



General Terms and Conditions on the Purchase of Production Material and Spare Parts

1. Determining Conditions

The legal relationships between the Supplier and the Purchaser are based on these General Terms and Conditions for the Purchase of Production Material and Spare Parts ("General Terms") and any other contracts agreed upon in writing between the Supplier and the Purchaser. Changes and amendments require the written form. Other terms and conditions shall not apply, even if they are not rejected in each single case. This also applies when the Supplier explicitly refers to these, e.g., in confirmations of orders.

2. Orders

2.1 Supply contracts (order and acceptance of such order) and delivery releases as well as any changes and amendments thereof have to be made in writing. Delivery releases may also be issued by tele-communication.

2.2 Correspondence is to be carried out with the Purchasing Department of the Purchaser. Arrangements with other departments, that alter the points established in this contract, require explicit written confirmation by the Purchasing Department in the form of a supplement to the contract.

2.3 Orders and calls for delivery are considered to have been accepted if the supplier does not object to them in writing within one week of receipt. The purchaser is, however, also entitled to revoke the order within a further week, if the supplier has not issued a written acceptance beforehand.

2.4 Within an ongoing supply relationship the supplier will fulfill the orders and calls of the purchaser especially regarding delivery time and delivery quantity according to their content, unless there are compelling reasons for the rejection. In such case the supplier has immediately to explain such reasons in writing to the purchaser. If the supplier intends to terminate an ongoing supply relationship in whole or in part, he has to notify such intention in writing so sufficiently in advance that the purchaser is able to resource the purchase of such products without disturbances of its production. Furthermore the supplier shall support the purchaser in this change of supplier by providing necessary information, documents and know how. However, agreed delivery commitments have still to be fulfilled by supplier in a proper manner. The last agreed prices shall furthermore apply until the phase-out of the delivery.

2.5 Estimates of costs, initial samples and samples in general are binding and not to be remunerated unless otherwise explicitly agreed in writing.

2.6 To the extent it is reasonably acceptable to the Supplier; the Purchaser may demand changes to be made to the goods relating to design and process. In this case the consequences, especially with respect to additional costs or reduction of costs, as well as with respect to delivery dates, are to be resolved in an appropriate and mutually agreeable manner.

3. Payment

3.1 The agreed prices are fixed prices and include – in addition to the rate of value added tax prevailing at the time – duty-paid free at the place of use including packaging and freight costs. If a price is agreed 'ex works' or 'ex stores', the purchaser takes over only the most favorable freight costs. The supplier bears all the costs which arise including loading and excluding haulage up to the delivery of the goods to the carrier. The agreement concerning the place of fulfillment is not affected by the method of pricing.

3.2 The purchaser reserves the right to accept over or short deliveries.

3.3 Payment is to be made within 30 calendar days after receipt invoice, unless otherwise agreed with the Supplier. Where premature deliveries are accepted, the due date is based on the agreed delivery date.

3.4 Payment shall be made by bank transfer or by check.

3.5 Payments by the Purchaser do not signify acceptance of the statement of account and take place subject to the reservation of checking the bill.

The purchaser can offset all the claims which the supplier has against him against all the claims to which he is entitled against the supplier. In case of defective deliveries, the Purchaser shall be entitled to withhold payment pro rata to the value until the defective goods have been replaced.

3.6 Without previous written consent of the Purchaser, which shall not be unreasonably withheld, the Supplier shall not be entitled to assign his receivables to third parties or to have such receivables collected by third parties. In the event of an extended retention of title, agreement to resale is assumed to have been given.

Even if the Supplier assigns his receivable against the Purchaser contrary to the first sentence of paragraph 3.6 to a third party without the consent of the

Purchaser, the assignment remains valid. Regardless of the assignment the Purchaser may choose whether payment is made to the Supplier or the third party.

4. Notification of Deficiencies

4.1 The Purchaser performs the following checks at the incoming inspection:

- Identification check based on packaging units;
- Inspection for any visible external transport damage;
- Estimate of the supplied quantity;
- Check whether agreed test certificates are attached; and
- Occasional countercheck regarding the values stated in the test certificates.

