

General Terms and Conditions of PC CADDIE AG

§ 1 The scope of General Terms and Conditions; Order of priority of contract documents

1. These general terms and conditions (hereinafter called as „General Terms and Conditions“) are valid for the provision of supplies (especially of Hardware and Software) and services (e.g. consultation, installation, maintenance services and training) in business dealings through the PC CADDIE AG and with it legally associated companies (hereinafter called as „PCAG“).
2. The General Terms and Conditions in their current version are valid for all similar future contracts regarding the provision of supplies and services between the PCAG and the customer, even if it is not expressly mentioned again.
3. Nature and extent of the specifically agreed supplies and services, agreed appointments as well as amount of remuneration will be specified in individual contracts. The individual contract or Regulations in other customer specific contract documents of PCAG (especially in the offer) have priority over the General Terms and Conditions and all other contractual documents in case of objection. For selected services of PCAG, besides the General Terms and Conditions, additional special contractual conditions are valid (particularly special conditions created for maintenance), which take priority over the General Terms and Conditions in case of objection.
4. Conditions deviated from the General Terms and Conditions of the customer are not part of the contract, even if PCAG should provide supplies or services, without explicitly contradicting them.
5. For third party products (Hardware and Software of third party), which PCAG distributes to the customers, – unless otherwise agreed – the Contract and License conditions of the third party are primarily valid, alternatively and additionally, these terms and conditions are valid. Upon request by the customer, the PCAG makes available the contract and license terms and conditions of third party to the customer. The customer may use the licensed third party products only for the agreed and intended purposes.
6. The Open Source Software provides PCAG to the customer on the basis of separate open source license terms and conditions, on their availability, PCAG will inform to the customer. PCAG provides the texts of the applicable open source license terms to the customer on request.

§ 2 Offer and contract conclusion

1. Offers of PCAG are subject to change and non-binding, provided they are explicitly not marked as binding or contain a specific acceptance period. PCAG can accept orders or assignments of the customers within fourteen days after receipt.
2. The contract conclusion with the customer is subject to the correct and timely delivery of PCAG by its suppliers, unless the non-delivery or late delivery by its suppliers can be justified by PCAG, because PCAG has not concluded any corresponding covering transaction regarding the purchase of the goods needed to be delivered by the supplier. PCAG will immediately inform the customer regarding the unavailability of the delivery items and immediately refund already paid monies to the customers.
3. Prior to the contract conclusion, the customer has checked that the delivery items and its characteristics and functionalities meet his requirements. The customer has to be conversant with the essential features and conditions of the delivery items.
4. Specifications of the PCAG regarding the supplied items (for example: dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as representations of the supplied items (for example: drawings and pictures) are only approximate, unless the usability of the contractually intended purposes demand an exact match. Conventional variations and deviations, which arise due to the legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts are permissible, unless they do not impair the usability of the delivered items for the contractually agreed or intended purpose.

5. The PCAG reserves the right of ownership and copyright to all its created tender documents and cost estimates as well as to all the drawings, pictures, brochures, catalogues, models and other documents made available to the customer. The customer has to return these documents on demand to PCAG and to destroy any copies if they are no longer needed for the proper course of business or if negotiations have not resulted into the conclusion of a contract.

§ 3 Delivery terms; Retention of proprietary rights

1. Deliveries by PCAG are made at the factory. In case of shipping the delivery items, the customer bears the cost of shipping and packaging. The selection of shipping method is subject to the professional judgment of PCAG.
2. The risk of accidental damage and accidental deterioration passes with the handing over of the delivery items from the shipper, carrier or otherwise particular designated to dispatch person to the customer. If PCAG have assumed the obligation to the customer for the installation and / or commissioning of the delivered goods, the risk of installation or commissioning goes to the customer. If shipment or delivery is delayed due to circumstances for which the customer is responsible, the risk is transferred to the customer from the day when the delivery goods are ready for dispatch and PCAG has notified the customer.
3. PCAG is entitled to the partial deliveries when it is independently usable by the customer, the complete delivery is ensured and the customer bears no significant additional expenditure or addition expenses by the partial delivery.
4. Software is provided to the customer in the object code as per the discretion of PCAG either by download or on a suitable disk. The customer has no right to release the source code of the software. The granted rights that apply to the software usage rights relate solely to the use of the software in object code. The software will be delivered in the current version unless otherwise agreed. Along with the software, the customer receives an electronic user manual in German.
5. The goods provided to the customer (reserved goods) remain the property of PCAG until their full payment is made. The PCAG is entitled to have this retention of proprietary rights recorded in the retention of proprietary rights register. The customer takes the custody of the reserved goods free of charge for PCAG. If third parties have the access to the reserved goods, particularly by seizure, the customer will immediately indicate the ownership rights of PCAG and inform the PCAG as well in order to enable the PCAG to enforce their property rights. If PCAG sees the breach of contract (in recovery case) by the customer - particularly default in payment – the PCAG is entitled to demand reserved goods.

