

# **GENERAL SALES TERMS AND DELIVERY CONDITIONS OF BIOGEST ENERGIE UND WASSERTECHNIK GmbH (BVB) (August 2007)**

## **1. Scope and general principles**

1.1. These sales terms and delivery conditions (subsequently referred to as BVB) apply without exception to all completed transactions, supplies and services between BIOGEST Energie- und Wassertechnik GmbH (subsequently referred to as BIOGEST) and their customers / clients. The BVB apply without the need for a separate agreement, also for all ancillary and follow-up orders as well as all other transactions.

1.2. Terms and conditions of any kind, especially purchasing and supply conditions, contract provisions, preliminary observations and the like, which are in contradiction to these BVB are fully ineffective, regardless of whether, when and in what form they were brought to the notice of BIOGEST. Different agreements on specific points of the present conditions are effective only for these and are not effective without a preceding, explicit and written confirmation of BIOGEST. Disclose to business, shopping or delivery conditions of the client shall under no circumstances constitute consent.

1.3. Changes and additions to the contract or these BVB must be made in writing to be valid. Agreements in writing can also be ended only in written form.

1.4. These BVB apply both to companies and consumers, to the latter only insofar as they do not conflict with mandatory provisions of the Consumer Protection Act or other laws.

1.5. Should any of these BVB in whole or in part be invalid or obliged by law to be invalid, the validity of the remaining provisions shall not be affected. Invalid provisions shall be replaced by effective regulations, which most closely resemble the original intended purpose.

## **2. Cost estimates**

2.1. Cost estimates are only binding if they are in writing and explicitly described as such; the creation of a cost estimate does not oblige BIOGEST to accept a contract.

2.2. Cost estimates of BIOGEST are not binding; a guarantee for the correctness and completeness does not exist.

2.3. Cost estimates are value in terms of the expense associated with the production. When placing an order, charges paid for the cost estimate will be counted as remuneration.

## **3. Contract conclusion**

3.1. Offers by BIOGEST are subject to change, unless otherwise expressly agreed. They are created only in writing. The quantities, dimensions, weights and other details contained in the offer are given without guarantee. For information about technical data, the relevant Austrian standards or official authorization decisions with standard deviations apply. Technical information is based on the problem representations specified by the customer. Apart from customary product information, BIOGEST is not obliged to warn or advise the client.

3.2. When the contract is not agreed upon by the mutual signing of a document, BIOGEST accepts offers or orders of the customer's choice, by written order confirmation, by the beginning of the performance or by the start of supply. BIOGEST has the option of accepting the contract offer from the customer within 3 weeks from receipt of the offer of the customer.

3.3. As long as the client has not made a written declaration of contract, BIOGEST is entitled but not obliged to start the compliance.

#### **4. Performance**

4.1. BIOGEST, irrespective of contractually agreed dates and deadlines, is only obliged to carry out the performance once all the technical details have been resolved and the client has created all construction, technical and legal conditions for the implementation. Once a deposit is agreed, the receipt of full payment is required for the execution of the service. The benefit period begins with full compliance with those conditions.

4.2. BIOGEST owes only those services that were offered in written form.

4.3. If the performance of services is due to plans, floor plans, sketches, other documents or instructions passed by the client, it is him who guarantees the accuracy of the provided documents and instructions. There is no duty to test or warn on those documents and instructions on the side of BIOGEST. The soil and subsoil risk meets the client. BIOGEST has no obligation to test or warn in this regard. If Biogest takes over the laying of pipes in the floor, the client guarantees the suitability of the soil. There is no duty to test or warn on the side of BIOGEST. Structural measures, such as digging, packing etc. are met by the client at his risk. BIOGEST assumes no liability in this regard.

4.4. For any official permits necessary to implement the order or operate the plant, the customer shall bear the costs.

4.5. Performance dates and deadlines are only binding if they were expressly approved by BIOGEST as binding in written form. If the beginning of the service execution or further execution is delayed by circumstances not attributable to the sphere of BIOGEST, agreed upon performance deadlines will be reasonably extended or agreed completion dates will be postponed accordingly. The same applies to any amendments or additions to initially agreed services. Accruing additional costs from delays are carried by the customer, if the circumstances which cause the delays are attributable to his sphere.

#### **5. Fees and payments**

5.1. Flat rate agreements are only effective with the explicit designation as such and if done in writing.

5.2. All fees and charges are exclusive of applicable VAT.

5.3. BIOGEST is entitled to claim a separate payment for travel and transportation costs. The choice of transport is free to BIOGEST.

5.4. After placing the order, BIOGEST is authorized to charge a deposit amounting to 30% of the agreed fee, which is due no later than eight days after demand for payment. Unless otherwise agreed, BIOGEST is entitled to demand a guarantee of payment of the agreed fee in the form of an abstract bank guarantee of a domestic credit institution or some other comparable guarantee. Prior to receipt of payment or security, BIOGEST is not obliged to start its services. BIOGEST is further entitled to demand partial payments and to demand payment on account in the amount of the calculated material costs.

