

General Business Terms for the Firm of Harter GmbH

The following General Business Terms apply to the contractual relationship between the firm of Harter GmbH – hereinafter known as “Harter GmbH” – and the Purchaser/Client – hereinafter known as “Purchaser”, unless agreed otherwise in writing. They are equally applicable for future business transactions even if they are not specifically agreed again. Divergent- or additional business or delivery provisions on the part of the Purchaser do not become an integral part of the contract, even if they are not specifically opposed, unless agreed in writing by Harter GmbH.

I. Retention of title

1. The objects supplied remain the property of Harter GmbH until the fulfilment of all of its claims against the Purchaser arising out of the business relationship. Insofar as the value of all the securities, to which Harter GmbH is legally entitled, exceed the value of all secured claims by more than 20%, Harter GmbH will, at the Purchaser's request, release a corresponding part of the securities.

While the retention of title remains in force the Purchaser is not permitted to pledge or transfer title for the purpose of securing a debt and resale is permitted only to retailers in the normal course of business and only on condition that claims arising from the resale to his buyer or a third party, together with all secondary rights amounting to the invoiced value have previously been assigned to Harter GmbH.

If the objects supplied are combined with other objects, which are not the property of Harter GmbH, or new articles are made from the objects supplied by processing or transformation, this always results in Harter GmbH acquiring title to the combined or new articles in the ratio of the value of the objects supplied to the other combined or processed objects at the time of processing.

2. In the case of seizures, attachments or other enactments or interventions by a third party against an object supplied, to which title is retained, the Purchaser has to inform Harter GmbH without delay.
3. In the case of infringements of obligations on the part of the Purchaser, especially in the case of a delay in payment, Harter GmbH is entitled to rescission and repossession following the expiry without result of an appropriate deadline notified to the Purchaser for compliance; the legal provisions concerning the dispensability of the appointment of a time limit remain unaffected. The Purchaser is obliged to hand over the object supplied. Following advance warning with an appropriate deadline, Harter GmbH is entitled to sell the purchased object by private treaty as advantageously as possible, taking into account the purchase price. The Purchaser will bear all costs relating to the repossession and sale of the purchased object.
4. Harter GmbH retains unreservedly its property- and authorship rights of exploitation to all cost estimates, drawings and other documents. The documents may be made accessible to third parties only with the prior agreement of Harter GmbH and if the contract is not awarded to Harter GmbH must be returned without delay at the latter's request.

II. Prices and payment conditions

1. The prices are understood to be ex works excluding packaging plus the legally applicable Value Added Tax.
2. If Harter GmbH has undertaken the erection or installation and it has not been agreed otherwise, apart from the agreed remuneration the Purchaser will bear all the necessary additional costs such as travelling expenses, costs for transportation as well as allowances.
3. Payments are to be made prepaid and free of charges to Harter GmbH's address for payment. Unless agreed otherwise the following due dates apply to the purchase price payment:

50% on awarding of the contract, payment terms: 14 days net

40% on delivery, payment terms: 14 days net

10% on commissioning, payment terms: 14 days net

For servicing and maintenance work, repairs, supply of spare parts etc. a term of payment without reductions of 14 days from the date of invoicing applies.

4. The Purchaser can offset only those debts, which are determined to be undisputed or legally binding.
5. Additional charges for work on site: Saturday work 50%, nighttime work 50%, Sunday work 100%, public holiday work 100%

III. Delivery deadlines; default

1. The meeting of delivery deadlines presupposes the punctual receipt of all documents, required permissions and releases, particularly of plans, to be supplied by the Purchaser as well as the maintenance of the agreed payment conditions and other obligations on the part of the Purchaser. If these prerequisites are not fulfilled punctually the deadlines will be extended appropriately; this does not apply if Harter GmbH is responsible for the delays.
2. If the failure to meet the deadlines is due to force majeure or similar events, e.g. to war, insurrection, strike, lock-out i.a., the deadlines will be extended appropriately.
3. Claims for compensation on the part of the Purchaser on account of default or in lieu of service, which exceed the limits stated in Section 3, are excluded in all cases of delayed delivery, even, for example, after the expiry of a deadline, which Harter GmbH is set. This does not apply if Harter GmbH is incontrovertibly liable in cases of premeditation, of gross negligence or on account of injury to life or limb or health. Under the legal provisions the Purchaser can withdraw from

the contract only if Harter GmbH is responsible for the delay to the delivery. An alteration of the burden of proof to the disadvantage of the Purchaser is not linked with this regulation.

