

§ 1 Subject matter of the agreement and scope of application

(1) In its online platform in the Internet ([http:// www.SupplyOn.com](http://www.SupplyOn.com)) SupplyOn AG (hereinafter referred to as "SupplyOn") offers services exclusively for business customers.

(2) For the business relationship between SupplyOn and the Contractual Partner these General Terms and Conditions (hereinafter referred to as "GTC") shall apply exclusively for the provision of SupplyOn Services. For any other services of SupplyOn (e.g. training and consulting services) as well as services offered by SupplyOn's partners, special terms and conditions may apply in addition to these GTC. Such special terms and conditions shall prevail over these GTC in the event of any contradictions. SupplyOn shall refer to the applicability of such special terms and conditions in the respective case.

(3) The version of these GTC applicable at the time of conclusion of the Agreement shall be controlling for the legal relationships with SupplyOn.

§ 2 Definitions

(1) "SupplyOn Services" facilitate the processing of electronic business transactions by means of a browser interface or integration in internal systems of the Customer, notably in respect to sourcing and engineering, supply chain management and quality management. SupplyOn Services include processing, temporary storage and transfer of data. Details are described in the applicable Service Specification.

(2) "Customers" of SupplyOn shall be all companies SupplyOn has granted access for the SupplyOn Services.

(3) "Buying Company" refers to companies which as Customers wish to acquire goods from other customers, obtain services and exchange information in connection with these.

(4) "Supplying Company" refers to companies which as Customers offer goods or services and exchange information in connection with these.

(5) "Affiliated Companies" refers to companies which have to be included in the consolidated financial statements of the corporate group by way of full consolidation pursuant to Sec. 300 of the German Commercial Code [*Handelsgesetzbuch - HGB*] or pursuant to internationally comparable accounting principles.

(6) "Administrator" refers to employees of the Customer, who enter, change or delete authorizations.

(7) "Users" refers to employees of the Customer authorised by the Customer's Administrators or by the Customer itself who use SupplyOn Services.

(8) "Participants" refers to the Administrators and Users registered for use of the SupplyOn Services.

(9) "Platform Data" refers to all Access Data (for example Customer ID, user name or password), Contract Data (data on the existing contractual relationship with the Customer as regards use of the SupplyOn Services), Transaction Data (log files electronically recorded during use of the SupplyOn Services), Company Profile Data (information on the company, products and services provided by the Customer), Business Data (data which a Customer transmits to another Customer when using the SupplyOn Services) and Registration Data (Contract Data and Company Profile Data).

(10) "Confidential Information" refers to all documents and information marked as "confidential" by the disclosing contracting party in writing or orally of which the contracting parties gained knowledge on the basis of the cooperation as well as all information which by its nature is confidential.

§ 3 Contract conclusion

(1) (Registration in writing)

For the registration with SupplyOn the Contractual Partner is required to submit a written application for conclusion of a Master Contract on the provision of SupplyOn Services. Acceptance of such application for conclusion of a Master Contract shall be subject to SupplyOn's freely exercised discretion and shall be effected by sending an invoice or by any other form of acceptance of the application.

The Contractual Partner is obliged to provide correct and complete Registration Data, to update any changes without undue delay or to inform SupplyOn of such changes. The registration must be made by the Contractual Partner. A commercial agent, an association and/or any other similar organisation may not make a registration on behalf of the Contractual Partner.

(2) (Online application for SupplyOn Services by Supplying Companies)

Supplying Companies may apply online for being granted access to use individual or all SupplyOn Services with SupplyOn if they have submitted a written application for conclusion of a Master Contract. Upon receipt of the online application SupplyOn shall send an e-mail to the Supplying Company which confirms receipt of the online application by SupplyOn and lists the details of the application (order confirmation). Such order confirmation shall not constitute an acceptance of offer, but is merely to inform the Supplying Company that SupplyOn has received the online application. Acceptance of the online application shall be subject to SupplyOn's freely exercised discretion and shall be effected by granting the Supplying Company access to use the SupplyOn Services, by sending an invoice or by accepting the application in any other way. § 3 (1) subsection 2 sentences 2 and 3 shall apply *mutatis mutandis*. The GTC shall also apply to all further business relationships even if they are not expressly agreed again.

