

# Terms and Conditions of Delivery and Payment of Harder & Steenbeck GmbH & Co. KG

## I. General information

The buyer acknowledges these Terms and Conditions of Delivery and Payment, which shall only apply for contracts with entrepreneurs, for this contract and for all future business. Deviating conditions of the buyer shall – even if we are aware of these – not become part of the contract through our silence or our delivery; they must be confirmed by us by our managing directors or authorized signatories separately in writing for each individual business.

## II. Offers, delivery, risk, returns

1. Our offers are – also according to quantity, quality, price and delivery date or delivery deadline – without obligation.
2. The buyer is bound to his order for four weeks. It shall become binding for both parties as soon as they have confirmed this in writing. In case we do not confirm an order in writing, our delivery note or the delivery shall be deemed as confirmation.
3. We shall be permitted to cancel the contract if we are on our part not supplied correctly or on time and this – e.g. in view of a corresponding cover purchase – is beyond our control.
4. We shall be entitled to make part deliveries unless these cannot be used by the buyer and this is evident for us.
5. We are – also when stating a delivery date or a delivery deadline – entitled to deliver at all times. We shall be deemed in default of delivery if we do not deliver on time in case of a fixed business or if after written request by the buyer we do not deliver within a reasonable deadline set by him; in case of a delivery date or a delivery deadline only a request made subsequently shall be decisive. The buyer is entitled to a right of cancellation according to § 323 BGB owing to default in delivery, if we are responsible for this delay. A final deadline to be set for us is extended by the duration of unforeseeable impediments to delivery for which there is no fault such as subsequent import or export bans, interferences to manufacture or delivery to us or our suppliers owing to force majeure, traffic interferences, strike, lock-out etc. In the event that we are in default of delivery the buyer shall be obliged within a deadline to be set by us to declare whether he cancels the contract or insists on delivery.
6. The risk shall pass to the buyer as soon as the goods leave our warehouse; this shall also apply if carriage paid delivery has been agreed or we deliver personally or we have covered a transport insurance.
7. The buyer shall dispose of the packaging at own costs.
8. Exchange and return of the goods is excluded, insofar as this – e.g. for goods on commission – has not been agreed otherwise in writing. In case of agreed right of return the buyer must send the goods to us in the original condition, packaged and carriage paid. After examination of the returned goods we shall issue a credit note; the buyer may only set off against our claims after issuing a credit note.

## III. Prices, terms of payment

1. Our prices are derived from our price lists applicable upon conclusion of contract unless otherwise agreed in writing. They apply from our warehouse plus packaging, despatch costs and value added tax at the rate applicable when delivered.

**Delivery:**

- **In case of orders with a net goods value less than € 50,- a reduced quantity surcharge is charged of € 5,- plus packaging and despatch costs**
- **up to € 250,- packaging and despatch costs shall be charged**
- **from € 250,- we shall assume packaging and despatch costs with deliveries within Germany, to a place of receipt**
- **from € 1000,- we shall assume the packaging and despatch costs with deliveries by package despatch within the EU to a place of receipt. For deliveries on the basis of weight and volume by forwarding, the packing and shipping costs will be charged.**
- **Compressors like model Eurotec 20 A and larger will only be shipped on palettes. On orders totalling less than € 500,- packaging and despatch costs will be charged.**
- **If the delivery address is different from the billing address a surcharge of at least € 5,- will be charged.**

**Export papers:**

- **The fees for preparation of export papers vary depending on type of order, minimum fee is € 30.-**

**Payment:**

- **in case of advance payment 3% cash discount**
- **in case of bank collection within 7 days 3%, 14 days 2% cash discount, 30 days net**
- **on invoice, payable within 10 days 2% cash discount, 30 days net**

**insofar as at this time there are no other outstanding claims against the buyer.**

**Delivery of new customers is carried out exclusively against advance payment. In case of deliveries carried and by a forwarding agency due to weight and volume, packing and forwarding expenses will be charged.**

2. We are entitled to deem claims not yet due as due in case already due claims are not settled within a reasonable final deadline set by us, direct debit orders are revoked effective for claims already incurred through the delivery of goods or we become aware of essential deterioration in the financial circumstances (e.g. negative information) of the buyer, through which our payment claim appears at risk. This applies in particular in case disputes of bills of exchange/cheques become known, reversal direct debits or compulsory executions against the buyer and applications for insolvency or extra judicial debt regulations over the buyer's assets. We shall not exercise these rights as soon as the buyer provides us sufficient security.
3. The buyer shall only be entitled to rights of retention – also from § 369 HGB – insofar as they are based on the same contractual relationship. Set-offs are only permitted by the buyer if the counter claim are undisputed or have been legally declared.