The Purchaser will inform the Supplier in writing about any alleged defects of the products delivered found here without delay.

4.2 After that the Purchaser shall notify the supplier in writing about any alleged defects of the products delivered as soon as such alleged defects have been discovered in the course of an orderly business practice.

4.3 In case the Purchaser complies with the afore-stated conditions of paragraph 4.1 and 4.2 above the Supplier hereby waives his right to reject delayed notification of deficiency.

5. Confidentiality

5.1 The contracting parties commit themselves to deem as business secrets all commercial and technical details which come to their knowledge during the course of their business relationship unless such details are public.

5.2 Drawings, models, patterns, samples and similar objects shall not be made available or otherwise be made accessible to unauthorized third parties. Reproduction of such objects is permitted only according to business requirements or in compliance with the laws on copyright.

5.3 Sub-suppliers shall be made to commit themselves accordingly.

5.4 The Supplier must treat the conclusion of the contract as confidential. He may name the purchaser as a reference to third parties or use it for advertising purposes only with the Purchaser's prior written agreement. The supplier must treat as confidential the information made available to him in connection with the conclusion and implementation of the contract, provided that this has not been proved to be or become common knowledge.

5.5 Drawings and other documents, devices, models, tools and other means of production that are handed over to the supplier, remain the property of the purchaser. The ownership of tools and other means of production that are paid for by the purchaser is based on the arrangements made in a separate tooling agreement.

5.6 Without the written agreement of the purchaser the above-mentioned objects may neither be scrapped nor made available to third parties, e.g. for the purpose of production. They may not be used for purposes other than those contractually agreed, e.g. supply to third parties. During the implementation of the contract they are to be carefully stored for the purchaser by the supplier at the supplier's cost.

5.7 The care, maintenance and partial renewal of the above-mentioned objects are based on the arrangements made at the time between the purchaser and the supplier.

5.8 The Purchaser reserves all the rights to drawings or products made according to his information as well as to procedures developed by him.

5.9 All commercial or technical information made available by the purchaser (including features that are to be gathered for instance from the objects, documents or software handed over, and other knowledge or experiences) are, as long as and as far as they are not demonstrably public knowledge, to be kept in confidence from third parties and may be made available in the supplier's business only to such persons as necessarily have to be brought in for their use for the purpose of supply to the purchaser and who are likewise committed to maintaining confidentiality; they remain the exclusive property of the purchaser. Such information – except for supplies to the purchaser – may not be reproduced or used in any other way without the prior consent of the purchaser in writing. All information originating from the purchaser (if applicable including copies or drawings made) and objects entrusted by way of a loan are on demand of the purchaser to be returned to him completely and without delay or to be destroyed.

The Purchaser reserves all rights to such information (including copyrights and the right to registration of industrial property rights, such as patents, utility models, semiconductors etc.). In so far as these were made available to the



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purchaser by third parties, this reserved right also applies in favor of these third parties.

6. Delivery dates and time limits, proofs of origin and obligation to deliver spare parts

6.1 Variations from the contracts concluded and orders of the purchaser are permitted only after prior consent in writing.

6.2 Agreed dates and time limits are binding. The receipt of the goods by the purchaser defines the compliance with the delivery deadline or delivery period. If the delivery is not agreed as 'free at factory gate' (DDU or DDP in accordance with Incoterms 2000), the supplier must make the goods available in due time, taking into account the time to be agreed with the carrier for loading and dispatch.

6.3 If agreed delivery dates are not kept, the legal regulations apply in principle.

6.4 As soon as the supplier becomes aware of difficulties with regard to the production, provision of primary material, keeping of appointments or similar circumstances that could prevent him from making a delivery in accordance with the appointment or from delivering in the agreed quality, the supplier must inform the Purchasing Department of the purchaser without delay. The obligation to comply with agreed appointments is not affected by this.

