

Action code: **COMMERCIAL**

Fees for technical service, training works

EVER MAN Marine Service Shanghai, China

SL2024-001 November 2024

Concerns

Owners and operators of Two-stroke marine engines around the worldwide.



Dear Sir or Madam

This Service Letter informs Two-stroke marine engine product owners and operators of EVER MAN's prices on service or training rendered from China.

The fees are valid from January 2024 for assistance rendered by personnel based in Shanghai, China.

Any questions regarding our fees for technical training service can be directed to EVER MAN Marine Service at dieselservice@ever-man.cn

or the dieseltraining@ever-man.cn

Yours faithfully

Stone Hou

General manager
EVER MAN Marine Service, Shanghai China

Encl.:
General Terms & Conditions

EVER MAN Marine Service

Address: Room B201, 2nd Floor, No.152 Jiaoji Road, Putuo District, Shanghai, China
Mobile: +86 135 12169712
Mail: stonehou@ever-man.cn
Please visit our website: <https://www.ever-man.cn>

Fees in USD for technical service and training

Pricing 2024

	Weekdays within normal working hrs. (08:00-17:00)			Saturday, Sunday, and local holidays*			Waiting time		Travelling time**
	Full day (4-8 hrs)	½ day (0-4 hrs)	Hourly rate after normal working day	Full day (4-8 hrs)	½ day (0-4 hrs)	Hourly rate after 8-hour working day	Full day (4-8 hrs)	Hourly rate	Hourly rate
Superintendent engineer	822.5	411.5	150	1175	587.5	187.5	625	100	100
Senior service engineer	650	325	115	937.5	469	150	500	82.5	82.5
Service engineer	582.5	291.5	122.5	865	432.5	122.5	395	65	65
Technician	450	225	77.5	617.5	309	80	347.5	57.5	57.5
Onboard Training	822.5	411.5	150	1175	587.5	187.5	625	100	100
Training Onboard	Prices vary depending on the number of participants and location, so please contact us for further information.								

*Holidays are determined by the location where the job is being performed

** Max. 16 hours of travelling time per day will be charged

OSR specialist rates are identical to senior service engineer rates

Terms and conditions

Charges

For work up to 4 hours, half a day will be charged. For hours worked in excess of 4 hours up to 8 hours, a full day will be charged. Work carried out before and after normal working hours (08:00–17:00) and in excess of 8 hours per day will be charged as overtime hours. A minimum of 12 hours per day are charged when our personnel are requested to sail with the vessel/stay on site. Note that accommodation suitable for an officer is expected. Meal break hours are not to be deducted from the attendance as these have been provided for in the fees. 10 waiting hours will be invoiced for a full waiting day due to delay caused by the customer.

In addition to the service fees, customers will be invoiced for travel expenses (train, bus, taxi, ferry, mileage).

For service rendered outside the home base of the respective service personnel, a per diem charge of USD 95 will be added, together with expenses for hotels and transportation.

Mileage with company/private car will be charged USD 1 per km. A 10% administration fee will be added to our outlays (hotel, flights, taxi, train, ferry, etc.).

Tools shipped in connection with the service work must be returned to EVER MAN no later than 7 days after the repair is finished. If tools are returned late, EVER MAN reserves the right to surcharge USD 600 per day until the tools arrive at our facility in China.

Working hours

Company policy dictates that the duties of our engineers cannot be extended beyond 12 working hours a day excluding travelling, transport and breaks. However, in cases of emergency, particularly if unpredictable events pose threats to life and limb or result in disproportionate damage that cannot be mitigated through alternative means, the working hours may be extended as necessary. During such emergencies, the situation must be evaluated by the attending EVER MAN personnel and requires written consent from the captain/chief engineer before extension of work can occur. No deductions for transport or breaks are to be made in the service fees as these have already been provided for in the fees.

To comply with international rules, it is required for jobs extending beyond two weeks that our engineers have a weekly day of rest. Diems will be invoiced, hours will not be invoice on a day of rest. Hours on the invoice will be rounded off to nearest half hour.

Supporting documents

Hotels and flight tickets will be booked by EVER MAN. Supporting documents, i.e. documentation for flight tickets and hotel accommodation, will only be made available if this is requested when the service visit is ordered. If such documents are ordered after the service attendance, a fee of USD 350 will be charged. We also charge USD 350 for changes to invoicing address, PO number, or similar that requires a new invoice due to missing information when the PO was issued.

Expenses in connection with special visa requirements, as regards the ISPS Code, etc., will be added on an actual cost basis + 10%.

