



MORE LIGHT

# JENOPTIK

## General Terms and Conditions of Sale

### 1. General provisions

1.1 These general terms and conditions of sale (GTCS) shall apply to all our deliveries, services and offers, as well as future transactions between the contracting parties, without requiring additional notification thereof. Contrary or divergent terms of the purchaser are not recognised by us. We hereby contradict the purchaser's general terms and conditions. Our general terms and conditions of sale shall also apply even if we unreservedly fulfil our contractual obligations in the knowledge of contrary terms of the purchaser.

1.2 Any changes to these GTCS including this provision requires our consent in the form of text (§ 126 b BGB) or in written form (§ 126 BGB).

1.3 The present terms shall apply mutatis mutandis to contracts for work, contracts for work and materials and mixed contracts. The term "purchaser" is to be understood in this sense as "customer" or "client".

1.4 These GTCS shall only apply if the purchaser is an entrepreneur, a legal person under public law or a special fund under public law. The same applies to purchasers engaging in business activities abroad that are comparable to those of a domestic entrepreneur and to foreign institutions comparable to domestic legal persons under public law or a domestic fund under public law. An entrepreneur is a natural or a legal person or a partnership having legal capacity and acting when concluding a legal transaction in the performance of its business or self-employed vocational activity.

These general terms and conditions of sale shall apply from 01 July 2019.

### 2. Conclusion of the contract

2.1 All agreements between us and the purchaser relating to the contract and its execution must be made in form of text (§ 126 b BGB) or written form (§ 126 BGB).

2.2 Our offers and any drawings, images, measurements, weights and other performance data therein contained are subject to confirmation and non-binding unless expressly marked as being binding or specifying a certain period for acceptance. As for prices quoted in offers expressly marked as being binding, we consider ourselves committed to them for four weeks starting from the date of the offer unless the offer specifies a different period for acceptance.

2.3 If the purchaser's order is an offer within the meaning of § 145 German Civil Code (BGB) we are free to accept it within two weeks of its receipt unless the purchaser has specified a different period for acceptance.

2.4 A contract shall not be deemed to come into being until confirmed by way of an order confirmation in writing. If there is no such confirmation in an individual case or if a contract comes into being without it, our offer shall be authoritative in determining the substance of such contract. Where the purchaser and the seller have jointly signed a written document on a delivery and if such document contains all terms of contract, such document shall be equivalent to a written order confirmation.

2.5 If an export licence is required for the execution of the contract, the conclusion of the contract is subject to the condition precedent of the export licence being granted.

### 3. Subject matter of contract

3.1 We shall supply the hardware identified in the order confirmation and – to the extent agreed – software conforming to the specifications set forth in the order confirmation.

3.2 Software shall be supplied in an executable form (object code). The source code does not form part of the subject matter of contract and is not included.

3.3 Our hardware and software is delivered complete with the documentation provided for and made available by us or the manufacturer (manuals).

3.4 The allocation and application of the hardware and software supplied by us shall be the purchaser's responsibility. Pertinent counselling is provided only if specifically agreed.

3.5 Installation, configuration and briefing do not form part of our duties except where expressly agreed.

### 4. Payment terms

4.1 The prices stated in the order confirmation shall be deemed agreed. Unless otherwise agreed, prices are in EURO, "ex works", excluding packaging. Packaging and other additional or special services shall be charged separately.

4.2 Unless otherwise agreed, the prices are initially stated excluding the statutory VAT. Any VAT will not be indicated until the day of invoicing, when it will be stated separately on the invoice. In the case of export deliveries, this also applies to customs duties and other public charges.

4.3 Unless stated otherwise in the order confirmation, the purchase price is due for payment without deduction within 30 days of the invoice date. Once the payment deadline has passed, the purchaser will be in arrears. The purchaser is then obliged, without further warning, to pay default interest of 9 percentage points above the base interest rate. We may set the purchaser a grace period of ten days and once this has passed to no avail, either declare our withdrawal from the contract in writing and demand compensation or continue to request payment of the purchase price.

4.4 If, after the conclusion of the contract, circumstances become known to us that substantially reduce the creditworthiness of the purchaser and that jeopardise the payment of our outstanding receivable from the relevant contractual relationship, we are entitled to provide outstanding performances only against advanced payment or to demand additional security. Moreover, we may in that case and in particular in case of default on due payments declare immediate maturity of the entire residual debt.

