

# TERMS OF SERVICE

for entrepreneurs

STEININGER

# GENERAL TERMS AND CONDITIONS

## for Entrepreneurs

### of steininger.designers GmbH

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#### **1. Applicability**

These General Terms and Conditions (GTC) apply to the business relationship between steininger.designers gmbh, Weinleiten 1, A-4113 St. Martin, (hereinafter referred to as 'steininger.designers') and those of your CLIENTS for whom the business is for the purposes of running a company (hereinafter referred to as CLIENT). These GTC govern the mutual rights and duties between the contractual partners. steininger.designers generates offers, renders services and carries out deliveries exclusively on the basis of these GTC. This applies to current and future contractual relationships, even if these are not expressly referred to.

Oral commitments by steininger.designers made before the conclusion of the contract are not legally binding. Oral agreements between the parties shall be replaced by the written contract. Any deviating, conflicting or supplementary GTC shall not be a contractual component, even if steininger.designers is aware of them, unless steininger.designers recognises their applicability in writing. The sending of a fax or e-mail shall suffice for the purposes of adhering to the written form requirement.

#### **2. Amendments to our GTC**

We can make amendments to our GTC and these shall also apply to existing contractual relationships. Amendments are to be announced at a transparent location on [www.steinger-designers.at](http://www.steinger-designers.at) eight weeks before the amendments become effective. We shall directly inform the CLIENT in writing of any not entirely advantageous amendments in a suitable manner. In this case, the CLIENT shall be entitled to terminate the contractual relationship within two weeks of receiving the notice of amendments.

#### **3. Transfer of Rights and Duties, Authorisation**

Without prior written consent, the CLIENTS of steininger.designers are not entitled to transfer contractual rights and duties to a third party. steininger.designers is authorised to fully or partially transfer its duties – therefore also in connection with individual work performances or the entire contract – to a third party with the consent of the CLIENT, thereby satisfying its obligations.

Only the managing directors listed in the commercial register are entitled to issue declarations, make commitments and receive payments on behalf of steininger.designers.

#### **4. Scope of services**

steininger.designers renders services in the fields of kitchen and living room planning, joinery, design and interior decoration (hereinafter referred to as Works).

#### **5. Offer, Scope of Services and Quotations**

Offers and quotations shall only be issued in writing. Cost estimations given orally do not represent a binding offer. Our offers are valid for four weeks. The contract shall be concluded if the CLIENT accepts our contractual offer in writing, if we render the agreed service for the CLIENT or if we send the CLIENT a written confirmation of contract. If the CLIENT sends us an offer without us having first issued a contractual offer, the CLIENT shall be bound to it for up to eight weeks after sending the offer, or until we issue a written confirmation or render the services.

The offer/quotation of steininger.designers in which the scope of services, description of services and remuneration are set out, or a subsequent confirmation of contract by steininger.designers – subsequent changes to the specification of services must be made in writing – shall be authoritative. Our quotations are non-gratuitous and non-binding. The costs shall be on the basis of time and materials.

#### **6. Framework Agreement**

steininger.designers can conclude a framework agreement with the CLIENT. This framework agreement shall govern the services to be rendered by steininger.designers, the minimum order value of the overall engagement by the CLIENT and the period in which the contracts must be granted by the CLIENT. These framework agreements can only be concluded if they use these GTC as a basis.

If, within the agreed period of time, the CLIENT fails to conclude contracts with steininger.designers to the extent set out in the framework agreement, the CLIENT undertakes to pay steininger.designers a contractual penalty equal to 10% of the difference between the agreed minimum order value and the actual order value.

## **7. Delivery**

We shall render our services based on the delivery dates set out in the offer; we reserve the right to alter the indicated deadlines.

Unavoidable and unforeseeable events – e.g. delays suffered by our contractors (strikes, delivery problems etc.) and force majeure – shall release us from the construction stage deadlines. The same shall apply if the CLIENT delays in meeting those of its obligations which are necessary for the performance of the contract (e.g. the provision of documents, information or preliminary work, drilling). In such cases, the agreed deadline shall be postponed by the duration of the delay at the very least.

