



## General Terms and Conditions EN

### Article 1 : Application

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The present general terms and conditions (the "Terms") of Cogen sa ("Cogen") prevail over those of the Customer. The Customer renounces application of its own terms and conditions, unless expressly agreed to otherwise by Cogen. No interlineations, deletions, modifications or amendments to these Terms shall be binding on unless mutually agreed to and accepted in writing. Cogen's Terms are applicable for all negotiations, offers and agreements by which Cogen delivers goods and/or services insofar as there is no mutually agreed deviation. These Terms shall remain valid for the full duration of commercial relations and shall be applicable for all future transactions.

### Article 2 : Conclusion of Contract – Price Determination

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No contract shall arise until a written acknowledgment from Cogen accepting the Customer's order is sent by Cogen to the Customer. Receipt by Customer of Cogen's acknowledgment of an order without prompt written objection thereto shall constitute acceptance by Customer of these Terms.

The rates and other data on Cogen's catalogs, prospectus, circulars, advertisements, price lists and other documents are mentioned only as general information. They are only approximate and shall not bind Cogen.

"Translation rates by word, by line, by page or by the hour and rates of other services are listed in the quotations or tenders of Cogen and do not include tax. These quotations or tenders are noncommittal in nature.

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Cogen will be entitled to adjust quoted and agreed prices on the basis of the average change in the cost price of the services to be delivered and/or activities to be performed by Cogen:

§ in the event of urgent work, evening, weekend or night work;

§ in the event of a sworn translation;

§ in the event Cogen is not able to review the entire source text prior to order acceptance;

§ in the event the Customer amends the source text or the services requested (review, page layout, optimization of source documents, project management, management of the review process, database filtering and pick-up and the layout of language versions for print or electronic format (e-publishing)."

In any of the above cases, Cogen shall explicitly specify the price increase in the order confirmation and/or the invoice that Cogen sends to Customer.

### Article 3 : Acceptance and Confirmation of Translation Order

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The Customer shall ensure that he/she has provided sufficient documents and information for Cogen to be able to evaluate the volume and level of difficulty of the source text with respect to translation and page layout.

Any order or request for an offer addressed to Cogen shall be confirmed in writing by Cogen upon receipt of the source text and the material necessary for execution of the order. The written confirmation will specify the rate to be applied. If the Customer so wishes, the delivery deadline may also be specified in the written confirmation. Such written confirmation shall be subject to these Terms.

#### **Article 4 : Terms and Conditions of Delivery**

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The Customer shall ensure that he has transmitted to Cogen, prior to execution of any contract, all information and material necessary for effective execution of the services requested (source text, glossary, reference documents, reviewer's contact details...). The relevant source text, information and material shall be delivered to Cogen by the Customer at the expense of the Customer. If the Customer fails to provide Cogen with any information and material necessary for effective execution of the services requested (source text, glossary, reference documents, reviewer's contact details...), Cogen shall not be held responsible for any problem in the performance of the services requested.

The translation and services requested are deemed delivered on the date that they are sent to the Customer by post (the postmark being evidence), by courier (acknowledgement of receipt being evidence) or by fax (transmission confirmation being evidence). In that event that delivery is by electronic means (e-mail or ftp), delivery is deemed to have been effected upon dispatch confirmation from the system. If review of the text is executed by a reviewer appointed by the Customer, the translation is deemed delivered upon dispatch of the non reviewed translation to the Customer or to the reviewer.

#### **Article 5: Delays in delivery & Force Majeure**

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Cogen shall use its best efforts to meet delivery deadlines agreed to by the parties. Cogen shall advise the Customer immediately should Cogen recognize a need for extension of the agreed deadline. In the event of extension of the deadline of more than 2 weeks caused exclusively by Cogen, the Customer shall have the right to unilateral termination of contract. In such case, Cogen shall not be liable to pay any compensation whatsoever.

The Customer agrees to indemnify, defend and hold Cogen harmless against any costs and expenses related to any claims for lost profits or other consequential damages based on Cogen's failure to deliver timely the translation and any other services requested.

