



WIKA Instruments  
(Pty) Ltd

Chilvers Street, Denver  
Johannesburg, 2094 • S. Africa

Tel. +27 11 621 0000  
Fax +27 11 621 0060/59  
admin.za@wika.com  
www.wika.co.za

## General Conditions of Sale of WIKA Instruments (Proprietary) Limited

### 1. Scope

1. These General Conditions of Sale shall apply to any and all business relations between WIKA Instruments (Proprietary) Limited (hereinafter referred to as **"WIKA"**) and the customer, even if not mentioned in subsequent contracts. They shall apply accordingly to work performances and services. In case of work performance, taking of the delivered products shall be replaced by acceptance of work, and in case of services by receipt of the service.
2. Any terms and conditions of the customer conflicting with, in addition to, or deviating from these General Conditions of Sale shall not form subject matter of the contract unless WIKA consented to their applicability in writing. These General Conditions of Sale shall also apply in case WIKA unconditionally effects delivery to the customer, having knowledge of its conflicting, additional, or deviating terms and conditions.
3. Any conflicting agreements between WIKA and the customer made in addition to or deviating from these General Conditions of Sale and entered into for the purpose of performing a contract shall be laid down in the contract in writing. This also applies to the deletion of this requirement for written form.
4. Rights exceeding these General Conditions of Sale that WIKA is entitled to pursuant to legal provisions or other agreements remain unaffected.

## **2. Conclusion of Contract**

1. Offers quoted by WIKAI are subject to change and non-binding.
2. Illustrations, drawings, specifications as to weight, dimension, performance, and consumption as well as any other descriptions of the products contained in the documents pertaining to the offer shall only be approximate unless expressly specified as binding. They constitute neither agreement nor guarantee as to the characteristics or durability of the products unless explicitly agreed as such in writing. Expectations of the customer with respect to the products or the use thereof do not constitute any agreement or guarantee.
3. WIKAI reserves all rights of ownership, copyrights, and any other property rights to all offer documents, in particular illustrations, drawings, calculations, brochures, catalogues, models, samples, and tools. Such documents must not be made available to third parties. The customer shall return upon WIKAI's request to WIKAI all offer documents that are no longer necessary in the ordinary course of business. For orders according to customer specifications, the customer is liable for a possible violation of third-party rights or property rights and indemnifies WIKAI against such claims unless the customer has not committed a breach of duty or is not responsible for this breach of duty.
4. Orders are not binding until they have been confirmed by WIKAI within 2 (two) weeks in a written order confirmation or until WIKAI performs the order, in particular by sending the products. Any order confirmation processed by use of automatic appliances and lacking signature and name is considered a written order confirmation. Silence of WIKAI as to offers, orders, requests, or other declarations of the customer is deemed consent only if there is a prior written agreement to that effect. To the extent the order confirmation contains obvious errors, misspellings, or miscalculations, WIKAI shall not be bound to it.
5. If the customer's financial situation deteriorates significantly or the justified application for opening insolvency or comparable proceedings concerning the customer's assets is rejected for lack of assets, WIKAI may rescind the contract in whole or in part.

## **3. Scope of Service and Acceptance**

1. The written order confirmation of WIKAI is authoritative for the scope of delivery. Changes to the scope of supplies and services by the customer require the written confirmation of WIKAI to be effective. The products are subject to modifications in construction and form to the extent such modifications are customary in trade or lie within the DIN tolerances or are

insignificant and thus acceptable to the customer. This applies accordingly to the choice of materials, the specification, and the construction type.

