

# MAN Truck & Bus SE

## Conditions for Special Production Equipment [formerly MAN 239-7]

as of April 2019

### 1. Scope and definitions

For the purposes of these conditions, special production equipment ("production equipment") means any tools, tools elements, moulds, gauges, templates, models, dies and other technical production equipment required to manufacture specific components of MAN Truck & Bus SE (hereinafter referred to as "MAN"). The commission, use, servicing, maintenance and new acquisition of such production equipment, the rights to this production equipment as well as the right of disposition regarding the same, are conducted exclusively as per the following provisions. MAN and the Supplier are also referred to hereinafter as the "Parties". The Terms and Conditions of Purchase for Production Material and Spare Parts for Commercial Vehicles of MAN shall additionally apply.

### 2. Ownership and possession of the production equipment:

- 2.1 MAN is the sole owner of the production equipment. MAN loans the production equipment to the supplier. If the production equipment remains with the supplier, the Parties agree that the supplier keeps the production equipment safe for MAN free of charge (constructive possession). The transfer of the production equipment is superseded in this respect by constructive possession pursuant to § 930 German Civil Code (BGB). Should the production equipment be located at a subcontractor's facility, the supplier shall assign its claim for restitution to MAN (§ 931 German Civil Code (BGB)).
- 2.2 The supplier possesses the production equipment for MAN for the duration of the supply relationship, unless the Parties have arranged otherwise.
- 2.3 The supplier is committed to send a confirmation of possession regarding the lent production equipment to **MAN Accounting Center Sp. z o.o., Einkaufsunterstützung Deutschland/Purchasing Germany, reference: Tooling documentation, ul. Kolorowa 6, 60-198 Poznan, Poland** once a year. The current production equipment location shall be indicated in the confirmation of possession, and information on target output over the term, cumulative output/part number since tool application and the maximum daily capacity/shift must be provided in the comments field. The confirmation of possession shall be created in the application "tool inventory" at [www.VWGroupSupply.com](http://www.VWGroupSupply.com).  
In addition, following a corresponding request, the supplier is obliged to provide MAN immediately and free of charge, with separate confirmations of possession and all miscellaneous documents such as bills, delivery notes, etc. that are required to reimburse already-paid value-added tax, for fiscal purposes. If the supplier does not comply with the obligation in an individual case, MAN reserves the right to claim any resulting damages against the supplier.
- 2.4 Regardless of this condition, MAN is entitled to exercise its right of ownership at any time and to reclaim the production equipment from the supplier. If MAN exercises this right, the supplier shall be obliged to surrender the production equipment to MAN in perfect condition. The supplier has no right of retention or lien on the production equipment and documentation, as far as the counter-claim is not undisputed or upheld by a court of law.  
The supplier must not object to the surrender with the following:
  - o An objection of invalidity to the termination of the supplier relationship,
  - o A plea of non-amortisation in the allocation of costs for subsequent production equipment, maintenance and servicing, etc.
- 2.5 In the event of authorised production for the independent aftermarket, the supplier shall be obliged to immediately develop a corresponding strategy for ensuring secure supply sources. The supplier shall have no right of retention beyond a period reasonable for this condition.

### 3. Marking requirement

The supplier shall be obliged to mark the production equipment permanently and in an adequately visible manner in accordance with the requirements of the standard M 3666. The supplier must prepare at least two, a maximum of 5 digital photos of the marked production equipment for invoicing purposes. The digital photos shall be created in such a way that the production equipment, all

add-on and exchange parts, and the production equipment marking are visible.

Photo 1: Complete tool with size comparison

Photo 2: Close-up view on which the labelling of the tool as property of MAN is clearly visible (label according to MAN norm M 3666)

Photo 3: Tool in the open position, both halves of the form on one image  
Photo 4 & 5: Each halve of the form a photo

The costs associated with this requirement are compensated with the payment of the agreed remuneration.

### 4. Operating Equipment Sheet, production equipment specification, application "tool inventory"

- 4.1 The supplier is obliged to fill out a production equipment sheet completely for each inventory number as per the production equipment order.
- 4.2 The production equipment specification is the detailed listing of the individual elements of a production equipment item and constitutes the content of the production equipment sheet. In particular, the cores, gauges, moulds, etc. that are required for the purpose of using the production equipment, must be designated.
- 4.3 The supplier shall use the application "tool inventory" at [www.VWGroupSupply.com](http://www.VWGroupSupply.com). The information from sections 4.1 and 4.2 and the digital photos from section 3 must be set in the application "tool inventory" as part of the tool request, and updated for invoicing and in case of changes. The production operating sheet from section 4.1 must be sent to **MAN Accounting Center Sp. z o.o., Einkaufsunterstützung Deutschland/Purchasing Germany, reference: Tooling documentation, ul. Kolorowa 6, 60-198 Poznan, Poland**.