Indemnity

Note that our personnel is not authorized to sign any forms releasing the customer, ship, or power plant from its responsibility towards our representative. If doubt occurs, our representative will be entitled to leave the site, and the customer will be invoiced in accordance with our normal fee, including travelling expenses.

In general

The exchange rate will be fixed on the date of issue of the order. On overseas flights our engineers will be travelling on lowest fare business class. Inside USD pe, travelling will be on economy if available.

Invoices are exclusive of local taxes, such as VAT and sales tax (e.g. in China). Each service call will be followed up by a report covering the service rendered.

Service will be rendered in accordance with our General Terms and Conditions, a copy of which is enclosed. When ordering, please provide the exact invoicing address. The invoice will be forwarded electronically in PDF-format. An administration fee of USD 10 will be added on the invoice if a paper copy is required.

We recommend liaising with the nearest EVER MAN Centre in order to reduce travelling time and cost. However, attendance is always subject to competence, availability and capability. The contact details of the nearest EVER MAN Centre can be found at:
<https://www.ever-man.cn>

Safety when boarding

In accordance with our focus on safety, we underline the importance of checking and confirming the following five items when boarding a vessel from a launch boat:

1. SOLAS approved life jacket must be available for use when entering the pilot ladder/gangway and returned after arriving safely on the main deck of the vessel.
2. The launch boat must have a crew of minimum two members, who will assist during the transfer to the vessel or in case of an unlikely rescue operation.
3. The vessel pilot ladder and/or gangway must be arranged in accordance with SOLAS Regulation V/23 and IMO Resolution A.1045(27).
4. A vessel crew member must be posted at the access point to the vessel.
5. SOLAS survival suit must be available if the seawater temperature is below 10 degrees Celcius.

We reserve the right for our attending personnel to decide whether or not to board a vessel based on their evaluation of the weather and sea conditions and the equipment made available.

Our engineers can decline boarding/disembarking a vessel/site due to poor weather conditions, boarding facilities, seaworthiness of the launch boat, or if other safety issues warrant it.

Scan the QR-code with your smartphone to gain quick access to the below listed websites:



EVER MAN Marine Service

"Sanctions circumvention clause according to article 12g of Council Regulation (EU) No 833/2014

The following outlines specific obligations and consequences regarding the sale, export, or re-export of goods to Russia, as governed by Council Regulation (EU) No 833/2014. As per the said Council Regulation (EU) item 1-5 below hereby automatically becomes part of any agreements between you and EVER MAN:

1. Prohibition on Sale, Export, or Re-export to Russia: You are explicitly prohibited from directly or indirectly selling, exporting, or re-exporting any EVER MAN supplied goods to the Russian Federation if such goods fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
2. Efforts to Prevent Circumvention: You must make your best efforts to ensure that the prohibition outlined in (1) is not circumvented by any third parties, including potential resellers.
3. Establishment of a Monitoring Mechanism: You are required to establish and maintain an effective monitoring mechanism to detect any conduct by third parties, including potential resellers, that could circumvent the prohibition mentioned in (1).
4. Consequences of Violation: Any violation of the aforementioned obligations (1), (2), or (3) will be considered a significant breach of your agreement with EVER MAN. EVER MAN reserves the right to seek appropriate remedies, including termination of our agreement and imposing a penalty. The penalty will amount to 10% of the total value of the agreement or the price of the goods exported, whichever is higher.
5. Reporting Obligation: You must promptly inform EVER MAN of any difficulties encountered in adhering to the obligations outlined in (1), (2), or (3). Additionally, you must provide relevant information regarding compliance with these obligations within two weeks upon EVER MAN's request to do so."

