

General Conditions of Sale

I. General details

1. These Conditions of Sale apply to all Goods supplied by the contracting Tognum Group Company named in the footer (hereinafter referred to as the "Supplier"). They also apply to Ancillary Services (e.g. erecting, installing and commissioning) provided in addition to the Goods supplied or agreed separately as Primary Services (referred to hereinafter collectively as "Services"). These Conditions of Sale apply exclusively; they apply even where the Supplier provides Goods or Services without condition knowing that the Client has opposing or divergent conditions. They also apply to all future business transactions.
2. Contracts, amendments and additions to them, recognition of the Client's Terms of Business and any Specifications Agreement require our written confirmation in order to be valid. There are no verbal side agreements.
3. Errors in the transmission of telegraphic, teleprinted, telexed, faxed, electronic or telephone orders/instructions are at the risk of the Client.

II. Contract conclusion

1. Quotations by the Supplier are provided without obligation. The Supplier reserves all rights (esp. copyright and intellectual property rights) in respect of quotations, samples, cost estimates, drawings, technical information and other documentation; Third Parties may only be allowed access to such documentation with the prior written consent of the Supplier.
2. Orders placed are binding on the Client for a period of six weeks from the date of receipt by the Supplier. The Contract is concluded by written confirmation of order acceptance by the Supplier. Such confirmation is also definitive with regard to the extent and specifications of the Goods/Services supplied if the Client fails to contradict any differences from the Order.
3. The Goods shall comply with the general German and EU technical regulations and standards applicable to the items concerned. Where the Client requires compliance with different technical regulations or technical regulations applicable to its particular specialized application, it must be agreed in writing. The same applies where the Client requires the provision by the Supplier of specific local approvals or licenses such as for the import or operation of the Goods supplied.
4. Stated technical data, operating costs, consumption figures, power outputs, weights, dimensions, service lives, etc. are only approximate figures unless they are expressly agreed as required specifications in writing. Power outputs, speeds, consumption figures, etc. are deemed to be proven by the bench-test results from the manufacturing plant. To that extent ISO 3046 or SAE J1995 in the case of the S60 shall apply. Where the Contracted Goods are gas-operated, the test run is completed using natural gas.
5. We reserve the right to alter the design, shape and materials of the Contracted Goods provided the Contracted Goods are not fundamentally changed by doing so and the changes are reasonable for the Client to accept.

III. Prices

1. Prices are stated net ex Supplier's works without discount or other reductions and exclusive of value added tax at the relevant statutory rate where applicable. Charges imposed by public authorities (taxes, fees, customs duties) incurred as a result of exporting the Contracted Goods, as well as packing, loading, transportation, installation, insurance or any other costs (e.g. for consular certificates or certificates of origin) are payable by the Client.
2. The Supplier is entitled to appropriate additional payment (even in cases where a fixed price is agreed) if technical specifications or delivery/design deadlines are changed at the request of the Client after the Contract is concluded. In the event of changes in the price of materials, labor costs, freight charges or other cost fac-

tors, the Supplier reserves the right to adjust prices accordingly provided there is a period of at least four months between the date the Contract is concluded and the delivery date and a fixed price has not been agreed. The same applies to situations of continuous debt.

