

**General Terms and Conditions of Business  
(Construction of Plants or Works) of Bioenergie grünes  
Deutschland GmbH**

Bioenergie grünes Deutschland GmbH (hereinafter referred to as the "Supplier") delivers biogas plants to third parties such as businessmen, legal entities under administrative law and special funds under administrative law (hereinafter referred to as the "Customer"). The contractual documentation related to the above is hereinafter referred to as "Contract". The following terms and conditions of business apply in addition and by way of supplement.

For projects in Thailand, the building and installation of a biogas facility is carried out in due consideration of the "Safety Regulations for Bio Gas Installations" by Factory Act B.E. 2535, Building Control Act B.E. 2522 and other relevant laws and regulations of the Kingdom of Thailand.

**Clause 1 General**

(1) For all construction and installations of plant and works including associated deliveries of the Supplier's goods to Customers the following General Terms and Conditions of Business shall apply exclusively. Conflicting or different terms and conditions of a Customer shall not form part of the said construction and installation Contracts unless the Supplier has individually agreed to them expressly in writing. This applies to all plants and installations for the Customer.

(2) Insofar as 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, the invoking party shall bear the burden of proving that the relevant content has become part of the Contract.

(3) If the General Terms and Conditions of Business have not been received by the Customer in connection with a respective order of the Supplier or were not submitted to it on another occasion before or on conclusion of the respective Contract for construction or installation, they shall nonetheless apply if the purchaser knew or should have known of them from an earlier or other business relationship.

**Clause 2. Description of Service/Implementation**

(1) All necessary documentation forms part of the scope of delivery of the biogas plant. This includes in particular:

- Operating instructions for the individual components of the scope of delivery
- Component suppliers' maintenance instructions,
- Construction plans for implementation planning,
- Description of control and
- Inspection reports and test certificates of the Supplier's subSuppliers.

(2) The Supplier has the right to carry out the deliveries and services through third parties.

(3) The Customer shall bear the cost for the provision of electricity (400 V, 32 A) and drinking water with a minimum pressure of 3 Bars on the construction site.

(4) The works to be delivered are designed for environmental temperatures of -10°C to 30°C in Europe, North America and Central Asia and 20°C to 40°C in South East Asia, the Middle East, Africa and South America (respectively, as measured in the shadow). If environmental temperatures exceed or fall below these limits, this may in either case lead to restrictions or additional costs in the operation of the plant, for which the Supplier shall not be liable. If environmental temperatures differ in general from the accepted norms, the Customer must inform the Supplier of the same at the beginning of the planning phase. A range for the environmental temperatures shall be established

by mutual agreement and the plant shall be designed accordingly.

(5) With respect to the software needed for the use of the control technology, it is to be noted that source codes are not part of the deliverables and do not form part of the scope of delivery of the supplier.

**Clause 3. Software**

If software or a software modification is offered or commissioned, the following shall apply:

- i. For the included software the Customer shall have an exclusive right to use the delivered software, including documentation.
- ii. Installation of the software on more than one system is prohibited.
- iii. The remote use / remote log in is not limited.
- iv. In particular, duplicating, reworking, translating, or distributing to third parties is prohibited. All other rights of the software remain with the Supplier. The granting of sublicenses is prohibited. The Customer has to observe the copyright. In case of a violation the Customer has to pay a penalty to the Supplier in the amount of EUR 100.000,00 per violation.

**Clause 4. Payment/Validity Period**

(1) Within Germany:

- i. The Parties agree on a down payment and advance payments. The payment schedule of the agreed advance payments can be modified by the Supplier according to the progress of the construction work.
- ii. Counterclaims can only be retained if they are undisputed.
- iii. If the payment due date is missed, statutory default interest shall apply. The right to claim further damages caused by the default shall remain unaffected. Late payments extend the delivery time of the biogas plant correspondingly by the same period.
- iv. If the payment due on start of construction is not paid within four (4) months of the commission being placed, the Supplier has the right to withdraw from the Contract.
- v. Unless otherwise agreed in the Contract, the payment term is ten (10) days after receipt of the invoice by the Customer.
- vi. Unless otherwise agreed in the Contract, all offers shall be valid for a period of six (6) weeks.

(2) Outside Germany:

- i. The Parties agree on a down payment and advance payments. The payment schedule of the agreed advance payments can be modified by the Supplier according to the progress of the construction work.
- ii. The advance payments shall be secured by the Customer by means of an "irrevocable letter of credit" ("LC") in favour of the Supplier. The payments shall be made in accordance with the payment schedule specified in the Contract.
- iii. The LC is to be opened within four (4) weeks of the signing of the Contract.
- iv. If the LC is not opened within four (4) weeks, the Supplier has the right to withdraw from the Contract. In this event the Supplier is entitled to retain 50% of the down payment to cover costs incurred.

