

## GENERAL TERMS AND CONDITIONS OF BUSINESS (GTC)

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### I. – General terms and conditions

#### 1. Scope

##### 1.1

The provisions of these General Terms and Conditions of Business ("**GTC**") apply, in the form applicable at the time of contract formation, to all contract types pursuant to Section 1.2 and to the pre-contractual obligation between F&S solar concept GmbH ("F&S" herein), or one of its affiliates, and its customers.

##### 1.2

**Customer** as used in the GTC includes *consumers, merchants, legal entities under public law* and funds under public law.

**Consumer** as used in the GTC is a natural person with whom business relations are entered into without being able to ascribe a trade or independent profession to such person.

**Merchant** as used in the GTC is a natural or legal person or a partnership with legal capacity with whom business relations are entered into and who is acting in the exercise of a trade or independent profession. This includes legal entities under public law and funds under public law.

##### 1.3

With respect to *merchants*, these terms and conditions also apply to all future contracts without further reference.

##### 1.4

In the event that the customer has its own GTC, they shall not become part of this contract unless F&S agrees in writing to their inclusion.

Performance of the contract without reservation shall not be deemed consent to the inclusion of the customer's GTC.

Amendments to these GTC shall be announced to the customer in writing and are deemed approved unless the customer objects to them within six weeks after the amendment is announced. F&S shall make special reference to this consequence with the announcement.

##### 1.5

Agreements entered into between the parties in individual cases (including side agreements, addenda and amendments) have priority over these General Terms and Conditions of Business in every case. For their validity, however, a written contract or written confirmation by F&S is controlling.

#### 2. Contract types

These GTC apply to all contracts between F&S and the customer.

The general provisions under Parts I and VI of these GTC apply as well to all contract types entered into with F&S.

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In addition, special provisions apply within these GTC to the following contract types:

- a. **Purchase agreements** in accordance with the special provisions in Part II of these GTC; if the photovoltaic plants purchased thereby are also installed by F&S or by third parties commissioned by F&S, the provisions under Part III of these GTC also apply
- b. **Contracts for work and services** in accordance with the special provisions in Part III of these GTC
- c. **Planning services** for PV roof or open spaces in accordance with the provisions in Part IV of these GTC
- d. **Purchase of a photovoltaic project**, including any concept of a space or rented roof, the legal securing of the rent for the contractually prescribed period, planning and installation of the photovoltaic plant in accordance with the provisions of Parts II, III, IV and V of these GTC.

### 3. Formation of agreement

#### 3.1

Our offers are strictly subject to change without notice and are nonbinding unless we expressly characterise them as binding.

#### 3.2

An individually developed binding offer binds F&S for no more than two weeks.

#### 3.3

In the case of an offer by the customer which likewise binds it for two weeks, a contract is not formed until F&S has accepted it by sending an order confirmation in writing.

#### 3.4

F&S reserves its ownership rights, copyrights and other industrial property rights to all images, calculations, drawings and other documents. The buyer may only disclose such to third parties with the written consent of F&S, regardless whether F&S has identified such as confidential.

In case of errors in catalogues, price lists, prospectuses, offers, invoices and other statements, F&S is entitled to correct them and, if appropriate, make any additional charge and/or credit without prior notification.

### 4. Invoices, payments

#### 4.1

F&S shall issue the customer an invoice for the performance, which shall show the applicable value-added tax at the time of invoicing.

#### 4.2

Payments are payable in full upon receipt of the performance, without deduction, to the account indicated on the invoice.

If it has not paid, the customer shall be in default without further declarations 14 days after the due date.

Even if notices of defects or counterclaims are asserted, the customer is only entitled to offset the amount due if the counterclaims have been legally established or are undisputed. The buyer is entitled to exercise a right of retention only if its counterclaim is based on the same contractual relationship and only to the extent it bears a reasonable relationship with the defects and the anticipated costs of the cure.

#### 4.3

In case a customer who is a *merchant* is in default of payment, F&S is entitled to demand default interest eight percentage points above the applicable base interest rate (Section 247 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB)).

