

General Terms and Conditions

1. Validity of these conditions

SteelCERT GmbH concludes contracts with clients only in application of these "General Terms and Conditions" (GTC). The once agreed terms and conditions apply - until revoked by SteelCERT GmbH - also for all future contracts. The application of the client's purchasing conditions and other terms and conditions is hereby excluded for the entire business relationship. As far as the contracts with consumers are concluded in terms of the consumer protection law, indispensable statutory provisions take precedence over these general terms and conditions.

2. Offers

2.1. Unless otherwise agreed in writing, offers from SteelCERT GmbH are non-binding. A mutually binding contract is only concluded when the written order confirmation from SteelCERT GmbH is received by the customer or when SteelCERT GmbH begins its service. Changes and supplements to the contract must be in writing. This also applies to the agreement on the deviations from the written form itself. Oral information, ancillary agreements and promises from organs or employees of SteelCERT GmbH are only binding at any stage of the contract if they are confirmed in writing.

2.2. With the announcement of tests and their execution, SteelCERT GmbH does not assume any obligation of the client to comply with this or follow-up test dates.

3. Spatial Validity

Unless expressly stated otherwise, the fees offered are only valid for activities in Austria.

4. Execution of the order

4.1. SteelCERT GmbH owes only the contractually specified services that are provided in compliance with the generally recognized rules of technology. SteelCERT GmbH assumes no liability for the correctness of the laws, guidelines, and standards on which the orders are based.

4.2. When the order is placed, the order volume is specified in writing. If necessary, changes or exceeding of the agreed order volume should arise during the proper execution of the order, SteelCERT GmbH is entitled to carry out these based on the present GTC even without a written order, provided that the last agreed fee is not exceeded by 15%. If the modification exceeds 15%, this must be agreed in writing before the additional service is provided. If the last agreed fee increases by more than 50% because of this modification of the scope of the order, the client is entitled to withdraw from the contract within three days of the notification of the new fee. However, the client must pay remuneration in the agreed amount for the scope of services already provided.

4.3. SteelCERT GmbH assumes no responsibility for the proper execution and functionality of the objects that have been checked exclusively for technical safety unless this is expressly part of the order. In particular, the construction, material selection and the construction of devices and systems are only subjected to an examination if an order is specifically aimed at such a service. This also applies to safety programs or safety regulations in the same way.

4.4. When placing the order, the client must submit all necessary documents, such as drawings, plans, calculations, and certificates to SteelCERT GmbH, provide all necessary permits and releases, provide order-related information at any time, and make the necessary preparations before the start of the examination, in particular to make the object that is to be examined accessible. The client is obliged to make all reasonable efforts to provide the required documents or permits in good time. If the client does not meet these obligations despite the setting of a deadline by SteelCERT GmbH, the contract will be canceled when the deadline expires. In this case, SteelCERT GmbH is entitled to claim damages for non-performance.

4.5. SteelCERT GmbH is not obliged to check the correctness of the test base provided to or of verbal information from the client or its employees, so that SteelCERT can assume the correctness of such information.

4.6. SteelCERT GmbH is entitled to determine the method and type of examination itself at proper discretion.

4.7. SteelCERT GmbH is entitled to make copies of the written examination documents made available to them and to include them in their file and to save data from the client and from business dealings with the client in an electronic data processing system for its own purposes. The client expressly gives its consent to this in accordance with Section 10 of the General Terms and Conditions.

4.8. SteelCERT GmbH provides examination services, unless otherwise agreed in individual cases, with one examiner per subject. Any auxiliary services necessary or useful for the examination are to be made available to SteelCERT GmbH free of charge by the client or on its behalf by a third party. The client must make all reasonable efforts to provide the necessary or useful assistance. When providing such auxiliary services, the client must monitor and comply with the applicable statutory or official regulations, in particular in employee protection.

4.9. The client and SteelCERT GmbH must work together in connection with the testing service provided. If the test / sampling / packaging is to be carried out in the presence of the client or another body, this must be agreed in advance.

5. Periods and deadlines/delay

5.1. The contractually agreed periods and deadlines are based on estimates of the scope of work based on the information provided by the client. These times displays are only binding if they have been expressly determined as "binding" by SteelCERT GmbH in writing. Delays do not entitle the client to assert claims, regardless of the legal title.

5.2. Binding deadlines begin with full agreement in all parts of the contract and all conditions of the service and end with the provision of the service by SteelCERT GmbH. They lose their binding force if the client is in default with his obligations according to the provisions of the present General terms and conditions, in particular points 4.4. until 4.8. - for whatever reasons.

