

GENERAL PURCHASING AND (SUB-)CONTRACTING TERMS AND CONDITIONS

General purchasing and (sub-)contracting terms and conditions of Biogas Plus Systems BV in Venray dated 1 July 2019.

General

Article 1: Applicability

1. The "Client" is understood as the natural person, legal entity or partnership that applies these purchasing terms and conditions. The other party is referred to as the "Contractor". For the purpose of these terms and conditions the "Principal" refers to the client of the Client. In addition, the "work" is also understood as the performance of services.
2. Articles 1 up to and including 23 of these terms and conditions are applicable to any and all offers made to the Client and any and all agreements concluded with the Client and to any and all agreements that derive from the same, all to the extent that the Client is the purchaser or the client. If the said offers or agreements are related to (sub-)contracting of work or the performance of services then articles 24 up to and including 32 of these terms and conditions are also applicable.
3. Deviations from these general purchasing and (sub-)contracting terms and conditions are only valid if they were confirmed in writing to the Contractor by the Client.
4. In case of a discrepancy between the content of the agreement concluded by and between the Client and the Contractor and these general terms and conditions, the provisions laid down in the agreement shall prevail.

Article 2: Costs of offers

1. Potential costs associated with the submission of offers or quotations, also including the costs of recommendations, drawing work and the like created by or on behalf of the Contractor, are not reimbursed by the Client.

Article 3: Delivery period and penalty

1. An indicated delivery period or completion period is fatal. The Contractor shall be in default by operation of law following a transgression of the delivery period or the completion period. As soon as the Contractor is or should be aware of the fact that the implementation of the agreement shall not take place or not in a timely fashion or improperly, the Contractor shall forthwith inform the Client accordingly.
2. The Contractor shall be liable for any and all damages that are incurred by the Client as a result of a transgression of the delivery period and/or the completion period as intended in paragraph 1 of this article.
3. For every day of delay in the delivery period or the completion period the Contractor forfeits an immediately claimable penalty to the Client of €1,000.00 per day. The said penalty can be claimed in addition to statutory compensation.

Article 4: Prices

1. The prices quoted in the offer are based on delivery as intended in article 5 paragraph 1 of these terms and conditions.
2. Any and all prices are expressed in euros, fixed, exclusive of VAT, and inclusive of proper packaging.
3. An increase in the cost price determining factors that occurs after the conclusion of the agreement shall remain at the expense of the Contractor, irrespective of the period that has lapsed between the conclusion of the agreement and the relevant implementation.

Article 5: Delivery and transfer of risk

1. Delivery takes place at the moment that the Contractor makes the unloaded good available at the business location of the Client. Up to that moment the Contractor bears the risk of the good during, inter alia, storage, loading, transport and unloading. The Contractor is held to take out insurance against the said risks at its own expense.
2. The Client and the Contractor can agree that the Client provides for the transport. The risk of, inter alia, storage, loading, transport and unloading shall in that case also be vested in the Contractor. The Contractor can take out insurance against the said risks.
3. If the goods are picked up by or on behalf of the Client then the Contractor must provide assistance during the loading, without charging any costs for it.

Article 6: Inspection and testing

1. The Client shall always be entitled to inspect or test the ordered or delivered goods and/or the work (in progress). As the occasion arises, the Contractor shall provide for such facilities as can

- reasonably be required.
2. The Client shall never be held to inspect or test the ordered or delivered goods and/or the work (in progress) and can assume that the ordered or delivered goods and/or the work (in progress) are reliable.
 3. The costs of the inspection / test as intended in paragraph 1 of this article shall be at the expense of the Contractor, if the said goods / the work are rejected by the Client. Inspection or approval shall not release the Contractor from any warranty or liability pursuant to these terms and conditions, the agreement or the law.

