

## General Terms and Conditions of Sale and Delivery

### Clause 1 General

(1) For all deliveries of goods by Bioenergie grünes Deutschland GmbH (hereinafter „Supplier“) to a purchaser (hereinafter „Customer“), the following General Terms and Conditions of Sale and Delivery (hereinafter “T&C”) shall apply. General terms and conditions of the Customer which are in conflict or differ from the terms shall not form part of the contracts which are the basis of the said delivery of goods unless the Supplier has individually and expressly agreed to such terms and conditions in writing. They shall not even form part of the contracts if the Supplier, with knowledge of such general terms and conditions of the Customer, unconditionally executes the delivery of goods. This applies to all future deliveries of goods by the Supplier to the Customer.

(2) If the Supplier or the Customer invokes an agreement as to the content of the contractual duties of a party which cannot be documented by an agreed written declaration of the parties, it shall have the burden of proving that the relevant content has become part of the contract.

(3) If the T&C have not been received by the Customer in connection with any offer of the Supplier or were not submitted to it on another occasion before or on conclusion of the respective contract for delivery, they shall nonetheless apply if the Customer knew or should have known of them from an earlier or other business relationship.

### Clause 2 Offers and Prices

(1) The Supplier's offers are non-binding, i.e. they are generally to be understood as an invitation to the Customer to submit an offer on his part

(2) Due to occasional pressure on capacity it is not to be ruled out that the products offered by the Supplier or ordered from the Supplier will not be available at the expected delivery time - possibly for longer periods of time. The offers and order confirmations of the Supplier are therefore subject to product availability.

(3) The prices agreed upon individually between the Supplier and the Customer determine the consideration to be paid by the Customer for the respective delivery of goods by the Supplier. The prices stated in the relevant Supplier price lists are exclusive of VAT and inclusive of standard packaging and apply to deliveries ex works as well as ex service warehouse of the Supplier.

(4) Furthermore, all information contained in the Supplier's information material current at any time (e.g. price lists, advertising brochures, technical data sheets) or electronic information media (e.g. information on a website) shall not be legally binding, unless such information was explicitly made part of an written agreement between the Customer and the Supplier.

(5) All agreements between the Customer and the Supplier regarding the quality of the goods to be delivered by the Supplier as well as all other declarations of the Supplier relating to the quality of these goods do not constitute a guarantee or surety, unless the Supplier has made a separate written declaration to the Customer in which he expressly accepts such a guarantee or surety. The same applies with regard to the acceptance of a procurement risk by the Supplier.

### Clause 3 Terms and Conditions of Payment

(1) The place of performance for the Supplier's payment claims is the Supplier's registered office. The Supplier's invoices are due with effect from the invoice date. The Supplier may charge the

Customer default interest after the expiry of three (3) working days from the due date until the time of default at the statutory rate of seven point five percent (7.5%) of the due amount, if no payment is tendered by the time of default at the latest. Invoices of the Supplier shall be deemed to have been acknowledged if the Customer has not indicated otherwise in writing within ten (10) calendar days of receipt of the invoice. Both parties hereby agree to the electronic transmission of invoices. Receipt shall be deemed to have taken place on expiry of the next working day if the system has not returned the email as undeliverable or rejected it.

(2) Cheques shall only be accepted as performance with reservation of return at any time and excluding any liability for proper presentation or protest. Cheques shall only be considered as paid after irrevocable credit by the Supplier's bank. Bills of exchange are not accepted in principle.

(3) If the Customer does not satisfy an invoice of the Supplier within thirty (30) calendar days of receipt of the invoice or of an equally valid demand for payment, it shall be in arrears and the statutory rules shall further apply. The Supplier is entitled to charge the Customer interest on arrears from the time of default of payment at a rate of seven point five percent (7.5%). The Supplier reserves the right to assert a claim for compensation of higher damages amounts caused by delay.

(4) As soon as the Supplier has a substantial indication of over-indebtedness, insolvency or imminent insolvency of the Customer, e.g. in the event of default or suspension of payment, return or non-redemption of direct debits, cheque protest, an application for the opening of insolvency proceedings or credit agencies, the Supplier shall be entitled to make his payment claims against the Customer payable immediately, if these claims have not yet been met.

(5) Set off or retention of payments based on counterclaims of the Customer against the Supplier's claims for payment, to which he is entitled for the delivery of goods to the Customer, is excluded. The Supplier is entitled to set off all payment claims to which he is entitled against the Customer against all payment claims to which the Customer is entitled against the Supplier.

(6) Assignment of a claim against the Supplier requires the written consent of the Supplier, regardless of the content. The Supplier shall only withhold consent if, after examination of the merits in the individual case, its interest in maintaining the contractual relationship outweighs the interest of the Customer in the intended assignment.

### Clause 4 Delivery and Delay

(1) The place of performance for deliveries by the Supplier is the registered office of the Supplier, or an agreed service warehouse of the Supplier or a sub-Supplier named by the Supplier in the order. Risk shall pass to the Customer when the goods are handed over to the carrier (shipment to destination).

