

**Commercial part**  
As at 11.08.2016

**§ 1 AREA OF VALIDITY**

- 1.1 These terms apply to the whole business relationship between Masa GmbH (hereinafter: "Masa") and their client (hereinafter: "The Client" and together as "Contractual parties") in the version in force on the date the contract is concluded.
- 1.2 These terms also apply to all future transactions as agreed between the contractual partners, even if Masa is not expressly referred to in these.
- 1.3 The conditions below relate primarily to the supplies and services for plant or plant parts. The same conditions apply to consumables and spare parts, fitting, service and repairs unless otherwise stated.
- 1.4 The client's differing, conflicting or supplementary terms will not be a component part of the contract, even if they are known to Masa, unless Masa has agreed that they are valid in writing. This shall also apply unreservedly should Masa provide services if it knows about the client's conflicting and/or differing conditions.

**§ 2 CONCLUDING THE CONTRACT AND TOPIC MATTER OF THE CONTRACT**

- 2.1 A contract comes into force between the contractual parties with the receipt at the client of Masa's order confirmation or pro-forma invoice, by the receipt of the down payment governed by § 3.2.1 in Masa's bank account or by the contract being signed by both contractual parties.
- 2.2 Masa's written order confirmation or pro-forma invoice is decisive for the type and range of services.
- 2.3 Any changes to the contractually agreed supplies and services require a written agreement and attract an additional payment. Should the client make such changes to the order, Masa will submit a quotation to the client that contains the required drawings, descriptions and specifications as well as any additional or reduced costs and any possible time shifting.
- 2.4 The client will owe Masa a reasonable payment for making the change requests as set out in § 2.3 regardless of whether it involves a change to the range of supplies and services.

**§ 3 PRICES AND PAYMENT**

- 3.1 The price for the supply and assembly of the components as set out in the specifications in the TECHNICAL PART relates to the whole range of supply and services and includes exclusively all taxes, duties and fees that are to be paid in accordance with the law in force. The costs of packaging and transport are not included in the price unless otherwise stated.
- 3.2 Plant and plant parts including assembly
  - 3.2.1 Payment must be made to Masa as follows:
    - 30% as down payment when the order is confirmed
    - 60% on delivery, on presentation of shipping documents
    - 10% 180 days from the date of the last shipment.
  - 3.2.2 Unless agreed otherwise, the price is to be paid by opening an irrevocable, confirmed, free negotiable Letter of Credit in Masa's favour, advised by one of the German banks below.
  - 3.2.3 The following clauses (standard SWIFT) must be included in the Letter of Credit:
    - a) Field 31D: Validity (expiry) date: at least 21 calendar days after the last shipping date. If an acceptance certificate is to be submitted under the terms of the Letter of Credit the expiry date must be extended accordingly in order to enable the submission of the acceptance certificate.
    - b) Field 43P: Partial deliveries: permitted
    - c) Field 44E: Port of loading: any European port (in the case of sea transport).
    - d) Field 48: Presentation period: 21 days after the shipping date (for presentation of the shipping documents). The acceptance certificate must be submitted within the Letter of Credit validity period (if an acceptance certificate is to be submitted under the terms of the Letter of Credit).

3.2.4 If payment is not made by Letter of Credit (§ 3.2.2), it must be made to Masa immediately after receipt of the respective invoice but no later than 30 days after receipt of the invoice. Failure to observe these payment terms will incur default charges of 8% above the relevant base rate of the European Central Bank from the 31st day after the receipt of the invoice. No warning will be given. A discount will only be possible when it has been agreed upon in writing for the respective order.

3.3 Spare parts, consumables, repairs and services

Payment to Masa for spare parts, consumables, repairs and service will be made according § 2 of the general terms for the sale of spare parts and consumables and for repairs.

3.4 Bank details

Landesbank Baden-Württemberg Augustaanlage 33 68165 Mannheim SWIFT: SOLADEST IBAN: DE92 6005 0101 7401 5504 20	Commerzbank AG: Clemensstraße 32 56068 Koblenz SWIFT: COBA DE FF 570 IBAN: DE56 5704 0044 0104 7000 00
DZ BANK AG Roonstr. 7 56068 Koblenz SWIFT: GENO DE DD 570 IBAN: DE10 5706 0000 0000 5389 43	Kreissparkasse Köln Neumarkt 18 – 24 50667 Köln SWIFT: COKS DE 33 IBAN: DE49 3705 0299 0000 3611 47

3.5 The client may only withhold payment or set it off against counter claims if its counter claims are established to be undisputed or legally valid.

