

# Standard Terms of Sale and Delivery of Grünbeck Wasseraufbereitung GmbH

## 1 APPLICATION, SUBJECT MATTER OF CONTRACT AND CONCLUSION OF CONTRACT

1.1 These Standard Terms of Sale and Delivery (hereinafter: "STS") apply for the sale of goods ("Delivery") as well as for the provision of services or work contract services ("Service"). Our STS apply for all (including future) business relationships with our customers (hereinafter: "Purchaser") and irrespective of whether we manufacture the object ourselves or obtain it from suppliers or perform the service or work contract service ourselves or through third parties. We do not accept standard business terms of the Purchaser. We object to their application. The STS also apply if we, having knowledge of conflicting standard business terms of the Purchaser, carry out deliveries without reservation.

1.2 As far as not otherwise mentioned in an offer, our offers are subject to change and non-binding. An order of the Purchaser is deemed to be a binding offer of contract. As far as the order does not indicate to the contrary, we are entitled to accept the Purchaser's order within four (4) calendar weeks after receipt. The acceptance shall occur through confirmation or by delivery of the order to the Purchaser.

1.3 Individual terms deviating from these STS are only valid if they are confirmed in writing. Legally binding declarations or notices of the Purchaser after conclusion of the contract (e. g. setting of deadlines, notice of defects, declaration of rescission or reduction of price) must be made in textual form.

1.4 The minimum order value amounts to EUR 100.00 net. In the case of orders under EUR 100.00 we are entitled to apply a reduced quantity charge of EUR 20.00 for the processing costs.

## 2 SERVICES

2.1 We provide services within the scope of our existing technical and operational possibilities. The services include in particular assembly, start-up operation, customer service and maintenance.

2.2 In the case of services to be provided by us including (but not limited to) development services and/or analysis services, in general no particular result is owed. In connection with the performance of services we do not assume any responsibility for a particular result and are entitled to perform the services through subagents (subcontractors). This shall not apply upon conclusion of a separate contractual agreement.

2.3 If exceptionally an acceptance is stipulated for our services, the Purchaser shall accept the work contract services as provided by us, including partial work contract services, without delay and declare the acceptance or partial acceptance as far as there are no defects in the services which materially impair the suitability or the function.

2.4 If after the making available for acceptance or partial acceptance no objection of substantial defects is made within seven (7) calendar days or if the Purchaser uses the work services or partial work contract services which were made available, the acceptance (partial acceptance) shall be deemed to have occurred as far as the Purchaser is a merchant.

## 3 SPECIAL PROVISIONS FOR ASSEMBLY, START-UP OPERATION, CUSTOMER SERVICE AND MAINTENANCE

In the event that the order includes assembly, start-up operation, customer service and/or maintenance, the following terms have supplementary application. In the case of contradictions the provisions of this Section 3 have priority over the other provisions of these STS.

### 3.1 Assembly works

As far as the order includes assembly works, the Purchaser shall ensure at the construction site at his expense that at the start of and during the assembly works

3.1.1 there is freedom to build; i. e. we can perform the contractually owed services without being obstructed by third parties;

3.1.2 suitable access possibilities and openings to bring in items exist in the size specified by us such that the installation can be transported with all necessary vehicles to the site where it is to be set up; the transport path shall not be obstructed;

3.1.3 all terminal points of supply for power supply and signal transmission exist at the agreed location according to the agreed specifications;

3.1.4 the assembly site is protected against weather influences and damaging influences by animals and is secured against unauthorized access;

3.1.5 a power connection of 230/400 V, 50 Hz in accordance with the VDE regulations respectively exists at the assembly site and/or there is an assembly room with such a connected wattage;

3.1.6 appropriate load-bearing points exist on the building and/or ceiling structure to affix hoists;

3.1.7 the interfaces to connect to existing systems, including if applicable necessary isolation valves, are implemented.

