

## General Terms and Conditions of the company BHKW Johann Hochreiter Biogas Planung Beratung GmbH, Stangern 12, D-83530 Schnaitsee

### Section 1

#### General Provisions, Scope of Terms

1. The following terms and conditions (General Terms and Conditions) and any separate contractual agreements shall apply to all transactions (more specifically, deliveries and services based on contracts for work and purchase contracts) with the Customer.
2. Our contractual conditions shall apply exclusively; we do not recognise any conditions of the Customer that conflict with or deviate from our contractual conditions unless we have expressly agreed to their validity in writing. Our conditions of sale shall also apply if we carry out the delivery to the Customer without reservation knowing that the Customer's conditions conflict with or deviate from our contractual conditions.
3. All agreements between us and the Customer for the purpose of the performance this contract shall be set out in writing. Oral subsidiary agreements, amendments and supplements to the contract need to be made in writing in order to become effective.
4. Our GTC shall also apply to future transactions as a framework agreement.
5. The Customer represents that it is an entrepreneur as such term is defined in Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*). According to this definition, an entrepreneur is a natural or legal person or a partnership with legal personality who or which acts in the exercise of its trade, business or profession when entering into a legal transaction. We do not provide services to consumers as such term is defined in Section 13 BGB.

### Section 2

#### Offer, Order, Offer Documents

1. Our offers are subject to change. All offers regarding price, quantity, storage periods and delivery options are non-binding unless otherwise agreed. Commissions and all supply contracts shall only become binding if we have confirmed acceptance of the order for the specified subject of purchase or supply at least in text form or if we carry out the delivery or service. The subject of the service shall be determined by the contract. The technical conditions shall form an integral part of the contract.
2. If an order is to be qualified as an offer to conclude a contract, we can accept such offer within two weeks.
3. We reserve the property rights and copyrights to illustrations, drawings, calculations, cost estimates and other documents. This shall also apply to documents denominated as "confidential". The reproduction of such documents to third parties by the Customer shall require our express written consent prior such reproduction.
3. Illustrations, drawings and other technical documents shall only be binding if this has been expressly stated by us.
4. If the offer contains a draft plan (*Planentwurf*), the builder shall be responsible for the approval planning in accordance with the law of the respective country. The draft plan will merely constitute our proposal for planning; compliance with the respective law in the builder's home country shall not be the subject of the service, unless otherwise agreed. No warranty will be assumed in this respect.

### Section 3

#### Prices, Terms of Payment

1. Unless otherwise agreed, our prices are "ex works" (EXW, Incoterms 2020), excluding packaging, freight, transport insurance and unloading costs; these costs will be charged separately. Assembly costs - unless these costs are expressly stated in the offer - will be charged separately.
2. Our prices do not include the statutory VAT (*gesetzliche Umsatzsteuer*); the statutory VAT will be shown separately on the invoice at the statutory rate on the day of invoicing.
3. The deduction of a discount shall require a special written agreement.
4. Unless otherwise stated in the order confirmation, payment is due net (without deduction) within 10 days of the invoice date. The statutory provisions regarding the effects of default in payment shall apply. The interest rate for default in payment is 9 percentage points above the respective base rate of the European Central Bank per annum. If instalments have been agreed and the Customer is more than 30 days in arrears with an instalment, the entire payment will be due without undue delay. If the Customer is in default, we shall be entitled to withdraw from the contract and to claim damages in accordance with statutory rights.
5. Special provisions for services under a contract for work: Unless otherwise agreed, we shall be entitled to payments on account in the amount of the value of the respective proven contractual services, including the shown VAT (*Umsatzsteuer*) due on these services.
6. All public charges (taxes, fees, customs duties, etc.) arising from or in connection with the conclusion or fulfilment of the contract outside the Federal Republic of Germany shall be borne by the Customer.
7. The Customer shall only be entitled to set-off rights if their counterclaims have been stated according to final judgment (*rechtskräftig festgestellt*), are undisputed or have been recognised by us. The Customer shall only be entitled to exercise a right of retention insofar as their counterclaim is based on the same contractual relationship. Exclusion of the right of retention in the case of advance performance clauses shall only be possible if an objective reason for doing so is present.

