



**Purchasing Conditions  
of Gebr. FALLER GmbH  
Kreuzstraße 9, D-78148 Gütenbach**

## **1. General**

1.1 These terms and conditions shall form part of this purchase contract and any future purchase contracts with the supplier, even if they are not separately agreed upon. Contradictory or deviating conditions of delivery or other restrictions on the part of the supplier are not accepted unless the buyer has expressly agreed to this in writing for the individual case.

1.2 Other agreements, amendments and ancillary agreements shall only be valid if the buyer agrees to them in writing. These Purchasing Conditions also apply if the buyer accepts a delivery without reservations in the knowledge of supplier conditions that contradict or deviate from these Purchasing Conditions.

## **2. Offer**

2.1 The supplier shall ensure that its offer adheres exactly to the buyer's inquiry and shall expressly point out any deviations from it.

2.2 The offer shall be free of charge and shall not create any obligations for the requesting party. Payment will be made for cost estimates only upon special agreement.

## **3. Order**

3.1 Orders and any changes to orders shall be made in writing. For the avoidance of doubt, the contents of oral and telephone agreements shall only be binding if they have been confirmed in writing.

3.2 The supplier shall promptly check the order for any obvious errors, ambiguities, incompleteness or unsuitability of the specifications made by the buyer for the intended use and shall promptly inform the buyer of any changes or clarifications which need to be made to the order.

3.3 The supplier shall confirm each order and change to an order in writing and shall deal with them separately in all correspondence.

3.4 All documents must state the purchasing department, complete order number, order date and reference of the buyer.

3.5 The buyer shall be entitled to change the place at which delivery is to be made and the type of packaging at any time by giving at least 10 calendar days' written notice before the agreed delivery date. The same shall apply to any necessary changes to the specifications of the delivery item, provided that these can be implemented within the supplier's normal production process

without significant additional expense. In these cases the notice period shall be at least 6 weeks. The buyer shall reimburse the supplier for any proven and reasonable additional costs which it incurs as a result of the change. If any such change causes a delay in delivery, which the supplier cannot avoid by using reasonable efforts in its normal production and business operations, the originally agreed delivery time shall be postponed accordingly. The supplier shall notify the buyer in writing of any additional costs or delays in delivery, which it reasonably expects to incur, in good time before the agreed delivery date and within 10 working days of receiving the notice of the buyer in accordance with the first sentence of this clause.

#### **4. Delivery Time**

4.1 The delivery time shall be determined according to delivery dates or periods. Delivery periods shall run from the date the order was received. As soon as the supplier has reason to expect that it will not be able to fulfil its contractual obligations in full or in part, it must immediately notify the buyer of this, also indicating the reasons and the expected length of the delay. If the supplier neglects to provide this notification, it cannot invoke this impediment in appeal to the buyer.

4.2 If the supplier does not deliver within the agreed period, it shall be liable in accordance with the statutory provisions. Any agreed contractual penalty for the event of late delivery remains hereby unaffected within the framework of § 340 para. 2 of the German Civil Code.

#### **5. Warranty, Notice of Defects and Liability**

5.1 The supplier warrants that the delivery item shall have no defects impairing its value or suitability, shall have the agreed or guaranteed quality, shall be suitable for the use envisaged by the contract, and shall fully comply with generally accepted technical practice, the most recent regulations issued by the relevant authorities, the applicable safety and environmental protection requirements, the Product Safety Act (Produktsicherheitsgesetz), the industrial safety and accident prevention regulations, and the requirements listed in the latest version of the relevant manufacturer's declaration. The supplier's warranty shall also extend to any parts manufactured by its subcontractors.

5.2 If the supplier has provided a guarantee for the properties and condition or service life of the delivery object, the buyer can also make good the claims from the warranty.

5.3 The buyer will immediately notify the supplier of defects in the delivery object as soon as they are discovered in the course of ordinary business activities. The notice period for defects is determined according to the circumstances of the individual case, but for visible defects shall not be less than eight (8) business days (Mon. – Fri.) from delivery and for hidden defects at least eight (8) business days after discovery of the defect. For services such as assembly, maintenance, etc., the above provisions apply accordingly.

5.4 The buyer's acceptance of any deliveries or services shall not affect the supplier's warranty obligation.

5.5 The supplier's warranty obligation shall also not be affected if the buyer remains unaware of any defects at the time of concluding a contract due to gross negligence.