The customer is allowed to prove that the loss is not more than five percentage points above the base interest rate (Section 247 BGB).

In case a customer who is a *consumer* is in default of payment, F&S is entitled to demand default interest five percentage points above the applicable base interest rate (Section 247 BGB).

F&S is entitled to demand higher default interest if the amount of it has been proven.

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### 4.4

The customer's payments shall first be applied to default interest, then to costs and then to the outstanding receivables.

### 4.5

In the event that the customer is in arrears or in case, after entry into the contract, circumstances become known which compromise the customer's creditworthiness, F&S is entitled to accelerate the customer's remaining debt arising from all contracts, to demand prepayments or the provision of security or, after passage of a reasonable time, to rescind the contract without prejudice to other rights.

## **5. Retention of title and security**

### **5.1 General provisions**

#### 5.1.1

The delivered articles remain the property of F&S until complete satisfaction of all claims through the customer resulting from the business relationship.

#### 5.1.2

The customer shall treat the goods which are subject to retention of title ("retained goods") with care, keep them separate from the property of the customer and third parties and store them properly. The keeping and storing shall be free of charge to F&S.

F&S shall be immediately notified of an event of loss. If the customer insures the retained goods, the claims under the insurance policy are herewith assigned to F&S up to the full amortisement of all claims arising from the business relationship with the customer.

#### 5.1.3.

As long as the retention of title subsists, the customer is prohibited from pledging the articles or assigning them as security.

In the event of attachments or other seizures by third parties, the customer shall point out the ownership of F&S to the third party and immediately notify F&S in writing.

#### 5.1.4

The customer is not authorised to transform and/or process the retained goods in the ordinary course of business without the express written consent of F&S.

In the event that the retained goods are processed and/or transformed, this shall occur on behalf of and for F&S, but without any obligations arising therefrom for F&S.

If the retained goods are processed with other goods which do not belong to F&S, F&S acquires co-ownership of the new article according to the relationship between the value of the retained goods (total invoice amount, including VAT) and the other processed articles at the time of processing.

The same applies for the new article that arises through processing as for the retained goods.

If the retained goods are inseparably commingled with other articles which do not belong to F&S, F&S acquires co-ownership of the new article according to the relationship between the value of the retained goods (total invoice amount, including VAT) and the other commingled articles at the time of commingling.

If the customer's article is to be seen as the main article in consequence of the commingling, the customer and F&S agree that the customer assigns pro rata co-ownership in the article to F&S; F&S hereby accepts the assignment.

The sole or co-ownership of the article which has accrued to the benefit of F&S shall be maintained by the customer for F&S without charge.

#### 5.1.5

In the event of breaches of obligation, particularly the customer's default in payment, F&S is entitled to take back the retained goods after first setting a reasonable grace period, to enter the property of the customer for that purpose and to utilise the retained goods for the purpose of amortising the secured receivables or to assign the claim for surrender to third parties.

If F&S takes back the retained goods, this represents a rescission of the contract. If F&S seizes the retained goods, this is also a rescission of the contract. After deduction of a reasonable amount for the utilisation costs, the proceeds of utilisation are to be applied against the amounts owed to F&S by the customer.

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### 5.1.6

In the case of 5.1.5, the customer is obliged to reimburse F&S for the use that has already been derived in the form of the feed-in tariff.

### 5.1.7

Upon request, the customer shall provide an adequate security to F&S or, at its option, make advance payments.

## **6. Delivery and installation periods and delay**

### **6.1**

Delivery dates or deadlines, for which it has not been expressly agreed in writing that they are binding, are exclusively nonbinding statements. The term of agreed, binding delivery deadlines begins with the date of final and complete order placement, but not before the customer has properly and completely completed any arrangements (e.g. supplying documents and the like) of its own that are necessary for the execution of the order.

### **6.2**

F&S is entitled to make partial deliveries and render partial services and to invoice accordingly if this is reasonable for the customer.

### **6.3**

F&S may require progress payments and condition the continuation of the work on their settlement.