4.5 Contrary to the purchaser's repayment arrangements, any payments made by him may first be credited against his older debts. We will inform the purchaser immediately of the specific way in which the offsetting was carried out.

4.6 The purchaser may only declare set-off where its counter claims are uncontroversial, acknowledged by us in writing or non-appealably established. The purchaser may only exercise a right of retention to the extent that an uncontroversial counter claim acknowledged by us in writing or non-appealably established is based on the same contractual relationship.

### 5. Terms of performance

5.1 If a delivery does not cross any borders, i.e. it is domestic, it will be delivered ex works to our address stated on the order confirmation; cross-border deliveries will be delivered FCA (Free Carrier) to our address stated on the order confirmation in accordance with INCOTERMS 2010, unless otherwise agreed. Upon delivery, the risk passes to the purchaser, this also applies in case of partial delivery.

5.2 If the delivery is delayed due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser from the day on which we have notified the purchaser of our readiness to deliver, provided that the delivery item is ready for delivery on this day.

5.3 The dates and time limits of delivery anticipated by us are always tentative except where a fixed time limit or deadline has expressly been promised or agreed. Compliance with a fixed delivery date or a fixed delivery time presupposes that the purchaser fulfils his obligation to cooperate. This means, among other things, participates in the full clarification of the technical details of the order, submits the agreed scope of paperwork and documents to us on time and makes punctual down payments and punctually furnishes payment security.

5.4 We only assume a no-fault procurement risk by virtue of a separate agreement using the words "we assume the procurement risk..."

5.5 We are entitled to make partial deliveries and partial performances if

- partial delivery or partial performance is usable for the purchaser,
- the remaining delivery and remaining performances is ensured and

- the partial delivery or partial performance causes no significant additional work or costs for the purchaser, unless we agree to bear these costs.

5.6 Unless differently provided for by the order confirmation, the place of performance of our services and the purchaser's payment obligation is our business address.

5.7 Where formal acceptance is required, our delivery or performance shall be deemed to have been formally accepted if and when -

- delivery or performance, where appropriate with installation, has been completed;
- the seller has accordingly advised the purchaser while drawing its attention to the implied form of acceptance provided for above and has requested the purchaser to accept the delivery or performance;
- twelve days have passed since delivery or installation or, alternatively, the customer has begun to use the delivery or performance result and six business days have in that case elapsed since delivery or installation and -
- the purchaser has neglected to declare acceptance within that period for any reason except where the use of the purchased object is rendered impossible or substantially impaired by a defect communicated to the seller.

## 6. Warranty

6.1 Our deliveries and performances shall carefully be inspected immediately following delivery or performance. The purchaser must inform the seller immediately in writing of any material and/or legal defects. If the item to be delivered is to be installed in another item, the inspection must be carried out prior to installation.

6.2 Statements made in the offer or the order confirmation do not constitute any guarantee of quality within the meaning of § 443 BGB unless specifically agreed otherwise.

6.3 If the delivered item is defective, we may initially choose whether to effect subsequent performance by eliminating the defect (rectification) or by delivering a defect-free item (replacement). The rectification shall be deemed to have failed if we have made at least two unsuccessful attempts to eliminate the defect. In addition, our right to refuse subsequent performance (rectification or replacement) under the statutory conditions shall remain unaffected.

6.4 Subsequent performance does not include the dismantling of the defective item or the re-installation, unless we were originally required by contract to install it. This provision does not apply to transactions where consumers are involved in the supply chain.

6.5 Any expenditure required for the purposes of inspection and subsequent performance, in particular transport, travel, labour and material costs, shall be borne by us, provided a defect actually exists. Otherwise, we can demand compensation from the purchaser for the costs incurred as a result of the unjustified request for rectification of a defect, unless the lack of defectiveness was not discernible for the purchaser. Any obligation to bear the costs of installation and dismantling shall remain unaffected.

