

## **Terms and conditions of sale, delivery and payment of the company August Faller GmbH & Co. KG**

### **1. Scope of agreement**

- 1.1 The following terms and conditions for sale, delivery and payment shall apply exclusively to all current and future agreements between our customers and August Faller GmbH & Co. KG, regardless of product delivered or service rendered. Our customers' terms and conditions shall apply only to the extent they were agreed in writing with August Faller GmbH & Co. KG.
- 1.2 Any deviation from these terms and conditions is binding only if acknowledged, explicitly in writing (also via fax) or electronically, by August Faller GmbH & Co. KG.

### **2. Quotations**

- 2.1 Quotations by August Faller GmbH & Co. KG are subject to confirmation. Unless otherwise agreed, the quotation shall become invalid if not confirmed by the customer within a month.
- 2.2 Orders and quantities quoted shall coincide. If quantities ordered deviate from those offered, prices shall be adjusted accordingly.
- 2.3 If preparation of a quotation requires increased expenditures in form of development, technical services, or samples, for instance, August Faller GmbH & Co. KG shall invoice the customer for such expenditure.
- 2.4 Diagrams, drawings and data regarding colour, weight or measurement shall represent approximated values unless explicitly described as binding.

### **3. Order confirmation, contracts**

- 3.1 A contract shall only be concluded if receipt of an order is followed by transmission of a written or electronic confirmation (also via fax) to the customer. Especially the employees of August Faller GmbH & Co. KG are obligated to confirm in writing any verbal auxiliary agreements or promises which exceed the contents of the written agreement, or which alter these general terms and conditions for sale, delivery and payment in a manner disadvantageous to August Faller GmbH & Co. KG.
- 3.2 Prices in order confirmations and contracts are based on commodity prices at the time of finalising the business transaction. In the event of delivery periods of longer than 2 months, August Faller GmbH & Co. KG shall be entitled to increase or reduce the agreed prices accordingly if, after conclusion of the agreement, significant changes to salary, material or commodity prices occur, which are not within the purview of August Faller GmbH & Co. KG.
- 3.3 If the customer cancels the agreement unjustifiably, August Faller GmbH & Co. KG, without prejudice to any legal rights or options for asserting higher actual damages to which it is entitled, may demand 10% of the agreed total price for expenses incurred for processing the order and lost profits. The customer shall bear the burden of proving lesser damage.

### **4. Delivery, invoicing, transfer of risk**

- 4.1 Delivery schedules are a component of this agreement. The term of delivery shall commence upon receipt of the order confirmation but not before clarification of all details regarding order execution and technical queries. The term of delivery is observed if the goods are ready for shipping upon expiry of the period. If shipping is delayed as a result of circumstances not within the purview of August Faller GmbH & Co. KG, and in the event of storage at its premises, August Faller GmbH & Co. KG will charge at least 0.5% of the invoice amount of the stored delivery monthly. Delivery is subject to timely and correct delivery to August Faller GmbH & Co. KG on the part of its suppliers.
- 4.2 Change requests by the customer extend the term of delivery until August Faller GmbH & Co. KG has reviewed their feasibility and by the period required for implementing the new specifications in production. If the change request should interrupt a current production process, August Faller GmbH & Co. KG may bring forward or finalise other orders. August Faller GmbH & Co. KG is not obliged to keep production capacity available during the delay. In the event of default of delivery due to ordinary negligence, liability on the part of August Faller GmbH & Co. KG shall be limited to 0.5% per completed week of delay but not more than 5% of the net invoice amount of the part of the delivery affected by the default. The claim for damage in lieu of performance according to paragraph 11 shall not be affected as a result. The customer shall inform August Faller GmbH & Co. KG no later than the time of contract formation of contractual penalties applicable with respect to its buyer.
- 4.3 Goods plus incidental expenses shall be invoiced as of the due date for delivery.
- 4.4 Within reason, August Faller GmbH & Co. KG is entitled to partial delivery. August Faller GmbH & Co. KG shall be reimbursed by the customer for additional costs for partial deliveries caused by the customer (additional shipping charges, storage expenses, etc.).
- 4.5 The risk is transferred to the customer ex-works Waldkirch (Incoterms 2000) even in the case where August Faller GmbH & Co. KG has undertaken additional services such as the cost of shipping or carriage, even with its own transport personnel.

