General Terms and Conditions on the Provision of Training Services

1 INTERPRETATION

1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:
"**Conditions**" means the General Terms and Conditions on the Provision of Training Services set out herein;
"**Contract**" means any contract for Training Services between the Customer and MD;
"**Customer**" means the person, firm or company that has requested any Training Services identified in the Order;
"**MD**" means the company within MAN Diesel group of companies which offers the Training Services with its PrimeServ Academy under the Contract, which is MAN Diesel SE or any of its branches or affiliates (as the case may be);
"**Order**" means an order placed by the Customer with MD for Training Services;
"**Participant**" means the employee named by the Customer taking part in the Training Services;
"**Training Services**" means the training measures offered by the respective MAN Diesel PrimeServ Academy.

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 MD subject to the Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Customer 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 MD of performing the Contract, then the Contract price and/or programme will be adjusted accordingly.

2.2 Orders from the Customer are binding on MD only after a written order acknowledgment has been issued and only on the conditions stated in the order acknowledgment.

2.3 All information on price, technical and other data stated in catalogues, prospectuses, circulars, advertisements, illustrated matter and price lists is to be considered approximate. Such information is only binding to the extent expressly stated in the order acknowledgment or in other documents forming part of the Contract expressly referring to such information.

3 SCOPE OF SERVICES

3.1 As far as not stipulated otherwise by MD, the participation fee shall be per Participant and date of the training measure excluding VAT. However, this participation fee includes the training material and, as far as the Training Service takes place at one of MD's PrimeServ Academies, also meals and drinks during the Training Service.

3.2 MD shall be entitled to replace the referees announced and to change program and content of the Training Service, however, preserving the overall character of the Training Service. In case it is not feasible to hold the Training Service because of an event of Force majeure, rejection of the referee, disturbances at the place of venue or an insufficient number of Participants, the Participants will be informed without undue delay. In case the Training Service is cancelled because of an insufficient number of Participants, the notice of cancellation will be sent to the Customer at least 4 weeks prior to the planned date of the Training Service. The participation fee will be reimbursed in such cases.
Claims for compensation of travel expenses and accommodation are excluded, unless they have been caused by intention or gross negligence of MD.

3.3 MD is obliged to use best efforts to minimise the effects of impairments of performance.

3.4 Claims for reimbursement of the participation fee shall be excluded in case of a premature departure of one or more Participants, e. g. in case MD exercises its right of the owner of the premises to undisturbed possession according to Clause 3.6 below.

3.5 In case the Participant needs an official invitation from MD in order to get a visa for the country where the Training Service takes place and MD is therefore liable according to the applicable law of this country for damages and costs of third parties caused by the corresponding Participant, the Customer shall reimburse such costs and damages to be paid by MD.

3.6 In case the Training Service does not take place at a PrimeServ Academy of MD, the Customer shall timely cooperate with MD in order to ensure proper arrangement of the Training Service by MD. This especially applies to the provision of appropriate locations, technique etc. according to MD's choice. In case the Customer infringes this obligation to cooperate, the Customer shall fully pay the training fees even if the Training Service could not be arranged as originally planned or has to be cancelled.

3.7 MD exercises its right of the owner of the premises to undisturbed possession at the place venue and is especially entitled to take all necessary measures to ensure proper arrangement of the Training Service. This also includes prevention of disturbances of the Training Service by one or several Participants, if necessary, up to the removal of such Participants from the Training Service.

3.8 MD will issue participation certificates for those Participants having attended the whole Training Service after the end of the Training Service and send them to the Customer.

4 PRICE AND OFFER BINDING PERIOD

4.1 Unless otherwise given forth by MD in writing, all offers are made at the prices valid at the date of MD's offer or the date of MD's order acknowledgement (as the case may be).

4.2 Unless stipulated otherwise by MD in writing, all offers of MD are subject to an offer binding period of 30 days.

4.3 Unless fixed prices have been agreed in writing by MD, all Training Services shall be arranged at the prices valid at the date of MD's offer or the date of MD's order acknowledgement (as the case may be).

5 DELIVERY, DELAY AND SET-OFF

5.1 The training fee is due upon receipt of the bill.

5.2 In case the Customer is in delay with its payments of the training fee, MD is without prejudice to MD's other rights under these Conditions, entitled to interests from the due date until payment is made in full, both before and after any judgment, at 8% per annum over the rate of the main refinancing facility of the European Central Bank in force on the due date of payment. In case a higher damage caused by delay occurred to MD, the Customer shall reimburse such damages to MD. In each case the Customer is allowed to prove that no or a lesser damage occurred to MD.

5.3 Payment shall be made via bank transfer against invoice. Payment in cash or with cheque is not permitted. Accordingly MD bears no responsibility in case of their loss.

