

Terms of Purchase of the Randack Spezialschrauben GmbH
- hereafter Randack -
- Status: March, 2005 –

1. General / orders

(1) In so far as something different has not been explicitly agreed in writing, goods and services are taken in solely on the basis of these Terms of Purchase and these hold good for all contractual relationships regardless of the medial form of communication (e.g. by telephone, telex/fax, in writing or per E-mail). An agreement on the use of electronic signatures may only be reached in writing.

Supplier's terms or prescriptions which have the effect of changing a contract of Supplier are herewith gainsaid. They will not be recognized by Randack unless Randack has explicitly agreed to their application in writing. Orders are only binding for Randack after they have been issued in writing.

(2) Written form is agreed for the effectiveness of contracts concluded by Randack; the written form requirement may not be revoked verbally.

(3) Holding good in the case of conflicts which cannot be settled by mutual agreement are the legal prescriptions of the German Civil Code as well as – where commercial practices have to be interpreted - the Incoterms of the International Chamber of Commerce, Paris in their version as valid on the day a contract is concluded. Subsidiary agreements require to be confirmed in writing by Randack.

2. Confirmations

Each order has to confirmed in writing; if a confirmation has not been received by Randack within two weeks, then Randack is no longer bound by the order. The Terms of Purchase of Randack hold good as accepted through the confirmation even if this acceptance has not been explicitly declared. Documents used by Supplier in business transactions with Randack must show the following: address and commission number of Supplier, Randack's order number and the date of order.

Without the agreement of Randack, Supplier is not entitled to carry out changes to the design or mode of execution relative to earlier, identical deliveries or services.

The transferring of a delivery order to a subcontractor or third party is only permitted with Randack's explicit confirmation thereto in writing.

The cost of returning packing material is to the burden of Seller.

3. Delivery / delivery dates

(1) The final and/or intermediate periods contained in the order for the delivery are binding in the same way as the place of performance named therein. Randack is obliged to accept part deliveries only when this has been explicitly agreed to by Randack.

(2) Prescriptions of Seller, which also permit part deliveries of an order to hold good as a complete delivery, are explicitly gainsaid.

(3) Randack is to be informed without delay in writing should circumstances become clear to Supplier that he cannot maintain the conditional delivery time.

(4) Should Supplier be compelled to exceed a delivery period for severe reasons for which neither Supplier nor his suppliers are to blame or for reasons for which Randack is to blame, then Supplier is obliged to inform Randack of these circumstances without delay in writing. Should he not comply with this obligation without delay, then he may not call upon these reasons.

(5) In the case of a delivery default, Randack is entitled to advance the legally permitted claims; each and every exclusion of claims for damages from the side of Supplier is gainsaid.

(6) Even if no party is to blame for a delivery default, Randack has the right to withdraw from the contract once the legally required period of grace has been given and has expired. Randack has the right to inform itself at any time on the spot on the progress of the work or of the deliveries. A delivery carried out prematurely without the agreement of Randack does not affect the period for payment linked with the originally agreed date of delivery. A delivery default of subcontractors is to be notified without delay in writing; such a default does not justify the periods for delivery being exceeded. The acceptance without objection of a late delivery or service does not represent any foregoing of Randack's rights to advance claims for damages based on the lateness of the delivery or service. This holds good up to the time of the payment in full by Randack for the delivery or service in question.

(7) If in cases of force majeure, strike or lock-out it becomes impossible or significantly more difficult for Randack to fulfil its contractual obligations, then Randack may cancel the contract in part or demand that it is executed at a later time without thereby Supplier becoming entitled to advance any claims against Randack.

(8) If the transport via the envisaged route or to the envisaged place or at the envisaged time becomes impossible without Randack being to blame therefor, then – following consultation – Supplier may carry out the delivery by another route or to another place. The additional costs arising thereby shall be to the burden of Supplier.

(9) In the case of deliveries ex works, Randack is entitled to instruct Supplier as to which forwarding agent should be commissioned.