### **6.4**

F&S shall be liable for **delayed delivery** according to the statutory provisions, provided that the delay is based on an intentional or grossly negligent breach of contract which is attributable to F&S. A late notice by the customer is required in every case for the onset of delayed delivery.

In other cases of delayed performance, F&S's liability to pay damages along with performance and damages in lieu of performance shall be limited to foreseeable, typically occurring loss.

All other claims by the customer are excluded.

This shall not apply to compulsory liability for injury to life, limb or health. The above provisions are not associated with a shifting of the burden of proof to the customer.

### **6.5**

If and for as long as inhibiting circumstances occur, which considerably hamper or make it impossible for F&S or third parties commissioned by F&S to render the performance, F&S shall be relieved from having to comply with the agreed delivery dates for goods and services.

Inhibiting circumstances in this sense are

- War, riots, embargoes, labour disputes, lockouts;
- Hurricanes, cyclones, earthquakes, tidal waves;
- Explosion and fire;
- Transportation impediments and restrictions;
- Government actions, particularly administrative orders.

In such cases, F&S is entitled to postpone the contractually stipulated dates and deadlines for the estimated duration of the inhibiting circumstances. F&S shall immediately inform the customer upon learning of the inhibiting circumstances and their effect on the delivery or service.

If the timeframe in which the inhibiting circumstances occur is not only an insignificant period, both parties are entitled to rescind the contract. In the event of rescission, F&S is obligated to reimburse any payments that have already been received from the customer.

### **6.6**

If F&S cannot render the contractually owed performance because of supply problems with its suppliers, it is authorised to deliver qualitatively adequate components that are obtainable elsewhere at an appropriate price. In such case, F&S is obliged to promptly notify the customer and reimburse any overpayments.

If it is impossible to make a substitute delivery, F&S is entitled to rescind the contract.

In such case, F&S is obliged to promptly notify the customer and to promptly reimburse any overpayments.

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### 6.7

If requested by F&S, the customer is obliged to declare within a reasonable time whether it will rescind the contract due to the delay or adhere to the performance.

### 6.8

If there is **delayed acceptance** by the customer, F&S is entitled to demand reparation for the incurred loss and any additional costs. The same applies if the customer culpably breaches duties to cooperate. Upon the occurrence of delayed acceptance or payment, the risk of accidental deterioration and accidental destruction passes to the customer.

## 7. Damages claims

### 7.1

In case of a breach of contractual and non-contractual obligations, F&S shall be liable according to the statutory provisions unless otherwise provided in these GTC, along with the following provisions.

### 7.2

In all cases of contractual and non-contractual liability, F&S shall pay damages or reimburse expenses incurred in vain:

#### 7.2.1

in the full amount for intentional acts and for the absence of a quality for which F&S has assumed a guarantee;

#### 7.2.2

in the full amount for gross negligence if the customer is a *consumer*;

#### 7.2.3

in the case of gross negligence if the customer is a *merchant*, only to the extent of typically foreseeable loss that was to have been prevented by the obligation breached;

#### 7.2.4

in the case of simple negligence arising only from the breach of a material obligation if the purpose of the contract is thereby compromised, solely to the extent of the typically foreseeable loss that was to have been prevented by the obligation.

Applicable in the process is a limitation of € 250,000 per event of loss and a maximum aggregate of € 500,000 from the respective contract.

### 7.3

A one year limitation period applies to all claims mentioned in Section I 7.2, except in the cases of unlimited liability.

The limitation period begins at the time specified in Section 199(1) and (2) BGB.

It occurs at the latest upon expiry of the maximum periods specified in Section 199(3), (3a) and (4) BGB.

The different limitation period for claims due to material defects arising under II 2 of these GTC remains unaffected by the provisions of this Section.

Moreover, the limitation period of this Section shall not apply to the extent that Section 438(1) No. 2 BGB (buildings and items used for buildings) provides longer limitation periods.

### 7.4

The above provisions are not associated with a shifting of the burden of proof to the customer.

### 7.5

The defence of contributory negligence remains reserved.

The limitations of liability under I 7.2 and 7.3 are inapplicable to liability for life, limb and health and liability under product liability law.

