

# General Terms and Conditions of Business, Delivery and Payment (T&Cs) of BIOGASKONTOR Köberle GmbH

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## I. General

### 1.

The following General Terms and Conditions of Business, Delivery and Payment, hereafter referred as “**T&Cs**”, apply to all product deliveries, services and offers of BIOGASKONTOR Köberle GmbH, hereafter referred to as “**BIOGASKONTOR**” and its customers, hereafter referred to as the “**client**”.

### 2.

All product deliveries, services and offers of BIOGASKONTOR shall be provided exclusively based on these T&Cs. They shall form an integral component of all contracts that BIOGASKONTOR enters into with its clients for the products and services offered by BIOGASKONTOR. They shall also apply to all future product deliveries, services or offers to the client within the framework of existing business relations, even where they have not been expressly agreed once again. No divergent, contrary or additional general terms and conditions of the client shall apply, even where no express objection has been raised to them.

### 3.

Individual agreements entered into with the client in an individual case, including side agreements, additions and amendments, shall in all cases have priority over these T&Cs. A written contract or written confirmation from BIOGASKONTOR shall be authoritative in terms of the content of these types of agreement.

### 4.

Additions or amendments to the agreements entered into including these T&Cs must be made in writing in order to be effective. Transmission via telefax shall satisfy the requirement for the written form. In all other respects transmission via telecommunication means, in particular via e-mail, shall not suffice, unless electronic correspondence between the contractual partners is agreed in an individual case.

## **II. Draft, approval and performance documents**

### **1.**

BIOGASKONTOR reserves the title and copyright in the catalogues, technical documentation (e.g. designs, plans, computations, calculations, references to DIN standards), other production descriptions or documents created by BIOGASKONTOR - including those in electronic format. These documents may not be reproduced nor may they be made available to third parties without the consent of BIOGASKONTOR and they must be returned to BIOGASKONTOR immediately without being additionally requested in the event that no order is placed.

### **2.**

Official and other approvals must be obtained by the client unless otherwise agreed.

## **III. Offer and conclusion of a contract**

### **1.**

All offers and statements on prices are subject to change and are non-binding unless they have been designated as binding. This is also the case where BIOGASKONTOR has surrendered catalogues, technical documentation (e.g. designs, plans, computations, calculations, references to DIN standards), other production descriptions or documents to the client - including in electronic format. BIOGASKONTOR shall be entitled to accept an offer from the client for the purposes of section 145 of the German Civil Code (BGB) within 2 weeks following receipt. The client shall be bound by their offer for this period.

A contract shall only be formed with acceptance of the offer by way of a written order confirmation from BIOGASKONTOR. If the order confirmation varies from the offer and if the client is an entrepreneur, then the content of the written confirmation shall be decisive unless the client contests the variance immediately.

### **2.**

The statements contained in price lists, brochures, cost estimates and other documents provided to the client, in particular statements on weight or mass and/or other technical data, references to DIN, EN, VDI, VDE or other company or inter-company standards or models, merely designate the subject matter of the contract and only represent warranted characteristics of BIOGASKONTOR where there is an express written binding commitment to this effect.

## IV. Prices

### 1.

Product deliveries and other services shall be calculated at the agreed prices plus VAT at the relevant statutory amount. Ancillary expenditure, in particular packaging, freight, postage, insurance and delivery costs, installation, etc. will be charged separately.

### 2.

In the event that product deliveries and services are provided more than four months after a contract comes into existence, BIOGASKONTOR shall be entitled to demand a reasonable corresponding adjustment of the contractual price originally agreed for salary and material cost increases of more than 5% that have arisen by the time that the service is provided. These rights shall not apply where BIOGASKONTOR is responsible for the delay in the service provision.

## V. Payment terms

### 1.

Invoices shall be due for payment in full within 30 days following invoice receipt unless otherwise agreed in writing. Cheques shall only be deemed to constitute payment once they have been cashed. Once the above payment term has expired the client shall be in default of payment without any formal reminder (section 286 sub-section 2 no.2 BGB). Interest shall be charged on the outstanding invoice amount at the relevant applicable statutory default interest rate during the period of default. The right to assert claims for higher interest and additional damage actually incurred or suffered in the event of default remains unaffected by this. The right to claim commercial interest after the due date from traders under section 355 of the German Commercial Code (HGB) remains unaffected by this.