4. At the request of Harter GmbH, the Purchaser is obliged to clarify within an appropriate period of time whether he wishes to withdraw from the contract or insist upon the delivery.

IV. Passage of the risk

1. The risk passes to the Purchaser as follows, even in the case of a carriage-paid service:
 - a) For deliveries without erection or installation, when they are consigned or collected.
 - b) For deliveries with erection or installation in a similar manner, when they are consigned or collected, unless the reasons for an accidental deterioration or the accidental loss of the delivery up to the time of the completion of the erection or installation are the fault of Harter GmbH. If desired, and at the expense of the Purchaser, the deliveries will be insured by Harter GmbH against the normal transportation risks.
2. If the consignment or the collection are delayed, for reasons which are the responsibility of the Purchaser, or the Purchaser is in default of collection for other reasons, the risk passes to the Purchaser.

V. Installation and Acceptance

The following provisions apply to the installation and acceptance, unless agreed otherwise in writing:

1. The Purchaser has to undertake at his expense and provide punctually:
 - a) All excavation-, constructional- and other work carried out by other trades, including the necessary specialist and additional assistance, construction materials and tools,
 - b) all articles and materials necessary for installation and commissioning, such as scaffolding, hoists and other devices, fuel and lubricants,
 - c) power and water at the site including connections, heating and lighting,
 - d) rooms, which are sufficiently large, suitably dry and lockable close to the installation site for the storage of machinery parts, equipment, materials, tools etc. and suitable working- and rest rooms for the installation personnel, including sanitary equipment appropriate to the circumstances; as for the rest the Purchaser has to take those measures at the construction site for the protection of the objects supplied and of the installation personnel, which he would take for the protection of his own property,
 - e) protective clothing and protective equipment, which are required because of the special circumstances of the installation site.
2. Before the installation work begins the preliminary work necessary for this must be so far advanced that the installation can commence as agreed and be carried out without interruption. Access ways and the installation area must be levelled and cleared. In addition, before the installation work starts the Purchaser must provide unasked the necessary information about the location of covered electricity-, gas- and water conduits or similar equipment as well as the required static information.
3. If the installation or commissioning are delayed for circumstances, for which Harter GmbH is not responsible, to an appropriate extent the Purchaser has to bear the costs for waiting time and the additional necessary journeys by Harter GmbH or by the installation personnel employed by the latter.
4. If, following completion, Harter GmbH requests acceptance of the delivery, the Purchaser must undertake this within four weeks. If this does not happen, acceptance is considered to have taken place. Similarly, acceptance is considered as having taken place – possibly at the conclusion of an agreed test period of three months at most - if the object supplied is taken into use.
5. The Purchaser may not refuse, on account of insignificant defects, to take delivery of the items supplied and to accept the services provided.

VI. Material defects

Harter GmbH accepts liability for material defects as follows:

1. All those parts or services, which exhibit a material defect within the period of limitation, provided that their cause already existed at the time of the passage of risk, are to be rectified, re-supplied or undertaken again free of charge at the discretion of Harter GmbH.
2. Claims for material defects are limited to twelve months. This does not apply if longer periods are prescribed in §§ 438 para. 1 No. 2 (structural works and articles for structural works), 478 (actions for recourse) and § 634a para. 1 No. 2 (structural defects) of the German Civil Code as well as in cases resulting in injury to life or limb, or health, in the case of a premeditated or grossly negligent infringement of an obligation on the part of Harter GmbH and in the fraudulent concealment of a fault. The legal regulations concerning suspension of the expiry term, the suspension period and restarting of the time limits remain unaffected.
3. The Purchaser has to notify Harter GmbH of material defects in writing without delay.
4. With notifications of defects, payments by the Purchaser may be withheld to an amount representing an appropriate proportion of the material defects, which have occurred. The Purchaser can withhold payments only if a notification of a defect is raised, regarding the justification of which there can be no doubt. If the notification of defect does not prove to be correct, Harter GmbH is entitled to claim reimbursement from the Purchaser for the costs incurred.