(3) (Registration of Affiliated Companies)

Affiliated Companies of a Contractual Partner may use SupplyOn Services for which the Contractual Partner is registered if the Affiliated Company registers with SupplyOn, submits the entry number to SupplyOn and the contracting party and SupplyOn consent to the Affiliated Company's use of the SupplyOn Services.

SupplyOn may, if so requested by an Affiliated Company, provide the Affiliated Company with the telephone number and e-mail address of the Contractual Partner's Administrator.

By granting the Affiliated Company access to use the SupplyOn Services, no own contractual relationship shall be established between SupplyOn and the Affiliated Company; rather, the contractual relationship with the Contractual Partner shall be extended by the possibility of the Affiliated Company using the SupplyOn Services. Where the Affiliated Company's access to use SupplyOn Services is consented to, the Contractual Partner shall be fully responsible for the payment obligations and all acts of the Affiliated Company that was granted access to use the SupplyOn Services.

These provisions shall apply *mutatis mutandis* where an Affiliated Company wishes to register for further SupplyOn Services or a legally dependent unit of the Contractual Partner (divisions, departments, plants, etc.) wishes to register for the SupplyOn Services.

This shall not affect SupplyOn's right to conclude its own agreements on the use of SupplyOn Services with the Affiliated Companies and the legally dependent units of the Contractual Partner (divisions, departments, plants, etc.).

§ 4 Performance obligations of SupplyOn

(1) (Main item of performance)

SupplyOn shall make available to the Contractual Partner the contractually agreed SupplyOn Services. Unless otherwise agreed, the SupplyOn Services shall be used exclusively on the basis of these GTC and the applicable Service Specification.

For the use of the SupplyOn Services, SupplyOn shall grant the Contractual Partner a non-exclusive, non-transferable, non-sublicensable right, which shall be restricted to the term of the agreement, to use the contractually agreed SupplyOn Services of SupplyOn and the information and data provided within this scope.

(2) (Additional services)

In addition, SupplyOn offers training and consulting services as well as services offered by SupplyOn's partners. Such additional services can be applied for online pursuant to § 3 (2). For such services, special terms and conditions may apply in addition to these GTC. Such special terms and conditions shall prevail over these GTC in the event of any contradictions. Any Service Specification(s) applicable may also apply.

(3) (Status of SupplyOn)

SupplyOn shall be merely the technical service provider for the provision and transmission of Transaction Data between the Buying Company and the Supplying Company as well as of the declarations of the Participants in connection with the use of the SupplyOn Services. SupplyOn shall not act for the Customers as representative, courier, other agent or broker. Agreements between the Customers shall be concluded outside the use of the online platform unless the Customers concerned conclude a binding agreement to the contrary which applies exclusively to the Customers themselves and/or SupplyOn explicitly indicates in the Service Specification that agreements between the Customers concerning a specific SupplyOn Service may be concluded within the online platform.

(4) (Release of SupplyOn and its vicarious agents [*Erfüllungsgehilfen*] from their performance obligations in the event of *force majeure*)

SupplyOn is not obliged to perform its services pursuant to § 4 where it becomes impossible for SupplyOn or its vicarious agents to perform their services due to cases of *force majeure* such as industrial action, acts of nature, war or similar unforeseeable events beyond SupplyOn's scope of responsibility.

§ 5 Obligations of the Contractual Partner

(1) (Compliance with the GTC)

The Contractual Partner is obliged to comply with the GTC. The Contractual Partner shall impose an obligation on the Participants and the Affiliated Companies which were granted access to use the SupplyOn Services and the legally dependent units of the Contractual Partner in the event of the Contractual Partner's consent to the use of the SupplyOn Services to comply with these GTC and shall have full responsibility in the event of breaches of the GTC.

(2) (Selection of qualified employees; representation rights)

The Contractual Partner has to name at least one Administrator of its company who manages the access and Registration Data. The Contractual Partner may appoint as Participants only natural persons with the relevant expertise. It must grant them power of representation to make and accept declarations of intent [*Willenserklärungen*] on its behalf. The Contractual Partner shall ensure under its own responsibility that, where necessary, a successor for the Administrator is registered with the system without undue delay.

(3) (Data formats)

The Contractual Partner shall be obliged to make the Platform Data available to SupplyOn in the prescribed formats by using the interfaces provided for this.