(2) Force majeure, including strikes, lock-outs, blockades, traffic disruptions, disruptions in the supply of energy and raw materials, states of emergency and other sovereign actions as well as operational disruptions, insofar as these circumstances affect the contractor, shall extend the agreed delivery date or the said deadlines in reasonable measure and the Supplier shall inform the Customer immediately of the expected duration of the delay in delivery. If the deliveries affected by these circumstances become wholly or partially impossible as a result of these circumstances or it becomes unreasonable for the

Customer to adhere to the delivery contracts affected thereby, the Customer shall be entitled to rescind the contract. The Customer's claims for damages shall be governed exclusively by the provisions set out in Clause 6. Further claims of the Customer resulting from a delay in delivery, in particular claims for reimbursement of contractual penalties at the expense of the Customer, are excluded.

(3) As soon as the Supplier has the indications referred to in Clause 3 (4), the Supplier shall be entitled to refuse further performance of the delivery contracts with the Customer or to render such further performance only after complete fulfilment of the payment claim of the Supplier (advance payment). Further, if the said indications are present, the Supplier shall be entitled, after the expiry without performance of such reasonable period set by the Supplier for the provision of security in the form of directly enforceable bank guarantees or for the provision of advance payment, to withdraw from those parts of the delivery contracts with the Customer which have not yet been fulfilled either by the Supplier or the Customer and to claim damages from the Customer.

(4) If the Customer fails to accept a delivery from the Supplier on the agreed delivery date, the Supplier may, after the expiry without performance of a further period of at least five (5) working days, withdraw from the delivery contract so far as it relates to the delivery not accepted in time and is entitled to claim damages in the amount of 30 % of the calculated value of the goods without prejudice to proof of higher damages, unless the Customer proves that he is not responsible for the delay in acceptance or that lower damages have been incurred.

#### **Clause 5 Warranty for defects**

(1) The quality of the goods to be delivered by the Supplier shall exclusively be determined either by the relevant agreements between the Supplier and the Customer or by statutory provisions. Samples and specimens of the goods to be delivered by the Supplier shall only serve as an approximate description of these goods.

(2) The Supplier shall furnish a warranty for material defects in the goods delivered by him as follows:

- i. The Customer must inspect the goods delivered by the Supplier immediately after receipt for defects and deviations in quantity and type of the ordered goods. Defects and deviations which are identifiable on reasonable inspection must be reported to the Supplier in writing immediately after inspection, defects and deviations which are not identifiable during these inspections must be reported to the contractor in writing immediately after their discovery or after they have become known with details of the type and scope of the defects and deviations. Should the Customer omit to give prompt notice, the delivered goods shall be deemed to have been approved. Any damages and costs incurred by the Supplier by reason of lack of immediate notification shall be reimbursed by the Customer to the Supplier, without prejudice to other rights to which the Supplier is entitled.
- ii. If the Customer accepts delivery of defective goods from the Supplier, although it knew or should have known of the defect at the point of acceptance, it shall only be entitled to exercise the claims provided for in Clause 5 (2) (c) if it reserves the right to do so on acceptance.

- iii. In the event of justified notices of defects, the Supplier shall, at its discretion, either deliver a replacement or remedy the said defect and the Supplier shall be granted a reasonable period of time for this purpose. The Supplier shall bear the requisite costs of remediation, in particular transport, travel, manpower and material costs. Without prejudice to any claims for under Clause 6, in the event of impossibility or failure of remediation, the Customer may, at its discretion, demand a reduction in price or terminate the respective supply contract.
- iv. If quality of the goods delivered by the Supplier deviates only in minor respects from the agreed quality, the Customer may only demand remediation or a reduction in price and Clause 5 (2) (c) applies to the claim for remediation.
- v. Further warranty claims by the Customer are excluded.

#### **Clause 6 The Customer's claims for damage**

(1) Claims by the Customer for damages against the Supplier which require a default on the Supplier's part, are excluded, unless the damage is caused by intentional or grossly negligent breach of duty by the Supplier, its legal representatives or its agents.

(2) In the case of a minor deviation in the quality of the goods delivered by the Supplier from the agreed quality, claims for compensation for damage are excluded.

(3) If the Supplier provides technical or economic information or carries out other advisory activities which are not within the contractually agreed scope of services to be provided by him, he shall provide them free of charge and to the exclusion of any liability.

(4) Claims by the Customer for damages are exclusive to the Customer and may not be assigned to third parties domestically or abroad.

#### **Clause 7 Retention of Title**

(1) The Supplier retains ownership title in the goods which it has delivered to the Customer until all claims, including future claims, to which he is entitled against the Customer from the existing business relationship have been paid in full.

(2) The processing or transformation of the goods under retention shall be carried out for the Supplier as a manufacturer without any obligation on the Supplier arising from this. In the event of processing or transformation by the Customer with other goods not supplied by the Supplier, the Supplier shall be entitled to co-ownership of the new object in the ratio of the invoice value of the retained goods to the invoice value of the other processed goods at the time of processing.