Article 7: Rejection

1. If the goods or the work delivered by the Contractor do / does not comply with the agreement then the Client shall be entitled to reject the same. Taking delivery of the goods or payment of the goods or the work shall not imply acceptance.
2. If the Client rejects the delivered goods and/or the work then the Contractor shall be held to, within a time limit to be determined by the Client:
 - provide for free repair or, at the discretion of the Client;
 - provide for free replacement of the goods and/or to yet perform (have performed) the work in accordance with the agreement.
3. If the Contractor does not comply with its obligation as intended in paragraph 2 of this article, not within the imposed time limit or not to the satisfaction of the Client, then the Client shall be entitled to perform the activities as intended in paragraph 2 of this article itself or to have a third party perform them.

Article 8: Intellectual property rights

1. "Intellectual property rights" are understood as, inter alia, copyrights, database rights, model rights, trademark rights, patents, topographies, or the right to acquire the said intellectual property rights through application, filing, registration, or otherwise.
2. "Intellectual property rights on the work" are understood as any and all intellectual property rights vested in the work, the performance to be delivered, the goods, and the auxiliary resources, e.g. drawings, models, moulds, dies, and tools, accomplished during or for the benefit of the implementation of the agreement between the Contractor and the Client.
3. Any and all intellectual property rights on the work belong to the Client. The Client is qualified as, respectively, the maker, designer or inventor of the works accomplished in the context of the agreement. Hence, the Client is exclusively entitled to apply for a patent, trademark or model. If the performance (also) consists of already existing intellectual property rights then the Contractor shall, where possible, hereby, as the occasion arises, already transfer the said rights to the Client and shall, on demand of the Client, forthwith perform the additional acts that may be required for the transfer.
4. The Client shall not be liable to pay the Contractor a fee for (the transfer of) the intellectual property rights.
5. The Contractor waives the personality rights as intended in Section 25 Subsection 1 under a of the Dutch Copyrights Act. To the extent that it regards changes in the work, the goods or the name of the same, the Contractor moreover waives the personality rights as intended in Section 25 Subsection 1 under b and c of the Dutch Copyrights Act. The Contractor shall not rely on the authority granted to the same pursuant to Section 25 Subsection 4 of the Dutch Copyrights Act.
6. The Contractor warrants that the goods delivered by the same to the Client, the activities to be performed and the intellectual property rights on the work do not infringe rights of third parties, also including intellectual property rights, and indemnifies the Client against any and all claims on account of the same. The Contractor shall compensate the Client for any and all damages incurred by the latter as a result of an infringement, including the (complete) costs of the defence.

Article 9: Source code and user licence computer software

1. If the performance to be delivered by the Contractor (also) consists of the delivery of computer software specifically developed for the Client then the Contractor shall transfer the source code to the Client.
2. If the performance to be delivered by the Contractor consists of the delivery of computer software not specifically developed for the Client then the Client acquires - in derogation from article 8 paragraph 3 of these terms and conditions - a non-exclusive, worldwide and perpetual user licence in respect of that part of the computer software for the benefit of the normal use and proper operation of the good. If a part of the computer software was specifically developed for the Client then article 8 and article 9 paragraph 1 of these terms and conditions remain in full force and effect in respect of the said part. The Client is allowed to transfer the licence or to grant a sub-licence. In case of a sale of the good by the Client to a third party, the licence transfers to the acquirer of the good by operation of law.

3. The Client shall not be liable to pay the Contractor a fee for the acquisition of the source code as intended in paragraph 1 of this article or the user licence as intended in paragraph 2 of this article.

Article 10: Confidentiality and non-solicitation clause

1. Any and all information (e.g. models, design data, images, drawings, know-how, and other documents etc.) made available to the Contractor by or in the name of the Client, of any nature and in any form whatsoever, is confidential and shall not be used by the Contractor for any purpose other than the implementation of the agreement.
2. The information as intended in paragraph 1 of this article shall not be disclosed or reproduced by the Contractor.
3. The Contractor shall by no means submit, either directly or indirectly, quotations or offers to the Principal that are related to the good or the work that is the subject of the agreement between the Client and the Contractor.

Article 11: Penalty

1. In case of a violation of the provisions set forth in article 9 paragraph 1 or article 10 the Contractor shall be liable to pay an immediately claimable penalty of €25,000.00. The said penalty can be claimed in addition to statutory compensation.