2. Delivery in parts is permissible unless the customer cannot be reasonably be expected to accept a delivery in parts and WIKAI's interests are taken into account at the same time.
3. WIKAI reserves the right to make excess or short deliveries of up to 5% (five per cent) of the scope of delivery for technical reasons. Claims for defects shall be excluded in this case.
4. The customer shall be obliged to formally accept the work performed by WIKAI. The customer shall not be entitled to refuse a formal acceptance because of insignificant defects. For a formal acceptance, the customer has to sign an acceptance document. It shall also be considered as formal acceptance if WIKAI has set the customer a reasonable period for acceptance after completion of the work and the customer has not refused acceptance within this period by indicating at least one defect or if the customer starts operating the products or using them in any other way. WIKAI shall be entitled to request acceptance of partial deliveries.
5. Export Restriction
  - (1) The Customer shall not, at any time, sell, and/or export and/or re-export, directly or indirectly,
    - a) to the Russian Federation; and/or
    - b) to territories occupied by the Russian Federation; and/or
    - c) to the Republic of Belarus; and/or
    - d) for use in the Russian Federation; and/or
    - e) for use in territories occupied by the Russian Federation;
    - f) and/or for use in the Republic of Belarusdirectly or indirectly any
    - i. goods/services/technologies (means engineering) = everything that is sold or dispatched or handed over to the customer in the conventional sense; and/or
    - ii. any intellectual property; and/or
    - iii. know-how; and/or
    - iv. any other confidential information whatsoever supplied or brought to the attention of the Customer howsoever under or in connection with this Agreement.
  - (2) The Customer shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
  - (3) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).
  - (4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement, and WIKAI shall be entitled to seek appropriate remedies, including, but not limited to:

- i. termination of this Agreement; and/or
- ii. a penalty of 10 % of the total value of this Agreement or price of the goods exported, whichever is higher.

(5) The Customer shall immediately inform WIKAI about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The Customer shall make available to WIKAI information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information.

#### **4. Delivery Dates and Periods**

1. Delivery dates must be agreed in writing. Delivery dates are non-binding unless specified by WIKAI as binding in advance in writing.
2. The delivery date shall be deferred by an adequate period of time if the customer does not provide the documents and approvals to be provided by it or grant the required releases in due time, or if not all technical matters have been completely clarified in due time, or if the agreed down-payment or, in case of an international order, the entire payment has not been received by WIKAI in due time. All delivery dates and periods are subject to the due and timely fulfilment of all other obligations of the customer.
3. Delivery can take place as quoted from date of receipt of official order provided all technical aspects of the order have been cleared to the satisfaction of both parties. Any revisions and/or changes to any order already received will necessitate a review of the originally quoted delivery time.
4. The delivery period is deemed to have been met if the products have left the factory before this period has expired or if WIKAI has communicated that the products are ready for dispatch or collection. All delivery dates and periods are subject to the fact that WIKAI receives its own supplies in due form and especially in due time unless WIKAI is responsible for this situation of inadequate supplies. If WIKAI has not duly and timely received its own supplies, WIKAI shall be entitled to rescind the contract. WIKAI shall inform the customer within reasonable time in case it exercises its right of rescission and shall return any performances made by the customer.
5. In case of cross-border deliveries, the customer shall furnish the competent authorities in due time with all declarations and shall take all measures required for export from South Africa and import to the country of destination, in particular procure the documentation required for customs clearance and comply with the export regulations or other limitations as to the merchantability of the products. The delivery shall be subject to the reservation that performance of the delivery is not hindered through national or international regulations,

particularly regulations controlling exports as well as embargoes or other sanctions. Delays due to export inspections or licensing procedures suspend deadlines and delivery times.

6. Every endeavor will be made to dispatch or ship goods with due promptitude or within the time limits agreed upon, but no responsibility will be accepted for loss or damage caused by non-delivery, delays in delivery or erection if such be due to lock-out, strike, or any combination of workmen, Government or other authorised intervention or control measures, delays in transportation, enemy action or sabotage, riot, insurrection, civil commotion, breakdown of plant or machinery, shortage of materials or labour, fires, explosions, Act of God or any other circumstances beyond WIKAI's control.
7. Should WIKAI and the customer have entered into a framework contract on future deliveries with fixed delivery periods and dates, and should the customer fail to call the products in due time, WIKAI is entitled to deliver and invoice the products after a reasonable grace period set by WIKAI has expired unsuccessfully, to rescind the contract, or to claim damages or reimbursement of expenses. The right to claim damages or reimbursement of expenses shall not apply if the customer is not responsible for the failure to call the products in due time.