5.6 The buyer shall be entitled, without restriction, to statutorily determined rights of recourse within the supply chain, in addition to any claims for defects. In particular, the buyer shall be entitled to demand from the supplier exactly the type of remediation which it owes to its customer in an individual case. This shall not restrict its statutory right to choose the type of remediation. Before

the buyer acknowledges or meets a claim for defects asserted by a customer, it shall notify the supplier, giving a brief summary of the facts, and shall request a written response. If the supplier does not provide a substantiated response within a reasonable period of time, and no amicable solution is reached, any claim for defects which the buyer has actually conceded shall be deemed to be owed to the customer. In this case, the supplier shall have the burden of providing counter evidence. The rights of recourse shall also apply if the buyer or another business person has further processed the defective delivery item.

5.7 The supplier shall bear the costs of remediation, including incidental and consequential costs such as transport, travel, labour, installation and removal costs.

5.8 Any parts complained about under the warranty shall remain at the buyer's disposal until they are replaced and shall then become the supplier's property.

5.9 The buyer may remedy defects at the supplier's expense or have recourse to its other warranty rights in urgent cases when notification to the supplier and subsequent performance by the supplier is not possible or is unreasonable to expect due to the urgency, or the supplier fails to remedy the defect despite being set a grace period or its remediation of the defect is unsuccessful.

5.10 The supplier shall indemnify the buyer from any third parties' claims arising from manufacturer's liability or under the Product Safety Act (Produkthaftungsgesetz), insofar as the cause derives from a failure of control or organisation on the part of the supplier or its own suppliers. The supplier shall, pursuant to its indemnification obligation, also reimburse any expenses which the buyer incurs as a result of or in connection with any product recalls which it lawfully carries out. The buyer shall, as far as possible and reasonable, inform the supplier in advance of the content and scope of any product recall measures and give the supplier an opportunity to comment on them.

5.11 The supplier shall be liable in accordance with the statutory provisions in all other respects.

## **6. Limitation Period**

6.1 The statutory limitation periods shall apply, unless expressly agreed otherwise.

6.2 Notwithstanding the statutory provisions, the general limitation period for claims for defects of quality or title shall be 3 years from the transfer of risk or from any agreed acceptance. The statutory limitation period in the case of defects of title due to claims for restitution in rem by third parties shall remain unaffected. The regular statutory limitation periods shall apply to any non-contractual claims that the buyer may have due to a defect.

6.3 In the event of a notice of defect, the limitation period shall be extended by the period of time between receipt of the notice of defect and correction of the defect. If the delivery object is completely refurbished, the limitation period begins anew; for partial refurbishment, this applies to the refurbished parts. The limitation period shall not recommence if the supplier acts in a way that shows it does not recognise its obligation to remedy the defect.

## 7. Inspections

If inspections are planned for the delivery object, the supplier shall cover the material costs and its personnel costs for the inspection. The buyer shall cover its personnel costs for the inspection. The supplier must provide the buyer with binding notification of the readiness for inspection at least one week in advance and agree on an inspection date with the buyer. If the delivery object is not presented at this time, the buyer's personnel costs for the inspection must be covered by the supplier. If repeated or additional inspections are required as a result of identified defects, the supplier shall cover all material and personnel costs associated with these further inspections. The supplier shall cover the material and personnel costs for the material verifications for the precursor materials.

## 8. Insurance

8.1 The buyer shall be solely responsible for taking out transport insurance.

8.2 The supplier shall, at its own expense, take out an adequate liability insurance policy for damage caused by it, its personnel or its agents through services rendered or work or goods delivered, which need not cover the risk of product recalls, unless otherwise agreed in individual cases. The amount of coverage per damaging event must be verified to the buyer upon request.

8.3 The buyer and supplier shall decide in individual cases whether they wish to take out special assembly insurance in addition to liability insurance under Clause 8.2.

8.4 The buyer shall insure any machines, appliances, etc. which are loaned to it against the usual risks. Any further-reaching liability of the buyer for destruction of or damage to the provided machines, instruments, etc. is excluded – except in cases of intentional action or gross negligence.

## 9. Shipping Regulations

9.1 The supplier shall send a detailed dispatch note for each individual consignment on the day of dispatch, separate from the goods and the invoice. A delivery slip and packing slip must be included with the delivery. For maritime freight, the name of the ocean carrier and the ship as well as the arrival port must be specified in the shipping papers and on the invoice. For air freight, the flight number and arrival airport must be specified in the shipping papers and on the invoices. If the buyer makes no other specifications, the supplier shall select the transport option that is most convenient for the buyer and most suitable. The order code and indication of the unloading site must be completely included on all shipping notices, delivery slips, packing slips, bills of lading, invoices and the outsides of packaging, etc.