Article 12: Auxiliary resources

1. Any and all auxiliary resources, e.g. drawings, models, moulds, dies and tools, that are made available to the Contractor by the Client for the implementation of an agreement or that the Contractor specifically created or had created in the context of the agreement with the Client remain or become, under all circumstances, the property of the Client, irrespective of the fact whether payment was made for the same.
2. Any and all auxiliary resources and any and all copies made of the same must on demand of the Client be made available or be returned to the Client.
3. As long as the Contractor has auxiliary resources in its possession, the Contractor must provide them with an indelible identification that indicates that they are owned by the Client. The Contractor shall point third parties who intend to enforce claims in respect of the said auxiliary resources to the ownership right of the Client.
4. Without prejudice to the provisions set forth in article 10 of these terms and conditions, the Contractor shall only use the auxiliary resources as intended in this article for the performance of deliveries and activities for the benefit of the Client and not show them to third parties, unless the Client gave express written consent to this. The Contractor bears the risk of loss, destruction or damage and is held to take out insurance against the said risk at its own expense.

Article 13: Liability

1. The Contractor shall be liable for any and all damages, also including penalties, resulting from a shortcoming or unlawful act of the Contractor.
2. The Contractor indemnifies the Client against any and all claims of third parties for compensation for damages as intended in paragraph 1.

Article 14: Insurance

1. The Contractor is held to have taken out adequate insurance that covers the potential damages incurred by the Client due to a shortcoming or unlawful act of the Contractor or third parties hired by the same. On demand of the Client, the Contractor shall submit copies of the relevant policy and proof of premium payment.

Article 15: Termination or cancellation of the agreement

1. The Client shall always be authorised to terminate or to cancel the agreement with immediate effect upon payment of a fee equal to the costs actually incurred by the Contractor as well as a profit margin. The onus of proof in respect of the costs incurred and a reasonable profit margin shall be vested in the Contractor.

Article 16: Warranty

1. The Contractor warrants the proper operation of the stipulated performance for a period of **(number)** months after the commissioning.
2. In the event that the delivered / completed goods or the work have not been commissioned within **(number)** months after delivery / completion then the warranty is applicable for a period of **(number)** months after delivery / completion.
3. If the stipulated performance was delivered improperly then the Contractor shall forthwith deliver the performance properly, in the course of which the Client can choose between repair or replacement, without prejudice to any other rights vested in the Client by law.

4. The Contractor bears any and all costs associated with the repair of the defect or the replacement of the goods and/or the work. This also includes the costs for the commissioning of the goods and/or the work after the said repair or replacement. If the goods and/or the work pertain to a larger project then the costs for commissioning of the said larger project shall also be at the expense of the Contractor.
5. If the Contractor fails to comply with its warranty obligations then the Client shall be entitled to perform the warranty activities itself or to have them performed by third parties, all at the expense of the Contractor.

Article 17: Payment

1. Unless stipulated otherwise, payment takes place within 60 days after the date of the invoice.
2. In case of payment in advance or payment by instalment the Client shall be entitled to require of the Contractor that sufficient security, at the discretion of the Client, is provided for compliance. If the Contractor does not comply with this within the imposed time limit then the Contractor shall immediately be in default. The Client shall, as the occasion arises, be entitled to rescind the agreement and to recover its damages from the Contractor.

Article 18: No settlement and suspension by the Contractor

1. The right of the Contractor to settle its potential claims in respect of the Client, or to suspend compliance with its obligations, is excluded, unless there is question of suspension of payment or insolvency on the part of the Client or if the statutory debt restructuring is applicable to the Client.

Article 19: Transfer of title in advance

1. On demand of the Client, the Contractor is held to transfer the title of the goods to be delivered, or the materials, parts and/or structural components of which the goods shall be assembled and/or manufactured, to the Client in advance. The Contractor shall forthwith perform any and all additional acts that are required for the said transfer.

Article 20: Prohibition on right of retention

1. The Contractor is never allowed to exercise a right of retention in respect of goods of the Client that are, on any account whatsoever, in the possession of the Contractor.
2. In case of a violation of the provisions set forth in paragraph 1 of this article the Contractor shall be liable to pay an immediately claimable penalty of €250.00 per day, with a maximum of €25,000.00. The said penalty can be claimed in addition to statutory compensation.