## **5. Prices and Payment**

1. Unless specific agreements are made to the contrary, all prices apply EXW INCOTERMS® 2020, WIKAI JHB Office, Denver, and are exclusive of shipping and packaging costs, insurance, statutory taxes, customs duties, or other levies. The costs incurred in this context, in particular the costs for packaging and transport of the products, will be invoiced separately. Statutory VAT will be shown separately on the invoice at the statutory rate valid on the day of invoicing.
2. Orders without expressly agreed fixed prices and with a delivery period or date of at least 2 (two) months following the conclusion of contract will be invoiced at the list prices of WIKAI valid on the day of delivery. The recording of the list price valid on the order date on the order form or order confirmation does not constitute agreement of a fixed price. The customer shall be entitled to rescind the contract to the extent prices are increased by more than 5% (five per cent). The customer will notify WIKAI within reasonable time of the latter's request of whether or not it will exercise such right of rescission. If production-related price increases occur by the date of delivery, WIKAI shall, irrespective of the offer and order confirmation, be entitled to adjust the prices accordingly.
3. Unless a separate agreement is made to the contrary, the delivery price is payable net within 30 (thirty) days from date of statement. The day of payment is considered the day WIKAI is able to dispose of the delivery price. If the customer defaults payment on overdue accounts

and extended bills shall bear interest at prime plus 2% (two per cent) per annum. Further claims by WIKAI remain unaffected.

4. Payment Terms:

For first time Customers -100%(one hundred per cent) pre-payment is required.

Non-account holders : - Cash on delivery (C.O.D.) / Electronic Fund Transfer (EFT) , 50% (fifty per cent) deposit is required on placement of order, balance to be paid prior to delivery.

100% (one hundred per cent) pre-payment is required for the Import of Items and Special Manufactured goods.

For WIKAI account holders : - Strictly 30 (thirty) days net from date of statement.

5. In case of international orders, payment shall, in derogation of Para. 3 above, take place prior to delivery unless otherwise agreed in advance in writing.

6. Payment for goods supplied must be effected in accordance with the terms agreed upon. Performance is deemed to have been effected if the respective amount has irrevocably been credited to WIKAI.

7. In case single or all items of a firm purchase order placed on WIKAI be revised or cancelled, the following cancellation or revision charges will come into force:

7.1 Items supplied which are standard stock items at WIKAI and which are cancelled or returned in the original condition in the original packaging – 0%(zero per cent) charges.

7.2 Items which have to be especially manufactured or custom made for a firm purchase order placed on WIKAI:



Status of order at WIKA Instruments (Proprietary) Ltd or a Sub-supplier	Cancellation Charges
Order entered - Required Items or Material ordered but not yet shipped - No manufacture has taken place yet	10% of total item value, revised or cancelled
Required material already received and cut	25% of total item value, revised or cancelled
Required material already received and manufacture complete	50% of total item value, revised or cancelled
Complete Items required ex sub-suppliers (local or overseas) and already shipped by sub-supplier	70% of total item value, revised or cancelled
All Items complete and ready to ship	85% of total item value, revised or cancelled
All Items shipped	100% of total item value, revised or cancelled

## 6. Exotic Materials:

1. There are various factors, outside the control of WIKA, that influence the pricing of exotic materials and precious metals and need to be confirmed prior to order placement. In the case of Platinum used in the manufacturing of said item, price will be reliant on the performance of the precious metal pricing of Platinum (Pt) at the date of material order receipt.
2. WIKA reserves the right to implement surcharges without prior notification based on market fluctuation outside of WIKA Instruments control.

## 7. Passing of Risk

1. The risk of accidental loss and accidental deterioration shall pass to the customer as soon as the products have been handed over to the person effecting transport or have left the warehouse of WIKA for purposes of shipment. In case the customer collects the products, the risk of accidental loss and accidental deterioration shall pass to the customer upon notification of readiness for collection. Sentences 1 and 2 above shall also apply to partial

deliveries or if WIKAI has assumed additional services, e.g., the transport costs or assembly of the products at the customer's site.

