verband Deutscher Elektrotechniker (Association of German Electrical Engineers) shall apply to electrical material.

3. If the object of purchase is to be used outside the Federal Republic of Germany, the scope of delivery for industrial and environmental protection equipment shall be based on the agreement reached. The Purchaser shall be responsible for compliance with the legal or other provisions for the export of the object of purchase and/or at the location it is to be used unless agreed otherwise.

4. If customary commercial clauses are agreed for the type of delivery, the Incoterms of the International Chamber of Commerce in Paris in the version in force on the date the Agreement was concluded shall apply to their interpretation.

5. All public charges (taxes, fees, customs duties, etc.) that accrue from or in connection with the conclusion or settlement of the Agreement outside the Federal Republic of Germany shall be paid by the Purchaser.

III. Prices

1. Unless agreed otherwise, the price for the object of purchase is the price ex works including loading, without packaging, any cash discount or other reductions. Agreed additional services, such as packaging, freight or installation at the installation site (assembly) and commissioning shall be charged in addition.

2. Unless otherwise agreed, the prices referred to herein represents net prices without any value added tax, goods & services tax (GST), sales tax or other similar taxes (hereinafter "VAT or similar taxes"). The applicable VAT or similar taxes will be charged in addition to the net prices unless purchaser is liable for the VAT or similar taxes by law and the reverse charge mechanism or any similar regime has to be applied.

Purchaser shall use its best efforts to support seller in obtaining a tax exemption or a zero-rating for the Deliveries. Purchaser shall within 14 days after being requested to do so by seller, provide the seller with any requested documents in this context (e.g. exemption certificates for Deliveries to specific entities, proof of dispatch for intra-EU Deliveries or proof of export). If as a result of purchaser's failure to fulfill its obligation in accordance with this paragraph, the seller is obligated to pay any VAT or similar tax, then the purchaser shall reimburse the seller the same.

Should the remuneration be subject to withholding taxes, the purchaser is only allowed to withhold the amount of withholding tax as required by national law of purchasers country of residence and pay it to the tax authorities in the name of the seller.

Is a double tax treaty existent between Germany and purchaser's country of residence, purchaser is only allowed to withhold the maximum amount of withholding tax according to the applicable double tax treaty from the payments to the seller, as long as the requirements for a tax exemption respectively a tax reduction according to the applicable double tax treaty are met.

It is sellers responsibility that the formal requirements for a tax exemption respectively a tax reduction are met. Any applications and certificates of residence must be provided and procured by the seller.

Purchaser is obligated to support MAN during the process of obtaining a tax exemption respectively tax reduction (or the like).

Purchaser will then send MAN unrequested and promptly the official tax receipt, which confirms the tax payment in the name of MAN.

3. If a down payment has been agreed for deliveries of purchased items that are subject to value-added tax and an advance invoice is created, then the value-added tax payable on the down payment must also be paid.

IV. Terms of payment

1. The purchase price and the prices for additional services shall be paid without any deductions or charges to MAN's bank account on the agreed dates.

2. If partial payments are agreed, the entire remaining debt - regardless of the maturity of any bills of exchange - shall be due for immediate payment if

a) the Purchaser, which is not registered as a merchant in the Commercial Register, is in default, either in whole or in part, with at least two consecutive payments and the amount which it has failed to pay amounts to at least one tenth of the purchase price.

a) the Purchaser, which is registered as a merchant in the Commercial Register, is 14 days in default with an instalment, suspends its payment or an application is made to initiate insolvency proceedings against its assets.

3. Payment orders, cheques and bills of exchange shall be accepted only after separate agreement has been reached and only accepted in payment with all collection and discount expenses payable by the Purchaser.

4. The Purchaser shall be entitled to offset a counterclaim by the Purchaser against the claims of MAN or assert a right of retention only insofar as it is undisputed or has a legal title. Where the counterclaim is not undisputed or legally enforceable, the Purchaser may assert a right of retention or declare the offset only where it relates to claims ensuing from the Purchase Agreement.

5. If the Purchaser is in default with payments - with two consecutive instalments if partial payments have been agreed - MAN may, without prejudice to its rights under clause VII. subclause 4, set the Purchaser a grace period of 14 days in writing, stating that it will refuse fulfilment of the Agreement by the Purchaser once this period has elapsed.