9.2 The supplier shall always pack, mark and dispatch hazardous products in accordance with nationally and internationally applicable regulations. In addition to the hazard class, the accompanying documents must contain the additional information defined by the respective shipping regulations.

9.3 The supplier shall be liable for any damages and shall bear any costs which arise from any failure to comply with these instructions. It is also responsible for compliance with this shipping regulations by its subcontractors.

9.4 The supplier shall at its own expense and risk store any shipments that cannot be accepted due to non-compliance with these instructions. The buyer has the right to inspect the content and condition of such shipments. Tools and equipment may not be loaded together with delivery objects.

9.5 The EU VAT identification number must be stated for any deliveries and services which are provided from a country outside Germany which is a member of the European Union.

9.6 Imported goods must be delivered duty paid, unless the parties expressly agree otherwise. The supplier shall at its own expense provide any required declarations and information, permit any inspections by the customs authorities, and provide any necessary official confirmations, in accordance with Commission Implementing Regulation (EU) 2015/2447.

9.7 The supplier shall inform the buyer in detail and in writing about any licensing requirements for exports or re-exports pursuant to German, European or US export and customs regulations and any export and customs regulations of the country of origin of the goods and services.

9.8 Unless expressly agreed otherwise, delivery shall be made CFR within Germany, DAP within the rest of the European Union, and FOB for all other countries (according to Incoterms 2020).

9.9 The supplier shall bear the shipping and packaging costs, unless otherwise agreed. Additional costs for accelerated shipping in order to comply with the confirmed delivery deadline must be paid by the supplier.

## **10. Outgoing Goods**

10.1 The delivered goods must satisfy the origin conditions or preferential agreements of the EEC, unless statements to the contrary are expressly included in the order confirmation.

10.2 The preferential status shall be attested to by the supplier in the form of a supplier declaration or a long-term supplier declaration in the current version or with an officially signed certificate of origin.

## **11. Compliance with the REACH Regulation (EC) 2006/1907 and the CLP Regulation (EC) 2008/1272**

11.1 The supplier must perform all of its obligations under the REACH and CLP regulations with regard to the delivery of goods.

11.2 The supplier warrants that all substances contained in the delivered goods shall be properly pre-registered, registered and approved for the uses notified by the buyer in accordance with the REACH and CLP regulations and any related rules and regulations.

11.3 The supplier shall provide the buyer with an up-to-date and complete safety data sheet, if required under the REACH or CLP regulations. The supplier shall inform the buyer in a similar way in respect of any substances for which no safety data sheet is required.

11.4 If any components of a product delivered by the supplier contain at least one substance which is in a concentration of more than 0.1 per cent w/w and meets the criteria of Articles 57 and 59 of the REACH Regulation and/or is listed in Annex XIV of the REACH Regulation, the supplier shall inform the buyer about the presence and safe use of such substance(s). The same shall apply to packaging.

## 12. Quality Assurance

12.1 The supplier shall establish and maintain an effective quality assurance system, e.g. according to ISO 9000 et seq or equivalent, and the supplier shall prove this to the buyer on request.

12.2 The buyer may, after giving notice, also have the quality assurance system checked by a third party commissioned by the buyer.

## 13. Prices, Invoice and Payment

13.1 Prices quoted are fixed and total prices. They include all expenses in connection with the deliveries and services to be provided by the supplier.

13.2 Invoices must correspond to orders in terms of their mode of expression, order of text and prices. Upon delivery of the goods, a corresponding invoice must be sent, with inclusion of our order number as well as a breakdown of the content and weights and all ordered mandatory information acc. to §14 para. 4 Value Added Tax Act. The invoice may not be enclosed with the delivery. Any increased or reduced performance must be listed separately in the invoice.

13.3 Payment periods shall run from the specified date, but no earlier than the receipt of the goods and invoice. A payment by bank transfer is considered made as soon as the payer instructs its bank to make the transfer to the supplier with sufficient funds in its account.

13.4 Payment does not imply any acceptance of conditions or prices. The time of payment shall not affect the supplier's warranty obligation or the buyer's right to complain.

