

General Terms and Conditions of RAMME Electric Machines GmbH

I. General Provisions

1. All deliveries and services of RAMME Electric Machines GmbH (RAMME) shall be governed by the General Terms and Conditions (GTC) below. General terms and conditions of the purchasers shall not apply, unless RAMME has consented to them in writing.
2. RAMME shall not be bound by different and/or supplementary terms and conditions of the purchaser, except where RAMME has explicitly consented to such different agreements in writing. Such consent shall merely be granted for the given business transaction, not however for future business transactions.

II. Offers

RAMME's offers shall invariably be subject to change without notice and non-binding, except where RAMME has provided for otherwise.

III. Contract Conclusion

1. Contract conclusion shall be subject to the condition that RAMME own supplies from suppliers have been affected in a proper and timely manner. However, this shall only apply in the event that RAMME is not answerable for the potential non-supply or delayed supply. The purchaser shall be informed about the unavailability of the service without delay.
2. By placing a purchase order the purchaser shall declare in a binding manner that the purchaser wishes to acquire the merchandise from RAMME, in which context a forecast or request for delivery on call (e.g. under a framework agreement) shall be tantamount to such purchase order in terms of effectiveness. The purchase order shall be accepted either by a relevant notice from RAMME or by delivering the merchandise. RAMME shall have the right to reject the order within 14 days of its placement. If RAMME rejects the purchase order by referring to other specifications contained therein (such as prices or deadlines), this shall constitute a new offer. If the order is received electronically by RAMME, the acknowledgement of receipt shall not be deemed to be an acceptance of the purchase order as yet.
3. Deadlines and periods fixed for delivery shall only be binding if confirmed in writing by RAMME. RAMME shall always be entitled to part deliveries. In the event that no date has been fixed for the purchase in any individual case, RAMME may deliver, without a prior reminder, within 6 months after the purchase order has been placed, payment by the purchaser for such delivery then being due and payable without any deduction immediately after RAMME's invoice has been received.

IV. Prices and terms of payment and delivery

1. Any and all prices quoted by RAMME shall be prices net of tax; statutory value added tax shall be separately shown in invoices. RAMME shall be entitled to send its invoices electronically, too (e.g. by means of a signed PDF file), such invoices being binding and effective even in the absence of a signature. The purchaser shall always be obligated to check each RAMME invoice within a reasonable period. Objections to invoices received after the expiry of 6 weeks shall no longer be considered by RAMME.
2. If RAMME opts for part deliveries, each such delivery shall be invoiced separately, the amount invoiced falling due immediately irrespective of the total consignment agreed, except where RAMME and the purchaser agreed on specific deadlines for payment for such part deliveries, too.
3. RAMME reserves the right to increase prices, if and when,

after the contract has been concluded, there are cost increases caused, for example, by collectively agreed higher wages, changes in the costs of freightage and dispatch or costs ancillary thereto or in the prices of materials;

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after the contract has been concluded, the purchaser introduces technical changes or communicates to RAMME specifications differing from those stated in the purchase order. In this case the purchaser shall bear all additional costs incurred by RAMME as a result of such changes/specifications. Such additional costs shall include, for example, extra expenses on material or staff, payment for material left over, etc.

4. The purchaser may only exercise a right of retention if the purchaser's counterclaim is based on the same contractual relationship. Similarly, the purchaser shall only be entitled to rights of setoff against RAMME's claims if such rights arise from the same contractual relationship with RAMME.

5. In case of framework purchase orders prices shall invariably be fixed for certain periods and/or certain quantities. Where quantities required or deadlines fixed change in a non-negligible way, the prices shall be renegotiated and newly fixed.