### Section 4

#### Delivery, Customer's Duty to co-operate, Duty to exercise Proper Care

1. The scope of delivery will be determined by the contractual agreement. The delivery period will be specified in the contract.
2. The commencement of the delivery period stated by us shall be subject to all technical and commercial questions having been clarified and the Customer having fulfilled their obligations to co-operate. Obligations to co-operate means all obligations that must be fulfilled by the Customer so that we can provide our service. The obligation to co-operate includes in particular the provision of all earthworks, foundation, construction and scaffolding work, the provision of water, energy, work and operating materials and appropriate rooms for personnel and assembly materials as well as the provision of skilled and unskilled workers and equipment at our request. The place where the subject of purchase is to be set up or maintained must be in a clean and dry condition, in particular it must not present any danger to our employees.
3. In the event of assembly abroad, all entry, labour and other necessary permits shall be procured by the purchaser at their expense.
4. The delivery date stated by us shall be regarded as provisional and non-binding unless otherwise expressly agreed in writing.
5. The delivery term shall be deemed to have been met if the goods have been notified as ready for dispatch or the subject of delivery/purchase has left our place of business by the time the delivery term expires.
6. If we will not be supplied, not supplied on time or not supplied correctly by our supplier/sub-supplier through no fault of our own, despite proper and sufficient coverage prior to conclusion of the contract, we shall inform the Customer of such circumstance without undue delay after becoming aware of it, at least in text form. In such an event, we shall have the option of postponing the delivery for the period of hindrance or withdraw from contract in whole or in part, provided that we have informed the Customer of the hindrance and have not assumed any procurement risk pursuant to Section 276 BGB or a delivery guarantee.

7. § Section 4(6) shall also apply in the event of force majeure. Force majeure means any event beyond the control of the respective contracting party that prevents it in whole or in part from fulfilling its obligations. This shall include any circumstance that permanently or temporarily impedes or makes the delivery impossible for a period of at least 14 working days (*Werktage*), in particular route closures, obstructed shipping, strikes, lockouts, natural disasters, fire, war, warlike events, riots, official orders, pandemics, numerous illnesses of our employees.
8. Compliance with our delivery obligations shall also presuppose the timely and proper fulfilment of the Customer's obligations. These include, more specifically, official authorisations and certificates. The Customer must also ensure order on the construction site and organise the co-operation of the various contractors. Otherwise, the delivery period shall be extended accordingly. The right to plead non-performance of the contract (*Einrede des nichterfüllten Vertrages*) shall remain reserved.
9. Partial deliveries shall be permissible unless expressly excluded.
10. Unless otherwise stated in the order confirmation, delivery is agreed "ex works" (EXW, Incoterms 2020). It is agreed that any freight charges incurred for deliveries from upstream suppliers shall be borne by the purchaser.
11. If the Customer so wishes, we will cover the delivery with transport insurance; the costs incurred in this respect shall be borne by the Customer.
12. If the Customer is in default of acceptance or culpably violates other obligations to co-operate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims or rights shall remain reserved.
13. In the event of an intra-Community delivery, the client shall be obliged to complete, sign and return the certification of entry (*Gelangensbestätigung*) within 6 weeks of delivery at the latest. If the goods are not returned, the Customer shall be obliged to pay compensation in the amount of the applicable VAT.

## Section 5

### Transfer of Risk

1. Contracts for our plants are to be qualified as purchase contracts. Unless otherwise agreed, delivery shall be ex works (EXW, Incoterms 2020), meaning that the risk will transfer to the Customer upon provision of the service. In the event of despatch, the risk will transfer to the Customer as soon as we have handed over the goods to be delivered to a forwarding agent or transport company. This shall also apply to partial deliveries, even if we bear the shipping costs and even if we have taken on services of another kind, e.g. assembly after the goods have arrived at the Customer's premises.

