

# General Terms and Conditions of Sale

## § 1 General Provisions; Scope of Applicability

- (1) These General Terms and Conditions of Sale (hereinafter referred to as "GTC") apply to all sales or deliveries of movable goods (hereinafter referred to as "Goods") and other services of Kalfany Süße Werbung GmbH & Co. KG (hereinafter referred to as "Seller" or "We") to its customers (hereinafter referred to as "Buyer"), provided that the Buyer is an entrepreneur within the meaning of Section 14 German Civil Code (Bürgerliches Gesetzbuch, BGB), a legal entity under public law or a special fund under public law. These GTC also apply to all future business transactions, deliveries and services irrespective of whether they are separately referred to.
- (2) These GTC apply exclusively. Deviating, conflicting or supplementary terms and conditions of the Buyer will not be recognised, even if the Seller has not explicitly objected to them in every single case. Deviating, conflicting or supplementary terms and conditions only apply if and to the extent that the Seller has explicitly agreed to their applicability in the single case. Reference to a purchase order, a letter, an e-mail or other declarations of the Buyer which contain or refer to deviating, conflicting or supplementary terms and conditions, or the unconditional performance of the Seller's services of deliveries with knowledge of such terms and conditions, do not constitute consent of the Seller and also in such cases these GTC apply exclusively.
- (3) Legally relevant declarations and notifications relating to the contract which are to be submitted to us by the Buyer after conclusion of the contract (e.g. setting of deadlines, notification of defects, declaration of withdrawal or reduction) must be made in text form in accordance with Section 126b BGB in order to be valid.

## § 2 Conclusion of the Contract

- (1) Our offers are subject to change and non-binding, unless We will expressly indicate them as binding in the single case. This shall apply in particular to prices, quantities, delivery periods and delivery options.
- (2) Buyer's purchase orders or orders shall be deemed to be a binding offer of contract. Unless otherwise stated in the purchase order or the order, the Seller shall be entitled to accept this offer of contract by means of an order confirmation within fourteen (14) days of its receipt.
- (3) The contract concluded through the Buyer's purchase order or order and the Seller's order confirmation represents the entire agreement between the Parties and supersedes any oral agreements between the Parties, unless it is expressly stated that such oral agreements shall continue to apply in a binding manner. Additions and amendments to the contract, including these General Terms and Conditions of Sale, must be made in text form in accordance with Section 126b BGB to be valid.
- (4) Information provided by the Seller on the subject of the delivery or service (e.g. weights, dimensions, ingredients) as well as depictions of the same (e.g. drawings, graphics and illustrations) are only approximations unless the usability for the contractually intended purpose requires an exact concurrence. They are not guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations according to custom and usage and deviations resulting from legal provisions or deviations constituting technical improvements as well as the replacement of components with equivalent components, are permissible insofar as they do not impair the usability for the contractually intended purpose.
- (5) The Seller shall retain the ownership title or copyright to any offers and cost estimates submitted by the Seller and any drawings, graphics, illustrations, calculations, brochures, catalogues, models, samples, tools and other documents and aids provided to the Buyer. The Buyer may not make these items available to third parties, either as such or in terms of content, disclose them, use them itself or through third parties, or reproduce them without the express consent of the Seller. At the request of the Seller, the Buyer shall return these items to the Seller in full and destroy any copies made if they are no longer required by the Buyer in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded hereof shall be the storage of data provided electronically for the purpose of usual data backup.