3.6 The client will bear any costs related to paying the purchase price.

#### § 4 DELIVERY TIME, DELAYED DELIVERY, DELIVERY CONDITIONS

4.1 Masa will start providing the services after receipt of the first down payment or in accordance with the payment schedule. A delay will alter the time schedule accordingly. If necessary it will need to be re-negotiated.

4.2 A prerequisite for Masa meeting its contractual obligations regarding supplies and services in accordance with the contract is the client meeting in full the duties and obligations set out in § 6. If this is not the case the delivery time will be extended to a reasonable extent. This will not apply if Masa is responsible for the delay.

4.3 Delivery time:

4.3.1 Delivery time unless otherwise agreed in the contract:

- on 100% Letter of Credit: currently 4 - 5 months after L/C opening and technical clarification (confirmed project drawing).
- on a down payment not associated with the Letter of Credit: currently 4 - 5 months from down payment and technical clarification (confirmed project drawing). Opening of L/C at least 3 months before delivery date.

4.3.2 For spare parts, consumables, repairs and services: In accordance with the individual confirmation.

4.3.3 Delivery terms are **ex German works (INCOTERMS 2010)**.

All costs relating to these delivery terms are specified and included in the price.

4.4 Partial deliveries are permissible if

- a) the supply of the remaining goods ordered is guaranteed and
- b) the client is not caused considerable additional work or additional costs (unless Masa declares that it is prepared to bear these costs).

4.5 The delivery time is deemed to be met if the delivery item has left the factory before it expires or Masa has notified that it is ready for dispatch. If an acceptance procedure must take place,

except in the event of acceptance being justifiably refused, the acceptance date is the deciding factor or, alternatively, notification of readiness of acceptance.

- 4.6 Masa shall not be liable for not being able to supply or for delivery delays if these have been caused by an Act of God or other events that were unforeseeable at the time the contract was concluded, such as fire, explosion, war, general mobilisation, rebellion, revolution, confiscation, acts of sabotage, embargo, requisition, insolvency, adverse weather conditions, which make working unreasonable (e.g. heavy snow, frost or storms), industrial action of any kind, operational malfunctions of any kind, difficulties in obtaining materials or power, transport delays and failure by suppliers to supply or suppliers supplying the wrong items or not supplying them in time, for which Masa is not responsible. Should such events make it significantly more difficult or impossible for Masa to supply the goods or provide the service and the delay is not just temporary, Masa is entitled to withdraw from the contract. For temporary delays the lead time for supply and services will be extended or the dates for supply and services will be moved by the period of the delay plus a reasonable lead time and the time for any necessary reorganisation. If the client cannot be expected to accept the supply or service as a result of the delay, it may withdraw from the contract by sending a written declaration to Masa immediately.
- 4.7 Masa is also not responsible for the events listed in § 4.6 should they occur during a delay by Masa that has already started. Masa will inform the client promptly of the start and end of such events in important cases.
- 4.8 Should the dispatch or acceptance of the delivery item be delayed for reasons for which the client is responsible, it will be charged any costs arising as a result of the delay one month after notification that the goods are ready for dispatch or the acceptance date or notification of readiness for acceptance by Masa (§ 4.5) but at least nought point five percent (0.5%) of the invoice amount for the consignment or, in the event of partial deliveries, the proportionate invoice amount for each month. Further claims by Masa remain unaffected. It is up to the client to prove that Masa has incurred no or significantly lower damages as a result of the delay.
- 4.9 After another month from the notification that dispatch or acceptance is ready (§ 4.8) Masa is entitled to withdraw from the contract without setting another date and to dispose of the delivery item in another way. Masa may retain any down payment already paid by the client. Masa reserves the right to claim any further expenses from the client. § 4.8 and § 4.9 also apply if Masa has transported the plant or plant parts and the client has refused to accept the supplied plant or plant parts.
- 4.10 Should Masa be responsible for the delay and the client incurs damages as a result, the client is entitled to claim fixed delay damages should the whole consignment be delayed. The delay damages will be nought point five percent (0.5%) after a delivery delay of 4 weeks for each additional complete week, in full or no more than five percent (5 %) of the value of this part of the total consignment which, as a result of the delay, cannot be used at the right time or not in accordance with the contract. Further claims by the client because of a delay and claims for a delay for a partial delivery are excluded.
- 4.11 After taking legally exceptional cases into consideration, should the client set Masa a reasonable time to perform after the due time and Masa does not meet this date, the client is entitled to withdraw from the contract.