§ 4 Execution of services

1. The PCAG will provide the agreed upon state of the art services. The functional and technical specifications required by the customer shall only be binding upon written confirmation from the PCAG. The PCAG under takes all services carefully and by trained and skilled employees. Regardless of the place of work, the employees of PCAG must not be supervised and directed by the customer and do not enter into an employment relationship with the customer. If the employees of the PCAG (for example in the individual contract) are identified by name, it is done by the respective level of knowledge and planning status at the time the contract is concluded. If the exchange of staff is necessary, PCAG will pay attention to a equivalent qualification.
2. For implementation of services, PCAG can employ corporate law affiliates, independent contractors and / or freelancers (hereinafter consistently called "subcontractor"), wherein PCAG remains always directly obligated to the customer. The customer can object to the use of a subcontractor only in case of serious reasons.
3. When required, PCAG will establish a time and work schedule in consultation with the customer and update it. At any time, upon request, PCAG will inform the customer regarding the progress of work. The PCAG can customize the protocols when it comes to clarification or adjustment of contractual conditions, in particular about the agreed services, the scheduled timetable

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and the remuneration. When PCAG provides the customer these contractual conditions, they become binding for both parties if a written note of objection is not delivered within one week after receipt of notice. PCAG will indicate to the customer each of these conditions by granting the protocols.

4. The Parties shall designate a contact person. He is authorized under the contract conditions to make and receive required explanations and to take the necessary decisions. The parties will replace the designated contact person only in serious cases and immediately inform the other party about the replacement.
5. If acceptance of services has been entrusted by law or the implementation of an acceptance process between the parties is expressly agreed, services shall be considered accepted at the latest when
 - a. the work results are handed over and, if PCAG owes an installation of work, the installation is completed,
 - b. PCAG has communicated to the customer the need for acceptance of work with regards to the deemed acceptance according to this paragraph, and asked him to accept, and
 - c. (i) ten working days have passed since the request for acceptance without the provision of any handover preventing deficiencies by the customer, or
(ii) the customer started with the productive use of the work results, which are not used only in pure testing purposes in operation.

Acceptance prevention are significant deficiencies, which cancel or severely restrict the utility of the work product to the agreed or implied purpose. For partial acceptance, the above regulations apply accordingly.

§ 5 Deadlines and schedules

1. The deadlines and schedules proposed by the PCAG for deliveries and services are only approximate, unless a fixed period or date is promised or agreed upon.
2. The agreed upon deadlines and schedules for supplies and services can be delayed or extended by the period in which PCAG is not responsible and is prevented from delivering or performance, PCAG is provided with adequate recovery time to remove the obstacle. The circumstances beyond the reach of the PCAG include disasters and other unforeseeable events (for example, operational disturbances, transport delays, strikes and lockouts, shortage of labor, energy or raw materials, difficulties in obtaining necessary regulatory approvals, official measures). Also they can include the failure or delay of provision of cooperation services of the customer (for example, lack of provision of credit products or restricted access of PCAG to the customer's IT infrastructure) and times when PCAG waits for necessary information, documents or decisions of customers.

§ 6 Customer cooperation services

1. The customer pays no charges as a basic contractual obligation, which are described in the following paragraphs of § 6 and in other contractual documents (for example: in the special maintenance conditions) as well as further conditions, if necessary, required for the fulfillment of the cooperation services on time, correctly and completely. The customer shall ensure that his employees have the qualifications and experience required for the provision of cooperation services and makes them available to the required extent from other activities.
2. To the extent necessary for the service provision, the customer provides complete and free of contradictions data, information and documents as well as the necessary IT infrastructure and system environment and collaborates in specifications, tests and acceptance. Moreover, the customer must pay attention to the minimum technical requirements and instructions regarding hardware and software under his use presented on the PCAG website. The customer provides a workplace with a PC with an Internet access and telephone for the employees of PCAG providing the customer site services.