## Section 6

### Acceptance

1. An acceptance for work services, e.g. for assembly or commissioning services, must be carried out without undue delay on the agreed acceptance date, alternatively after our notification of readiness for acceptance. The Customer may not refuse acceptance in the event of a minor defect.
2. Acceptance shall be deemed to have taken place
  - a) if the Customer has taken the subject of our service into use and produces biogas or wood gas with it or otherwise uses the subject of our service in the intended manner;
  - b) if the Customer has not refused acceptance within a period of 10 days after completion, stating at least one defect at least in text form (Section 126b BGB) or
  - c) if the Customer has expressly or impliedly declared acceptance,depending on what the earlier point in time is.
3. We shall be entitled to partial acceptance. The fictitious acceptance pursuant to Section 6(2) shall also apply to works that are capable of partial acceptance from the time of acceptance. Acceptance shall be deemed to have taken place if we have completed a service that is capable of partial acceptance and the Customer has not fulfilled their obligations to co-operate despite the setting of a deadline.

## Section 7

### Rights of Use to Software; Prohibition of Reverse Engineering

1. If the subject of our services is software, more specifically software installed in our plants, we shall grant a simple, non-transferable and non-sublicensable right to use the software within the scope of its intended use.
2. The software in our plants may only be used in conjunction with our plants.
3. The Customer shall be authorised to use the software in order to make use of the agreed functions and services, in particular to operate our plants.
4. The Customer may not reproduce, distribute, lease, edit, reverse engineer, decompile or disassemble the software. Mandatory statutory rights, more specifically Sections 69d(3) and 69e of the German Act on Copyright and Related Rights (*Gesetz über Urheberrecht und verwandte Schutzrechte*, UrhG), shall remain unaffected.
5. The Customer shall be authorised to provide the software to a third party subject to the scope of the rights granted hereunder. If the software is subject of a plant, the provision shall only be authorised in connection with the sale of the plant. The Customer undertakes to cease all use of the software upon conclusion of the contract and to delete all copies of the software, unless the Customer is obliged to retain them for a longer period. We may request information from the Customer about the implementation of the measures to be carried out in accordance with the preceding sentence.
6. There will generally be no entitlement to the provision of the source code.
7. The Customer may not remove, change or make unrecognisable any copyright notices, trademarks or other legal reservations of ours on the software.

## Section 8

### Warranty

1. The statutory provisions shall apply to the rights of the Customer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise provided for below. We will generally only take back purchased goods in the cases provided for by law, e.g. in the event of a defect.
2. The basis of our liability for defects shall be primarily the agreement reached on the quality of the goods. Only our product description shall be deemed agreed for the quality of the goods. Public statements or claims in advertising do not constitute a contractual statement of quality. The mere reference to DIN or EN standards will not make its content a warranted characteristic.
3. Insofar as the quality has not been agreed, the statutory provision shall be used to assess whether or not a defect is present (Section 434(1), Section 633(2) BGB).
4. The Customer shall be obliged to observe the technical conditions and the operating instructions. A warranty shall not exist otherwise.
5. We shall generally not be liable for defects of which the Customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (Section 442 BGB). Furthermore, the Customer's claims for defects presuppose - if he is a merchant - that he has fulfilled his statutory duties of inspection and notification (Sections 377, 381 of the German Commercial Code (*Handelsgesetzbuch*, HGB)). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later point in time, we must be notified of this in writing without undue delay. In any case, obvious defects must be notified within eight work days (*Arbeitsstage*) of receipt and defects not recognisable during the inspection within the same period of time from discovery, at least in text form (§ 126b BGB). If the Customer fails to properly inspect the goods and/or give notification of defects, our liability for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.
6. There shall be present no defect in the case of natural wear and tear and parts which are subject to premature wear and tear due to their material properties or the nature of their use; nor in the case of improper storage, handling or use, faulty assembly or commissioning by the Customer, excessive strain, inappropriate operating resources, defective construction work or foundations, unsuitable building ground and external influences and circumstances which have arisen through no fault of our own.