Once the grace period has elapsed without success, MAN is entitled to withdraw from the Agreement by submitting a written declaration, or may demand compensation for non-fulfilment.

6. In the event of payment being delayed, the Seller shall be entitled to demand interest on arrears at a rate of nine percentage points above the main refinancing operations rate of the European Central Bank (ECB) (www.bundesbank.de). Enforcement of additional damages is not hereby excluded.

V. Delivery time, delay in delivery

1. The delivery time is determined within the agreements of the contracting parties. In order for MAN to adhere to this delivery time, all commercial and technical questions between the contracting parties must be answered and the Purchaser must fulfil all obligations for which he is responsible, such as supplying the necessary official certifications or permits, or making a down payment. If this is not the case the delivery time shall be extended until the above-mentioned preconditions are fulfilled. This does not apply if the delay is attributable to MAN. In cases where delivery includes assembly, the delivery time shall be complied with as soon as the object of purchase is ready to be put into service for the first time within the delivery time or, if there is to be no putting into service, when assembly is complete. If subsequent amendments to the Agreement are agreed, a new delivery date or delivery time, if necessary, must be agreed at the same time.

2. Compliance with the delivery deadline is subject to the proviso that the Seller is supplied with the correct materials on time.

3. The delivery deadline has been met if the object of purchase has left MAN's plant or is notified as ready for dispatch before it expires. If the goods are to be accepted, then, unless acceptance has been justifiably refused, the acceptance date is authoritative, alternatively notification of readiness for acceptance.

4. If a non-binding delivery deadline or a non-binding delivery period is exceeded by six weeks, the Purchaser shall be entitled to call upon the Seller to deliver. On receipt of this reminder the Seller is in default. If the Purchaser is entitled to claim compensation for the delay in delivery, this shall be limited to a maximum of 5% of the agreed purchase price of that part of the total delivery, which cannot be used in time or not used appropriately because of the delay, if the Seller has acted with slight negligence. The compensation to be paid by MAN accordingly must be offset in the final settlement.

5. If, in addition, the Purchaser wishes to withdraw from the agreement and/or demand compensation instead of performance, it must, after expiry of the six week period specified in section 4, sentence 1 of this clause, set the Seller a reasonable time limit for the delivery. Compensation claims in the event of slight negligence are excluded.

If, whilst the Seller is in default, an accident makes it impossible for him to deliver, he is nevertheless liable in accordance with the aforementioned liability limitations. The Seller is not liable if the damage would have occurred even if delivery had been made in good time.

6. The limitations of liability and exclusions of liability set out in this clause do not apply to damage arising from grossly negligent or intentional breach of duty by the Seller, its legal representative or agent, or in the event of injury to life, limb or health.

7. In the event of force majeure or other unforeseen complications, such as riots, operational disruptions, strikes, lockouts, supply delays from sub suppliers, defective goods, transportation stoppages or interferences, the delivery shall not default. In such cases the agreed delivery date or period shall be extended by a period equal to the duration of the event of force majeure.

Such cases entitle both parties to withdraw from the Agreement six months after the contractually agreed delivery period or the contractually agreed delivery date is exceeded, if fulfilment of the Agreement has become unreasonable for the party which made use of the right of withdrawal.

8. During the delivery period, MAN reserves the right to make changes to the construction or shape, deviations in colour or changes to the scope of delivery, provided no significant changes are made to the object of purchase and any changes are deemed reasonable with respect to the Purchaser.

VI. Acceptance

1. The Purchaser shall be entitled to inspect the object of purchase at the agreed acceptance location within six days following notification that the object of purchase is ready for dispatch. The right to perform an inspection shall be deemed to have been tacitly renounced if the inspection is not carried out within the specified

period or if the dispatch order is issued. The object of purchase shall then be deemed to have been transferred and duly delivered when it is delivered to the Purchaser or its appointed agent.

2. If, after notification of readiness for dispatch, the Purchaser delays for more than 14 days in taking possession of the object of purchase, in issuing the shipping instructions, in fulfilling the payment agreements or in providing the agreed surety, then the Seller shall after expiry of an appropriate period of grace that has been stipulated in writing be entitled to withdraw from the Agreement through a declaration in writing and demand 15% of the purchase price as compensation.