5.5. Payments must be made net upon receipt of the invoice. In case of default, interest at a rate of 12% per year will be charged, but at least the applicable statutory interest between merchants. Furthermore BIOGEST is entitled to reimbursement for costs that accrue in pursuing their claims through contrary to contract behavior of the client. This includes court costs of the lawyer, address research costs, repossession costs and enforcement costs.

5.6. The set-off against counterclaims by the customer or with the alleged price reduction claims, and the full or partial withholding of payments by the client because of defects is not allowed.

5.7. Payments will first be allocated to interest and costs, then to the capital, starting with the oldest debt. A dedication of the payment by the contracting authority does not bind BIOGEST.

5.8. If the principal is in arrears with payment, BIOGEST is entitled, subject to any other rights, to immediately cease its services and work until paid by the client, to place all loans from all contractual relations due and/or rescind the contract. In addition, BIOGEST is certainly entitled to demand the continuation of its services/works by the submission of a guarantee of payment of outstanding pay not yet due in the form of a bank guarantee of a domestic credit institution. Through these acts, withdrawal from the contract is to be seen only when this was expressly stated by BIOGEST.

## **6. Takeover**

6.1. BIOGEST shows the customer the completion of performance by joint commission.

6.2. A possible trial run will be agreed. The trial operation is carried out at the risk of the customer. The client is obliged to assume the power to the final day of trial operation. If the client does not keep the displayed appointment for joint commission, the transfer is deemed to have taken place at the date of the proposed joint commission. This applies in case the takeover by the client does not happen on the last day of the trial operation.

6.3. With the proper use of the services or parts of the performance by the client, the service is considered as incorporated in any case.

6.4. The client may refuse to assume just because of major defects, which make proper use of the plant impossible.

## **7. Retention of title**

7.1. Until full payment by the client, goods and all delivered and installed parts remain property of BIOGEST.

7.2. The client agrees to immediately notify BIOGEST of a resale, third party access, enforcement measures, and of damage or destruction. For a resale, the client undertakes to assign his claim to BIOGEST and to inform the debtor of it.

## **8. Duties of the client**

8.1. The client is required to operate the object of services only according to the instruction manuals, operating instructions and other legal provisions, and especially to have carried out the planned maintenance work failing warranty and damage claims are excluded.

8.2. The client undertakes to observe, make and confirm error messages and maintenance requests made through the process control system, and to provide BIOGEST upon their request with a documentation of these processes; otherwise any warranty and damage claims against BIOGEST are excluded.

## **9. Warranty**

9.1. The client undertakes to examine the performance object immediately after delivery and to promptly criticize any shortcomings, with other losses of his claims, in writing with a precise description of the defect.

9.2. The warranty is provided primarily by improving or replacing the goods within a reasonable time, on the usual day and business hours. The relevant election is available to BIOGEST.

9.3. The proof that the defect was present at the time of delivery shall be borne by the client even if the defect occurs in the first six months after delivery of the work.

9.4. Claims under the warranty void if the services of BIOGEST have been amended, supplemented or repaired by third parties or by the client itself, or upon faulty installation by the same.

9.5. The warranty period is 1 year and begins with the delivery in accordance with point 6.

9.6. No warranty exists for damage caused by external influence, or parts that are subject to normal wear and tear. No warranty exists for inappropriate or improper use, normal wear and tear, neglect maintenance, neglect of error messages and the failure to disclose the documentation referred to in point 8.2.

## **10. Compensation**

10.1. BIOGEST is only liable for damages that were caused by gross negligence or intentionally, which has to be proven by the client. The liability for slight negligence is excluded, just as liability for consequential damages, property damages, lost profits, savings not achieved, or interest losses. No liability exists for claims of third parties. There is also no liability for damages caused by non-timely completion.

10.2. Within the scope of product liability, BIOGEST is liable for personal injury and property damage suffered by a consumer. Claims of a customer, who is a businessman, from product liability law do not exist.

10.3. Claims become statute-barred within two years from knowledge of the damage and the tortfeasor.

## **11. Data processing**

The client agrees that his data of BIOGEST known through the business relationship may be electronically saved, processed, transmitted and in case of default of payment passed on to creditor protection associations.

## **12. Intellectual property**

Plans, drawings or other technical documents as well as samples, catalogs, brochures, pictures, etc. remain intellectual property of BIOGEST and are subject to the protection of the relevant statutory provisions governing reproduction, imitation and competition.

## **13. Jurisdiction and applicable law**

For all disputes arising from the relationship between the client and BIOGEST, the competent court shall be agreed in Vienna, unless mandatory legal rules are against it. BIOGEST is entitled to sue at the general jurisdiction of the principal. Austrian law applies. The UN purchasing law is excluded.