(3) The Customer shall store the goods owned and co-owned by the Supplier (retention goods) free of charge and shall store them appropriately. At the Supplier's request, the Customer shall insure the retained goods against the risks of "fire", "water" and "theft" at its own expense with sufficient cover for the value of the retained goods and shall immediately assign the claims resulting from this insurance to the Supplier and agree to the payment to the Supplier of the cover provided.

(4) With regard to the retained goods not yet sold by the Customer, the Supplier shall be entitled during normal business hours to inspect and/or inventory them at any time at the business premises of the Customer as well as to mark the

reserved goods as being the property of the Supplier, and the Customer shall not be entitled to assert any objections or defences of any kind against this right, unless those counter rights are undisputed or legally upheld.

(5) The Customer is entitled to process, transform and sell the retained goods in the ordinary course of business until recall by the Supplier, which is possible at any time, and such recall may only take place after the Supplier has received the indications or indications referred to in Clause 3 paragraph 4 that the Customer is not or might not be able to fulfil his obligations to the Supplier as agreed. Pledging, transfer by way of security or other disposition of the reserved goods as well as any other transfer of the reserved goods to third parties (e.g. granting of possession) is not permitted.

(6) As soon as the Supplier has indications referred to in Clause 3 (4) that the Customer is not or might not be able to fulfil its obligations towards the Supplier as agreed, the Supplier shall be entitled to terminate all supply contracts concluded with the Customer which relate to the retained goods not yet sold by the Customer without further notice and at the same time to demand immediate surrender of the retained goods not yet sold by the Customer, and the Customer must tolerate the removal of these retained goods by the Supplier during normal business hours and it is not entitled to any objections relating to possession or other objections or defences of any kind with regard to this right of removal, unless those counter rights are undisputed or have been legally upheld.

(7) The Customer hereby assigns to the Supplier all claims against third parties to which it is entitled from the use of the retention goods, in particular through their resale, processing or installation (e.g. payment claims and claims for restitution), in the amount of the value of the retention goods calculated by the Supplier to secure the claims specified in Clause 7 paragraph 1. This applies regardless of whether the goods were processed or transformed before use. If the retained goods have been processed or transformed and the new object is co-owned by the contractor, the assignment shall be made in the amount of the value of the contractor's ownership share in the new object in relation to its total sales price, but not exceeding the invoice value of the retained goods. If the retained goods are sold by the Customer to third parties together with other items, the Customer must list the respective invoice items separately. Insofar as such a separate listing does not take place, the Customer hereby assigns to the Supplier with immediate effect that part of his total claim which corresponds to the value of the retained goods calculated by the Supplier.

(8) The Customer shall be entitled to collect the claims assigned in accordance with Clause 7 (7) until recall by the Supplier, which is possible at any time, and such revocation can only take place after the Supplier has received the indications or indications referred to in Clause 3 (4) that the Customer is not or might not be able to fulfil its obligations to the Contractor as agreed. After recall, only the Supplier shall be entitled to collect the claims assigned to the Supplier with regard to retention goods already sold, while the Customer must refrain from collecting these claims. In addition, the Customer must disclose the assignment to the debtors of these claims and notify the Supplier of these debtors and of all other information required for collection and supply the associated documents; this must also be carried out immediately.

(9) The Customer must notify the Supplier immediately in writing of actions of legal enforcement which relate to the retained goods and/or the claims assigned in accordance with Clause 7 (7). Insofar as the Customer is responsible for these actions, he must compensate the Supplier for the damage caused by these actions, including the expenses incurred for the purpose of setting aside these actions.

#### **Clause 8. Copyright**

(1) The Supplier reserves all intellectual property or copyright of all offers and cost estimates submitted by it as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. The Customer may not make these objects accessible to third parties, make them known, use them itself or through third parties or reproduce them without the express consent of the Supplier. At the request of the Supplier, it must return these items in full to the Supplier and destroy any copies that may have been made if they are no longer required by it in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. If the negotiations lead to the conclusion of a contract, the Supplier grants the Customer an unrestricted right to use the provided materials for the purpose of the contract.

(2) The storage of electronically provided data for the purpose of normal data security is excluded from the above.

#### **Clause 9. Data Protection**

The Customer consents to the collection, use and disclosure of the data necessary for the fulfilment of the contracts. The Supplier shall use this data solely for the fulfilment of the contracts and not for any other purposes.

#### **Clause 10. Jurisdiction, Applicable Law**

(1) The place of jurisdiction for all disputes is at the Supplier's registered office. Even if the Customer does not have a general place of jurisdiction in the Federal Republic of Germany at the time the action is brought by the Supplier, or if the Customer's registered office or place of residence or its usual place of abode is not known, the place of jurisdiction shall at the Supplier's registered office.

(2) The law of the Federal Republic of Germany shall apply for the settlement of disputes arising out of these General Terms and Conditions of Business.