



GENERAL TERMS AND CONDITIONS OF PARTICIPATION

1. Application and acceptance

The contract on the rental of booth space and the exhibitor's participation at the respective exhibition or event shall come into effect once FWTM or Solar Promotion GmbH (on behalf of FWTM) accepts the exhibitor's application. This gives the exhibitor the right to use a subsequently allocated booth space at the time of the exhibition within the scope of the law, public safety considerations and the house rules pursuant to Section 16 of the General Terms and Conditions of Participation, and the right to participate in the exhibition. For the protection of event participants, additional requirements such as pandemic-related hygiene measures, distancing rules etc. may be imposed on the exhibitors at a later point in time. Such requirements must not, however, exceed what is perceived to be reasonable for the exhibitor unless they are imposed on the basis of an official order. The exhibitor shall have no claim to a specific type of exhibition booth or a specific location. However, when assigning the exhibition booths, FWTM shall make every effort to take the exhibitor's wishes into account. If necessary as a result of the layout of the hall (e.g. due to how it is arranged into sectors; irrespective of the order in which the applications are received), the booth allocated may differ from the type, size and location requested by the exhibitor, certain exhibits may not be approved, and admission may be made subject to certain conditions. Provisos, conditions and special requests stipulated by the exhibitor (e.g. in terms of the location of the booth, the exclusion of competitors, and the booth structure and design) shall only be binding if this was expressly confirmed when the application was accepted.

Companies which have not met their financial obligations towards FWTM, e.g. from previous events, or which have breached Messe München's rules of use or the general terms and conditions of participation at previous The smarter E events may be excluded from consideration for acceptance as exhibitors. They may also be excluded when acceptance has already been granted. FWTM may withdraw from the contract or terminate the contractual relationship without notice if the application is accepted on the basis of incorrect or incomplete information provided by the exhibitor or if the exhibitor does not meet the admission requirements at a subsequent point in time.

2. Rental of booth area, terms of payment

Please see page 3 of the application for the booth area rental prices.

Each square meter or part thereof shall be charged in full. The floor space shall generally be calculated as if it were rectangular, without taking into account any projections, beams, service connections, etc. An invoice for the booth rental fee shall be issued once the booth has been assigned. This invoice confirms the exact booth size and is due for payment immediately. The organizers reserve the right to issue an invoice for the sum of 50% of the booth rental fee as soon as the application has been submitted. The invoiced amount shall be based on the booth type and size specified in the application. It is only possible to subsequently amend the billing address by notifying the organizers of such a change in writing before the invoice has been issued. After the invoice has been issued, changes shall incur a processing fee of €150 per amendment and per invoice. In order to occupy exhibition space, the exhibitor must pay the booth rental fee (and any fee for the admission of co-exhibitors). If the exhibitor has fallen behind with its payments and fails to meet its payment obligations even after FWTM has given it a five-day extension, FWTM may choose to withdraw from the contract or assign the exhibitor a different booth location with the same type and size of booth.

FWTM is entitled to assert its statutory landlord's lien in order to secure the payment of obligations arising from the rental agreement. If the exhibitor does not meet its payment obligations, FWTM may retain the exhibited items and booth equipment and sell them by public auction or in the open market at the expense of the exhibitor. To the extent permitted by law, the statutory regulations regarding the sale of securities shall be waived. The exhibitor must keep FWTM informed at all times about the ownership status of objects to be or being exhibited. FWTM shall not accept any liability for damage to retained exhibition goods and booth equipment, unless it was caused as a result of FWTM acting with intent or gross negligence.

If the exhibitor has ordered services from FWTM, FWTM may refuse to provide services which have not yet been paid for (including listing the exhibitor's data in media publications) until the exhibitor meets its financial obligations towards FWTM, in particular those arising from previous events.

3. Additional costs

3.1 Professional association fee

A professional association fee of €0.60 per square meter of booth space shall be charged for the Association of the German Trade Fair Industry. This fee is listed in all invoices as a separate item. AUMA upholds the various interests of the German exhibition and trade fair industry.

