

General Terms and Conditions of Business

of Kunstgiesserei St.Gallen AG, Sittertalstrasse 34,
9014 St.Gallen (hereafter referred to as Kunstgiesserei)
Version dated 2015-09-29

1. General

1. Products and services shall be offered by Kunstgiesserei exclusively on the basis of these Terms and Conditions of Business.
2. Any terms with contrary effect shall only be binding if confirmed by us in writing.

2. Scope and limitation of performance

1. Kunstgiesserei offers individual and complex services in relation to the realisation of works of art. Its services focus on moulding and casting work, sculptural work and restoration.
2. Unless agreed otherwise, services shall not include:
 - a) packaging and transportation;
 - b) mounting and assembly away from the premises of Kunstgiesserei.
 - c) the storage of objects for more than 30 days after notification of the completion of work
3. If services falling outside the ordinary scope of services are desired, these must be stated in the mandate and will be charged separately.

3. Cooperation by the principal

1. Subject to agreement, customers may carry out sculptural work on the premises of Kunstgiesserei. The arrangements applicable to the use and cooperation by employees of Kunstgiesserei shall be agreed upon separately.

4. Cost estimates, offers and order confirmation

1. Cost estimates made on the basis of imprecise or lacking documentation or technical information shall have the status of non-binding guide prices.
2. If special operating conditions are required for the work, the Customer must give notice of these in writing.
3. Unless indicated otherwise, our offers include all foreseeable necessary steps and outlays in order to realise the work.

5. Prices

1. Unless specified otherwise, the prices stated in the offer shall be valid for 30 days from the date of the offer. The foregoing shall be without prejudice to any increases in the price of metal arising at the time of production, depending upon the world market price.
2. The prices applicable shall be those stated in the order confirmation of Kunstgiesserei plus value added tax at the relevant statutory rate.
3. The prices stated in the order confirmation of Kunstgiesserei relate to the performance of the services at or by Kunstgiesserei specified in the order confirmation, plus storage of up to 30 days from the date of notification of the completion of work. Additional services shall be calculated separately.
4. Alterations to the production process, material quality or surfaces may be desirable or necessary depending upon the progression of the production process and/or specifications. They will be reported following consultation and any difference in costs compared to the offer or order confirmation respectively shall be ascertained.

6. Deadlines

1. Unless specified otherwise, order placements shall not contain any agreement regarding deadlines. Delivery deadlines shall be explicitly agreed upon separately and shall only be valid if established in writing.
2. In the event of delays owing to force majeure and events that render performance by Kunstgiesserei significantly more difficult or impossible - including in particular strikes, official instructions, electricity or raw material shortages etc., including those affecting suppliers - Kunstgiesserei may alter any time limits and deadlines that have been agreed to as binding.
3. If the impediment lasts for longer than three months, the principal shall be entitled to withdraw from the contract with regard to the unperformed part, after a reasonable grace period.
4. If the principal requests amendments to the order after order confirmation that would affect the duration of production, a new schedule will be drawn up by Kunstgiesserei.

7. Intermediate acceptance

1. In order to guarantee the smooth operation of order completion, intermediate acceptance may be desirable or necessary in particular for major projects (e.g. drafts, casting model, wax model, rough cast, patina sample etc.).
2. Kunstgiesserei shall inform the principal that intermediate acceptance is necessary. If the principal refuses intermediate acceptance, Kunstgiesserei shall bear no liability for faults that could have been ascertained upon intermediate acceptance.
3. Intermediate acceptance must occur within five working days of notification of the conclusion of the relevant stage of the work. Acceptance may also be granted with reference to photographs. If an agreed deadline is not complied with by the principal, approval shall be deemed to have been granted by the principal.
4. Unless agreed otherwise, the location of acceptance shall be the registered office of Kunstgiesserei.

8. Final acceptance

1. Upon completion of the services described in the order, Kunstgiesserei shall inform the principal that work has been concluded. The principal shall complete final acceptance within five working days of notification of the conclusion of work or agree upon another deadline. Acceptance may also be granted with reference to photographs.
2. If the principal fails to complete final acceptance prior to the agreed deadline, final acceptance shall be deemed to have occurred without any objection.
3. Unless agreed otherwise, the location of delivery shall be the registered office of Kunstgiesserei.

9. Limitation of liability

1. Liability for damage to property and financial losses shall be limited to situations involving intentional or grossly negligent conduct. Any further liability on the part of Kunstgiesserei (including for auxiliaries and consequential losses) is excluded.
2. Kunstgiesserei expressly refers to the fact that damage may be caused to the casting model during the work, which is unavoidable on account of the production process or can only be avoided at disproportionate cost. This applies in particular to damage arising during moulding, including colour changes to the surface of the casting model. The principal accepts the risk of such changes or damage.

