



1 INTERPRETATION

1.1 In these Conditions the following words will (unless the context otherwise requires) have the following meanings:

"**Australian Consumer Law**" means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

"**Conditions**" means the General Terms and Conditions on the Provision of Training Services set out herein;

"**Consumer**" has the meaning given to it in section 4B and Schedule 2, section 3 of the Australian Consumer Law;

"**Contract**" means any contract for Training Services between the Customer and MDT;

"**Customer**" means the person, firm or company that has requested any Training Services identified in the Order;

"**MDT**" means the company within MAN Diesel & Turbo group of companies which offers the Training Services with its PrimeServ Academy under the Contract, which is MAN Diesel & Turbo SE or any of its branches or affiliates (as the case may be);

"**Order**" means an order placed by the Customer with MDT for Training Services;

"**Participant**" means the employee named by the Customer taking part in the Training Services;

"**Training Fee**" means the fee payable by the Customer to MDT for the Training Services;

"**Training Services**" means the training services offered by the respective MAN PrimeServ Academy.

"**VAT**" means Value Added Tax

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 MDT 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. To the extent that there is any inconsistency between any Contract and these Conditions, these Conditions shall apply. 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 MDT of performing the Contract, then the Contract price and/or programme will be adjusted accordingly.

2.2 These Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Training Services.

2.3 Orders from the Customer are binding on MDT only after a written order acknowledgment has been issued by MDT and only on the conditions stated in the order acknowledgment. MDT may refuse to accept an Order or part of an Order without giving reason.

2.4 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 MDT, the Training Fee shall be per Participant and date of the training measure excluding VAT. The Training Fee includes the training material and, as far as the Training Service takes place at one of MDT's PrimeServ Academies, includes meals and drinks during the Training Service.

3.2 MDT shall be entitled to replace the referees announced and to change the program and content of the Training Service, provided that the overall character of the Training Service is preserved. 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 Training Fee will be reimbursed in such cases.

3.3 Claims for compensation of travel expenses and accommodation are excluded, unless they have been caused by intention or gross negligence of MDT.

3.4 MDT Claims for reimbursement of the Training Fee shall be excluded in case of a premature departure of one or more Participants, for example where MDT 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 MDT in order to obtain a visa for the country where the Training Service takes place and MDT is therefore liable according to the applicable law of such country for damages and costs of third parties caused by the corresponding Participant, the Customer shall reimburse MDT for any such costs and damages paid by MDT.

3.6 Where the Training Service does not take place at a PrimeServ Academy of MDT, the Customer shall cooperate in a timely manner with MDT in order to ensure proper arrangement of the Training Service by MDT, including with respect to the provision of an appropriate venue, access to such venue, locations, and technique, at MDT's discretion. If the Customer infringes this obligation to cooperate, the Customer shall pay the training fees in full even if the Training Service is not arranged as originally planned or has to be cancelled.

3.7 As owner of the PrimeServ Academy premises, MDT has a right to undisturbed possession of each premises and is entitled to take all necessary measures to ensure proper arrangement of the Training Service. This includes prevention of disturbances of the Training Service by one or more Participants, including, if necessary, the removal of such Participants from the Training Service.

3.8 MDT will issue by mail participation certificates for those Participants having attended the whole Training Service, upon completion of the Training Service.

4 PRICE AND OFFER BINDING PERIOD

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

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

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

5 DELAY AND SET OFF

5.1 The training fee is due within 14 days of receipt by the Customer of the bill.

5.2 Unless otherwise expressly agreed in writing by MDT, if the Customer delays payment of the training fee, MDT is entitled, without prejudice to MDT's other rights under these Conditions, to interest from the due date until payment is made in full, both before and after any judgment, at 6% per annum over the Cash Rate Target of the Reserve Bank of Australia in force on the due date of payment. The Customer is liable to MDT for any direct and indirect loss suffered by MDT and caused by the Customer's delay of payment of the Training Fee, and shall reimburse MDT for such loss upon demand.

5.3 Payment shall be made via bank transfer against invoice. Payment in cash or cheque is not permitted.

5.4 The Customer may deduct payments only against claims set forth by a court order or those explicitly accepted by MDT in writing.