IV. Payment terms

1. Unless agreed otherwise, payment shall be made as follows to the Supplier's account within 14 days of the invoice date without deduction of any:
 - one third on conclusion of the Contract,
 - one third after half of the delivery period has elapsed,
 - one third on notification that the individual Goods are ready for dispatch and in any case prior to delivery of the Goods/Services.
2. To qualify as settlement of a debt, payments must be made to the Supplier or an agent in possession of a written authority to collect on behalf of the Supplier. Bank charges and credit transfer costs are payable by the Client. No interest is paid on advance payments on account. Payment instructions, checks and bills of exchange are only accepted by special arrangement and only for the purposes of settlement – taking account of all collection and discount charges.
3. Should the Client fall into arrears with its payments, the Supplier may – without prejudice to any other statutory or contractual rights such as provided for in Clause V.8 and VII.4 – claim interest at a rate of 10% or 8 percentage points above the base rate of the Deutsche Bundesbank. If it becomes evident due to the Client's inability to pay that there is a risk it may not meet its obligations, then the Supplier may refuse to supply the Goods/Services (including under other Contracts) until the Client has fully met its obligations or provided appropriate security.
4. The Client may only offset its own claims against the claims of the Supplier or exercise a right to withhold payment if the Client's counterclaim is undisputed or a legally enforceable title exists.
5. The Supplier is entitled to offset amounts owed to the Client by Tognum AG and its Group Companies against amounts it is owed by the Client. The same applies to offsetting amounts owed to the Client by the Supplier against amounts owed to those Companies by the Client. Offsetting will also be employed in the event of bankruptcy (insolvency) or an arrangement with creditors on the part of the Client provided it is allowable under the bankruptcy or insolvency administration law applicable to the Client.

V. Retention of ownership

1. All Goods supplied shall remain the property of the Supplier (Retained-ownership Goods) until such time as all commitments arising from the business relationship have been settled in full.
2. Any processing or modification of the Retained-ownership Goods by the Client shall be performed on behalf of the Supplier. If the Retained-ownership Goods are combined with other Goods not belonging to the Supplier, the Supplier shall acquire part-ownership of the resulting products in proportion to the value of the Goods.
3. The Supplier agrees to the Retained-ownership Goods being sold on by the Client as part of the normal conduct of business subject to the right of revocation and the provisions of Clause V.8. The Client may not pledge or assign the Goods as security. To safeguard all the Supplier's claims arising from the business relationship, the Client hereby assigns to the Supplier the amounts it is owed from selling on the Retained-ownership Goods – regardless of whether they have been further processed – to the value of the purchase price claimed (including VAT). Until and unless revoked, the Client is entitled and obliged to collect the receivables assigned to the Supplier. The Supplier is entitled to revoke the authorization to collect if the Client falls into arrears with its payments, suspends its

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payments, files for bankruptcy or seeks an arrangement with creditors, or institutes comparable proceedings. After cancellation of the authorization to collect, the Supplier shall be entitled to collect the amounts receivable. To that end, the Supplier may demand that the Client discloses details of the assigned receivables and by whom they are owed, supplies all information necessary for collection, hands over the associated documentation and notifies the Third Parties of the assignment.

4. At the request of the Client, the Supplier shall release the security to which it is entitled under the above provisions to the extent that the realizable value of the security exceeds the secured receivables by more than 20% or their estimated value by 50%, the choice being at the Supplier's option.
5. The Client is obliged to look after the Retained-ownership Goods carefully for the Supplier, maintain them in technically perfect condition and have any corrosion-proofing, servicing and repair work that may become necessary carried out immediately. Except in emergencies, the Retained-ownership Goods are to be repaired at the Supplier's own workshops or workshops authorized by the Supplier.
6. For the duration of the period of ownership retention, the Client must on request insure the Retained-ownership Goods to the value of the existing remaining debt against all risks to the extent specified by the Supplier with the stipulation that the rights arising from the insurance accrue to the Supplier. The Supplier has a claim to the standard insurance certificate.
7. The Client must inform the Supplier without delay in the event of seizure of property or other impairment of owners' interests.
8. Should the Client fall into arrears with its payments or culpably fail to meet its insurance obligations or the obligations arising from the retention of ownership including the assignment of receivables then the entire remaining debt shall fall immediately due even where bills of exchange have a later due date. Any right of sale on the part of the Client under Clause V.3 shall become void. The same applies where bankruptcy, administration or comparable proceedings are instigated against the Client's estate or the Supplier receives an insurer's notification as provided for in the insurance certificate as a result of the behavior of the Client. If the entire remaining debt is not immediately paid, the Client's rights of use in respect of the Retained-ownership Goods shall become void. The Supplier is then entitled after allowing a period of 14 days' grace or in the event that bankruptcy, administration or comparable proceedings are instigated against the Client's estate after withdrawing from the Contract to demand release of the Retained-ownership Goods to the exclusion of any rights of retention and to collect them from the Client's premises. Where possession is taken of Retained-ownership Goods which are co-owned by Third Parties, such possession is taken on behalf of the co-owners at the same time. All costs arising from taking possession and realizing the value of the Retained-ownership Goods shall be chargeable to the Client. If the Goods supplied have been used, the Supplier is entitled to claim as a minimum figure for depreciation an amount of 25% for the first six months of use and of 7.5% for each succeeding six months of use without having to provide evidence of damage. The Client may bring evidence that no damage/depreciation has occurred or is substantially less. The Supplier is entitled to demonstrate that greater depreciation has occurred as a result of use.
9. If the country in which the Goods supplied are located does not allow retention of ownership but allows the Supplier to retain other rights to the Goods supplied, then the Supplier may exercise all such rights. The Client is obliged at its own expense to take all measures necessary to ensure that the retention of ownership or instead other rights to the Goods supplied can be applied and are maintained.