## § 3 Buyer Specific Goods

- (1) According to the respective contract, We produce specific Goods and packaging for the Buyer. The provisions of this § 3 apply in addition to contracts for the delivery and performance of such buyer specific Goods.
- (2) Insofar as We have to produce final artwork and digital print templates for the packaging of the Goods, the Buyer shall be obliged to provide us with the data, product information and artwork required for this activity.
- (3) Insofar as the Buyer provides us with templates, data and information for use, the Buyer shall assure that its authorised to deliver and use these templates, data and information. The Buyer shall indemnify the Seller against all claims by third parties based on a legal defect of these templates, data or information.
- (4) The Seller shall expressly be entitled to use protected trademarks, logos, names or other business identifiers of the Buyer for the purpose of performance of the respective contract.
- (5) The Seller reserves the right to refuse the use of templates, data and information if they could lead to a breach of legal provisions, official orders or morality, or if there is reasonable cause for concern that they could lead to an infringement of the rights of third parties. In this case, both Parties shall be entitled to terminate the respective contract.
- (6) Insofar as the Seller provides the Buyer with templates, data and information (e.g. standard motifs) for the purpose of executing the respective contract (e.g. for the production or coordination of final artwork or digital print templates), these may only be used by the Buyer for the purposes of the respective contract. No other uses shall be permitted.
- (7) Unless expressly agreed otherwise, the Seller shall be entitled to delete buyer specific digital (print) data 12 months after invoicing for the respective contract.
- (8) Buyer specific Goods and packaging will be produced as soon as their design has been approved by the Buyer. For this purpose, the Seller shall submit appropriate samples or proofs to the Buyer for approval. Any agreed delivery periods pursuant to § 4 of these GTC shall only begin with the date of the release of the sample and/or the proof.
- (9) Unless expressly agreed otherwise, all tools required for the production of the Goods (e.g. moulds, films, printing plates, production and hand tools, master stamps) shall remain the property of the Seller. Unless expressly agreed otherwise, this applies also if the Buyer has made a financial contribution to the manufacture of the tools.
- (10) The tools for buyer specific custom-made products shall remain protected for the Buyer for the period of two years from the date of invoicing for the relevant contract and shall not be used for other customers of the Seller. However, unless expressly agreed otherwise, We shall be entitled to use Goods manufactured with these tools as samples or for advertising purposes.
- (11) Tools for buyer specific custom-made products shall be kept by the Seller for two years from the date of invoicing for the relevant contract.

## § 4 Delivery Periods

- (1) Unless expressly agreed otherwise, information concerning delivery periods shall be only approximate. Unless expressly agreed otherwise, information concerning delivery periods refer to the time of handover to the carrier, freight forwarder or other third party commissioned with the transport or (in the case of pick up by the Buyer) to the Buyer.
- (2) Compliance with agreed delivery periods shall be subject to the timely and proper fulfilment

- of all obligations of the Buyer. We reserve the right to plead non-performance of the contract.
- (3) The Seller shall not be liable for the impossibility of delivery or for the delay in delivery insofar as this was caused by an event of force majeure or other events unforeseeable at the time of the conclusion of the contract and for which the Seller is not responsible. Events of force majeure and unforeseeable events within the meaning of the preceding sentence shall be deemed to be in particular labour disruptions and interruptions, impossibility or delays in the procurement of raw materials, delays in transport, strikes, lockouts, periods of energy shortage, energy scarcity, difficulties in obtaining official permits, official measures, pandemics or epidemics or non-delivery, incorrect delivery or late delivery by upstream suppliers for which the Seller is not responsible. If the Seller will be unable to meet delivery periods due to such events, the Seller shall inform the Buyer thereof without undue delay. If such events are only of temporary nature, delivery periods shall be extended accordingly. If such events make it significantly more difficult or impossible for the Seller to deliver and the hindrance is not only of temporary nature, the Seller shall be entitled to withdraw from the contract in whole or in part; in this case, any payment already made or other consideration already provided shall be refunded to the Buyer without undue delay.
- (4) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer shall be required.
- (5) The rights of the Buyer pursuant to § 10 of these GTC and our statutory rights in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected.

## § 5 Delivery

- (1) Unless expressly agreed otherwise, delivery of the Goods shall be ex works of the Seller. Unless expressly agreed otherwise, the risk shall pass to the Buyer when the products are handed over to the carrier, freight forwarder or other third party commissioned with the transport or (in the event of pick up by the Buyer) to the Buyer.
- (2) At the request and expense of the Buyer, the Goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, the right to determine the type of shipment (in particular transport company, shipping route, packaging) shall lie with us.
- (3) Unless otherwise stated in the contract, delivery excluding packaging shall be deemed agreed.
- (4) The Seller shall be entitled to make partial deliveries and render partial services for justified reasons, insofar as this will be reasonable for the Buyer. Each partial delivery shall result in partial performance of the delivery obligation.
- (5) We reserve the right to produce excess or short quantities within a fluctuation range of +/- 10 % for reasons relating to production.
- (6) In the event of default in acceptance or other culpable breach of duties to cooperate on the part of the Buyer, the Seller shall be entitled to compensation for the resulting damage, including any additional expenses. In this case, We shall charge a flat-rate compensation of 0.5 % of the net invoice amount of the relevant delivery per calendar week or part thereof, but no more than 5 % of the net invoice amount, beginning with the agreed delivery date or, in the absence of a delivery date, with the notification that the Goods are ready for dispatch. The Seller reserves the right to prove that a higher damage has been incurred. The Buyer reserves the right to prove that no damage at all or only significantly less damage has been incurred. Further claims of the Seller shall remain reserved.
- (7) In this case, the risk of accidental loss or accidental deterioration of the products will pass to the Buyer at the time of default of acceptance or other breach of duties to cooperate.
- (8) We will not take back transport packaging and all other packaging in accordance with the Packaging Act, such packaging will become the property of the Buyer (exempted hereof shall be Euro exchange pallets).