5.4 The Customer may deduct payments only against claims set forth by a court decision or those explicitly accepted by MD in writing. The Customer is entitled to exercise a right of retention only as far as the counterclaim results from the same contract.

6 CANCELLATION

6.1 Cancellation of a Training Service booked by the Customer has to be made in writing.

6.2 The following amounts have to be paid by the Customer in case of a cancellation or will be deducted from payments already received (as the case may be):
- if the notice of cancellation will be received by MD at least 28 calendar days prior to the scheduled Training Service, cancellation shall be free of charge;
- 50 % of the training fee shall be charged, if the notice of cancellation will be received by MD after the 28th but before the 10th calendar day prior to the scheduled Training Service;
- if the notice of cancellation will be received by MD after the 10th calendar day prior to the scheduled Training Service, the full amount of the training fee shall be charged.
The Customer is in principle entitled to prove that no or a substantially lesser damage occurred from the cancellation of the Training Service compared to the cancellation fee charged by MD.

6.3 If the Training Service is part of the scope of supply of a new building contract, the following shall apply in case of a cancellation by the Customer instead of Clause 6.2 above:
- if the notice of cancellation will be received by MD at least 28 calendar days prior to the scheduled Training Service, the Customer shall once have the right to agree with MD on an alternative date for a further Training Service free of charge;
- 50 % of the training fee shall be charged for an alternative date for a further Training Service, if the notice of cancellation will be received by MD after the 28th but before the 10th calendar day prior to the scheduled Training Service;

- if the notice of cancellation will be received by MD after the 10th calendar day prior to the scheduled Training Service, the full amount of the training fee shall be due for a further Training Service based on the prices valid according to the current price list of MD.

The Customer is in principle entitled to prove that no or a substantially lesser damage occurred from the cancellation of the Training Service compared to the cancellation fee charged by MD.

6.4 MD will be glad to accept a substitute Participant without additional cost to the Customer.

7 COPYRIGHTS

The training material provided to the Participants and/or the Customer is protected by MD's copyrights. Any reproduction, transfer or other usage of these training materials is permitted only with the prior written consent of MD.

8 LIMTATION OF LIABILITY

8.1 The Training Services will be properly prepared and carried out by qualified authors and referees. However, MD shall not be liable for topicality, correctness and completeness of the training material provided and the Training Services arranged. MD shall especially not be liable to the Customer in contract, tort, law or otherwise howsoever and whatever the cause thereof, (i) for any loss of profit, hire, business contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.

8.2 Nothing in these Conditions shall exclude or limit the liability of MD for death or personal injury or damage to the Customer's or the Participant's property, caused by MD's negligence or fraudulent misrepresentation. In addition Clause 8.1 above shall not apply in case MD has caused the damage with intention or gross negligence.

9 FORCE MAJEURE

9.1 In case of Act of God, labour disputes, civil commotion, governmental or official actions or any other event which was unforeseeable or outside the reasonable control of the Party affected, the Parties shall be temporarily relieved from their obligations during the period of time such events continue and to the extent their liabilities are affected. The afore-stated shall also be applicable in case the Party concerned is already in default.

9.2 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.

10 DATA PROTECTION

10.1 MD will take its utmost care protecting the Customer's and the Participant's personal data. MD shall keep the Customer's and the Participant's personal data confidential and shall use them only in compliance with the locally applicable data protection law. Personal data shall be defined as any data recorded in combination with the name of the Customer and/or Participant. The basic data received from the Customer and/or the Participant (first name, last name, delivery and invoice address, e-mail address, depending on the terms of payment agreed upon also bank account, credit card number, expiration date of the credit card) will be recorded by MD in its customer database. They will be used for purposes of arrangement of the Training Services, for charging of the training fees and will – as far as necessary – be given to external service providers of MD.

10.2 As far as not stipulated otherwise by the Customer and/or the Participants, MD will inform about its products and services and will contact the Customer via fax, e-mail or phone.

10.3 The Customer and the Participant may revoke their consent hereto at any time. Requests for modification may be directed to the PrimeServ Academy arranging the Training Service.

11 GENERAL

11.1 As far as permitted by law, place of fulfilment is the legal seat of the respective MD company which is arranging the Training Services.

11.2 The Parties 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 Party.

11.3 If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect. The Parties are committed to replace the invalid provision by another - with respect to the commercial effect - equivalent provision, in so far as this is possible.

11.4 The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of Switzerland, however, excluding the rules of conflicts of law.

11.5 If a difference of opinion cannot be settled by the Parties themselves, the dispute shall be finally decided by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such Rules. The arbitration proceedings shall take place in Geneva, Switzerland in the English language.