

Harder & Steenbeck GmbH & Co. KG
Terms of delivery and payment

I. Scope

1. These terms of delivery and payment apply exclusively to organisations, legal entities under public law or special funds under public law in the meaning of § 310 para. 1 BGB. If the buyer has his own different or conflicting terms of delivery and payment, we shall only recognise them if we have given express written consent.
2. These terms of delivery and payment shall also apply to any and all future business with the buyer, insofar as a legal transaction of similar nature is concerned.

II. Offers and delivery

1. All our offers are subject to alteration, in particular with reference to quantity, quality, price and delivery time.
2. The buyer will be bound to this offer for a period of four weeks. Orders placed by the buyer will not be regarded as accepted before these have been confirmed in writing by us. If we do not confirm an order in writing, then our deliveries invoice or the delivery itself will be regarded as confirmation.
3. We may withdraw from the agreement if we are not supplied correctly or on time and if this is beyond our control, e.g. in view of a corresponding cover purchase.
4. We are entitled to make part deliveries unless these cannot be used by the buyer and this is evident to us.
5. We are entitled to deliver at all times, even if a delivery date or deadline has been specified. We shall be deemed in default of delivery, if we do not deliver on time (in case of a fixed date transaction) or if we do not deliver within a reasonable deadline set by the buyer (after written request by him); in case of a set delivery date or deadline, only requests made subsequently shall be decisive. If we are responsible for a delay of delivery, the buyer is entitled to cancel according to § 323 BGB owing to default in delivery. A period of grace to be set for us shall be extended by the duration of unforeseeable and non-culpable obstacles to delivery (e. g. subsequent import or export bans, manufacturing or delivery disorders at Harder & Steenbeck or at our suppliers owing to force majeure, traffic breakdowns, 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 will cancel the contract or insist on delivery.

III. Transfer of risk, returns

1. The risk of accidental loss or of deterioration of the goods shall pass to the buyer as soon as the goods leave our warehouse. This shall also apply if the goods are delivered at the request of the buyer and irrespective of who must bear the freight charges.
2. The buyer shall be responsible for the disposal of packing material and all related costs.
3. Exchange and return of the goods is excluded, insofar as this has not been agreed upon otherwise and in writing (e.g. for consignment goods). If a right of return shipments has been agreed upon, the buyer must return the goods to us in their original state, adequately packaged and carriage paid. After inspection of the returned goods we will issue a credit note; the buyer may only offset against our claims after the credit has been issued.

IV. Prices and payment

1. Unless otherwise agreed upon in writing, our prices are derived from our price lists applicable when the contract is concluded. They apply ex our warehouse plus handling and shipping and value added tax at the rate applicable upon delivery.

Delivery:

In case of orders with a net value of goods of

- less than € 50.–, a reduced quantity surcharge of € 5.– shall be charged, plus handling and shipping
- € 50.– to 500.– handling and shipping shall be charged
- more than € 500.– we shall bear the costs of handling and shipping to a receiving point within Germany
- more than € 1000.– we shall bear the costs of handling and parcel shipping to a receiving point within the EU. For deliveries which due to weight and volume must be delivered by forwarding, handling and shipping shall be charged.
- Oil Compressors will only be shipped on palettes.
- If the delivery address is different from the billing address, we will charge a surcharge of € 5.– or more.

Export declaration:

- Fees for preparation of export declaration papers will be charged according to expenditure (at least € 30.–).

2. All payments are to be credited exclusively to the following account:

Term of payment:

Harder & Steenbeck GmbH & Co. KG
Bank: Sparkasse Holstein
IBAN: DE70 2135 2240 0134 9852 58
BIC: NOLADE21HOL

Cash in advance:

Harder & Steenbeck GmbH & Co. KG
Bank: Sparkasse Holstein
IBAN: DE44 2135 2240 0134 9952 32
BIC: NOLADE21HOL

Unless otherwise agreed upon, payments must be made within 30 days after invoicing. A cash discount will be granted as follows:

- in case of bank collection within 10 days 2 % cash discount
- In case of prepayment 3 % cash discount

Any cash discount will only be granted if at the time there are no other outstanding claims against the buyer.

3. Delivery to new customers will be carried out only against prepayment. We reserve the right to deliver against prepayment in other cases as well.
4. Default interest will be charged at 8 % above the respective basic interest rate (p.a.). We reserve the right to assert higher damages caused by late payment.
5. The buyer shall only be entitled to rights of retention (even from § 369 HGB) arising from the same contractual relationship. Setoffs by the buyer are not valid unless the counterclaim is undisputed or recognised by declaratory judgement.