6.6 If a subsequent performance has failed, or a reasonable period for subsequent performance set by the purchaser has passed to no avail, or if dispensable under the statutory provisions, the purchaser can withdraw from the contract or reduce the purchase price and demand compensation for damages or reimbursement of expenses. In the case of an insignificant defect, there is no right of withdrawal. In the case of withdrawal from the contract, we will refund the purchase price minus reasonable compensation for the use of the items / service until the revocation of the contract.

6.7 Claims of the purchaser for damages or reimbursement of futile expenses exist for material defects and defects of title only pursuant to Paragraph 7.

6.8 Warranty rights against us may not be assigned to a third party without our written consent.

6.9 In the case of defects in components from other manufacturers included in the sale which we cannot eliminate due to licensing or any other reasons, we will either assert our warranty claims against the manufacturers or suppliers for the account of the purchaser or assign these to the purchaser. Warranty claims against us in respect of such defects are deemed to exist under these terms and conditions of sale only if any legal enforcement of the aforementioned claims against the manufacturer and the supplier was unsuccessful or is considered futile, for example, due to insolvency. While such litigation is pending, the statute of limitations in respect of the purchaser's pertinent warranty claims against the seller shall be suspended.

6.10 All warranty rights shall lapse where changes are made to our performance results without our consent, where parts are exchanged or materials used which do not conform to our original specifications and where, as a result, any analysis or rectification of defects becomes impossible or is inordinately hampered. In these cases we are entitled to

a refund of any costs we may have unnecessarily incurred for the analysis and rectification of such defects. The same shall apply if our operating or maintenance instructions are not observed or if our performance results are not used in accordance with contract or with our product specifications or operating instructions. This shall also apply where our performance results are used in combination with third-party performances in a way that is incompatible with our product specifications or operating instructions or where the defect of the given performance is based on design records or other standards provided by the purchaser. The above provisions shall not apply if the purchaser can prove that the given defect is not attributable to any of the aforementioned circumstances.

6.11 In regard to deliveries of software, we warrant compliance with the agreed and stated programme specifications provided that the given software is installed on such device systems as are confirmed by us to be compatible as per the given product specifications and that such use by the purchaser is confined in accordance with contract to the hardware and software environments specified by us. The purchaser is, in particular, obliged to ensure regular and proper data backup that is commensurate with the associated risks and that is carried out in accordance with the latest technological standards.

## 7. Liability

7.1 Our liability for damages, regardless of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contractual negotiations and tort, is limited in accordance with Paragraphs 7.2 to – 7.6 insofar as it depends on fault. Claims arising from data protection breaches will be stipulated separately and conclusively in Paragraph 7.9.

7.2 We shall not be liable in cases of slight negligence on the part of our organs, legal representatives, employees or other vicarious agents, unless it concerns a breach of essential contractual obligations. Essential contractual obligations are those whose fulfilment characterizes the contract and upon which the purchaser may rely.

7.3 In the case of slight negligence, liability for breach of essential contractual obligations is limited to the foreseeable, typically occurring damage.

7.4 The exclusions and limitations of liability contained in this Paragraph 7 shall apply to the same extent to our organs, legal representatives, employees and other vicarious agents.

7.5 Insofar as we provide technical information or advice, and this information or advice is not included in the contractually agreed scope of services owed by us, this information or advice will be provided free of charge and with exclusion of liability.

7.6 Any liability attributable to us for any loss of data shall be limited to the cost of reproducing the data of the backup copies to be provided to the purchaser and to the cost of recovering such data as would have been lost also if the data had been regularly protected in a risk-adequate manner. If the purchaser breaches its obligation described under Paragraph 6.11, we shall not be liable for any resulting damage.

7.7 The above limitations of liability shall not apply to intentional or grossly negligent breaches of duty, in case of a liability due to a quality guarantee or due to the explicit assumption of a procurement risk, due to injury to life, body or health, or under the German Product Liability Act (Produkthaftungsgesetz) and/or any other cases of mandatory liability under statutory law.

7.8 A reversal of the burden of proof is not associated with the above provisions.

7.9 Possible claims for damages resulting from a breach of the General Data Protection Regulation (GDPR) will be limited to intentional and grossly negligent breaches of duty, unless it concerns a breach of essential contractual obligations. Essential contractual obligations are those whose fulfilment characterizes the contract and upon which the buyer may rely.