General Terms & Conditions – EVER MAN Marine Service

INTERPRETATION

1.1 In these Conditions the following words will have the following meanings:

- »**Customer**« means the legal person that has issued the Order;
- »**Conditions**« means the conditions set out in this document;
- »**Contract**« means any contract for Work between the Customer and EVER MAN incorporating these Conditions;
- »**Engine**« means the engines, gensets, propellers and other auxiliary equipment installed on-board the vessel covered by the Order;
- »**EULA**« means EVER MAN's standard end user license agreement, in place from time to time, regulating the Customer's right to use software incorporated in engines (firmware) as well as any separate software supplied by EVER MAN for use with engines (applications), which is available from EVER MAN upon request or at <https://www.EVER-MAN-es.com/eula>;
- »**Goods**« means goods supplied by EVER MAN (as specified in EVER MAN's tender or Order Acknowledgement);
- »**IPR**« means intellectual property rights of any nature whether registrable or not including without limitation any and all inventions, patents, utility models, design rights, copyright, know-how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;
- »**EVER MAN**« means MAN, filial af MAN SE, Tyskland (a Danish registered branch of MAN SE, Ger EVER MAN), company reg. no. (CVR) 31611792, Teglhøgsgade 41, 2450 Shanghai SV, China;
- »**Order**« means an individual order placed by the Customer to EVER MAN.
- »**Order Acknowledgement**« means a written acknowledgement by EVER MAN of the Order, and thereby constituting a Contract, which is subject to the Conditions and/or such other conditions expressly stated in writing in the acknowledgement;
- »**Party**« and »**Parties**« mean either EVER MAN or Customer or EVER MAN and Customer together;
- »**Services**« means services supplied by EVER MAN (as specified in EVER MAN's tender or Order Acknowledgement);
- »**Site**« means the place specified in EVER MAN's tender or Order Acknowledgement where the Services are to be performed by EVER MAN;
- »**Work**« means Goods and/or Services.

2 INTRODUCTION AND FORMATION

- 2.1 All tenders are made and Orders are accepted by EVER MAN subject to the Conditions and they shall apply to any Contract to the exclusion of any other terms and conditions including without limitation 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.
- 2.2 Any quotations, tenders, Orders and Contracts shall incorporate these Conditions by reference.
- 2.3 All information on weight, dimensions, capacity, 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 Acknowledgement or in other documents forming part of the Contract expressly referring to such information.

3 DELIVERY AND NON-DELIVERY AND DELAY

- 3.1 Unless otherwise expressly agreed in writing by EVER MAN
- (a) delivery times accepted by EVER MAN are given in good faith but are an estimate only; and
 - (b) delivery of the Goods is made EXW (Incoterms 2020).
- 3.2 EVER MAN may deliver Goods in instalments and perform Services in sections in any sequence. Default by EVER MAN, howsoever caused, in respect of one or more instalments and/or sections shall not entitle the Customer to terminate the relevant Contract as a whole.
- 3.3 Where:
- (a) the Customer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order; or
 - (b) EVER MAN agrees to postpone delivery of the Goods at the request of the Customer; or
 - (c) the Customer fails to provide any instructions, consents or authorisations required to enable the Goods to be delivered on the due date;

the risk in the Goods shall pass immediately to the Customer. In such cases delivery of the Goods shall be deemed to have taken place and EVER MAN may store or arrange for storage of such Goods and charge the Customer for all related costs and expenses (including storage and insurance) and may sell such Goods after expiry of 28 days following such failure or refusal and deduct any monies payable to EVER MAN by the Customer from the sale proceeds and charge the Customer for any shortfall below the Contract price.

- 3.4 All Goods must be examined by the Customer, and the Customer must notify EVER MAN of any claim in relation to visible transportation damage, immediately upon delivery. EVER MAN may, at its option, be present at such examination. EVER MAN shall only be liable for shortages in, damage to, non-delivery of, incorrect supply of or delivery of an excessive quantity of Goods if notified by the Customer to EVER MAN in writing immediately after the appearance thereof and in no event later than 90 days after the actual or anticipated date of delivery (as relevant) and provided that the cause thereof was within the reasonable control of EVER MAN. Where EVER MAN is liable as set out in this Condition 3.4 EVER MAN shall, at its sole discretion, either arrange for delivery as soon as reasonably possible or credit the Customer for such Goods and this shall be the Customer's only remedies and in lieu of all other rights and remedies which might otherwise be available to the Customer. Shortages in or non-delivery of some or part of the Goods shall not affect the Contract in respect of any other Goods. In case of incorrect supply of or delivery of excessive quantity of Goods, the Customer shall, if accepted by EVER MAN, return the Goods delivered at the cost of EVER MAN. In order to have the returned Goods replaced or credited it must be in the same condition as when received by the Customer. The Customer is liable for any damage to the returned Goods caused by inadequate packing and/or transportation.
- 3.5 If prior to delivery EVER MAN has concern regarding timely payment because of an adverse change in the Customer's circumstances or otherwise, it may require payment of all or additional parts of the Work before delivery.
- 3.6 If the contractual delivery time for the Work or part of the Work is delayed and this delay was caused by negligence or intention of EVER MAN and if the Customer has suffered a loss caused by such delay, the Customer shall be entitled to liquidated damages for delay. Such liquidated damages for delay shall amount to 0.5% of the value of the delayed part of the Work concerned per each full week of delay considering a grace period of 2 (two) weeks. The liquidated damages for delay will be limited to a maximum of 5% (five per cent) of the value of the delayed part of the Work.
- 3.7 Liquidated damages shall be the Customer's sole and exclusive measure of damages and remedy against EVER MAN with respect to the failure to achieve the contractual delivery time for the Work.