3.2 Exhibitor list

In the exhibitor list all the exhibitors shall be listed using the information provided in the application form. If the application is made by March 30, 2022, the information shall also be listed in the printed Event Guide. Any changes to this information shall require the approval of FWTM. The standard listing shall cost €175, irrespective of whether the company's details are listed in the printed Event Guide. Further listing and advertising options shall be offered to the exhibitor separately and details shall be made available on the website → www.TheSmarterE.de and the websites of the individual exhibitions. The information provided on the application under "Product groups" shall be used for the purpose of publishing the exhibitor's details in the exhibitor list. Up to five categories shall be included in the standard listing in the exhibitor list; a fee of €100 shall be payable for each additional category.

3.3 Waste disposal

Waste disposal during the event shall be charged at a flat rate of €4.95 per square meter of booth space. During the exhibition, the exhibitor is requested to separate its waste into types and place it in the gangways at the end of each day of the exhibition. The exhibitor shall be responsible for properly disposing of any waste produced during the set-up and dismantling periods. The exhibitor must make separate arrangements for packaging, booth construction materials and floor coverings to be disposed of at its own expense.

3.4 Technical services

The costs of the energy supply equipment and other ancillary services (gas, water, electricity and sanitary and telecommunications connections, etc.) provided at the request of the exhibitor shall – if desired – be disclosed to the exhibitor in advance and shall be settled directly between the exhibitor and the supplier. Requests for such connections and supply lines can only be considered if they are received by the service partner no later than six weeks before the start of the event. Only service partners named by FWTM may be appointed for the provision of electricity and water installations, items suspended from the ceiling, security services, cleaning personnel and machinery such as cranes, fork lift trucks and working platforms. Regardless of whether any services are actually ordered and regardless of the order volume, Messe München GmbH (MMG) shall charge a flatrate advance payment of €20 per square meter plus VAT for services, e.g. electricity, water and telephone connections, which the exhibitor may make use of at its booth after ordering them in advance by the deadlines stipulated on the order forms. An invoice shall generally be issued for the advance payment for services around eight weeks before the start of the event. The cost of technical services provided by MMG shall be settled directly between MMG and the exhibitor and must also be cancelled with MMG.

The order forms for technical services and additional services shall be available online from January 2022 at → www.TheSmarterE.de/en → For Exhibitors → Exhibition Planning → Service Manual

4. Exhibitor Badges and Exhibitor Cockpit

The exhibitor shall be given an appropriate number of exhibitor badges free of charge for use during the exhibition in which it is participating. Exhibitor badges shall be issued once the booth rental fee and fee for the admission of any co-exhibitors have been paid and must be ordered by the exhibitor itself. Exhibitor badges are non-transferable and must not be given to third parties, e.g. to people or companies wishing to sell goods or provide services on the exhibition grounds without the authorization of FWTM.

Exhibitor badges and additional services provided by The smarter E Europe and the individual events may be booked via the Exhibitor Cockpit. The required access data shall be sent to the contact named under 1 b) on the application.

5. Allocation and use of the booth

5.1 Booth assignment and floor plan

FWTM may also make subsequent changes to the allocation of space, in particular to the exhibition space allocated to the exhibitor in terms of location, type, dimensions and size, if doing so is necessary for safety reasons, for reasons of public order – for instance on account of additional pandemic-related requirements – or because the exhibition in question is oversubscribed and additional exhibitors have to be admitted to the exhibition, or because changes to the allocation of space are needed in order for the areas and rooms required for the exhibition to be used more efficiently. Such subsequent changes must not, however, exceed an extent perceived to be reasonable for the exhibitor. If the subsequent changes result in a reduced booth rental fee, the difference must be reimbursed to the exhibitor. The exhibitor shall not be entitled to make any further claims against FWTM. If the location, type, dimensions or size of the exhibition space rented by the exhibitor is subsequently amended by an extent no longer perceived to be reasonable for the exhibitor, the exhibitor may withdraw from the contract within one week of receiving written notification by FWTM or Solar Promotion GmbH (on behalf of FWTM).

FWTM is entitled to change the allocation of the other booths, in particular the neighboring booths, amend the location of the entrances and exits to the exhibition grounds and halls, and make any other reasonable changes.

Claims may not be made against FWTM as a result of any such changes.

