

# EnviTec Biogas AG

## Conditions of Sale - as per 03/2011

Applicable to business dealings with companies, legal entities under public law and special public funds.

### 1. General

(1) Every delivery and performance and tender made by our suppliers is carried out on the basis of these conditions of sale. These are part of all contracts, concluded between ourselves and our suppliers regarding the deliveries or performances offered by you. They also apply to all future deliveries, performances or tenders to the Contracting Principal, even if they are not concluded especially.

(2) The terms and conditions of our suppliers, or of third party, do not apply, even if we do not especially contradict their application. Even if we refer to correspondence which contains the supplier's terms and conditions, or those of a third party, this does not constitute a consent regarding the applicability of said terms and conditions. Even the acceptance of goods, or services delivered by the supplier (hereinafter: subject of contract), or the payment thereof does not constitute consent.

### 2. Conclusion of Contract and Alteration of Contract

(1) Orders, contracts and order releases as well as modifications or addenda thereto are to be made in writing. This requirement of written form also applies to supplementary agreements and retrospective alterations to the contract. Agreements to waive the requirement of written form must also be made in writing.

(2) The requirement of written form is also fulfilled with e-mail or fax.

(4) Tenders are binding and not to be remunerated, unless the parties have explicitly agreed on the contrary.

(5) Should the supplier not accept the order within two weeks of receiving it, we are entitled to rescind the order.

(6) Tenders and order releases are binding in their concrete form, if the supplier does not veto the order within five days of receiving it.

(7) Should our tender not contain an explicit binding period, we will keep to one week after the date of tender. Acceptance will be seen as punctual, dependant on the receipt of the declaration of acceptance in our premises.

(8) We are at any time entitled to change the time and place of delivery, and the type of packaging in writing within a period of at least 14 calendar days before the agreed delivery appointment. The same applies to product specifications, as long as it is done within the boundaries of the supplier's normal production process and can be implemented without any considerable extra effort, whereby such cases of extra effort must be made clear within a period of at least 14 calendar days. Should the amendments cause delays in delivery, which are unavoidable in the supplier's normal production and business dealings, the delivery appointment will be postponed accordingly. The supplier will carefully estimate the length of the delay in delivery and will notify us in writing before delivery, at least 4 working days after receiving our notification in accordance with sentence 1.

### 3. Delivery

(1) Any changes and/or deviations to our orders and final accounts require our prior written consent.

(2) Agreed appointments and periods of time are binding. The appointment will be considered kept when the goods are received on our premises, or at the place of performance. If nothing else has been agreed upon, inland deliveries and deliveries abroad DAP (stipulated place of delivery) ) ICC-Incoterms® 2010 to the agreed place of delivery shall apply, whereby in addition the supplier is obliged to unload the delivery item at his own risk and costs.

(3) If nothing else has been agreed upon, the supplier is to carry all incidental costs, e.g. travelling costs, provision of tools and daily allowances requisite to the assembly of the delivered goods carried out by him or by his representative.

(4) The supplier is obliged to inform us immediately of any changes in circumstances which will affect the time of delivery or the quality of delivery. Should the delivery day be determinable on the basis of this contract or an order, the supplier will fall into

arrears at the end of the stipulated day of delivery, without this requiring an official reminder from us. Should the supplier fall into arrears, we are entitled to our full legal claims, including our right to rescind the contract and claims to damages in the performances stead, after a reasonable period of time has lapsed.

(5) The unconditional acceptance of the delayed delivery or performance does not constitute a waiver of our claims to compensation due to the delay in delivery or performance; this applies until the remuneration owed by us for the afore-mentioned performance or delivery has been paid in its entirety. We are entitled, after prior written notification to the supplier in the case of delay in delivery to levy a set charge for compensation of 0.5%, but no more than 5% of the value of the goods for every week of arrears commenced. The supplier is entitled to produce evidence that the damage or a decrease in value has either not taken place or is significantly less than the set price. We are entitled to demand compensation for damages which are more than the set price for compensation, if we are able to prove this.

(6) Part deliveries are inadmissible, unless we have agreed to them explicitly or they can be held as reasonable for us. Risk is only transferred to us when the goods have been delivered at the stipulated premises in their entirety, or in the case of part delivery in the agreed part, even if delivery has been agreed upon.

(7) For quantities, weights and measurements, the values taken from our incoming goods inspection will be applied, pending proof to the contrary.

(8) The subject of delivery is to be delivered packaged, assuming this is necessary. The packaging must be suitable for transit. The supplier's obligation to recycle the packaging is based upon the legal stipulations. The place of performance for the supplier's obligation to recycle the packaging, pursuant to § 4 VerpackV (German ordinance on packaging), is the place of transfer of the goods. In the case of assembly, all debris and waste caused during the delivery/assembly is to be removed at the cost of supplier and in accordance with the legal stipulations, should the waste and debris have been caused by him, at the latest when leaving the assembly site. Upon our request, the supplier is to provide proof that he has disposed of the waste and debris in a correct fashion.

Should the supplier not carry out his duty, the Contracting Principal is entitled to do the same at the costs of the supplier. The costs of disposal will be recharged to the supplier.