4 TITLE

- 4.1 Unless EVER MAN has been paid in full in advance, the Goods will be considered as having been delivered with EVER MAN retaining the ownership of the Goods until full payment has been effected by the Customer. If the Customer does not pay when due, EVER MAN is entitled to take back the Goods without a court judgement in accordance with the applicable law.

5 PRICE AND BINDING PERIOD OF QUOTATIONS AND TENDERS

- 5.1 Unless otherwise expressly agreed, quotations and tenders lapse after 30 days from their date unless already withdrawn by EVER MAN.
- 5.2 Unless fixed prices have been expressly agreed in writing by EVER MAN, all sales are made at EVER MAN's prices valid at the date of EVER MAN's Order Acknowledgement.
- 5.3 Unless otherwise agreed in writing by EVER MAN, prices set out in any of EVER MAN's price lists, tenders or Order Acknowledgements are EXW (Incoterms 2020) and exclusive of any taxes, duties or fees, charges as well as any costs of carriage, package and insurance which shall be payable by the Customer in addition to the price. Prices are exclusive of board, lodging and local transportation and such other facilities as are to be provided by the Customer free of charge. All travelling expenses and costs of carriage of luggage, instruments and tools incurred by EVER MAN's personnel shall be finally paid for by the Customer. If EVER MAN upon the Customer's request agrees to arrange for transportation of the Goods on behalf of the Customer this shall not in

itself change the EXW (Incoterms 2020) delivery of the Goods, cf. Condition 3.1 (b) above, unless expressly agreed in writing by EVER MAN, and the Customer shall pay, reimburse and/or indemnify EVER MAN for all costs associated with the transportation.

- 5.4 Unless otherwise expressly agreed by EVER MAN in writing, sums payable by the Customer to EVER MAN shall be paid by the Customer net cash not later than 30 days after the date of the invoice. If any sum payable under the Contract is not paid when due then without prejudice to EVER MAN's other rights under these Conditions, such sum shall bear interest from the due date until payment is made in full, both before and after any judgement, at 8% per annum.
- 5.5 Where EVER MAN has incurred any liability to the Customer, whether or not arising from or under a Contract, EVER MAN may upon written notification set off the amount of such liability against any liability of the Customer to EVER MAN or any of EVER MAN's group companies.
- 5.6 The Customer shall not be entitled to withhold any payment under a Contract with reference to claims related to transportation of Goods or alleged counterclaims under a Contract or any other contracts with EVER MAN, or to set off such claims against any payments under a Contract.
- 6 PROVISION OF SERVICES**
- 6.1 Unless otherwise expressly agreed in writing, Services rendered by EVER MAN shall be charged on time used basis in accordance with EVER MAN's general rates for personnel at the date of the Order Acknowledgement (available from EVER MAN upon request).
- 6.2 Unless otherwise expressly agreed in writing, EVER MAN's execution of Services is subject to EVER MAN's assistance being rendered by the Customer either through engine room staff or other qualified persons made available by the Customer.
- 6.3 The taking over of the Service by the Customer shall be deemed to have taken place at the latest, when the Customer has received EVER MAN's notice that the Service has been completed, provided that the Service is as required for taking over according to the Contract. Minor deficiencies which do not affect the efficiency of the Service shall not prevent taking over. The period, referred to in Condition 7.1 shall start to run at the latest when the Service is ready for taking over in accordance with this Condition 6.3.

