



**General Business, Delivery and Payment Terms
of Gebr. Faller GmbH – hereinafter called Faller –
Kreuzstraße 9, D-78148 Gütenbach
applying to Companies**

**§ 1
General**

For all businesses entered into with FALLER the following General Business, Delivery and Payment Terms applying to Companies shall exclusively be applicable pursuant to Section 14 of the Federal German Civil Code BGB. Any differing terms of the purchaser are expressly excluded from the contract concluded even though they have not been expressly opposed by FALLER.

The present terms shall also apply to similar future contracts without FALLER having to refer again to such terms in each individual case.

Single provisions individually agreed upon with the buyer shall take priority over the present General Terms. For the contents of such single provisions to have binding force a contract in writing or a written confirmation by FALLER will be required.

Legally binding statements or notifications that have to be sent to FALLER by the buyer after concluding the contract (e.g. fixing of a time-limit, notifications of defects, etc.) shall be made in writing to be valid.

Tenders by FALLER are not binding, that is, they are only a request to submit a quotation.

Unless nothing else is implied from the order placed by the customer, FALLER is entitled to accept such contractual offer within two weeks.

Small deviations in the design, shape or colour of the subject of the contract in comparison with samples, illustrations and measurement data are permissible as far as they are acceptable to the purchaser.

**§ 2
Term of delivery and Delay in delivery**

The term of delivery is agreed on a case-to-case basis, that is, stated by FALLER when acknowledging the receipt of the order. If this is not the case, the term of delivery is approx. seven working days.

Whenever FALLER cannot keep binding terms of delivery for circumstances for which FALLER cannot be made answerable (non-availability of the performance), FALLER shall inform the buyer without delay and simultaneously advise him of the expected new term of delivery. If the performance is not possible within the new term of delivery either, FALLER shall be entitled to withdraw in part or in full from the contract; any consideration previously executed by the buyer shall be refunded by FALLER without delay. A case of non-availability of the performance in this sense is in particular the unpunctual supply by subcontractors while FALLER has concluded a congruous covering transaction, or neither FALLER nor the subcontractor is answerable for the delay, or when in some individual cases FALLER is under no obligation to ensure the procurement.

In any case there is not any delay in delivery until a reminder in writing is sent by the buyer.

§ 3

Delivery, Passing of risk, Partial delivery

Goods are delivered ex warehouse. On request, and at the buyer's cost, goods will be shipped to another place of destination (Sale to destination). Unless otherwise agreed upon, FALLER is entitled to choose the mode of shipment (in particular forwarding agent, transport route, packaging).

The risk of loss or deterioration of the goods by accident passes to the buyer on the handing-over of said goods at the latest. In case of sale to destination the risk of loss or deterioration of the goods by accident as well as the risk of delay pass right on the delivery of the goods, to the forwarding agent, the carrier or the person or institution otherwise charged with the execution of the shipment.

FALLER is entitled to make partial shipments; the additional costs this might cause shall not be born by the purchaser.

§ 4

Prices, Scope of services, Freight

Prices are quoted in euros, unless otherwise stated, and are to be understood without value-added tax. That tax will be charged separately according to the tax regulations ruling at the time.

Orders exceeding € 150.00 net price are delivered within Germany free of shipping charges. For the rest the costs actually incurred will be charged.

Prices and scope of services are only binding on FALLER if they have been stated or confirmed by FALLER in writing. The prices agreed upon only apply to the specific order.

§ 5

Payment terms

The invoice issued by FALLER has to be settled within 30 days of invoicing without any deduction. When paying within 10 days of invoicing FALLER grants a 2 % discount, just as when paying cash before delivery or cash on delivery. Whenever the purchaser is in default regarding other invoices issued by FALLER, any deduction of a discount will not be permitted. A term of payment is considered to be kept whenever the amount is made available to FALLER within the term specified. Unless a payment term has been agreed upon, payments will be each time passed to the oldest account receivable.

The withholding of payments on the part of the purchaser or any set-off against counterclaims shall be excluded, unless the relevant claim is undisputed or recognised by declaratory judgment. FALLER is entitled to avert any exercise of withholding rights by requiring a security deposit – including a bank guarantee.

Should the purchaser be in arrears with his financial responsibilities in part or in full, then he will have – without prejudice to all other rights of FALLER – to pay from this moment default interests amounting to 9% annually above the European Central Bank's base rate unless FALLER proves the damage to be higher.

Should the purchaser stop his payments, excessive indebtedness arise, an application in bankruptcy or composition proceedings be filed, or should the purchaser be in default regarding the payment of overdue cheques or bills of exchange, then FALLER's outstanding total claim arising from the entire business relations will immediately be due for payment. The same shall apply in case of any

other essential deterioration in the purchaser's financial conditions. In such cases FALLER shall be entitled to require sufficient security or to withdraw from the contract.

The purchaser is not entitled to assign any claim he has against FALLER unless an explicit different contractual provision exists between the parties or between FALLER and the intended assignee.

§ 6 Reservation of ownership

The ownership of goods supplied shall remain vested in Faller until the satisfaction of all claims by FALLER against the purchaser (reservation goods), even though particular goods have been paid for. The pledging of any transfer of ownership of reservation goods is not permitted without the prior consent of FALLER in writing.

In case of transfer of reservation goods – which is only permitted as part of the ordinary course of business – the purchaser herewith assigns FALLER right now, by way of security, the future claims arising from such resale until all claims of FALLER have been settled.

