



General Terms and Conditions

Ritter Concept GmbH
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Valid as of: 10/2019

1. Scope

- 1.1 Our General Terms and Conditions only apply in relation to “entrepreneurs” within the definition of Section 14 German Civil Code (“BGB”). They apply to all supply contracts and, by analogy, to all other services, especially repairs as well as to continuous business relations insofar as no explicit reference is subsequently made to them. Our terms and conditions apply exclusively; the customer’s contrary or conflicting conditions will not be recognised unless we have expressly agreed to their validity in writing. Our terms and conditions remain applicable, even if we perform delivery to the customer unconditionally, while aware that the customer’s conditions conflict or are contrary to our terms and conditions.
- 1.2 Our General Terms and Conditions apply to all future business activities with the customer, even if not explicitly referred to with future business transactions.

2. Quotation and conclusion of contract

- 2.1 Our quotations are given without obligation, unless they are declared binding in the text of the quotation. Contracts are concluded only upon our order confirmation (written, text form), unless our quotation states that it is binding and the customer validly accepts it.
- 2.2 If the order is deemed to be a quotation within the definition of Section 145 German Civil Code (“BGB”), we may accept it within a period of 4 weeks.
- 2.3 We retain ownership of and copyright to images, drawings, calculations and other such documentation. This applies equally to other written documentation labelled as “confidential”. The customer shall require our explicit written consent before passing the aforementioned documents on to any third parties.

3. Prices, terms of payment, sureties

- 3.1 Unless otherwise agreed, our prices are “ex works” prices and do not include packaging and insurance, which will be invoiced separately.
- 3.2 Unless otherwise stated, we will be bound by the prices contained in our binding quotations for a period of four weeks from the date of the quotation.
- 3.3 Our prices do not include statutory VAT; this will be separately indicated in the invoice at the statutory rate applicable on the day of billing.
- 3.4 Unless otherwise agreed, the delivery price is payable (without deduction) within 14 days following the date of the invoice.
- 3.5 The punctuality of the payment is determined not by the time we receive it, but rather by the time that it is credited to our account.
- 3.6 We are entitled to offset payments against older debts first; we will notify the customer of the nature of the offset performed. If costs and interest have already been accrued, we shall be entitled to use the payment to firstly satisfy costs, then the accrued interest and finally the principle debt.
- 3.7 The deduction of cash discounts requires a special written agreement. Cash discounts can only be performed if the customer has satisfied all its other obligations towards us.
- 3.8 If the customer is in default of payment, we shall be entitled to charge default interest at the rate of 9 percentage points p.a. above the base lending rate pursuant to Section 247 BGB (Section 288 (2) BGB). In the event that we are able to demonstrate that we have suffered a greater level of loss due to the default, we will be entitled to claim compensation in respect thereof. The customer remains entitled to prove that we did not sustain any loss as a result of the default, or that the actual loss was less than claimed.
- 3.9 The establishment of default will be determined in accordance with the statutory provisions.
- 3.10 By way of derogation from Section 195 BGB, our claims to payment are subject to a limitation period of five years. The start of the limitation period is determined in accordance with Section 199 BGB.
- 3.11 The customer is only entitled to exercise set-off rights if its counter-claims are confirmed by a res judicata decision, are undisputed or are acknowledged by us. It is only entitled, moreover, to exercise any right of retention provided its counter-claim is based on the same contractual arrangement.
- 3.12 If the delivery is to a location outside of the Federal Republic of Germany, we shall be entitled to demand the provision of an irrevocable, confirmed letter of credit issued by a major bank or savings bank approved as a customs and tax guarantor in the Federal Republic of Germany, and to only make the delivery after the letter of credit has been furnished. If INCOTERMS have been expressly agreed, the relevant definitions decided and published by the International Chamber of Commerce in Paris will apply.
- 3.13 The time limit for the notification of SEPA direct debits is ten calendar days, starting from the invoice date. Repairs and hourly wage work is payable immediately. All payments must be free of charge.

