

# General Terms and Conditions of Biogastechnik Süd GmbH (as of: 1 May 2022)

## **1. Scope**

These Terms and Conditions shall apply to all contracts concluded between the customer and us regarding the delivery of plant and equipment, individual components, devices, accessories, and any other objects, as well as the provision of installation, maintenance and repair services. They also apply to any future business relations, even if not expressly agreed upon. Any terms and conditions of the customer that conflict with or deviate from our General Terms and Conditions shall not apply even if we do not expressly object to them, but only if we have expressly agreed to their validity in writing.

## **2. Offers, Conclusion of Contract, Documents Provided**

2.1 An order placed by the customer can be accepted by us within two weeks by confirmation of the order or the actual delivery of goods or provision of services. Our offers are non-binding and without obligation unless we have expressly designated them as being binding.

2.2 Brochures or the technical documents enclosed with our offer or the order confirmation, such as illustrations, drawings, design proposals, etc., are only approximately authoritative unless individual details are expressly guaranteed or designated as binding. We reserve the right to make technical improvements in terms of the design or manufacturing method.

2.3 We reserve all proprietary rights and copyrights to any documents, such as calculations, drawings, etc., delivered to the customer in connection with the placement of orders. These documents must not be made accessible to third parties unless we give the customer our express written consent to do so. Insofar as we do not accept the customer's order, such documents must immediately be returned to us.

## **3. Prices**

3.1 Prices quoted are net plus the value added tax valid at the time of delivery and apply to the delivery of unpacked goods ex works in Isny. Transport will be charged separately as an additional service. Any packaging required will be charged and will not be taken back unless we have made a different arrangement in writing.

3.2 Prices quoted carriage paid shall be subject to the condition of unhindered traffic.

3.3 If there is a period of more than eight weeks between the contract conclusion and the agreed delivery date, the customer shall pay for the goods the list price determined by us and generally applicable at the time of delivery.

3.4 The prices of the initial transaction shall only apply to repeat orders if expressly agreed.

## **4. Terms of Payment**

4.1 Unless otherwise agreed, payment is due immediately upon completion of our delivery/service and invoicing without any discount. For invoices that are not settled within 5 working days from the due date, default of payment shall occur without this requiring a reminder. The default interest shall be charged at a rate of 8 % p.a. above the respective base interest rate according to Section 247 BGB (German Civil Code). We reserve the right to claim for higher damage caused by delay. We are entitled to first set off the customer's payments against older debts. In the event that any costs or interest have already been incurred, we have the right to first set off such payments against costs, then against interest and finally against the principal claim itself.

4.2 The customer is only entitled to offset payments against warranty claims or any other counter-claims if such claims have become res judicata, incontestable or have been recognised by us.

4.3 The customer may only exercise a right of retention if his counter-claim is based on the same contract. Customers may not assign their claims against us.

4.4 Any payment will only be deemed to have been effected if we are able to dispose of the sum. In case of payments through cheques or bills of exchange, payments will only be deemed to have been effected once the cheque or bill of exchange has been cashed.

4.5 We do not assume any liability with regard to the receipt of payments which the purchaser does not directly pay to Biogastechnik Süd GmbH or an expressly authorised person.

## **5. Delivery and Time of Performance, Default**

5.1 Dates and periods of delivery are non-binding unless they have been agreed upon as binding.

5.2 In the event of any delay in delivery, we are only liable if such delay should be the result of an intentional or grossly negligent breach of contract for which we bear responsibility. Our liability is limited to the foreseeable, typically occurring damage if the default is not the result of an intentional breach of contract for which we bear responsibility. In case a delay in delivery is the result of a culpable violation of an essential contractual obligation, we are liable according to the statutory regulations, provided that also in this case the indemnification is limited to the foreseeable, typically occurring damage. In this case, we do not assume liability for any consequential damage resulting from the failure of the plant.