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### II. – Special terms for purchase agreements

#### 1. Prices

##### 1.1

Unless otherwise agreed in individual cases, our current prices at contract formation apply, plus applicable statutory value-added tax.

##### 1.2

Price adjustments in terms of an increase are only possible if

- the stipulated delivery time exceeds a period of six weeks after contract formation without the fault of F&S, and
- there has been a price increase by the supplier in this period, and
- F&S has not yet issued an invoice.

##### 1.3

Prices are ex warehouse, including loading and packaging, but excluding freight and the applicable statutory amount of value-added tax. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

#### 2. Passage of risk, shipping and packaging

##### 2.1

Delivery shall occur ex warehouse, which is simultaneously the place of performance, uninsured and at the customer's expense. If desired, F&S will back the delivery with shipping insurance at the customer's expense. Unless otherwise agreed, F&S is entitled to specify the type of shipping itself (particularly the shipping company, method of shipment and packaging).

##### 2.2

*Merchant:*

The risk of accidental destruction and accidental deterioration of the goods passes to the *merchant* when the article has been shipped or picked up. This also applies when carriage-paid delivery has been stipulated.

If shipment is delayed at the request or fault of the buyer, the notification of readiness for shipment is tantamount to shipment.

##### 2.3

*Consumer:*

With respect to *consumers*, the risk of accidental deterioration and accidental destruction does not pass to the customer until delivery of the goods.

##### 2.4

If it is stipulated that the customer will pick up the goods, then, in deviation from the above provisions, the risk of accidental destruction and accidental deterioration passes to the customer when the goods are made available for pick-up and the customer is notified thereof.

Goods that F&S announces are ready for shipment must be requested immediately. Otherwise, F&S is entitled to ship the goods at the customer's expense and risk or, at F&S's option, to store them and invoice immediately.

##### 2.5

F&S does not take back transport packaging or any other packaging, with the exception of Euro-pallets. The buyer assumes sole responsibility for proper disposal of the packaging materials.

#### 3. Liability for material defects

##### 3.1 General provisions

###### 3.1.1

Unless otherwise specified in the following, the statutory provisions apply to the customer's rights in case of material defects or legal deficiencies (including wrong delivery, under-delivery and defective installation instructions).

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### 3.1.2

All such articles that exhibit a material defect within the limitation period must be repaired without charge, newly delivered or rendered, provided that the cause of the material defect already existed at the time when risk passed.

### 3.1.3

No claims are available for material defects when they involve only a slight deviation from the agreed quality or only a slight impairment of the article's serviceability.

### 3.1.4

No claims for defects exist for natural wear and tear or damages that have arisen, after the passage of risk, as a consequence of incorrect handling, excess stress, unsuitable equipment, defective workmanship, unsuitable subsoil, lightning strike, excess voltage or other external influences that are not expected under the contract and in the case of non-reproducible software errors. If the customer or a third party undertake improper changes or repair work, claims for material defects and consequences resulting therefrom are unavailable to them.

### 3.1.5

The customer's rights of recourse against F&S under Section 478 BGB exist only to the extent that the customer has made no agreements with its buyer which go beyond statutory rights.

### 3.1.6

Apart from that, I 7 applies to damages claims. Further claims of the customer against F&S and its agents or claims other than those regulated in Part II for a material defect or legal deficiency are excluded.

## 3.2 Provisions for consumers

### 3.2.1

The *consumer* shall promptly inspect the received goods for defects and complain in writing within 14 days of delivery. The dispatch of the notification of the defects is controlling to this extent. However, this represents no limitation period for the assertion of rights arising from deficiencies.

F&S shall not be liable for errors whose occurrence was occasioned by the *consumer*. This also applies to the appearance of customary wear and tear. With respect to all other deficiencies, the statutory provisions on warranty in the law on the sale of goods apply.

### 3.2.2

Unless the law mandates longer periods, the *consumer's* claims for defects lapse within the two-year statute of limitations, calculated from the date of delivery of the article.