### 3.2 Start-up operation, customer services and maintenance

As far as the order includes the start-up operation, customer service works and/or the maintenance of the installation or individual components, the Purchaser shall at his expense and having regard to the cooperation duty applicable in 3.1 ensure that at the start of and during such works in addition

3.2.1 there is freedom to build; i. e. we can perform the contractual services without being obstructed by third parties;

3.2.2 all necessary operating media with the necessary volume power and flow pressure are available ready for operation;

3.2.3 the water quality (product water, waste water) produced by the installation is accepted with the relevant volume streams;

3.2.4 the air volume streams necessary for the operation of the installation can be and are permitted to be discharged;

3.2.5 all electrical voltages necessary for the operation of the installation are ready for operation together with the necessary connected wattage;

3.2.6 in the case of swimming pools the basin is filled with water;

3.2.7 all signals necessary for the operation of the installation together with third parties and/or agreed signals are available for operation;

3.2.8 suitable climate conditions of the assembly site

3.2.9 location for individual components and/or operating resources are complied with.

### 3.3 Works abroad

As far as the services are to be performed abroad and our technical personnel requires a residence and/or work permit for that purpose, the Purchaser shall, subject to agreement in a particular case, support us free of charge in the necessary scope in relation to the local authorities in the application for, the extension of or the change of the permit required for the performance of the service.

## 4 INTELLECTUAL PROPERTY RIGHTS, KNOW-HOW

The Purchaser recognizes our know-how as well as our intellectual property rights. As far as not stipulated otherwise, we reserve our rights of ownership and copyrights to illustrations, drawings and other documents. They may not be made accessible to third parties. This applies in particular for confidential documents. As far as not expressly stipulated elsewhere, e. g. in the order, we do not grant to the Purchaser any rights of use to the know-how or intellectual property rights which arose in connection with our services.

## 5 DELIVERY, TIME LIMITS, SCOPE OF SERVICE, DEFAULT

5.1 The delivery shall be made EXW "Ex Works" (Incoterms 2010). The place of performance is Höchstädt/Donau. At the request of the Purchaser the goods shall be sent to another destination at his expense. As far as not stipulated otherwise, we are entitled to ourselves to determine the manner of shipment (in particular shipping company, shipping route, packaging). The risk passes to the Purchaser upon delivery to the shipping agent or upon collection at the factory site, as far as the Purchaser is a merchant. If the Purchaser is a consumer, the transfer of risk is governed by the respective statutory provisions. Please note that we are exempted from mandatory freight forwarders' insurance (SLVS-Verzichtskunde).

5.2 Delivery and service deadlines are non-binding unless their binding effect is expressly stipulated.

5.3 We are not responsible for delays which arise through the fact that we do not receive timely or proper supplies from our supplier if we have carefully selected the supplier and have timely placed an order with him such that timely delivery was to be expected. The same applies in the case of delays of services if we have carefully selected the subcontractor and have timely engaged him such that timely service was to be expected.

5.4 The contract fulfilment including compliance with time limits is subject to the condition that there are no conflicting hindrances on the basis of German, US as well as other applicable national, EU or international foreign trade regulations and no embargos or other sanctions.

5.5 Our goods correspond to German safety and quality guidelines. The compliance with foreign guidelines is not ensured as far as not stipulated in a particular case. The purchaser of the goods agrees to inform himself of the regulations under the law to be complied with concerning distribution and the use of our goods in the country of destination and shall comply therewith. If we require information or the participation of the Purchaser in connection with the export or import of the goods in the country of destination, the Purchaser agrees to provide them upon request without delay at his expense.

5.6 The compliance with deadlines for our deliveries or services require the timely receipt of all documents to be provided by the Purchaser, the performance of the cooperation services as well as the compliance with the agreed payment terms and other obligations. If these conditions are not timely fulfilled, the delivery or service time limits shall be reasonably extended.

5.7 If we cannot meet delivery or service deadlines we shall inform the Purchaser thereof without delay and at the same time indicate the probable new deadline or a new date.

5.8 Any rights due to delay, delivery or service can only be asserted by the Purchaser after an unsuccessful warning notice with the setting of a reasonable time limit. A reasonable time limit is considered to be four (4) weeks.

5.9 Partial deliveries and partial services are permissible in a scope which can be reasonably expected and can be brought to account as such. We can provide partial services for acceptance (hereinafter "partial acceptance"). This includes self-contained phases to fulfil the contractually agreed services and self-contained functioning parts.

5.10 In the event that the Purchaser does not timely accept the delivery or service the statutory provisions on delay of acceptance apply. The Purchaser shall in such a case in particular bear the additional costs (e. g. for a second delivery) involved therewith.