4. Price changes

- 4.1 The applicable prices are the prices agreed between us and the customer.
- 4.2 If the price at the time of the delivery of the service has increased due to a change in the market price or due to an increase in the fees charged by sub-contractors involved in the delivery of the service, the higher price shall apply. If this is 20 % or more than the agreed price, the customer will be entitled to withdraw from the contract. This right must be asserted promptly following notification of the increased price.
- 4.3 If the delivery is delayed for more than 60 days beyond the scheduled delivery date for reasons for which the customer is responsible, we will be entitled to charge the price applicable of the day of delivery.
- 4.4 Unforeseeable changes to import and export duties and charges, to exchange rates or shipment costs will entitle us to implement a price adjustment.

5. Delivery period

- 5.1 Delivery dates or time limits must be confirmed in writing by us in order to be binding.
- 5.2 The delivery period commences with the receipt of the order confirmation. Delivery dates or periods are fulfilled if, before these have expired, the readiness for shipment has been announced or if the supplied articles have been dispatched from our works.
- 5.3 Our fulfilment of our obligations of service and delivery is conditional on the customer duly fulfilling its own obligations within time, and on the clarification of all technical issues (especially the delivery by the customer of all documents and information etc.) and on the receipt of the surety agreed or demanded.
- 5.4 The delivery period or delivery date will be extended in the event of any labour disputes, especially strikes or lock-outs, as well as the occurrence of unforeseen impediments outside of our control, e.g. operational interruptions, delays to the delivery of essential materials, insofar as such impediments clearly have a significant impact on the delivery of the supplied items. This also applies if such circumstances are experienced by sub-suppliers. The delivery period or the delivery date will likewise be extended in all cases of force majeure. The delivery period will be extended in accordance with the duration of such measures and impediments. We will notify the customer as soon as possible about the start and end of such impediments.
- 5.5 We are entitled to make partial deliveries and render partial services in respect of a complete product with the specified delivery time, provided this does not detrimentally impact the intended use.
- 5.6 If the customer is in default of acceptance or is in breach of performing its other duties of cooperation, we will be entitled to claim compensation for our losses including reimbursement or any costs we have incurred. In such a case, the risk of accidental loss or deterioration of the delivered item passes to the customer at the time at which it is first in default of acceptance or payment. Other claims and rights reserved.
- 5.7 If there is a delay to the delivery, or it is rendered impossible due to our fault, the customer will only be entitled to rescind the contract if it first grants us a grace period of at least four weeks in writing, declaring that it will refuse performance after this time limit.

6. Scope of delivery

- 6.1 The scope of the delivery will be determined according to our order confirmation.
- 6.2 We reserve the right to amend the design or shape in response to technological improvements or legislative requirements occurring during the delivery period, provided the supplied articles is not significantly modified and the changes are tenable to the customer.

7. Cancellation costs and return consignments

- 7.1 If the customer cancels a submitted order without justification, irrespective of the possibility of claiming additional damages we will be entitled to demand 10 % of the sales price as compensation for the costs of processing the order and for our lost profit.
- 7.2 Return deliveries are made at the risk and cost of the customer. The customer will bear expenses we incur through the return consignment, and to which we have not agreed. Any necessary refurbishment and/or repackaging needed due to changes or damage outside of our control may be claimed having set off the liquidated damages specified in No. 7.1.
- 7.3 If the customer is sending back the goods outside of the legal or contractual return rights, which is granted applicably to the customer, we reserve the right to charge a € 25.00 administrative fee for each unauthorized return. The customer is allowed to prove a lower value disadvantage. This regulation does not apply, if the customer is sending back the goods within the legal rights of defect.

8. Packaging and consignment

- 8.1 Packaging charges will be invoiced separately. The packaging type will be selected according to our best judgement.
- 8.2 We will only take back supplied packaging in accordance with our statutory obligations; packaging may not be returned for deliveries made abroad. The take-back of this material does not include return deliveries and the costs thereby incurred. If the customer is not a private consumer within the definition of the Packaging Regulation, the customer will be charged for the costs of disposing of the packaging on the basis of our primary costs thereby incurred. If the packaging is not returned to us, we will not contribute to or assume the disposal costs.
- 8.3 If the customer requests the transport, this has to be agreed separately. The type of shipment takes place to a common extent, the transport company will be ordered to our best judgement. Per request of the customer, a special transport insurance can be arranged. The entire costs of the transport will be borne by the customer.
- 8.4 If a collection date is agreed between the parties and the customer fails to comply with the collection date without our permission, we will charge it for the storage costs.

