

# General terms and conditions

of REMA Anlagenbau GmbH, Rudolf-Diesel-Weg 26  
23879 Mölln, hereinafter simply referred to as – REMA –

## **I. General**

The following delivery terms apply to all contracts, deliveries and other services and to all business carried out; including paid and unpaid consultancy services, as long as they are not modified or excluded with the express written consent of REMA.

The ordering party's terms do not become part of the contract, even if REMA does not contradict them and provides the contractually required delivery/service unreservedly.

Agreements that vary from these conditions should be included in the order confirmation.

## **II. Quotation and scope of delivery**

1. Quotations given by REMA are always non-binding. Documents relating to the quotation, such as pictures, drawings, weights and measurements, only serve as approximations, as long as they are not expressly indicated as being binding. Services and operating costs are specified as average values. REMA retains ownership and copyright to cost estimates, drawings and other documents; they must not be made accessible to third parties.

2. The contract is concluded when REMA confirms the acceptance of the purchase order for the contract work or object described in more detail in writing within four weeks or the delivery has been made. REMA is obliged, however, to advise any rejection of the purchase order in writing immediately after checking the ability to supply.

3. Assurances made about properties, ancillary agreements and changes require written confirmation by REMA.

4. REMA reserves the right to make design and form changes to the contract work or delivery object, as long as the delivery object is not changed considerably and the changes are reasonable to the ordering party.

5. If REMA becomes aware of facts after concluding the contract, which give rise to justified concerns about the ordering party's creditworthiness, without being responsible for the lack of knowledge, REMA is entitled to demand appropriate forms of security and to withdraw from the contract in case of refusal.

## **III. Price and payment**

1. In the absence of any particular agreement, the prices apply from REMA's warehouse or ex works if delivery is made from the manufacturer's factory, excluding packaging. Prices are quoted excluding value added tax. Should delivery be made more than four months after concluding the contract, REMA is entitled, in case of price increases by its suppliers or unexpected increases to labour and transport costs, to ask for negotiations to set a new price. REMA is only tied to the agreed price for the agreed delivery time, yet for at least four months. Additional expenses, which REMA incurs due to the ordering party's delay in acceptance, can be asked to be compensated by the ordering party.

2. Unless otherwise agreed, payment is to be made to REMA's designated account immediately, without reductions, following delivery or provision and receipt of the invoice. Discount agreements are only valid in case the ordering party is not in arrears for prior deliveries.

3. REMA only accepts discountable and correctly taxed bills of exchange on account of payment where this has been agreed accordingly. Credit notes against bills of exchange and cheques are issued subject to receipt and include expenditures at the value on the day REMA is able to access the funds.

4. The ordering party is not permitted to offset with any non legally binding counterclaims or any counterclaims contested by REMA. It is not possible to enforce a right of retention due to unrecognised or non legally binding counterclaims, providing that the claims do not concern the same contract relationship. Should a claim for defects be enforced, only a reasonable proportion of payments made by the ordering party shall be withheld.

5. Payments may only be made to REMA employees if these present an authority to collect.

6. Should the ordering party's payments be in arrears, REMA is entitled to request default charges and compensation for operating costs starting from the payment due date. Unless otherwise agreed by the parties, the interest rate will be 8 percentage points above the European Central Bank marginal lending facility rate. Repayment of operating costs is calculated as 1% of the default charges payable. In cases of delayed payment or delayed provision of an agreed deposit by the ordering party, REMA is permitted to withhold services until such time as payment or deposit is received, provided the ordering party is notified in writing beforehand. Should the ordering party be more than three months in arrears, REMA is permitted to withdraw from the contract and request damages from the ordering party, in addition to the default charges and operating costs as described above. The total of the damages requested must not exceed the agreed purchase price.

#### **IV. Delivery deadlines and delays**

1. All delivery deadlines and appointments are approximate, unless REMA provides a written, binding agreement. Delivery deadlines begin on the date a written contract is signed or the date the order confirmation is issued. However, this shall not precede the ordering party's provision of any required documents, approvals and clearances or receipt of a deposit. Should the ordering party request shipment later than agreed, storage costs will be calculated beginning 30 days after notification that goods are ready for dispatch. The cost of storage at REMA's factory is calculated at 0.5% of the invoiced amount for each new month.
2. Delivery is subject to REMA having received its supplies punctually and in good order.
3. The delivery deadline is respected if the delivery object has been dispatched from storage at REMA or for ex works, if it has been dispatched from the manufacturer, or if notification of readiness for shipment has been issued by the time the deadline expires.
4. The delivery deadline and completion date can be extended, also during delays, due to unforeseen circumstances outside of REMA's control, provided that such circumstances are proven to have affected the delivery of the item or contract work. This is also valid if these circumstances affect REMA's supplier or sub-suppliers. In serious cases, REMA will inform the ordering party of the beginning and end of these circumstances as soon as possible. The delivery deadline will also be extended if performance is delayed due to weather conditions.
5. To ensure the delivery deadline is respected, the ordering party must adhere to its contractual obligations.
6. Should the ordering party incur damages due to delays caused by REMA, it is entitled to request compensation to the exclusion of further claims. For each complete week of the delay, it may claim 0.5% in total, but a maximum of 5% of the value of the part of REMA's overall delivery that cannot be used promptly or in accordance with the contract due to the delay. This limit does not apply if the delay is based on malicious intent or gross negligence on the part of REMA.
7. The above paragraph also applies in cases where REMA is responsible for an inability to deliver. The liability is, however, limited to a maximum of 10% of the value of the agreed delivery.
8. REMA's right to withdraw due to impossibility (§ 325 of the German Civil Code) or delay (§ 326 of the German Civil Code) is unaffected.
9. REMA is entitled to employ subcontractors for the production of the contract work.