Said compensation shall be higher or lower, if the Seller can furnish proof of a larger extent of damage or the Purchaser can furnish proof of a smaller extent of damage, or of no damage whatsoever. A grace period need not be offered if the Purchaser is seriously and definitely refusing acceptance, or is obviously not capable of paying the purchase price within this time period.

3. If the Seller does not exercise its right under section 2, it shall then, without prejudice to its other rights, be entitled to dispose freely of the object of purchase and to deliver an equivalent object of purchase in its place in accordance with the terms of the Agreement and within a reasonable period.

4. As a basic principle, the object of purchase is not taken back.

VII. Retention of title

1. The object of purchase shall remain the property of MAN until all claims arising from the Agreement are settled in full. The retention of title shall also apply to all claims that MAN subsequently obtains against the Purchaser in connection with the object of purchase, e.g. due to repairs or spare part deliveries as well as other services.

2. Any handling and processing by the Purchaser or a third party of the object of purchase, for which MAN holds the retention of title, as well as any connection to external properties, is carried out on behalf of MAN. For emerging properties, MAN is due shared ownership according to the value of the object of purchase.

3. The Purchaser is entitled to handle and sell the object of purchase within the framework of its proper business practices; as a precautionary measure, the Purchaser shall hereby assign its claims from reselling the object of purchase to MAN. The Purchaser is authorised to collect the claims. The announcement of the assignment and collection of the claim by MAN remain reserved. MAN undertakes to release the securities to which it is entitled to the extent that the invoice value of the goods subject to retention of title exceeds the claims to be secured, so long as these have not yet been settled, by more than 20%.

4. Should the Purchaser fail to pay the purchase price and prices for additional services or fails to pay in accordance with the terms of the Agreement, the Seller shall be entitled to withdraw from the Agreement and/or in the event of a culpable breach of contractual obligations on the part of the Purchaser shall be entitled to claim compensation instead of performance if the Seller has given the Purchaser notice to remedy the breach without result, unless such notice is deemed unnecessary according to the statutory provisions. Without prejudice to the Purchaser's payment obligations, the Seller shall be entitled to sell the object of purchase, plus accessories, that he has taken back into his possession on the open market for the best possible price. The Seller shall at his discretion also be entitled to arrange for a publicly appointed and sworn expert to ascertain the customary value of the object purchased. The Purchaser shall bear all costs arising from the object purchased being taken back and reutilised. The utilisation costs, without provision of proof, are 5% of the usual selling value. They shall be set higher or lower if the Seller can furnish proof of higher costs or the Purchaser can furnish proof that lower costs or no costs at all have been incurred. If the Purchaser fails to fulfil its obligations and if the Seller asserts its retention of title, then under no circumstances may it be claimed that the object purchased is required to maintain the Purchaser's business.

5. In case of third-party access, in particular the seizure of the object of purchase, the Purchaser must inform MAN immediately in writing and notify the third party of MAN's retention of ownership.

The Purchaser will pay all costs which are applied to lifting the seizure and to replacing the object of purchase as long as they cannot be collected from third parties.

6. The Purchaser is responsible for keeping the object of purchase in good condition for the duration of the retention of title and for immediately having all maintenance work that is scheduled by the manufacturer and any necessary repair work carried out (except in emergencies) by MAN or by a workshop approved by MAN to service the object of purchase. During the period of retention of title the Purchaser must insure the object of purchase for theft, burglary, fire, third-party liability and damage with the proviso that the Seller shall be entitled to the rights under the insurance policy until payment in full of the remaining amounts due. The insurance policy and premium receipts must be submitted to the Seller on request.

7. The Seller has the right to waive the retention of title according to this clause by means of a written declaration towards the Purchaser. The Purchaser agrees to the waiver by accepting the next performance and / or delivery of goods ordered, or by giving a corresponding written declaration to the Seller.

8. If the law of a country does not allow a retention of title but allows similar rights to be reserved, MAN shall be entitled to exercise all such rights. The Purchaser is obliged to take any action that is required for these rights to the object of purchase to come into effect and remain valid at its own cost.