5.11 Rules concerning exchange of pallets if the Purchaser is a merchant.

5.11.1 As far as nothing is stipulated otherwise, for the shipping of the

goods by a shipping company Euro Pool exchange pallets according to the Cologne Pallet Exchange shall be used.

5.11.2 The Purchaser is obligated upon delivery of the palletized goods to return the same amount of exchangeable pallets of the same type and quality. The UIC standard 435-4 of the International Union of Railways applies for the exchangeability.

5.11.3 The Purchaser must provide a receipt for the number and type of the loaded pallets and note in writing the reservations concerning the quality, provide empty pallets in the same number and type in exchangeable condition, obtain a receipt for the delivery and note reservations concerning the quality, as well as in the event of non-exchange, if no pallets of the same type and quality or not of a sufficient quantity are provided or the acceptance is rejected as not being capable of exchange, to confirm this.

5.11.4 In the case of non-exchange if no pallets of the same type and quality or not of a sufficient quantity are provided or the acceptance is rejected as not being capable of exchange, we will invoice the procurement of replacements for missing or non-exchangeable pallets.

## 6 PRICES

6.1 As far as not agreed otherwise, our prices are for delivery ex works, including packaging without VAT. The VAT and other costs shall be separately stated in the invoice.

6.2 As far as not agreed otherwise, the provision of the services shall occur Monday to Friday during our usual business hours (max. 8 h/day) and the calculation of the services according to the time spent by us, at the hourly rates respectively currently applied by us plus the respectively applicable material prices and as far as relevant plus travel expenses (in particular, but without limitation, travel to and from the site, accommodation). If at the request of the Purchaser our employees work overtime, the overtime compensation shall be borne by the Purchaser. The same applies for extra pay for Sunday and holiday work. Overtime, Sunday and holiday work shall be charged in accordance with the respectively applicable collective bargaining provisions of the Bavarian metal industry. The Purchaser agrees to verify and countersign working hours certificates which are prepared by our employees. If compensation at a fixed price is agreed, we are entitled to make a down payment for self-contained parts of the service or after completion of a project phase (e. g. contract commencement, initial partial delivery, making available for acceptance, acceptance).

6.3 Costs increases which arise on the basis of requests for change by the Purchaser, in particular delays involved therewith shall be borne by the Purchaser.

6.4 Reasonable price changes in accordance with our price list are reserved if the delivery occurs in accordance with the contract more than four (4) months after conclusion of the contract and as far as the list price increase is attributable to a subsequent increase of the acquisition costs (prices for raw, auxiliary or operating materials, such as material price increases, collective bargaining wage increases or other preliminary services necessary for the subject matter of the contract) on which we have based our price indication upon conclusion of the contract.

## 7 PAYMENT TERMS

7.1 The agreed compensation shall become due without deduction immediately after performance has been provided and an invoice issued. As far as in a particular case a discount was agreed, no discount can be deducted from wage, packaging and freight costs.

7.2 Upon default of the Purchaser the respectively outstanding residual amount shall bear interest of 5 percentage points above the base interest rate and in the case of legal transactions in which no consumer is involved, 9 percentage points above the base interest rate. In the case of a default by a Purchaser who is a merchant, we are in addition entitled to charge a collection fee of EUR 40.00. The collection fee shall be set off against any damages which are owed as far as the damages are based on costs of the pursuit of legal rights.

7.3 If the Purchaser despite a warning notice does not comply with the payment terms or if the financial circumstances of the Purchaser deteriorate such that there are justified doubts as to his ability to make payments or creditworthiness, we can make further deliveries/ services dependant on the Purchaser providing sufficient security. If the Purchaser is not in a position to do so, we are entitled to rescind the contract, if appropriate after setting a time limit.

7.4 The Purchaser is only entitled to apply set-off and to assert a right of retention based on claims which have been finally adjudicated or which are undisputed. Thus does not apply for the reciprocal claims which are characteristic for the exchange of the main performance and counter-performance under the contract. The right of retention is limited to a counterclaim arising from the same contractual relationship.

## 8 INFORMATION, WARRANTY

8.1 The information in our catalogues, brochures, list of types, data sheets and other advertising writings, in specifications, specification sheets and other technical delivery terms, in certificates and other forms or documents are not guarantees which go beyond the normal warranty.

8.2 In the case of any reliability information (useful life, long-term stability, etc.) statistically determined average values are involved. They are provided according to best knowledge and belief, but in a particular case may be exceeded or not reached.