2. If the customer falls into default in accepting the products, WIKAI is entitled to demand compensation for the damage incurred including possible additional expenses unless the customer is not responsible for non-acceptance of the products. In particular, WIKAI may store the products at the expense of the customer as long the latter is in default of acceptance. The costs for storing the products are fixed at a rate of 0.5% (zero point five per cent) of the net invoice value for each commenced calendar week of default. Further claims by WIKAI remain unaffected. The customer is entitled to prove that WIKAI has incurred lower or no costs at all. The same applies if the customer violates any other obligations to cooperate, unless the customer is not responsible therefor. The risk of accidental loss and accidental deterioration of the products shall pass to the customer at the latest at the time the customer falls into default of acceptance. WIKAI is entitled to otherwise dispose of the products after the unsuccessful expiry of a reasonable period set by WIKAI and to supply the products to the customer within a reasonably extended period.
3. In case shipping is delayed due to circumstances WIKAI is not responsible for, risk shall pass to the customer upon notification of shipping readiness.
4. The delivered products must be accepted by the customer even if they have minor defects, without this affecting its claims based on defects.

## **8. Warranty Claims**

1. The rights of the customer to assert claims based on defects presuppose that the customer inspects the delivered products upon receipt, to the extent reasonable also by way of trial processing or trial use, and notifies WIKAI of any apparent defects in writing without delay, however no later than 2 (two) weeks after receipt of the products. Hidden defects must be reported to WIKAI within reasonable time and in writing after their discovery. The customer must describe the defects in writing when notifying WIKAI of them. The assertion of claims based on defects by the customer further presupposes that any and all specifications, statements and conditions shown in the technical instructions, construction manuals, operating manuals, planning and design guidelines, and other documents pertaining to the individual products are complied with during planning, construction, mounting, connection, installation, start-up, operation, and maintenance of the products, in particular that maintenance works are duly carried out and evidenced, and that recommended components are used.
2. The assertion of claims based on defects is excluded if the defect results from natural wear and tear in particular of wear parts or is due to improper handling, mounting, operation, or storage, or faulty modification or repair of the products performed by the customer or third

parties. The same shall apply to defects attributable to the customer, in particular in case the defect is based on chemical, physical, or thermic factors which are unusual and which the customer did not point out to WIKAI in writing. The same applies to defects resulting from a technical cause other than the original defect.

3. WIKAI does not assume any warranty, in particular no warranty of quality or durability, unless otherwise agreed in writing.
4. In lieu of any warranty, condition or liability implied by law, WIKAI's liability for any loss, injury or damage in respect of any defect in or failure of the goods supplied is limited to making good by replacement or repair of defects which under proper use appear therein and arise solely from faulty design, materials or workmanship, within a period of 12 (twelve) calendar months, after the original goods shall have been dispatched by WIKAI. At the termination of this period, all liability on WIKAI's part ceases provided always that such defective parts are returned free to WIKAI within reasonable time. Unless otherwise arranged, the repaired or new parts will be delivered free of charge to the point of delivery. A comment of WIKAI on a claim based on defects asserted by the customer shall not constitute an opening of negotiations on such claim or on the facts giving rise to the claim, provided that WIKAI rejects the claim based on defects to the full extent.

## **9. Liability of WIKAI**

1. WIKAI is liable, without limitation, for damages resulting from a breach of warranty or from a violation of life, body or health. The same applies to intent and gross negligence, or to the extent WIKAI has assumed a procurement risk. In the case of slight negligence, WIKAI is only liable if substantial obligations are violated which result from the nature of the contract or which are of special significance for achieving the purpose of the contract. In the case of violation of such obligations, delay or impossibility, WIKAI's liability is restricted to such damage as can be typically expected to result from the scope of this contract. Mandatory statutory liability for product defects remains unaffected.
2. In as far as WIKAI's liability is excluded or limited, this also applies to the personal liability of the staff, workers, employees, representatives and agents of WIKAI.

## **10. Product Liability**

1. The customer will not modify the products; in particular, it will not modify or remove existing warnings about risks due to improper handling of the products. In case of breach of this undertaking, the customer shall internally indemnify WIKAI from and against any and all

product liability claims asserted by third parties unless the customer is not responsible for the modification of the products.

2. In the event WIKAI is caused to call back or send a warning notice due to a defect in the products, the customer shall use its best efforts to support WIKAI and take part in all reasonable measures that WIKAI deems reasonable and appropriate; the customer shall in particular assist WIKAI in obtaining the necessary customer data. The customer shall bear the costs for the product recall or warning notice unless it is not responsible for the defect in the products and the loss occurred according to the principles of product liability laws. Further claims by WIKAI remain unaffected.
3. The customer shall inform WIKAI within reasonable time and in writing about any and all risks in connection with the use of the products and any possible defects in the products that become known to it.