## **8. Risks**

When installing or repairing kitchens, pieces of equipment, cladding etc., tears and cracks may appear on existing Works as a result of undetectable stresses or material defects. Wear parts have a limited service life. When carrying out a makeshift repair, we can only provide a provisional duration; this does not replace professional repair work. If there are cables in walls whose positions are unknown, we cannot rule out the possibility of damaging them as a result of cutting or drilling work. We cannot be held liable for such damage.

## **9. Duty to Cooperate of the CLIENT**

steininger.designers can only start rendering the service once the CLIENT has met the necessary structural, technical and legal requirements for the performance of the service and once the necessary information has been sent to us by the CLIENT.

In particular, before services are rendered the CLIENT must provide the necessary information, in writing, about any hidden power, gas, water and other supply lines and similar fixtures, emergency exits, other structural obstacles and any potential causes of disruption and danger. If the CLIENT should fail to do this, it shall be liable for any resultant damage. If the CLIENT should fail to carry out this duty of cooperation, we cannot be held liable for any incomplete installation of the Work caused as a result of the CLIENT providing false information or failing to provide information.

If the performance of a service is delayed or interrupted by circumstances for which the CLIENT is responsible, the performance deadlines / construction stages shall be extended accordingly. The CLIENT is aware that, if any other work that has not been coordinated with us is carried out in parallel with the installation of the Work, we cannot be held liable for any resultant delays, disruptions or damage.

The CLIENT must gathering all necessary permits, notices and approvals itself and at its own expense. We make no guarantee that such permits or approvals will be issued.

## **10. Pricing**

Our prices do not include statutory VAT; the various service items are set out in the order/quotation. Fixed prices shall be indicated separately.

If additional services or services that were not agreed upon have been rendered, e.g. repair work, organisational advice, waiting times culpably caused by the CLIENT, the time and materials shall be invoiced at the applicable rates on the date of the performance of the service. If labour costs should increase as a result of collective regulations in the sector or internal agreements, or if other cost centres relevant to the quotation or costs necessary for the performance of the service – such as the costs of materials, transport, outsourcing, financing etc. – should change, steininger.designers shall be entitled to increase its prices accordingly.

We shall invoice additional services separately; with regard to flat-rate contracts, these are not included in the scope of the offer. The CLIENT shall bear the expenses accrued if any work has to be repeated or delayed by steininger.designers as a result of incorrect, incomplete or subsequently altered information provided by the CLIENT.

## **11. Invoices, Terms of Payment and Default Interest**

The invoice shall be issued immediately upon completion of each construction stage as described in the offer or contract confirmation (see section 4). Unless agreed otherwise, we are entitled to issue an invoice for 50% of the remuneration for the overall performance upon the conclusion of the contract.

Unless agreed otherwise, invoices shall be payable in full immediately upon receipt and they shall be issued to the CLIENT by post. The total invoice amount shall be payable by the handover of the Work at the latest, minus any payments already rendered.

If, in spite of the issuance of an invoice and the maturity of said invoice, any individual services are not paid for, all services rendered as part of the business relationship shall become immediately payable after the issuance of one final warning. Additionally, steininger.designers shall be entitled to terminate the contract with immediate effect. Discount agreements shall become null and void if any (partial) invoices are not paid punctually and in full.

steininger.designers reserves the right to only render services for a CLIENT in exchange for payment in advance (in cash). Cash discounts require a separate agreement. Payments to steininger.designers shall only satisfy the obligation of the CLIENT to render payment if they are made to the account specified on our invoice. For the purposes of judging the punctuality of payments, a payment shall be deemed rendered when the full invoice amount is credited to our account; the CLIENT must always bear any bank transfer fees. The CLIENT shall acquire ownership of the Work after rendering payment in full.