9. Transfer of risk

- 9.1 Unless otherwise provided for in the order confirmation, delivery „ex works“ is agreed. The pick-up takes place through the customer or through a forwarder instructed by the customer. The risk of accidental loss will be passed to the customer at the time of the notification of the readiness for shipment.
- 9.2 If the transport through us is agreed, the transfer of risk will be passed to the customer when handing over the goods to the forwarder. Section 447 (1) BGB applies.

10. Warranty

- 10.1 The limitation period for claims and rights in connection with defects in our services is one year – irrespective of the legal basis. However, this does not apply to the cases defined by Section 438 (1) no. 1 BGB (defective legal title to immovable property), Section 438 (1) no. 2 BGB (buildings and items intended for buildings), Section 479 (1) BGB (contractor's right of recourse) or Section 634 a (1) no. 2 BGB (buildings or works based on the delivery of design and supervisory services). The exceptional cases specified in the preceding sentence 2 are subject to a limitation period of three years.
- 10.2 The limitation periods pursuant to 10.1 also apply to all compensation claims against us where these are connected with the defect – irrespective of the legal basis of the claim.
- 10.3 However, the limitation periods of 10.1 and 10.2 apply with the following proviso:
 - a) The limitation periods generally do not apply in the event of a deliberate act or the deceitful concealment of a defect or in the event that we have given a guarantee in respect of the quality of the supplied item.
 - b) The limitation periods on compensation claims likewise apply to a non-grossly negligent breach of duty – not connected with the delivery of a defective article or the delivery of defective works – concerning the culpable breach of material contractual duties, in the event of death or personal injury or in relation to claims connected with the Product Liability Act. The limitation periods for compensation claims likewise apply to the reimbursement of futile expenditure.
- 10.4 The limitation period for all claims commences with the delivery, or upon formal acceptance in the case of works.
- 10.5 Unless otherwise expressly stated, the legal provisions regarding the start of the limitation period, the suspension of statute of limitations, suspension and the recommencement of limitation periods remains unaffected.
- 10.6 The aforementioned provisions apply mutatis mutandis to claims for damages not connected with a defect; the limitation period is provided for by 10.1 sentence 1.
- 10.7 The provisions above do not entail any change to the burden of proof that might disadvantage the customer.
- 10.8 Claims for defects are not valid for minor deviations from the contractually agreed quality, or if the fitness-for-purpose is only insignificantly impaired. We are in no event obliged to make a new delivery or to deliver a new product by way of our subsequent performance. The customer's demand for subsequent performance must be made in writing. We must be granted a period of at least two weeks for the subsequent performance. The subsequent performance is deemed to have failed following an unsuccessful second attempt at subsequent improvement, and the customer will have the right to diminution of price or – if subject of the warranty does not concern construction works – it may opt to withdraw from the contract. The legally defined situations for the dispensability of an obligation to grant additional time remain unaffected. Sections 478 and 479 BGB (contractor's right of recourse) remain unaffected.

- 10.9 The customer will bear the increased costs entailed in the delivery of subsequent performance insofar as such increased costs are incurred through our works/services having been relocated to place other than the customer's registered address, unless this relocation corresponds to the intended use. Section 478 BGB (contractor's right of recourse) remains unaffected.

Our other claims notwithstanding, in the event that a defect complaint proves unfounded the customer must reimburse for the costs of our inspection and – where demanded – the elimination of the defect.

- 10.10 Defects must be promptly reported to us following receipt of the goods or following discovery of the defect in question. The customer is not entitled to return products without the prior agreement of us. The customer must select the most cost-efficient method of delivery.
- 10.11 No warranty claims exist in the following cases:

- using the product outside of or contrary to its intended use, or operating the product outside of its specifications
- failure to observe the instructions on use, maintenance or installation
- improper handling or neglected maintenance
- use of non-approved spare parts or accessories
- product modifications or conversions performed by customer or third parties
- usual wear and tear or other changes to or deterioration of the product attributable to:
 - * external influences (e.g. knocks, blows, mechanical impacts)
 - * water, fire
 - * improper method of storage, handling or installation
 - * unusual ambient conditions, especially conditions upon receiving or operating conditions at the installation location or force majeure
 - * calcification or corrosion resulting from neglected maintenance or improper handling
 - * contaminants in the air and water supply
 - * unusual or impermissible chemical or electrical influences
 - * soiling, discolouration or wear and tear on padding

The warranty as a rule excludes parts subject to normal wear, especially lamps, glass and rubber components and cables as well as plastic parts and surfaces with regards to their colour-fastness.