## **§ 5 MASA'S SCOPE OF SUPPLY AND SERVICES**

- 5.1 Deliveries will be made ex works. Masa will provide the plant and plant parts as well as spare parts and consumables for the client to collect unpackaged unless the contractual parties agree otherwise. Reference is made to Clause EXW of Incoterms in their currently valid version.
- 5.2 Plant parts, machines, materials, such as building materials, basic materials, operating materials, raw materials including substances required for commissioning or operation as well as gas, water, power, petrol or oil (including hydraulic oil) which are not expressly part of Masa's delivery schedule and services will not be paid for by Masa. For safety reasons all hydraulic parts will be quoted for and supplied without hydraulic oil.
- 5.3 Deliveries will be made with the following restrictions:
- 5.3.1 Sound insulation devices, sound absorption measures, dust filter units and corresponding plant parts for pollution control as well as catwalks, stairs or maintenance platforms will only be part of the delivery schedule if this has been expressly agreed.

- 5.3.2 The compressed air supply is not included in the delivery schedule. The client will ensure that there is a sufficient compressed air supply both in terms of quality and quantity.
- 5.3.3 Consumables and also spare parts are only included in the delivery schedule if this has been expressly agreed in writing.
- 5.4 Plant parts which are not included in the delivery schedule but which are integrated into the equipment at the client's request, must meet German technical standards in order to guarantee that the plant subsequently works perfectly. These integrated parts that are not supplied by Masa are not covered by Masa's guarantee.
- 5.5 Masa assumes that the project plans and foundation plans submitted to the client have been implemented fully and correctly by the client. Masa is not obliged to check this but will rely on the client's confirmation that this has been done properly.
- 5.6 Masa will only train and instruct the client's operating and maintenance personnel in how the plant works in accordance with the separate service description. The client will have to pay Masa separately for any training or instruction going beyond this.

## **§ 6 CLIENT'S DUTIES AND OBLIGATIONS**

- 6.1 The client will perform its contractually agreed duties and obligations in good time according to the schedule, in particular it will set up the foundations and the site and the required connections at its own expense. This includes in particular fully finished, hardened foundations and completed installation work that would hinder or delay Masa's fitters' work in any way, e.g. work on the building. The client must discuss the technical prerequisites for Masa to perform the supply and service obligations early in the proceedings so that the destination point can be prepared accordingly. The basis for these duties and obligations are the project or foundation plans and the tables of services provided by Masa which must be approved by the client within two (2) weeks. Unless expressly contradicted these will be deemed to be approved after two (2) weeks.
- 6.2 The client will obtain all the approvals necessary for the transportation (including export), the erecting, the commissioning and the operation of the plant or plant parts in good time and will prove this to Masa on request and will provide the required number of them. The client will guarantee that all the required approvals are available.
- 6.3 Catwalks, stairs or maintenance platforms must be installed in accordance with the relevant legal regulations. Personal protective equipment, such as fall protection equipment must be provided by the client.
- 6.4 For plant parts that are not included in the actual delivery schedule but which are integrated into the plant at the client's request, the client will ensure at its own expense and under its own responsibility that these plant parts comply with the relevant safety regulations, that they can be integrated into Masa's safety concept and an appropriate reliable exchange of signals can be made between these plant parts and Masa's plant parts.
- 6.5 The measures required to meet additional, special or deviating foreign standards and laws, e.g. technical regulations or safety regulations, must be specified by the client and Masa will be paid separately for them.
- 6.6 The client bears the risk of the supply and service provided under the terms of the contract not complying with the legal standards applying in the destination, particularly customs and import provisions and the standards for construction, pollution control, environmental protection and plant safety laws unless compliance with these legal standards is definitely assigned to Masa. It will release Masa from any consequences of an infringement of such legal standards. This exemption will also include in particular the costs of legal action.