### 2.

The client shall only be entitled to withhold payments or to offset these against any potential counter-claims where the counter-claims are undisputed or have been determined in law. The client's reciprocal rights in the event of defects in the product delivery or service remain unaffected.

### 3.

BIOGASKONTOR reserves the right to supply clients with whom no ongoing business connection exists solely following advance payment of the invoice amount.

**4.**

BIOGASKONTOR shall be entitled to execute or provide outstanding product deliveries and services solely following advance payment or the provision of security if, having entered into the contract, it becomes aware of circumstances which are capable of considerably reducing the client's creditworthiness and which place payment of the outstanding claims of BIOGASKONTOR by the client from the relevant contractual relationship at risk.

**5.**

BIOGASKONTOR shall be entitled to assign its claims against the client to third parties.

**6.**

In the case of an agreement to pay by instalments, if the client is in default of a payment which amounts to one instalment by more than 14 days then the remainder of the entire outstanding amount shall become due for payment. In this event and in the event of default, BIOGASKONTOR shall be entitled to withhold product deliveries and services until the final payment is received in full or to take back any goods where these have already been delivered. Furthermore after setting a final deadline for performance, BIOGASKONTOR shall be entitled to withdraw from the contract or to demand damages for breach of contract.

## **VI. Product delivery and service provision deadlines, partial deliveries**

**1.**

The dates and deadlines for product deliveries and service provision provided by BIOGASKONTOR shall in all cases be deemed to be merely approximate ones, unless a fixed date or fixed deadline has been expressly promised or agreed. Where shipping has been agreed, delivery dates and delivery deadlines relate to the point in time that the consignment is handed over to the carrier, freight-forwarder or other third party appointed to transport it.

**2.**

BIOGASKONTOR shall not be liable for the impossibility of delivering or of providing the service or for delayed deliveries where these have been caused by force majeure or other events not foreseeable at the time of entering into the contract, such as disruptions to operations of any kind, difficulties in

procuring materials or energy, shipping delays, strikes, legal lockouts, shortages in workforce, energy or raw materials, natural disasters, difficulties in obtaining required official approvals, official measures or outstanding, incorrect or late deliveries of goods by its suppliers where BIOGASKONTOR is not responsible for these. Where events of this type considerably hamper BIOGASKONTOR's ability to deliver or provide the service or they render this impossible and this is not merely temporary in nature then BIOGASKONTOR shall be entitled to withdraw from the contract. If the obstacles are of a temporary nature then the delivery and service times shall be extended or postponed by the length of the period of the obstacle plus an additional reasonable warm-up period. If the agreed delivery or agreed service is delayed by this by more than two months and if acceptance of the delivery or the service can no longer be reasonably expected of the client then the client may withdraw from the contract after setting a final deadline of two weeks for performance.

**3.**

Compliance with delivery times presupposes that all technical and other details of the order have been clarified, any required documents of the client have been provided on time, any agreed advance payments have actually been made and that the client has met its obligations as agreed. The delivery times shall be extended appropriately at least by the length of time that the client is late in meeting its contractual obligations.

**4.**

BIOGASKONTOR shall be entitled to make partial deliveries and provide services in part and to provide partial invoices accordingly as long as no considerable increased effort or additional costs are incurred by the client through this and the partial delivery/partial service provision is suitable for the client within the framework of the purpose of the contract.

**5.**

If BIOGASKONTOR is in default with the product delivery or service provision or if a delivery or service becomes impossible for any reason whatsoever then liability shall be limited in accordance with section X. of these T&Cs.

## **VII. Shipment and transfer of risk**

**1.**

BIOGASKONTOR shall make international trade deliveries in accordance with INCOTERMS 2010 DAT/DAP. The client shall be under an obligation to provide the delivery location as precisely as possible, stating the address, local contact person and exact time for delivery acceptance (NOTIFICATION). BIOGASKONTOR excludes liability for selecting the most convenient and fastest shipment type. BIOGASKONTOR shall enter into the freight and

shipping agreement and will be responsible for export clearance. The client shall be responsible for import clearance. The client shall be responsible for the shipping costs from the factory and for the costs of transportation insurance if the items delivered are sent to the client by BIOGASKONTOR. In the case of export deliveries the client shall be responsible for any customs fees, charges, taxes and other public levies.

**2.**

Ownership of containers, mesh crates, cassettes and EURO pallets will not pass to the client. These must be returned free of charge. Wooden crates, cardboard boxes and disposable packaging will be charged at cost price and will not be taken back.