6. Invoices by RAMME shall invariably be made out after the service has been performed or the products been delivered. Unless agreed otherwise, the purchaser shall be obligated to pay RAMME's invoices within 14 days after receipt of the relevant invoice, the date on which RAMME receives the payment being decisive for the purpose of determining whether payment has been made in due course. RAMME shall be entitled to charge default interest at a level of 0.03% per day as from the due date, the assertion of more extensive damage remaining unaffected thereby. If the purchaser defaults on paying an invoice, RAMME shall have the right to arrange for a production stoppage and to assert a right of retention to all goods and services against the purchaser, regardless of the specific contract to which the purchaser's default on payment relates. RAMME shall have the right, in particular in the case of framework purchase orders, to immediately stop any further cost-incurring works that would have been necessary for contract fulfilment until full payment has been received or to rescind the contract and to declare all outstanding services immediately due and payable.

7. If, at the purchaser's request or fault, the dispatch or delivery of the merchandise produced is delayed by more than one month after RAMME has advised the purchaser that the merchandise is ready for dispatch or after the date agreed in a binding manner for the acceptance of the merchandise, RAMME shall have the right to charge to the purchaser in respect of each month begun as from the date when the default of acceptance occurred a storage fee equal to 0.8% of the price of the goods destined for delivery in each case. The storage fee, inclusive of costs ancillary thereto, shall be due for payment no later than 6 months after the deadline agreed for delivery has expired.

V. Extended Reservation of Title

1. Any and all items forming part of RAMME's deliveries shall remain RAMME's property until all claims of RAMME against the purchaser have been fully satisfied by the purchaser. In the event that the purchaser commits breaches of duty, for example by defaulting on payment, RAMME shall be entitled, without being required to grant a period of grace, to demand the surrender of the deliverables and/or rescind the contract, in which case the purchaser shall be obligated to promptly surrender the same. Such demand for surrender by RAMME will not constitute a declaration of rescission, unless RAMME explicitly makes a declaration to this effect.

2. If the purchaser processes, mixes or resells the services and goods delivered by RAMME, title to the receivables arising therefrom shall be reserved, i.e. such title be extended to the goods newly produced. Should the purchaser process, inseparably mix or restructure deliverables, this shall be done for RAMME. In the event that the purchaser processes the goods and services delivered with things not owned by the purchaser, RAMME shall request joint title to the thing newly produced at a level reflecting the value of the services and goods delivered by RAMME compared to the other things processed at the time of processing. In the event that the new product of the purchaser is to be regarded as the principal item (e.g. upgraded product) after such mixing, the purchaser undertakes to transfer to RAMME joint title thereto on a pro-rata basis. In any case the purchaser shall be under the obligation to hold RAMME's sole and/or joint title thereto, as the case may be, in safe custody for RAMME. As long as title to property is reserved, the purchaser will not be allowed to pledge such property or transfer the same as collateral. In case of attachments, seizures or other third-party dispositions or interventions, the purchaser shall notify RAMME without delay.

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3. In the event that the newly manufactured products are sold, the purchaser hereby assigns to RAMME, as a matter of precaution, the claims arising for it from the resale against the customers, further declarations not being required. RAMME accepts this assignment as of today. However, the assignment shall only apply at the level of the amount reflecting the value of the newly manufactured merchandise to which RAMME is entitled in accordance with its outstanding invoices vis-à-vis the purchaser.

4. As from the date when the purchaser discontinues its payments or in the event that an application for the opening of insolvency proceedings concerning the purchaser's assets is filed or that such application is dismissed for insufficiency of funds, the purchaser shall no longer be entitled to sell the services and goods delivered by RAMME and shall promptly arrange for separate storage and for labelling these goods and services "owned by RAMME Electric Machines GmbH". In addition, the purchaser shall be under the obligation to have the amounts received under claims assigned to RAMME credited to a separate account. If RAMME has serious doubts over the purchaser's ability to pay or in the event that the purchaser defaults on its payments or that an application for the opening of insolvency proceedings concerning the purchaser's assets is filed or that such application is dismissed for insufficiency of funds, RAMME shall have the right to promptly demand the return of the services and goods delivered and to pick the same up.

