

General Terms and Conditions

STEKA-Werke GmbH & Co KG

1. General

The following business General Terms and Conditions (in short: GTC) form the basis for all our offers, orders, deliveries and services. Different terms and conditions will only be deemed acceptable, if corresponding with our own GTC or in particular cases where they are expressly declared in writing to form the basis of the respective contract or services.

2. Offers

Our offers are subject to change and non-binding at all times. Our offers, including additional materials, samples, dimensioned drawings and descriptions remain our property and may not be replicated or made accessible or passed on to third parties without our prior written consent. We reserve the right to recall our offers including additional materials.

3. Conclusion of Contract

A contract shall only become effective upon our written confirmation of order and according to its conditions and content.

Provided that the product to be delivered is made up of porcelain, steatite, synthetic resin, pressed or injected parts, we reserve the right to exceed or to fall short of the stipulated quantity by 10 percent.

4. Prices

Our prices are in Euro and are stated as net prices (without value-added tax) without trade discounts or other reductions and are quoted ex works (Incoterms: Ex works) excluding packaging, freight and insurance. Thus the respective compulsory legal value-added tax is added to our price. Any trade discounts require explicit agreement. Our prices apply exclusively to the items or services requested; we may demand extra payment for any additional work or services required.

Should the cost factors essential to setting the prices (applicable material, energy, operating supply items, wages and salaries etc.) change during the time from the signing of the contract to the contractually scheduled time of delivery, we are entitled to demand new prices by changing the original prices. Should an agreement not be forthcoming, we are entitled to withdraw from the contract.

5. Terms of Payment

Domestic customers shall pay our invoice within 8 days with 2% trade discount and invoice recipients outside the country shall pay within 14 days with 2% trade discount or within 30 days after receipt of invoice with no discount, if not explicitly agreed differently. For late payments, without prejudice to other rights, late interest of 10% over the base lending rate (available under: www.oenb.at) shall be deemed as agreed.

The right to offset against our claims shall be waived by the client, until his demands are undisputed or have been stated in a legally binding manner.

6. Delivery

The delivery time shall commence upon receipt of the confirmation of order and end with the handing over to the freight forwarder, as long as nothing else is agreed. The delivery time indicated by us shall not be binding.

When delivery is delayed as a result of unforeseeable circumstances with suppliers or subcontractors at our firm, such as e.g. force majeure, strike, shortage of raw material, operational disturbance, power failure, train or road blocks, we shall be released from our obligation to deliver. Should delivery become economically unreasonable due to such circumstances, we are entitled to refuse delivery. No claims for damages in case of delayed delivery are possible – particularly in cases where we are not responsible for the circumstances of the delay.

In case a client does not adhere to his obligations, an appropriate prolongation of the term of delivery shall apply and we are entitled to withdraw from the contract after a grace period notification of 14 days and demand compensation for damages suffered.

Partial deliveries shall be permitted. In case of delay of partial deliveries the client shall not be able to exert rights concerning the remaining partial deliveries.

Deliveries are ex works excluding packaging. Upon leaving our plant, all risk is transferred to the client, at the latest however upon handing the goods over to the freight forwarder or shipper. We shall only be liable for transport damages if caused by deliberate or gross negligence on the part of our staff.

The aforementioned conditions shall also apply in cases where we have assured delivery free of transportation charges.

When goods are ready for shipment and actual shipment or reception of goods is delayed, in cases where we are not responsible for the circumstances of delay, all risk is transferred to the client upon receipt of our notice of readiness for shipment.

Dispatch route, ways and means of shipment are at our discretion when not otherwise agreed, without guarantee for fastest, safest and cheapest transportation.

Goods that have been declared ready for shipment must be retrieved immediately by the client, at the latest however after a reasonable lapse of time. Should no efforts to retrieve be made, we are entitled to store the goods at the client's cost and risk at our sole discretion and to bill as delivered ex works.

Insurance for transport damages shall only be taken upon the client's explicit instruction and at the client's cost.

7. Right of Withdrawal

The client's good financial standing or complete pre-payment of the order shall be precondition to our obligation to deliver. After signing of the contract, we are entitled to demand advance payment or securities or withdraw from the contract and claim damages for non-performance, should we receive information suggesting deterioration of the client's creditworthiness or raising doubts about the client's solvency; particularly if substantial deterioration of the client's credit rating or cessation of payment occurs or bills remain unpaid, despite reminders.

8. Reservation of Ownership

All goods remain our property until all demands are met, also when goods are manufactured.

In case the client acquires property or joint ownership through connections, mingling or mixing of our property with other objects, creating a new, uniform product, the client shall already accord us property rights at this point to secure our demand with the concurrent assurance to adequately store the new product without charge. In case of resale of the goods in our property or of the new products including our property the client must make the purchaser aware of our property.

9. Third Party Property Rights

When ordering products not listed in our catalogue the client is liable to ensure that the ordered products do not infringe on any third party property rights or patents. The client agrees to indemnify and hold harmless STEKA if claims are filed against us by a third party for infringement of property rights or patents for execution of an order.

10. Tolerance

All measurements given are mean measurements, when no tolerance is specified, and are subject to DIN40680-A-m.

11. Warranty

We shall be liable for defects in our products according to the following provisions and only towards our client as first buyer. Assignment of statutory warranty claims to third parties shall be excluded.

We warrant the quality of material and the proper execution, provided that variance within the physical dimension is unavoidable during production. Therefore tolerance according to DIN 40680 shall be applicable, as long as no different agreement has been made.

The delivered goods shall be examined without delay to make sure they are free of any defects. Any defects are to be reported in writing immediately, at the latest within 14 days after receipt of goods. Defects that cannot be recognized immediately must be reported within 14 days of being noted, in any case within a year of delivery, in writing. When the objection is not in due form and time, the goods shall be deemed approved. A defect within a partial delivery shall not entitle the client to withdraw from the contract.

Warranty shall only be valid for demands under standard operational and climatic conditions. In cases where the goods are intended for special purposes and we have not accorded warranty in writing for these purposes, a warranty for these special circumstances is excluded.

Claims for damages by the client due to defective goods are excluded, especially in cases of slight negligence.

12. Tooling for Client's Own Construction

The cost for tools and alterations to existing tools are payable as follows: Half the cost is payable upon ordering and the second half upon acceptance (goods found to be in perfect condition) of the initial sample. Invoices relating to this are to be paid within 14 days of receipt with no discount, if not explicitly otherwise agreed.

Tools paid by the client become his property; however remain in our possession to protect construction. Their delivery shall not be demanded, also not in cases of notice of defects, or when the tools are not used. Delivery of goods produced with client's tools to third parties shall only be permitted if the owner agrees.

Should no orders be placed for a period of five years, requiring use of client's own tools, we reserve the right to destroy client's matrices and tools or use them otherwise.

13. Final Clause

Place of fulfillment and court of jurisdiction for all claims stemming from the contract is Innsbruck, Austria. Austrian law shall be applicable and conflict of laws and the UN Convention on Contracts for the International Sale of Goods are expressly excluded.

In cases where contract text is in several languages, the German version shall prevail and remain binding. Should one of the aforementioned clauses be invalid or impracticable, the validity of the remaining clauses and those of the underlying contract shall remain unaffected. The invalid or impracticable clause shall be replaced by a valid and practical clause that comes as close as possible in economic purpose to the invalid or impracticable.