(4) (Responsibility for technical requirements and data verification)

It is entirely within the Contractual Partner's scope of responsibility to provide the equipment and technology required for the use of the SupplyOn Services and to observe the system requirements of the latter. This notably applies to all necessary equipment, data transmission lines, telecommunications services, browsers and the use of encryption methods. The technical requirements shall be determined by the applicable Service Specification or the information additionally provided by SupplyOn. The Contractual Partner shall bear the costs incurred for this as well as any other charges.

Moreover, it is the Contractual Partner's sole responsibility to have its Participants call up and verify all Platform Data of other Customers referred by SupplyOn.

(5) Prohibition of manipulation

The Contractual Partner shall not manipulate the SupplyOn Services in any way whatsoever.

Contractual Partners may notably not make any offers which inappropriately manipulate the pricing. Where a Contractual Partner is registered both as Buying Company and Supplying Company, it must ensure that Platform Data cannot be exchanged between Users of the buying side and the supplying side.

The Contractual Partner may notably not enter or transfer any data which contains viruses, trojan horses or similar executable program codes which are capable of damaging, viewing, intercepting, forwarding or deleting data or systems, or of providing unauthorised access to data, systems or areas. The Contractual Partner shall not use any mechanisms, software or any other routines which can interfere with or put an excessive strain on SupplyOn Services.

(6) (Safekeeping of the Participants' Access Data)

The Contractual Partner is obliged to pass on Access Data only to the authorised Participants the contracting party has registered with SupplyOn. Third parties must be prevented from gaining knowledge of, accessing and using Access Data. This notably applies also to employees of the Contractual Partner who are not named as authorized Participants. Any acts in which the Access Data of a Participant are used shall be deemed acts performed by them and shall be attributed to the Contractual Partner. This shall not apply where the Contractual Partner is able to submit proof of having met the requirements of sentences 1 to 3.

(7) (Prohibition of illegal content)

Offers or requests in violation of legal regulations, notably penal law or public morality, are inadmissible. It is inadmissible to offer objects or services which are subject to statutory sales or supply restrictions or prohibitions. This notably applies to medicinal products and drugs, stolen goods, radioactive materials, toxic substances, explosives, securities, loans or any other financial instruments as well as to objects or services infringing on copyrights, patents, trademarks, trade secrets, any other IP rights, personality rights or third-party data protection rights, or offers which violate provisions under competition law.

(8) (Compliance to export control regulations)

The Contractual Partner undertakes to observe US, European, and/or German export control laws and shall not use the SupplyOn Services notably in countries in which the use of such services is prohibited under said export control laws.

(9) (Remuneration obligation)

The Contractual Partner is obliged to pay the currently applicable prices for the agreed SupplyOn Service according to the price agreement for registration, use and utilisation of the SupplyOn Service. The payment terms shall be based on § 8.

(10) (Prohibition on modification and exploitation; IP rights)

The Contractual Partner shall not modify, publish, transfer or participate in the transfer and sale of the SupplyOn Services or parts thereof, nor store or reproduce them or produce, distribute or display derived content or commercially exploit the SupplyOn Services and information in any other way.

§ 6 SupplyOn's rights

(1) (Rights upon registration)

SupplyOn is entitled but not obliged to verify the Registration Data of the Contractual Partner by collecting data from the Contractual Partner itself or from third parties. SupplyOn may demand proof of power of representation for each Participant registered by the Contractual Partner. SupplyOn may refuse registration for objective reasons, notably where a prospective customer provides wrong or misleading Registration Data, if there is clear indication that its creditworthiness is not ensured or if there is clear indication that applicable international, European or national legal regulations are violated.

(2) (Rights of use)

SupplyOn may for the term of the Agreement use the Company Profile and Business Data, word and device marks, designations and other ancillary copyrights of the Contractual Partner for the purposes required for performance of the Agreement, notably reproduce, edit, translate and transmit such data and information and make it available to other Customers for use.

Domain names, word and device marks as well as trade names of SupplyOn are protected by law. Any other marks and designations appearing in the SupplyOn Services are not the intellectual property of SupplyOn. The foregoing shall be without prejudice to the rights of the respective holders. SupplyOn reserves all ownership rights and rights of use in the present and future structuring and design of the SupplyOn Services and the website of SupplyOn.