5.3 Not later than 2 weeks after written notification of our readiness to perform, the customer will be obliged to accept our delivery or service. Should the customer default in acceptance or culpably violate any other duties to cooperate, we are entitled to claim compensation for the damage incurred by us in this respect, including any additional expenditures. Further claims remain reserved. Provided that the aforesaid conditions exist, the risk of an accidental destruction or an accidental deterioration of the purchased goods will be transferred to the purchaser at the time when he is in default of acceptance or payment.

## **6. Transfer of Risk – Shipment**

Delivery shall be made ex warehouse of our plant in Isny. If the customer wishes the goods to be transported to a destination specified by him, he shall bear the costs and the risk of the transport. Shipment of the goods shall also be at the risk of the customer if, by way of exception, we provide freight prepaid. Prior to dispatch of the goods, the customer shall bear the risk of destruction, loss of possession or damage to the object of sale for which neither party is responsible if, at the customer's request, the goods ready for dispatch are not to be delivered until a date later than scheduled. The risk shall then pass to the customer at the end of the scheduled shipping date. Insurance shall only be taken out at the request of the customer and at the customer's expense.

## **7. Warranty and General Liability – Contracts with Companies**

7.1 The customer will only be entitled to claims based on defects if he has properly fulfilled his duties of examination and notification under Section 377 HGB (German Commercial Code).

7.2 In the case of a justified complaint, we are entitled to rectify the defect within a reasonable period of time. Only if such rectification has failed or is refused by us, the customer may, at his choice, request a reduction of the purchase price / contractual fees, cancel the contract, or assert a claim for damages under the conditions mentioned below.

7.3 The customer's right of action in respect of warranty claims is limited to a period of 1 year. The term of limitation commences - for pure contracts of delivery with the handover of the goods to the customer,

- for contracts for work and services and contracts for work and materials with the acceptance.

A plant assembled and delivered by us shall be considered accepted after a period of two weeks following its commissioning. Our liability for obvious defects ends at the moment of acceptance unless the customer has explicitly asserted them in detail and writing in the acceptance protocol.

7.4 Irrespective of the following limitations of liability, we are liable, pursuant to law, for any damage to life, body and health resulting from a grossly negligent or deliberate breach of duty on our part, on the part of our legal representatives or vicarious agents, as well as for any losses covered by the German Product Liability Act.

7.5 We are only liable for any other damage or losses if they result from a deliberate or grossly negligent breach of contract or fraudulent intent on our part, on the part of our legal representatives or vicarious agents. In such cases, the liability for damages will be limited to the foreseeable, typically occurring damage unless we, our legal representatives or vicarious agents have acted deliberately or with gross negligence. In this case, we do not assume liability for any third-party, secondary or consequential damage.

7.6 Furthermore, we will be liable for any damage caused on our part by a slightly negligent breach of such contractual obligations, the fulfilment of which is mandatory for the proper execution of the contract in the first place and on whose compliance the purchaser regularly relies and may rely. However, we only assume liability to the extent that such damage is typically related

to the contract and foreseeable. In this case, we do not assume liability for any third-party, secondary or consequential damage.

7.7 Any liability going beyond this will be excluded, irrespective of the legal nature of the asserted claim; this will in particular apply to claims based on tort and claims for restitution of futile expenses in lieu of performance; this will not affect our liability under Section VII. 4.

## **8. Warranty and General Liability – Contracts with Consumers**

8.1 Should the goods contain a defect for which we bear responsibility, we will be obligated to carry out subsequent performance or rectification, under exclusion of the customer's rights to withdraw from the contract or to reduce the purchase price unless we have the right to refuse subsequent delivery or rectification on the basis of the statutory provisions. The customer must grant us an adequate period of grace for subsequent delivery or rectification.

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8.6 Furthermore, we will be liable for any damage caused on our part by a slightly negligent breach of such contractual obligations, the fulfilment of which is mandatory for the proper execution of the contract in the first place and on whose compliance the purchaser regularly relies and may rely. However, we only assume liability to the extent that such damage is typically related to the contract and foreseeable. In this case, we do not assume liability for any third-party, secondary or consequential damage.