**3.**

The risk of accidental destruction and of accidental deterioration of the items delivered shall pass to the client at the latest with handover of the items. If the shipment or handover is delayed as a result of circumstances caused by the client then the risk shall pass to the client from the date upon which the items delivered are ready for shipment or handover and the client has been notified of this fact. If acceptance is agreed then this shall be decisive for the transfer of risk. In all other respects also the statutory regulations on the law of contracts for services shall apply accordingly to the agreed acceptance. The handover or the acceptance shall be deemed to have been completed if the client is in default of acceptance.

**4.**

If the client is in default of acceptance, does not cooperate in line with its obligations or if the product delivery or service provision is delayed for other reasons for which the client is responsible then BIOGASKONTOR shall be entitled to charge the costs for storage etc. incurred through this to the client at an amount of at least 0.5% and up to a maximum of 10% of the order invoice amount for each calendar week that passes, starting with the delivery date or, where there is no delivery date, with the notification that the consignment is ready for shipment. The right of BIOGASKONTOR to provide evidence that greater damage was suffered and to assert statutory claims, in particular damages for additional effort and expenditure, reasonable compensation, withdrawal and termination remain unaffected by this; however, the flat-rate amount must be offset against further claims for damages. The client shall be entitled to provide evidence that BIOGASKONTOR suffered considerably less damage than the flat-rate amount above or suffered no damage at all.

## **VIII. Retention of title**

**1.**

All product deliveries will be made with title reserved in the goods. The goods shall remain the property of BIOGASKONTOR until payment has been received in full for all existing claims from the business relationship with the client.

**2.**

The goods subject to the reservation of title may not be pledged to third parties or assigned by way of security before payment has been received in full for the secured claim. The client must notify BIOGASKONTOR immediately and in writing if and to what extent third parties seize the goods subject to the retention of title.

**3.**

In the event that payment is not received for the claims secured through the retention of title, BIOGASKONTOR shall in accordance with the statutory regulations be entitled to withdraw from the contract and/or to demand that the goods be returned based on the retention of title. The demand that the goods be returned does not at the same time involve a declaration of withdrawal from the contract; on the contrary, BIOGASKONTOR shall be entitled to demand merely that the goods be returned and to reserve the right to withdraw from the contract. If the client does not pay the secured claims that are due then these rights may only be asserted after BIOGASKONTOR has already set a final deadline of 10 calendar days for the payment without any result, unless a deadline of this kind is superfluous under the statutory regulations.

**4.**

The client shall be entitled to sell the goods subject to the retention of title on in the ordinary course of business and/or process them with other items. The following regulations shall additionally apply in this event.

**5.**

The retention of title extends to the products that result from processing, mixing or amalgamation of the BIOGASKONTOR goods at their full value, with BIOGASKONTOR deemed to be the manufacturer here. In the event that the goods are processed, mixed or amalgamated with goods belonging to third parties who retain title in these goods then BIOGASKONTOR shall acquire co-ownership in proportion to the invoice values of the processed, mixed or amalgamated goods. In all other respects the same regulations shall apply for the resulting product as for the goods delivered subject to retention of title.

**6.**

The client shall be entitled to sell the goods subject to the retention of title on in the normal course of business. With this contract the client assigns the claims arising from the sale of the goods or products against third parties in their entirety or for the amount of any proportion of co-ownership of BIOGASKONTOR in accordance with the previous sub-section to

BIOGASKONTOR as security. BIOGASKONTOR accepts this assignment. The client shall still remain entitled to collect the claim following the assignment. BIOGASKONTOR undertakes not to collect the claim as long as the client meets its payment obligations towards BIOGASKONTOR, is not in default of payment, no application is made for the opening of insolvency proceedings and there is no other defect in its performance. However, if this does occur then BIOGASKONTOR may demand that the client notifies BIOGASKONTOR of the claims assigned and of its debtors, provides all information required for collection, hands over the associated documents and notifies the debtors (third parties) of the assignment.

**7.**

At the client's request BIOGASKONTOR shall release securities where the realisable value of the securities exceeds BIOGASKONTOR's claims by more than 10%. BIOGASKONTOR shall have a right to select the securities where different securities are provided.

## **IX. Rights of the client in the event of default and defects**

**1.**

The following terms and conditions shall apply to the rights of the client in the event of material defects and defects of title, including delivery of incorrect products or short deliveries as well as improper assembly or defective assembly instructions.