10. Storage of casting models and negatives, direct casting, samples

1. Kunstgiesserei shall store the casting models at no charge from the time the order is placed until the work is completed. In the event of storage for a longer period, Kunstgiesserei reserves the right to charge storage fees.
2. Negatives shall be stored at Kunstgiesserei, unless the Customer wishes to store or dispose of them itself. Kunstgiesserei cannot provide any guarantee that stored negatives are fit for purpose.
3. In the event that objects are moulded for direct casting (lost model), casting errors or total loss may occur during the production process, which is unavoidable or can only be avoided at disproportionate cost. Kunstgiesserei expressly refers to this risk. The limitations on liability under clause 9 shall also apply for direct casting.
4. Unless expressly ordered by the Customer and charged for by Kunstgiesserei, ownership of samples shall remain with Kunstgiesserei, subject to any intellectual property rights of the principal.

11. Casts and patina

1. Each one of our castings is unique. Cast materials may feature inhomogeneous structures and pores. Visual discrepancies are normal in the cast skin.
2. If the production of a patina is required in the order, it will be created by Kunstgiesserei as agreed with the principal. In this regard, a patina sample may have to be examined and confirmed by the principal.
3. Patination is a chemical process, which cannot be fully controlled. Patina samples only provide an approximate representation of the final patina. Colour nuances are also normal during the patination of similar or identical objects. No guarantee can be provided by Kunstgiesserei for particular colour nuances in relation to patination.
4. Patinas may change as a result of environmental influence. No guarantee is provided by Kunstgiesserei against any such changes.

12. Warranty

1. Kunstgiesserei warrants that the products will be free from production defects. In the event that Kunstgiesserei carries out parts of work on objects produced by a third party, the warranty shall be limited to the part of the work carried out by Kunstgiesserei.
2. The warranty period extends to one year and commences upon final acceptance.
3. If any instructions provided by Kunstgiesserei relating to care, maintenance and handling are not followed or if changes are made to the product, any warranty rights shall lapse.
4. The principal must report any evident defects promptly in writing to Kunstgiesserei, and no later than 8 days after taking possession of the product. Defects that cannot be discovered within this period through careful examination shall be reported in writing to Kunstgiesserei promptly upon discovery.
5. In the event that notice is given by the principal that a product is defective, Kunstgiesserei may request at its choice that:
 - a) the defective product is returned to it for remedial work and redelivery, while the shipping costs are to be borne by the customer, or
 - b) the customer retains the defective product and provides Kunstgiesserei with the opportunity to carry out remedial work in situ. Travel time and travel costs shall be charged on the customer's account. Should the principal require that warranty work be carried out at a location specified by it, Kunstgiesserei may comply with such a request, in which case parts covered by the warranty will not be charged, whilst working time and travel costs must be paid for by the principal at the ordinary rates of Kunstgiesserei.
6. If remedial work within a reasonable deadline is unsuccessful, the principal may request a reasonable reduction of the fee.
7. Any liability for ordinary wear and tear is excluded.
8. Warranty claims against Kunstgiesserei only lie with the principal directly and may not be assigned.
9. Warranty works are limited to the production cost at the maximum.

13. Reservation of title

1. The product shall remain under the ownership of Kunstgiesserei until all claims have been fulfilled.
2. In the event of a breach of contract on the part of the customer - including in particular payment default - Kunstgiesserei shall be entitled to take back the product. The reacquisition of the product by Kunstgiesserei shall not imply withdrawal from the contract.

14. Payment arrangements

1. Unless agreed otherwise, the invoices issued by Kunstgiesserei shall be payable directly to Kunstgiesserei upon receipt and without any discount. Notwithstanding any terms and conditions of the customer with contrary effect, Kunstgiesserei shall be entitled to offset payments initially against pre-existing claims, and shall inform the customer as to how it has been offset. If costs and interest have already fallen due, Kunstgiesserei shall be entitled to allocate the payment initially to the costs, thereafter to the interest and thereafter to the principal claim.
2. Payment shall only be deemed to have been made once Kunstgiesserei is able to dispose of the amount. If payment is made by cheque, it shall be deemed to have been made once the cheque has been cashed and the amount credited can no longer be reversed.
3. The contractual partner shall only be entitled to offset claims, withhold payment or reduce the amount due, even if claims have been made in relation to defects or counterclaims, if the counterclaims have been established with legal effect or are undisputed.

15. Applicable law, jurisdiction

1. **These Terms and Conditions of Business and all legal relations between the Customer and Kunstgiesserei shall be governed by Swiss law.**
2. **The place of jurisdiction is agreed as St.Gallen.**
3. Should any provisions of these Terms and Conditions of Business be or become invalid or unenforceable, this shall not affect the legal validity of the remaining provisions. In the event that any provision is declared invalid, the valid term that comes as close as possible to the economic purpose of the invalid provision shall be deemed to have been agreed upon.
4. No liability is accepted for the contents of linked websites, the contents of which were not unlawful or contrary to morals at the time the link was created. Responsibility for the content of linked websites is borne solely by the operators of those sites.