Until recalled, the purchaser is entitled to collect the claims assigned, he is not however entitled to dispose of them in any other way, e.g. through assignment. At the request of FALLER the purchaser shall have to inform the customer of the assignment, to supply the required information and to hand over to FALLER the necessary documentation such as invoices etc. that may allow FALLER to enforce its rights against the customer. All costs for collection and other possible interventions shall be paid by the purchaser.

Should the purchaser be in arrears, in part or in full, with his financial responsibilities or regarding the payment of overdue cheques or bills of exchange, or should excessive indebtedness arise or the purchaser stop his payments, an application in bankruptcy or composition proceedings be filed or any other essential deterioration in the purchaser's financial conditions arise, then FALLER shall be entitled to take immediately back all goods put under reservation of ownership. FALLER may also immediately enforce all other rights arising from its reservation of ownership.

The purchaser shall grant FALLER's representative free access to all his business premises during office hours. The request to hand over reservation goods or their appropriation shall not represent a withdrawal from the contract. FALLER shall be entitled to realize reservation goods with the due diligence of a conscientious businessman, and to satisfy its outstanding claims by crediting the proceeds against such claims. If the value of the securities exceeds FALLER's claims arising against the purchaser from the current business relations by more than 20%, then on the purchaser's request FALLER shall be under an obligation to release some of the securities accrued of its own choice

§ 7 Purchaser's rights in case of defects

The purchaser's rights in case of defective supply are statute-barred after one year. If the sale is a mercantile transaction for both parties the purchaser has to examine the goods without delay on receiving them, and to inform FALLER immediately of any defect that should appear.

Should the purchaser fail to give notice of any defect, then the supply shall be considered to be approved unless the defect was not visible during the examination. For the rest Sections 377 et seq. of the German Code of Commerce HGB shall apply.

The purchaser's rights are, at FALLER's option, the elimination of the defect (Remedying the defect) or the supply of goods free from defects (Posterior fulfilment). This does not affect FALLER's right to refuse under the statutory provisions any posterior fulfilment. The purchaser shall give FALLER the required time and opportunity for the posterior fulfilment due, he shall in particular hand over the rejected goods for examination by the company. In case of substitute delivery the purchaser shall return the defective goods to FALLER according to the statutory provisions. FALLER will bear the expenses incurred for examination and posterior fulfilment, in particular carriage, travelling, labour and material costs, whenever an actual defect is found. Otherwise FALLER may require the purchaser to refund the costs incurred for the unjustified elimination of defect unless the absence of defectiveness was not apparent to the purchaser.

If posterior fulfilment fails to give satisfaction to the purchaser, he shall be entitled, at his option, to decide on a reduction or to withdraw from the contract as far as the defect was not merely irrelevant. Any other farther reaching claims of the purchaser are excluded, in particular any claim for consequential damages. This does not apply in case of intent, gross negligence or breach of substantial contractual obligations through FALLER as well as in case of injury to life, body or health. This does not affect the purchaser's rights to withdraw from the contract.

§ 8 Liability

Unless otherwise specified above, FALLER as well as its legal representatives and vicarious agents will assume responsibility in case of claims for damages as follows:

- a) Liability for physical injuries is determined by legal regulations.
- b) Liability for property damage is limited to € 250,000.00 for each damaging event up to a total of € 500,000.00.
- c) Liability for consequential loss is excluded.

The above limitations of liability (b and c) do not apply whenever our liability is mandatory for any foreseeable damage typical of a contract, e.g. in case of damage on privately used things pursuant to the Product Liability Law, or intent or gross negligence, or breach of substantial contractual obligations, or lack of warranted quality.

§ 9 No returns

FALLER is under no legal obligation to take back any goods that have been duly ordered and delivered.

§ 10 Use of brands

FALLER holds various brands and logos (hereinafter called »Brands«). Website www.dpma.de allows to look up the relevant list of brands. The purchaser is entitled to use those brands as follows to advertise goods originating from FALLER:

- a) The image of the brands may not be modified. When using these brands size, colours and other apparent signs may not be modified.
- b) The brands used must accurately correspond to the image registered.
- c) The purchaser is entitled to use the brands as part of advertisements and offers for FALLER products, e.g. in flyers or advertisements.

The purchaser is not entitled to use word elements of such brands as company names or elements thereof, as internet domain, as element of an internet domain, as company symbol, as first, second, third or higher level domain, or as element of an e-mail address.

The purchaser is not entitled to use the brands in any not visual form, in particular not in the form of meta elements (tags and keywords in search engines) or as part of search engine sponsoring as far as the brands would appear in part of in full in the advertisements displayed against payment. The purchaser is not allowed to use the brands for merchandising, that is, for the marketing of goods wearing the corresponding symbol/brand.

§ 11

Severability; Governing law; Place of jurisdiction

Amendments and additions to the present contract must be made in writing to become effective. There are no verbal subsidiary agreements.

Place of performance is Güttenbach; only German law shall apply under exclusion of the United Nations Convention on Contracts for the International Sales of Goods.

Should a provision in the present contract be or become ineffective for whatever reason or should the present contract present a loophole, this shall not affect the validity of the other provisions. The parties to the contract undertake to complement the ineffective provision or the loophole in the contract with a provision that would have been chosen by the parties if they had known of the circumstance causing the ineffectiveness or the loophole when concluding the contract.

Issue: March 2017