If the agreed payment deadline is exceeded, steininger.designers shall be entitled to charge default interest and compound interest at a rate of 12% p.a. If the CLIENT should enter default in payment, any discounts or reductions granted shall cease to apply. Besides default interest, in the event of default the contractual partner shall also be obliged to cover all relevant procedural and extra-procedural costs of recovery, especially lawyer's fees.

Claims filed against the CLIENT shall not entitle the CLIENT to withhold agreed payments. The CLIENT is not entitled to offset its own claims against claims of steininger.designers unless the claim of the CLIENT was recognised by steininger.designers in writing or recognised by final judgement. The CLIENT shall not have a right of retention on the grounds of an incomplete overall delivery or warranty or guarantee claims.

In so far as steininger.designers carries out dunning on its own behalf, the CLIENT undertakes to pay € 40.00 per notice issued.

## **12. Completion of Contracts**

The CLIENT must confirm the due handover of the Work either by signing the transfer protocol or inspecting the Work within 21 days of its completion and communicating any remarks/objections to steininger.designers in writing. If the CLIENT fails to provide feedback to steininger.designers or approve the Work within 21 days, the Work shall be deemed inspected, approved and transferred without objection.

## **13. Products and Services of Third Parties**

steininger.designers provides no guarantee and cannot be held liable for third-party products and services. Likewise, steininger.designers provides no guarantee and cannot be held liable for materials and services provided by the CLIENT. This does not affect the other limitations of liability and disclaimers.

## **14. Transferred Documents, Copyright**

If we provide plans, sketches, documents or any other intellectual property, these shall remain our property until full payment is received. Our plans, sketches, documents and other intellectual property may not be transferred to third parties without our written consent. The CLIENT shall be liable for any damage caused by the culpable transfer of our intellectual property. With regard to non-gratuitous quotations/offers, rendering payment shall not grant the CLIENT any rights of exploitation or licences.

In so far as the CLIENT provides us with documents, plans and sketches, we shall not verify that these are correct, especially with regard to their conformity with the actual measurements, and are not obliged to do so. Nevertheless, we shall inform the CLIENT of any inconsistencies, errors and defects we discover.

The copyrighted work results created by steininger.designers in connection with the Work, as well as the rights to these, shall be the sole and unrestricted property of steininger.designers. steininger.designers is entitled to depict the Work for promotional purposes and publish, use and exploit the photographs of the Work for promotional purposes.

## **15. Place of Fulfilment**

The place of fulfilment shall be the registered offices of our company. This also applies when we send ordered Works.

## **16. Processed Materials, Patterns, Surfaces and Availability**

steininger.designers strives for the best possible availability, care and reliability. However, interruptions to operations, e.g. caused by poor-quality wood, defects in flues or other external causes, as well as part of maintenance, care and repair work, cannot be ruled out.

Wood and concrete are natural products whose appearance and characteristics may vary. Negligible changes to our obligation to render services and carry out delivery, as well as other changes that are reasonable for our clients, shall be deemed approved in advance.

All samples used by us merely serve to visualise colour patterns. The samples we use do NOT represent a binding offer or ANY template for the grain or structure of the wooden or concrete elements. The formwork elements used during the construction process are wooden sheets, each with their own grains, patterns and visual characteristics, over which we have no influence. Therefore, the CLIENT has no claim to a specific pattern or a specific structure of concrete elements. Any provisions to a different effect must be expressly agreed in writing.

Fair-faced concrete is a natural product and is therefore subject to external factors which cannot be controlled, or only with great difficulty. These factors include the open-cell character of the surface of the concrete and the slight cupping effects in wooden sheets exceeding certain dimensions as a result of stresses. The open-cell character is countered by waterproofing the concrete and then coating it with hard wax. The durability of the concrete products depends on the method and frequency of care. Over the course of their lives, the surfaces produce a patina which is a major characteristic of a concrete surface and which is considered an aesthetic feature. The fine hair-line cracks which form as the concrete dries are also a characteristic of a concrete surface. Fine cracks can appear, especially in recesses. However, these have no negative influence on the surface and therefore do not represent grounds for a complaint. This also concerns the fragility of materials caused by the construction process, e.g. recesses for hobs/sinks or drilled holes, which could result in the formation of more cracks.