7 WARRANTY

- 7.1 EVER MAN warrants for a period of 12 months (i) from the date the Goods were delivered, that such Goods are free from substantial defects in materials or EVER MAN's manufacture; and (ii) from the date the Services were rendered, that such Services were carried out with reasonable skills and care.
- 7.2 All conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with Condition 7.1, are hereby expressly excluded to the fullest extent possible.
- 7.3 The warranty given in Condition 7.1 will not apply:
- (a) where the defect arises from any drawing, design, specification or intellectual property right supplied by the Customer or arises from normal wear and tear, wilful damage, the Customer's negligence, abnormal working conditions, use for unintended purpose, misuse, abuse, lack of maintenance or arises from any failure to follow EVER MAN's advice or general instruction (whether oral or in writing) or alteration or repair of the Work without EVER MAN's approval;
 - (b) if EVER MAN or its representatives are not given a reasonable opportunity to safely inspect the Work;
 - (c) if the total price for the Work has not been paid by the due date for payment;
 - (d) if the Goods supplied by EVER MAN are mounted in a EVER MAN designed engine for which the Customer has also used non-original parts which are violating intellectual property rights of EVER MAN; or
 - (e) if the Customer has not notified EVER MAN of the warranty claim within 14 days after the time where Customer discovered or ought to have discovered the defect and, if so requested in writing by EVER MAN after such notification, the Customer fails to fill out a defect report within a period of 14 days after receipt of such request from EVER MAN.
- 7.4 In the event of a breach by EVER MAN of the warranty in Condition 7.1 and without limiting Condition 10 EVER MAN shall only be obliged (and shall have no further liability in contract, tort, law or otherwise for any defect in quality of the Work) at its option either to:
- (a) credit the price (if already paid) attributable to the faulty Work; or
 - (b) repair, rectify or replace the faulty Work, provided that any Goods are returned to EVER MAN or someone designated by EVER MAN in their delivered state at EVER MAN's expense if so requested by EVER MAN within 3 months from the date of the dispatch of the replacement Goods. EVER MAN shall not be responsible for offloading of cargo and/or any precondition works necessary to repair and/or rectify the defect. Replacement Goods are delivered EXW (Incoterms 2020) unless another Incoterm has been expressly agreed in writing by EVER MAN in the specific Contract.

- 7.5 Condition 7.4 shall be the Customer's sole remedy and in lieu of any other rights and remedies which might otherwise be available to the Customer. Any replacement Work will be warranted on the terms set out in this Condition 7. However, any and all warranty shall end within 18 months after delivery of the original Work being replaced.

8 EXEMPTIONS AND FORCE MAJEURE

- 8.1 Either Party may be excused from the timely perform EVER MAN's of its obligations under the Contract, where the perform EVER MAN is impeded or prevented by circumstances beyond its control, including but not limited to perform EVER MAN's affected by an act of God, labour disputes, civil commotion, governmental or official actions or any other event which was unforeseeable or outside the reasonable control of such Party. The Party shall be temporarily relieved from its obligations during the period of time such events continue. The afore stated shall also be applicable to EVER MAN if a sub-supplier of EVER MAN is affected by such event and/or in case the Party concerned is already in default.
- 8.2 Either Party may terminate the Contract affected if such circumstances mentioned in Condition 8.1 continue for more than 6 months.
- 8.3 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.

9 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 9.1 The Customer shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to Work, or any plans, descriptions, blue prints, designs, technical information, software, documents, drawings and/or specifications relating thereto either (a) supplied by or on behalf of EVER MAN to the Customer in connection with Work, or (b) resulting from Work, unless otherwise expressly agreed by EVER MAN in writing. Should the Customer acquire any such rights then the Customer shall immediately inform EVER MAN and shall take such steps as may be required by EVER MAN to assign such rights to or vest such title in EVER MAN.
- 9.2 EVER MAN shall have the right to apply any trademarks, trade names and/or service marks to the Goods. The Customer acknowledges that no rights are granted to the Customer in respect of such trademarks, trade names and/or service marks through the use of the Goods by the Customer. The Customer shall not deface, remove or obliterate any trademarks, trade names or logos applied by EVER MAN on or in relation to the Goods.
- 9.3 The Customer shall keep confidential and not use, without the prior written consent of EVER MAN, all or any information including, without limitation, that supplied by EVER MAN to the Customer or disclosed to or obtained by the Customer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Customer, or disclosure of the same is required by law or by any governmental or other regulatory body. Further, the Customer shall not reproduce or copy in any EVER MAN's whatsoever, in whole or in part, any of the information mentioned above.
- 9.4 In the event that EVER MAN bases the production of the Goods on its own specifications, EVER MAN shall under the exclusion of any further liability warrant that such Goods do not interfere with IPRs published in USA, China and/or by the USDPatent Office. This shall not apply, if EVER MAN has EVER MAN's manufactured the Goods in accordance with drawings, models or other equivalent descriptions or information provided by the Customer. As far as EVER MAN is not liable pursuant to this Condition 9.4, the Customer shall release EVER MAN from all related third party claims. In case an infringement of such third party IPRs appears to emerge, the Parties will enter into negotiations with due consideration of such situation and jointly agree on the consequences.
- 10 LIMITATION OF LIABILITY AND PRODUCT LIABILITY**
- 10.1 EVER MAN shall not be liable to the Customer for any special, indirect, consequential or incidental loss, damage, delay or expense incurred of whatsoever nature.