### 3.2.3

If a defect exists, the *consumer* may initially demand replacement or repair, at its option, unless the selected type of cure (replacement or repair) is disproportionate or impossible for F&S in terms of the statutory provisions.

### 3.2.4

The *consumer* may not cancel the contract (rescission) or reduce the purchase price commensurately (reduction) until after the cure has failed or if the seller declines to cure.

## 3.3 Provisions for merchants

### 3.3.1

*Merchants* shall promptly inspect the received goods for defects and notify the seller in writing and specifically. The deadline for complaining under Section 377 of the German Commercial Code (*Handelsgesetzbuch* – HGB) is five working days in this case. This deadline does not apply to latent defects that were not discernible during the examination. Latent defects must be asserted promptly after their discovery. The complaints must be communicated in such timely manner before processing and reprocessing that the seller is still able to take remedial action. If the *merchant* neglects to make the complaint, it loses any warranty rights.

### 3.3.2

Claims for defects lapse in one year, calculated from the date of delivery. This shall not apply in cases in which the law mandates longer periods.

### 3.3.3

If the object of purchase exhibits a defect within the limitation period, the cause of which already existed when risk passed, F&S is obliged, at its option, to repair or to deliver a new object of purchase without charge.

### 3.3.4

If a repair has failed twice, the *merchant* has the right to rescind the contract or to reduce the purchase price commensurately.

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### III. – Special terms for contracts for work and services

#### **1. Performances by F&S**

##### **1.1**

F&S undertakes to install the components provided by the customer or the photovoltaic system ("**object of work**") ready for service. The subject matter of the installation contract is exclusively photovoltaic systems which comply with the terms of the VDEW (German Electrical Industry Association) guideline "*Richtlinie für den Parallelbetrieb von Eigenerzeugungsanlagen mit dem Niederspannungsnetz des Elektrizitätsversorgungsunternehmens (EVU)*" ("Guideline for parallel operation of self-generating plants with the low voltage grid of the electricity company").

##### **1.2**

F&S is entitled to use third parties to perform the contract.

#### **2. Supply of electrical energy**

The customer is responsible for contracting with the local grid operator for supplying electrical energy to the network of the local grid operator.

F&S has no obligation of any kind in this respect.

#### **3. Requirements for installation services**

##### **3.1**

The customer shall ensure at its expense that the installation, assembly and and/or placement in service can be commenced as contracted and performed without interruption.

##### **3.2**

A prerequisite for the turnkey installation of the object of work is that the contractually defined structural requirements for the plant installation be in place.

The customer is obliged to ensure that these structural requirements are in place before the installation work is commenced and to verify this to F&S. Costs incurred in this context are borne by the customer.

##### **3.3**

The customer shall grant F&S and its agents unrestricted access to the installation area to the extent such is necessary for rendering the contractually owed performance.

##### **3.4**

The customer warrants that the public notification which is required for installing the photovoltaic system has been tendered to the competent building authority and any other permissions from public authorities have been obtained.

F&S may demand corresponding proof from the customer.

If the customer fails to meet its notification obligations recited here, F&S is free of any liability.

##### **3.5**

If there is delayed acceptance by the customer with respect to the performance, or if it culpably breaches its obligations to cooperate, F&S is entitled to demand reparation for the loss incurred by F&S, including any additional costs. The risk of the accidental destruction and accidental deterioration of performances that have already been rendered passes to the customer upon the occurrence of delayed acceptance.

#### **4. Acceptance**

##### **4.1**

Acceptance shall be effected by the customer upon turnkey installation of the object of work.

##### **4.2**

A report of the acceptance shall be prepared, which shall be signed by both contracting parties. F&S may commission a third party to represent it for the acceptance and signing of the acceptance report.



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### 4.3

If F&S gives the customer a reasonable period for acceptance and the customer fails to accept the object of work or the installation work within such period, the object of work or installation work shall be deemed to be unobjectionable upon expiry of the period. The acceptance is deemed to have been completed if the customer places the object of work in service.

## 5. Warranty rights

### 5.1

Unless otherwise specified in the following, the statutory provisions apply to the customer's rights in the case of material defects or legal deficiencies.