3. The customer will provide all the necessary requirements for the proper service provision in his sphere of operation. In particular, the customer will grant the access, to the required extent, to its hardware and software to PCAG during the contractual period. The customer will ensure the provision of contractual services required for provision and licensing of products of third-party (hardware, software, databases, etc.), unless the parties agree that they are provided by the PCAG to the customer.
4. If the subject matter of the contractual services is the installation of equipment by the customer, he will ensure that the electrical and other facilities required for the installation of the devices and associated their facilities are of available state of the art quality. If it is necessary for the third parties to collaborate in the installation of equipment (for example: manufacturer or supplier of facilities, that is affiliated with the equipment), the customer is responsible for the provision of such services by the third party involvement.
5. The customer under its damage prevention obligation shall ensure adequate emergency arrangements (for example through regular data backups, periodic inspection of his IT systems, etc.) and shall ensure to have an appropriate emergency concept and emergency plans in the event of a total failure of his IT systems; at least one continuous emergency operation at any time. In the absence of explicit written evidence in particular cases, the employees of the PCAG as well as contractually binding subcontractors of the PCAG can always assume that all the data of the customer, with whom they come into contract, are adequately protected against loss.
6. If the parties agree that training will be conducted by the customer, the customer will provide relevant premises and technical equipment (in particular hardware and software) in consultation with the PCAG. The PCAG can cancel an agreed training date due to good cause, such as illness of the speaker; in this case the parties agree on an alternative date.
7. If the customer defaults in his provision of cooperation services, the equipment of the customer remains the obligations of PCAG for the period of delay, provided the services can be provided by PCAG without the necessary involvement of the customer or only with disproportionate extra effort. Additional expenses of the PCAG that result from late, default or negligence of customer cooperation services are paid by the customer. If cooperation services provided by the customer expire even after a reasonable deadline is set, in exigent circumstances, additional expenditures resulting from the substitute provided by PCAG are compensate. Further claims of PCAG remain unaffected.

§ 7 Prices and terms of payment / payment conditions

1. All prices for supplies and services result from the quote as well as the applicable and valid price list of PCAG. All the prices are net (excluding VAT), plus applicable shipping costs and packaging as well as any applicable taxes, fees and other public charges.
2. Unless otherwise agreed, the PCAG provides the customer the incurred ancillary costs, in particular travel expenses and travel times for on-site repairs separately as incurred or the invoiced expenditure.
3. Unless otherwise agreed, purchase prices for supplied items are due for the payment upon delivery. Unless otherwise agreed, the provided services are paid by the customer; the PCAG provides the invoice to the customer on monthly basis at the beginning of the following month for the provision of the service under the hiring out of the conventional PCAG activity reports.
4. Unless otherwise stated, all invoices are immediately due for payment upon receipt by the customer. If case of default of the customer with the payment of an invoice, the PCAG can use the statutory rights for the equipment of the customer.
5. The PCAG is entitled to execute or provide any outstanding supplies or services only against advance payment or guarantee, if their circumstances become known after conclusion of the contract, which are suitable to significantly reduce the creditworthiness of customers and by which the payment of the outstanding amounts of the customer to the PCAG from the respective contractual relationship appears to be at risk.

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6. The customer has the right to compensation only if his counter claims have been legally established or are undisputed. The customer can only exercise the right to retention, provided his counter claim is based on the same contractual relationship.