5.2 Booth design, two-story booths

The exhibitor is responsible for fitting out its booth. When designing the exhibition booths, booth perimeter walls to neighboring booths and floor coverings are mandatory. Booth structures exceeding 3 meters in height require special approval from FWTM. The construction height may not exceed 6 meters on the perimeter to neighboring booths. All rear walls facing neighboring booths and exceeding 2.50 meters must be kept clean and neutral. Booths with a gap of 2 meters from the neighboring booths may be constructed to a height of 7.50 meters. A construction height of 7.50 meters is not possible in all locations. On sides facing an aisle, at least 30% of the booth front must have an open design, and after a maximum of 6 meters there must be a passage or a transparently designed front at least 2 meters wide or the booth front must be transparent. Exhibitors must obtain written consent from neighboring booth holders if booth walls are wider than 6 meters. To make it easier to obtain the required written consent from neighboring booth



holders, we may forward the name and telephone number of said booth holders' on-site contacts to the exhibitor who requires their written consent. The legal basis for data processing is Art. 6 Para. 1 Sentence 1 (f) GDPR. Our legitimate interest is based on the above-listed purposes of data collection. Structures and equipment must be positioned within the booth perimeter such that they do not impinge on neighboring exhibitors. All materials used must be flame retardant. The organizers reserve the right to stipulate further conditions concerning the booth design. Requests for any special constructions must be submitted to the exhibition management at least three months before the start of the exhibition.

Two-story booths require the prior approval of FWTM and, if applicable, the approval of the competent authorities. A surcharge of 50% of the space covered by the booth shall be added for two-story booths.

5.3 Staffing, setting up and dismantling the booths

Throughout the exhibition and during the predefined hours, all booths must be properly fitted out and staffed with specialized personnel.

The exhibitor is not permitted to remove exhibited goods and dismantle its booth before the end of the exhibition; if this regulation is violated or the exhibitor does not attend, FWTM shall be entitled to impose a contractual penalty on the exhibitor of 25% of the booth rental fee, but not less than €500. FWTM may exclude the exhibitor from participating in future The smarter E events if the exhibitor does not keep its booth staffed during the daily exhibition hours, exhibits a range of products or services not approved of by the organizers, leaves its booth early or breaches the general terms and conditions of participation in any other way. The right to terminate this contract for extraordinary circumstances and the right to seek compensation for any resulting damages caused to FWTM shall remain unaffected by this.

5.4 Using the booth outside of the exhibition hours

The use of the exhibition booth outside of the exhibition hours (e.g. for meetings or booth parties) requires the express written consent of FWTM; FWTM must be advised of such wishes in writing at least six weeks before the event. The costs of any additional hall security required as a result shall depend on the booth size and number of people present, and must be covered by the exhibitor. The booth may be used until 10:00pm at the latest.

5.5 Restrictions on the exhibitor's use of the booth

If the exhibitor is unable to use its booth space or if its use of the booth is restricted as a result of it having violated statutory or official regulations or provisions stipulated in the general terms and conditions of participation or Technical Guidelines, the exhibitor shall still be required to pay the booth rental fee in full and to compensate FWTM for any damage caused by its conduct and that of its legal representatives or vicarious agents; the exhibitor shall not be entitled to withdraw from or terminate the contract unless such a right is compulsory by law.

6. Co-exhibitors and shared booths

The exhibitor is not permitted to sublet the booth assigned to it in full or in part or to swap it or give it to third parties in any other way. If the exhibitor wishes to share the booth with a co-exhibitor, it must request this using the applicable form available at www.TheSmarterE.de. Co-exhibitors are defined as exhibitors that share a booth with the main exhibitor (main lessee) but have their own staff, products and services. Co-exhibitors also include consolidated companies and subsidiaries. If the request to share the booth with a co-exhibitor is approved, a co-exhibitor fee of €175 shall be charged. The full co-exhibitor fee is to be paid even if the co-exhibitor does not participate in the exhibition or event. The organizer is entitled to withdraw its approval of co-exhibition for good cause. Good cause exists in particular if the main exhibitor withdraws from its contract with the organizer or does not participate in the exhibition or event for other reasons. If a main exhibitor accepts a co-exhibitor without prior approval from the organizers, the organizers shall be entitled at their own discretion to demand the immediate removal of the unapproved co-exhibitor, or to terminate their contract with the main exhibitor without prior notice after having issued a warning to no effect and to have the booth cleared at the main exhibitor's expense. The exhibitor shall remain obliged to pay the agreed booth rental fee in full. However, the organizer may also allow a previously unapproved co-exhibitor to participate on the day of the event. In this case, the co-exhibitor fee will be raised to €360. Additional services and services for co-exhibitors may only be booked by the main exhibitor and invoices for such services shall only be issued to the main exhibitor. No contract shall be concluded between FWTM and the co-exhibitor. The main exhibitor is responsible for informing its co-exhibitors in good time about the relevant booking options. The exhibitor must ensure that its co-exhibitors observe the general terms and conditions of participation, the Technical Guidelines and the instructions issued by the exhibition management. The exhibitor shall be held liable for any culpable acts committed by its co-exhibitors to the same extent that it is held liable for its own culpable acts. It is not possible for multiple exhibitors to jointly rent a shared booth.