VI. Supply of Goods/Services

1. In the absence of other agreements, Goods shall be supplied ex works (as per Incoterms 2000). Partial deliveries, partial service provision and reassignment are permissible. Dates/deadlines shall be extended/postponed accordingly provided and to the extent that the documents required for processing orders on time are not received by the Supplier in time, contractual obligations (e.g. payments on account, provision of letters of credit, etc.) are not met, contract-related work on the part of the Supplier suffers from interruptions or delays caused by the Client or delays occur due to other events over which the Supplier has no control (e.g. strikes, lockouts, business disruptions, delays by subcontractors, acts of God, action by government authorities) regardless of whether they occur at the Supplier's location, the Client's location or elsewhere. The Supplier shall notify the Client of the occurrence of events such as those listed above. Those events shall not be the responsibility of the Supplier even if they arise during a delay. If the supply of Goods/Services is delayed by such events by more than 6 months both Contracting Parties shall be entitled to withdraw from the Contract.
2. Should the delivery of Goods/Services be more than 6 weeks overdue for reasons for which the Supplier is responsible, the Client shall be entitled after fruitless expiry of a suitable period of grace to withdraw from the Contract by written notification and to demand reimbursement of any payments on account plus 5% interest. Where parts of the Goods/Services to be supplied are overdue, the entitlement to withdraw shall be limited to those parts provided that is something that can reasonably be expected of the Client.
3. Should the delivery of Goods/Services become overdue due to the gross negligence of the Supplier's agents, the Supplier shall reimburse any losses suffered by the Client to the value of up to 0.5% of the price of the overdue Goods/Services for each complete week by which delivery is overdue but in any case not more than 5% in total; the same shall also apply in the case of simple negligence except that no compensation for loss of profit/use shall be paid.
4. The Supplier reserves the right to supply the Client with different Goods of a similar type or design within the bounds of what is reasonable if the type or design ordered is no longer in production by the time of the delivery date. There is no obligation on the Supplier to supply the Goods originally ordered or to provide compensation for failure to fulfill the original order.
5. Should dispatch of the Goods be delayed for reasons for which the Supplier is not responsible, the Client is obliged as of the second month of the delay to reimburse the costs arising from storage. If the Goods are stored at the Supplier's works, the reimbursement shall be 0.5% of the value of that part of the entire Goods to be supplied that is delayed, per month. The Client shall be at liberty to demonstrate that such costs have not accrued or are substantially lower.