Cogen shall not be held liable for delays in job execution or failure to perform the services or other obligations because of illness, accident or temporary incapacity, differences with employees, strikes, labor shortage, fire, floods, other natural disasters, supplier delays, delays caused by a third party (post, courier services, fax, e-mail, reviewers appointed by the Customer), restrictions imposed by any governmental regulation, whether valid or invalid, or cause beyond the control of Cogen, or without the sole fault or negligence of the Customer. Cogen shall do its best to advise the Customer of any such delays within a reasonable time period. Customer agrees to indemnify, defend and hold Cogen harmless against any claims made by third parties based on whole or in part on Cogen's inability to perform because of such a delay or failure to perform as described in this paragraph. Moreover, Cogen shall not be held liable if the source text, translation and/or services requested are damaged in transit.

#### **Article 6 : Liabilities, Disclaimer**

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Cogen shall not be held liable in the event that a third party (post, courier services, e-mail, reviewers appointed by the Customer) loses or destroys the source text, translation or services requested. The Customer is responsible for creating a back-up copy of the source text before it is sent to Cogen.

Cogen shall provide to Customer a translation of good linguistic quality to the best of its ability as professional translator.

The Customer has the responsibility to review, or to commission reviewing of, the translation provided by Cogen and to check the correctness of the translation in terms of the information contained therein, even when Cogen has also hired a reviewer or verifier of the translation. The return of the reviewed text to Cogen by the Customer, shall indicate the approval of the Customer of the contents of the translation. Any mistake in the contents of the translations or complaint shall be reported by the Customer to Cogen pursuant to the provisions of Article 6 of these Terms. Customer accepts and acknowledges that Cogen shall not be deemed

an expert or to have knowledge of or independent information regarding the text to be translated and that Customer is solely responsible for the contents and correctness of the text to be translated.

If the Customer fails to review the translation within thirty (30) days of the delivery of the translation by post, fax, electronic means or courier, Cogen will be deemed having fully performed the service requested by the Customer.

Cogen disclaims any and all responsibility for inexact wording in the translation provided to the Customer and for any and all damages caused by the use or application of, or reliance on, such translation, as well as for any and all errors contained in the source text provided by the Customer and any and all damages that this error may have caused. The Customer agrees to indemnify, defend and hold Cogen harmless against any and all damages, costs and expenses related to any claims for direct or indirect damages of any kind, including but not limited to lost profits or other consequential damages based on mistakes contained in the translations or other services provided by Cogen.

Cogen shall not be responsible for any and all damages, including but not limited to consequential, direct or indirect damages, costs or losses under any circumstances. Cogen shall not be liable in any event for any and all indirect damages, including but not limited to, loss of revenue, company closure, loss of company information or any other financial loss. In any case, liability of Cogen is limited to the invoice amount up to a maximum amount of 25,000 Euros.

Customer assumes liability for, and shall pay when due, and shall indemnify, reimburse and hold Cogen harmless from and against all Claims (defined below), directly or indirectly relating to or arising out of the goods and/or services provided to Customer by Cogen, the falsity of any non-tax representation, statement, source text or other materials provided by Customer to Cogen or Customer's failure to comply with the terms of these General Terms and Conditions. "Claim" means all liabilities, losses, damages, actions, suits, demands, injuries, claims of any kind and nature (including, without limitation, claims relating

to injuries, property damage or other accidents), and all costs and expenses whatsoever to the extent they may be incurred or suffered by Cogen in connection therewith (including, without limitation, reasonable attorney's fees and expenses), fines, penalties (and other charges of applicable governmental authorities), licensing fees relating to any goods and/or services provided by Cogen to Customer, damage to or loss of use of property (including, without limitation, consequential or special damages to third parties or damages to Customer's property), or bodily injury to or death of any person (including, without limitation, any agent or employee of Customer).

Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of any business relationship or completion of any particular assignment or contract between Cogen and Customer. Upon Cogen's written demand, Customer shall assume and diligently conduct, at its sole cost and expense, the entire defense of Cogen against any indemnified Claim described in this Article.