## **5. Industrial property law**

- 5.1 The customer shall indemnify and hold August Faller GmbH & Co. KG harmless at all times in case of claims for breach of intellectual and / or industrial property rights, in case of production or reproduction in accordance with the order and instructions by the customer, and / or texts, trade-marks, sketches, and designs made available to August Faller GmbH & Co. KG by the customer or a third party on its behalf. This shall not apply if the breach is not within the customer's purview.
- 5.2 Intellectual property rights in the development of folding boxes, package inserts and labels shall remain with August Faller GmbH & Co. KG and may not be exploited by the customer without written consent.
- 5.3 Sketches, dies, negatives, plates, print cylinders, moulding equipment, films, printing plates, and digital data created by August Faller GmbH & Co. KG shall remain its property even if the customer has made a financial contribution to its creation. Customer's plans, drawings, sketches and other property are stored at August Faller GmbH & Co. KG at the customer's risk unless the customer requests its return / destruction at its own expense.
- 5.4 The obligation for storing materials listed under 5.3 sentence 2 shall end one year after their final use. Thereafter, August Faller GmbH & Co. KG is entitled to exercise its option to destroy or return the materials at the customer's expense.

## **6. Tolerances**

- 6.1 Quality: The products shall be produced in accordance with the state of the art. Production process tolerances customary in the industry (see any currently applicable defect evaluation list from ecv Verlag) are deemed accepted by the customer.
- 6.2 Quantity: Unless otherwise agreed, the quantity tolerances of +/- 10% are considered accepted. In the case of small editions of fewer than 1.000 pieces, a tolerance of +/- 20% shall be admissible.

## **7. Packaging**

Special packaging specifications must be arranged separately. August Faller GmbH & Co. KG shall accept the return of packaging materials at its place of business during usual business hours. The customer shall bear the costs for return and disposal. Packaging material shall be clean, free of foreign materials, and sorted by kind.

## **8. Acceptance of goods, defect liability**

- 8.1 August Faller GmbH & Co. KG shall be notified in writing of defects without delay but no later than 8 days after receipt of the goods, in case of hidden defects no later than 3 days after discovery. If these time limits are exceeded, all claims and rights from defect liability for these defects shall expire. The customer must not delay or deny acceptance of deliveries based on insignificant defects.
- 8.2 Breach of third-party rights shall only constitute a defect, if they are protected rights within the Federal Republic of Germany.
- 8.3 In case of justified complaints, August Faller GmbH & Co. KG, at its option, shall replace the goods or repair them. If subsequent delivery should fail or be denied or delayed unjustly, the customer, after unsuccessful expiry of a reasonable time period, may demand a price reduction or, in the case of material defects, rescind the contract and according to paragraph 11 demand damages in place of performance.  
Cost for subsequent performance arising from the fact that, after delivery, the purchased goods were brought to a place other than the customer's business location, shall not be assumed.
- 8.4 If the defect is the result of a material third party product, August Faller GmbH & Co. KG shall initially be authorised to limit its liability to the assignment of the claims and rights for defect liability to which it is entitled against the third-party product supplier, unless satisfaction from the assigned claim or right should fail or cannot be asserted for other reasons. In this case, the customer is entitled to its rights from subparagraph 8.3 again.
- 8.5 The period of limitation shall be 12 months from transfer of risk unless August Faller GmbH & Co. KG is liable for bodily harm, intentional or gross neglect of its duties, malicious concealment of the defect, or has assumed a guarantee beyond this in this respect, or a longer statutory period of limitation is mandatory.

## **9. Retention of title**

- 9.1 The goods to be delivered (goods subject to retention of title) shall remain the property of August Faller GmbH & Co. KG until all claims against the customer from the business relationship have been settled. If the value of all security interests to which August Faller GmbH & Co. KG is entitled exceed the amount of all secured claims by more than 10%, August Faller KG, upon request by the customer, shall release the respective portion of the security interest.
- 9.2 The customer is entitled to resell the goods delivered in the course of a proper business transaction; however, in advance it shall assign to August Faller GmbH & Co. KG all claims in the amount of the purchase price (including sales tax) agreed between it and the buyer resulting from the resale, regardless of whether the goods to be delivered are resold without or after further processing. The customer is authorised to collect these claims after they have been assigned. The authority of August Faller GmbH & Co. KG to collect these claims itself shall remain intact; however, August Faller GmbH & Co. KG undertakes not to collect these claims as long as the customer duly observes its payment obligations and is not in default. Should this be the case, August Faller GmbH & Co. KG can demand that the customer reveal the assigned claims and their debtors, to provide all information required for collection, to turn over the associated documentation and notify the debtors (third parties) of the assignment.
- 9.3 Processing or recreation of the goods shall always be undertaken on behalf of August Faller GmbH & Co. KG but without placing it under an obligation. If these goods are processed with other objects not belonging to August Faller GmbH & Co. KG, it shall acquire joint ownership of the new objects in proportion of the deliverables value (invoice value) to the other processed goods at the time of processing.