VII. Passage of risk, acceptance and delay by the Client

1. The risk passes to the Client on delivery as per Clause VI or when acceptance becomes overdue. The above also applies if partial deliveries or reassignments are made or the Supplier provides ancillary Services in addition to delivery (e.g. site delivery, unloading, erecting, commissioning).
2. Where, in addition to delivery, the Supplier is responsible for the completion of work and/or services not simply as an ancillary Service, an acceptance inspection is to be carried out without delay by the appointed acceptance date, alternatively after notification by the Supplier that the Goods are ready for acceptance. The Client may not refuse acceptance on the grounds of insignificant defects. Acceptance shall be deemed to have taken place if the Client does not accept the plant within a certain appropriate period

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specified by the Supplier even though the Client is obliged to do so. As distinct from Clause VII.1, where acceptance is required, passage of risk shall take place on acceptance or at such time as acceptance by the Client becomes overdue. However, the Client shall bear the risk of war, civil war, acts of terrorism and damage caused by nuclear radiation as of delivery ex works.

3. The Goods to be delivered shall be subjected to testing by the Supplier; according to Clause II.4 of these Terms and Conditions, power outputs, speeds, consumption figures, etc. are demonstrated by the bench-test results from the manufacturing plant. The Client may with the appropriate agreement have specific trials in addition to the above tests carried out by the Supplier at extra charge. Where the Client or its appointee wishes to be present at the tests or any additional trials it must be agreed in writing at least four weeks before the expected delivery date. If the Client does not attend the tests or any additional trials agreed, the Client may not demand that they are repeated.
4. Should the Client fall into arrears with agreed payments, be late providing the agreed security or taking receipt of/accepting the Goods or issuing the dispatch requirements after notification that they are ready for collection or – where applicable – for acceptance, the Supplier shall be entitled after allowing a further period of four weeks' grace to (partially) withdraw from the Contract and demand compensation due to non-fulfillment or inadequate fulfillment. In the event of compensation, the Supplier shall be entitled to demand either 15% of the Contract value as compensation – to the exclusion of higher damages claims – or reimbursement of the actual losses accrued. If the Supplier does not exercise that right then the Supplier may – without prejudice to its other rights – dispose of the Goods as it chooses and supply equivalent Goods within an acceptable period according to the terms of the Contract instead. Clause IV.3 remains applicable. Any and all resulting additional costs shall be payable by the Client.

VIII. Dispatch

1. Where dispatch has been agreed it will be effected from the Supplier's works according to best judgment but without obligation as to the cheapest shipping.
2. The Client shall bear the risk of accidental deterioration or loss from commencement of loading at the Supplier's plant. If the Goods are ready for dispatch and should dispatch of the Goods be delayed for reasons for which the Supplier is not responsible, the risk shall pass to the Client on receipt of the notification that the Goods are ready for dispatch. The same applies to partial deliveries.
3. The Supplier will charge for the costs of shipping and packing. Company-owned packing apparatus such as containers and pallets shall remain the property of the Supplier. The Client shall handle such items with care and return them at its own expense.
4. On request the Supplier shall provide the Client with a dispatch note where required for freight insurance purposes. Where the Client issues such an instruction, the Supplier will take out insurance for land, sea and air freight at the expense of the Client. Goods damaged in transit or short deliveries must be notified to the carrier or freight forwarder within three working days.

IX. Warranty (warranty of quality)

1. The Supplier warrants to the Client that the Goods supplied will be free of defects in material and workmanship to the extent technically possible at the point of passage of risk for a period of twelve months from commissioning but in any case no longer than eighteen months from notification that the Goods are ready for dispatch. For components that have been rectified or replaced, a warranty shall be provided until expiry of the limitation period applicable to the Goods supplied and otherwise in accordance with the present Clause IX. For parts sold as spares, the limitation period shall be six months from commissioning of the part but in any case

no longer than twelve months from notification that the parts are ready for dispatch.