7. Notification of defects

The exhibitor must make any complaints concerning any defects to the booth or exhibition space to FWTM in writing immediately after taking possession of the booth and no later than the final set-up day, so that FWTM can rectify these defects. Any complaints made after this date shall not be considered and shall not entitle any claims to be asserted against FWTM.

8. Withdrawal/cancellation of the contract

Each application is binding. The exhibitor may only withdraw from the contract for reasons prescribed by law. If no such reason exists, FWTM may – but is not obliged to – cancel the application at the exhibitor's request. FWTM may choose to only cancel the exhibitor's application

if it is possible for the rented booth to be leased to another exhibitor. In such an event, FWTM shall not be entitled to receive the booth rental fee from the exhibitor. If it is not possible for the booth to be leased to another exhibitor, FWTM may – in the interest of preserving the overall image of the exhibition – move another exhibitor to the unoccupied booth or fill the booth in another way. In such an event, the exhibitor shall not be entitled to request a reduction in the booth rental fee. FWTM has the option of charging a flat-rate compensation fee (cancellation fee). The actual cancellation fee charged shall depend on when FWTM receives (written) notification from the exhibitor that it wishes to withdraw from its binding application or from the concluded contract:

Date on which the notification from the exhibitor is received by FWTM	Cancellation fee as a % of the fees and payments to which FWTM is entitled during the execution of the contract
Up to and including	October 15, 2021 10%
After	October 15, 2021 25%
After	January 14, 2022 50%
After	March 11, 2022 100%

If the exhibitor can prove that FWTM has not incurred any damage or has only incurred damage which amounts to less than the cancellation fee, the compensation payable by the exhibitor shall be reduced accordingly. Besides the cancellation fee, the exhibitor has to compensate for the costs resulting from the contracts already awarded on its instruction. Any costs incurred for the decoration or furnishing of the unoccupied booth shall be borne by the exhibitor.

FWTM may withdraw from the contract if the exhibitor breaches the obligation arising from this contract to respect the rights, objects of legal protection and interests of FWTM and if FWTM can no longer be expected to adhere to the contract. In such cases, besides being permitted to withdraw from the contract, FWTM may also demand that the exhibitor pays a fixed amount of compensation amounting to the agreed booth rental fee. FWTM's right to demand additional compensation shall remain unaffected by this. The exhibitor may request that the fixed amount of compensation be reduced if it can provide evidence that FWTM has only incurred less damage.

9. Force majeure, cancellation of the event

If FWTM is required to temporarily clear one or more of the exhibition areas for a short or longer period of time or to postpone or curtail the events belonging to The smarter E Europe as a result of force majeure or due to other reasons beyond its control (e.g. a power outage), the exhibitor shall not have any rights of withdrawal or termination nor the right to assert any other claims, in particular claims for compensation, against FWTM as a result. If FWTM cancels the events because it cannot organize the events as a result of force majeure or any other circumstances beyond FWTM's control, or because it has become unreasonable to expect FWTM to organize the events, FWTM cannot be held liable for damage and losses suffered by the exhibitor as a result of the cancellation of the events.

10. Catering, provision of food and drink

Only the contractually bound companies may provide catering, including the provision of beer and drinks, inside the exhibition grounds.

The sale of food and drinks (including samples) of any kind and the running of bars or counters serving alcoholic drink require special permission from FWTM as well as a catering permit. The exhibitor must apply for this permit from the Kreisverwaltungsreferat München (Munich Department of Public Order), Ruppertstraße 19, 80313 München, Germany. The same applies if the exhibitor provides food and drink (including samples) which has been supplied to it by professional caterers, even if it hands out this food and drink free of charge.