#### **V. Delivery and assembly at the ordering party's site**

1. The ordering party must pay for fitter and accommodation allowances. This also applies to overtime, work on Sundays and public holidays. Travel time and standby time count as working time. The ordering party bears the cost of travel to and from the ordering party's site.
2. Preparatory work for assembly must be completed by the start of the assembly period. Assembly work must be able to be carried out unhindered.
3. On request, the ordering party bears the cost of employing support staff for the assembly, unloading and transportation of the delivery item to the assembly point. The ordering party will also provide the necessary equipment for assembly and materials necessary to commission the delivery item.

4. The provision of support staff and equipment for assembly, repairs and inspections as required is the responsibility of the ordering party. REMA does not assume liability for support staff provided by the ordering party.
5. The conditions for the completion of assembly, repairs and inspections also apply for free of charge services and work within the scope of the guarantee.

#### **VI. Acceptance and compensation**

1. The ordering party has the right to check within eight days following receipt of the notice of completion from REMA and a duty to decline acceptance of the contract work within this period. The ordering party may not refuse acceptance if there is an insignificant defect.
2. If, after concluding the contract and notification from REMA that the contract work can now begin, an ordering party does not allow the contract to be carried out, then REMA can set it a further period of eight days to accept the service, with the declaration that once the extended period has expired to no avail, REMA is entitled to withdraw from the sales contract or to demand compensation due to non-fulfilment by sending a written declaration.
3. If REMA asks for compensation, then this shall be 25 % of the agreed price. The amount of damages shall be set higher if REMA proves higher losses. The ordering party is entitled to give evidence of lower losses incurred by REMA.

#### **VII. Transfer of risk and transport**

1. The route and method of delivery are left to the choice of REMA. The goods are insured at the request and the expense of the ordering party.
2. The risk is transferred to the ordering party when the goods are passed on to a haulage company or freight carrier, at the latest however when they leave the warehouse or, in case of direct delivery ex works, when they leave the factory. This also applies if part deliveries are made or REMA has taken on other services, e.g. the delivery costs.
3. If shipment is delayed due to circumstances for which REMA is responsible, then the risk is transferred to the ordering party from the day the goods are ready for dispatch, however REMA is obliged, at the ordering party's request and expense, to effect the insurance policies asked for by the latter.
4. Delivered articles, even if they feature minor defects, shall be accepted by the ordering party without prejudice to its rights arising from Section VIII.
5. Partial deliveries are allowed.

#### **VIII. Retention of title**

1. If the ordering party is using the supplied contract work, accessories etc. itself, then REMA retains the title until the object and any additional invoice amounts it has incurred for delivery and performance and repairs carried out to it, as well as interest and the like, have been paid in full. The ordering party is obliged to secure the objects from intervention by third parties and to insure them immediately against fire "for the account of a third party" and to prove this on request; otherwise REMA is entitled to insure these itself at the expense of the ordering party.
2. If the ordering party is an agricultural tenant, then it also undertakes, if a loan agreement exists or has been concluded under an inventory pledge, to protect the ordering party's retention of title to goods not yet fully paid with the tenant in question and the bank.
3. If the ordering party is a reseller, then the delivered goods remain the property of REMA under retention of title until all debts have been fulfilled, for whatever legal reason, including conditional debts or those arising in future, even from contracts concluded at the same time or later. This also applies if payments are made for specially designated debts. In case of a running account, the retained property counts as security of REMA's balance of receivables. The ordering party is entitled to resell the goods in the normal course of business on condition that, until full payment of the price along with interest and costs is made, it agrees now to assign to REMA the receivables and rights acquired from onward sale to third parties to the amount of the invoices payable to REMA, plus a security surcharge of 10 %. The ordering party is authorised to collect these receivables even after assignment. REMA's

authorisation to collect the receivables itself remains unaffected by this, although REMA undertakes not to collect the receivables as long as the ordering party meets its payment obligations properly. REMA can demand that the ordering party notifies it of the assigned receivables and their debtors, provides all the details necessary for collection, hands over the related documents and informs the debtors of the assignment.

4. The ordering party may neither mortgage the delivered goods nor assign them as security. In the case of garnishment, sequestration or other forms of disposal by third parties, it must advise REMA immediately whilst handing over the documents necessary for an objection.