VI. Materials scheduling/procurement by RAMME

1. RAMME shall generally be responsible for procuring and keeping stocks of all materials required for production, except where the purchaser personally provides the material or gives RAMME relevant procurement instructions. Where it potentially becomes necessary to procure material at short notice by reason of the fact that the periods agreed for delivery were too short at the purchaser's fault, the purchaser shall bear any additional cost of such procurement incurred by RAMME. Stocks of material no longer required by reason of technical changes or specifications received from the purchaser after the order placement or after the conclusion of a delivery contract shall be acquired by the purchaser on account from RAMME or the value thereof refunded to RAMME as damages.

2. If a purchase order is cancelled or reduced in scope after a purchase order has been placed by the purchaser with RAMME or after a contract has been concluded, as the case may be, the purchaser shall be obligated to acquire the merchandise (raw material, finished products, unfinished services, revolving stock, etc.) already kept in stock by RAMME or already ordered by RAMME with a contractual commitment to accept the same from a sub-supplier against invoicing by RAMME. For this purpose, as regards finished products, the prices agreed with RAMME shall apply and, as regards raw materials/unfinished services and merchandise ordered from sub-suppliers, the prices quoted by RAMME, taking into account expenses already incurred and overhead to be allocated on a pro-rata basis, shall apply.

3. Also in the case of individual purchase orders RAMME will procure the material prior to the start of production, except where the purchaser is responsible for providing it. As regards framework agreements, material shall be procured in accordance with the provisions agreed therein. The purchaser shall continuously present to RAMME on a monthly basis (at least 6 months in advance) a forecast which shall serve to facilitate production scheduling and which shall constitute a binding purchase order. In the case of framework agreements RAMME will thus only be required to procure/keep stocks of material if having been provided with a schedule of delivery on-call requests/forecasts or if having agreed on a material-related clearance schedule with the purchaser. In the case of open framework agreements without binding monthly requests/binding forecasts RAMME shall merely be required to keep stocks corresponding in scope to one month's demand (estimated total quantities of the year ./ 12 months) and not have any material-related obligation going beyond this.

4. If personally providing the material as agreed, the purchaser shall be required to deliver the same to RAMME sufficiently in advance before the production begins and on the basis of RAMME's production schedule. Material supplied by the purchaser will then be taken over at RAMME's depot, labelled separately and managed and subjected to stocktaking there in the same way as RAMME's own material. The cost of storing and handling material supplied by the purchaser shall be included in manufacturing costs.

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The purchaser shall be required to supply material of the same quality as the material estimated, ordered and used by RAMME itself. If the purchaser fails to meet this requirement, RAMME shall notify the purchaser of the deficiency promptly after gaining knowledge thereof. The purchaser shall then be obligated to promptly supply material conforming to the quality standards and reimburse RAMME for any costs incurred by such delay or by extra manufacturing expenses, as the case may be. Even in the absence of a separate written notification, RAMME shall no longer be required to comply with the agreed production and delivery deadlines in such a case.

VII. Logistics

1. The purchaser may establish a customer depot for selected components on RAMME's or the purchaser's premises. RAMME shall inform the purchaser about withdrawals from the customer depot. On this basis the purchaser shall thereafter invoice the material withdrawn to RAMME.

2. If this is wished by the purchaser, RAMME will also be prepared - in the event that raw material supplies discontinue (notice of discontinuation by sub-suppliers) - to transact what is known as a last-call order and to procure material accordingly and add the same to the customer depot. The purchaser shall pay for the material acquired by RAMME against invoicing after RAMME has received the goods.