### 5. Service, maintenance, insurance

- 5.1 The supplier shall treat the production equipment carefully, maintain it over the customary intervals in a timely manner, and always keep it usable as per the latest drawing version of the components manufactured from the production equipment throughout the duration of the loan.
- 5.2 As the borrower, the supplier shall be responsible for the dimensional stability of the production equipment, particularly the gauges. At the same time, the supplier must evaluate the deviations related to wear and tear and correct them if necessary.
- 5.3 The supplier shall be obliged to insure the production equipment at stated value against fire, theft, and other damages.
- 5.4 Any storage costs incurred shall be borne by the supplier only.
- 5.5 MAN is authorised to verify compliance with these obligations at any time over the duration of the loan period during the supplier's regular business or working hours at the production equipment operating site. MAN is also entitled to verify the required insurance coverage documents held by the supplier. Provided there is no imminent danger and notification does not conflict with the purpose of the inspection, MAN will announce the inspection in advance.
- 5.6 New production equipment that is required due to wear, damage and similar phenomena is acquired by the supplier as the property of MAN, provided the original production equipment was also the property of MAN. At the time of the new acquisition, the production equipment transfers to MAN ownership. The investment costs required for this new acquisition are included in the parts price, unless a different written arrangement is made in individual cases. The provisions of this contract shall apply accordingly to replacement production equipment.

### 6. Right of disposition

- 6.1 The production equipment must be used to fulfil the demands of MAN, subsidiaries of MAN or companies affiliated with them pursuant to §§ 15 ff AktG (German Stock Corporation Law), both for production and spare parts.
- 6.2 If there is no longer a need to use the production equipment at the supplier's facility to fill orders of MAN or the companies mentioned in sentence 6.1, the supplier must inform MAN of the decreased demand in writing by means of a

scrapping request. The supplier is not entitled to sell, scrap, or dispose of the production equipment in any other way, unless this is agreed upon with MAN in writing. The scrapping request can be accessed on MAN's Internet website at "[Company → Suppliers & Partners → Supplier → Information](#)".

- 6.3 MAN reserves the right to reclaim the production equipment from the supplier or to commission the supplier with scrapping it. The supplier is obliged to provide information required by MAN in the framework of the scrapping release. The supplier shall bear the scrapping costs. If the supplier generates revenue when scrapping the production equipment, MAN must be informed of the magnitude of this revenue. If the revenue generated exceeds the scrapping costs, the Parties will reach an agreement about the distribution of the revenue. If the scrapping costs exceed the revenue, the supplier shall document the actual costs and is entitled to establish cost-sharing discussions with MAN.
- 6.4 Both during the loan period and when demand decreases for MAN and the companies in sentence 6.1, utilisation of the production equipment by the supplier to manufacture parts for third parties requires prior written approval by MAN in each case, which may not be unreasonably denied. Third parties in this context are companies not connected with MAN as per §§ 15 ff. AktG (German Corporation Law).
- 6.5 A pledge, assignment as security, or any other act of disposal of the supplier regarding the production equipment is not permitted.

### 7. Relocation, use of production equipment at sub-contractor's facility, forwarding to third parties

- 7.1 The supplier may relocate the production equipment to a location other than the original production site only after prior written approval by MAN's Procurement Department. The same is true in the case of production equipment located at the facility of a supplier's sub-contractor.
- 7.2 If the supplier uses the production equipment or parts of the production equipment at one or several of its sub-contractors' facilities, the supplier must ensure with the respective sub-contractors through corresponding contractual provisions, that existing provisions and rights of MAN are also guaranteed in relation to the respective sub-contractors.
- 7.3 MAN is entitled to demand disclosure of the corresponding contractual agreements by the supplier, in particular in the case of sub-contractors' insolvency. If the supplier cannot present contractual agreements and damage is incurred by MAN by distribution to the third parties under violation of this obligation, the supplier shall be obliged to fully compensate and indemnify this damage caused to MAN.

