

# **Purchasing Conditions of Gebr. Faller GmbH**

## **1. General Topics**

- 1.1 These conditions become part of this purchase agreement as well as of all future purchase agreements with the supplier. 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 are only valid if the buyer accepts them in writing. These Purchasing Conditions also apply if we accept a delivery without reservations in the knowledge of supplier conditions that contradict or deviate from these Purchasing Conditions.

## **2. Offer**

- 2.1 In his offer, the supplier must hold strictly to the request for quotation and explicitly indicate any deviations.
- 2.2 The offer must be provided at no charge and does not establish or give rise to any obligations on the part of the requesting party. For cost estimates payment will be made only upon special agreement.

## **3. Order**

- 3.1 Orders and order changes shall take place in writing. In case of doubt, the content of oral and telephone discussions is only binding if it has been confirmed in writing.
- 3.2 The supplier will inspect the order immediately for identifiable errors, unclear issues, incompleteness as well as unsuitability of the specifications selected by the buyer for the intended use and will immediately inform the buyer of necessary changes or detailed clarifications of the order.
- 3.3 Every order and order change must be confirmed by the supplier in writing and treated separately in all written correspondence.
- 3.4 The following must be noted in all documents: purchasing department, complete order number, order date and code of the buyer.

## **4. Delivery Time**

- 4.1 The delivery time begins on the day our order is received. As soon as the supplier has reason to expect that he will not be able to fulfil his contractual obligations in full or in part, he 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, he cannot invoke this impediment in appeal to the buyer.

- 4.2 If the supplier does not provide fulfilment within the agreed delivery time, he is 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 object does not exhibit any defects that reduce its value or suitability for use, that it has the agreed or promised properties, is suitable for the intended use understood from the contract and fully satisfies the generally accepted principles of engineering, the most recent regulations of the relevant authorities, the currently applicable safety and environmental requirements, the Equipment Safety Act, the occupational safety and accident prevention regulations as well as the requirements listed in the manufacturer declaration, as currently amended. If the delivery object is completely refurbished, the period of limitation begins anew; for partial refurbishment, this applies to the refurbished parts. The restart of the period of limitation does not occur if the supplier is clearly not acting in recognition of his obligation to rectify defects. 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. This does not apply to defects in or damage to the delivery object that are caused by

- a) normal wear
- b) improper handling by the buyer.

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.

- 5.2 The statutory periods of limitation apply, unless other terms are expressly agreed upon.
- 5.3 The warranty of the supplier also extends to the parts manufactured by subcontractors.
- 5.4 In event of a notification of defects, the period of limitation is extended by the amount of time between the notification of defects and rectification of the defects. If the delivery object is completely refurbished, the period of limitation begins anew; for partial refurbishment, this applies to the refurbished parts.
- 5.5 The parts subject to warranty claims remain at the disposal of the buyer until replacement and upon replacement become the property of the supplier.
- 5.6 In urgent cases, if it is not possible to wait for remedy by the supplier, if the supplier is delinquent despite the setting of an extended deadline or if the rectification of the defect finally fails, the buyer can have the defect rectified at the expense of the supplier or take advantage of the other warranty rights.
- 5.7 The warranty obligations of the supplier are not affected by the acceptance of the deliveries and services by the buyer.
- 5.8 The supplier indemnifies the buyer from and against claims arising from producer liability as well as based on the Product Liability Act insofar as the supplier or his upstream supplier caused the product flaw giving rise to the liability.
- 5.9 Otherwise the supplier is liable according to the statutory provisions.

## **6. Inspections**

If inspections are planned for the delivery object, the supplier shall cover the material costs and his personnel costs for the inspection. The buyer shall cover his 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.

## **7. Insurance**

7.1 The transport insurance shall be concluded exclusively by the buyer.

7.2 The supplier must conclude sufficient liability insurance at his own expense for damages caused by him, his personnel or his agents through provided services, delivered work or objects. The amount of coverage per damaging event must be verified to the buyer upon request.

7.3 The conclusion of a special installation insurance policy in addition to the liability insurance according to item 7.2 requires a decision between the buyer and supplier for the individual case.

7.4 Machines, instruments, etc. provided to the buyer on loan will be insured by the buyer for the typical 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.

## **8. Shipping Regulations**

8.1 On the day of shipping, the supplier must send a detailed shipping notice for each individual shipment separately from the goods and 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 economical 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.