7.10 Our liability is excluded, unless stipulated otherwise in this Paragraph 7.

## 8. Limitation periods in the case of material defects and defects of title

8.1 In deviation from Section 438 paragraph 1 no. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed to, the limitation period shall commence on the date of acceptance.

8.2 The aforementioned limitation periods also apply to contractual and non-contractual compensation claims made by the purchaser which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would result in a shorter period of limitation in the individual case.

8.3 The statutory limitation periods for claims based on Paragraph 7.3

und 7.7 and those in the case of a recourse claim pursuant to Section 445 b BGB shall remain unaffected.

## 9. Retention of title

9.1 All delivered goods shall remain our property (reserved goods) until the payment of all receivables, including future receivables.

9.2 The purchaser is entitled to process within the meaning of § 950 BGB and re-sell the reserved goods in the ordinary course of business as long as it is not in default. Pledging or transfer by way of security is not permissible. Where the value of the collateral securities granted to us exceeds by more than 50 per cent the receivables secured and not yet satisfied, we shall, on request and at our choice, release collateral in whole or in part.

9.3 The purchaser shall insure the goods against the usual risks.

9.4 Processing is made on our behalf as manufacturers without committing us. We become co-owners of the new item at the ratio between the invoice value of the reserved goods and the value of the other items processed. The purchaser shall provide storage at no charge to us. Any new item emerging from such processing shall be subject to the terms applicable to reserved goods.

9.5 Where reserved goods are inseparably combined or mixed with other items not belonging to us, we become co-owners of the new items at the ratio between the invoice value of the reserved goods and the value of the other combined or mixed items. Where such combination or mixture is made in such a manner that the item of the purchaser must be looked upon as the principal item, it shall be deemed agreed that the purchaser shall transfer to us a proportionate co-owner's interest therein. The purchaser shall provide storage at no charge to us. Any new item emerging from such combination or mixing shall be subject to the terms applicable to reserved goods.

9.6 The purchaser assigns to us already now in full by way of security all accounts receivable deriving from the re-sale or further processing of reserved goods, including all claims to credit balances in current accounts pertaining to the a.m. receivables. However, the purchaser is entitled to collect such receivables in its own name but for our account so long as we do not revoke the direct debit authorisation by reason of delay in payment by the purchaser.

9.7 Where third parties have recourse to reserved goods, in particular in the form of attachment, the purchaser shall draw attention to our ownership status and shall notify us immediately. The purchaser shall be liable for all costs incurred by us in this connection.

9.8 In the case of breach of contract by the purchaser, in particular in the case of non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the goods on the basis of retention of title. The demand for return of the goods does not at the same time include the declaration of withdrawal; instead, we shall be entitled merely to demand return of the goods and reserve the right of withdrawal. If the purchaser does not pay the purchase price due, we can only assert these rights if we have given the purchaser a reasonable time period in which to make the payment and payment has not been made or such a deadline is not required under the statutory provisions.

## 10. Industrial property rights and copyrights and trademark use

10.1 The intellectual property rights to all specifications, drawings, offer documents, illustrations, calculations, technical descriptions, source codes or other technical information regardless of their format or medium (hereinafter collectively referred to as "Technical Information"), and to all products, assemblies, contractual objects, etc. that are delivered or rendered in connection with the contract shall remain exclusively with us. This applies regardless of whether the delivery or service is provided to the purchaser or to third parties.

10.2 No licences, rights of use, industrial property rights, rights similar to industrial property rights or other intellectual property rights are transferred by us or our suppliers with the acquisition of the respective object of purchase, exclusive of the mandatory right of use associated with each purchase.

10.3 The purchaser shall immediately notify us in writing whenever a third party asserts a claim against it by reason of the latter's use of a consignment/performance, invoking infringement of industrial property rights or copyrights. We reserve, in respect of these cases, the right to legal defence by all available defensive and extrajudicial measures. The purchaser is obliged to assist us in this endeavour.

10.4 Our liability for infringement of any third-party industrial property rights or copyrights shall be confined to those cases where the subject rights are owed to the given third party in respect of territory of the Federal Republic of Germany or of the country in which delivery is to be effected, or of the states in which the object of purchase is to be used in accordance with the purpose of the contract expressly declared in text form at least. The latter applies only insofar as the states covered by the purpose of the contract are expressly designated in the order confirmation.