## § 6 Prices and Terms of Payment

- (1) The prices stated in our order confirmation shall be decisive.
- (2) Unless expressly agreed otherwise, the prices will be in euros, ex works of the Seller and subject to addition of costs of packaging. Unless otherwise agreed, they are subject to the addition of the respective statutory value added tax and any further taxes, customs duties or other import or export charges.
- (3) We reserve the right to charge for excess or short quantities of 10 % relating to reasons of technical production, without this resulting in a change to the agreed price.
- (4) Unless otherwise agreed, the prices do not include design costs. In the absence of an agreement to the contrary, the services for the development of Buyer specific Goods in accordance with § 3 of these GTC and for the production of designs and means of production (e.g. moulds, films, drawings, printing plates, production and hand tools, master stamps) in particular shall be remunerated and invoiced separately.
- (5) The Seller expressly reserves the right to adjust prices if there will be a period of more than thirty (30) days between the date of the order confirmation and the delivery of the Goods and if there will be a demonstrable and substantial increase in the costs of manufacturing the Goods, such as material or energy costs. In this case, the Buyer may cancel the contract concerned without further costs. Claims for damages by the Buyer are excluded.
- (6) Unless expressly agreed otherwise, the purchase price will be due and payable within thirty (30) days from the date of invoice and delivery of the Goods.
- (7) Insofar as advance payment has been agreed, any agreed delivery periods in accordance with § 4 of these GTC shall only begin from the moment of receipt of payment.
- (8) In the event that, after the conclusion of the contract, the Seller has reasonable grounds to believe that the Buyer is not in a position to fulfil its obligations (e.g. if the Buyer fails to make due payments), the Seller shall be entitled, at the Seller's discretion, to deliver Goods only against advance payment or appropriate security. The Seller shall declare a corresponding reservation at the latest with the order confirmation.
- (9) Generally, payments are only deemed to have been made on the day on which We can dispose of the corresponding amounts. In the event of partial deliveries, We expressly reserve the right to invoice on a pro rata basis. Transaction fees from foreign banking transactions shall be borne by the Buyer. Payments are to be made directly to us.
- (10) The Buyer shall only be entitled to rights of set-off or retention insofar as the Buyer's claim has been finally and non-appealably established or is uncontested. In the event of defects in delivery, the counter rights of the Buyer shall remain unaffected, in particular pursuant to § 9 para. 5 sentence 2 of these GTC.
- (11) If it becomes apparent after the conclusion of the contract that our entitlement to the purchase price is jeopardised by the Buyer's inability to perform (e.g. due to an application for the opening of insolvency proceedings), We shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (Section 321 BGB).

## § 7 Retention of Title

- (1) All delivered Goods shall remain our property ("Goods Subject to Retention of Title") until all our present and future receivables, to which we are entitled in connection with the contract and the ongoing business relationship have been fully settled ("Secured Receivables").
- (2) The Goods Subject to Retention of Title may neither be pledged to third parties nor assigned as security before full settlement of the Secured Receivables. The Buyer must inform us without undue delay in writing if and to the extent that third parties seize the Goods Subject to

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Retention of Title or an application is made to open insolvency proceedings.