4. Force majeure

Force majeure, industrial disputes, operational disruptions for which no party is to blame, disturbances, official measures and other unavoidable events entitle Randack to withdraw from the contract in whole or in part without thereby prejudicing its other rights in so far as such situations are not of only insignificant duration and in so far as they cause Randack's requirements to be considerably reduced.

5. Transport risks

All risks pass first to Randack when the goods have been delivered to and accepted by Randack at Randack's or at the agreed place of performance. Up to this point in time Supplier bears all risks. The transfer of risks takes place with the acceptance of the goods in Randack's warehouse and following Randack's incoming goods check.

6. Transfer of risks

The risks pass – proper packing and loading assumed – pass to Randack with the dispatching of the delivery item to Randack in so far as the seat of Supplier has been agreed as place of performance and the goods are either to be picked up by Randack or to be dispatched on Randack's request. Randack shall inform Supplier if the goods cannot be accepted as a result of unforeseeable events or force majeure. For the duration of such a delay Supplier shall bear the risks for the delivery item. If in accordance with the nature of the order erection or commissioning is necessary, then Supplier bears the risks up to the time of final acceptance.

7. Prices

(1) The price shown in the order is a fixed price and binding. In so far as something different has not been agreed in writing, the price includes delivery “carriage paid” including packing, insurance and freight. In the case of overseas transport, a CIF price is agreed. Official value-added tax is to be shown separately.

(2) If in exceptional circumstances the prices have not been agreed in advance, then the contract shall come into being first when the prices to be stated in the order acceptance have been accepted by Randack in writing.

(3) Prices are agreed in Euro and are to be paid to Supplier in this currency in so far as something different has not been agreed in writing with Supplier.

8. Warranty / notification of defects

(1) Randack will accept deliveries / services only in the contractually agreed quality, free of faults. The agreeing of particular qualities, properties or standards holds good as a warranty. Supplier bears liability for all warranted composition characteristics and properties of the goods. If an agreement has not been explicitly agreed, the delivery / service shall be carried out in accordance with the latest state of the art or, as the case may be, standard and in accordance with the particular valid prescriptions.

(2) If other qualities are delivered or if the warranted composition characteristics and properties are not maintained, then – regardless of whether the defect was noticed at the time of acceptance or quality check – Randack is entitled to proceed in accordance with the legally applicable warranty prescriptions. The right to select the mode of supplementary performance is held fundamentally by Randack. Supplier has the right to reject the mode of supplementary performance selected by Randack in accordance with the prescriptions of § 439 Para. 3 of the German Civil Code.

(3) Supplier warrants that his delivery/service has no defects, possesses the agreed or warranted properties, is in accordance with the regulations to be conformed with and is in accordance with the latest state of the art or, as the case may be, standard.

(4) Defects count as having been notified in good time when externally detectable defects are notified within 4 weeks of receipt of the goods and other defects within 2 weeks of their having been detected by Randack or of their having been notified by Randack's customers. Counting as concealed defects are such defects that could not be detected by checking of the goods in the manner usual in the sector.

(5) The warranty period is 30 months from use or commissioning but at maximum 36 months from transfer of risks. Should a longer period of warranty hold good in accordance with legally applicable prescriptions, then this longer period is decisive.

In the case of defects being eliminated or replacement deliveries made, then the warranty period shall start again. In the case of part deliveries, the warranty period begins with the last delivery.

(6) Randack herewith explicitly gainsays each and every prescription of Supplier which foresees a formalized notification procedure for defects in the delivery, in particular an obligation to present chronological incoming goods logs for presenting with the notification declaration.

(7) The losses and costs (costs of faultfinding, occupying of internal capacities etc.) caused by the warranty case shall be borne by Supplier. Apart from this the legal prescriptions hold good.

(8) If Randack takes back the products it has manufactured and/or sold by reason of the defectiveness of the contractual object supplied by Supplier or if as a result of this defectiveness the purchase price to be paid to Randack is reduced or if in any other way claims are advanced against Randack, then Randack reserves its right of regress vis à vis Supplier, whereby the setting of a period otherwise necessary shall not be required for Randack's rights in connection with defects.