2. Warranty of quality shall not be provided where faults or damage are due to the following causes:
 - a) natural wear and tear or external action, incorrect handling, incorrect storage, incorrect erection, inadequate corrosion-proofing, the use of force, incorrect installation, chemical, electrical or other harmful effects;
 - b) fitting or attachment of components from third-party sources or performance of commissioning, servicing, repairs or other work on the Goods supplied by persons not authorized by the Supplier;
 - c) failure to follow the operating, inspection or servicing instructions of the Supplier or its employees;
 - d) use of the Goods supplied for purposes other than those intended;
 - e) use of the Goods supplied under extraordinary operating conditions not made known to the Supplier in writing at the time of the order.
3. Services provided by the Supplier under the present Clause IX are conditional upon the Client meeting its fundamental contractual obligations. In particular, the Client must notify the Supplier in writing of defects that are obvious or identifiable by straightforward inspection within 3 days of hand-over and in all other cases immediately on discovery, giving details of the defect and the factory number.
4. In the event of defects the Supplier shall provide retrospective fulfillment by means of replacement delivery/production or defect rectification at the Supplier's works, a workshop appointed by the Supplier or on site as follows:
 - a) If defect rectification takes place at the Supplier's works or a workshop appointed by the Supplier, the Supplier shall reimburse the shipping costs provisionally paid by the Client for the cheapest possible method of dispatching the defective parts which is to be instigated by the Client. The above shall also apply if parts are replaced and the Supplier requests the return of the parts replaced.
 - b) Freight charges for dispatching rectified or replaced parts by the cheapest means shall be paid by the Supplier. Furthermore, the Supplier shall pay the appropriate costs for the removal and refitting of components of the Goods supplied up to the level of the cost of removal and refitting at the Supplier's works. The Supplier shall not pay the cost of removal and re-installation of the entire Goods supplied or any incidental costs. Where a specific installation site is agreed for the Goods supplied, additional costs arising from moving the Goods to a different location shall be paid by the Client.
 - c) Where defects are rectified at the deployment site, the Supplier's staff shall be provided free of charge with the personnel and equipment required by the special conditions at the site.
 - d) Parts replaced shall become the property of the Supplier.
5. Only in urgent cases of which the Supplier must be immediately informed where operational safety is at risk or in order to prevent disproportionately extensive damage and with our written consent or where retrospective fulfillment is unlawfully refused is the Client entitled to rectify the defect or to have it rectified by Third Parties. In such cases the Supplier shall reimburse the cost not exceeding the amount that the Supplier would have incurred in rectifying the defect.
6. Should a complaint by the Client prove not to be a case of warranty of quality on the part of the Supplier, the Client must take back any returned parts or the returned Goods without delay and pay the cost of transportation to and from the Supplier as well as all incidental costs including those accruing from the investigation of the complaint.