8.3 For the rights of the Purchaser in the case of physical defects

and defects in title (including incorrect and insufficient delivery as well as improper assembly or defective assembly instructions), the statutory provisions apply as far as nothing is stipulated otherwise below. A defect in particular does not exist to the extent that we have performed our services in accordance with the illustrations proved by the Purchaser or data provided by the Purchaser.

**8.4** If the Purchaser is a merchant, he shall inspect or cause to be inspected the delivery or service without delay after receipt as to proper delivery or service, completeness and apparent defects.

**8.5** If the Purchaser is a merchant, he loses the right to refer to a defect if he does not notify us thereof within seven (7) calendar days after the day on which he determines it or should have determined it, and exactly specifies the manner of non-compliance with the contract. The timely sending of the notice is sufficient to comply with the time limit.

**8.6** If the Purchaser objects to a defect, he must provide to us the allegedly defective parts or devices or allow us a review of such parts in his premises during the usual business hours and provide us with the necessary time and opportunity for the replacement performance.

**8.7** If the delivery or a work service is defective, we can initially choose whether we provide a replacement performance through elimination of the defect (improvement) or through delivery of a defect-free item (replacement). Depending on a particular case we are entitled to at least three (3) improvement attempts.

**8.8** If only an individual part of the facility is to be exchanged, we can request that the Purchaser himself replaces that part of the installation which is provided to him by us if the costs for the sending of the technical personnel are disproportionately high.

#### **8.9 The warranty period is**

**8.9.1** two years, if the Purchaser is a consumer;

**8.9.2** one year, if the Purchaser is a merchant;

**8.9.3** two years for all DVGW-certified devices, including for industrial and commercial use, as far as the special stipulation of the SHK liability assumption agreement with the German Sanitation, Heating and Air-Conditioning Association (ZVSHK) applies to the contractual relationship between us and the Purchaser. All requirements of that agreement must be fulfilled, in particular the compliance with the applicable operation manual as well as the proper assembly, start-up and maintenance;

**8.9.4** one year in the case of used goods (consumer and merchant).

**8.10** The warranty does not – as far as not stipulated otherwise in this Section 8 – cover wear-and-tear parts such as sealings, ion exchange resins, membranes, etc. and damages which arose through excessive electrical voltage, frost or improper treatment, operation and maintenance, in particular in deviation from the operation manual. Our liability is also excluded for damages which arose through the use of unsuitable dosing solutions and chemicals.

**8.11** Services which do not serve to remove defects in connection with the warranty shall be invoiced separately to the Purchaser.

**8.12** After an unsuccessful replacement performance, in relation to the defect removal the Purchaser retains the right at his option to rescind the contract or to reduce the agreed compensation. The right to damages instead of performance shall not be affected thereby.

**8.13** The place of performance for the replacement performance is in the case of companies the place of the registered office of Grünbeck, unless the defective products or parts thereof cannot be disassembled. In that case the place of performance of the replacement performance is the agreed place of delivery of the affected product/installation.

**8.14** In cases of breach of warranty concerning installations which are not installed in Germany, the warranty service shall be undertaken by the local customer service authorized by Grünbeck as far as it exists. If in a particular country no customer service exists, the customer service of Grünbeck ends at the German border in cases in which the Purchaser is a merchant. All other costs arising in this connection, except material, shall be borne by the Purchaser.

#### **9 RETURNS**

**9.1** The return of new goods with original packaging can only occur after prior agreement and only within twelve (12) months after the delivery date. The return fee amounts to 20 % of the net merchandise value. No credit note can be issued for returns which have a net merchandise value of EUR 50.00 after deduction of the return fee. Any necessary processing costs shall be charged separately. The return must be made free of charge to the address mentioned by us.

**9.2** A return of goods with a limited expiry date (e.g. chemicals) will not be accepted by us. The same applies for the return of goods which are manufactured according to the Purchaser's specifications.

**9.3** After prior agreement defective goods can also be returned. Repairs shall be made after a cost estimate. If the Purchaser does not respond to our cost estimate within 8 weeks, we are entitled to return the defective goods to the Purchaser at his expense and to charge the expense incurred by us to the Purchaser.

**9.4** For the purpose of the return the Purchaser shall receive an RMA number which must be indicated at the time of return.