VIII. Purchaser's obligations in the case of assembly

1. The Purchaser shall create all preconditions, which facilitate rapid assembly by MAN, at its expense.

2. On request by MAN, these include, in particular, the provision of specialists and assistants, equipment, energy, water and operating materials and resources; also the preparation of all earthworks, foundations, construction and scaffolding works. Access routes and the installation site must be levelled at floor level and be strong enough for vehicles and the foundations must be completely dry and set. If requested by MAN, the Purchaser shall provide suitable rooms for personnel and assembly equipment.

3. If the installations are to be carried out abroad, the Purchaser shall obtain all entry, work and other permits required at its expense.

IX. Transfer of risks

1. If the Purchaser is an entrepreneur, the risk of accidental loss and accidental destruction of the object of purchase shall pass to the Purchaser upon handover, in the case of a sales shipment upon delivery of the object of purchase to the shipping company, freight carrier or other person designated to carry out shipment.

Risk shall be transferred on handover even if the Purchaser's acceptance is delayed.

2. In cases where delivery includes assembly, risk shall be transferred as soon as the equipment is ready to be put into service for the first time or, if there is to be no putting into service, when assembly is complete.

If MAN's performance is damaged or destroyed through force majeure, war, unrest, sabotage or other unavoidable circumstances for which MAN is not responsible after the equipment has been despatched from the plant but before the transfer of risks, MAN shall be entitled to that part of the fee, which equates to the damaged or destroyed performance.

3. From the date of fulfilment, MAN must assume responsibility in accordance with the provisions in section XI.

4. Delivered objects of purchase must be accepted by the Purchaser even if they have inessential defects regardless of the rights specified in section XI.

X. Fulfilment

1. The delivery shall be deemed to have been fulfilled when the risk is passed to the Purchaser in accordance with section IX.

2. Partial deliveries are permitted.

XI. Liability for defects

1. In the event of resale to the end customer (contractual partner of the Purchaser), the right to assert claims shall expire in 12 months after delivery of the object of purchase to the end customer, however, the claims shall lapse at the latest 36 months after dispatch to the Purchaser or notification of readiness for dispatch to the Purchaser.

2. Shortening the statute of limitations as set out in subclause 1, sentence 1 does not apply to claims based on defects arising from grossly negligent or intentional breach of duty by the Seller, its legal representative or agent, or in the event of injury to life, limb or health.

3. If, under legal provisions, the Seller is liable for damage caused by slight negligence, the Seller's liability shall be limited:

Liability shall exist only in the event that material contractual obligations are breached, which the Purchase Agreement intends to impose on the Seller by virtue of its very content and purpose or whose performance is a prerequisite for the proper execution of the Purchase Agreement in the first place and on compliance with which the Purchaser may and does regularly rely. This liability shall be limited to typical kinds of damage foreseeable at the time the agreement was concluded. Insofar as the damage is covered by insurance taken out by the Purchaser for the type of damage in question (fixed-sum insurance policies are excluded), the Seller shall be liable only for possible concomitant disadvantages for the Purchaser (e.g. higher insurance premiums or interest-related disadvantages) until the claim in question has been settled by the insurance company.

Personal liability of the legal representatives, persons acting under instructions and employees of the Seller's company for damage caused by slight negligence on their part is excluded.

Subclause 2 of this clause applies accordingly to the aforementioned limitation of liability and the aforementioned exclusion of liability.

4. Irrespective of whether the Seller is at fault, any liability of the Seller in respect of fraudulent concealment of a defect, from taking over a warranty or a procurement risk and according to the product liability law shall remain unaffected.