All of our obligations under the warranty will be extinguished if the delivered goods are modified, improperly handled or processed. We do not warrant co-supplied or integrated third-party products. However, if requested we will assign to the customer our warranty claims against the vendor of the third-party product.

In order to activate the warranty, it is necessary to send a copy of the record of delivery and the warranty card to us following installation.

11. Liability/disclaimer

- 11.1 We will be liable in accordance with the statutory provisions for our deliberate acts or gross negligence and that of our representatives or vicarious agents, as well as for negligently causing death or personal injury. However, in cases of gross negligence our liability will be limited to foreseeable damages typical for this type of contract apart from the exceptions listed in the preceding or following sentence. Otherwise we will only be liable in accordance with the Product Liability Act, and for the negligent breach of material contractual obligations or if we, as the seller, deceitfully conceal the existence of a defect, or to the extent that we have extended a guarantee regarding the quality of the supplied item. However, the damages for the breach of material contractual obligations is limited to the foreseeable damages typical for this type of contract, unless one of the other exceptions listed in the 1st or 3rd sentences of this Section 11.1 is also established.
- 11.2 The provisions contained in Section 11.1 above apply to all claims to damages (especially damages alongside performance and damages in lieu of performance) irrespective of the legal basis, but especially due to deficiencies, the infringement of obligations arising from the contractual relationship or connected with tortious liability. It also applies to compensation for futile expenditure. Liability for delay is determined according to Section 11.3 of these terms and conditions, the liability for impossibility according to Section 11.4.

- 11.3 We will be liable in accordance with the statutory provisions for delays to the goods/services caused by our deliberate acts or gross negligence and that of our representatives or vicarious agents, as well as for negligently causing death or personal injury. However, in case of gross negligence our liability is limited to foreseeable damages typical for this type of contract. Apart from the cases described in the preceding sentences, in cases of delay our liability to pay compensation alongside performance will be limited to 5 % and to pay compensation in lieu of performance (including the reimbursement of futile expenditure) will be limited to a total of 20 % of the value of our goods/services. All further claims of the customer are excluded, including following the expiry of any time limit placed upon us. The limitation does not apply to the negligent breach of material contractual obligations. However, the claim to damages for the negligent breach of material contractual obligations is limited to the foreseeable damages typical for this type of contract, unless one of the other exceptions listed in the 1st sentence of this Section is also established.
- 11.4 We will be liable in accordance with the statutory provisions for the impossibility of the goods/services caused by our deliberate acts or gross negligence and that of our representatives or vicarious agents, as well as for negligently causing death or personal injury. However, our liability in cases of gross negligence is limited to the foreseeable damages typical for this type of contract, unless one of the other exceptions listed in the aforementioned 1st sentence is also established. Apart from the cases described in the preceding 1st and 2nd sentences, our liability for impossibility and to pay damages and reimburse futile expenditure will be limited to a total of 20 % of the value of our goods/services. All further claims of the customer based on impossibility of delivery are excluded, including following the expiry of any time limit placed upon us.
- 11.5 The preceding provisions contained in Sections 11.1 to 11.4 do not entail any change to the burden of proof to the customer's detriment.