**2.**

The agreement made concerning the nature and condition of the delivery and service shall above all provide the basis for BIOGASKONTOR's liability for defects. All product descriptions which are the subject matter of the individual contract shall be considered to be an agreement on the nature and condition.

**3.**

If no agreement has been made as to the nature and condition then a judgement must be made in accordance with the statutory regulations as to whether there is a defect or not.

**4.**

The client's claims for defects are dependent upon the fact that the client has met its statutory obligations to examine and to provide notification of defects in accordance with sections 377 and 381 HGB. The items delivered must be examined carefully following delivery to the client or to the third party determined by the client. They shall be deemed to have been accepted if BIOGASKONTOR has not received a notification of defects in writing within 10 working days for obvious defects or other defects which could be detected



through an immediate and careful examination following delivery of the items or the service provision, or otherwise within 10 working days following detection of the defect or any earlier time where the defect could be detected by the client with normal use of the item delivered or the service without a more detailed inspection.

**5.**

The items delivered and/or services provided which are alleged to be defective must be made available for inspection by BIOGASKONTOR in the condition in which they were found at the time that the defect was ascertained. The delivery item under dispute must be returned at BIOGASKONTOR's request with freight paid. BIOGASKONTOR will reimburse the most cost-effective shipment method where the notification of defect is found to be justified. BIOGASKONTOR will not be responsible for disassembly and installation costs.

**6.**

BIOGASKONTOR shall be under an obligation to provide supplementary performance if the item delivered or the service provided is not of the nature and condition agreed or if it is not generally suitable for the purpose or use specified in the contract. This shall not be the case where BIOGASKONTOR is entitled to refuse supplementary performance based on statutory regulations.

**7.**

BIOGASKONTOR shall be obliged and entitled initially to choose to rectify the defect or to deliver a replacement product within a reasonable period where the item delivered or the service provided features a material defect. In the event of failure, i.e. through impossibility, unreasonableness, refusal or two unsuccessful attempts to rectify the defect or to deliver a replacement, the client may withdraw from the contract, have a reasonable reduction in the contractual price or, if the client then rectifies the defect itself with justification, demand compensation for the expenditure required to rectify the defect. Supplementary performance or a replacement delivery shall not include removal of the defective item nor reinstallation of the same unless BIOGASKONTOR was under an obligation originally to install the item. BIOGASKONTOR shall be entitled to make the supplementary performance which is due dependent upon the fact that the client pays the invoice amount due for payment. However, the client shall be entitled to retain a reasonable amount of the invoice amount in proportion to the amount of the defect.

**8.**

Where BIOGASKONTOR uses components from other manufacturers within the framework of fulfilling the order and these components feature defects which BIOGASKONTOR is unable to rectify for legal or factual reasons, BIOGASKONTOR will at its own discretion assert its claims for defects against

this manufacturer for the account of the client or assign these to the client. Claims against BIOGASKONTOR for defects shall only exist for defects of this type under the other prerequisites and in accordance with these T&Cs if judicial enforcement of the claims against the manufacturer and supplier stated above was unsuccessful or if this is futile, for example on account of insolvency. The limitation period for the relevant claims of the client against BIOGASKONTOR for defects shall be suspended for the duration of the legal dispute.

**9.**

The client must provide BIOGASKONTOR with the time and opportunity that are required to inspect the defects notified. Only in urgent cases, e.g. in the event of a danger to operational safety or in order to prevent disproportionate damage, shall the client be entitled to rectify the defect themselves and to demand compensation from BIOGASKONTOR for the expenditure objectively required for this. BIOGASKONTOR must be notified immediately where the client takes this action themselves, and before this occurs wherever possible. The client shall not be entitled to take this action themselves where BIOGASKONTOR would have had the right to refuse corresponding supplementary performance under the statutory regulations.

**10.**

The costs for defects which are notified and which transpire to be unjustified shall be borne by the client.

**11.**

Claims of the client for damages or for compensation for futile expenditure shall only exist in accordance with section X. of these T&Cs and shall be excluded in all other respects.

## **X. Damages and liability**

**1.**

BIOGASKONTOR's liability for damages for any legal reason whatsoever – in particular for default, impossibility, defective or incorrect product deliveries or service provision, breach of contract, breach of obligations in contract negotiations and unauthorised conduct – shall be limited in accordance with this section X. of these T&Cs to the extent that fault is relevant.