#### **10 DISPOSAL OF B2B DEVICES ACCORDING TO ELECTROG (ELECTRICAL AND ELECTRONIC EQUIPMENT ACT)**

**10.1** The buyer assumes the obligation to properly dispose of the delivered goods after the end of use at his own expense in accordance with the statutory provisions.

**10.2** The Buyer indemnifies the Supplier from the obligations under § 19 (1) ElektroG (manufacturers' obligation to accept returned devices) and related third-party claims.

**10.3** The Purchaser shall contractually obligate commercial third parties to whom he delivers goods to properly dispose of them after the end of use at their expense in accordance with the statutory provisions and to impose a corresponding further obligation in the event of redelivery.

**10.4** If the purchaser fails to obligate a third party to whom he delivers the goods to take over the obligation to dispose of the goods and to impose a corresponding further obligation in the event of redelivery, the purchaser is obliged to take back the delivered goods at his own expense after the end of use and to dispose of them properly in accordance with the statutory provisions.

**10.5** The manufacturer's entitlement for takeover/exemption by the customer does not expire before a period of two years after the final termination of the use of the device. The two-year limitation period starts at the earliest upon receipt of a written notification from the purchaser to the manufacturer of the end of use.

#### **11 LIMITATION OF LIABILITY**

**11.1** If nothing is stipulated to the contrary, the following exclusions and limitations of liability apply for our liability, regardless of the legal grounds, subject to the other statutory claim requirements, and which also apply for our employees, agents and other third parties whom we engage for the performance of the contract.

**11.2** The following liability limitations however do not apply as far as we have fraudulently concealed a defect, provided a guarantee for the quality of the merchandise, claims of the Purchaser exist under the Product Liability Act or injury to body or health are caused.

**11.3** We are liable for damages as far as we are responsible for intentional actions or gross negligence. In the case of simple negligence we are only liable for damages arising from injury to life, limb or health and for damages arising from the breach of a material contractual duty (obligation the fulfillment of which first makes possible the proper performance of the contract and on the fulfillment of which the contractual partner as a rule relies and is entitled to rely). Where there is a breach of substantial contractual obligations, in the case of simple negligence our liability is limited to the indemnification of the foreseeable, typically arising damages.

**11.4** If the Purchaser is a merchant, we are liable – except in the case of liability for intentional acts – for any damages which do not result from injury to life, limb or health or under the German Product Liability Act and only up to a maximum amount of EUR 250,000.00 per calendar year. If our insurance company pays a higher amount for the claims asserted by the Purchaser than this maximum amount, this higher paid out amount constitutes the maximum amount.

**11.5** The Purchaser may only rescind or terminate the contract due to a breach of duty which does not constitute a defect if we are responsible for the breach of duty. Other rights of termination of the Purchaser are excluded.

#### **12 FORCE MAJEURE**

**12.1** We are not liable for force majeure events which make the performance of the contractual services substantially more difficult for us, which temporarily obstruct or make impossible the proper implementation of the contract. Force majeure shall be deemed to be all circumstances which cannot be foreseen or influenced by us and the Purchaser and which arise after conclusion of the contract, including but without limitation natural catastrophes, blockades, war and other military conflicts, mobilization, strikes or lock-outs.

**12.2** As far as we are prevented from the fulfillment of the contractually agreed obligations through force majeure, this shall not be deemed to be a contractual violation and the contractually agreed deadlines shall be reasonably extended in accordance with the duration of the hindrance. The same applies as far as services are performed by third parties and they provide performance to us with delay due to force majeure. If the force majeure circumstances or circumstances outside the sphere of influence of the contracting party last longer than two (2) months, the contracting parties shall reach an agreement on the continuation of the contract within one (1) week.

#### **13 RESERVATION OF TITLE**

**13.1** Until the fulfillment of all claims (including all outstanding balance claims based on the current account) to which we are entitled for any legal reasons against the Purchaser now or in the future, the goods remain our property.

**13.2** The goods which are subject to the reservation of title may not be pledged to third parties nor transferred by way of assignment until complete payment of the secured claims. The Purchaser shall inform us in writing without delay if and the extent seizures of the goods belonging to us made are made by third parties. In the case of seizures by third parties of the goods which are subject to a reservation of title, the Purchaser shall refer to our ownership and inform us without delay.

**13.3** The Purchaser is entitled to resell and/or process in the ordinary course of business the goods which are subject to the reservation of title. In this case the following provisions have supplementary application.