Concrete surfaces located outdoors are subject to natural atmospheric conditions. This can never be completely prevented. Differences in colour, bleaching effects and blooming caused by sunlight and rain are a characteristic of concrete and, although they can be impeded by coatings, they cannot be entirely prevented. All of these characteristics are natural characteristics of the products, therefore we cannot be held liable for them

## **17. Reporting and Remedying Defects**

The CLIENT must immediately inform steininger.designers of any defects in order that steininger.designers can remedy them before other companies are engaged to remedy the defects. If the CLIENT should breach this duty to notify us of defects, steininger.designers cannot be held liable for any damage or expenses resulting from the failure of the CLIENT to notify us (e.g. the costs of a third-party company engaged unnecessarily by the CLIENT).

Disruptions in performance for which steininger.designers is responsible shall be overcome as quickly as possible. The CLIENT must support steininger.designers when remedying defects, especially by granting any necessary access and providing any necessary information. The CLIENT must reimburse us for any expenses accrued from engaging us, especially if steininger.designers is called out to remedy a defect and it turns out there is no defect or the defect was caused by the CLIENT. After we complete our activities and hand over the Work, we shall not carry out any painting work.

## **18. Duties of the CLIENT / Breaches of Duty by the CLIENT; Improper Use / Alterations**

We cannot be held liable for damage caused by the CLIENT as a result of failing to adhere to the contract, its components and these GTC, or as a result of inappropriate or incorrect use.

Improper use of the Works, defective maintenance and improper maintenance shall release steininger.designers from its contractual and legal obligations in connection with liability and warranties. Likewise, the CLIENT must bear the costs of damage repairs by steininger.designers or third parties. steininger.designers shall endeavour to use the mildest resources possible. steininger.designers shall immediately inform the CLIENT of the steps taken and the reasons behind them. steininger.designers underlines that it rejects all liability for improper use by the contractual partner or its assistances and employees as well as for alterations made to the Work without the consent of steininger.designers.

## **19. Withdrawal**

In the event of default in acceptance (e.g. due to insufficient/delayed preliminary work), default in payment or under any other serious circumstances, especially a deterioration in the financial situation of the CLIENT, steininger.designers shall be entitled to withdraw from the contract in so far as the contract has not yet been completely performed by both parties. A deterioration in the financial situation of the CLIENT will be apparent through the credit information provided by the credit reference associations and by viewing the property number of the CLIENT in the Austrian land register to see the executive liens and any forced sales that have taken place. In the event of withdrawal, if the CLIENT is at fault then steininger.designers shall be entitled to a fixed sum of compensation equal to 15% of the gross invoice amount plus additional damages.

Additionally, if the CLIENT should default in payment, steininger.designers shall be released from all further obligations to render services and carry out deliveries and entitled to withhold outstanding deliveries and services, demand payment in advance or the provision of a security and even withdraw from the contract after setting a reasonable subsequent deadline. In this case, steininger.designers can render all services and partial services immediately payable, even those rendered under other contracts with the CLIENT.

If, without having the right to do so, the CLIENT should withdraw from the contract or demand its dissolution, steininger.designers can choose to either insist on the performance of the contract or agree to its dissolution. In the latter case, at the discretion of steininger.designers the CLIENT shall be obliged to pay either a fixed sum of

compensation equal to 15% of the gross invoice amount or compensation for the actual damage suffered, which shall be calculated based on the number of hours worked by steininger.designers.

In the event of unforeseen technical difficulties caused by the type of contract which would render it unreasonable for steininger.designers to perform the contract, steininger.designers shall be entitled to withdraw from the contract without being obliged to pay compensation.

## **20. Warranty, Compensation and Liability**

We create and inspect all Works with care and deem them transferred once handed over to the CLIENT. The CLIENT must immediately report and substantiate any defects in writing, or within seven days of the transfer of the Work by steininger.designers. We only guarantee the specification of services that have been agreed and rendered on the basis of the existing and applicable state of the art as of the date of acceptance.