(9) Randack is entitled to demand that Supplier makes good expenditure, which Randack has to bear vis à vis its customers because these have advanced claims for compensation vis à vis Randack for the expenditure necessary for purposes of supplementary performance, in particular transport, path, work and material costs.

(10) In cases of section 8, Paras. (4) und (5), the period of limitation comes into force at the earliest two months after the point in time at which Randack has fulfilled the claims advanced against it by its customer but in any case at the latest five years after the delivery by Supplier.

(11) If a material defect shows up within six months from the transfer of risk, then it will be supposed that this defect was present at the time of transfer of risk unless this supposition is not to be reconciled with the nature of the matter or of the defect.

(12) Supplier is obliged to carry out a quality check in accordance with the latest state of the art and on request to prove to Randack that he has done this.

9. Period of limitation

The legal period of limitation for the advancing of claims under warranty begins with the point in time at which the final declaration of Supplier on the complaints raised is received by Randack.

10. Assignment and right of retention

The assignment of claims from this contract of Supplier vis à vis Randack is excluded. Seller only has a right of retention in respect of the goods ordered when his claim is beyond dispute or has been legally confirmed.

11. Invoice / payment

(1) Invoices are to be sent to Randack in accordance with the instructions in Randack's order whereby above all Randack's order, item and commission numbers are to be stated. Two copies of each invoice are to be sent including any test documents that may be required. Invoices in which the statements are not complete or for which works certificates are missing count as not having been received until the points in question have been clarified by Supplier. Value-added tax is to be shown separately. Supplier is responsible for all consequences resulting from failure to maintain these obligations unless he is able to prove that he is not responsible therefor. Following receipt of a proper invoice and the related delivery Randack will pay the invoice in one of the following ways whereby the choice is Randack's:

(I) Within 14 days with 3 % discount, or

(II) On the 15th of the month following the delivery without deduction, or

(III) 90 days later net, or

(IV) On the 15th of the month following the delivery by 3-month accepted bill with 2 % discount (subject to agreement)

(2) Only a delivery that is faultfree and in accordance with the order produces the obligation for it to be paid. Only the agreed prices will be paid. Excess deliveries will only be paid when Randack has explicitly agreed to them in advance. If a quantity smaller than that due is delivered and is accepted by Randack, then Randack is only obliged to pay for the quantity actually delivered. Where a premature delivery is accepted, it will be due for payment in accordance with the delivery date as originally agreed.

(3) Payments on account / payments in advance shall be carried out subject to the proper fulfilment of Randack's order as well as following presentation of an open-ended, unconditional bank guarantee for which there are no costs for Randack. Any L/C costs and the related bank charges shall be borne by Supplier.

(4) Randack is entitled to hold back payments if Randack has claims against Supplier from other legal transactions or for other reasons.

12. Changes to orders / suspension / annulment / rescission

Randack is entitled at any time to change, suspend or annul an order. Effects on costs and due-dates resulting therefrom are to be regulated by mutual agreement whereby claims for damages and lost profit are excluded. Before carrying out a change to an order, Randack is entitled to request changes to the design, quantity to be delivered and time of delivery in consultation with Supplier. If a mode of regulation cannot be reached by mutual agreement, Randack is entitled to terminate the contract. In such a case Supplier is entitled to reasonable reimbursement of expenditure, claims to be supported by proof. Randack may withdraw from the contract in whole or in part if the contractor becomes insolvent or if the creditworthiness of Supplier or his ability to make deliveries deteriorate to such an extent that fulfilment of the contractual obligations is endangered.

13. Retention of title / provision of materials

We acknowledge the simple, expanded and extended retention of title of Randack's supplier.

(1) Materials provided by Randack remain Randack's property. Such material is to be stored separately, marked and administered, in each case free of charge. Such material may only be used for Randack's orders. Contractor is to make good any loss in value or loss.. The same holds good too for the surrendering of materials related to an order subject to charging.

(2) The processing and/or converting of the material by Supplier shall be carried out for Randack. Randack shall then become the direct owner of the new and/or modified thing. Should Randack's goods subject to retention of title be processed with other things not belonging to Randack, then Randack shall acquire joint ownership rights to the new thing in the ratio of the value of the goods from Randack to the other things processed, the values being in each case the values at the time of the processing.