**Clause 5. Completion and Acceptance**

The biogas plant shall be deemed to be complete when it has been installed ready for operation and the and the commissioning of a gas production unit (filling of a digester tank/reactor with inoculum, seed material, substrate or liquid manure) can be carried out. Minor defects which do not significantly affect the safety or operation of the plant or outstanding residual work shall not justify a refusal of acceptance.

- i. After installation the Supplier will supervise the filling of the "reactor". The Customer is responsible for required man power and filling material (inoculum, seed sludge) supply, unless otherwise agreed in the Contract
- ii. The Supplier shall notify the Customer one (1) week prior to the filling.
- iii. After completion of works of the Supplier according to the Contract, the mechanical commissioning is carried out by the Supplier. The Customer shall join the mechanical commissioning with three (3) persons in maximum. The mechanical commissioning will be protocolled by the Supplier and a "Mechanical Acceptance Certificate" shall be signed by the Customer. If the Customer unreasonably withheld the signature for more than 3 (three) days, the biogas plant is considered mechanically accepted.
- iv. If the mechanical commissioning shows significant deficiencies, the Supplier shall be responsible to remedy such issues at his own expense, and to repeat the procedure of mechanical commissioning. If the mechanical commissioning shows minor deficiencies, the Supplier is responsible to remedy such issues at his own expense, but such deficiencies do not affect the success of the mechanical commissioning and the signing of the Mechanical Acceptance Certificate shall not be unreasonably withheld.
- v. With signing of the Mechanical Completion Certificate the biogas plant is considered as mechanically completed and mechanically ready for operation. The responsibility is handed over from the Supplier to the Customer.

#### **Clause 6. Probation period/biological start-up**

If a probation period for the plant (biological operation) was offered and commissioned, the acceptance (biological acceptance) shall take place after the successful completion of the probation period. The requirements of Clause 5 of these General Terms and Conditions apply.

- i. The Customer is responsible to provide, on his own costs, the feedstock and inoculum or seed sludge described in the start-up feeding plan and has to provide manpower. The Customer acknowledges that the amount and quality of seed sludge material will affect the start-up period.
- ii. The Supplier provides supervision, additives (nutrients) and laboratory analysis during the biological start up. Further the Supplier provides a start-up feeding plan with details about start up time and feeding rates at least four (4) weeks prior to biological start-up. Customer is allowed a grace period of additional four (4) weeks to provide the required feedstock.
- iii. If the Customer cannot provide at least seventy percent (70%) of the required feedstock during start-up period or test run, the biological commissioning is considered successful.
- iv. The biological commissioning is considered successful if ninety percent (90%) of the agreed plant performance, based on the design parameter as specified in the Contract, is reached.
- v. The production of biogas is a complex biological process and affected by several physical, biological, chemical, weather, temperature and technical factors. By this reason a variation of up to ten percent (10%) feeding rate, based on the design parameter, is accepted as natural variation and does not affect the biological commissioning and acceptance of performance in any way.
- vi. After the start-up period (specified in the start-up feeding plan), the biological acceptance test run will last four (4) days. Measurements of gas quality will be executed on an hourly basis. The mean daily average of methane production shall be counted.
- vii. If for any reason the Customer cannot continuously provide the feedstock during these four (4) days, the test run can be repeated up to three times whereby the intervals in

- between such test runs may not be longer than seven (7) days. If the test run cannot be completed as per these conditions the plant counts as accepted and the Biological Acceptance Certificate must be signed by Customer.
- viii. If for any reason caused by Supplier, the biological commissioning cannot be completed successfully, the test run can be repeated up to three (3) times whereby the intervals in between such test runs may not be longer than thirty (30) days.
- ix. After successful Biological Commissioning, a Biological Commissioning Certificate must be signed by the Customer. With signing of the Biological Commissioning Certificate the biogas plant is considered biologically accepted and the responsibility is handed over from the Supplier to the Customer. If the customer unreasonably withheld the signature for more than 3 (three) days, the biogas plant is considered biologically accepted.
- x. The commercial operation may start one day after biological commissioning has been concluded.