- (3) In the event of a Buyer's conduct in breach of contract, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the Goods Subject to Retention of Title on the legal basis of the reservation of title and withdrawal. The demand for return shall not be deemed to include also the declaration of withdrawal; We shall rather be entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, We may only assert these rights if We have previously set the Buyer a reasonable deadline for payment that has expired without the payment being made or if setting such a deadline is dispensable according to the statutory provisions.
- (4) Until revoked in accordance with (c) below, the Buyer shall be authorised to resell and/or process the Goods Subject to Retention of Title in the ordinary course of business. In this case, the following provisions shall apply in addition.
  - (a) The retention of title shall extend to the products created by processing, mixing or combining the Goods Subject to Retention of Title at their full value, whereby We are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, We shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the product resulting as to Goods Subject to Retention of Title.
  - (b) The Buyer hereby assigns to us as security the receivables towards third parties arising from the resale of the Goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the above paragraph. We accept the assignment. The obligations of the Buyer referred to in paragraph (2) also apply in respect of the assigned receivables.
  - (c) In addition to us, the Buyer shall remain authorised to collect the receivable. We undertake not to collect the receivable as long as the Buyer meets its payment obligations towards us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in its ability to perform. If this is the case, however, we may demand that the Buyer informs us of the assigned receivables and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case We are entitled to revoke the Buyer's authorisation to further sell and process the Goods Subject to Retention of Title.
  - (d) If the value realisable of the securities shall exceed the Secured Receivables by more than 10 %, We shall release securities of our choice at the Buyer's request.
  - (5) In general, the Buyer shall be obliged to treat the Goods Subject to Retention of Title with care and to insure them against the usual risks of damage such as fire, water and theft in an amount sufficient at the Buyer's own expense. Claims against the insurance company shall be deemed assigned in the amount of the value of the Goods plus any costs and expenses incurred by us. The Buyer shall be obliged to notify us immediately in the event of a seizure of the Goods Subject to Retention of Title or the receivables towards its customers assigned to us and to advance the costs of a possible intervention process; the Buyer must finally bear these costs if the opposing party will not reimburse them.
  - (6) In any case, if there will be a concrete risk for the Goods Subject to Retention of Title and thus receivables to which we are entitled, we shall have the right to access the Goods Subject to Retention of Title ourselves or through agents and to ensure by suitable measures that the rights to which we are entitled will not be impaired or thwarted. This shall include the consent of the Buyer for access to the storage location of the Goods Subject to Retention of Title. If the Goods Subject to Retention of Title will be stored with third parties, the Buyer shall undertake to also request their consent already at the time of storage of the Goods.

## § 8 Use and Quality of Goods

- (1) Insofar as the use of the Goods delivered by the Seller or the products resulting from the use of the Goods are subject to statutory regulations (e.g. in the case of use of Goods as or for foodstuffs or semi-luxury foods) and insofar as this is not expressly agreed otherwise, it shall be the responsibility of the Buyer to control whether the Goods are suitable for this use and whether the products comply with the relevant statutory regulations.
- (2) Unless expressly agreed otherwise, variations in quality inherent in the nature of the Goods, in particular variations in smell, taste, colour or consistency inherent in the nature of the Goods, shall not constitute a defect and shall not give rise to any warranty claims on the part of the Buyer.
- (3) For technical reasons, register differences and slight colour deviations cannot be avoided in some printing processes for packaging. These do not constitute a defect and do not justify any warranty claims on part of the Buyer.
- (4) In the case of perishable Goods, the agreed minimum shelf life presupposes the proper and professional handling of the Goods (in particular storage and transport) by the Buyer.
- (5) Insofar as the Buyer provides raw materials or materials which We use for the manufacture of Goods or for packaging purposes, the Buyer shall bear unlimited responsibility for ensuring that these raw materials and materials are free from material defects and defects of title. The Buyer shall indemnify the Seller against all claims of third parties based on a material defect or defect of title of these raw materials or materials.

## § 9 Buyer's Claims for Defects

- (1) The statutory provisions apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery), unless otherwise determined below. In all cases, the special statutory provisions remain unaffected in case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further (supplier recourse pursuant to Section 478 BGB). Claims from supplier recourse are excluded if the defective Goods have been further processed by the Buyer or another entrepreneur, e.g. by incorporation into another product.
- (2) The basis of our liability for defects shall be primarily the agreement reached on the quality of the Goods. All product descriptions and manufacturer's specifications which are subject of the single contract shall be deemed to be an agreement on the quality of Goods. Insofar as the quality has not been agreed, the statutory provision shall be used to assess whether or not there is a defect.
- (3) Generally, we shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (Section 442 BGB). Claims for defects on part of the Buyer presuppose that the Buyer has fulfilled its statutory obligations to inspect and give notification of defects (Section 377 and Section 381 German Commercial Code, (Handelsgesetzbuch, HGB)). In the case of Goods intended for further processing, an inspection must in any case be carried out immediately prior to processing. If a defect becomes apparent upon delivery, inspection or later, We must be notified of such defect in text form without undue delay. If the Buyer fails to properly inspect the Goods and/or give notification of defects, our liability for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.
- (4) If the delivered item is defective, we shall, at our discretion, provide warranty by remedying the defect (rectification) or by delivering Goods free of defects (replacement). Our right to refuse supplementary performance under the statutory conditions shall remain unaffected.
- (5) We are entitled to depend the supplementary performance owed on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.
- (6) The Buyer must allow for us the time and opportunity necessary for the supplementary

performance owed, in particular to hand over the Goods rejected for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions.