5. If the ordering party acts contrary to the contract, particularly by delaying payment, REMA is entitled to have the goods and contract work returned following a reminder, and the ordering party is obliged to release them. Taking back or distraining the object by REMA only constitutes a withdrawal from the contract if this is expressly declared by REMA in writing, unless the German Instalment Act applies.

6. The ordering party shall bear all the costs of returning and disposal of the goods. The costs of disposal amount to 10 % of the disposal proceeds including VAT without evidence. They can be made higher or lower if REMA provides evidence of higher costs or the ordering party provides evidence of lower costs. Proceeds will be credited to the ordering party after deducting costs and other receivables associated with the contract owed to REMA.

#### **IX. Notice of and liability for defects**

1. REMA is only liable for defects of quality and title under exclusion of further claims as follows:

a) The ordering party must inspect the received goods and work immediately after receipt for quantity, condition, guaranteed properties and defects. It must raise a complaint about obvious defects immediately, at the latest within 14 days by written notification to REMA. If the contract is a trade transaction for both parties, then §§ 377, 378 of the German Commercial Code apply with the proviso that noticeable defects shall be complained about within 14 days by written notification to REMA.

b) All parts affected are to be remedied or replaced free of charge according to the reasonable discretion of REMA with respect to the options open, if these parts turn out to be unusable or considerably impaired in terms of usability as a result of circumstances before the transfer of risk - particularly due to faulty design, poor construction materials or inadequate execution. Replace parts become the property of REMA. REMA's liability ends once the respective statutory period expires.

c) The ordering party's right to enforce claims arising from defects lapses in all cases from the time of prompt notification of defects in six months, at the earliest however when the respective statutory warranty period expires.

d) No warranty is given for damage caused by the following reasons: unsuitable or improper use, faulty assembly or commissioning by the ordering party or third parties, natural wear, faulty or negligent handling, incorrect maintenance, unsuitable operating equipment, replacement materials, inadequate construction work, unsuitable foundations, chemical, electronic or electrical influences, as long as they not attributable to a fault committed by REMA.

e) The ordering party has to give REMA the required time and opportunity based on reasonable judgement to rectify the defects. If it refuses this, then REMA is released from the liability for defects. Only in urgent cases of danger to operational safety and to prevent disproportionately greater damage, whereby REMA shall be immediately notified, or if REMA is late in rectifying the defect, does the ordering party have the right to have the defect remedied itself by third parties and to ask REMA to compensate the necessary costs.

f) The guarantee period for the replacement part and repair is six months, but it runs at least until the original and respective guarantee period for the delivered goods expires. The period for the liability of defects of the delivered goods is extended by the period during which operations were interrupted due to the necessity of rectifying the defects.

g) In the case ordering party or third parties carry out any changes or repairs without prior permission from REMA then all liability for all consequences of such steps is suspended.

h) As long as the complaint turns out to be legitimate, REMA bears the immediate costs of the repairs or replacement item including delivery. It also bears the costs of dismantling and installation, as well as the costs of any necessary provision of fitters and support staff required including travel costs, as long as this does not place any disproportionate burden on REMA.

i) If REMA lets a reasonable granted extension period for repairs or a replacement delivery pass to no avail (taking account of the statutory exceptions), the ordering party is entitled to withdraw from the contract. In case of impossibility or inability regarding repairs or a replacement delivery, the ordering party can also withdraw. If there is only one insignificant defect, the ordering party is only entitled to a reduction of the contract price. The right to reduce the contract price is excluded otherwise.

j) Other claims by the ordering party against REMA and its vicarious agents are excluded, in particular a claim to compensate for damages which did not arise from the delivery object or contract work itself. This does not apply if the cause of damage is based on malicious intent or gross negligence, including malicious intent and gross negligence on the part of REMA employees, staff, vicarious agents and representatives. The same applies if a property assured in writing is missing from the supplied contract work.

2. REMA only assumes a liability for defects on used goods if this has been expressly agreed with the ordering party in writing.

#### **X. General limitation of liability**

1. REMA's liability is based solely on the agreements made in the above sections. The ordering party's claims for compensation arising from fault in conclusion of the contract, breaches of secondary contractual obligations and prohibited acts are excluded unless they are based on gross culpability on the part of REMA or malicious intent or gross negligence committed by its vicarious agents or representatives.

2. These claims lapse half a year after receipt of the goods by the ordering party or the completion of the contract work by REMA.

#### **XI. Place of performance, jurisdiction, applicable law**

1. The place of performance and sole place of jurisdiction for deliveries and payments, plus for all disputes arising between the parties, is the REMA headquarters. REMA is entitled, however, to bring legal action at the ordering party's headquarters.

2. The relationships between the contractual parties are based solely on the law applicable in the Federal Republic of Germany with the exclusion of the UN sales law, even if the ordering party's company is based abroad.

#### **XII. Severability clause**

If one or more sections of the conditions are ineffective, then in the case of conditions that otherwise remain effective, the legally permitted condition that is similar to the ineffective condition takes its place.