(3) (Blocking of illegal content)

SupplyOn may, in the event of gaining positive knowledge of the illegality, or upon learning of facts and circumstances which indicate illegality, block illegal content without undue delay, notably in the event of violation/infringement pursuant to § 5 (7).

(4) (Withdrawal of the right of use in the event of misuse)

SupplyOn is entitled to temporarily or permanently exclude Customers (including Contractual Partners) from using individual SupplyOn Services if such Customers breach their contractual obligations, notably under § 5, despite a warning.

In the event of violation of the GTC, SupplyOn may block Platform Data of the Customers (including Contractual Partners) for other Customers one (1) week after issuance of a warning. Blocking the Platform Data without warning and without observance of the one-week period is permissible only if

1. the Customer (including the Contractual Partner) has given cause for termination of the contractual relationship without notice or
2. the facilities of SupplyOn or public safety or public order are at risk or
3. immediate blocking was ordered by the authorities or is required for statutory reasons.

After termination of Customer's violation of its duties, SupplyOn shall lift the blocking if no further violations on the part of the Customer are to be expected.

§ 7 Liability

(1) (Mutual liability for damages)

The contracting parties shall be mutually liable for any damage caused by them, regardless of the legal cause, only if (i) such damage is attributable to the material breach of duties jeopardizing the purpose of the Agreement, or breach of duties the fulfilment of which is a pre-requisite for proper performance of the Agreement, and which is subject to a culpable act (i.e. at least negligent), or (ii) such damage has been caused by gross negligence or intent, or (iii) one of the contracting parties has assumed a guarantee.

(2) (Unlimited liability)

In the event of a breach of duty caused by intent or gross negligence, the assumption of a guarantee, fraudulent concealment of defects, injury to life, limb or health or claims under the product liability act [*Produkthaftungsgesetz*], the Contractual Partners shall be mutually liable without limitation. In such cases § 7 (3) to (7) shall not apply.

(3) (Exclusion of liability for indirect damages)

In the event of a culpable (i.e. at least negligent) material breach of duty jeopardising the purpose of the Agreement or a culpable breach of duty the fulfilment of which is a pre-requisite for proper performance of the Agreement, liability for indirect damages, for example lost profits and consequential damages, shall be excluded – also in respect of Contractual Partners of the contracting parties.

(4) (Limits on liability typical of such type of agreement)

In the event of a culpable (i.e. at least negligent) material breach of duty jeopardising the purpose of the Agreement or a culpable breach of duty the fulfilment of which is a pre-requisite for proper performance of the Agreement, liability shall be limited to the damage that can be typically foreseen by the Contractual Partners in connection with SupplyOn Services. This also applies in the event of grossly negligent violation caused by SupplyOn's simple vicarious agents [*einfache Erfüllungsgehilfen*] (thus no legal representatives or executive employees).

(5) (Liability limited to an amount)

In the event of a culpable (i.e. at least negligent) material breach of duty jeopardising the purpose of the Agreement or a culpable breach of duty the fulfilment of which is a prerequisite for proper performance of the Agreement, liability shall be limited to the amount equalling the regular remuneration the Contractual Partner paid to SupplyOn within one year for the respective SupplyOn Service agreed.

(6) (Exclusion of liability of the lessor)

The provision of Sec. 536 a paragraph 1 of the German Civil Code [*Bürgerliches Gesetzbuch – BGB*] is expressly contracted out to the extent it does not require negligence on the lessor's part.

(7) (Statute of limitations)

All mutual liability claims shall fall under the statute of limitations within one year of creation of such claim and the injured party gaining knowledge of the circumstances giving rise to the claim or which it could have gained knowledge of without gross negligence. Regardless of such knowledge the liability claims shall fall under the statute of limitations at the latest three years from the date of the damaging event.

(8) (Claims against employees and agents)

The above liability limitations shall include claims against legal representatives, vicarious agents or agents of the contracting parties.

(9) (Mutual indemnification)

If third parties, including state institutions, assert against a contracting party claims or infringements on the basis of the other contracting party having breached the obligations set forth in these GTC, the infringing party shall without undue delay indemnify the contracting party against which claims have been asserted against such claims; it shall offer the contracting party against which claims have been asserted assistance in the legal defence and indemnify it against the costs of such legal defence. The prerequisite for this is that the contracting party against which claims have been asserted informs the other contracting party without undue delay in writing of claims asserted, does not submit any concessions or acknowledgements or equivalent declarations and allows it to conduct all judicial and extrajudicial proceedings/negotiations regarding the claims at its expense. This shall not apply to the extent the contracting party against which claims have been asserted is a necessary party to the litigation. § 7 (9) shall not apply if the contracting party with the indemnification obligation is not responsible for the breach of duty.