- 10.2 In particular EVER MAN shall not be liable to the Customer for
- any loss of profit, hire, business contracts, revenues or anticipated savings;
 - damage to the Customer's reputation or goodwill;
 - any loss resulting from any claim made by any third party;
 - docking costs;
 - offloading of cargo; or
 - costs of any precondition works necessary to repair and/or rectify a defect;
- whether or not such losses and/or damages are considered to be direct or indirect in nature.
- 10.3 If EVER MAN incurs liability towards a third party, the Customer shall indemnify and hold harmless EVER MAN for all losses, damages and costs of whatsoever nature.
- 10.4 Nothing in these Conditions shall exclude or limit the liability of EVER MAN for any liability that cannot be excluded in law for:
- death or personal injury; or
 - damages to property other than the Goods;
- caused by EVER MAN's gross negligence or fraudulent misrepresentation.
- 10.5 Without prejudice to Conditions 10.1, 10.2, 10.3 and 10.4 EVER MAN's total liability for Work in contract, tort, law or otherwise shall be limited to the value of that Work.
- 11 USE OF THIRD PARTY SPARE PARTS AS PART OF EVER MAN'S PERFORM EVER MANCE OF SERVICE**
- 11.1 If EVER MAN is to use spare parts provided by the Customer or by third parties via the Customer (hereafter "Third Party Spare Parts") for the Service, the Customer warrants that to the extent required by the classification society, the Third Party Spare Parts will be either original parts from the relevant EVER MANUFACTURERS, appropriately certified, or parts that have been approved by the classification society. The Customer will handle all issues with the classification society in this respect.
- 11.2 The Customer accepts and agrees that EVER MAN will not provide any warranty for the Third Party Spare Parts and/or accept any liability whatsoever for the use of such Third Party Spare Parts or for any losses or damages (direct or indirect) which might be caused by those Third Party Spare Parts now or in the future. Furthermore, the Customer undertakes to indemnify and hold harmless EVER MAN from any third party claim whatsoever made against EVER MAN, which is related to the installation of, the use of and/or the failure of the Third Party Spare Parts.
- 11.3 For the avoidance of any doubt and without limiting the above the Service rendered by EVER MAN shall be warranted in accordance with Condition 7.
- 12 OTHER PARTS/SPARE PARTS THAN THE GOODS**
- 12.1 The Customer accepts and agrees/acknowledges that EVER MAN is not responsible and therefore will not accept any liability whatsoever for any parts/spare parts other than the Goods or for any losses or damages (direct or indirect) which might be caused by those parts/spare parts now or in the future. Furthermore, the Customer undertakes to indemnify and hold harmless EVER MAN from any third party claim whatsoever made against EVER MAN, which is related to the installation of, the use of, and/or the failure of such parts/spare parts.
- 13 TERMINATION**
- 13.1 If the Customer fails to make any payment when due or to perform any of its other obligations on time, EVER MAN shall be entitled to suspend its perform EVER MANCE of the Contract until the failure is remedied; and regardless of whether EVER MAN decides to suspend perform EVER MANCE:
- the time for perform EVER MANCE of the Contract by EVER MAN shall be automatically extended accordingly; and
 - any cost (including waiting time, financial costs and storage, demurrage or other charges) thereby incurred by EVER MAN shall be paid by the Customer.
- 13.2 Without prejudice to any of its other rights EVER MAN may immediately terminate the Contract if any of the following occurs or is likely to occur:
- suspension under Condition 13.1 continues for more than 120 days;
 - the Customer is in breach of any of its obligations under the Contract which, if capable of remedy, the Customer has not remedied within 30 days of receiving written notice from EVER MAN; or
 - the Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or any equivalent or analogous event occurs in any jurisdiction or the Customer ceases or threatens to cease to carry on business or otherwise is unable to pay its debts when they fall due.
- 13.3 Upon termination, howsoever arising, EVER MAN shall be entitled to suspend any further Work under the Contract without any liability to the Customer. Without prejudice to EVER MAN's other remedies under the Contract, within 14 days of such a notice of termination, howsoever arising, the Customer shall pay to EVER MAN:
- the outstanding balance of the Contract price of the Work which has been delivered or performed; and
 - the costs incurred or committed by EVER MAN up to the date of notice of termination in performing such Work which is not yet completed plus a reasonable margin to be agreed between the Parties which shall not be less than 15% of the Contract price; and
 - the costs reasonably incurred by EVER MAN as a result of the termination.
- 13.4 Termination, expiry or completion of the Contract or any part of it, shall not affect or prejudice the provisions of Conditions 9, 10, 11, 12, 13, 14, 17 and 18.
- 14 CUSTOMER'S OBLIGATIONS**
- 14.1 The Customer shall provide EVER MAN's personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be carried out and ensure that they have free access to the Site.
- 14.2 The Customer shall provide EVER MAN's personnel with unobstructed and safe access to the Site to enable them to perform the Service in compliance with EVER MAN's safety policy and health and safety principles in place from time to time (available from EVER MAN upon request).