### 8. Liability

- 8.1 The supplier shall be liable for any damage incurred on the production equipment, provided the supplier is at fault. The supplier is responsible for intent and negligence. In this context, the supplier must take responsibility for the conduct of its employees and the further vicarious agents employed by it. Exonerating evidence pursuant to § 831 (1) sentence 2 BGB (German Commercial Code) is excluded.
- 8.2 If damage arises to the legally protected interests of third parties and these third parties assert claims against MAN with regard to the damage to these legally protected interests, the supplier agrees to indemnify MAN from these claims in this respect and shall compensate the costs resulting from a corresponding claim of MAN. Included among these costs are prosecution/legal costs arising as a result.
- 8.3 MAN liability is limited to intent and gross negligence.

### 9. Simulation, tool strip list, initial sampling

- 9.1 Before start of tooling manufacturing, the supplier verifies the feasibility of the components in accordance with specifications over the lifetime of the product by simulating the corresponding equipment and transmitting the results to MAN.
- 9.2 Immediately after the nomination, the supplier is obligated to provide a detailed time schedule (requested layout: tool strip list) for the manufacture of

the production equipment. The so called tool strip list must also specify the respective manufacturer of the equipment (toolmaker) including details of its location.

9.3 The components manufactured with the corresponding production equipment must be sampled and released in accordance with the specifications listed in the quality assurance agreement for purchased parts and suppliers.

#### 10. Changes to production equipment

If changes to the production equipment are commissioned by MAN, the conditions apply accordingly.

#### 11. Invoicing and payment

11.1 Payment of the remuneration for the production equipment is effected if the following documents are present and have been completed correctly and in full: (1) order confirmation for the production equipment order, signed without conditions, (2) initial sample report with OK-sampling (Grade 1), (3) a production equipment specification updated to the point in time of invoicing (4.2 and 4.3), to be sent by the supplier to MAN Accounting Center Sp. z o.o., Einkaufsunterstützung Deutschland/Purchasing Germany, reference: Tooling documentation, ul. Kolorowa 6, 60-198 Poznan, Poland, and (4) proper and auditable invoice. 11.2 The invoicing address can be gleaned from the respective production equipment order. Invoicing is permissible if the prerequisites for payment under 11.1 are met.

11.3 Other payment conditions come from the production equipment order.

#### 12. Production equipment in the event of insolvency, expectant rights, production equipment in the ownership of the supplier

12.1 In the event that the supplier transfers its above-mentioned duties to manufacture the above-mentioned production equipment, either wholly or in part to third parties, and insolvency proceedings are being applied against its assets, MAN is entitled in supplement to clause 18.2 of the Terms and Conditions of Purchase for Production Material and Spare Parts for Commercial Vehicles to enter into the supplier's contracts with third parties and pay the third parties directly. The supplier is obliged to make a corresponding contractual arrangement with the third party ensuring an unobstructed right of MAN to enter into contracts with third parties.

12.2 If the supplier acquires expectant rights to the production equipment with whose manufacture it has commissioned a third party, the supplier declares the assignment of the expectant rights to MAN by signing the order receipt. However, this assignment takes place under the condition that MAN pays to the supplier the agreed price for the expectant rights to the production equipment. The expectant rights pass to MAN with the payment without the need for further clarifications between the parties.

12.3 In the case a supplier is entitled to ownership of the production equipment, clauses 2, 3, 6.5 and 7.1 do not apply. Instead of the operating equipment sheet and the specification from clauses 4.1, 4.2, or the specification in the application "tool inventory" as per clause 4.3, the order value is openly detailed in consultation with MAN. Clause 6.3 applies only to the extent that MAN is entitled to purchase the production equipment from the supplier. In doing so, the purchase price is oriented to the present value of the production equipment. As part of relocations, the non-use of clause 7.1 does not release the supplier from any potentially required releases/audits of the new production site/processes. The remaining clauses apply accordingly, taking into account that the production equipment is owned by the supplier.

#### 13. Prototype production equipment

Production equipment ordered and used exclusively for the production of prototype parts is subject to the above conditions with the exception of Item 2.3 Ownership and possession of the production equipment, 3. Marking requirement, 4. Operating Equipment Sheet, production equipment specification, application "tool inventory", 9. Simulation, tool strip list, initial sampling and 11. Invoicing and payment. Regulations on these topics can be found in the prototype order for resources.

translation differs from the German legal meaning of this agreement and its terms, the German meaning shall apply."

"The English Translation is for information only. This Agreement and its terms shall be construed according to German law. If the English meaning in the courtesy