#### **Article 7 : Complaints - Time Limits for Lodgment and Justification**

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To be valid, any complaint from the Customer must be forwarded to Cogen by registered letter within 30 days of date of delivery of the translation to the reviewer or, if no review is required, to the Customer, by post, fax, electronic means or courier. Any invoice or bill of fees not disputed within 30 days of receipt is deemed accepted. Under no circumstances is the Customer entitled to withhold its payment obligations to Cogen and/or attempt to offset them with any obligations of Cogen to the Customer.

Complaints or disputes relating to non-conformity of the translation, formulated within the contractual period, must be justified in detail with reference to dictionaries, glossaries or equivalent texts written in the native language of their author. Complaints or disputes relating to non-conformity of page layout must be justified in detail using examples. Rejection of a translation or page layout does not constitute grounds for non-payment of invoice or bill of fees. In the case of continuing disagreement with respect

to the quality of the translation or page layout after the complaint has been examined by Cogen, such disagreement shall be settled in accordance with the provisions of Article 15.

#### **Article 8: Cancellation of Translation Request**

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In the event of unilateral cancellation of the translation order by the Customer, the Customer shall be liable for compensation, the amount of which shall be proportionate to the work already carried out, including any project organization or file optimization work. Calculation of such compensation shall be based on the rate agreed for the cancelled order.

In addition, Customer shall pay Cogen a cancellation fee equal to 20% of the price of the cancelled order value in reparation of the time dedicated by Cogen in the execution of the cancelled order.

#### **Article 9 : Translation, Page Layout and Copyright**

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The Customer is deemed to be acting on behalf of the author of the text to be translated and explicitly authorizes translation thereof. Likewise, the Customer is deemed to have obtained the license for the software necessary to write the source text and arrange page layout thereof.

Cogen owns the copyright for the translated text and its page layout. However, all the copyright elements of the translation and page layout executed by Cogen shall pass from Cogen to the Customer upon payment in full of Cogen's invoice. Hence, upon full payment of invoice by the Customer, the latter will have the right to sell, transfer, hire, or distribute under license said copyrights, completely or partially, and will have the right to amend and adapt the translation and page layout. In no event shall Cogen be held responsible for any amendment or adaptation made to the translation and page layout provided by Cogen to the Customer. The Customer will indemnify Cogen against claims of third parties based on any allegation relating to or that by using the translated text or other materials made available by the Customer, Cogen has infringed the intellectual property rights of third parties. Cogen makes no warranty concerning the appropriateness

of its services for the purposes of which the Customer is acquiring the same. Moreover, Cogen makes no warranty that the source text or materials of the Customer does not infringe the rights of third parties, and Cogen shall be under no obligation to protect Customer from any claims made by third parties for any reason.

#### **Article 10 : Payment**

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All prices and rates quoted do not include tax. In the event Cogen is insecure concerning payment by the Customer, Cogen reserves the right to demand payment of a deposit and/or to require cash or letter of credit payment terms.

Payment of Cogen's invoices and bills of fees are to be received by Cogen within 30 days from date of invoice. Payments are to be made to Cogen's head office.

In the event of late payment, the Customer shall pay late payment interest at the rate of 1.5% per month on the unpaid portion of the invoice sum, applicable from invoice settlement date. Cogen will be entitled to apply payments made by the Customer first to pay those claims it deems appropriate, including interest, costs of collection, etc.

The Customer shall pay all of Cogen's costs of collection of any amounts past due, including, but not limited to, attorneys' fees, court costs, witness fees, travel and lodging, etc.

In the event of non-payment of one of its invoices, Cogen shall be entitled to suspend all ongoing orders. Furthermore, Cogen reserves the right to terminate, at its own discretion, by registered post and with immediate effect, the contract to which the unpaid invoice refers, as well as all other agreements awaiting execution.