(3) Should Randack's goods subject to retention of title be mixed in an inseparable way with other things not belonging to Randack, then Randack shall acquire joint ownership rights to the new thing in the ratio of the value of the goods from Randack to the other things mixed, the values being in each case the values at the time of the mixing. If the thing produced by the mixing is to be seen as the main thing, Supplier transfers to Randack pro-rata joint title to the new thing. Supplier shall look after the new thing free of charge for Randack with the care of a proper businessman.

14. Tools / moulds / patterns / keeping of secrets etc.

Tools, moulds, patterns, models, profiles, drawings, standard specifications sheets, artwork, calculations, files, software programs and/or other documents may not be handed over to third parties or be used for other than the contractually envisaged purposes. The same holds good for any things manufactured with the aid of or in accordance with any of the above. The objects handed over are to be insured by Supplier against fire, water and theft at their value when new at Supplier's cost. At the same time Supplier assigns here and now the claims for losses under such insurance to Randack; Randack accepts this assignment herewith. Supplier is obliged to carry out maintenance, servicing, making good and repair work to the things handed over to him and to do this on time at his own expense. Supplier warrants that the objects and rights he uses do not contravene any legal prescriptions, official prohibitions or commercial practices. Supplier indemnifies Randack against all claims under public or private law in the case of these prescriptions being contravened and shall do this on first demand. Supplier warrants that his delivery does not infringe the proprietary rights of third parties. In the case of claims being advanced against Randack, Supplier shall indemnify Randack against all claims of third parties on first demand and - by concluding licence contracts with the holders of the relevant proprietary rights - ensure that Randack can make full use of the objects and rights in accordance with the full scope of the contract. Supplier is obliged to bear all expenditure that arises from claims advanced by third parties.

Randack retains its title and copyright rights; these rights may not be made accessible to third parties without the explicit agreement in writing thereto of Randack. Should further rights exist, then Randack may demand the withdrawal of these if the contractor has infringed these obligations. Supplier is not entitled to use his legal relationships with Randack for

promotional purposes unless Randack has declared his explicit agreement thereto in writing and in advance.

15. Product liability / indemnification

(1) In so far as Supplier is responsible for product damage, he is obliged to indemnify Randack from claims for damages from third parties on first demand when the cause is placed in his regime and/or organizational area and he is liable himself in external transactions. Randack's product liability is restricted solely to passing this on to Supplier. In so far as Randack recognizes Supplier's retention of title and does not itself act externally as if it were the manufacturer, then Randack is not the manufacturer of a product in the sense of §§ 1 and 4 of the German Product Liability Act.

(2) Within the framework of cases of damage in the sense of Para. (1) above, Supplier is also obliged to reimburse any expenditure in accordance with §§ 683 and 670 of the German Civil Code as well as in accordance with §§ 830, 840 and 426 of the German Civil Code which expenditure results from or in connection with a call-back action carried out by Randack. In so far as this is possible and reasonable, Randack shall inform Supplier on the nature and scope of the call-back measures to be carried out and give him opportunity to state his position on the matter. Other opportunities to advance legal claims are retained regardless of the above. Supplier shall take out production liability insurance and prove the existence of this to Randack on request at any time by showing it.

16. Place of performance / venue / applicable law

Place of performance for deliveries is the place of reception designated by Randack. Venue is Hagen or the general venue of Supplier whereby Randack shall make the selection.

Hold good for all legal relationships between Randack and Supplier resulting directly or indirectly from this contractual relationship is the law of the Federal Republic of Germany whereby the applicability of the UN Convention on the International Sale of Goods is excluded. In accordance with § 33 of the German Data Protection Act Randack refers to the fact that it stores Supplier's data within the framework of this act.

17. Other points

Should individual clauses of these Terms of Purchase be invalid in whole in part, then this shall not affect the effectiveness of the other clauses or, as the case may be, of the other parts of such clauses. In such a case the parties to the contract shall replace such an ineffective mode of regulation with one that comes closest to the economic objective of the ineffective mode of regulation and that is effective.