

## International Conditions of Sale for Customers not Resident in Germany

### I. Application of the International Conditions of Sale

1. These International Conditions of Sale apply to all customers of HERA GmbH & Co. KG - hereinafter referred to as HERA - whose relevant place of business is **not in Germany**. For customers whose place of business is in Germany, the General Conditions of Sale of HERA apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to all contracts made on or after 1 September 2011 whose preponderant object is the **supply of goods** to customers. Additional obligations assumed by HERA do not affect the application of these International Conditions of Sale.
3. Conflicting or differing **terms of business of the customer** do not bind HERA, even if HERA does not object to them or even if HERA unconditionally renders performance or accepts the customer's performance. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these International Conditions of Sale, deviate from statutory provisions.
4. These International Conditions of Sale do not apply, if the customer buys the goods for **personal, family or household use** and if HERA knew or should have known that at the conclusion of the contract.

### II. Formation of the Contract

1. The customer is under an obligation to give **written notice to HERA** prior to the formation of a contract if the goods to be delivered are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use or if there is a risk of atypical damages or unusual amounts of loss of which the customer is or ought to have been aware.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by HERA, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of HERA, will **take effect exclusively if followed by a written acknowledgement** of the order by HERA. The actual delivery of the goods ordered, any other conduct of HERA or silence on the part of HERA does not allow the customer to assume the formation of the contract. HERA can dispatch such written acknowledgement of the order up to and including **fourteen (14) calendar days after** the customer's order has been received by HERA. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** by HERA shall be **received in time**, if it is received by the customer within fourteen (14) calendar days after its date of issue. The customer will inform HERA without delay, if the written acknowledgement of the order is received with some delay.

5. The written acknowledgement of the order by HERA sets out all the **terms of the contract** and brings the contract into effect even if - except for the price for the goods and the quantity to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Conditions of Sale. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation by HERA in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by HERA is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by HERA within a short time, at the latest seven (7) calendar days, after receipt of the written acknowledgement of the order by the customer.
6. Confirmations produced by the customer are of **no effect** without any objection by HERA being necessary. In particular, neither the actual delivery of the goods, any other conduct of HERA or silence on the part of HERA shall give rise to any belief by the customer in the relevance of his confirmation.
7. HERA's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order by HERA or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against HERA, is to be determined according to German law.
8. **Amendments** to the concluded contract always require written confirmation by HERA.

### **III. Obligations of HERA**

1. Subject to an exemption according to section VII.-1. b) HERA must **deliver the goods** specified in the written acknowledgement of the order and transfer the property in the goods. HERA is **not obliged to perform obligations** not stated in the written acknowledgment of the order by HERA or in these International Conditions of Sale, in particular HERA is under no obligation to render planning-services, to supply documents, to furnish information or to deliver accessories not explicitly agreed upon in writing, to install additional safety devices, to carry out assemblies or to advise the customer.
2. HERA's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against HERA. The customer's responsibility to take delivery continues to exist even if he **assigns rights to third parties**. The customer gives HERA an unlimited indemnity against all claims made by third parties against HERA out of the contract made with the customer.
3. HERA undertakes to deliver goods of average kind and quality taking account of the **tolerances customary in trade** concerning the kind, quantity and quality. If the goods cannot be delivered in the condition offered at the time of the formation of the contract because technical improvements to goods of series production were made, HERA is entitled to deliver the goods with the technical improvements. HERA is entitled to make **part deliveries** and to invoice them separately.
4. If further **specification** is required in relation to the goods to be delivered, HERA will carry this out having regard to his own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. HERA does not undertake to

inform the customer of the specification he has made or to give the customer the option of a differing specification.