V. Warranty, notice of defects and recourse

1. Warranty entitlements on the part of the buyer presuppose that the buyer has duly fulfilled his obligations with respect to the inspection and making of complaints about defects under § 377 HGB.
2. Illustrations and specifications in our catalogues merely give an idea of our goods. A guarantee of condition shall only exist if such a guarantee has been expressly mentioned and operating instructions for the goods are observed. As a reseller, each buyer is obliged to refer his customers to the operating instructions and to give them sufficient opportunity to acquaint themselves with these instructions.
3. All claims arising from a defect shall lapse 12 months upon delivery of the goods to the buyer. The above provisions shall not apply if longer periods are mandatory according to § 438 para. 1 No. 2 BGB, § 479 para. 1 BGB and § 634a para. 1 BGB.
4. If despite all due care the delivered goods have a defect that already existed at the time of transfer of risk, we will, subject to timely notice of defects, at our choice, either repair the goods or supply replacement goods. We shall always have reasonable opportunity to provide subsequent fulfilment within a reasonable period. Recourse claims shall remain unaffected by the above regulation without restriction.
5. In the event of subsequent performance failing, the buyer may – regardless of possible damage claims – cancel the contract or reduce the purchase price.
6. Defect claims do not apply if there is only a minor deviation from the agreed nature of the goods or only a minor impairment of usability or natural wear and tear or defects or in case of defects occurring after the transfer of risk as a consequence of incorrect or negligent handling, excessive stress or unsuitable operating equipment.
7. Claims by the buyer for the purpose of subsequently fulfilling necessary expenses (in particular transportation, routing, labour and material costs) do not exist to the extent that the expenses increase because the purchased goods were subsequently delivered to a location other than the buyer's headquarters.
8. Legal recourse claims by the buyer towards us exist only in so far as the buyer has not made any agreements with his customer beyond statutory claims due to defects.
9. We shall be liable for compensation if this liability is based on product liability laws or if injuries to life, body or health have been culpably caused by ourselves, our legal representatives or our statutory agents. Moreover, we shall be liable for damage compensation if we, our legal representatives or our statutory agents have acted with gross negligence or deliberate intent or if we have negligently breached a material contractual obligation.

VI. Retention of title

1. We reserve the right to the property of the delivered goods until payment of all claims from the delivery contract with the buyer. This also applies to all future deliveries, even if we do not always expressly refer to this fact.
2. The buyer is obliged to handle the goods with the utmost care, as long as the property has not yet officially been handed over to him. In particular, he shall undertake to insure the goods at his own expense against theft, fire and water damage, with the insured sum being adequate to cover the replacement value. The buyer hereby assigns to us all claims he has to an insurer or otherwise owing to the loss of or damages to the reserved goods. Until such time as the property ownership has been transferred, the buyer has to inform us immediately in writing if the delivered goods are impounded or otherwise subjected to the intervention of a third party.
3. The buyer is only authorised to resell the reserved goods against cash payment or under reservation of title in normal business transactions. The buyer's claims arising from a resale of the reserved goods are hereby assigned to us to the amount of the purchase price agreed with us (including VAT). The buyer will remain entitled to enforce the claim after assignment. Our authority to collect claims ourselves shall remain unaffected hereby. We shall however refrain from enforcing the claim as long as the buyer continues to meet his payment obligations from the proceeds obtained, is not in default of payment and in particular has not filed a petition for the opening of insolvency proceedings and payments have not been suspended.
4. All the aforementioned assignments are hereby accepted by us.
5. We undertake to release the securities due to us at the request of the buyer insofar as the value of the securities exceeds the secured accounts receivable by more than 20 %.

VII. Resale and export

1. Goods delivered to wholesalers may only be resold to retailers.
2. Goods delivered to retailers, including abroad, may only be exported with our consent; opposing EU regulations shall remain unaffected.

VIII. Final provisions

1. This contract as well as the entire legal relationship between the parties shall be subject to the law of the Federal Republic of Germany, to the exclusion of UN purchase law (CISG).
2. If not otherwise agreed upon in the confirmation of order, the place of fulfilment and sole court of jurisdiction for all disputes arising from this contract is Hamburg.
3. Should individual provisions of our contract either be invalid or contain a loophole, the validity of the remaining provisions shall not be affected hereof. The parties undertake to reach an agreement in place of the invalid clause, which corresponds as closely as possible to the commercial purpose of the invalid clause and/or fills this hole.