## **§ 7 TRANSFER OF RISK**

- 7.1 Risk is transferred on the date set out in the international regulations for the interpretation of trading clauses (INCOTERMS) in the version applying on the date the contract is concluded. This will be ex German works unless agreed otherwise. The aforementioned terms apply unrestrictedly even if partial deliveries take place for which the purchaser is obliged to perform an acceptance process in accordance with § 4.4 of these business terms, without requiring separate express permission for this or the seller has assumed other costs, e.g. dispatch costs or transportation.

- 7.2 Should the dispatch or the collection be delayed or not occur as a result of circumstances for which Masa is not responsible, the risk is transferred to the client on the day of the notification of the dispatch or acceptance readiness.
- 7.3 At the client's request Masa will insure the respective consignment against theft, breakage, transport, fire and water damage and any other insurable risks. The client will bear any associated costs.

#### **§ 8 ASSEMBLY AND OTHER SERVICE**

- 8.1 If assembly has been agreed in the contract this will be done, along with the acceptance of the plant/ plant parts, in accordance with the "Assembly terms" in the version applicable at the time the contract is concluded. This applies also to training and instructing the client's employees and to the use of fitters for repairs and other service jobs.
- 8.2 With assembly or other service jobs Masa is under no obligation to provide general supervision for safety issues.

#### **§ 9 RESERVATION OF PROPRIETARY RIGHTS**

- 9.1 Masa reserves the right to ownership and copyright for patterns, cost estimates, drawings etc., tangible and intangible information even in electronic form.
- 9.2 All goods remain Masa's property (reserved goods) until all claims from the business relationship with the client have been met for whatever legal reason, including claims that will arise in future and conditional claims also arising from contracts concluded at the same time or at a later date. This also applies if payments are made for especially designated requirements. Masa is only entitled to take back or seize the reserved goods after withdrawal from the contract. A right to withdraw applies particularly if an application to open insolvency proceedings against the client's assets has been made.
- 9.3 The reserved goods are machined and processed for Masa as the manufacturer without obligating Masa. The machined or processed goods are deemed to be reserved goods in the sense of these conditions. If the reserved goods are processed or amalgamated inseparably with items not belonging to Masa, Masa will obtain co-ownership in the new item in proportion to the value of the invoice for the reserved goods to the invoice value of the other goods used at the time of processing or amalgamation. If Masa's reserved goods are attached or amalgamated inseparably with other movable items in order to form a single item and if this item is considered to be the main item, the client will transfer proportional co-ownership to Masa if the main item belongs to it.
- 9.4 The client may not pledge the reserved goods or make them over as security without Masa's prior written consent. The client must inform Masa immediately in writing in the event of seizures or other third party interventions. The client is entitled to dispose of the reserved goods in the normal course of business. The client is free to dispose of the reserved goods either by installing them in property or in facilities attached to buildings or to use them to meet other contracts. The client will cede to Masa any claims against the purchaser or third parties for the invoice value of the reserved goods that arise from the reselling of the reserved goods. Should the reserved goods be disposed of by the client together with other items not supplied by Masa, the cession of the claim from the resale will only be for the amount stated by Masa in the invoice for the reserved goods disposed of in this case. If goods in which Masa has a co-ownership share pursuant to § 9.3 above are resold, the cession of the claim will be for the amount of this co-ownership share. The ceded claims will be used to the same extent as the reserved goods for security.
- 9.5 The client is entitled to collect amounts from the resale until this is revoked by Masa, which is permissible at any time. Under no circumstances is the client entitled to cede these claims in any other way. On request it is obliged to inform its purchasers of the cession to Masa and provide Masa with the required information and documents to assert the claims.
- 9.6 Should the value of the existing securities for Masa exceed Masa's claims by a total of more than ten percent (10 %), at the client's discretion and at its request, Masa is obliged to release securities to this extent.