VIII. Order cancellation

1. In the event that orders are cancelled and goods and services not accepted in spite of existing purchase orders/contracts/forecasts under individual orders or framework agreements or that quantities accepted are reduced or in the event that the business relationship with the purchaser is terminated (for example if RAMME gives notice of termination to the purchaser for good cause attributable to the purchaser or if an application for insolvency proceedings concerning the purchaser's assets is filed, etc.), the purchaser shall be under the obligation to immediately acquire from RAMME against invoicing the goods and stocks stored by RAMME (raw material, revolving stock, finished goods and pending supplies ordered from sub-suppliers). In this context, the agreed selling price will be charged for finished products and the purchase or manufacturing prices, as the case may be (plus surcharges to cover overhead, other expenses, etc.) quoted by RAMME shall be used as a basis for raw material, finished and unfinished products and pending supplies ordered from sub-suppliers. The invoices thus made out shall be due and payable without any deduction within 14 days.

2. If the purchaser postpones binding acceptance deadlines, RAMME shall be entitled to charge to the purchaser financing costs at a rate of 0.8% per month, as accrued from the 1st day of delay.

IX. Terms of delivery / transfer of risks

1. The purchaser shall bear the risk of the accidental destruction of total and/or partial damage to the merchandise ex place of performance. This shall even apply in the event that the goods are dispatched to any place other than the place of performance.

2. Compliance with the delivery deadlines by RAMME presupposes the timely receipt of all records to be provided by the purchaser, in particular plans, licences and endorsements as well as compliance with the agreed terms of payment and other preparatory and cooperative actions to be taken by the purchaser.

3. RAMME shall have the right to retain deliveries in whole or part until RAMME's claims against the purchaser have been fully satisfied, such retention not being deemed to constitute default on RAMME's part.

4. In the event that RAMME culpably defaults on any contractually agreed delivery, the purchaser shall have the right to claim from RAMME, as from the 4th week of default in respect of each following full week, default compensation up to a rate of 0.5%, as a maximum, however, up to 5% of the value ordered or received on call.

X. Defects of quality / warranty / claims for damages

1. RAMME shall only be liable for defects of the goods manufactured by it and for the value added by RAMME according to these GTC, typical wear and tear not constituting a defect. In this context, RAMME shall give warranty for deficient merchandise according to the statutory regulations, unless provided for otherwise below. Normal wear and tear typically caused by use shall,

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in the same way as premature wear and tear due to untypical use – caused, for example, by unusually high work loads –, not be deemed to be a defect.

2. Each purchaser shall be required to describe potential deficiencies in detail. If the purchaser fails to meet this requirement, RAMME shall not be liable for damage consequential to the delayed remedial works resulting from the insufficient documentation.

Each purchaser shall carefully check the merchandise for any damage in transit in due course before accepting/signing a receipt for it, object to any such damage at once, fully describe the same in the acknowledgement of acceptance, etc., and obtain a counter-confirmation in writing. If the purchaser fails to meet this inspection and reporting duty, any and all claims of the purchaser against RAMME in connection with such damage in transit shall be forfeited.

Each purchaser shall be required to inspect RAMME's goods promptly upon receipt by checks (using state-of-the-art testing technology) to verify that the quantities, type and quality of the goods conform to specifications. Obvious defects and missing quantities shall be reported to RAMME in writing no later than within 3 business days of receipt. Even where defects are invisible, each purchaser shall report the same to RAMME in writing within one week after detecting that the goods do not conform to contractual specifications. If the purchaser fails to meet this inspection and reporting duty, any and all potential claims of the purchaser against RAMME in connection with such defects shall be forfeited, too.

3. RAMME's liability for so-called warranted qualities or for guarantees assumed by it shall only apply on the condition that RAMME had confirmed such warranted qualities or guarantees assumed to the purchaser in writing before the order was placed.

4. Any warranty by RAMME shall conclusively be limited to a period of 12 months, beginning from the date of delivery of the relevant goods and services. Any deviation thereof shall require the written form in order to be effective.