5.3. If the fulfillment of the order is delayed by circumstances for which SteelCERT GmbH is not responsible (e.g. operational disruptions, strike, force majeure, transport obstacles, etc.), SteelCERT GmbH is entitled to either withdraw from the contract or to extend the deadline appropriately under exclusion of warranty, claims of errors and/or claims for damages. This also applies if the events occur at a point in time at which SteelCERT GmbH is already in delay.

SteelCERT GmbH will inform the customer of this in good time. In the event of withdrawal, SteelCERT GmbH is entitled to invoice the customer for partial services provided up to that point of time at the agreed prices.

6. Objections/Complaints

6.1. Objections regarding the testing, inspection or certification activity are accepted by the respective specialist management, documented accordingly and the party who has reclaimed is informed that their objection is being processed.

6.2. The evaluation of the objection is done by the respective specialist management or an examiner / inspector / auditor who has not carried out the testing, inspection, or certification activity in question. The customer will be informed of the result in writing.

6.3. Complaints are treated in the same way as objections (point 6.1 and 6.2).

6.4. If the submitter does not agree with the decision made, he or she can contact the committee for an independent opinion.

6.5. If the submitter has concerns that the complaint is dealt with objectively or he expects a disadvantage, the way via the committee is free.

7. Terms of payment

7.1. The services are charged according to the offers, price lists and the like valid at the time the contract is concluded. If the service provision extends over a period of more than one year or services are provided repeatedly, they will be invoiced at the prices valid at the time of the individual service provision.

7.2. If the performance period of SteelCERT GmbH extends to more than four weeks, SteelCERT GmbH has the right to submit monthly partial invoices. Payment of the partial and total invoices must be made promptly and without deduction after receipt of the invoice, stating the invoice and customer number.

7.3. Objections to the invoice must be submitted to SteelCERT GmbH in writing and substantiated within two weeks of receipt of the invoice, otherwise the invoice will be deemed accepted.

7.4. The client is not entitled to set off claims - of whatever kind - unless these have been legally determined by a court or recognized in writing by SteelCERT GmbH.

7.5. In the event of delay in payment, even if only one claim is due, all open claims - including those from other orders and regardless of a different payment agreement - become due immediately and SteelCERT GmbH can optionally request payment of the outstanding claims immediately and wait until payment is made before the order is fulfilled or withdraw from the contract without notice and demand compensation for non-performance.

In the event of delay in payment, SteelCERT GmbH is entitled to charge delay interest of 12% p.a. above the base interest rate of the Austrian National Bank and to charge own dunning costs of EUR 4.00 / dunning.

7.6. Furthermore, the client undertakes to reimburse SteelCERT GmbH for the costs and expenses actually incurred because of delay in payment and necessary for appropriate legal prosecution. This includes, without prejudice to an obligation to reimburse costs under procedural law, in particular, the extrajudicial costs, the dunning costs, the costs of a debt collection company (in accordance with the remuneration set out in the ordinance of the Federal Ministry for Economic Affairs of BGBl 141/96, valorized according to § 4 paragraph 2 of this ordinance for collection services), as well as the costs of intervening lawyers insofar as they were expedient and necessary.

7.7. In case of doubt, prices are exclusive of statutory sales tax, which is also to be paid by the client in its respective amount.

7.8. Several contractual partners are jointly liable.

8. Warranty

8.1. If the client is not a consumer within the meaning of the consumer protection law, he must check the work or the services of SteelCERT GmbH immediately after the service has been provided and assert in writing any defects found or detectable with any other exclusion of any liability of SteelCERT GmbH immediately, but no later than seven calendar days after delivery of the expert opinion, test report or the like. Hidden defects must be reported in writing immediately after their discovery, but within the warranty period. Any complaints do not entitle to partial or total withholding of invoice amounts.

8.2. Warranty claims of the client are limited to improvement or replacement at the option of SteelCERT GmbH. SteelCERT GmbH is entitled to make an appropriate number of attempts at improvement or replacement deliveries, but at least two.

8.3. If the attempts to improve or replacement delivery are unsuccessful within a reasonable period or if the improvement or replacement delivery is economically impractical, the client has the right of a conversion of the contract or a reduction of the price. Conversion due to insignificant, unrecoverable defects is excluded. In this case, there is a reasonable price reduction.