## § 10 CLAIMS FOR DEFECTS

Subject to § 11, Masa will provide the following guarantee for material defects and defects of title excluding further claims:

### Material defects:

- 10.1 Guarantee claims from the client presuppose that the client has complied with its legal examination and complaint obligations properly. Masa must be notified immediately of any defects detected. Should the client fail to notify Masa, the defect will be deemed to be approved unless it is a defect that could not be detected in the examination.
- 10.2 Should there be a material defect at the time risk was transferred, Masa is first of all obliged to provide supplementary performance either by repairing or replacing the goods at its discretion. To do this the client, after consultation with Masa, must set a reasonable time for supplementary performance. Otherwise Masa is relieved of liability for any consequences arising. The client is only entitled to remedy the defect itself or have it remedied by a third party and demand damages from Masa for the expenses required for this, limited to the normal market amount, in urgent cases such as endangering operational safety or to prevent a disproportionate amount of damage and if supplementary performance attempts have repeatedly failed or if supplementary performance is not reasonable and it may only do this on prior instructions from Masa.
- 10.3 Should the complaint turn out to be justified, Masa will bear the direct costs of the replacement part, including dispatch, arising from the repair or replacement delivery. Masa will also bear the costs of removal and installation and the costs of providing the necessary fitters and assistants, including their travel expenses, as long as a disproportionate strain is not put on Masa as a result of this. Should the complaint turn out to be unjustified, Masa may charge the client its expenses at normal market conditions.
- 10.4 Should Masa supply a replacement product for supplementary performance, the client shall release the defective product and pay compensation for use and enjoyment. Replaced parts become Masa's property.
- 10.5 The guarantee does not cover damage caused by the following reasons:  
Unsuitable or improper use, defective fitting or commissioning by the client or a third party, normal wear and tear, defective or negligent treatment, unsuitable operating materials, replacement materials, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences, unless Masa was responsible for them.
- 10.6 Should the client or a third party repair the item wrongly, Masa is not liable for the consequences arising. The same applies in the event that the client or a third party makes changes to or undertakes maintenance work on the plant without Masa's prior consent.

### Defects of title:

- 10.7 Should the use of the supplied item lead to the infringement of industrial property rights or copyright in the home country, Masa will acquire for the client the right to further use or will modify the delivery item in a reasonable way for the client so that the industrial property right infringement no longer exists. Should this not be possible under financially reasonable conditions or within a reasonable time, the client is entitled to withdraw from the contract. Masa is also entitled to withdraw from the contract under the aforementioned conditions.
- 10.8 Masa's obligations as set out in § 10.7 are, subject to §§ 11 and 13, final in the event of an infringement of industrial property rights or copyright.

They exist only if

- a) the client informs Masa immediately of any industrial property rights or copyright infringements asserted,
- b) the client supports Masa to a reasonable extent in the defence of the claims asserted or allows Masa to carry out the modifications as set out in § 10.7,
- c) Masa reserves the right to use any means of defence, including out of court settlements,
- d) the defect of title is not based on a client's instruction and
- e) the infringement of rights has not been caused by the client modifying the delivery item independently or using it in a manner that is not in compliance with the contract.

**Material defects or defect of title:**

- 10.9 Claims for damages from the client, claims for compensation for wasted expenses and the right to reduce the value of the contract or withdraw from it as a result of a material defect or defect of title are excluded. This shall not apply if Masa has fraudulently concealed the defect.
- 10.10 Masa is liable under the terms of the guarantee for an amount of no more than five percent (5%) of the order value for material defects or defects of title. Masa's total liability under the guarantee for material defects and defects of title is limited to a maximum amount of seven point five percent (7.5 %) of the order value.

**§ 11 LIABILITY**

- 11.1 Unless otherwise stated in these general business terms, including the following provisions, in the event of an infringement of contractual and non-contractual obligations, Masa is liable in accordance with the relevant legal regulations.
- 11.2 Masa is liable for damages - regardless of the legal reason - for malice aforethought and gross negligence. In the event of slight negligence, Masa is liable only:
- 11.2.1 for damages arising from death, bodily injury or injury to health,
- 11.2.2 for damages arising from the breach of an essential contractual obligation (an obligation whose fulfilment actually enables the contract to be performed and on the compliance with which the contractual partner regularly relies and must rely). In this case Masa's liability, however, is limited to compensation for foreseeable, typically occurring damages. This also applies to damages that did not occur to the delivery item itself. Otherwise liability is excluded.
- 11.3 The restrictions to liability arising from § 11.2.2 do not apply if Masa has fraudulently concealed a defect or has provided a guarantee for the quality of the goods.
- 11.4 The preceding liability exclusions and restrictions apply to the same extent to Masa's organisational bodies, legal representatives, employees and other agents of vicarious liability.