## **11. Force Majeure**

1. If WIKAI is hindered in the fulfilment of its contractual obligations, in particular the delivery of products, due to force majeure, WIKAI will be exempted from liability for the duration of the hindrance as well as for a reasonable start-up time afterwards, without being obliged to pay compensation to the customer. The same shall apply if the fulfilment of the obligations of WIKAI is unreasonably impeded or temporarily impossible due to unforeseeable circumstances beyond the control of WIKAI, in particular due to strike, pandemic, epidemic, measures of public authorities, lack of energy, difficulties in supply on the part of a sub-contractor, or material interruptions of operation, including, in particular cyber attacks. This also applies if such circumstances occur at one of WIKAI's sub-contractors. It shall equally apply in case WIKAI is in default. To the extent WIKAI is released from its obligation to supply, WIKAI will grant back preliminary performances of the customer as may have been made.
2. WIKAI shall be entitled to rescind the contract after a reasonable period has elapsed if such hindrance continues for more than four months and the performance of the contract is no longer of interest to WIKAI due to such hindrance. Upon the customer's request, WIKAI will after expiration of such period declare whether it will exercise its right of rescission or will deliver the products within a reasonable period.

## **12. Retention of Title**

1. WIKAI retains title to the delivered products until the purchase price and any and all claims against the customer that WIKAI is entitled to recover under this Agreement have been fully settled. The customer, prior to the payment of the purchase price and all claims owing to

WIKAI, shall handle the products that have been supplied it with the relevant and all due care required. The customer shall in particular sufficiently insure the products while they are in the customers care at its own expense at replacement value against fire, water, and theft damage. The customer shall provide WIKAI upon the latter's request with proof of such insurance policy. The customer hereby agrees and assigns to WIKAI any and all claims, that would result in compensation being received by the customers insurance policy over the products, that have resulted from the destruction and/or damage to the products. WIKAI herewith accepts this assignment. If the insurance agreement does not allow for such assignment, the customer herewith instructs the insurance company to make payments to WIKAI directly for such a claim. Further claims by WIKAI remain unaffected.

2. The customer is only permitted to sell the products once the full purchase price and any and all claims have been settled. Beyond that, the customer shall not be entitled to pledge the products subject to retention, to transfer them by way of security or to otherwise dispose of them in a way endangering WIKAI's title of property. The customer shall immediately notify WIKAI in writing of any attachment or any other intervention by a third party, provide all information required, inform the third party of the title of WIKAI, and assist in all measures of WIKAI in order to protect the products. To the extent the third party is not able and/or willing to reimburse WIKAI the judicial and extrajudicial costs for enforcing WIKAI's title of property, the customer shall reimburse WIKAI any and all losses sustained by WIKAI in this regard, provided that the loss/es were not as a direct result of the willful act or omission on the part of the customer.
3. The customer assigns to WIKAI, with immediate effect, all claims in connection with the resale of the products with any and all ancillary rights, irrespective of whether the products subject to retention were resold prior or after processing. WIKAI accepts such assignment with effect as from today. If such assignment is not permissible, the customer herewith instructs the third party debtor to make payments to WIKAI exclusively. The customer shall be revocably authorized to collect the claims assigned to WIKAI in trust for WIKAI in the customer's own name. The amounts collected shall be transferred to WIKAI immediately. WIKAI may revoke the customer's authorization for collection and resale for good cause, in particular if the customer:
  - 3.1. ceases or threatens to cease payment of its debts or ceases or threatens to cease to carry on its business;
  - 3.2. becomes unable to pay its debts as and when they fall due within the meaning of the Insolvency Act, No. 24 of 1936;
  - 3.3. becomes subject to an order, petition or effective board resolution for its winding-up or business rescue, where such order, petition or resolution is made, otherwise than for the purpose of its amalgamation or reconstruction upon terms previously approved in writing by the other Party;
  - 3.4. convenes a meeting for purposes of, or proposes or enters into, any arrangement or composition with its creditors;