6.5 Furthermore the supplier is obliged in the event of exceeding agreed deadlines to compensate the purchaser and/or the purchaser's own customer for the damage arising from exceeding the time limit.

6.6 In the event of delay of the supplier, and after the expiry of an appropriate subsequent period set by the purchaser without result, the purchaser can have the supply not yet provided by the supplier carried out by a third party at the expense of the supplier. Instead of this, the purchaser can also withdraw from the contract after the expiry of a subsequent period set by him without result.

6.7 The acceptance without reservation of the delayed delivery or service does not include a renunciation of the claims to compensation to which the purchaser is entitled on account of the delayed delivery or service; this applies until the completion of the payment owed by the purchaser for the delivery or service concerned.

6.8 Partial deliveries are in principle not authorized, unless the purchaser has explicitly agreed to these or they are reasonable to him.

6.9 Subject to other proof, the values ascertained by the purchaser in the process of incoming goods inspection are definitive for the number of items, weights and measures.

6.10 For software, including its documentation, that is part of the scope of supply, the purchaser has in addition to the right of usage to the legally authorized extent the right of usage with the agreed performance characteristics and to the extent necessary for a use of the product in accordance with the contract. The purchaser may also make a back-up copy without explicit agreement.

6.11 The supplier bears the risk for the object until the acceptance of the goods by the purchaser or by the purchaser's agent at the place at which the goods are to be delivered in accordance with the order.

6.12 Force majeure, industrial disputes, operational interruptions that are not the fault of the operator, disturbances, official measures and other unavoidable events entitle the purchaser regardless of his other rights to withdraw from the contract wholly or partly, as far as they are of considerable duration and have a considerable reduction of the needs of the purchaser as a consequence.

6.13 Proof of Origin: Suppliers located in the European Union shall provide a "long-term supplier's declaration" or – unless otherwise possible – a separate declaration for each consignment of goods, latest at the time of delivery, according to the rules as set forth in the Council Regulation of the European Union No. 1207/2001. Suppliers located outside the European Union shall provide upon request proof of preferential origin (EUR.1, EUR-MED, declaration on the invoice, etc...) according to the respective provisions governing preferential trade with the European Union. If the goods do not have preferential origin status or if the preferential origin deviates from the non-preferential origin, Supplier shall inform about the non-preferential origin and – upon request – provide a respective certificate of origin issued by the responsible authority. The country of origin shall be stated precisely. In case a community or group of countries is concerned, the individual country must be mentioned additionally, e.g. "Federal Republic of Germany (European Union)". Any proof of origin as referred to in this paragraph shall be free of charge.

6.14 Supplier undertakes to provide for each supplied item the net weight and the customs tariff number according to the European Combined Nomenclature or the HS-Code according to the "Harmonized System",

6.15 Supplier is obliged to inform purchaser in writing, if the supplied items are subject to export restrictions, in particular if the scope of supply contains Dual-Use- or other items according to European Regulation (EC) No 428/2009 or any other Regulation prohibiting or restricting the export or re-export of certain goods in general or to specific countries, such as but not limited to European embargo regulations, the U.S. Export Administration Regulations ("EAR") or the International Traffic in Arms Regulations (ITAR).

6.16 The supplier undertakes to supply the purchaser with replacement parts and replacement products for a period of up to 15 years after the end of the last delivery to the purchaser.

6.17 The prices for replacement parts and replacement products are standard prices. Claims regarding defects of quality, liability and delay are based on the provisions of this contract.

7. Quality and Documentation

7.1 Changes to the goods to be delivered are subject to the previous written consent of the Purchaser.

7.2 The Supplier shall permanently control the quality of the goods delivered and shall keep records about the outcome of these quality checks. The contracting parties shall inform each other of the possibilities of improving the quality of the goods to be delivered. In the event the kind and extent of testing, as well as the instruments and testing methods, are not agreed between the Supplier and the Purchaser, the Purchaser shall, if the Supplier so desires, agree to discuss the testing with the Supplier pursuant to his Know-how, experiences and possibilities in order to find out the requisite state of testing techniques in the case being considered. In addition, the Purchaser shall, upon request, inform the Supplier about the applicable safety regulations.