7. The obligations to remedy a material defect shall not apply if the cause of the defect is that
  - a. the Customer has not notified us of an error without undue delay at least in text form (§ 126b BGB, e.g. via e-mail);
  - b. the subject of purchase has not previously been repaired, maintained or serviced in accordance with our specifications;
  - c. parts have been installed in the subject of purchase which are neither original parts purchased from us nor parts of equivalent quality;
  - d. the subject of purchase has been modified in a manner not authorised by us or
  - e. the Customer has not complied with the rules on handling, maintenance and care of the subject of purchase (e.g. operating instructions) or the Customer has not complied with the respectively valid installation guidelines.
8. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.
9. We are entitled to depend the subsequent performance owed on the Customer paying the compensation due.
10. The Customer must allow for the time and opportunity required for subsequent performance owed by us, in particular to hand over the rejected product for inspection purposes and/or to provide access to the product. In the event of a replacement delivery, the Customer shall return the defective item to us in accordance with the statutory provisions.
11. We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, the costs for removal and installation in accordance with the statutory provisions, if a defect is actually present. Otherwise, we may demand compensation from the Customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognisable to the Customer. Until we have verified whether there is actually a defect present, the Customer must disburse or pay the expenses.
12. In the event of a return, the delivered item must be packed by the Customer in a manner appropriate for its transport. In the event of goodwill returns, the delivered item must be returned in its original packaging.
13. Customer's claims for damages or reimbursement of futile expenses shall persist for defects only in accordance with Section 9 and shall otherwise be excluded.

#### **Section 9 Other Liability**

1. Insofar as nothing to the contrary arises from these GTC including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), for
  - a. damages resulting from injury to life, body or health,
  - b. damages arising from the breach of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this event, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage, but not exceeding the amount of our business liability insurance of € 3,000,000.00.
3. We shall only be liable for direct damages; we shall not be liable for indirect damages such as, more specifically, loss of production and loss of profit.
4. The above limitations of liability shall also apply towards third parties and in the event of breaches of duty by persons (also in their favour) for whose fault we are responsible in accordance with statutory provisions. They shall not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of goods has been assumed, and for claims of the Customer under the Product Liability Act.
5. Due to a breach of duty that does not consist of a defect, the Customer may only withdraw from or terminate the contract if we are responsible for the breach of duty. An unrestricted right of termination (*freies Kündigungsrecht*) of the Customer (in particular according to Sections 650, 648 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.
6. The Customer shall be liable towards us for damages incurred by us due to the circumstance that they are is not an entrepreneur as such term is defined in Section 14 BGB.
7. The Parties shall be obliged to minimise damages (Section 254(2) BGB). If damages from a breach of contract by the other Party are foreseeable, the respective other Party must inform the contractual partner of this and of the expected scope and foreseeable measures to minimise damages. Measures to prevent or rectify damage must be communicated to the other Party in advance, unless they must be carried out immediately. If the other Party is aware of or has the possibility to minimise the damage, it must indicate this to the notifying Party.

#### **Section 10 Limitation Period**

1. Notwithstanding Section 438(1), no. 3 BGB and Section 634a(1), no. 1 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery or acceptance.
2. If the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be five years in accordance with the statutory provision (Section 438(1), no. 2 BGB).
3. Other special statutory provisions on limitation (in particular Sections 438(1), no. 1, 438(3), Sections 444, 445b BGB) shall also remain unaffected.
4. The limitation periods above under purchase or work contract law shall also apply to contractual and non-contractual claims for damages of the Customer based on a defect, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in the single case. Claims for damages by the Customer pursuant to Section 9(2) sentences 1 and 2(a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