**§ 12 STATUTE OF LIMITATIONS**

- 12.1 The Defects Liability Period (§ 10) is one year from delivery in accordance with the selected delivery conditions. Should an acceptance procedure be agreed, the Defects Liability Period starts with acceptance but ends no later than eighteen (18) months after delivery. The Defects Liability Period relates to single shift operation.
- Should Masa GmbH correct a defect, the Defects Liability Period for defect claims for improvements and spare parts is three (3) months. However it will run at least until the expiry of the original Defects Liability Period for the plant.
- 12.2 This shall not apply if the law prescribes longer periods, as in cases of death, bodily injury or injury to health (§ 11.2.1) and in the event of a deliberate or grossly negligent breach of obligation (§ 11.2.2) by Masa and in the event of fraudulent concealment of a defect.

**§ 13 INDUSTRIAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 13.1 Masa will grant the client the right to use its industrial property rights free of charge if this is necessary for the operation, maintenance and repair of the plant. The same applies to the industrial property rights of any of Masa's subcontractors or suppliers.
- 13.2 The client must use documents and information provided to it by Masa exclusively for the aforementioned purposes. Making copies of these or passing them on, even extracts thereof, is not permitted without Masa's prior consent.
- 13.3 The client is obliged not to publish the contract and any of the documents that have arisen or arise in connection with the performance of the contract and any knowledge and information about Masa gained when the order was placed and while it is being fulfilled, not to disclose them to third parties and not to use them for its own business purposes. The obligation to confidentiality remains even after the performance or termination of the contract.
- 13.4 The client shall ensure that the obligations to confidentiality are also observed by its staff, agents of various liability and subcontractors. These obligations to confidentiality do not apply if the client can provide proof that the documents and information
- a) are or were generally known without the client being responsible for this;
  - b) were already known to it before Masa disclosed them to it;
  - c) were disclosed to it by a third party without this third party having breached Masa's confidentiality obligation as a result.

**§ 14 SOFTWARE USE**

- 14.1 If software is included in the delivery schedule the client is granted a non-exclusive right to use the supplied software including its documentation. It is made available for use on the specified delivery item. Using the software on more than one system is forbidden.
- 14.2 The client may only copy, re-engineer, translate or convert the software from the object code to the source code to the extent that it is permitted by law. The client undertakes not to remove the manufacturer's details, particularly the copyright marks or change them without Masa's prior express consent.
- 14.3 All other rights to the software and the documentation including copies thereof remain with Masa or the software supplier. The granting of sub-licences is not permitted. There are no claims to disclose source codes and to supply the most recent version of the software.

**§ 15 MISCELLANEOUS**

- 15.1 No contractual party may transfer the rights or obligations from this contract in whole or in part without the written consent of the other contractual party.
- 15.2 Any costs, expenses and fees connected with the conclusion of the contract, its negotiation and its execution, including the costs of legal advice, must be borne by the party by which they were incurred unless otherwise specified in these general business terms.
- 15.3 Masa GmbH's total liability under the terms of this contract, regardless of the provisions of § 12.2 and for whatever legal reason, is limited to ten percent (10%) of the contractual value.

**§ 16 FINAL PROVISIONS**

- 16.1 The law of the Federal Republic of Germany applies to these general business terms and any legal relationships between Masa and the client including the UN Purchasing Law. The conditions and effects of the reservation of title pursuant to § 9 are subject to the law applicable in the place the item is kept unless subsequently the selection of law in favour of German law is impermissible or unworkable.
- 16.2 The place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship is Andernach in the Federal Republic of Germany. Masa is, however, entitled to take legal action in the client's general place of jurisdiction.
- 16.3 Should the parties agree on an arbitration court, the language of the arbitration procedure is German or English.
- 16.4 Changes and amendments to the contract, including a change to or renunciation of this form requirement, must be in writing and signed to become binding unless stricter form regulations are prescribed.
- 16.5 Should a provision of this contract be or become totally or partially invalid or unenforceable, the validity of the remaining provisions remains unaffected by this. The parties are obliged to replace the wholly or partially invalid or unenforceable provision with a valid or enforceable provision that comes closest to the original business intention of the parties and the purpose underlying the invalid or unenforceable provision. The same shall apply should the contract prove to be incomplete.