In the event of a punctual and legitimate notice of defects (see section 12), the defects shall be remedied within a reasonable deadline; in this regard, the CLIENT shall be obliged to support steininger.designers in remedying the defect. If a defect is present, steininger.designers can, at its own discretion, either remedy the defect or provide a replacement within a reasonable deadline. If the subsequent improvement or replacement should fail within both this deadline and a reasonable subsequent deadline, steininger.designers can, at its own discretion, either grant a reasonable reduction on the price or terminate the contract. If the CLIENT fails to report a defect within the 21-day deadline (see section 12), it shall no longer be able to file warranty claims, claims for damages based on that defect or claims based on an error concerning the absence of defects.

We offer no guarantee for the case that the underlying technical conditions change after the handover of the service. The warranty period is 12 months and it commences on the date of the handover.

The CLIENT must pay all necessary costs and expenses accrued by third-party providers engaged by the CLIENT to render the Works of steininger.designers functional and guarantee said functionality.

The shifting of the burden of proof to steininger.designers pursuant to Section 924 of the Austrian Civil Code (ABGB) shall be excluded. The CLIENT must provide evidence for the presence of the defect on the date of the handover, the date on which the defect was discovered and the punctuality of the notice of defects.

steininger.designers shall be liable under the statutory provisions for damage caused as a result of injury to life, limb or health. The following provision notwithstanding, steininger.designers can only be held liable for other damage in cases of intent and gross negligence. steininger.designers can also be held liable for other damage based on the breach of a material contractual duty in cases of ordinary negligence, although its liability in such cases shall be limited to the foreseeable damage on the date of the breach of contract. These provisions do not affect liability under the Austrian product liability act (PHG)

All claims for damages must be filed within six months of the claimant becoming aware of the damage and the author of the damage, or within a maximum of 10 years of the transfer pursuant to section 9. The amount of compensation that can be claimed shall be limited to the value of the contract, excluding taxes. In all cases, steininger.designers cannot be obliged to pay compensation for lost profits.

## **21. Retention of Title**

The good/service delivered, installed and otherwise transferred by steininger.designers shall remain our property until full payment is received. If the CLIENT should default in payment for more than six weeks, steininger.designers shall be entitled to demand that the Work be returned after setting a subsequent deadline of at least two weeks. When recalling goods, we are entitled to pass on any transportation and handling costs that are accrued. In the event that third parties gain access to the Works or parts thereof – especially by means of attachment – the CLIENT undertakes to inform the third parties of our ownership of the Works and immediately inform us.

Until the full outstanding purchase price has been paid, the CLIENT may not dispose of the goods subject to retention of title or (in particular) sell, pledge, gift or lend them. In order to assert our retention of title and in so far as reasonable for the CLIENT, we are entitled to access the location of the goods in question after providing reasonable prior notice. The assertion of our retention of title is not to be interpreted as a withdrawal from the contract unless this is expressly declared as such by steininger.designers.

## **22. Applicable Law, Severability Clause and Place of Jurisdiction**

The legal relationships between the CLIENT and steininger.designers shall be subject to Austrian law, excluding the international principles on conflicts of law. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply.

If any provision of these GTC should be ineffective, this shall not affect the effectiveness of the remaining provisions or the contracts concluded on the basis thereof. The ineffective provision is to be replaced by an effective provision which best approximates the sense and purpose of the original.

The CLIENT may only offset with counter-claims if the claim was either recognised by final judgement or not contested by steininger.designers.

The place of jurisdiction for contracts with companies shall be the locally and materially competent court for 4113 St. Martin, Austria. The following applies to contractual partners based outside of Austria: The place of jurisdiction shall be the locally and materially competent court for 4113 St. Martin, Austria, yet steininger.designers is also entitled to file lawsuits at the place of jurisdiction of the CLIENT.

4113 St. Martin, 06.06.2019

steininger.designers gmbh