

## **General Terms & Conditions of Business of REMAIN GmbH**

Status: 28 August 2004

### **1. Offer and contract**

- 1.1. Contracts with REMAIN shall only be effectuated when REMAIN is in possession of a corresponding written confirmation of order.
- 1.2. Should REMAIN receive an order issued by e-mail, this shall be deemed a valid offer only under the following conditions:
  - The order must have been issued by an authorised representative of the customer.
  - Orders issued by e-mail must be confirmed in writing should REMAIN so require.
- 1.3. Any regulations agreed in individual contracts shall have precedence over these general conditions of contract.

### **2. Subject of performance, subcontractors**

- 2.1. REMAIN shall have a duty to provide contractually agreed repairs in conformity with the state of technology.
- 2.2. REMAIN shall have a duty to apply the norms and norm-related publications specified in detail in the contract. These shall apply in the version valid at the time the contract was concluded. Amendments to such norms and publications which cause REMAIN to incur increased expense shall entitle REMAIN to require a revision of the price and/or work deadlines.
- 2.3. Cleansing work may be refused even after acceptance of order if removal of the dirt in question cannot reasonably be expected, or if such cleansing may pose a danger to the health or life of our staff.
- 2.4. If original spare parts for fulfilment of order are not available, REMAIN is hereby authorised to manufacture such spare parts itself, or to have them manufactured, and to install them. The customer shall be entitled to require REMAIN to test such parts prior to installation. Without an order to this effect, however, REMAIN shall have no duty to do so. The test costs incurred thereby shall be paid by the customer on an actual-cost basis. The same shall apply to costs of certification, inspection and confirmation for purposes of checking standards, repair and / or cleansing work.
- 2.5. Should the customer himself provide spare parts or materials, REMAIN shall be entitled to add a charge for overheads, by way of disposition, manipulation, storage and loss of profit.
- 2.6. REMAIN may scrap or otherwise utilise any damaged or dismantled parts without the express permission of the customer, unless otherwise agreed when the order was issued. All costs incurred thereby shall be paid by the customer.
- 2.7. There shall be no obligation to monitor CSC plates. Nor shall REMAIN have any obligation to prolong CSC plates if REMAIN believes that the subject of the order in question is one which no longer corresponds to the CSC agreement.

2.8. REMAIN shall be entitled to employ subcontractors as vicarious agents.

### **3. Cost estimates**

3.1. Should a customer require a stated price, this shall require a written cost estimate by REMAIN. REMAIN shall be bound to this estimate until the end of thirty days following its receipt by the customer. REMAIN may make the issue of an estimate dependent on assumption by the customer of the costs arising therefrom. When billing the order the total price shall not exceed more than 15% without the customer's permission.

3.2. Should the customer pay the costs of the estimate and should a contract be effectuated with REMAIN on its basis, the costs of the estimate shall be subtracted from the contractual price.

3.3. For the due and proper removal of residues whose origin was not a consequence of executing the order, REMAIN shall be entitled to pass on the costs of removal, on an actual-cost basis. This shall apply even if these costs were not the subject of the estimate, providing the occurrence of such costs could not be seen at the time the estimate was produced.

### **4. Deadlines**

4.1. Following consultation and agreement with the customer, REMAIN may carry out reasonable part services and invoice these separately.

4.2. Should the scope of services or work change or expand compared with the original order, either at the customer's request, or as a result of subsequent amendments to, or the new introduction of, such norms, or publications similar to norms, of which REMAIN must take cognizance, the contractually agreed service or completion deadline shall be extended appropriately. REMAIN shall appoint a new service or completion deadline.

4.3. Should it be impossible to meet a service or completion deadline due to force majeure, or due to interruptions to business for which REMAIN is not responsible, such deadlines shall be extended appropriately.

### **5. Customer's duties of cooperation**

5.1. The customer shall have a duty to ensure that his goods are properly loaded in conformity with his dispositions. REMAIN shall therefore not be liable for costs or damages resulting from faulty loading.

5.2. REMAIN shall only have a duty to draw attention to improper repairs should these be seriously improper repairs which obviously require repair and / or must be repaired for reasons of structural safety.

Should a customer, when issuing an order, cancel items which in the opinion of REMAIN must be repaired, REMAIN shall have no liability for the consequences arising from such neglect.

5.3. If hazardous goods formed part of the subject of the order, or if the subject of the

order came into contact with such hazardous goods, the customer shall have a duty to draw truthful attention to the same and to designate said hazardous goods unambiguously and in writing. Should such declarations not be true, or should they fail to be made, the customer shall be liable for all damages without limitation of amount.

- 5.4 The customer or his vicarious agents shall enter or drive on the premises of REMAIN at their own risk in every case. Should a Third Party enter or drive on the premises of REMAIN, he must obey all instructions given to him by REMAIN staff and shall be liable in full and without limitation for all damage he may cause. REMAIN may prohibit Third Parties from entering or driving on the premises of REMAIN without giving reason.