8.2 In principle, the supplier must pack, label and ship hazardous objects in accordance with the applicable national/international provisions. In addition to the hazard class, the accompanying documents must contain the additional information defined by the respective shipping regulations.

8.3 The supplier is liable for damages and accepts the costs arising from failure to comply with these regulations. He is also responsible for compliance with this shipping regulations by his subcontractors.

8.4 All shipments that cannot be accepted as a result of failure to comply with these regulations shall be stored at the expense and risk of the supplier. 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.

8.5 For deliveries and services taking place from an EU Member State outside of Germany, the EU value-added tax identification number must be specified.

- 8.6 Imported goods must be delivered customs paid unless other terms are expressly agreed upon. The supplier is obligated within the framework of Regulation (EC) No. 1207/2001 to provide the required explanations and information, permit inspections by customs authorities and provide required official confirmations at his own expense.
- 8.7 The supplier is obligated to inform us in writing and in detail regarding any approval obligations for (re-)exports in accordance with German, European or USA export and customs regulations as well as export and customs regulations of the country of origin of the goods and services..
- 8.8 Unless other terms are expressly agreed, the delivery shall take place "CFR" within Germany, "DAP" within the EU and "FOB" in all other countries (acc. to Incoterms 2010).
- 8.9 Shipping and packing costs must be paid by the supplier unless otherwise agreed. Additional costs for accelerated shipping in order to comply with the confirmed delivery deadline must be paid by the supplier.

## **9. Invoicing**

If the supplier lowers his 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.

## **10. Prices, Invoice and Payment**

- 10.1 The prices are fixed prices and total prices. They include all expenses in connection with the deliveries and services to be provided by the supplier..
- 10.2 Invoices must correspond to the order in terminology, order of the 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.
- 10.3 Payment periods start from the specified point in time, at the earliest upon receipt of the goods and invoice. A payment by bank transfer is considered made as soon as the payer instructs his bank to make the transfer to the supplier with sufficient funds in his account.
- 10.4 The payment does not represent the acceptance of conditions and prices. The time of the payment has no influence on the warranty of the supplier and on the right to give notice of defects.
- 10.5 The assignment of the supplier's claims against the buyer to third parties is not permitted.
- 10.6 Unless other terms are expressly agreed, the payment owed to the supplier is due 60 days after goods receipt, receipt of the invoice and receipt of the signed manufacturer's declaration or, at the discretion of the buyer, 30 days after goods receipt, receipt of the invoice and receipt of the signed manufacturer's declaration with a 3% discount, unless the special conditions were confirmed to the supplier in writing.
- 10.7 Ownership of the delivered goods transfers to the buyer after payment. All extended or expanded reservations of ownership are excluded.

## 11. Documents

- 11.1 All drawings, standards, guidelines, analysis methods, recipes and other documents that are provided to the supplier by the buyer for manufacturing of the delivery object as well as the documents produced by the supplier according to special instructions of the buyer remain the property of the buyer and may not be used by the supplier for any other purposes, reproduced or made accessible 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. He 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 him of any warranty or other obligations.
- 11.2 Documents of all types required by the buyer for the use, set-up, assembly, processing, storage, operation, maintenance, inspection and repair of the delivery object must be provided by the supplier in a timely fashion, at no charge and without special request.
- 11.3 The standards and guidelines listed by the buyer apply in their currently newest versions. 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.

## 12. 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. On request, these objects must be handed over to the buyer.

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

- 13.1 If assembly, maintenance, inspection, repair work, etc. is performed at the factory of the buyer, the safety and procedural rules for external companies carrying out orders within the factories of Gebr. FALLER GmbH and its affiliated companies apply to such work. These rules will be provided before the start of the work.
- 13.2 The risk for property of the supplier or his staff brought into the factory of the buyer shall not be borne by the buyer.

## 14. Patent Infringement

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. Any license fees and other costs must be paid by the supplier.

## 15. Advertising Material

References to the business relationship existing with us in informational and advertising material are only permitted with the express written permission of the buyer.

## **16. Applicable Law, Interpretation of Clauses, etc.**

- 16.1 German law applies. 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.
- 16.2 Typical commercial clauses shall be interpreted according to the Incoterms in their current version.

## **17. Origin of Goods**

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.

The preferential status shall be attested 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.

## **18. Agreement on Place of Jurisdiction**

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

Gütenbach (Germany), on 20.12.2011