8.4. Warranty claims of the client - also for so-called intangible works, for example for expert reports or software development - expire one year after the completion of the performance by SteelCERT GmbH. The warranty period is neither extended nor interrupted by improvements or attempts at improvement, especially not if this takes place outside of the warranty period agreed herewith.

8.5. Claims for damages and claims based on and from contestations for error resulting from a possible defective delivery or service are expressly excluded unless employees of SteelCERT GmbH have justified such claims intentionally or through gross negligence.

9. Liability

9.1. If the contractual partner asserts claims for damages against SteelCERT GmbH, he is obliged to provide evidence with regard to the causation, illegality, as well as fault and degree of fault. The assignment of claims for warranty and claims for damages to third parties and the like is not permitted.

9.2. If the client suffers damage because of a bindingly agreed performance deadline being exceeded for which SteelCERT GmbH is responsible, this can only be claimed up to a maximum of 5% of the part of the order affected by the delay.

9.3. The following exclusions and limitations of liability also apply to tortious

General Terms and Conditions

claims, insofar as these compete with contractual claims.

9.4. The liability of SteelCERT GmbH for damages of any kind is excluded. This exclusion does not apply for damage that SteelCERT GmbH has caused intentionally or through gross negligence; in cases of slight negligence for damage based on injury to life, body or health; however, only insofar as there is insurance coverage for this under the liability insurance taken out by SteelCERT GmbH, up to a maximum of the amounts specified in point 9.7.

9.5. The liability of SteelCERT GmbH - with the exception of damage to life, body or health - is also limited in all cases to damage typical for the contract and foreseeable for SteelCERT GmbH when the contract was concluded, or the breach of duty was committed.

9.6. The exclusions and limitations of liability in sections 8.1 to 8.5 also apply to the company's liability for its organs and employees, as well as the personal liability of the company's organs and employees.

9.7. SteelCERT GmbH is not liable for slight negligence by fulfillment assistants who are not organs or employees. In addition, the liability of SteelCERT GmbH for fulfillment assistants who are not organs or employees, as well as for misconduct by organs and employees, insofar as liability can be established against them contrary to the provisions of these General Terms and Conditions, towards all persons who are not consumers in the sense of the term of the consumer protection law are limited to:

- € 7.500.000 for personal injury and property damage

- € 3.000.000 for pure financial losses, per order and in total.

Higher than the above amounts can be agreed upon request and at the expense of the client, provided that SteelCERT GmbH can provide appropriate reinsurance with their liability insurer.

9.8. Claims for damages by the client are excluded, except in the case of intent on the part of SteelCERT GmbH or its organs / executive employees, if they are not asserted in court within a period of three months after the rejection of the claims with a corresponding notice by SteelCERT GmbH or its insurer. All possible claims for damages by the client against SteelCERT GmbH (except in the case of intent on the part of the company or its organs / executive employees) expire within one year of the client having awareness of its claim unless the conditions elsewhere or the law stipulate a shorter limitation period. This does not apply to claims from tort.

9.9. The above exclusions and limitations of liability in points 8.1 to 8.8 do not apply: for claims under the Product Liability Act, insofar as liability is mandatory thereafter.

9.10. If SteelCERT GmbH is liable to the client for intentional or grossly negligent actions or omissions on the part of its organs, employees, and fulfillment assistants, it can demand the assignment of any claims for damages by the client against the organ, employees, and fulfillment assistant of SteelCERT GmbH.

9.11. Insofar as third parties, who are neither in a contractual relationship with SteelCERT GmbH nor with the client, raise claims against SteelCERT GmbH, its organs, employees, and fulfillment assistants on the basis of the contract between SteelCERT GmbH and the client, which cannot be traced back to intentional or grossly negligent actions of SteelCERT GmbH, its organs, employees and fulfillment assistants, the customer shall indemnify and hold SteelCERT GmbH or its vicarious agents harmless.

9.12. SteelCERT GmbH assumes no liability for damage to test items resulting from examinations, tests and the like that were carried out in accordance with the rules of technology at the time of the examination.

9.13. Liability for consequential damage caused by defects, for lost profit, lack of savings, lost earnings, other financial losses, interest damage, etc. is expressly excluded. Any legal liability that still exists is subject to all the restrictions listed under "Liability".

