



**Terms and Conditions of Performance and Payment  
of August Faller Artwork Solutions GmbH  
(status: May 2016)**

**For Use in Business Transactions with Companies**

1. Contractual Partner, Scope
  - 1.1 The contract is concluded with August Faller Artwork Solutions GmbH.
  - 1.2 Unless otherwise agreed in writing, solely the following Terms and Conditions of Performance and Payment apply to all (including future) services and deliveries ("hereinafter referred to only as "Work"). Terms and Conditions of Business of our customers apply only if we agree to them in writing. This also applies if the customer refers to their validity in business correspondence and we do not explicitly object to their inclusion in individual cases.
2. Offers and Conclusion of Contract
  - 2.1 Our offers are non-binding if they are not explicitly described as binding. Unless otherwise indicated in the order, the customer is bound by its order for 14 calendar days. The following applies unless otherwise agreed, for example in a general contract: Contracts are concluded only with our written confirmation of order or performance.
  - 2.2 If increased effort results for the preparation of an offer, e.g. in the form of development, technical services or samples, we will invoice the customer for this. The customer will be informed about this beforehand.
3. Performance, Period of Performance and Correction Runs
  - 3.1 We undertake to have the Work carried out in a correct and professional manner by qualified staff or to have it done by third parties. Within the period of performance, we will develop a template that we will submit to the customer for checking and release.
  - 3.2 The agreed period of performance commences with the sending of the order confirmation but not before the clarification of all details of the order implementation and technical and commercial issues, the receipt of the necessary data and the agreed down payment. The compliance with deadline necessitates the timely receipt of all data, specifications and documents to be delivered by the customer. If these requirements are not met in a timely manner, the deadlines will be extended appropriately; this applies if we are responsible for the delay. The Work is deemed to have been provided in a timely manner when we have sent the first template to the customer by the expiry of the deadline or, if the dispatch is delayed without our being culpable for this, the readiness for dispatch has been reported by us by the expiry of the deadline.
  - 3.3 The customer has to check and release the template and the data contained in it. Any correction runs that are necessary are done irrespective of the agreed performance time. With the release, the customer grants its consent to the template and the data contained in the template.
  - 3.4 In the event of arrears, our liability in the case of simple negligence is restricted to 0.5% per completed working day of the delay and to a maximum of 5% of the net invoice

value of the part of the performance affected by the delay. Statutory claims for compensation instead of performance pursuant to Clause 6 remain unaffected. The customer may only withdraw from the contract within the framework of the statutory provisions if an appropriate subsequent period for delivery has expired to no avail. The customer will inform us at the latest on conclusion of the contract about any contractual penalties that apply towards its own receiver.

#### 4. Performance under a work contract: acceptance and liability for defects

If, as an exception, we provide work under a work contract, the following applies in addition to and with priority over Clause 3:

- 4.1 The provision of the service under the work contract requires an explicit written agreement.
- 4.2 The customer is obligated to accept our contractual performance unless acceptance is excluded as a result of the quality of the work. If the acceptance is delayed without our being culpable for this delay, the acceptance is deemed to have taken place at the latest once two weeks have passed following receipt of our performance. The customer may not refuse the acceptance due to insignificant defects or due to a circumstance which is attributable to the customer.
- 4.3 With acceptance, the customer confirms that we have performed the work in compliance with the contract.
- 4.4 The limitation period for defects is 12 months from acceptance, provided that we do not breach our obligations in a wilful or grossly negligent manner, that we do not conceal the defect in a fraudulent manner, and that we have not assumed a guarantee that goes beyond this, and if no other limitation period is stipulated as mandatory under the law.