(9) We have the right to use any software belonging to the product delivery, including documentation belonging to the same, within the legal boundaries (§§ 69a ff. UrhG (German copyright law)).

(10) We have the right to use such software including its documentation with the capability characteristics agreed upon and in the scope requisite to the contractually bound use of the products. We are entitled to create a secure copy without prior agreement.

### 4. Force Majeure

Force Majeure, strikes, accidental interruptions to business or construction, riots, administrative measures and other unavoidable events exempt us from the duty to accept the goods punctually, for the length of their existence. During such events and including within a two week period after the event has ended, we entitled to rescind the contract in part or in whole - without affecting our other rights - as long as the events are not of considerable length and our demand is not reduced due to the necessity to acquire the goods elsewhere.

### 5. Dispatch note and invoice

The details stated in our orders and delivery instructions apply. The invoice is to be sent in a single copy, stating the invoice number, order number, project number and other information requisite to allocating the goods, to the address stated on the invoice. It is not to be attached to the delivery.

### 6. Prices, Terms of Payment, Details on Invoice

(1) The price stated in our order is binding.

(2) If nothing to the contrary has been agreed upon, the prices are including duties paid (DAP (stipulated place of delivery) ) ICC-Incoterms® 2010 we will stipulate) whereby the statutory value added tax is not included. The supplier is responsible for the

goods until we, or our representative, receive the goods at the place stipulated.

(3) The supplier is to package the goods at his own cost. If we so desire, the supplier is to recycle the packaging at his own cost.

(4) Should nothing to the contrary have been agreed upon, we will pay the purchase prices within 20 banking days (Mon. - Fri.) from receipt of the goods and the invoice with 3% discount or completely within 30 banking days. The receipt of the transfer order at our bank will sufficient for the payment to be seen as punctual.

(5) The article number, our order number, the delivery amount and address are to be stated in every order confirmation, delivery papers and invoices. Should any one or several of these details be missing and the treatment of the order as part of our normal business process be delayed, the periods of time for payment stipulated in sec. 4 will be extended for the duration of the delay.

(6) Should we fall into arrears with a payment, we will pay debt interest to the sum of five percentage points over base, in accordance with § 247 BGB (German Civil Code).

## 7. Defects and Legal Recourse

(1) Acceptance of goods is done on the condition that our inspection for defects, especially for the correctness and completeness, carried out as part of proper business dealings meets our quality specification. Notification will be made of defects as soon as they discovered. The supplier relinquishes the right to object to delayed defect notifications.

(2) The legal regulations regarding defects of title and material are applicable as far nothing to the contrary has been agreed upon in the following contract.

(3) We principally have the right to determine the kind of supplementary performance. The supplier can refuse to carry out the supplementary performance stipulated by us, if this requires excessive costs.

(4) Should the supplier no commence remedying the defect immediately upon receiving our demand and allowing for a reasonable period of time, we are entitled to remedy the defect ourselves at the supplier's costs, or to have the defect remedied by a third party; particularly in cases of emergency and especially to avoid acute danger or greater damage. In individual cases, due to circumstances of extreme urgency, the period of time can be deemed unnecessary.

(5) In the case of defects of title, the supplier is to release us from any claims which may be made by a third party.

(6) Claims for damages become statute barred - except in the case of malice - in 2 years, unless the object has been intended to be used construction - as would be considered usual, for example a bio-gas plant, and has caused the defect of construction. In the latter cases, the statutory limitation period applies. The limitation period begins with the initial operation or the supply of the object for its intended use.

(7) The receipt of our written defect notice from the supplier stays the period of limitation. If the supplier supplies us with a replacement delivery as part of his supplementary performance, the period of limitation for the goods delivered as replacement will begin again after they have been delivered.

(8) Should costs be incurred by the defective delivery, especially for transport, labour, material or road costs which go above the boundaries of a receiving control, the supplier is to carry the costs.

## 8. Product Liability

(1) The supplier is responsible for every claims made by third party on the grounds of personnel or material defects, which can be traced back to a defective product which he delivered and is obliged to release us from the resulting liability. If we are obliged to carry out a call back operation due to a defective product delivered to us by the supplier, the supplier is to carry all the costs of the call back action.

(2) The supplier is obliged to maintain a product liability insurance with a sum insured of EUR 10,000,000, which, in case nothing to the contrary has been individually agreed upon, does not need to cover the risk of call backs or criminal or other damages. The supplier will send us a copy of the insurance cover note at any time, up on request.

## 9. Execution of Assignments and Liability

Every person or employee commissioned by the supplier to fulfil his contractual duties is to follow the legal regulations in the relevant work regulations, construction site rules and legal stipulations.

Should the supplier commission employees, who are not from member states of the EU, he is to provide us with the relevant work permits without request, before these employees commence work on the building site. An infringement on this rule will entitle the supplier to terminate the contract and to claim for damages.

Upon our request, the supplier is to furnish us with the necessary and current certificates from the social insurance institutions responsible, professional association and the Inland Revenue, regarding the employees on the construction site.

The supplier is to release us from all claims for damages, which result from the supplier or his employees infringing upon any legal regulations.