## 11. Rights to software

11.1 The following rules shall apply where the subject matter of contract includes or is exclusively confined to the delivery or permanent transfer for use of software unless a separate licensing agreement has been concluded.

11.2 The purchaser is granted a non-exclusive right unlimited in terms of time and place to the use of the software. Where, according to the contract, the given performance result is not used by the purchaser itself but is rather passed on by it to a third party (end customer) in its entirety or as part of another performance pursuant to sub-section 11.7, the rights specified in this section 11 are only owed to such end customer. The purchaser is obliged to procure that the end customer gives an undertaking to this effect.

11.3 The use of the given software must be confined to the scope defined in the pertinent contract. In case of a licence confined to a specific device, the software may be installed and used only on a single device. In case of a server licence, the software may be installed and used only on a single server. Use shall be limited to the number of natural persons that corresponds to the number of licences acquired. Any use beyond the contractually agreed measure is not in conformity with the contract.

11.4 Permissible use comprises the installation of the software on a device or server, loading thereof onto a working memory, in each case to the extent required and feasible, and use thereof by the purchaser for the intended purpose. In no event is the purchaser entitled to let or otherwise sub-license the acquired software, to publicly communicate it or make it accessible wireless or wire-bound or to make it available to third parties against payment or free of charge. Sub-section 11.7 shall remain unaffected.

11.5 The purchaser is not allowed to alter, copy or otherwise reproduce the software transferred for its use. The purchaser may produce a backup copy. The purchaser will clearly display the words "backup copy" on the copy produced along with the manufacturer's copyright notice.

11.6 The inter-face information required to achieve inter-operability (§ 69e Copyright Act) may be ordered from us for a reasonable charge.

11.7 The purchaser is entitled to transfer the acquired software to a third party for permanent – not, however, for temporary – use. In that case, the purchaser shall

- completely cease using the software,
- remove and erase all copies installed with the purchaser and -
- erase all copies installed on other data carriers with the purchaser (complete with backup copies) unless it is obliged by law to preserve them for a longer period.

11.8 The purchaser is required to confirm to us in writing at our request that it has carried out the measures listed in sub-section 11.7 or to state the reasons for preserving the software for a longer period. Where software is transferred to the purchaser for its permanent use, the latter is obliged to communicate to us the name and the full address of the acquirer. The acquirer is obliged to confirm to us in writing that it has received the software from the purchaser. The purchaser is obliged to procure a pertinent undertaking from the acquirer.

11.9 Where software supplied by us is installed on hardware and expressly labelled as OEM software, the acquired software may be transferred for use to a third party only jointly with such hardware. Data carriers supplied by us complete with OEM software copies are merely backup or recovery data carriers which are not independently transferable. In all other respects, sub-section 11.7 shall apply.

11.10 The purchaser undertakes to prevent its staff members and other third parties by taking suitable precautions from having unauthorised access to the software supplied and to the pertinent documentation, doing so in particular by storing the original data carriers and the backup copies in a secure place. Copyright notices, serial numbers and other programme identifying marks must not be removed from the data carrier or from the documentation and must not be modified.

11.11 Our deliveries may include third-party software which we undertake to identify as such. The scope of rights of use to such software is primarily defined in the pertinent licensing conditions provided by the third-party producer. The above terms shall apply by way of supplement. The purchaser is required to accept the licensing conditions of the third-party producer, failing which we are entitled to withdraw from the contract.

## 12. Supply constraints/ Force Majeure

12.1 Unforeseeable and unavoidable events that are beyond our control and for which we are not responsible ("force majeure") release us for their duration from the duty of delivery and performance. The same applies if circumstances of force majeure occur with our subcontractors. In these cases, the agreed time limits and deadlines shall be extended by a reasonable period to overcome the impact of the force majeure events.

12.2 A force majeure event exists, for example, in the case of strikes or lockouts, natural disasters, military conflict, terrorism, riots, uprisings, demonstrations, accidents or delay in connection with transport, refusal or delay in the granting of public approvals, changes in laws and regulations, revocation or suspension of export or import licences, orders on state privileges, acts or omissions of civil or military authorities, such as foreign exchange restrictions, allocation or restrictions on the use of material or labour, or virus and other attacks on our IT system by third parties, insofar as these took place despite compliance with the usual diligence for protective measures or other circumstances for which we were not responsible.