#### **Clause 7. Implementation Period**

- (1) The Supplier shall commence construction of the biogas plant four weeks after the following conditions have been fulfilled
  - i. Technical clearance and approval of the plant design by the Customer (technical qualification)
  - ii. Full payment of the down payment and opening of the LC (if applicable) (financial qualification)
- (2) Actions to be implemented by the Customer must be completed at least two (2) weeks before commencement of the building works on the project site. Delays caused by the Customer or third parties shall extend the implementation periods correspondingly. Additional costs resulting from the delay may be invoiced to the Customer.
- (3) The agreed construction period requires suitable weather conditions. Interruptions of the construction process caused by bad weather conditions like heavy rain or other reasons will increase the construction period accordingly.

#### **Clause 8. Warranty/Liability**

- (1) Claims under the warranty shall not arise
  - i. if the Customer has omitted to supply critical information regarding the expected use of the plant which the Supplier could not foresee,
  - ii. if defects are due to improper use, operation or treatment,
  - iii. if defects are due to extraordinary or unforeseeable use,
  - iv. in cases of normal wear and tear,
  - v. if interventions or repairs have been carried out by the Customer or third parties on components, unless the Supplier has agreed to these in writing or has approved them retrospectively due to danger of delay,
  - vi. if maintenance works on plant components is not carried out by trained technical personnel,
  - vii. if compliance with maintenance intervals prescribed by the component manufacturer is not documented and
  - viii. if the Customer does not allow the Supplier access to the plant control system via remote dial-in at any time.

The Supplier shall not be liable for consequential damage caused by defects, in particular for increased use of operating resources, loss of profit and loss of production.

- (2) This limitation of liability is justified by the fact that a biogas plant is a highly complex, technical plant, over the use of which the Supplier has no influence. Further a biogas plant is a works in which energy is produced with a view to profit. The amount of

energy produced is dependent on a number of parameters over which the Supplier has no influence.

(3) The limitation period shall run from the completion of the plant (mechanical commissioning), but at the latest after the commissioning of a gas production unit (= the first filling of a digester tank/reactor) and is twelve (12) months. A new start of the limitation period after rectification of defects is excluded.

If the commissioning is delayed by Customer, the warranty of all components shall be limited to 24 months after delivery.

(4) If conditions imposed by a licensing authority, or by an expert required by such an authority, result in the assessment that the works are defective, having to be changed or supplemented, the Customer is obliged to notify the Supplier of the necessary changes to the works. In the event that the requirements of the licensing authority or an expert required by such an authority and the changes and/or additions to the works arise out of deficiencies in the planning and/or licensing documents and/or deficiencies in the performance of the Supplier, the Supplier is obliged to remedy such defects at its own expense pursuant to the warranty obligations. In the event that it is necessary to supplement the scope of works stated in the contractual description in order to meet the additional requirements of the authority, the Supplier shall submit a corresponding supplementary offer to the Customer, after receiving the notification mentioned in this sub-clause. The Customer shall be liable if the works specified in the supplementary offer are not commissioned and official sanctions follow as a result.

(5) If the removal of operating materials (in particular substrates from the digester tanks /reactors) is necessary for remedial work, the Customer shall arrange for the removal at its own expense.

(6) If the Supplier has warranted certain properties with regard to the scope of works and services or has issued guarantees, such warranties and guarantees shall terminate on expiry of the limitation period under sub-clause (3) above.

(7) In the event that the Customer causes a delay in the contractually agreed construction timeline and completion of the plant of four (4) weeks or longer, the Customer shall pay a contractual penalty in an amount equivalent to zero point five percent (0.5%) of the total remuneration for the construction works per week from then on. The claim for other compensation of damages by the Supplier remains unaffected.

#### **Clause 9. Publicity**

The Customer authorises the Supplier to publish technical data, raw materials, and the yield of the biogas plant with details of the municipality in which it was built on its internet homepage and in its company literature.

#### **Clause 10. Confidentiality**

(1) The Customer shall keep confidential all information/data received from the Supplier in accordance with his products or projects, for example, prices, information on business, machinery, technology, plant design and biological know how.

(2) In the event that the Customer needs to involve a third party for the execution of the construction, this party shall agree to confidentiality of this Contract in written form. The Supplier has the right to decline this party if it is proved that this third party is a competitor of the Supplier.

(3) In case information will be handover to an unauthorised person or competitor, the Supplier has the right to charge the Customer EUR 10.000,00 per violation.

#### **Clause 11. Intellectual Property**

All intellectual property that is developed in regard to projects or components of the Supplier and later operation remains intellectual property of the Supplier. This shall include copyrights, patents, trademarks, know-how or any other intellectual properties by The Supplier.

#### **Clause 12. Data Protection**

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

#### **Clause 13. Sureties**

Guarantees agreed in the Contract are always to be provided by major banks, recognised credit insurers, cooperative banks or savings banks.

#### **Clause 14. 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.

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