12. Retention of title

- 12.1 All our deliveries are made subject to an extended retention of title. We reserve our title to the purchased item until the customer has fulfilled all our claims against it under the business arrangement. The retention of title likewise applies to claims from previous or future legal transactions. If a current account arrangement exists between the customer and us, we reserve the title to the purchased item until we have received all payments under the existing current account arrangement; the reservation applies to the acknowledged account balance.
- 12.2 If the customer is in breach of contract, particularly in the event of a default of payment, we will be entitled to retake possession of the purchased item. If we retake possession of the purchased item, this will constitute cancellation of the contract. Having taken back the purchased item, we will be entitled to dispose of it; having deducted the reasonable costs of sale, the proceeds of the sale will be offset against the customer's payables.
- 12.3 The customer is duty bound to treat the purchased item carefully; in particular, it is obliged at its own cost to insure the replacement value of the item against the risk damage from fire, water and theft. In the event that servicing and inspection works are required, the customer must perform these in good time at its own cost. We are entitled but not duty bound to insure supplied articles against theft, breakage, fire, water or other such damage at the cost of the customer where said goods are subject to a retention of title, in the event that customer has not demonstrably arranged insurance of this kind and assigned its claims under this policy to us. If the customer has already arranged insurance, it here and now assigns to us all rights under the insurance contracts as well as its claims against the insurer. We here and now accept these claims.
- 12.4 The customer must inform us promptly in writing of any third-party liens or other such interference, in order that we can initiate an action pursuant to Section 771 German Code of Civil Procedure ("ZPO"). If the third party is not able to reimburse us the court and out-of-court expenses of a legal action pursuant to Section 771 ZPO, the customer will be liable to pay us the difference.
- 12.5 The customer is entitled to resell the purchased item in the course of its regular business; however, it assigns, here and now and up to an amount equal to our final invoiced total (including VAT), all claims established in its favour vis-à-vis its end customer or any other party, irrespective of whether or not the purchased item has been resold with or without reprocessing. We here and now accept these claims. The customer remains entitled to collect such receivables even after the assignment of such claims. This does not affect our authority to collect the receivables ourselves. However, we give an undertaking not to collect the claim provided the customer satisfies its payment obligations from the proceeds it receives, and that it is not in default of payment and, in particular, that no application is made for the commencement of insolvency proceedings and that the criteria for the commencement of insolvency proceedings are not established. But if this is the case, we may demand that the customer informs us of its assigned claims and the respective debtors, provides us with all information required for collection, supplies us with the appropriate documentation and informs debtors (third parties) of the assignment.
- 12.6 The customer is not permitted to pledge the supplied articles, nor use them as collateral. Executory officers (bailiffs) and any third party must be informed of our ownership.
- 12.7 Any processing or transformation of the purchased item is always performed by the customer on our behalf. If the purchased item is processed with other articles not belonging to us, we will acquire a co-ownership share in the new object equal to the proportion of the value of the purchased item (final invoiced amount, including VAT) compared to that of the other processed articles at the time of processing. Objects formed through the reprocessing are otherwise subject to the same provisions applicable for the delivered purchase item.

- 12.8 If the purchased item is inextricably combined with other articles not belonging to us, we will acquire a co-ownership share in the new object equal to the proportion of the value of the purchased item (final invoiced item, including VAT) compared to that of the combined articles at the time of processing. If the combination is performed in such a way that the customer's article is to be deemed the main article, it is hereby agreed that the customer will assign us co-ownership proportionally. The customer will, on our behalf, protect the sole or co-ownership established in this way.
- 12.9 In order to secure our claims against it, the customer will also assign to us its claims against any third party that arise by connecting the purchased item to real property. We accept this assignment.
- 12.10 We undertake, upon demand by the customer, to release the collateral security to which we are entitled, to the extent that the realisable value of our collateral security exceeds the claims secured by more than 10 %; the selection of the securities to be released will be made at our discretion.
- 12.11 If the customer is in breach of its obligations, especially if it is in default of payment, having granted a grace period for compliance we will be entitled to demand the surrender of the supplied item or the new article, and/or to withdraw from the contract having granted a grace period; the customer will be obliged to release the article as demanded. The demand for surrender of the supplied item/new articles does not constitute a declaration of termination on our part.
- 12.12 If the law prevailing at the customer's registered address does enable rights to be secured by way of a retention of title, the customer will be obliged to provide us with a financially equivalent form of security, which can be realised under the legal regulations applicable at the customer's registered address and which afford us rights of recourse against the customer's own customers in the event of the former becoming insolvent or unable to service its debts. Irrespective of the effectiveness of the other means of security used, the retention of title or the assignment of the customer's receivable is deemed agreed in any case.
- 12.13 If the customer is in default of payment or becomes completely or partially unable to service its debts or if it breaches the contract in any other way, we will be entitled – having issued a reminder and granted a grace period for payment – to demand the surrender of goods under our ownership.
- 12.14 The customer will bear the costs of repossessing or commercially realising goods by way of the retention of title. Reserving our right to claim additional damages, we are entitled to demand 10 % of the proceeds of the realisation as liquidated damages to cover the expenses. The customer is entitled to prove that our claim to damages is for a lower amount.