No goods of any kind, including food and drink, may be sold or handed out after 6:00pm apart from in the designated catering areas.

11. Advertising activities and events run by the exhibitor

The exhibitor may only carry out advertising activities at its own exhibition booth. The exhibitor is prohibited from conducting promotional campaigns in the gangways and public areas. Games of chance, tombolas and prize draws as well as raffles requiring the purchase of a ticket are only permitted if they are carried out in line with current legislation, in particular the regulations laid down in the German Act against Unfair Competition (UWG). In the event of the culpable violation of this provision, the exhibitor shall be obliged to indemnify the organizers against claims made by third parties and – if these activities are continued despite a warning notice being issued by the organizers – to pay a contractual penalty to the organizers. The contractual penalty shall amount to between €100 and €2,000 per day of the exhibition on which the activity was carried out; it shall be imposed in this context at the reasonable discretion of the organizers and its fairness may be verified by the competent court. Any further claims made by FWTM shall remain unaffected by this. Events held outside of the exhibition grounds are prohibited during the exhibition hours if they keep visitors away from attending The smarter E Europe events. Such events include receptions, parties, plant tours and other company/site visits. In cases of doubt, the exhibitor must agree any events with FWTM in advance. If FWTM decides that an event as defined above is being organized, the exhibitor must refrain from running such an event. If the exhibitor violates the above obligations, FWTM shall be entitled to do the following at its own discretion: To immediately shut down the exhibitor's booth and/or ban the exhibitor from re-entering the premises and/or prohibit the exhibitor from exhibiting at the next The smarter E Europe. The exercising of these rights shall not release the exhibitor from the payment obligations arising from the booth rental agreement.



12. Advertising activities run by the organizers

By participating in the exhibition, the exhibitor agrees to allow photos of its exhibition booth or exhibits on display, including any brands and other company labels found on such items, taken by or on behalf of the organizers to be used by The smarter E Europe events for advertising and communication purposes. The organizers of The smarter E Europe – FWTM and Solar Promotion GmbH – may, individually, use the name and company logo of the exhibitor in any given format (brochures, Event Directory, advertisements, posters, website, etc.) for the purposes of advertising campaigns aimed at visitors and exhibitors for The smarter E Europe events. The exhibitor shall provide an electronic file containing its logotype and logo for this purpose.

13. Photographs, films, video recordings and sketches

Only persons duly authorized by FWTM and issued with a valid permit by FWTM may film, photograph, produce video recordings and make sketches inside the exhibition halls. The exhibitor must not take photographs or produce other recordings of booths belonging to other exhibitors under any circumstances. In the event of this provision being breached, FWTM may demand that the recorded material be surrendered and can take legal steps to achieve this. Photographs and recordings of exhibition booths which are to be taken outside of the daily exhibition hours and need special lighting require the consent of FWTM. Such photographs and recordings require the ring circuit to be switched on and the hall electrician to be present. The resulting costs shall be borne by the exhibitor, unless they are covered by the photographer. FWTM may arrange to have photographs, sketches, film and video recordings taken and made of the exhibition, the booths and exhibition goods, and may use these for advertising purposes or general press publications.

14. Rights of third parties

14.1 Online publications produced by the exhibitor

FWTM may give the exhibitor permission to make information available to visitors on the web pages of The smarter E Europe events. In particular, this may include information about the company profile, job offers, products and employee profiles (hereinafter referred to collectively as "digital corporate presence"). The exhibitor shall bear sole responsibility for this information in accordance with general legislation. Before publishing this information, the exhibitor shall ensure that it has all the rights needed to do so (right to make the information available to the public) and that the published information complies with the principles of competition law and does not violate the rights of third parties. The right of access granted is non-transferable and must be protected against loss, unauthorized access and unauthorized disclosure in accordance with the state of the art. The exhibitor shall inform FWTM immediately if it becomes aware that the information has been lost or accessed by or disclosed to any unauthorized parties.

FWTM is generally not obliged to check the exhibitor information before making it available to visitors. If the rights of third parties are violated as a result of or in connection with the exhibitor information and if (a) FWTM is informed of this legal violation by third parties or (b) third parties make claims against FWTM as a result of such a violation, FWTM shall inform the exhibitor of this immediately after receiving notification of the legal violation or of the claim from the third party. The exhibitor shall adapt the exhibitor information immediately so that it no longer violates the rights of third parties or shall provide the exhibitor information in another form which does not violate the law. Until such amendments are made, FWTM may temporarily take down the exhibitor information concerned.