§ 8 Rendering of accounts and terms of payment

(1) (Prices)

The prices stated in the current price agreement shall apply.

(2) (Invoicing)

Invoicing shall be governed by the Master Contract. Recipient of the invoice shall be the Contractual Partner or any other invoice recipient to be named by the Contractual Partner.

(3) (Payment methods)

Invoices may be settled via transfer, direct debiting or any other method agreed with SupplyOn. Payments shall be deemed received when the amount payable is credited to SupplyOn's account.

(4) (Due date)

Invoices shall be due and payable by the due date indicated on the invoice upon receipt.

(5) (Reimbursement)

Any reimbursement claims of the Contractual Partner, notably as a result of excess invoice amounts paid or double payments, shall be credited to the contracting partner's invoice account and/or set off against the next claim(s) due.

§ 9 Amendments to the GTC or the scope of services

(1) (Amendments to the GTC)

SupplyOn shall inform the Contractual Partner of any amendments to the GTC by providing it with the amended version of the GTC and shall draw the Contractual Partner's attention to the right to object, the period for objection and the significance of remaining silent.

The Contractual Partner may object to amendments to the GTC within a period of four (4) weeks of announcement of the amendments and receipt of the amended version of the GTC.

If the Contractual Partner does not object to the amendments within such four week period, the amendments shall become effective after expiry of the four week period. If the Contractual Partner objects to the amendments to the GTC within the four week period, the GTC in the version applicable on the date of conclusion of the Agreement shall continue to apply for the Contractual Partner.

(2) (Amendments to the scope of services)

SupplyOn may perform reasonable changes to the scope of services at any time without the Contractual Partner's consent if

1. the amendments were caused by mandatory statutory requirements or requirements of the authorities or mandatory requirements made by third parties for which SupplyOn is not culpably responsible, or
2. the amendments are in the Customer's interest, with processes being improved and services being offered more efficiently and without the Customer having any disadvantages.

SupplyOn shall notify the Customers of such amendments in writing, by e-mail, on its website or otherwise.

Any other changes to the scope of services may be performed in accordance with the amendment procedure for GTC stipulated in § 9 (1) subject to the following provision: In lieu of the right to object provided for in § 9 (1), the Contractual Partner may terminate the SupplyOn Services affected by the amendments within a period of four (4) weeks of announcement and receipt of the amendment notification with effect from commencement of the amendments to the scope of services. In the event of material amendments to the scope of services which affect also other SupplyOn Services, the Contractual Partner may terminate the Agreement in its entirety.

§ 10 Term and termination of the Agreement

(1) (Term; ordinary termination)

The commencement of the Master Contract is determined by the date stipulated in the Master Contract. The Master Contract shall run until the end of the calendar month from the commencement date and the following twelve (12) months ("Basic Term"). Thereafter it shall be extended by a further twelve (12) months each time ("Extension Period") unless terminated on three (3) months' written notice for the end of the Basic Term or an Extension Period. The commencement date of the SupplyOn Services agreed pursuant to § 3 (2) shall be determined by the date of the conclusion of the respective agreement. Term and termination period of such SupplyOn Services shall be determined by the term and the termination period of the Master Contract. The termination right shall also extend to individual SupplyOn Services. The other aspects of the contractual relationship shall not be affected thereby.

(2) (Termination for good cause)

The contracting parties are entitled to terminate the contractual relationship as a whole without observing any notice period for good cause if, taking into account all circumstances of the individual case and giving due consideration to the interests of both parties, the party giving notice of termination cannot reasonably be requested to continue the contractual relationship or to use the SupplyOn Service until the agreed termination or until expiry of the notice period for termination.