**13.3.1** The reservation of title extends to the processing of products created through the processing, mixing or combination of our goods in their full value; we shall be deemed to the manufacturer. If in the case of processing, mixing or combination with the goods of third parties their right of ownership remains in place, we shall acquire coownership in the ratio of the invoice values of the processed, mixed or combined goods. In other respects the same applies for the created

product as for the goods delivered subject to the retention of title.

**13.3.2** The claims against third parties arising from the resale of the goods or the created product are hereby assigned to us by the Purchaser in full or in the amount of any co-ownership in accordance with Section 13.3.1 above by way of security. We accept the assignment. The obligations of the Purchaser mentioned in Section 13.2, also apply with respect to the assigned claims.

**13.3.3** The Purchaser remains entitled to collect the claim in addition to us. We do not agree to collect the claim as long as the Purchaser complies with his payment obligations toward us, does not default on payment, no application for the commencement of an insolvency proceeding has been made and there is no other deficiency in his payment capability. If this is however the case, we can request that the Purchaser disclose the claims assigned and the debtors thereof, provide all information necessary for collection, deliver the associated documents and inform the debtors (third parties) of the assignment.

**13.3.4** If the realizable value of the security exceeds our claims by more than 10 %, we shall at the request of the Purchaser release security of our selection.

#### **14 CONFIDENTIALITY**

Each contracting party shall keep secret the information received from the respective other party. This also applies after fulfillment of the delivery or services. This obligation does not apply (i) for information which was legitimately known to the receiving party upon receipt without a duty of confidentiality or (ii) thereafter legitimately becomes known without a duty of confidentiality or (iii) which are or become generally known without a breach of contract by one of the parties. The same applies for information which is developed by a contracting party independently of the information received in connection with the delivery or fulfillment of services. Each party reserves ownership and any rights to the documents or data carriers provided. Duplications and the passing on of such documents or data carriers is only permissible with the consent of the providing contracting party.

#### **15 PRIVACY**

**15.1** For the duration of the business relationship and to maintain legal retention periods, we process contact details (such as name, email address) of the buyer, his employees and his partners ("contact persons"). These have been obtained from the buyer or partner or collected from publicly available sources (e.g., buyer website). We process the data for the purpose of providing our services and, as long as there is no objection, to promote our offers; the latter is based on the interest-weighting clause of the EU General Data Protection Regulation (DSGVO).

**15.2** Contact persons may request information and restrict the processing, provision, correction, publication and deletion of the data (for example via [info@gruenbeck.com](mailto:info@gruenbeck.com)), object to the processing and file a complaint with data protection supervisory authorities.

**15.3** Buyers are obliged to forward the above information about our data processing to their contact persons or employees; in this way, our own information obligations towards these contacts are fulfilled. If the buyer requires further details, he can retrieve them at <https://www.gruenbeck.de/en/privacy-policy/> or contact our data protection officer ([info@gruenbeck.com](mailto:info@gruenbeck.com)).

#### **16 DISPUTE RESOLUTION**

The European Commission provides a platform for online dispute resolution under <http://ec.europa.eu/consumers/odr/>. We try hard to settle possible dissensions resulting from contracts directly with our contracting partner. However, we are not obliged to participate in the online dispute resolution procedure according to the Consumer Dispute Resolution Act (VSBG) and cannot offer you participation in such procedure. Please contact us with questions and problems directly under [info@gruenbeck.com](mailto:info@gruenbeck.com).

#### **17 APPLICABLE LAW, PLACE OF JURISDICTION, SEVERABILITY**

**17.1** The law of the Federal Republic of Germany, with the exception of the UN law on the sale of goods (CISG), has exclusive application.

**17.2** The exclusive place of jurisdiction for all disputes arising directly or indirectly in connection with the contractual relationship is Dillingen/Donau. We are however entitled to also raise claims against the Purchaser at the place of the registered office of the Purchaser.

**17.3** As far as individual provisions of this agreement are or become invalid in whole or in part, the validity of the remaining contractual provisions shall not be affected thereby. In place of the void or invalid provision the parties shall agree on a valid provision which comes as close as possible to it in a commercial sense as far as a supplementary interpretation of contract does not have priority or is not possible. The same applies accordingly as far as the contract contains a lacuna not intended by both contracting parties.

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