5. HERA undertakes to place the goods packaged according to HERA's standard **at disposal for collection by the customer FCA (Incoterms 2010)** at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at his premises in Enger/Germany at the agreed time of delivery. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. Under no circumstances, not even when other Incoterms are agreed HERA is obliged to inform the customer of the delivery, to examine the goods with respect to their conformity with the contract on the occasion of delivery, to arrange for the shipment of the goods or to insure the goods. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
6. Agreed **delivery time periods** or **delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by HERA. HERA is entitled to deliver earlier than at the agreed delivery time or to select the date of delivery within the period for delivery.
7. Without prejudice to his continuing legal rights, HERA is entitled to fulfil his obligations **after the delivery time agreed upon**, if the customer is informed that HERA will exceed the delivery time limit and of the time period for late performance. Subject to the aforesaid conditions, HERA is entitled to make repeated attempts at late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by HERA before commencing late performance. HERA will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that HERA is liable for this under the provisions laid down in section VII.
8. **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for HERA to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract or title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
9. HERA is **not obliged** to procure documents or certificates not expressly agreed, to obtain any licences, authorizations or other **documents** necessary for the export, transit or import, or to provide security, export, transit, import or customs **clearance**. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones merely involve a variation of the provisions as to the transportation and the transportation costs; besides that, the provisions laid down in these International Conditions of Sale remain applicable.
10. HERA is in no case liable to perform duties associated with the putting of the goods into circulation **outside Germany**, to bear levies, duties and charges accruing outside Germany, to comply with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or to comply with any other legal provisions

applicable to the goods outside Germany. The customer will arrange for translations in any language other than German of documents or other written materials about the goods required by law or called for otherwise at his risk and expense.

11. Without prejudice to his continuing legal rights, HERA is entitled to **suspend the performance of his obligations** so long as, in the opinion of HERA, there are grounds for concern that the customer will wholly or partly fail to fulfil his obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs his obligations to enable payment to HERA or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance HERA is entitled at his own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. HERA is not required to continue with performance of his obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.
12. Except as provided in section III.-7., HERA is only obliged to inform the customer of **possible disruption in performance**, once the commencement of the disruption is definitely certain for HERA.

#### **IV. Obligations of the Customer**

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price for the goods** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to one of the financial institutions designated by HERA. To the extent that a price for the goods has not been agreed, the price which is at the agreed time of delivery HERA's usual price for the goods will apply. HERA's employees, commercial agents or other sales intermediaries are not authorized to accept payments.
2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order, or otherwise on receipt of the invoice. The due time for payment arises without any further pre-condition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards HERA or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness or if the cover given by a credit insurer is reduced on grounds for which HERA is not responsible.
3. The customer warrants that all legal requirements and documentations for the fiscal treatment regarding **value added tax** of the delivery and/or any service will be fulfilled. To the extent that HERA has to pay German and/or foreign value added tax, the customer will indemnify HERA in all and every respect without prejudice to any continuing claim by HERA. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by HERA.
4. Regardless of the currency and of the jurisdiction of any court, HERA is entitled at his own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.

5. Any statutory rights of the customer to **set-off** against claims of HERA, to **withhold payment** or taking delivery of the goods, to **suspend** the performance of his obligations or to **raise defences or counterclaims** are excluded, except where the corresponding claim of the customer against HERA is in the same currency, is founded in the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer HERA has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.
6. The customer undertakes to **take delivery** of the goods at the delivery time without taking any additional period of time and at the place of delivery resulting from section III.-5. and shall fulfil all the duties imposed by the contract, by these International Conditions of Sale, by the rules of the ICC for the use of Incoterms® 2010 and by statutory provisions. The customer is only entitled to refuse to take delivery of the goods if he avoids the contract in accordance with the rules in section VI.-1.
7. Irrespective of any statutory provisions, the customer shall at his own cost take care of or in any other way ensure renewed utilization, material recycling or otherwise prescribed **waste-disposal** of the goods delivered by HERA to the customer and of the packaging material. HERA is not obliged to take back goods delivered to the customer or packaging material from the customer or a third party according to legal provisions regarding waste-disposal.

#### **V. Delivery of non-conforming Goods or Goods with Defective Title**

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods do **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Germany. Regardless of the stipulation established in sentence 1, the goods shall be deemed to conform with the contract to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods. Second-hand goods are delivered without any liability for their conformity.
2. To the extent that the written acknowledgement of the order by HERA does not contain an explicit statement to the contrary, HERA is in particular **not liable** for the goods being fit for a purpose which is not usual in Germany or for complying with further reaching expectations of the customer or for possessing the qualities of a sample or a model or for their compliance with the legal regulations existing outside of Germany, for instance in the customer's country. HERA shall also not be liable for any non-conformity with the contract that did not exist at the time the risk has passed. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of HERA in writing, HERA will be released from his liability.
3. The customer is obliged vis-à-vis HERA to **examine** every single delivery comprehensively for any discoverable or typical lack of conformity with the contract and moreover as required by law.
4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, goods have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties rights or claims founded on industrial or other intellectual property constitute a deficiency in title only

to the extent that the rights are registered, made public and in legal force in Germany and prevent the usual use of the goods in Germany. Regardless of the stipulation established in sentence 1, title to the goods shall be deemed not to be defective to the extent that the legal regulations applicable at the place of business of the customer do not prevent the usual use of the goods.