- 9.4 If deliverables are inextricably processed with other objects not belonging to August Faller GmbH & Co. KG, it shall acquire joint ownership of the new objects in proportion of the deliverables value (invoice value) to the other mixed goods. The customer shall preserve joint ownership for August Faller GmbH & Co. KG.
- 9.5 During the period in which retention of title is in force, the customer is prohibited from making a pledge or assignment as security, and resale is only permitted to resellers in the usual course of a business transaction and only subject to the condition that the reseller receives payment from its purchaser or the proviso that title will pass to the purchaser only when it has met its payment obligations.
- 9.6 In case of breach of obligation by the customer, especially default of payment, August Faller GmbH & Co. KG shall be entitled to repossession. The customer is obliged to surrender possession. Repossession of goods subject to retention of title shall not constitute rescission of the agreement. If August Faller GmbH & Co. KG declares rescission, it is entitled to exploitation at its discretion.
- 9.7 In case of liens, attachments or other orders or other third-party interference, the customer shall notify August Faller GmbH & Co. KG without delay. Costs arising from the defence against seizure shall be borne by the customer unless they can be exacted from a third party.

## 10. Prices and payment conditions

- 10.1 Prices are plus any applicable statutory sales tax.
- 10.2 Payments must be made in full within 30 days from invoice date free to the payment office of August Faller GmbH & Co. KG. Payments are deemed rendered only to the extent they are at the disposal of August Faller GmbH & Co. KG at its bank. Checks and bills of exchange are accepted as payment only; the customer is responsible for bank charges. They are due immediately.
- 10.3 The customer is entitled to offset or retain payment only to the extent counter claims are uncontested or have been determined without further legal recourse.
- 10.4 In the event of default of payment, August Faller GmbH & Co. KG shall calculate interest as of the due date in the amount of 8% above base interest rate but no less than 10%.

## 11. General liability

- 11.1 Claims for damages against August Faller GmbH & Co. KG regardless of kind are barred if the damages caused by August Faller GmbH & Co. KG, its legal representatives or agents are the result of ordinary negligence. This exclusion of liability shall not apply in case of bodily harm, assumption of a contractual guarantee, or in the event of breach of material contractual duties, which jeopardise fulfilment of the purpose of the contract. In this case, however, liability of August Faller GmbH & Co. KG is limited to the scope of the guarantee, or, in case of negligent breach of contractual obligations, to damages typical for the contract and foreseeable. Claims based on the product liability law shall remain intact.
- 11.2 Damage claims shall lapse one year after the customer became aware of or, without gross negligence, should have become aware of the damages and its liability to pay damages. Claims based on the product liability law as well as those due to bodily harm and defects shall remain intact.

## 12. Force majeure

- 12.1 Events which are unforeseen, unavoidable, and not within the purview of August Faller GmbH & Co. KG (such as force majeure, strikes and lockouts, malfunctions, difficulties with procuring materials and energy, transport delays, lack of work force, energy or commodities, measures taken by authorities, as well as difficulties with procuring permits, especially import and export licences) shall extend the term of delivery by the duration of the malfunction and its effects. The same shall apply in the event the Impediments occur with suppliers of August Faller GmbH & Co. KG or during an existing delay.
- 12.2 If the nature of the encumbrance is more than merely temporary, both parties shall be entitled to rescission. In cases of the aforementioned subparagraph 12.1, damage claims are excluded.

## 13. Severability clause

Should a provision in this agreement be or become invalid, the remaining contractual relationship shall remain intact. In this case, the parties mutually undertake to replace the invalid provision with a statutorily feasible provision which economically most closely reflects the purpose of the invalid provision. The same shall apply to a contractual gap.

## 14. Place of fulfilment, applicable law and place of jurisdiction

- 14.1 Place of fulfilment is the company headquarters of August Faller GmbH & Co. KG.
- 14.2 All legal relationships in conjunction with this agreement are subject to German material law in exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.3 **For all disputes arising from this contractual relationship, immediately or intermediately, the sole place of jurisdiction shall be the company headquarters of August Faller GmbH & Co. KG.** However, August Faller GmbH & Co. KG is also entitled to assert claims at the customer's company headquarters.