- 3.5. becomes subject to an order of execution, or if any other process is levied or enforced upon any part of its assets and is not paid out or discharged within 14 (fourteen) days; or
- 3.6. has any encumbrancer take possession of any of its assets or a receiver, administrative receiver, manager or business rescue practitioner is appointed over the whole or any material part of its assets or activities.
4. Upon request of WIKAI, the customer shall within reasonable notify the third party debtor of the assignment and provide WIKAI with any information and document necessary for collection.
5. In case the customer conducts itself contrary to the terms of the contract, in particular in case it defaults in payment, WIKAI shall, without prejudice to its other rights, be entitled to rescind the contract after a reasonable grace period set by WIKAI has expired. The customer shall within reasonable time grant WIKAI or its authorized agents access to the products subject to retention and return them. After due and timely notice, WIKAI may otherwise dispose of the products subject to retention in order to satisfy its matured claims against the customer.
6. The processing or remodeling of the products subject to retention by the customer shall always be made for WIKAI. The customer's expectant right to the products subject to retention shall also apply to the processed or remodeled item. Should the products be processed or remodeled together with other objects not belonging to WIKAI, WIKAI shall gain joint title in the new item in the proportion of the value of the delivered products to the other processed objects at the time of such processing or remodeling. The same applies if the products are combined or mixed with other goods not belonging to WIKAI, so that WIKAI loses their full ownership. The customer must secure the new objects for WIKAI. In all other regards, the item created through processing or remodeling and connection or mixing is subject to the same provisions as the products subject to retention.
7. As far as the realizable value of the securities, taking into account usual valuation adjustments by the banks, exceeds the claims of WIKAI arising from the business relationship with the customer by more than 10% (ten per cent), WIKAI shall at the customer's request be obligated to release the securities the customer is entitled to. The valuation should be based on the invoice value of the products subject to retention and on the nominal value of the claims. The choice of the security to be released lies with WIKAI in each case.
8. In case of delivery to other legal systems in which the above provisions of retention of title do not have the same retaining effect as in the Republic of South Africa , the customer hereby grants WIKAI a corresponding security interest. The customer will take all further measures that are necessary in this respect to grant WIKAI such corresponding security interest. The customer shall assist in all measures necessary for or conducive to the effectiveness and enforceability of such security interests.

### **13. Confidentiality**

1. The parties undertake to keep confidential for a period of 5 (five) years following delivery and – unless necessary for the business relationship – neither to record, hand on, or use any information that becomes available to them and that is indicated confidential or is in other circumstances identifiable as business or trade secret.
2. This confidentiality obligation shall not apply to the extent the information was evidently known to the other Party, common knowledge or public domain before commencing the contractual relationship, or becomes common knowledge or public domain without the fault of the other Party. The burden of proof is to be borne by the receiving party.
3. By appropriate binding agreements, the parties will ensure that the employees and agents acting on their behalf, in particular the freelancers and contractors as well as any service providers working for them, neither record without authorization nor hand on nor exploit such business and trade secrets for a period of five years following delivery.

### **14. Final Provisions**

1. The transfer of rights and obligations of the customer to third parties requires the prior written consent of WIKA.
2. Counterclaims by the customer are only permissible for set-off if they have become res judicata or are undisputed. The customer may exercise a right of retention only to the extent its counterclaim is based on the same contractual relationship.
3. Legal relationships between WIKA and the customer will be subject to the laws of the Republic of South Africa.
4. If the customer is a merchant or legal entity operating under South African law, the exclusive place of jurisdiction for all disputes resulting from the business relationship between WIKA and the customer is the place of business of WIKA. WIKA is also entitled to take legal action at the place of business of the customer as well as at any other admissible place of jurisdiction. Arbitration clauses shall be excluded.
5. Place of performance for all obligations of the customer and WIKA shall be the statutory seat of WIKA unless otherwise agreed.
6. The contractual language is English.
7. Should an individual provision of these General Conditions of Sale be or become ineffective or unenforceable in whole or in part, or should these General Conditions of Sale contain a regulatory gap, the validity of the remaining provisions shall not be affected thereby. Instead of the ineffective or unenforceable provision, the effective or executable provision which



comes closest to the purpose intended by the ineffective and unenforceable provision shall be regarded as agreed upon. In case of a regulatory gap, the provision shall be deemed to be agreed which corresponds to the provision that would have been agreed in terms of the object of these General Conditions of Sale if the parties had considered the matter at the outset.