5. Harter GmbH is initially to be given an opportunity to rectify the position within a given period of time. If the rectification work is not successful the Purchaser can withdraw from the contract or reduce the payment, without affecting any claims for compensation in accordance with Section VII of the contract.
6. Claims relating to defects are not accepted for only insignificant deviation from the agreed condition, for only insignificant limitation of the serviceability, for natural wear or damage caused after the passage of risk as a result of faulty or negligent handling, excessive loading, unsuitable operating materials, faulty structural work, unsuitable construction site or which occur as a result of special external influences, which according to the contract are not excluded, as well as for nonreproducible software errors. Similarly, if incorrect alterations or repair work are undertaken by the Purchaser or by a third party, no claims relating to defects are accepted for these and the resultant consequences.
7. Claims on the part of the Purchaser for expenditure necessary for the purpose of rectification work, in particular for transportation-, infrastructure-, labour- and material costs are excluded if the expenditure has increased because the object of the delivery has subsequently been moved to a place other than the Purchaser's premises, unless the transfer is in accordance with usage stipulated in the contract.
8. Actions for recourse on the part of the Purchaser against Harter GmbH in accordance with § 478 of the German Civil Code (Recourse of the firm) are accepted only insofar as the Purchaser has not made any agreements with his buyer, which go beyond the legal claims for defects. No. 7 also applies correspondingly to the scope of the action for recourse on the part of the Purchaser against Harter GmbH in accordance with § 478 para. 2 of the German Civil Code.
9. As for the rest, Section VIII (Other claims for compensation) applies to claims for compensation. Extensive claims, or ones other than those stated in Section VI, on the part of the Purchaser against the supplier and his agents on account of a material defect are excluded.

VII. Impossibility; contractual adjustment

1. If delivery is impossible, the Purchaser is entitled to demand compensation unless Harter GmbH is not responsible for the impossibility. The claim for compensation on the part of the Purchaser is, however, limited to 10% of the value of that part of the delivery, which cannot be taken into practical operation on account of the impossibility. This limitation does not apply if liability is incontestable in cases of premeditation, of gross negligence or on account of injury to life, limb or health; an alteration of the burden of proof to the disadvantage of the Purchaser is not linked herewith. The Purchaser's right to withdrawal from the contract remains unaffected.
2. Insofar as unforeseen circumstances in the sense of Section III 2 significantly alter the economic importance or the content of the delivery or have a considerable effect upon the operations of Harter GmbH, the contract will be suitably adjusted, taking into consideration loyalty and good faith. If this is not economically acceptable, Harter GmbH has the right to withdraw from the contract. If it wishes to exercise this right to withdrawal, it must notify the Purchaser immediately on recognising the consequences of the event and even if an extension of the delivery period was initially agreed with the Purchaser.

VIII. Other claims for compensation

1. Claims for compensation and reimbursement of expenditure on the part of the Purchaser (hereinafter known as "claims for compensation"), for any legal matter whatsoever, particularly on account of infringement of obligations arising from the contractual relationship and for unauthorised action are excluded.
2. This does not apply if liability is incontestable, e.g. according to product liability law, in cases of premeditation, of gross negligence, on account of injury to life, limb or health or on account of infringement of significant contractual obligations. The claim for compensation for infringement of significant contractual obligation is, however, limited to contractually typical, foreseeable damage, unless it is a case of premeditation or gross negligence or there is liability for injury to life, limb or health. An alteration of the burden of proof to the disadvantage of the Purchaser is not linked with the aforementioned regulation.
3. If the Purchaser has the right to claim compensation under this regulation, these lapse after expiration of the period of limitation applicable to claims for material defects in accordance with Section VI. 2. With claims for compensation under the product liability law, the legal regulations on limitation apply.
4. All claims for damages are limited to the benefits of business liability insurance.

IX. Place of jurisdiction and applicable law

1. For all present and future claims arising from the business relationship with firms, corporate bodies or separate estates under public law, the place of exclusive jurisdiction is the headquarters of Harter GmbH.
2. German substantive law applies to all legal dealings arising out of the business relationship between Harter GmbH and the Purchaser with the exclusion of the United Nations' Convention on Contracts for the International Sale of Goods.