13. Industrial property rights and copyright

- 13.1 In the event that claims are made against the customer for breach of an industrial property right or copyright because it is using our goods/services, we undertake to procure it the right to continue said use. This is conditional on the customer promptly notifying us in writing of such third-party claims and reserving all defensive and out-of-court measures to us. If, under these conditions, it is not possible to enable continued use of our goods/services for commercially reasonable terms, it is deemed agreed that we will, at our choice, either modify or replace the goods/services in order to eliminate the defective title or we will take back the goods/services and reimburse the price paid to us, having deducted an amount based on the age of the goods/services.
- 13.2 Claims against us are excluded if any violation of rights arises because our goods/services are used in a manner not approved by us, or if there are used in combination with third-party goods/services. The provisions contained in Section 11 apply moreover.
- 13.3 We are not liable for rights violations caused by goods/services delivered according to the customer's design documents or other specifications.

14. Rights to software

- 14.1 The customer will be granted a non-exclusive, unlimited right of use to software and software modifications, extensions and upgrades as well as accompanying documentation belonging to our scope of delivery or subsequently supplied. These materials are solely for the purpose of running the supplied services within the customer's company. The right of use is extinguished following loss of the goods (hardware).
- 14.2 The customer is only entitled to transfer the right of use to the software if this is done in connection with the resale of the associated delivered goods (hardware). In this case, the customer must delete the software it still retains along with any back-up copies it has made or it must provide these to its buyer. The buyer will also be provided with the original data carriers and documentation.
- 14.3 The customer is granted no other rights to the software and documentation other than those specified in Section 14.1. In particular, we or our contractors (firms or individuals) will remain the copyright holder. Unless it has our prior, written permission, the customer is not permitted to modify, copy or otherwise reproduce the software, documentation or any subsequently delivered modifications, extensions and upgrades, unless such reproduction is performed for the purpose of making a back-up copy, which is labelled as such.

- 14.4 The reverse translation of the delivered programming code into another code form (decompilation) is permitted subject to the conditions of Section 69 e Copyright Act ("UrhG"), for the purpose of establishing interoperability between the contractual software and an independently procured software. The interface information necessary for interoperability can be obtained in return for a small fee.
- 14.5 It is not permitted to simultaneously load, store or use the software on more than one piece of hardware. If the customer wishes to run the software on several hardware configurations simultaneously, it must purchase a corresponding number of programme packages.
- 14.6 The customer is obliged to implement suitable precautions to prevent unauthorised third-party access to the software and the documentation. The supplied original data carriers and the back-up copies are to be kept in a secure location protected against third-party access. The customer will release us from any liability for damage arising from the breach of this obligation. The customer's employees must be clearly instructed to comply with these contractual conditions and the provisions of the copyright law.

15. Take-back and disposal duty in accordance with the Electrical and Electronic Equipment Act ("ElektroG")

- 15.1 According to the ElektroG, we are obliged to provide a reasonable facility for the return of waste equipment from users other than private households and for waste equipment the quality and quantity of which is not comparable with the waste equipment customarily found in private households, and we are required to dispose of said waste equipment. This does not apply to equipment put on the market prior to 13.08.2005.
- 15.2 We fulfil this obligation in our capacity as the producer or distributor within the terms of the statutory obligations. The take-back of devices is conditional on the equipment being returned to us (Industriestrasse 63, 88441 Mittelbiberach, Germany) at the cost and risk of the customer. The equipment will not be collected nor will collection points be established. The dismantling of equipment is the sole responsibility of the customer. Contaminated equipment must therefore be disinfected by the customer in advance.
- 15.3 The obligations pursuant to 15.1 and 15.2 do not apply to waste equipment put on the market as new equipment prior to 13.08.2005.

16. Place of performance

Unless otherwise provided for in the order confirmation, the place of performance is our head office (Biberach/Riss).

17. Legal venue

If the customer is a "merchant" (commercial entity), the legal venue is the location of our head office (Biberach/Riss). However, we are also entitled to pursue legal actions before that court with jurisdiction over its place of residence/domicile.

18. Applicable law

The law of the Federal Republic of Germany applies to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

19. Severability clause

If any of these provisions are or become unenforceable, this will not affect the validity of the remaining provisions. The parties undertake to substitute any ineffective provision with an effective one, which most closely fulfils the commercial purpose of the original.