7.3 The test records have to be kept for ten years and have to be presented to the Purchaser in case of need. The Supplier is required to obligate any sub-suppliers to the same extent if legally possible.

7.4 In the event any authorities responsible for the safety of plants or vessels, emissions standards and the like, demand inspection of the manufacturing process and disclosure of the test records of the Purchaser, to scrutinize certain requirements, the Supplier shall, upon request of the Purchaser, concede to such authorities the rights which they have with regard to the Purchaser and provide them with the support which may reasonably be expected.

7.5 The supplier must set up and maintain a quality management system that is suitable in type and extent, corresponds to the current state of the art and is documented. All products and processes of the supplier have to be according to the current state of the art, the applicable safety regulations and the agreed technical data.

7.6 The supplier herewith consents to quality audits for the evaluation of the effectiveness of his quality assurance system by the purchaser or by his agent, if applicable with the participation of the purchaser's own customer.

7.7 The supplier is obliged at the request of the purchaser to conclude a quality assurance agreement with the purchaser.

8. Warranty

8.1 The supplier warrants that the products delivered

a) Will conform to the agreed specification and the initial samples delivered;
b) Fulfill any laws and regulations of those countries in which such products or the vehicles containing such products will be sold; and
c) Are perfectly suitable for the functional requirements and the capacity of purchaser's products and for the specified use.
The supplier declares to be informed about these requirements, capacity and use.

8.2 The supplier shall immediately check whether the demands imposed by purchaser are in any way incorrect, unclear, incomplete or inconsistent. If the supplier notes such a case, he shall immediately inform the purchaser in writing.

8.3 The purchaser is in principle entitled to choose the type of subsequent fulfillment. The supplier is entitled to refuse the type of subsequent fulfillment chosen by the purchaser in case this choice was unreasonable.



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8.4 If the supplier does not rectify the defect within a period of time adequate to the individual circumstances, the purchaser is entitled in urgent cases, in particular to avoid acute dangers or greater damage, to carry out these himself, or have them carried out by a third party, at the cost of the supplier.

8.5 Warranty claims expire in 36 months after taking into service of the plant/vessel equipped with Supplier's product, but not before the expiry of six months after the lodging of the complaint against the Supplier in respect of the defects

8.6 In the event of deficiencies in title caused by the product delivered by the Supplier, the Supplier additionally releases the purchaser from possibly existing claims of third parties.

8.7 If costs arise to the purchaser as a result of defective delivery, in particular transport costs, tolls, working costs, material costs or costs for an incoming goods inspection going beyond the usual extent, the supplier must bear these costs.

8.8 If the purchaser takes back products produced and/or sold by himself as a consequence of the defect of the contractual product supplied by the supplier or if because of this the purchase price to the purchaser was reduced or if there was a claim against the purchaser in some other way because of this, the purchaser reserves the right of recourse to the supplier, in the process of which there is no need for an otherwise necessary setting of a limit of the purchaser's rights regarding the defects.

8.9 The purchaser is entitled to demand compensation from the supplier for the expenditure which the purchaser was responsible for in relationship to his own customers, because they have a claim against the purchaser for compensation of the expenditure necessary for the purpose of the subsequent fulfillment, in particular transport costs, tolls, working costs and material costs.

8.10 The expiry of the limitation period in the cases of paragraphs 8.8 and 8.9 comes into effect at the earliest two months after the date at which the purchaser has fulfilled the claims of his own customers against him.

8.11 The supplier has liability without fault for the guaranteed properties of the deliveries. The guaranteed properties are agreed between the parties in the agreement or in the consignment agreement or in the order.