§ 8 Claims based on material defects

1. Upon delivery, all supplied items must be inspected immediately for defects by the customer. Detected defects must be notified by the customer in writing, described to a reasonable extent and documented in a way that PCAG may examine and comprehend the existence of the alleged defects. Moreover, Article 201 will be fully applied.
2. PCAG shall guarantee that the supplies and services of product and service description match (i.e. supplies and user manual). The nature and extent of the maintenance services are described in detail in the special care conditions. PCAG is entitled and obliged to rectify the defects of their supplies and services as detailed in the following provisions without any cost.
3. Claims can only be asserted for defects that are reproducible or can be comprehensibly described by the customer. Functional impairment of the contractual items do not constitute defects resulting from the circumstances of the hardware or software environment of the customer, damaged data, inadequate involvement, improper use or any other responsibility of the customer. The warranty for material defects and defects of the software also presupposes that it has neither been altered either by the customer or a third party without authorization nor has been used contrary to the contractual requirements (e.g. on a different hardware environment) or the user documentation, unless the customer proves that the defect is self-contained.
4. In case of a defect of the licensed contractual items, PCAG is entitled and obliged to a rectification at its discretion in the form of repair or replacement within a appropriate period of time. The remedial measures may initially be that reasonable possibilities are shown to the customer in order to avoid or evade („Workaround“) the effects of the defect. If the rectification is not successful (at least 2 per attempts according to deficiency), the customer can at his discretion demand a remuneration reduction or withdraw from the contract. Depending on the complexity of the contract items and their technical interaction with the customer's IT infrastructure, even more than 2 attempts may be appropriate and reasonable for the customer. In case of only minor defects, a cancellation of the contract is impossible. Claims for damages and compensation for futile expenditure due to defects are addressed in § 10 of General Terms & Conditions.
5. By deficiencies search or removal of defects, PCAG provides the services without being obliged to do so, it may require remuneration according to expenditures in accordance with its applicable and valid price list for this purpose. This is especially valid if a reported customer defect is not detectable or not attributable to PCAG. The compensation claim does not apply unless the customer can prove that he did not recognize the non-existence of a defect and he is also not at fault.
6. In case of defects of third party supplied products, PCAG at its discretion will make its warranty claims against the manufacturer or suppliers for the customer's invoice or assign them to the customer. Warranty claims against PCAG withstand with such defects under other prerequisites and in accordance with these terms and conditions only if the legal enforcement of the aforementioned claims against the manufacturer or suppliers was unsuccessful or have no hope, e.g. due to insolvency of the manufacturer or suppliers. During the duration of the manufacturer's or supplier's claims, the limitation of the relevant warranty claims by the customer against PCAG is inhibited.
7. If PCAG provides services outside the scope of the statutory material and legal infringement indemnification, failure or improper services, the customer has to report this to PCAG in writing and PCAG should be given a grace period in which the PCAG is provided the opportunity to fulfillment of services or alternatively remedy the situation. The right to reduce the compensation and the right to withdraw from the contract do not withstand in these cases. Claims for damages and compensation for futile expenditure are applicable as per § 10 of these General Terms and Conditions.

§ 9 Infringement of third party rights

1. PCAG is responsible to ensure that licensed contractual products entrusted to the customer are free of third party rights, and exempt the customer in accordance with the following provisions of claims by third parties due to infringements of property rights.
2. If third parties assert claims due to the violation of their rights as a result of the contractual use of the contractual products by the customer, the customer needs to notify PCAG in writing immediately and comprehensively. PCAG is entitled but not obliged to conduct negotiations with the third party in and out of court. If PCAG make use of this authorization, the company has the customer's support in this case to a reasonable extent free of cost. The customer will not accept any third party claims.
3. If the contractual products have legal deficiencies, PCAG will provide a legally unchallengeable use option to the customer for the contractual item. PCAG can alternatively replace the affected contractual products with the equivalents, if this is acceptable to the customer. If an infringement of third party rights and/or a legal dispute with the third party through corresponding claims can be eliminated or avoided so that the customer can use an available software provided by PCAG, then he is obliged to adopt and use it as part of damage mitigation, provided he can prove that the use of the current version is unacceptable to him.
4. Within the scope of the liability limits of § 10, PCAG shall indemnify the customer of all damage caused by the violation of property rights, unless it is due to a legal defect represented by PCAG. Furthermore, for the claims of the customer due to legal defects, the provisions for material defects are valid in accordance to § 8 of these General Terms and Conditions.