For SupplyOn, good cause exists in particular if a Contractual Partner misuses the SupplyOn Services, if it seriously or repeatedly breaches its contractual obligations pursuant to § 5 (5) to (8), if insolvency proceedings are opened against the assets of the contracting party or such opening is imminent or if a significant deterioration occurs in respect of the Contractual Partner's asset situation which gives rise to fear that it will not fulfil its obligations temporarily or permanently. In the event of valid termination without notice, SupplyOn may block the Platform Data without observing a notice period or without warning.

(3) (Form of termination)

Any termination requires written form. Electronic documents without qualified electronic signature within the meaning of the German Digital Signature Act [*Signaturgesetz*] do not observe written form.

(4) (Effect of the termination)

Upon the effectiveness of the termination, all outstanding remuneration to be paid by the Contractual Partner shall be due immediately. Where the Contractual Partner has made advance payments for SupplyOn Services not used, SupplyOn shall reimburse to the contracting party any payments already made proportionate to the scope of the SupplyOn Services not used. § 8 (5) shall apply *mutatis mutandis*. Upon the effectiveness of the termination, the performance obligations of the contracting parties shall end, with the exception of post-contractual obligations such as release, deletion and blocking of the Platform Data.

(5) (Reactivation fee)

SupplyOn reserves the right to charge a reactivation fee in the event of the Supplying Company's re-registration.

§ 11 Confidentiality

(1) (Obligation to maintain confidentiality)

The contracting parties undertake to maintain confidentiality in respect to all Confidential Information during the term of this Agreement until such Confidential Information is public. This shall not apply where these GTC or the Service Specification provide for a right to pass on such Confidential Information.

(2) (Right to pass on Confidential Information and Platform Data)

SupplyOn may pass on Confidential Information and Platform Data to Customers and Participants in order to fulfil the purpose of the Agreement. In particular, SupplyOn may inform all Buying Companies for which SupplyOn Services the Supplying Companies have been granted access. SupplyOn is further entitled to pass on to all connected Buying Companies information concerning the contractual relationship between SupplyOn and the Supplying Companies (such as contractual status, access granted, imminent deactivation due to failure to pay) and which is relevant and necessary for the electronic handling of business processes between Supplying Companies and Buying Companies.

If the contractual relationship with the Contractual Partner as a whole or the Contractual Partner's right to use a SupplyOn Service terminates, SupplyOn may furthermore inform the Affiliated Companies which were granted access to the SupplyOn Services concerned as well as the legally dependent units of the Contractual Partner which were granted access to the SupplyOn Services concerned that the use of the online-platform or the SupplyOn Service concerned is no longer possible upon termination of the contractual relationship, and that such use requires the conclusion of a separate agreement.

§ 12 Data protection

(1) (Information of the Contractual Partner)

SupplyOn informs the Contractual Partner that SupplyOn collects, processes and uses the personal Platform Data required for the fulfilment of the contractual purpose and that it transmits such data to other Customers. The Contractual Partner is obliged to inform its employees who use the SupplyOn Services, accordingly, and undertakes that only employees who have been informed accordingly will use the SupplyOn Services.

(2) (Data protection declaration)

Details of the collection, processing, use and transmission of the personal Platform Data of the respective SupplyOn Services are set forth in the Data Protection Declaration.

§ 13 Final provisions

(1) (Governing law)

This Agreement shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention and the conflicts of law rules.

(2) (Place of performance)

The place of performance shall be SupplyOn's registered office.

(3) (Place of jurisdiction)

Exclusive place of jurisdiction for all disputes arising from or in connection with this Agreement is Munich, District Court Munich I [*Landgericht München*].

(4) (Changes and amendments)

Any changes or amendments to this Agreement require written form. This shall also apply to any deviations from this written form requirement. Transmission via telecom networks (including transmission by e-mail or online) shall be admissible.

(5) (Defence clause)

Deviating or supplementary general terms and conditions of the Contractual Partner shall not apply, even if SupplyOn does not expressly contradict their applicability.

(6) (Miscellaneous)

The Master Contract, the GTC and their respective contractual components represent the entire provisions relating to the subject matter hereunder and replace all previous provisions agreed between the contracting parties in respect of the subject matter hereunder. No oral side agreements have been made. Should any of the provisions in this Agreement be invalid or unenforceable in whole or in part, this shall not affect the remaining provisions. The contracting parties shall replace any invalid provision without undue delay by a valid provision which comes as close as possible to the economic purpose of the invalid provision. The same shall apply for a gap in the Agreement.