**2.**

BIOGASKONTOR shall not be liable in the event of ordinary negligence on the part of its executive bodies, legal representatives, employees or other agents unless this involves the breach of essential contractual obligations. Obligations which are essential contractual obligations are those the fulfilment

of which enable proper implementation of the contract in the first place and which the client normally trusts and is capable of trusting will be met.

**3.**

Where BIOGASKONTOR is liable for damages depending on the reason in accordance with sub-section 2 above, this liability shall be limited to damage that BIOGASKONTOR foresaw as a potential consequence of breach of contract when entering into the contract or which BIOGASKONTOR must have foreseen had it applied due care and attention. BIOGASKONTOR shall also only be liable for indirect damage and consequential damage resulting from defects in the item delivered or the service provided where this damage can typically be expected where the item delivered or the service provided by BIOGASKONTOR is used as intended.

**4.**

In the event of liability for ordinary negligence on account of breach of an essential contractual obligation, the obligation on the part of BIOGASKONTOR to pay damages for material damage and financial damage resulting from this shall be limited to an amount of EUR ..... per damage event. **(Note: in accordance with the sum insured with the current product liability insurance or third-party liability insurance).**

**5.**

The exclusions and limitations of liability stated above -shall apply to the same extent in favour of the executive bodies, legal representatives, employees and other agents of BIOGASKONTOR.

**6.**

Where BIOGASKONTOR provides technical information or acts in an advisory capacity and this information or advice is not part of the scope of services owed by us under the contract then this shall occur free of charge and with all liability excluded.

**7.**

The limitations above in this section X. of these T&Cs shall not apply to BIOGASKONTOR's liability for conduct with wilful intent, fraudulent concealment of a defect, warranted quality features, injury to life, limb or health and to its liability under the Product Liability Act.

## **XI. Limitation**

**1.**

By way of derogation from section 438 sub-section 1 No. 3 BGB, the general limitation period for claims for material defects and defects of title shall be one year from delivery. If acceptance is agreed then the limitation period shall start with the acceptance.

**2.**

However, if the item delivered is a building construction or an item that is normally used in a building construction and which has caused the deficiency (construction material), the limitation period shall be 5 years from delivery in accordance with the statutory regulations under section 438 sub-section 1 No. 2 BGB. Special statutory regulations for tangible claims for surrender of third parties under section 438 sub-section 1 No. 1 BGB, fraudulent concealment of the defect under section 438 sub-section 3 BGB and for recourse to the supplier with an end-delivery to a consumer under section 479 BGB also remain unaffected.

**3.**

The limitation periods stated above under the law of sale of goods shall also apply to contractual and non-contractual claims for damages of the client which are based on a defect in the item delivered, unless application of the regular statutory limitation (sections 195 and 199 BGB) would lead to a shorter limitation period in an individual case. The limitation periods under the Product Liability Act shall remain unaffected in all cases. In all other respects the statutory limitation periods shall apply exclusively to claims for damages of the client under section X. of these T&Cs.

## **XII. Choice of law, place of fulfilment and jurisdiction**

**1.**

The law of the Federal Republic of Germany shall apply to these T&Cs and all legal relations between BIOGASKONTOR and the client to the exclusion of international uniform law, in particular the UN-Convention on Contracts for the International Sale of Goods. The prerequisites and the effects of the retention of title under section VIII. of these T&Cs shall be subject to the law of the relevant storage location of the item delivered where the choice of law made in favour of German law is not permitted or is ineffective.

**2.**

The place of fulfilment for all obligations arising from the contractual relationship shall be D-89611 Obermarchtal unless the parties have come to another agreement. In the event that BIOGASKONTOR is also responsible for assembly, the place of fulfilment shall be the assembly location.

**3.**

If the client is a trader for the purposes of the Commercial Code, a legal entity under public law or a special fund under public law - then the exclusive jurisdiction - including international jurisdiction - for all disputes arising directly or indirectly from the contractual relationship shall be Ulm. However, BIOGASKONTOR shall also be entitled to initiate legal proceedings at the client's general place of jurisdiction.

### **XIII. Regulatory loopholes**

In the event that the contract or these T&Cs contain any loopholes then legally effective regulations shall be deemed to have been agreed to fill these loopholes which the contractual partners would have agreed in accordance with the economic objectives of the contract and the purposes of these T&Cs had they known of the loophole.

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