10. Copyright

All copyrights to the test, inspection and monitoring reports, certificates, expert opinions, calculations and the like created by SteelCERT GmbH remain with SteelCERT GmbH. The passing on, exploitation and / or publication of the service beyond the contractually agreed purpose require the prior written consent of SteelCERT GmbH. If the service is passed on, exploited and / or published, the customer is responsible for compliance with the statutory provisions. In this respect, he shall indemnify and hold SteelCERT GmbH harmless from any claims by third parties.

11. Secrecy/Confidentiality/Data protection

11.1. SteelCERT GmbH has committed its employees and other assistants to secrecy about all facts that they have become aware of through the order. Each party undertakes to keep all confidential information, such as business and trade secrets of the other party, which they have gained knowledge about during the term of the contract absolutely confidential. The accreditation company may inspect the organization's documents as part of the accreditation audit without informing the client of its own. As part of the accreditation process, SteelCERT is obliged to make such documents available to the accreditation body for inspection. The accreditation societies and their agents are bound to absolute secrecy. In cases where laws also require information to be passed on to third parties, the organization will be informed of the information passed on within the framework of the law.

11.2. After fulfilling the contract, the contractor is entitled to publish the service as reference.

11.3. The client permits SteelCERT GmbH to make copies of written documents, drawings, plans, etc. which are made available for SteelCERT and are necessary for the fulfillment of the order.

11.4. The client permits SteelCERT GmbH to store and electronically process personal data within the meaning of the Austrian Data Protection Act.

11.5. The client refrains from recruiting, hiring or otherwise (indirectly or directly) employing employees of the contractor during the validity of the contract and for a further two (2) years after the end of the contract. Without prejudice to the assertion of further claims for damages by the employee against the client, the client undertakes to immediately pay a contractual penalty in the amount of 100% (one hundred percent) of the annual amount that the AG pays this person, but not less than EUR 100,000.00 (one hundred thousand euros) for each violation of this non-solicitation agreement in this article 11.5. The client bears the burden of proof.

12. Auxiliary material

The client shall bear the costs for auxiliary material that is not part of the standard equipment of SteelCERT GmbH.

13. Provision

The provision (connection and delivery) of water, electricity, lighting to the required extent and work scaffolds that are suitable for carrying out the test work and that comply with the applicable legal and other regulations are at the expense of the client, who is also responsible for ensuring that they are provided in a timely manner.

14. Delivery and safekeeping of test items

In the case of tests in the SteelCERT GmbH test facilities, the test items, samples and the like are generally to be delivered free of charge. Insofar as they are not handed over to the client or another body after the tests, a storage interest rate for further storage or, if they are disposed of, a disposal fee of an appropriate amount can be requested. After completion of the order-related work, the test pieces are stored for four weeks and then disposed of, unless otherwise is specified by the customer in the order documents. The return of sample material only happens at the request of the customer not free or against invoicing of the travel / shipping costs.

15. Cancellation of a contract by the client

Cancellations and changes to dates must be addressed to SteelCERT GmbH in writing by the client and are only possible with the agreement of SteelCERT GmbH. If the order or the order position cannot be carried out due to gross negligence on the part of the client, the client will reimburse the costs incurred, but at least 30% of the canceled order total to the SteelCERT GmbH.

The following rates will be charged for the cancellation or postponement of appointments that have already been scheduled.

Cancellation or postponement costs of a fixed appointment:

up to 4 weeks before the appointment: free of charge

up to 2 weeks before the appointment: 30% of the order total but at least EUR 300, - excl. VAT

up to 1 week before the appointment: 50% of the order amount at least EUR 500, - excl. VAT

up to 3 working days before the appointment: 75 % of the order amount, but at least EUR 750, - excluding VAT

<3 working days before the appointment: 100% of the order total, but at least EUR 950, - excl. VAT

16. Severability clause

Ineffective provisions of this agreement do not affect the effectiveness of the remaining provisions. In the event of the ineffectiveness of a clause of this agreement, the contracting parties agree to replace it with a valid one that comes closest to the meaning and purpose of the ineffective provision. The terms and conditions apply to consumers (within the meaning of the Consumer Protection Law) only insofar as they are not subject to mandatory provisions of the Consumer Protection Law, BGBl. No. 140/1979.

17. Choice of law, court of jurisdiction

For this agreement and the entire legal relationship between the contracting parties, Austrian law applies exclusively to its reference standards. The validity of the UN sales law is excluded by mutual agreement. For all disputes arising from the contract, it is agreed that the responsible court in Vienna will be exclusively responsible, but SteelCERT GmbH is also entitled to bring actions to other courts for which the contractual partner has a legal court of jurisdiction.

Status: 2021/10/11