12.3 Barriers to delivery as defined in Paragraph 12.1 and the non-exclusive list of examples mentioned in Paragraph 12.2 shall also entitle us to withdraw from or terminate the contract without the purchaser being entitled to claim compensation.

### **13. Withdrawal/termination clause**

13.1 Continuing obligations or mixed contracts that are to be regarded in terms of their essence as continuing obligations, may be terminated for cause in whole or in part by either contracting party.

13.2 If the purchaser has the intention to submit an application for insolvency pursuant to Section 13 of the German Insolvency Code (InsO) or if the purchaser becomes aware of the opening of insolvency proceedings against him as a debtor through the delivery of the request to open insolvency proceedings from a creditor in accordance with Section 14 InsO, he is obliged to notify us immediately. A breach of this duty of notification by the purchaser also constitutes good reason and entitles us to terminate or to withdraw from the contract. We are also entitled to do so if the request by the purchaser or by a third party to open insolvency proceedings against the purchaser is rejected due to insufficiency of assets in accordance with Section 26 InsO.

13.3 Notice of termination must be given in writing. It is sufficient for this to be sent via telecommunications, in particular by fax or email, provided that the copy of the signed notice of termination is sent.

### **14. Anti-corruption/compliance**

The purchaser undertakes to comply with all statutory provisions, in particular in the areas of anti-corruption, competition and antitrust law. In particular, the purchaser represents that it will refrain from offering, promising or granting our staff members and persons close to them any unlawful benefits. The same obligations apply to those staff members of the purchaser, its vicarious agents and other third parties who are acting on the purchaser's instructions and whom the purchaser is required to commit accordingly.

### **15. Transfer of information within the Group**

15.1 The information brought to our knowledge by the purchaser will be considered as non-confidential, unless it is specifically marked as such or the confidentiality is obvious.

15.2 We are entitled to pass on to companies associated with us within the Group (§§ 15 et seq. German Company Act) such data as come to our knowledge in the context of our customer relations with the purchaser except to the extent that this is incompatible with data protection regulations.

15.3 We are entitled to name the customer as a reference in press releases, public statements or advertising activities using its publicly available logos (e.g. on the website).

### **16. Disposal**

16.1 In the case of disposal of the goods, the purchaser must observe our accompanying information and ensure that the goods specified on the delivery note are disposed of properly in accordance with the statutory provisions.

16.2 The purchaser is obliged to dispose of the delivery item at its own expense. In the event of resale of the goods or their components, the purchaser must transfer this obligation to the next buyer.

### **17. Export**

17.1 Fulfillment of the contract is subject to the proviso that an export licence is granted and that there are no obstacles to performance of the contract due to national and/or international regulations of foreign trade law and/or no embargos and/or other sanctions.

17.2 The purchaser must provide the necessary information and documents required for compliance with the relevant (re-)export regulations and for carrying out export control inspections by authorities.

17.3 When passing on our deliveries or the work and services provided by us to third parties, the purchaser must comply with the applicable regulations of national and international (re-)export control law. In any case, the (re-)export control regulations of the Federal Republic of

Germany, the European Union and the United States of America must be observed when passing on the deliveries to third parties.

17.4 The purchaser shall indemnify and hold us harmless from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with the above obligations pursuant to Paragraph 17.1-17.3.

### **18. Applicable law, venue**

18.1 All legal relations between us and the purchaser shall exclusively be governed by German law to the exclusion of UN sales law.

18.2 Exclusive venue for all disputes (including cross border transactions) directly or indirectly arising from the legal relationship between us and the purchaser is the seat of our head office. However, we are entitled to sue the purchaser also before any court of its general venue.

### **19. Partial nullity**

Should the provisions of the contract or of these general terms and conditions of sale be or become wholly or partly invalid/void or impracticable for reasons of the law on standard business terms pursuant to Sections 305 to 310 of the German Civil Code (BGB), the statutory regulations that would have been agreed upon according to the economic objectives of the contract and the purpose of these general terms and conditions of sale if this loophole had been previously known shall apply with regard to these provisions.