#### **Article 11 : Cancellation privileges**

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Cogen may cancel any contract if the Customer is in default of the payment of any obligations pursuant to or any contract between the parties, or if in the sole judgment of Cogen, the Customer's financial condition and responsibility has become materially

impaired. In addition, Cogen shall have the right to recover damages for nonperformance, and any unpaid installments due on account of this or any other contract between the parties shall become immediately due and payable. If the Customer - validly - cancels the contract, the Customer will be obliged to compensate Cogen for any costs incurred by Cogen in connection with making the offer and entering into the contract and the damage and/or loss arising from the cancellation.

“Cogen will be entitled to terminate the contract unilaterally with immediate effect, fully or in part and/or to suspend performance of its obligations under the contract with immediate effect if:

- a. the Customer has failed to fulfill one or more of its obligations under this or any other contract or sales terms;
- b. the Customer has suspended payments or has sought the protection of the Bankruptcy Courts;
- c. a petition for the involuntary bankruptcy of the Customer has been filed;
- d. the Customer's property on Cogen's premises has been attached in execution;
- e. a resolution for the dissolution and/or winding up of the Customer has been adopted;
- f. the enterprise operated by the Customer has been fully or partly transferred to a third party.”

Cogen will never be liable with respect to the Customer for any damages arising from termination of the contract or from the suspension of obligations under the contract for the aforementioned reasons.

If the contract is terminated, performance of the contract already received by the Customer and the payment obligations of the Customer in connection with it will remain. The amounts invoiced by Cogen for performance prior to or upon termination of the contract will be immediately due and payable after termination. The Customer agrees to pay any of Cogen's costs, damages, attorneys' fees and other expenses associated with Cogen's termination of any contract with the Customer pursuant to the terms of this section.

## **Article 12 : Storage of Project Documents**

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All the documents of a project (i.e. the source and target document(s), the intermediate formats of these documents and the ancillary materials relating to the project) are safely stored at Cogen until the last day of the calendar year following the delivery date of the project.

This period can be prolonged upon written request by the customer, and at a fee that will be agreed between Cogen and the customer.

Files on Cogen's ftp servers are kept for 30 days.

## **Article 13 : Confidentiality**

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The identity of the Customer, the content of the source text, any reference material furnished by the Customer and the translation itself are considered strictly confidential by Cogen.

## **Article 14 : Severability**

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Should one of these clauses be deemed completely or partially invalid, such invalidation shall not affect the validity of the remaining clauses or other parts of the same clause, which shall continue to be effective with respect to both parties.

Furthermore, the parties undertake to negotiate immediately and in good faith a clause or part of a clause to replace so severed provision to bring the same within applicable legal requirements to the greatest extent possible.

## **Article 15 : Entire Agreement - Additions and/or Amendments**

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These Terms constitute the sole terms and conditions of the contract between the Customer and Cogen. No other terms, conditions, or understanding, whether oral or written, shall be binding upon Cogen, unless hereafter made in writing and signed by Cogen's authorized representative and, in the case of printed matter, also initialed by such representative next to such printed term or condition.



Amendments to the present agreement are invalid unless agreed in writing and signed by, or for and on behalf of, the parties.

#### **Article 16 : Governing Law & Arbitration**

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These terms and contractual relations between Cogen and the Customer are in all respects governed by, and construed in accordance with, the laws of the state of Delaware in the United States, without reference to conflict of laws principles.

All disputes and differences of any kind arising under these Terms, or arising between the parties including the existence or continued existence of these Terms and the arbitrability of a particular issue which cannot be settled amicably by the parties shall be submitted to binding arbitration. The arbitration shall be conducted in Chicago, Illinois, and shall finally be settled in accordance with the Rules of Arbitration of the American Arbitration Association by one arbitrator appointed in accordance with the above mentioned rules. The arbitrator shall be allowed to apportion fees according to the ruling.

The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction, and no party shall seek redress against the other in any court or tribunal except solely for the purpose of obtaining execution of the arbitral award or of obtaining a judgment consistent with the award. Any costs so incurred shall be paid by the losing party.

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