- (7) We shall bear or reimburse the expenses required for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs, in accordance with the statutory regulations if a defect is actually present. However, if a request by the Buyer to remedy a defect turns out to be unjustified, We may demand reimbursement of the costs resulting from such unjustified request from the Buyer.
- (8) If the supplementary performance has failed or a reasonable deadline to be set by the Buyer for the supplementary performance has expired without the supplementary performance having been made or the supplementary performance is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. However, there will be no right of withdrawal in the case of an insignificant defect.
- (9) Buyer's claims for damages or reimbursement of futile expenses shall persist only in accordance with § 10 of these GTC and are otherwise excluded.

## § 10 Other Liability

- (1) Insofar as nothing to the contrary arises from these GTC including the following provisions, We shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
- (2) We shall be liable for damages - irrespective of the legal grounds - in the event of intent and gross negligence. In the event of simple negligence, We shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), for
  - a) damages resulting from injury to life, body or health,
  - b) damages resulting from the breach of a material contractual obligation (obligation the performance of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. (2) also apply towards third parties and in the event of breaches of duty by persons (also in their favour) for whose fault We are responsible in accordance with statutory provisions. The limitations of liability resulting from para. (2) do not apply insofar as We have fraudulently concealed a defect or have assumed a guarantee for the quality of Goods, and for claims under the Product Liability Act.
- (4) Due to a breach of duty that does not consist of a defect, the Buyer may only withdraw or terminate the contract if We are responsible for the breach of duty. An unrestricted right of termination of the Buyer (in particular according to Section 650 and Section 648 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## § 11 Limitation Period

- (1) Notwithstanding Section 438 (1) no. 3 BGB, the general limitation period for claims resulting from material defects and defects of title shall be one year from the transfer of risk.
- (2) The limitation period above also applies to contractual and non-contractual claims for damages of the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (Section 195 and Section 199 BGB) would lead to a shorter limitation period in the single case. The limitation periods of the Product Liability Act shall remain unaffected in any case.

## § 12 Recall of Goods

- (1) The Buyer shall inform the Seller without undue delay if it becomes aware of a consumer complaint, a negative test result, abnormalities in sampling or official complaints about the Seller's Goods. The Buyer shall support the Seller in clarifying any indications of quality defects and/or safety concerns.
- (2) Should the Buyer become aware of circumstances on the basis of which a silent withdrawal, a recall of the Goods or a public warning is to be considered, the Buyer shall inform the Seller thereof without undue delay and in detail. All relevant documents, contact details and other information shall be forwarded to the Seller without request and without undue delay, and a central contact person with the decision-making powers necessary shall be appointed at the Buyer for further coordination.
- (3) The Seller solely shall decide on a withdrawal or recall of the Goods as well as on a public warning and the Seller shall coordinate with the Buyer regarding such withdrawal, recall of the Goods or public warning.
- (4) If the Buyer shall consider a withdrawal, recall or public warning of Goods processed by the Buyer, it shall consult the Seller in advance. Communication to third parties shall only take place with the prior written consent of the Seller.
- (5) In the event of a withdrawal, recall or public warning, the Seller shall only be liable for such costs or damages of the Buyer which it has agreed to bear in text form in advance or which have arisen due to its culpable conduct. The provisions of § 10 of these GTC shall remain unaffected.

## § 13 Confidentiality

- (1) The Buyer shall keep confidential information as well as business and trade secrets of the Seller which have been entrusted to it or have become known to it as such during the term of the contract and also after its termination confidential.
- (2) Documents or data regarding confidential information as well as business and trade secrets entrusted to the Buyer shall be returned to the Seller or deleted by the Buyer without undue delay after its use in accordance with the order, at the latest, however, upon termination of the contractual relationship. Excluded hereof shall be the storage of data provided electronically for the purpose of usual data backup.

## § 14 Data protection

With regard to the collection and processing of personal data, reference is made to the separate privacy policy of the Seller (available at <https://www.suesse-werbung.de/en/privacy-policy>).

## § 15 Place of Performance, Choice of Law, Place of Jurisdiction, Dispute Resolution

- (1) The place of performance for these GTC and all services shall be Herbolzheim/Germany, unless expressly agreed otherwise in writing.
- (2) The law of the Federal Republic of Germany shall apply to these GTC and all legal relationships between us and the Buyer to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (3) The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Freiburg im Breisgau/Germany. However, We shall also be entitled to bring an action at the Buyer's general place of jurisdiction.
- (4) Should one or more provisions of these GTC be or become void or invalid in whole or in part, this shall not affect the validity of the remaining provisions. Any provisions of these GTC that are not included or are invalid shall be replaced by statutory law. If such statutory law will not be available in the respective case (loophole) or would lead to an unreasonable result, the Seller and the Buyer shall enter into negotiations to replace the non-included or invalid provision with a valid provision that comes as close as possible to it in economic terms.