14.2 Conduct towards other exhibitors

FWTM expects the exhibitor to respect the industrial property rights of the other exhibitors. If it is proven to FWTM by a court ruling that the exhibitor has violated the industrial property rights of another exhibitor by means of its published exhibitor information (Fig. 14.1), exhibits, printed publications, advertising or in any other way, FWTM may – but is not obliged to – temporarily or permanently remove and, if applicable, take into safekeeping until the end of the exhibition the exhibition goods, exhibitor information, printed publications and promotional material violating the industrial property rights, close the infringing party's booth and/or expel the infringing party and its personnel from the exhibition grounds. FWTM shall also be entitled to exclude the infringing party from future exhibitions. If such measures are proven to be unjustified, no claims for compensation may be asserted against FWTM, unless FWTM is found to have acted with gross negligence or intent.

14.3 Indemnification, claims for compensation

If the cases outlined in Fig. 14.1 and 14.2 above arise, the exhibitor shall also – at the first request to do so – defend and indemnify FWTM and release and hold it harmless from any resulting damage and claims for compensation asserted against FWTM due to the violation of the rights of third parties. The exhibitor shall not be held liable for damages if it can provide evidence that it was not in any way responsible for the violation of the third-party rights.

14.4 Entry Requirements and Residence Regulations

The offering of booth space by the organizers of The smarter E Europe does not release the customer from the obligation to obtain comprehensive information in due time on the relevant regulations governing entry into the Federal Republic of Germany and in particular information on whether a visa is required. The organizers of The smarter E Europe do not accept any responsibility for any negative consequences resulting from customers' failure to take note of the prevailing laws on entering and staying in Germany.

15. Liability, insurance

FWTM shall assume liability in the event of it culpably breaching any of its essential contractual obligations in accordance with the statutory regulations. However, provided it has not acted with gross negligence or intent, it shall only be liable for typically occurring, foreseeable damage. In all other cases, FWTM shall be liable if damage has been caused by one of its legal representatives or senior vicarious agents intentionally or through gross negligence. In the event of damages resulting from bodily injury or harm to a person's health, liability shall be determined in accordance with statutory regulations. Claims for compensation arising from breaches of duty shall be excluded in all other cases.

The exhibition management recommends that the exhibitor take out exhibition insurance, which can optionally also cover the transportation of exhibition goods to and from the exhibition, and liability insurance covering personal injury and damage to property.

16. House Rules

The house rules and rules of use of Messe München GmbH (MMG) apply. These shall be sent to the exhibitor with the technical documentation. Overnight stays in the halls are prohibited. The exhibitor is obliged to treat the other event participants with consideration, to act with common decency and not to use the event to pursue ideological, political or other agendas not in keeping with the purpose of the event.

17. Limitation and cut-off periods

Any claims asserted by the exhibitor against FWTM arising from the rental of the booth and all associated legal relationships must be brought within a limitation period of six months. The limitation period shall commence on the last day of the month in which the final day of the exhibition falls. Claims made as a result of death, personal injury or impaired health as well as those arising from the gross negligence of FWTM shall be excluded from this; the limitation period for such claims shall be in line with statutory provisions. Complaints concerning invoices must be raised in writing within a cut-off period of one month from their receipt.

18. Data protection

Personal data shall only ever be processed in accordance with the applicable statutory provisions, in particular when it is being used to execute the contractual relationship. It shall only ever be disclosed to third parties if the person concerned has given their express consent for this to occur or if doing so is required by law.

19. Miscellaneous provisions

Any verbal agreements, individual licenses and special arrangements shall only apply once they have been confirmed in writing by FWTM. This contract shall be governed by German law. The Technical Guidelines of Messe München also apply. The place of jurisdiction for any legal disputes arising in connection with this contract is Freiburg im Breisgau, Germany. At FWTM's discretion, legal action may also be brought against the exhibitor in its registered place of business. If any part of the general terms and conditions of participation or Technical Guidelines is ineffective or incomplete, this shall not affect the validity of the other provisions or the contract. In such an event, the parties agree to replace the ineffective provision or fill the gap with a provision which best achieves the commercial purpose being pursued by the parties.