- 14.3 The Customer shall be responsible for ensuring the health and safety of EVER MAN's personnel whilst on the Site. The Customer shall take appropriate measures to protect EVER MAN's personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When EVER MAN is to carry out the Service on the Site, the Customer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies.
- 14.4 The Customer shall assume all responsibility for all acts or omissions of the Customer's personnel and EVER MAN shall have no liability with respect thereto.
- 14.5 The Customer shall provide all tools, test equipment and test facilities unless specifically stated otherwise in the Contract. Where EVER MAN does supply tools then the Customer shall give all necessary assistance with the customs formalities required for the import and re-export of EVER MAN's tools and equipment free of any duties or taxes.
- 14.6 The Customer shall to the best of its ability assist EVER MAN in obtaining all necessary information concerning such local laws and regulations as are applicable to EVER MAN's perform EVER MANCE of the Services, and must adhere to all safety regulations imposed by applicable regulatory authorities.
- 14.7 EVER MAN may, at its sole discretion, refuse to perform the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/or where the Customer is in breach of this Condition 14 and EVER MAN shall not be liable under the Contract for any delay in or failure of delivery in such event.
- 14.8 The Customer shall specify a firm delivery address for the ordered Goods at least within 3 weeks after receipt of EVER MAN's written confirmation of the date of readiness for dispatch. Condition 3.3 (c) shall apply accordingly.
- 14.9 The Customer must obtain at its expense all licenses, permits and approvals relevant to the Work.
- 14.10 The Customer warrants that all tools, equipment etc. to be provided by the Customer according to the Contract are in a safe and usable condition.
- 14.11 The Customer agrees that any Work supplied that includes Software (as defined in the EULA) is provided subject to the terms of the EULA.
- 15 EXPORT CONTROL AND CUSTOMS**
- 15.1 Notwithstanding any regulation regarding force majeure, as stated in these Conditions, EVER MAN reserves the right to suspend at its sole discretion its perform EVER MANCE at any time, in whole or in part, without incurring any liability, whenever such perform EVER MANCE would be prevented by any applicable restrictive measures including sanctions, export or re-export controls (including but not limited to UN, EU and its member states, UK and U.S. law) or would otherwise be inconsistent with such measures, or where an export license required by such regulations cannot be obtained. In the event the perform EVER MANCE of the Contract is prevented due to the above reasons for a period of more than 180 days, EVER MAN or the Customer shall be entitled to terminate the Contract to the extent the perform EVER MANCE is prevented. In the event an export license has been denied by the responsible authorities, EVER MAN or the Customer shall be entitled to terminate the denied part of the perform EVER MANCE immediately. As consequence of such termination the Customer shall pay to EVER MAN the price of the Work performed by EVER MAN under the Contract and any cost for unavoidable commitments incurred by EVER MAN with respect thereto. Any claims, rights and/or remedies of the Customer with respect to such termination shall be excluded.
- 15.2 EVER MAN shall provide the Customer with a customs invoice and a packing list as standard shipping documents. Such documents are made out to the name of the Customer. The content and layout of such documents are defined by EVER MAN and cannot be adjusted or amended. The provision of any further information or documents which might be required by the Customer for import purposes, such as but not limited to countries of origin, HS codes (numeric codes according to the "International Convention on the Harmonized System", issued by the World Customs Organization (WCO)), certificates of origin, declarations of preferential origin or other certificates shall be subject to an individual agreement. All costs for such additional information or documents shall be borne by the Customer.
- 15.3 If the agreed delivery address of the Goods is outside the territory of the USDPean Union, EVER MAN will issue the export customs declaration and act as responsible exporter towards the customs authorities. If Customer or any person acting on behalf of the Customer picks up the Goods before export, Customer shall present the Goods and the export customs declaration issued by EVER MAN at the responsible customs office of export and finalise the formal customs proceedings properly. If the agreed delivery address of the Goods is inside the territory of the USDPean Union, EVER MAN will not issue an export customs declaration and will not act as responsible exporter for any further exports made by the Customer, unless otherwise agreed. The same shall apply if the Goods are to be delivered on a vessel, which is currently located inside the territory of the USDPean Union. If Customer requires an export customs declaration by EVER MAN for delivery on such a vessel, this has to be agreed individually.
- 16 DATA PROTECTION AND RIGHT TO ACCESS CUSTOMER DATA**