## 10. Property Insurance

(1) We reserve the property and the copyrights to all orders, assignments or designs, pictures, invoices, descriptions and other documentation given from us to the supplier. The supplier may not make them accessible to third parties, nor publicise them himself or have them publicised by a third party without prior explicit consent. He is to return the documents in their entirety to us upon demand, if they are no longer requisite to his usual business procedures, or should the negotiations not result in the conclusion of a contract. Any copies the supplier may have made of the documents are to be destroyed; this excludes any data stored pursuant to the statutory storage duties and the storage of data as a back up as part of usual data storage practice.

(2) The supplier's property rights only apply in as far as they pertain to our payment obligations regarding the relevant products upon which the supplier has property rights. Extended retention of property rights is especially excluded.

## 11. Property Rights

(1) The supplier is to ensure that in connection with his delivery the rights of third parties in other countries of the European Union, North America or other countries in which the products are produced, are not infringed upon.

(2) The supplier is obliged to release us from all other claims, which third parties can have against us on the grounds on an infringement on the property rights labelled in section one, and to reimburse us for all costs incurred by the assertion of such claims. This right exists independent of the supplier's responsibility.

## 12. Confidentiality

(1) The supplier is obliged to keep the terms of the order and all information and documents given to him with regard to the order (with the exception of information which is accessible by the public) confidential for an unlimited period of time after the contract has been concluded and to use them solely to carry out the order. He will return them to us upon demand after dealing with queries or after dealing with deliveries.

(2) Without our prior written permission, the supplier may not allude to our business relationship in advertisement material, brochures, etc and to not display our products.

(3) The supplier will oblige his subcontractors according to §10.

## 13. Replacement Parts

(1) The supplier is obliged to keep replacement parts for the products delivered to us for a period of at least 6 months after delivery.

(2) Should the supplier intend to stop production of replacement parts for the products delivered to us, he is to inform us immediately of his decision. The decision must - subject to section 1 - be made at least 6 months before production is stopped.

## 14. Customs and Export Control

Current or expected obligations to obtain authorisation by (re-) exporting products according to the export and duty regulations of the German Federal Republic, the European Union or the U.S.A and the country of origin are to be stated in the business documentation. The supplier is obliged to state the following in his tenders, order confirmation and invoices next to the relevant positions:

- the export list number in accordance with appendix AL of the German Foreign Trade and Payments regulations or similar list positions in relevant export lists,
- the ECCN (Export Control Classification Number) for US goods in accordance with the US Export Administration Regulations (EAR),
- the trade-policy origin of his goods and their contents, including technology and software,
- whether the goods are to be transported through the USA, produced or stored in the USA or have been produced by means US-American technology,
- the HS-Code of the goods and
- a contact person in his company to answer any of our questions.

On our request the supplier is obliged to notify us in writing about all further external trade details for his goods and their contents and to inform us immediately (before the delivery of the aforementioned goods) about all amendments to the current details in writing. Further he is obliged to inform us about whether a relation is present between him or his employees and the aforementioned sanction list, pursuant to the information contained in the Federal Office of Economic and Export Control's (BAFA) leaflet regarding the country's embargo measures for the fight against terrorism. The ordinances EG no. 881/2002 and EG (no. 2580/2001) of the Council of the European Union are to be adhered to.

#### **15. Social Responsibility and Protection of the Environment**

The supplier is obliged to adhere to the relevant legal regulations regarding the treatment of employees, the environment and security in the work place and to ensure that he will work towards reducing the effects of his work on the people and environment. Furthermore the supplier will adhere to the principles of the Global Compact Initiative of UN. These pertain, essentially to the protection of human rights, the rights to tariff negotiations, the abolition of forced labour and child labour, the elimination of discrimination in employment, responsibility for the environment and the prevention of corruption. Further information regarding the Global Compact Initiative of the UN is available under [www.unglobalcompact.org](http://www.unglobalcompact.org).

#### **16. Transfer, Off-set, Retention**

(1) The supplier is not entitled to relinquish his claims from this contractual relationship to third parties. This does not apply if it regards monetary claims.

(2) The EnviTec Biogas AG is entitled to the rights of retention and set-off rights in their full legal capacity.

#### **17. Salvatory Clause**

Should any individual regulation or stipulation in this contract be or become inadmissible - or inexecutable, the contract in its entirety and the remaining stipulations remain unaffected. From the beginning of the invalidity or impracticability, the parties are obliged to replace the inadmissible or inexecutable regulation with an economically most similar regulation, which is in the parties' interests. The same applies for loopholes.

#### **18. Jurisdiction, Place of Performance, Applicable Law**

(1) Place of performance for both sides, should the Contracting Principal not stipulate anything to the contrary regarding individual projects, and exclusive jurisdiction for all legal disputes from this contractual relationship is the offices of EnviTec Biogas AG in Lohne. Above and beyond that EnviTec Biogas AG is entitled to bring an action before the court which has jurisdiction over the place where the supplier's registered office is situated.

(2) The contracts concluded between us and the supplier are subject to the laws of the Federal Republic of Germany, excluding the UN-Convention on the International Sale of Goods (CISG).

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