§ 10 Liability

1. If PCAG is providing the supplies or services to the customer without remuneration, e.g. the use of software during a gratuitous test phase, PCAG is liable only to the extent of the deliberate and grossly negligent breaches of obligation.
2. In addition, PCAG is liable for resulting damages and reimbursement of futile expenditure, regardless of the legal reason, also due to inability or default on any obligation, in case of defects due to unauthorized handling, to the following extent:
 - a. In case of gross negligence and for the provision of a fully amounted guarantee of the protection purpose covered by the warranty;
 - b. In all other cases only for breach of an essential contractual obligation, without which the achievement of the purpose would be endangered and on whose fulfillment, the customer can rely on a regular basis (so-called cardinal obligation), and on compensation for the typical and foreseeable damage. The liability for indirect or consequential damages and in particular the liability for lost profits is out of the question.
3. PCAG is only liable for the recovery of data provided the customer has ensured by adequate data security measures according to the state of the art technology that his data kept in electronic form can be reproduced at any time at a reasonable cost; this does not apply if PCAG handled deliberately or with gross negligence.
4. The above limitations apply to the same extent for the benefit of the organs, legal representatives, employees and subcontractors of PCAG.
5. The legal liability for damages resulting from loss of life, body or health injuries and liability under the Product Liability Act remain unaffected by the above provisions.

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§ 11 Period of limitation

1. The period of limitation for all claims by the customer due to defects of the supplies and services as well as for compensation for damages and replacement of futile expenditure is one year. This does not apply if a defect exists in collateral right of a third party, due to which the third party can demand a return of the affected contractual products. The limitation period begins in accordance with the law and – in the case of a statutory maximum period – enters into force no later than the expiry time of five years after the claim being made.
2. This does not affect the statutory limitation of claims against PCAG due to intentional or grossly negligent breach of obligation, in the case of fraudulent nondisclosure of a defect, assumption of guarantee as well as personal injury and due to the Product Liability Act.

§ 12 Rights of use of software

1. Unless no other provisions are contractually made, the copyright and other property rights on the software supplied to the customer, including the software created by PCAG or customized for the customer as well as other customer-specific work results (planning, design and concept information, documentations etc.), in relation to the customer exclusively with PCAG or its licensors remain the same.
2. Unless otherwise agreed, the customer gets the software condition licensed to him (including the new versions within the scope of licensed part of the rectification or maintenance) dilatory conditioned in full remuneration for the non-exclusive unlimited right, (moreover see. § 14) to use them either for business purpose of the customer or for the purposed required by both parties. The customer may install and use the software on the contractually specified server as well as use the software on the type and number of contracted certain works and/or by the agreed type and number of users. The nature and extent of the rights granted here are specified in detail in the provisions of the specific contract or in the quote of PCAG. As part of the contractual use, the customer is authorized to reproduce the software and make the necessary backup copies that must be labelled as such.
3. All additional rights, particularly the right to distribute, including renting, processing and development as well as making the software available remain exclusively with PCAG. Any use of the software supplied to the customer or to the third parties (for example, in the context of data center operation, software as a service, cloud computing, etc.) is not allowed without prior written permission of PCAG.
4. The customer can entrust the third party with a software purchased by PCAG for permanent use, (including the new versions acquired by any subsequent acquisitions programs and licensed under the maintenance) as a whole and in complete and final work of own use. Provisional or partial transfer to third parties or complete transfer to more third parties is forbidden. Distribution of the software always requires prior written permission of PCAG. PCAG will provide its consent if the customer submits a written declaration of the third party, in which he undertakes to PCAG for the compliance of the agreed software license, and if the customer ensures to PCAG in writing that he has entrusted all original software to the third party and all copies have been deleted. Third-party software may be subject to different regulations thereof.
5. Regarding the software authorized for testing (usually free of charge) or test installations, the customer receives a non-exclusive, non-transferable license limited to a time period of three months. The customer's right of use is limited content wise to such actions which serve to ascertain the condition of the software and its suitability for the customer's business. Any further acts of exploitation, particularly the productive business or preparation of the production operation, are as illegal as making copies (including backups), dissemination (in any form), and making edits and recompilations. If the software is provided to the customer free of charge, claims due to defects of the software are excluded; the liability of PCAG damages for willful and grossly negligent breaches remains unaffected.