8.12 The purchaser is entitled to the legal and contractual claims regarding defective deliveries.

In this the following applies in particular:

The purchaser can demand from the supplier subsequent improvement or the replacement of defective parts by parts without defects according to his own choice. The costs to be borne in these cases by the supplier also include the additional costs which have arisen for the purchaser and for the purchaser's own customers, in particular transport costs, tolls, working costs and material costs, including the costs for repair and exchange of such parts as were not supplied by the supplier but which likewise have to be repaired or exchanged as a result of the defective parts of the supplier. In particular they also include the removal and installation costs in the case of replacement delivery by the supplier or replacement procurement by the purchaser. Costs within the terms of this paragraph 8.12 also include flat-rate amounts that the purchaser has to pay on the basis of corresponding agreements in the event of defective supplies to his own customers.

The right to compensation, in particular to compensation for non-fulfillment, remains unaffected by this.

9. Liability

9.1 If a claim arising from product liability is made against the purchaser under the laws stipulated in paragraph 12.4 below or any other law, the supplier will intervene on behalf of the purchaser, in so far as he would be directly liable. A contractual liability of the supplier remains unaffected. The supplier is obliged to release the purchaser from claims of this kind, if and as far as the damage has been caused by a defect of the contractual object supplied by the supplier. In cases of liability with fault, however, this applies only when the supplier is at fault. If the cause of the damage lies within the area of responsibility of the supplier, he bears the burden of proof in this respect. In these cases the supplier takes over all the costs and expenditure including the costs of possible legal proceedings or recall action. In addition, the legal provisions apply.

9.2 The purchaser will inform the supplier without delay if he wants to assert a claim against him in accordance with the preceding paragraph. As far as it is reasonable to the purchaser, he will give the supplier the opportunity to

examine the claim and to come to an agreement with the purchaser about the measures to be taken, e.g. negotiations about a settlement.

9.3 The supplier will also bear the cost of preventive customer service measures by the purchaser and/or the purchaser's own customers, in particular of measures to avoid claims (e.g. recall), provided that the preventive customer service measure can at least also be attributed to defective supplies of the supplier.

9.4 The supplier is obliged to take out a product liability and recall campaign cost liability insurance with a coverage for personal injury, damage to property and pecuniary loss in the amount of at least Euro 5 million per case, to maintain these insurances during the ongoing supply relationship without any disruption and provide evidence to purchaser at all times, if so requested.

9.5 Purchaser will demand from the supplier to increase his insurance coverage on the merits or in terms of amount, based on the demands of purchaser's particular customer, the supplier's capability, the business relationship and liability risks. The supplier is obliged to study these demands and provide his agreement wherever possible. Such agreement shall not be unreasonably refused by the supplier.

9.6 In case that an insured event occurs, purchaser and supplier are obliged to provide each other with information on all circumstances and events associated with the insured event.

9.7 At the change of the liability insurance company the supplier shall immediately provide purchaser with the corresponding supporting documents without delay and unrequested.

10. Industrial Property Rights

10.1 The Supplier shall be liable for any claim which, by the use of products delivered according to the terms of the contract, result from the infringement of industrial property rights, either granted or applied for (industrial property rights), irrespective of where these industrial property right were published or applied for.

10.2 The Supplier shall hold the Purchaser and his Purchaser's customers free and harmless of all liabilities resulting from making use of such industrial property rights.

10.3 The afore-stated shall not apply inasmuch as the Supplier has manufactured the goods to be delivered according to drawings, models or similar other descriptions or statements provided by the Purchaser and if, at the same time, the Supplier does not know or, in connection with the products developed by him, was unable to know that industrial property rights were infringed.

10.4 To the extent the Supplier is not liable pursuant to paragraph 10.3 above, the Purchaser shall hold him free and harmless of all claims brought by third parties.

10.5 The contracting parties commit themselves to inform each other on all risks of violation or alleged violations and to give each other the opportunity to jointly oppose such claims.

10.6 At the request of the Purchaser the Supplier shall inform the Purchaser about the use of any published or unpublished industrial property rights which are owned by him or licensed to him relating to the goods to be delivered.