### 5.2

The customer must promptly complain of defects to F&S.

### 5.3

If, after acceptance, a material defect appears which was not discernible at the installation of the object of work, F&S is initially entitled to repair or replace within a reasonable period.

### 5.4

Upon failure of the repair or replacement the customer may, after setting a grace period with a threat to refuse performance, rescind the contract or reduce the remuneration commensurately according to the relation between the value of the work in flawless condition and the actual value of the work.

### 5.5

No claims for defects are permitted as long as only a slight impairment of serviceability is involved in the case of natural wear and tear or damages that have arisen, after passage of risk, as a consequence of incorrect handling, excess stress, unsuitable equipment, defective workmanship, unsuitable subsoil, lightning strike, excess voltage or other external influences.

### 5.6

During the warranty period, the object of work may only be serviced and maintained by qualified specialists. The customer must ensure that unauthorised persons have no access to the system. If improper changes or repair work have been undertaken by the customer or by a third party — no claims for material defects are available for them and consequences resulting therefrom.

### 5.7

Apart from that, I 7 applies to damages claims.

Further claims of the customer against F&S and its agents or claims other than those regulated in III 5 for a defect are excluded.

### 5.8

Warranty claims lapse two years after acceptance of the object of work or installation work.

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### IV. – Special terms for planning services only for PV roof or open spaces

#### **1. General terms, documents of the customer**

##### **1.1**

F&S prepares the planning for the operation of individual photovoltaic systems at or on property specified by the customer.

##### **1.2**

For this, the customer is obligated to provide F&S all documents needed for proper planning service, such as construction plans, sketches, dimensions, etc. The customer shall accrue no claims of any kind against F&S if delays ensue due to the customer's failure to cooperate in the foregoing sense or if planning services cannot be properly rendered because the customer has provided faulty documents.

#### **2. Calculations and calculation bases**

If F&S makes the following calculations in the course of preparing the planning services:

- Profitability calculations
- Calculations of the electricity output
- Other output calculations
- Budget overviews
- Sample tax calculations

the following applies:

##### **2.1**

Unless otherwise expressly denoted in the respective contract documentation, all calculations represent only sample calculations without any binding character.

##### **2.2**

All calculation bases (such as energy prices, sunshine duration and all other calculation bases) have only an illustrative character.

##### **2.3**

F&S is not responsible in any manner for factual and mathematical correctness or for the correctness of assumptions made in connection with any calculations.

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### **V. – Applicability of the GTC to whole photovoltaic projects**

If F&S takes on the planning and implementation of whole photovoltaic projects, the provisions of these GTC apply overall, while the GTC which apply to the respective partial performance are to be given priority for the individual performances.

The following applies in supplement with regard to rented roofs or rented spaces:

F&S shall arrange the contact between real estate owners and those customers who want to operate a photovoltaic system on someone else's roof or someone else's ground and to acquire the right to do so by way of a lease. F&S shall endeavour to have an appropriate lease executed between the real estate owner and the customer and, after it is legally effective, it will secure it by having corresponding entries recorded in the land register. The customer shall derive no claim of any kind against F&S if, for any reason, the tenure of the lease between the real estate owner and the customer does not continue for the intended term.

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### VI. – Common final provisions

#### **1. Place of performance and judicial venue**

The place of performance and judicial venue for deliveries and payments and for all disputes arising between F&S and the customer under the contracts that are entered into between F&S and the customer is Euskirchen. F&S is authorised to also bring an action against the buyer at its domicile or registered office.

#### **2. Applicable law**

The relations between the contracting parties are governed exclusively by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods, along with all international and supranational (contract) regulations, is excluded.

#### **3. Requirement of written form**

Amendments and additions to these General Terms and Conditions of Business must be in writing. The same shall apply to an amendment, addition or elimination of this written form clause.

#### **4. Severability clause**

Should individual provisions of this contract with the customer, including these GTC, be or become, entirely or in part, legally ineffective, such shall not affect the validity of the remaining provisions. The entirely or partially ineffective provision shall be replaced by a provision whose economic result comes closest to that of the ineffective provision.