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7. If retrospective fulfillment is possible but associated with disproportionately high costs, an appropriate price reduction shall be granted instead of retrospective fulfillment if the Goods supplied can reasonably be used by the Client for the intended purpose without rectifying the defect.
 8. A right to cancellation of the Contract or reduction of the purchase price shall only exist if retrospective fulfillment by the Supplier ultimately fails. Provided the Supplier is prepared and able to provide retrospective fulfillment within a reasonable period the Client must allow the required time and opportunity for retrospective fulfillment at least three times in order to protect its defect liability claims. The possibility of withdrawal is excluded in the case of insignificant defects.
 9. Agreed specifications or guarantees shall exist only if agreed explicitly in writing. In the event of absence of agreed specifications or non-compliance with guarantees the above provisions shall apply by analogy.
 10. In order to protect its claims if Third Parties should make claims due to legal defects of the Goods supplied, the Client must inform the Supplier accordingly without delay, provide all necessary information, follow the Supplier's instructions with regard to averting such claims and otherwise provide the Supplier with as much assistance as possible.
- X. Liability**
1. The Supplier's liability and the personal liability of its employees and other agents (esp. persons employed in performing and executing its obligations) shall be determined – regardless of the legal grounds for liability (contractual or non-contractual, e.g. due to defects, positive contravention of the Contract, culpability in Contract negotiation, consultancy liability, contravention of intellectual property rights, unlawful action) – exclusively according to the present Clause X.
 2. For loss or damage not occurring on the Goods supplied, the Supplier shall be liable only for personal injury or property damage to objects which by their nature are normally intended for private use or consumption and which have been used by the injured party primarily for private purposes to the extent that compulsory liability exists under the product liability legislation.
 3. In the case of negligence, the Supplier's liability is limited to 500,000.00 euro per case. There shall be no liability for financial losses, in particular either for loss of use or loss of profit. No further rights exist.
 4. Should claims exceeding the above liability limit be made against the Supplier by Third Parties, the Supplier shall to that extent have a claim to recourse against the Client.
 5. Any claims to compensation, price reduction, cancellation of the Contract or withdrawal from the Contract not expressly stated in these Terms and Conditions shall – provided it is legally permissible – be excluded. That applies in particular to claims for compensation for damage not occurring on the Goods supplied themselves (e.g. such as but not limited to loss of production, loss of use, loss of orders, loss of profit, other direct and/or indirect loss or damage).
- XI. Intellectual property rights**
1. The Client's rights of use of the Goods supplied and the accompanying documentation are limited to the operation, maintenance and repair of the Goods supplied. All intellectual property rights remain with the Supplier. Where software is included in the Goods supplied, the Client is granted a non-exclusive right to use the software supplied including its documentation. It shall be granted for use on the intended supplied Goods. Use of the software on more than one system is prohibited. The Client may only copy, revise, translate or convert the software from object code into source code to the extent allowed by law. The Client undertakes not to remove producer's details – esp. copyright marks – or to alter them without the prior written consent of the Supplier. All other rights to the software and the documentation (inc. copies) remain with the Supplier or, as the case may be, the software supplier. The issue of sublicenses is only permissible with written permission.
 2. In the event that the supplied Goods are sold on, the Client must contractually impose the above restrictions on the buyer.
- XII. Transferability of contractual rights**
- The transfer of the Client's contractual rights and obligations to Third Parties requires the prior written consent of the Supplier.
- XIII. Foreign trade legislation**
1. The supply of Goods and Services by the Supplier is subject to its permissibility under national and international export control provisions and the procurement of any export license that may be required. To that extent the Client undertakes to provide all necessary information and documentation, esp. any final destination declaration that may be required, at least 6 months before delivery. Delayed cooperation on the part of the Client or delays in the approval procedure shall entitle the Supplier to postpone the delivery dates accordingly. Should an export license not be granted, the Supplier shall be entitled to withdraw from the Contract. Neither a delay nor withdrawal under this Clause shall entitle the Client to compensation.
 2. In the event that the supplied Goods are sold on by the Client, it shall be responsible for compliance with the requirements of the local foreign trade legislation.
- XIV. Place of Performance**
- The Place of Performance for both Parties shall be the domicile of the Supplier.
- XV. Inapplicability Clause**
- In the event that any of the individual Clauses above or parts of them should prove to be inapplicable, void or unenforceable it shall not affect the applicability of the remaining provisions of this Contract. The same shall apply if omissions are identified. The inapplicable, void or unenforceable provision or the omission shall be replaced by an appropriate provision that to the extent possible under law most closely approximates to the economic intention of the Contracting Parties or what they would have intended according to the sense and purpose of the Contract if they had taken the factor into account when agreeing the Contract or subsequently inserting the provision. The above shall apply even if the inapplicability of a provision is based on a quantity of work or Goods or a time (period or deadline) provided for in this Contract. In such cases, what was agreed shall be replaced by a legally permissible quantity or time (period or deadline) that most closely approximates in economic terms to what was intended.
- XVI. Arbitration and applicable law**
1. Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force on the date when the Notice of Arbitration is submitted in accordance with these Rules. The seat of the arbitration shall be in Zurich, Switzerland. The language of the arbitration proceedings shall be German or English. Arbitration proceedings shall be conducted without the Anglo-American convention of pre-trial discovery.
 2. The legal relationships between the Client and the Supplier shall be governed by Swiss substantive law to the exclusion of the UN Convention of 11/04/1980 on Contracts for the International Sale of Goods (CISG).