5. In case of potential defects RAMME's liability shall, at RAMME's election, be conclusively limited to subsequent improvement or substitute delivery. Any more extensive liability claims and claims for damages against RAMME may only be asserted if the purchaser is able to prove that RAMME acted with wilful intent or gross negligence.

6. RAMME does not assume any liability for the electronic functionality of modules/products, unless the purchaser has instructed RAMME in a binding manner to carry out relevant electrical tests. Given the mass character of the merchandise produced by RAMME, RAMME shall have the right, for the avoidance of disproportionately high costs, to give warranty by substitute delivery in lieu of subsequent improvement within a reasonable period (at least 30 days), the purchaser accepting as of today potentially longer periods of substitute delivery (availability of the goods). If the purchaser, faced with the potential failure of subsequent works to remedy a defect, opts for rescinding the contract, the purchaser shall not be entitled to compensation for damage in addition thereto.

7. If it is impossible for RAMME to meet its contractual obligation for a reason which RAMME is answerable for, the purchaser shall be entitled to claim damages, such claim for damages of the purchaser being limited to 10% of the value of such part of the delivery/contractual obligation as cannot be put in proper operation as a result of such impossibility. The purchaser's right to rescind the contract shall remain unaffected.

8. Claims potentially arising from the Product Liability Act against RAMME are not excluded by these GTC.

XI. Industrial property rights

The purchaser shall be under the obligation to make available the products manufactured by RAMME under a contract awarded by the purchaser free from third-party rights. As of today the purchaser fully indemnifies and holds RAMME harmless from and against any claims asserted by such third parties, including legal costs necessarily incurred on account of the potential breach of property rights by the purchaser.

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XII. No assignment

The purchaser may not assign rights and obligations under contracts and purchase orders with RAMME to third parties, except if RAMME has endorsed the assignment in writing. In the case of any assignment not endorsed by RAMME by the purchaser RAMME shall be entitled to terminate the contract with immediate effect for good cause or to cancel the purchase order, as the case may, in each case with the right to assert the extra expenses and losses incurred by RAMME as a result.

XIII. Secrecy

1. Throughout the duration of their business relations and after their termination for at least another year RAMME and each purchaser shall maintain secrecy about the records, knowledge and information left for the other party's use and specially marked accordingly in each case. Records, knowledge and information left for use may only be published or passed on to third parties with the other party's explicit written consent, with the exception of records and information to suppliers forming the basis for RAMME's purchases of material. RAMME and each purchaser shall impose these obligations on their employees and suppliers. After the termination of their business relations either party may demand the return of the records provided in each case.

2. The duty of secrecy shall not apply to data or other information that had already been known at the time of their transfer, for example via generally accessible or legal channels. The onus of proof concerning access to such information other than by transfer by the other party shall in each case be borne by the party invoking any such other access.

XIV. Place of performance, jurisdiction, governing law and miscellaneous

1. Place of performance and exclusive place of jurisdiction for deliveries and payment as well as any disputes arising between RAMME and the respective purchaser from the contracts concluded between them shall be RAMME's registered office. The relations between the contracting parties shall exclusively be governed by the law of the Federal Republic of Germany, to the exclusion of the UN Sales Convention.

2. If any provision of these GTC is or becomes ineffective or impracticable, this shall not affect the effectiveness of the remaining GTC. In such a case RAMME shall replace the ineffective provision or fill any potential gap herein by a new provision that comes closest to the economic purpose originally pursued.

3. As regards facts not or not fully provided for in these GTC, the general conditions for the supply of products and services of the electrical industry (ZVEI – German electrical and electronic manufacturers' association), as last amended, shall apply. If there are additional agreements between RAMME and the respective purchaser, the following descending order of priority shall apply:

1. Individual written agreements (e.g. delivery confirmations)
2. Delivery contract with RAMME and the purchaser
3. These General Terms and Conditions of RAMME (GTC)
4. General Conditions for the Supply of Products and Services of the Electrical Industry (ZVEI), complemented by a reservation-of-title clause