5. Without prejudice to the statutory obligations of the customer to give notice within reasonable time, the customer is obliged vis-à-vis HERA to give notice to HERA of any lack of conformity with the contract or any deficiency in title at the latest within one (1) year after the goods have factually been handed over to him. Such **notice** has to be made in writing and directly to HERA and to be formulated in such a precise manner as to enable HERA to effect remedy measures without need for further inquiries at the customer and to secure claims against HERA's suppliers and moreover as required by law. HERA's employees, commercial agents or other sales intermediaries are not authorised to accept notices outside HERA's premises or to make any statements concerning lack of conformity with the contract or of title and its consequences.
6. Following **due notice** according to section V.-5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever and no claims of a non-contractual nature. In the event of **notice not having been properly given**, the customer may only rely on remedies if HERA has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by HERA as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by HERA of the requirement of proper notice.
7. The customer is **not entitled to remedies** for delivery of non-conforming goods or goods with a deficiency in title, insofar as the customer is liable vis-à-vis third parties for conditions of the goods or their fitness for a use which are not subject of the agreement with HERA, or if the customer's claim is based on foreign law not in force in Germany.
8. To the extent that the customer in accordance with the terms of these International Conditions of Sale is entitled to remedies because of delivery of non-conforming goods or goods with defective title, he is entitled to demand in accordance with the terms of the UN Sales Convention **delivery of substitute goods or repair or to reduce the price for the goods**. The delivery of substitute goods or repair does not lead to a recommencement of the limitation period. The reduction of the price for the goods is limited to the damages suffered by the customer. Further claims for performance are not available to the customer. Irrespective of the customer's remedies, HERA is always entitled in accordance with the provision in section III.-7. to repair goods which do not conform with the contract or to supply substitute goods or to avert the customer's remedies by giving him a credit note of an appropriate amount.

## **VI. Avoidance of the Contract**

1. The **customer** is entitled to **declare the contract avoided**, if the respective applicable legal requirements are complied with, after he has threatened HERA with avoidance of the contract in writing and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time in writing and to HERA directly.

2. Without prejudice to his continuing legal rights, **HERA** is entitled to avoid the contract in whole or in part without compensation if the customer objects to the application of these International Conditions of Sale, if on grounds for which HERA is not responsible the written acknowledgement of the order by HERA is received by the customer more than fourteen (14) calendar days after its date of issue, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards HERA or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness, if the cover given by a credit insurer is reduced on grounds for which HERA is not responsible, if HERA through no fault of his own does not receive supplies properly or on time, or if for other reasons HERA cannot be expected to fulfil his obligations by means which taking into consideration his own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

## **VII. Damages**

1. Without waving the legal requirements **HERA** is only obliged to **pay damages** due to the violation of obligations resulting from the contract with the customer, the contractual negotiations carried on with the customer or the business relation with the customer in accordance with the following provisions:

a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.

b) **HERA is not liable** for the conduct of suppliers or subcontractors or for damages to which the customer has contributed. Neither is HERA liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or other circumstances and which cannot be controlled by HERA with reasonable means. Moreover, HERA is only liable to the extent that the customer proves that the executive bodies or members of staff of HERA have deliberately or negligently breached contractual obligations owed to the customer.

c) In the event of liability HERA will compensate within the limits of lit. d) the **losses** of the customer to the extent that the customer proves that he has suffered an unavoidable loss caused by the breach of contractual obligations by HERA and **foreseeable** to HERA, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.

d) HERA is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late or non-existent delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent, and for other breaches of obligations is limited to an amount of 200 per cent of the value of the non-conforming part of the contract. However, this subparagraph does not apply to injury of life, body or health, to fraudulent concealment of the non-conformity or deficiency in title of the goods and to other breaches of contractual obligations due to intentional harm or gross negligence.

e) For breach of contractual, pre-contractual and/or obligations resulting from the business relation owed to the customer, HERA is obliged to pay damages exclusively in accordance with the provisions of these International Conditions of Sale. Any recourse to **concurrent bases of claim**, in particular of a non-contractual nature, is excluded. Equally excluded is any recourse against HERA's company organs, employees, servants, members of staff, representatives and/or those

employed by HERA in the performance of his obligations on grounds of breach of contractual obligations owed by HERA.

f) Insofar as the limitation period may not already have barred the claim, claims for damages brought by the customer are excluded after **six (6) months** beginning with the rejection of the claim for damages by HERA.