#### **IV. Guarantee, warranty, claims for damages**

1. Diagrams and descriptions in our catalogues merely give an idea of our goods. A guarantee of condition shall only exist if a guarantee has been expressly mentioned and operating instructions given for the goods are observed. Each buyer is obliged as reseller to refer his customers to the operating instructions and to give these sufficient opportunity to acknowledge these.
2. Goods, which have defects when the risk is passed, which are only detected during the warranty period, shall at our choice be improved or replaced. The buyer shall assume additional costs incurred in the event that the costs of this subsequent performance are increased, because the goods were taken to another location than the place of delivery. The buyer shall bear the thus associated costs in case of an unjustified complaint.
3. In case a subsequent performance fails the buyer may cancel the contract insofar as the fault is not insignificant or reduce the purchase price.
4. We shall also be liable for claims for damages if the liability is based on the product liability act or injuries were caused to life, body or health due to our negligence. If we are responsible for gross negligence or wilful intent or if we negligently breached an essential contractual duty, our liability shall be limited to the foreseeable damages typical as per contract; this limitation shall not apply in case of a breach of duty by our managing directors or executives. This liability limitation shall also apply for the benefit of our employees.
5. The afore-mentioned claims shall become statute-barred in 12 months. The statutory deadlines shall apply for claims according to the product liability act, according to §§ 438 I No. 2, 479 I, 634a I No. 2 BGB, owing to injury to life, body or health, in case of wilful, malicious or grossly negligent breach of duty or in case of assumption of a guarantee for condition.
6. If the goods delivered by us become an object of a purchase of consumer goods in the further supply chain, the statutory regulations shall apply insofar in case of defects of the goods if the buyer has not reached any agreements with his buyer beyond the legal claims.
7. Subclause IV, 4 - 6 shall apply accordingly for claims for damages of the buyer against us owing to delays in delivery, impossibility, damages instead of performance, tort or other legal reasons .

#### **V. Reservation of title**

1. We reserve the right to the property of the delivered goods until payment of all claims – also those due in future or conditional – from the business relationship with the buyer. The buyer must grant us access to the reserved goods in his possession.
2. The buyer may only sell the reserved goods against cash payment or under reservation of title in proper business transactions; he is not entitled to other disposals in particular to assign as security, pledging, sale of the whole stocks of goods or clearance sale. The buyer must use the proceeds from the resale to immediately repay his liabilities towards us.
3. The buyer hereby now already assigns his claims from the resale of the reserved goods – including the corresponding claims from cheques and bills of exchange – with all secondary rights to us. In case the reserved goods are sold by the buyer together with other goods which do not belong to us for a total price, the assignment is only carried out for the amount which we charged to him.
4. In case the claims of the buyer from the resale are included in a current account, the buyer hereby assigns now already his claim from the current account towards his customers. The assignment is carried out in the amount which we charged him for the resold reserved goods.
5. The buyer assigns us all insurance or other claims, which he acquires owing to the loss or damages to the reserved goods.
6. We accept all afore-mentioned assignments. The buyer shall upon request hand us a list of the assigned claims and all information and documents for their assertion.
7. The buyer may no longer dispose of the reserved goods and no longer collect the claims assigned to us, insofar as he is in default with the payment towards us or we can exercise our rights according to Subclause III, 3 or he breaches one of the afore-mentioned obligations for securing our property. We may then – if necessary after the expiry of a reasonable final deadline – cancel the contract, demand the immediate hand over of the reserved goods and disclose the assignments. For hand over the buyer must store the reserved goods separately from other goods of the buyer or other suppliers, mark these as our delivery under reservation of title, to refrain from all disposals over the goods and hand us a list of the reserved goods.
8. If the realisable value of the security exceeds the amount of our claims by more than 20%, we shall insofar at our choice release these upon request by the buyer.
9. The buyer must inform us immediately in writing of any access of third parties to the reserved goods or to the claims assigned to us and support us when intervening in all ways. The costs for this shall be borne by the buyer.

#### **VI. Resale, export**

1. Deliveries to wholesalers may only be further sold to retailers.
2. Deliveries to dealers – also overseas – may only be exported with our consent; opposing EU regulations remain unaffected.

#### **VII. Final provisions**

1. Place of performance for payment obligations and place of jurisdiction for all disputes, also from bills of exchange and cheques, ensuing from our business relationship with merchants is Hamburg.
2. German law shall apply, however the application of the convention of the United Nations on contracts for the international sale of goods is expressly excluded (CISG).
3. Should individual provisions of our contract with the buyer including these terms and conditions be invalid either in whole or in part or contain a loophole, this shall have no effect on the validity of the other provisions. The invalid regulation shall be replaced by one which shall as far as possible satisfy the commercial intention of the invalid provision; the same shall apply for filling a loophole.