#### 5. Design Services

The following applies if we provide design services:

- 5.1 There is freedom of design for design services. Complaints with regard to artistic design are excluded. If the customer requests changes during or after the provision of services, it will pay for any additional costs.
- 5.2 Our Work is subject to the Copyright Act. We grant the company a simple use and exploitation right to transfer the Work to third parties (in particular end customers), restricted with regard to material and geography pursuant to the underlying order. The intellectual property to the Work remains with us. Our Work may not be changed, either in its original or reproductions thereof, without our prior written consent. Any imitation, including of parts, is not permitted. A transfer of the use rights by the customer to third parties requires our prior written consent. The use rights will be transferred to the customer only after full payment by the customer to us. We have the right to be named as the author on copies and in publications. A breach of the right to be named entitles us to compensation.
- 5.2 The customer gives assurance that it is the holder of all rights and is entitled to use all data, information, documents, templates, etc. provided (by electronic means) to us for the purpose of performance, in particular editing and reproduction. If, contrary to this

assurance, it is not entitled to use, the customer hereby indemnifies us now from all compensation claims from third parties at the first request.

- 5.4 The breach of rights of third parties by our Work constitutes a defect only if these protective rights exist in the Federal Republic of Germany. We are not liable for the breach of the rights of third parties if we provide our Work solely according to the customer's specifications. We are not obligated to make any checks in this regard. Claims of the customer are also excluded if the customer is responsible for the breach of the law.

## 6. General Liability

- 6.1 We are liable in the event of wilful intent or gross negligence, in the event of fraudulent concealment of defects, in the event of death, injury or impaired health or under the Product Liability Act in accordance with the law. If a guarantee has been assumed, we are liable pursuant to any guarantee provisions.
- 6.2. In the case of simple negligence, we are liable only in the event of breach of a fundamental contractual obligation whose fulfilment makes the proper implementation of the contract possible in the first place and on compliance with which the customer regularly relies and may rely; unless otherwise stipulated in Clause 3.4 for arrears resulting from delay, this is limited to the reimbursement of the foreseeable and typical damage. The Contractor's liability is excluded in all other cases.
- 6.3 Compensation claims become time-barred one year after the customer has learned of the damage and of its obligation to pay compensation or should have gained knowledge thereof without gross negligence. In deviation from sentence 1 of this Clause 6.3, in the case of liability due to the assumption of a guarantee the guarantee provisions apply. In the event of fraudulent concealment of a defect and of compensation claims pursuant to the Product Liability Act, due to death, injury or impaired health and due to wilful or grossly negligent breach of obligations, the statutory limitation regulations apply.

## 7. Prices and Terms and Conditions of Payment

- 7.1 Unless otherwise agreed, the prices are based on our current price list. The prices are exclusive of the respectively valid statutory VAT.
- 7.2 The price includes correction runs that are incurred as the result of necessary reworking.
- 7.2 Payments are to be made to our paying agent within 30 days of date of invoice without deduction and free of any transaction charges.
- 7.4 The customer is entitled to retain payments or offset them with counterclaims only if the counterclaims are undisputed or have been legally established.
- 7.5 In the event of arrears in payment, we charge interest from the due date of seven percentage points above the respectively valid base interest rate, but of at least 8%.

## 8. Force Majeure

- 8.1 Unforeseen or unavoidable events or events that are not caused by us (e.g. force majeure, strikes, transport delays, war, lock-outs, operational disruptions, shortage of labour, energy and raw materials, measures by authorities) extend the deadline for per-

formance by the duration of the disruption and its effects. This also applies if the hindrances occur at our suppliers or during an existing delay.

8.2 If the hindrance is not temporary, both contractual partners are entitled to withdraw from the contract. Claims for compensation are excluded in the cases named in Clause 9.1.

9. Assignment, Place of Performance, Applicable Law and Place of Jurisdiction

9.1 The customer may assign its rights and obligations arising from this contract to third parties only with our prior written consent.

9.2 Amendments or supplements to this contract must be made in writing. This also applies to amendments to this written form clause.

9.3 The place of performance for all our Work is our registered office.

9.4 German law applies under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980.

9.5 The place of jurisdiction for all disputes arising from or in connection with the contractual relationship is our registered office. However, we are also entitled to file action at the customer's registered office.