§ 13 Privacy; data protection

1. The parties are obliged to retain the information entrusted, made available or otherwise obtained for business and trade secrets as well as other business

relationships and trade facts and use such confidential information only for the agreed purpose. Confidential information of PCAG belongs particularly to the customer's delivered software in all expressions or code forms along with the algorithms underlying the code. The parties can allow access to confidential information known for the purposes of the contract only to the employees and contractors. The confidentiality obligation shall remain valid for a period of two years on termination of the contract.

2. The obligation to confidentiality is not valid for the confidential information, which have been already made known to the recipient without obligation of secrecy or which are generally known or made known without the recipient being responsible for this, or communicated to the recipient by a third party lawfully without confidentiality obligation or which have been independently developed by the recipient.
3. The Parties are committed to properly retain all business products and documents provided and to hand over at any time to the other party appropriate request. They will particularly ensure that unauthorized third parties cannot have any insight at all.
4. As far as personal data are processed, PCAG must comply with the provisions of the Data Protection Act (DPA). PCAG is authorized to disclose personal data to contractually employed subcontractors, unless such disclosure for providing each commissioned service is required. PCAG is obliged for compliance of the data secrecy by the subcontractor. If customer provides access to personal data to PCAG, the customer should ensure that all legal requirements relevant for transmission and processing by PCAG are fulfilled.
5. PCAG is authorised to put the customer on a reference list for own advertising purposes and to use, in this context, the name, company names, trademarks and logos of the customer in printed publications and on the website of PCAG.

§ 14 Additional special arrangements for the temporary transfer of software (rental agreements)

1. The fee for temporary use of software based on a rental contract becomes due for payment in advance per calendar year. In case of partially used billing periods, the use fee will be invoiced proportional to the time. By including acquisition of additional programs, modules or licenses during the contract period, an increase in fees will be enhanced in accordance with the increase in license value.
2. With substantial defects of the rented software, the customer has a right to terminate the contract due to failure of rectification or repair in accordance with § 8 of right of cancellation in a way that the customer can not reasonably be expected to maintain the contract due to the defects. Furthermore, for the liability for material and legal defects of the software, the respective §§ 8 and 9 are valid. This regulation replaces the tenancy liability for defects in the software that are already available during termination of the contract.
3. Unless otherwise agreed, the parties can terminate the rental contract with a notice period of three months towards the end of the calendar year, but not before the end of the contracted binding minimum term. If no other period is expressly agreed, a binding minimum term of five years is valid. The right of both parties to terminate the contract for all intentions and purposes remains unaffected. An important reason, entitled to PCAG with an extraordinary termination without notice, lies particularly if either insolvency proceedings are opened against the customer's assets or rejected due to lack of assets or the customer has defaulted for more than two months with a significant part of the agreed remuneration. Any termination must be in writing.
4. At its own discretion, PCAG can initially temporarily deny the customer access to the software for an important reason and ask the client to provide a deadline to correct performance. Further rights of PCAG (in particular the right to payment of the agreed fee, the right to cancel the agreed license to use and to an extraordinary termination) remain unaffected.
5. With the termination of the rental agreement, the customer's right of use the software ends automatically. The customer is obligated to completely and permanently delete all copies of software at all servers, workstations or other computers and to return all the licensed data media, documentation and

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other filed items. On corresponding demand of PCAG, the customer will confirm the entire and final cancellation of the software in writing.

§ 15 Final provisions

1. PCAG can transfer its rights and obligations under the contract without the customer's consent to third parties, in particular the associated companies. A sale or transfer of contractual rights and obligations by the customer to third parties requires prior written consent of PCAG.
2. All modifications and additions to the contract must be made in writing (submission by fax is sufficient, but not by e-mail). The written form requirement can be revoked only in writing.
3. Unless expressly otherwise agreed, place of fulfillment of all obligations under the contract is the headquarters of PCAG, from where the services are provided.
4. Swiss law is valid for the disqualification of the conflict rules of international private law and the disqualification of the UN commercial law. Court of jurisdiction for all disputes arising in connection with the contract is in Lucerne / Switzerland. PCAG has the right to apply at any other competent national or international court.
5. If any of these General Terms and Conditions or other contractual terms are or become invalid, or if the contract have a legal loophole, the validity of the remaining provisions shall not be affected. Instead of an invalid or a missing provision, the parties agree on a valid provision that is closest to what they wanted at the time the contract is economically concluded.