13.5 The supplier may not assign its claims against the buyer to any third parties.

13.6 The supplier's claim to remuneration shall become due for payment 30 days after receipt of the invoice. Gebr. FALLER GmbH shall be entitled to deduct a 3% discount if it makes payment within 10 days of receipt of the invoice.

13.7 Ownership of delivered goods shall pass to the buyer after it has paid for them. All extended or expanded reservations of ownership are excluded.

## 14. Calculation

If the supplier lowers its prices in the time between the order and delivery or if the conditions improve, the prices and conditions valid on the day of delivery shall apply. If the conditions worsen, the new conditions are not accepted.

## 15. Documents

15.1 All drawings, standards, guidelines, analytical methods, formulations and other documents provided to the supplier by the buyer for the manufacture of the delivery item, and any documents prepared by the supplier according to special information provided by the buyer, shall remain the buyer's property and may not be used by the supplier for any other purposes, or reproduced or made available to third parties. Upon request, they must be immediately returned to the buyer, including all copies and reproductions. The buyer retains the industrial property rights to all documents provided to the supplier. The supplier must treat the request for quotation and order as well as the associated work as business secrets and handle them with corresponding confidentiality. It is liable for all damages that arise for the buyer from the violation of these obligations. The supplier must present to the buyer all documents that are required for a discussion of the delivery object. Such a discussion or other participation by the buyer lies exclusively within the supplier's area of responsibility and does not relieve it of any warranty or other obligations.

15.2 The supplier shall provide documents of any kind which the buyer requires for the use, installation, assembly, processing, storage, operation, maintenance, inspection, servicing and repair of the delivery item, in good time, without being asked and free of charge.

15.3 The latest versions of the standards and guidelines cited by the buyer shall apply. Internal standards and guidelines of the buyer must be requested by the supplier in good time insofar as they have not already been made available. The supplier is obligated to access and download a manufacturer declaration on the home page of the buyer at [www.faller.de](http://www.faller.de), immediately fill this out truthfully and immediately return it, signed, to the buyer.

## 16. Objects

Moulds, models, tools, films, etc. that have been created by the supplier for execution of the order become the property of the buyer upon payment of the order, even if they remain in the possession of the supplier. Upon request, these items shall be handed over to the buyer, unless this is contrary to a legitimate interest of the supplier.

## 17. Assembly, Maintenance, Inspection, Repair Work, etc.

17.1 The safety and order rules for external companies which process orders within plants belonging to Gebr. FALLER GmbH or its associated companies shall apply if assembly, maintenance, inspections, or repair work etc. are carried out in the buyer's plant. These rules will be provided before the start of the work.

17.2 The buyer shall not be responsible for any property of the supplier or its staff which is brought into the buyer's plant.

## 18. Infringement of Property Rights

The supplier is liable for ensuring that no patents, licenses or intellectual property rights of third parties are infringed by the delivery and use of the delivery objects. The supplier shall be obliged to indemnify the buyer from and against all claims which any third parties may assert against the buyer due to the infringement of industrial property rights and to reimburse all necessary expenses in this connection. The supplier shall not be liable if it proves that it was not responsible for the infringement of industrial property rights. Any license fees and other costs must be paid by the supplier.

## 19. Confidentiality, Advertising Material, and Competition Law

19.1 The supplier may only use the terms and conditions of the order and any information made available to it for this purpose, with the exception of publicly available information, for executing the order and shall keep them confidential for at least 5 years after conclusion of the contract.

19.2 The supplier shall impose similar confidentiality obligations on its subcontractors.

19.3 The supplier may not refer to its business relationship with the buyer in information or advertising material without the buyer's express written consent.

## 20. Compliance with the General Data Protection Regulation

The supplier shall be obliged to fulfil all obligations arising from the applicable data protection laws, in particular the General Data Protection Regulation (EU) 2016/679. The buyer shall be obliged to do the same.

## 21. Miscellaneous

21.1 The supplier shall only be entitled to use claims which are undisputed or have been legally established for purposes of set-off.

21.2 The supplier shall also only be entitled to a right of retention for claims which are undisputed or have been legally established.

21.3 Customary commercial clauses shall be interpreted in accordance with the Incoterms which are valid at the time.

21.4 German law shall apply. The application of the UN Convention on Contracts for the International Sale of Goods dated 11 April 1980, in force as of 1 January 1991, is excluded.

21.5 If the supplier is a merchant, the exclusive place of jurisdiction is agreed as Gütenbach.

Version: February 2020