2. Irrespective of continuing legal or contractual claims the **customer** is obliged to pay **damages** to HERA as follows:

a) In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as (without evidence being necessary) interest at the rate applicable in Enger/Germany for unsecured short-term loans in the agreed currency, at least however interest at 8 per-cent points over the base rate of the German Federal Bank (Deutsche Bundesbank).

b) In the case of a failure to take delivery of the goods by the customer or of seriously **late taking delivery** of the goods by the customer, HERA is entitled to claim damages without evidence being necessary up to 15 per cent of the value of the goods to be delivered.

3. Within the bounds of what is legally possible as well as within what is usual in the trade, the **customer** is in his commercial relationships with his clients obliged to **limit his liability** both in principle and in amount.

#### **VIII. Other Provisions**

1. **Title of the goods** that have been delivered **remains with HERA** until settlement of all claims existing against the customer. The allocation of risk as to price and performance in section III.-8. is not affected by the reservation of title.

2. The customer shall, without any demand being necessary, inform HERA in writing if HERA has to observe any particular duties of reporting or registration or providing information or prior notification or **retaining documents** or any other **requirements for access to market**, under the provisions in force in the customer's country or in the country where the goods are to be used. Moreover, the customer will **monitor the delivered goods** in the market and inform HERA directly and in writing of any concern that the goods might pose a risk to third parties.

3. Without prejudice to HERA's continuing claims, the customer will indemnify HERA without limit against all claims of third parties which are brought against HERA on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer or other third parties without express written consent of HERA. In particular, the indemnity also includes the reimbursement for expenses incurred by HERA and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.

4. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by HERA in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.

5. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

## **IX. General Basis of Contracts**

1. The **place of delivery** results from section III.-5. of these International Conditions of Sale. The **place of payment and performance** for all the rest of obligations arising from the legal relationship between HERA and the customer is Enger/Germany. These provisions also apply if HERA assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of other clauses of the Incoterms or of other delivery clauses merely involves a variation of the provisions as to the transportation and the transportation costs; besides that, the foregoing provisions remain applicable. HERA is also entitled to require payment at the place of business of the customer.
2. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention / CISG**) in the English version governs the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, in case of doubt the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.
3. The **formation of contract**, including agreements as to the jurisdiction of courts and arbitrators, and the **rights and obligations of the parties**, also including the liability for death or personal injury caused by the goods to any person and pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Subject to differing provisions in these International Conditions of Sale, the rest of the legal relationship between the parties is governed by the non-uniform Swiss law, namely by the Swiss Obligationenrecht.
4. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these International Conditions of Sale apply, including their validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship with the customer shall be finally resolved, without recourse to the ordinary courts of law, by arbitration according to the Swiss Rules of International **Arbitration** (Swiss Rules) in force on the date when the Notice of Arbitration is received in accordance with these Rules. The tribunal shall consist of three arbitrators, one (1) of them shall be nominated by the claimant, one (1) of them by the respondent and the chairman of the tribunal shall be designated by the two arbitrators so nominated, or if the amount in dispute is inferior to € 50.000, there shall be one (1) arbitrator appointed according to the Swiss Rules of International Arbitration. The place of the arbitration shall be Zürich/Switzerland, the languages used in the arbitral proceedings shall be German and/or English. The competence of the Arbitral Tribunal excludes especially every statutory competence, which is provided by reason of a personal or substantive relation. If this arbitration clause is or will become void, the exclusive local and international jurisdiction of the courts which have jurisdiction for Enger/Germany is agreed for all disputes instead. Instead of bringing an action before the arbitral tribunal or before the State Court which has jurisdiction for Enger/Germany, HERA is also entitled to bring an action before the national courts of the customer's place of business, or other national courts having jurisdiction according to domestic or foreign law.
5. If provisions of these International Conditions of Sale should be or become partly or wholly ineffective, the remaining arrangements will continue to apply. The parties

are bound to replace the ineffective provision with a legally valid provision, as close as possible to the commercial meaning and purpose of the ineffective provision.