## **6. Storage, handling and freighting**

- 6.1. Storage, handling or freighting undertaken by REMAIN shall be governed by the rules contained in BOOK IV of the German Commercial Code.

- 6.2 The following limitations of liability shall apply, however, in contradistinction to statutory provisions:

Compensation for loss or damage to goods shall be restricted to two units of account for every kilogram of the gross weight of the goods.

If only individual parts of a unit are lost or damaged, liability shall be restricted to a sum of two accounting units for each kilogram of the gross weight

- of the whole unit, if the whole unit has been devaluated,
- of the devaluated part of the unit, if only a part of the unit has been devaluated.

## **7. Place of fulfilment, transfer of risk**

- 7.1. The place of fulfilment for all services provided by REMAIN shall be that which has been contractually agreed, otherwise the registered office of the operating section of REMAIN which is performing the service, in Bremen, Bremerhaven or Hamburg, unless the contract concerned states otherwise.

- 7.2 Risk of price and property shall be transferred to the customer when he has inspected and accepted the work or, should no formal process of acceptance take place, when it is handed over to the customer, or when a communication is made that the service has been carried out in full.

## **8. Prices, changes to price**

- 8.1. Contractual prices are excluding statutory VAT.

- 8.2 Changes to price shall be permissible should more than four months elapse between conclusion of contract and the agreed service or completion deadline. Accordingly, should wages, material costs or market acquisition prices increase by the time the subject of contract has been completed, REMAIN shall be entitled to raise the price appropriately to reflect such increased costs. The customer shall be entitled to withdraw should such price increase exceed more than slightly the rise in the general cost of living between order and delivery.

## **9. Invoices, payment, arrears**

- 9.1. Invoices issued by REMAIN are due net within 14 days of receipt.
- 9.2. REMAIN shall be entitled to require a reasonable advance payment on issue of order or cash on collection (delivery versus payment).
- 9.3. Should the period of grace for payment expire without payment being made, the customer shall be in arrears even without a reminder. In cases of repeated arrears, REMAIN hereby reserves the right to require an advance payment of the customer before services are commenced.
- 9.4. Arrears interest shall be applied of 8% over the basic interest rate as valid from time to time (Section 247 of the German Civil Code).
- 9.5. Should the customer fail to meet his due payment obligations, should cheques fail to be honoured, should the customer suspend his payments, or should he otherwise be insolvent, all outstanding invoices shall become due immediately, irrespective of agreed payment dates. This shall not apply should such circumstances not be the customer's fault, or should arrears form no more than an inconsiderable fraction of the total amount owing.

## **10. Offset, right of retention, contractor's lien**

- 10.1. Any offset against receivables due to REMAIN under terms of contract, including associated receivables, for unauthorised action, unjust enrichment, or any other legal grounds, shall only be permissible by virtue of due counterclaims which are undisputed or which have been successfully asserted at law. In the same way, the exercise of a right of retention with respect to the aforesaid receivables shall only be permissible by virtue of counterclaims which are undisputed or which have been successfully asserted at law.
- 10.2. REMAIN shall be entitled for its receivables to a contractual right of lien on all items which have come into its possession through customer order. The period of grace set out in Section 1234, Paragraph 2 of the German Civil Code shall be replaced by a period of two weeks.

## **11. Inspection and acceptance**

- 11.1. Should a formal acceptance procedure be agreed, the date of such procedure shall be set between the Parties. The result of the acceptance procedure shall be recorded in an acceptance certificate to be signed by both sides. Both Parties shall have a duty of cooperation.
- 11.2. Should no formal acceptance procedure take place, acceptance shall be deemed to have taken place when the item repaired is handed over to the customer, or by virtue of notice to the customer that REMAIN has fully completed the service in question.
- 11.3. Should the customer fail to collect the item repaired within 30 days following acceptance, REMAIN shall be entitled to make the usual storage charges.

## **12. Proviso of ownership**

- 12.1. REMAIN hereby reserves ownership of all items installed or supplied until the customer has made complete and undisputed payment of all receivables due under the business relationship. The customer shall have a duty to keep all items free of charge, and with due care and attention, until full transfer of ownership. He must inform REMAIN immediately and in writing of any liens or other diminutions of REMAIN's rights of ownership and support REMAIN to an appropriate degree in asserting its rights as set out in Section 771 of the German Code of Civil Procedure.
- 12.2 Should the customer resell said items in the normal course of business, he here and now cedes to REMAIN all claims accruing to himself from the purchase contract vis-à-vis his buyer or Third Parties. REMAIN hereby authorises the customer to collect these receivables in its own name. If the customer so requests, REMAIN shall release securities to which it is entitled, providing the value of the security exceeds the receivables to be secured by more than 10 percent. REMAIN shall be responsible for selecting the securities to be released.