**Section 11**  
**Securing Retention of Title, Right of Withdrawal**

1. Retention of title

- a) We reserve title to the subject of purchase until all payments arising from the contract have been received. Until then, the Customer shall be obliged to treat the subject of purchase with care; in particular, the Customer shall be obliged to insure it adequately at their own expense against fire, water damage and theft at replacement value (*Neuwert*). If maintenance and inspection work is required, the Customer must carry out such work in good time at their own expense.
- b) For the period of retention of title, the subject of purchase will be marked with a label stating that the subject of purchase is our property. The Customer undertakes not to remove this label until the subject of purchase has been paid for in full. The Customer shall compensate us for any damage we incur as a result of premature removal of the label.
- c) In the event of seizures or other interventions by third parties, the Customer must inform us without undue delay, at least in text form, in order for us to take legal action against such third parties. The Customer must also inform the third party without undue delay that the subject of purchase is our property. The Customer shall be liable towards us for all damages for the recovery of the property and for extrajudicial and judicial costs incurred by us for measures against the third party, insofar as these cannot be recovered from the third party.
- d) The Customer shall be obliged to keep the subject of purchase in proper condition for the period of retention of title and to have all maintenance work and necessary repairs planned by us or other manufacturers carried out in good time. For the period of retention of title, the Customer must insure the subject of purchase against theft, burglary, fire, liability and damage, with the proviso that we are entitled to the rights arising from the insurance contract up to the remaining payment and in this amount. The Customer shall assign the claims from the insurance contract to us; we shall accept the assignment. The claims will be reassigned to the Customer upon full payment and the expiry of retention of title; the Customer shall accept the reassignment. The Customer assures that the claims arising from the insurance contract can be assigned. The insurance policy and any proof of timely payment of the insurance premiums must be shown to us on request.
- e) The Customer shall be entitled to resell the subject of purchase in the ordinary course of business; however, they hereby assign to us all receivables in the amount of the final invoice amount (including VAT) of our claim which accrue to them from the resale towards their purchasers or third parties, irrespective of whether the subject of purchase has been resold without or after processing. The Customer shall remain authorised to collect this receivable even after the assignment. Our authorisation to collect the receivable ourselves shall remain unaffected by this. However, we undertake not to collect the receivables as long as the Customer fulfils their payment obligations from the proceeds received, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed and payments have not been suspended. If this is the case, however, we may demand that the Customer informs us of the assigned receivables and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- f) The processing or remodelling of the subject of purchase by the Customer shall always be carried out for us. If the subject of purchase will be processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the subject of purchase (final invoice amount, including VAT) to the other processed items at the time of processing. In all other respects, the same shall apply to the item resulting from the processing as to the delivered subject of purchase subject to retention of title.
- g) If the subject of purchase will be inseparably mixed or combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the subject of purchase (final invoice amount, including VAT) to the other items mixed at the time of mixing. If the mixing takes place in such a way that the Customer's item is to be regarded as the main item, it shall be deemed to be agreed that the Customer shall transfer co-ownership to us on a pro rata basis. The Customer shall hold the resulting sole ownership or co-ownership for us.
- h) The Customer shall also assign to us the receivables to secure our claims against them that arise towards a third party through the combination of the subject of purchase with a property. The requirements for the authorisation to collect are set out in Section 11(1) e).
- i) We undertake to release the securities to which we are entitled at the Customer's request to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; we shall be responsible for selecting the securities to be released.

2. Reservation of Withdrawal

We reserve the right to withdraw from the contract if an application has been made to open insolvency proceedings against the Customer's assets, if the Customer has made an affidavit in accordance with Section 807 of the German Code of Civil Procedure (*Zivilprozessordnung*, ZPO) or if insolvency proceedings have been opened against the Customer's assets or the opening of such proceedings has been rejected for lack of assets.

**Section 12**  
**Data Protection**

Our information on data protection according to Article 13 GDPR is available at the following link: <https://biogas-hochreiter.de/en/privacy/>

**Section 13**  
**Final Provisions**

1. The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. The Customer may only offset claims that are recognised by us or are undisputed or have been stated according to final judgment (*rechtskräftig festgestellt*). Section 354a shall remain unaffected.
3. The place of fulfilment shall be our registered office, unless otherwise agreed.
4. If the Customer is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction shall be Traunstein, Germany; however, we shall also be entitled to sue the Customer at the court of its registered office.
5. No oral side agreements were made. Amendments, supplements, and subsidiary agreements to the contractual agreement must be made in writing to be effective. The same shall apply to the waiver of the written form requirement or amendments to the written form requirement.
6. Should a provision of these Terms and Conditions or a provision within the framework of other agreements wholly or partially be not legally valid or unenforceable, or lose its legal validity or enforceability at a later point in time, this shall not affect the validity of all other provisions or agreements. The invalid provision shall be replaced by a provision that comes closest to the intention of the Parties to the extent legally possible. This shall also apply in case of a missing regulation in the contract.