- 16.1 EVER MAN shall have the right to access, collect, transfer, store, process and use data from the Engine remotely, or by LAN, or otherwise ("Data Access / Processing") for the purpose of using said data for marketing or for optimizing the Engine (such purposes shall include but not be limited to: service, commissioning, benchmarking, technical optimisation and improvements of existing products, development of new products and statistical purposes). EVER MAN may utilize the Data Access / Processing to retrieve from time to time, and without prior notice, all available data regarding the Engine from the data logger, and upon EVER MAN's request the Customer shall procure that EVER MAN may effectively utilize the Data Access / Processing. EVER MAN may only use and disclose the data, as set out in this Condition 16.
- 16.2 To ensure that the Customer and/or the Customer's vessel cannot be identified, EVER MAN will anonymize all data before disclosing it. Any data not anonymized may only be used by EVER MAN or by sub-contractors under an obligation towards EVER MAN to keep the data confidential and to observe all applicable data protection provisions.
- 16.3 To the extent that EVER MAN has completely anonymized the data, including so it will not be possible to identify which specific Engine the data is coming from, EVER MAN shall in all aspects be free to use and disclose such data to third parties for any purpose.
- 16.4 If the Data Access / Processing is not already granted at this time, the Customer hereby expressly consents to said Data Access / Processing for data which has already been collected or that will be collected in the future.
- 16.5 For the avoidance of doubt, EVER MAN's obligation (if any) to perform Services under any contracts with the owner/operator of the concerned Engine shall cease in case Data Access/ Processing of the Engine is stopped/rejected by owner/operator and/or is not further provided for reasons for which owner/operator is responsible, and such Data Access / Processing of the Engine is needed to fulfil such obligation and/or in the agreed and/or in sufficient time. In such cases, EVER MAN shall be temporarily relieved from its obligations under such contracts until Data Access / Processing of the Engine has been reactivated.
- 16.6 For the avoidance of doubt, this right to Data Access / Processing does not imply any obligation for EVER MAN to provide any monitoring of or any maintenance of the Engine.
- 16.7 If any data processed also constitutes personal data, the Customer undertakes to ensure that the data subjects are informed about the processing of such personal data by EVER MAN in a capacity of data controller and to the extent needed obtain their consent thereto. In case of processing of personal data the following information about the processing of personal data at EVER MAN shall be provided to the data subjects by the Customer: <https://www.everman-es.com/data-protection-notice>. All personal data will be processed by EVER MAN in accordance with applicable data protection laws, including for example by entering into data transfer agreements on the basis of the USDPean Commission's Model Clauses.
- 17 PERSONAL DATA – CONTACT DATA**
- 17.1 Subject to complying with applicable law, the Parties expressly consent that the other Party may process the following:
- names, (ii) emails, (iii) work location, and (iv) phone numbers of the Customer's or EVER MAN's employees, respectively, that will have to interact for the provision of Work and to ensure communication between the Parties.
- 18 GENERAL**
- 18.1 The Customer shall not be entitled to assign or subcontract any of its rights or obligations under the Contract without the prior written consent of EVER MAN.
- 18.2 No act or omission shall be construed as a waiver of an unperformed obligation of the other Party or constitute an agreement to allow future breaches of the applicable provision.
- 18.3 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 equivalent provision with respect to the commercial effect, in so far as this is possible.
- 18.4 The Contract and these Conditions shall be construed in accordance with and governed in all aspects by the laws of China, however, excluding the rules of conflicts of law and excluding the Convention of the United Nations of 11.4.1980 on Contracts for International Sale of Goods.
- 18.5 If a difference of opinion cannot be settled by the Parties themselves, all disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce in Paris, France (ICC), by three arbitrators appointed in accordance with the said Rules. The Expedited Procedure Provisions and the Emergency Arbitrator Provisions shall not apply. The arbitration tribunal shall have its seat in and the arbitration proceedings shall take place in Shanghai, China in the English language. The Parties will keep confidential the existence of the arbitration or any information or document relating thereto or disclosed therein.
- 19 ENTIRE AGREEMENT**
- 19.1 These Conditions and the additionally agreed terms of the Contract contain the entire agreement and understanding of the Parties and supersede all other statements, understandings or the like relating to such subject matter. EVER MAN rejects any differing or supplemental terms which may be printed or otherwise found in any of the Customer's Order or other documents. Any alteration of a Contract must be in writing and signed by an authorized representative of each Party. No terms, conditions, representations, warranties or covenants contained in any correspondence, catalogue, or in any other form shall be applicable unless incorporated herein, by express written agreement of the Parties hereto.