5. As regards the procedure for the elimination of defects, the following shall apply:

a. The Purchaser shall immediately address claims in respect of defects to the Seller. In the event of oral notifications of claims the Purchaser is to be given a written confirmation of receipt of the notification in question.

b. If rectification of the defects by MAN is unreasonable, the defects may, with the agreement of MAN, be rectified professionally by the Purchaser or a third party. In this case, MAN shall reimburse the costs which MAN would have incurred in rectifying the defects.

c. For the parts that are installed in the course of the elimination of defects, the Purchaser is entitled to make claims arising from defects until the period of limitation of liability for the object of purchase under the Purchase Agreement has expired.

d. Any parts that are replaced become the property of MAN.

e. MAN shall bear the costs arising from the rectification or delivery of spare parts – if it transpires that the complaint is justified – the costs of the replacement part including dispatch and the appropriate costs (appropriateness of the costs is in particular given when the engine is freely accessible or is accessible with a sufficiently dimensioned maintenance flap) of removal and installation; furthermore, if it can rightly be demanded on the merits of the individual case, the costs of providing any fitters and/or assistants that may be necessary will be added.

f. To undertake any rectification work, the Purchaser must

i) grant the necessary time and opportunity

ii) furnish, at his expense, the necessary equipment and facilities and carry out ancillary work

iii) perform, at his expense, any work above and beyond the original scope of the order.

The extra cost of any work carried out outside regular working hours will be borne by the Purchaser, if the Purchaser has arranged this.

6. The obligation to eliminate defects does not include natural deterioration or parts that are subject to early wear due to their material character or area of application; moreover, it does not include damages arising from careless storage, handling or use, incorrect assembly or start-up, excessive loads, unsuitable operating fluids, inadequate engineering work or foundations, unsuitable building sites or chemical, electrochemical, or electrical factors. The same applies to other circumstances that occur after the transfer of risk, where the fault is not attributable to MAN.

7. There is no obligation to eliminate a defect if the cause of the defect which has occurred is that

- the Purchaser has not immediately notified MAN of the fault in writing.

- the object of purchase was not previously repaired, serviced or cared for in accordance with the Purchaser's specifications and the Purchaser should have recognised this or

- parts were installed in the object of purchase which are neither MAN original parts nor parts of the equivalent quality or

- the object of purchase has been changed in a way not approved by MAN or

- the Purchaser has not followed the provisions on the handling, servicing and care of the object of purchase (e.g. the Operator's Manual).
- the Purchaser has not complied with the installation guidelines applicable in each case.

8. Legal defects: If use of the object of purchase leads to commercial property rights or copyrights being breached in Germany, MAN shall, in principle, obtain the right, at its expense, for the Purchaser to continue using the object of purchase or modify the object of purchase for the Purchaser in a reasonable manner to ensure that the property rights are no longer breached.

If this is not possible on economically reasonable terms or within a reasonable period, the Purchaser shall be entitled to withdraw from the Agreement. MAN shall also be entitled to withdraw from the Agreement under the preconditions mentioned.

In addition, MAN shall indemnify the Purchaser against undisputed claims or those that have been established in law by the holder of the property rights.

9. Changes in ownership of the object of purchase do not affect the claims for elimination of defects.

XII. Liability for other claims

1. Other claims on the part of the Customer that are not regulated by clause XI, Liability for defects, lapse in accordance with the regular statute of limitations.
2. The liability for delay in delivery is definitively laid down in Clause V. In respect of any other claims for compensation against the Seller, the provisions of clause XI, Liability for defects, subclauses 2, 3 and 4 shall apply accordingly.

XIII. Use of software

If software is included in the scope of delivery, the Purchaser is granted the non-exclusive right to use the supplied software, including documentation. It is supplied for use with the object of purchase specified. Use of said software on more than one system is prohibited. The Purchaser may only duplicate, revise, translate or convert the software from the object code to the source code where legally permissible (sections 69a et seq German Copyright Act, UrhG). The Purchaser undertakes not to remove or change the manufacturer information, in particular copyright notices, without the express prior consent of MAN. All other rights to the software and documentation, including copies, are retained by MAN or the software supplier. The allocation of sub-licences is not permitted.

XIV. Place of fulfilment/applicable law/jurisdiction

1. The place of fulfilment shall be the respective supplying plant of MAN.
2. The Purchase Agreement shall exclusively be subject to the laws of the Federal Republic of Germany. The application of uniform laws on the conclusion of international purchase agreements for movable property and on the international purchase of movable property is excluded.
3. The place of jurisdiction for both parties for all present and future direct and indirect claims arising from the business relationship, including for cases involving bills of exchange and documents, shall be Munich, Germany; alternatively, the Seller may choose to bring a case at the court with jurisdiction for the Purchaser's place of domicile.