11. Safety and Security

11.1 Persons who carry out work on factory premises in executing of the contract must respect the HSE provisions applicable in such factory. Purchaser's liability for any accident on the factory premises is excluded as far as these were not caused by intent or gross negligence of any representative of the purchaser.

11.2 Supplier has to take care that the business premises and the loading and shipping areas where products for the purchaser are produced, stored, prepared, loaded and transported, are protected against unauthorized interference within a safe and secure supply chain, and that all employed staff is reliable.

12. General Provisions

12.1 The place of performance for deliveries is the place of use, for payments it is the legal seat of the Purchase placing the order.

12.2 In the event one of the contracting parties ceases payment, or insolvency or non-judicial settlement proceedings are applied for, then the other party shall be entitled to rescind the contract with respect to the part not yet fulfilled.



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12.3 Should one of the provisions of these General Conditions or of any additional stipulations agreed upon be or become invalid then the validity of the remaining part of these conditions shall not be affected thereby. The contracting 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.

12.4 If the Parties have not agreed otherwise in writing, the following laws shall exclusively apply to these General Conditions and any additional stipulations agreed upon between the Supplier and the Purchaser:

a) In case both the Supplier and the Purchaser placing the respective order have their legal seat within the European Union the laws applicable at the legal seat of the Purchaser placing the respective order shall exclusively apply. In such case the application of the Convention of the United Nations of 11.4.1980 on Contracts for the International Sale of Goods is hereby excluded. In such case place of jurisdiction shall be at the legal seat of the Purchaser placing the order;

b) In case either the Supplier and/or the Purchaser placing the respective order have their legal seat outside the European Union the laws of Switzerland excluding the rules of conflicts of law shall exclusively apply. In such case 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. All disputes arising in connection with these Conditions and such other stipulation agreed upon, which cannot be settled amicably, shall in such case be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, Paris, France, by three arbitrators appointed in accordance with the said rules. The arbitration shall take place in Geneva, Switzerland, in the English language. However, the Purchaser shall not be prevented from choosing, at the Purchaser's own discretion, to bring an action against the Supplier in any ordinary courts of law having jurisdiction over such action.

13. REACH

The REACH Regulation (Regulation (EC) No. 1907/2006) concerning the Registration, Evaluation, Authorization and Restriction of Chemicals stipulates an obligation to register, notify and inform and imposes substance bans and restrictions. Contractor is obliged to know the currently valid version of this Regulation, and when discharging its obligations under the contract to fully and in due time comply with it. In particular Purchaser refers to the obligation to inform about SVHC substances in products (Art. 33, Candidate List and Annex XIV REACH) and the restrictions of use (Art. 55 – 66, Annex XIV and XVII REACH), the relevant lists being constantly expanded. If due to the REACH Regulation and its requirements changes to MDT products occur, Contractor shall immediately notify MDT accordingly so that any substance substitutions which may be required can be prepared in due time. All the relevant information please send to the mailbox: REACH@mandieselturbo.com. For communicating please use the „REACH: Standard communication along the supply chain“ form. The relevant form is available at dieselturbo.man.eu/documentation/supplier-documents.

14. Supplier's Corporate Responsibility

14.1. The supplier shall observe and comply with the principles stipulated in the MAN Code of Conduct for Suppliers & Business Partners (handed out to supplier and/or can be downloaded from the internet under the following link: http://www.man.eu/man/media/content_medien/doc/global_corporate_website/1/unternehmen/1/MAN_Code_of_Conduct_Suppliers_and_Business_Partners_EN.pdf).

14.2. If the supplier engages third parties to fulfill its duties, it shall ensure that any third party complies with the MAN Code of Conduct for Suppliers & Business Partners. Any such engagement of any third party is in all events subject to the express prior written approval of purchaser, cfr. Section "Sub-Performance" above.

14.3. If the supplier does not comply with the principles stipulated in the MAN Code of Conduct for Suppliers & Business Partners, purchaser has the right to terminate the contract for good cause with immediate effect.