## **13. Documents**

- 13.1. REMAIN hereby retains sole right of ownership and copyright to all estimates, drawings and other documents, unless expressly agreed otherwise between the Parties. These documents may not be made available to Third Parties or utilised in any other way without REMAIN's prior written agreement. Copying is also prohibited without our express permission. REMAIN cannot be made liable for infringement of any patents or other protected rights. Any reproductions of the contractual item shall require agreement in advance.
- 13.2 Any reverse engineering carried out on the contractual item by the customer himself or by Third Parties shall not be permitted without the written permission of REMAIN.

## **14. Liability for defects**

- 14.1. Insofar as REMAIN supplies work performances for the customer, the following rules of guarantee shall apply (Sections 14.2 – 14.9).
- 14.2 Should the customer accept the contractual item despite knowing that it has a defect, he shall only be entitled to claim compensation for defects if he reserves the right to do so when accepting the item.
- 14.3 REMAIN's liability for defects shall be limited to a duty of subsequent fulfilment. The customer shall set REMAIN a reasonable period of grace for this purpose. Any claim to compensation, rescission or diminution under provisions of statute shall only be possible if the customer cannot reasonably be expected to accept such subsequent fulfilment, REMAIN refuses to repair the defect, finds itself unable to repair it, or said subsequent fulfilment has failed. In each of the aforesaid cases, before exercising his rights, the customer must give REMAIN an opportunity to supply a defect-free item instead of repairing the defect.
- 14.4 REMAIN's liability for defects shall cease if changes have been made to the contractual item without REMAIN's agreement, if the contractual item is damaged through circumstances for which REMAIN is not responsible, or if Third Parties undertake work on the contractual item, even to remove defects, without REMAIN's

permission, unless the customer can prove that such interference to the item was not the cause of the defect.

- 14.5 Natural wear and tear on an item shall not be subject to liability for defect, nor shall such defects as occur due to improper or negligent handling or operation, excessive operational demands, unsuitable operating facilities and equipment, or causes which have their origin in the sphere of the customer or of a Third Party.
- 14.6 With respect to defects of parts not manufactured by REMAIN itself but purchased by REMAIN from subcontractors or suppliers, REMAIN shall fulfil its duty of liability by ceding its own claims under liability for defect against the subcontractor or supplier which it employed. Should it not be possible to proceed against the subcontractor or supplier, REMAIN's liability for defect shall revive as set out in these Terms & Conditions. The same shall apply mutatis mutandis to services performed by subcontractors.
- 14.7 For work by way of subsequent fulfilment and any replacement work, REMAIN shall give a warranty of the same scope as for the original item of performance within the framework of the period of grace for defect liability applying to the latter.
- 14.8 Should REMAIN be required to pay compensation, it shall pay only immediate, foreseeable damages. Claims to compensation for consequential damage and other mediate damages are hereby excluded.
- 14.9 Liability for defects shall be subject to the statutory period of limitation applicable in each case.

## **15. Liability**

REMAIN's liability for damages shall be subject to the following regulations in the order in which they are listed:

- 15.1 Should damage have arisen through actions or omissions by REMAIN's subcontractors or suppliers, REMAIN may release itself from all liability to damages vis-à-vis the customer by ceding to the customer the claims to which it is entitled against said subcontractor or supplier.
- 15.2 Notwithstanding the regulation in 15.1, REMAIN shall be liable for damage to life, limb or health, and for claims under the Product Liability Act, in accordance with statutory regulations. This shall also apply to damage which REMAIN (i.e. its governing bodies, executive staff or employees) has caused maliciously or through gross negligence.
- 15.3 REMAIN shall be liable for damage caused by slight negligence only if essential contractual duties have been infringed. Liability shall be limited in these cases to such typical immediate damage as might be foreseen when the contract was concluded.
- 15.4 The above exclusions and restrictions of liability shall apply irrespective of the legal basis upon which such claims may be asserted.
- 15.5 REMAIN shall accept no liability should damage be caused by improper use of the item on the part of the customer and/or by Third Parties acting to his order.

- 15.6 Insofar as liability by REMAIN is excluded or limited under the above provisions, this shall also apply to the personal liability of the members of REMAIN's governing bodies, its employees, representatives and subcontractors. To this extent this regulation shall have the effect of a contract in favour of Third Parties.
- 15.7 The regulation in Section 8 shall always take precedence over the above Sections 15.1 to 15.6 for the cases regulated there and with it the regulations on liability contained in Book IV of the German Commercial Code, which are to be applied if storage, handling or transport forms part of a repair, maintenance or test order.

**16. Place of jurisdiction, application of law**

- 16.1. The sole place of jurisdiction shall be Hamburg.
- 16.2. German law shall apply. The provisions of the United Nations Convention on the International Sale of Goods (CISG) shall not apply.