8.7 Any liability going beyond this will be excluded, irrespective of the legal nature of the asserted claim; this will in particular apply to claims based on tort and claims for restitution of futile expenses in lieu of performance; this will not affect our liability under Section VIII. 4. If our liability is excluded or limited, this will also apply to the personal liability of our staff, employees, co-workers, representatives and vicarious agents.

## **9. Consequences of the Customer's Failure to Perform**

Should the customer fail to fulfil his obligation under the contract to accept delivery of the purchased object, and should he be in default of acceptance, we shall have the right to withdraw from the contract and request payment of a sum amounting to 25 % of the purchase price as lump-sum damages.

## **10. Reservation of Title**

10.1 Up until complete fulfilment of all claims, which we hold against the customer, whether at present or in the future, the delivered goods (reserved-title goods) will remain our property subject to an extended retention of title. The customer is obliged to handle the reserved-title goods with care until ownership has transferred to him. In particular, the customer is obliged to insure them at his own expense against theft and damage caused by fire or water. Any necessary maintenance or service work must be carried out by the customer in a timely manner and at his own expense.

10.2 Should the customer act in violation of the contract, for instance, default in payment, we have the right, after expiry of an adequate deadline, to take back the reserved-title goods. If we take back the reserved-title goods, this will constitute a rescission of the contract. If we seize the reserved-title goods, this will constitute a rescission of the contract. We are entitled to utilise the reserved-title goods after taking them back. After deduction of an appropriate amount for the costs of utilisation, we will set off the proceeds of utilisation against the amount owed to us by the customer.

10.3 The customer is entitled to sell and/or use the reserved-title goods in the ordinary course of business as long as he is not in default of payment. Pledging or assignment as security is not permitted. The full scope of any claims concerning the reserved-title goods arising from resale or on any other legal ground is hereby assigned by the buyer in advance by way of security to us; we hereby accept such assignment. We hereby authorise the customer, until revocation, to collect any claims assigned to us for his own account and in his own name. This direct debit authorisation can be revoked at any time if the customer does not duly fulfil his payment obligations.

10.4 Any processing or alteration of the reserved-title goods by the customer will be carried out for us in any case. If the reserved-title goods are processed with other items that are not our property, we acquire co-ownership to the new item at the ratio of the value of the reserved-title goods and that of the other processed items at the time of processing. The product resulting from such processing is subject to the same conditions as the reserved-title goods. If the reserved-title goods are inseparably mixed with other items that are not our property, we will acquire co-ownership to the new item at the ratio of the value of the reserved-title goods and that of the other items added by mixing at the time when such mixing took place. To secure our claims against the customer, the customer will also assign to us any claims that accrue to him from a third party as a result of the incorporation of the reserved-title goods in real property; we hereby accept such assignment.

10.5 If a third party intends to take hold of the reserved-title goods, in particular by seizing, the customer will inform such third party of our property and notify us without delay so that we can assert our property rights. To the extent to which the third party is unable to reimburse us for the judicial and extra-judicial costs of a lawsuit according to Section 771 ZPO (German Code of Civil Procedure), the customer shall be liable for any loss that occurred to us.

10.6 We are obliged to release the securities to which we are entitled as far as the realisable value of our securities exceeds the claims to be secured by more than 20 %, whereby the selection of the securities to be released shall be within our scope of responsibility.

## **11. Severability Clause**

Should one of the provisions in the present Terms and Conditions be or become invalid, this will not affect the validity of the remainder of the contract. The invalid provisions will be replaced by the corresponding statutory regulation.

## **12. Place of Performance, Place of Jurisdiction and Governing Law**

12.1 The place of performance and jurisdiction for deliveries and payments (including legal action in connection with cheques and bills of exchange) and all disputes arising between us and the purchaser from the contracts concluded between us and the purchaser is our company headquarters. However, we are entitled to sue the customer at his place of residence and/or business as well.

12.2 This agreement and all legal relationships of the parties shall exclusively be subject to the Law of the Federal Republic of Germany, excluding the UN Sales Convention (CISG) or other international conventions regulating the movement of goods.

12.3 The contractual language is German.