6 CANCELLATION

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

6.2 The following amounts must be paid by the Customer in case of a cancellation or will be deducted from payments already received, as the case may be:

- (a) if the notice of cancellation is received by MDT 28 calendar days or more prior to the scheduled Training Service, cancellation shall be free of charge;
- (b) if the notice of cancellation is received by MDT after the 28th but before the 10th calendar day prior to the scheduled Training Service, 50 % of the Training Fee shall be charged;
- (c) if the notice of cancellation is received by MDT after the 10 calendar days or less prior to the scheduled Training Service, the full amount of the Training Fee shall be charged.

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:

- (a) if the notice of cancellation will be received by MDT at least 28 calendar days prior to the scheduled Training Service, the Customer shall once have the right to agree with MDT on an alternative date for a further Training Service free of charge;
- (b) 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

MDT after the 28th but before the 10th calendar day prior to the scheduled Training Service;

- (c) if the notice of cancellation will be received by MDT 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 MDT.

6.4 MDT may 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 MDT's copyrights. Any reproduction, transfer or other usage of these training materials is permitted only with the prior written consent of MDT.

8 LIMITATION OF LIABILITY

8.1 The Training Services will be properly prepared and carried out by qualified authors and referees. There shall be no claims that are not provided for in this Contract. Save as expressly stated herein all warranties, terms and conditions whether express or implied by statute, common law usage trade custom or otherwise are hereby expressly excluded to the fullest extent permitted by law. Therefore to the extent to which MDT is entitled to do so under statute, common law usage trade custom or otherwise, MDT shall in no event be liable to the Buyer, by way of indemnity or by reason of any breach of contract or statutory duty or in tort or otherwise, for any and all claims, losses, damages such as but not limited to (i) any loss of use of any Part (or all) of the works or the Products, (ii) any loss of hire, business contracts, revenues or anticipated savings, (iii) damage to the Buyer's reputation or goodwill, (iv) any loss resulting from any claim made by any third party, (v) loss of production, loss of profit, (vi) default under any business contracts and/or for any indirect or consequential loss or damage which may be suffered by the Buyer in connection with the Contract.

8.2 Except to the extent required by law, MDT makes no other express or implied warranties or guarantees. To the maximum extent permitted by law, MDT's liability pursuant to:

- (a) any warranty, term or condition implied in these Terms; and
(b) any other rights (including, for the avoidance of doubt, section 274 of the Australian Consumer Law or any similar or successor provision), shall be limited, at MDT's option, to:
- (i) the supplying of the Training Services again; or
(ii) the paying the cost of having the Training Services supplied again.

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 MDT will take its utmost care protecting the Customer's and the Participant's personal data. MDT 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 MDT 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 MDT.

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

10.3 The Customer and the Participant may modify or revoke their consent hereto at any time. Requests for modification or revocation 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 MDT 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 New South Wales, 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.

12 INDEMNITY

The Customer indemnifies and holds MDT harmless against:

- (a) all liabilities, direct and indirect loss, damages, costs or expenses incurred or suffered by MDT; and
(b) all actions, proceedings, warranty claims, claims or demands made against MDT;

as a direct or indirect result of any action by the Customer or arising under or in connection with these Conditions, or the supply of Goods or Services by MDT.

13 WAIVER

Failure by MDT to enforce any of these Conditions shall not be construed as a waiver of any of MDT's rights hereunder or a waiver of a continuing breach.

14 ACCEPTANCE

14.1 Acceptance by the Customer of these Conditions as amended by MDT from time to time by MDT may be by any one of the following ways:

- (a) by signing and returning to MDT a copy of these Conditions or an order confirmation with reference to these conditions;
(b) by performing an act that is done with the intention of adopting or accepting these Conditions after receiving these Conditions from MDT, including but not limited to continuing to order Training Services;
(c) by oral acceptance.

14.2 Failure to accept these Conditions within seven (7) days of receipt by the Customer of these Conditions may result in the immediate withdrawal of MDT's offer to supply Training Services.