Article 21: Settlement and suspension by the Client

1. The Client shall be authorised to settle its potential debts to the Contractor with:
 - a. claims of the Contractor in respect of the Client;
 - b. claims of undertakings related to the Client in respect of the Contractor;
 - c. claims in respect of undertakings related to the Contractor.
2. The Client is moreover authorised to settle its claims in respect of the Contractor with debts of undertakings related to the Client to the Contractor.
3. Related undertakings as intended in this article are understood as undertakings that pertain to the same group, within the meaning of Section 24b of Book 2 of the Dutch Civil Code, and a participating interest within the meaning of Section 24c of Book 2 of the Dutch Civil Code.
4. If the Contractor does not comply with its obligations then the Client can suspend its payment obligations, until the Contractor has complied with its obligations.

Article 22: Transfer and pledging of claims

1. The Contractor cannot transfer or pledge claims that derive from the agreement with the Client. This provision has effect under property law.

Article 23: Applicable law and competent court

1. Dutch law is applicable.
2. The Vienna Sales Convention (C.I.S.G.) is not applicable and neither is any other international scheme of which exclusion is permitted.
3. The Dutch civil court with jurisdiction in the place of establishment of the Client shall take cognisance of disputes. The Client can deviate from these rules on jurisdiction and apply the statutory rules on jurisdiction.

(Sub-)contracting of work / services

Article 24: Prohibition on further subcontracting and hiring of staff

1. Without prior written consent of the Client, the Contractor cannot outsource the work, or parts of

- it, to another party or hire staff for the performance of (parts of) the same.
2. If the Client gives consent to outsourcing or hiring then the provisions set forth in articles 25, 26 and 27 shall in any case apply. In addition, the Contractor is held to impose the provisions set forth in the said articles on its contractual party and also to stipulate that the said contractual party includes these obligations in full in agreements that it concludes for the benefit of the performance of (parts of) the work.

Article 25: Vicarious tax liability in case of sub-contracting

1. If the vicarious tax liability for wage tax and national insurance contributions in case of sub-contracting applies then the Contractor is held to dispose of a blocked account and to, on demand of the Client, make a copy of the original G account agreement available to the Client.
2. The Client is always entitled to pay the stipulated part of the invoice amount to the Contractor through remittance to its G account. If a part has not been stipulated in advance then the Client determines what part of the invoice amounts it pays to the G account. Each and every remittance to the G account by the Client shall be qualified as a releasing payment in respect of the Contractor.
3. Every three months, the Contractor is held to provide the Client with a new, original certificate regarding the payment history issued by the Dutch Tax Administration.
4. Prior to the start of the activities, the Contractor is held to inform the Client in writing of any and all civil service numbers of the employees to be deployed.
5. Any and all labour to be deployed by the Contractor - i.e. any and all persons who are to perform work - must prior to and during the activities carry an original and valid identity document and - where applicable - residence documents, work permits and A1 declarations with them for the benefit of check(s) to be carried out by the Client. The Client is authorised to deny an employee who does not comply with this access to the location where the activities are performed or send the employee away from the said location. The Contractor shall be liable for any and all damages resulting from the same.
6. The Contractor must set up its administration in such manner that the following documents or data can immediately, or almost immediately, be retrieved:
 - the agreement or the content of the same on the basis of which the Contractor carried out the performance delivered to the Client;
 - the data regarding compliance with the said agreement, including a registration of the persons who performed work and the days and hours during which the said persons performed activities;
 - the payments that were made in connection with the said agreement.
7. In case of insolvency of the Contractor, the Client shall be entitled to suspend its payment obligations until the Client has received a declaration from the Dutch Tax Administration from which it becomes apparent if, and up to what amount, it shall be held liable for wage tax and national insurance contributions that remain unpaid by the Contractor. The Client can deduct the amount that the Client must pay to the Dutch Tax Administration from the amount potentially still payable to the Contractor.
8. The Contractor is held to, on demand of the Client, forthwith provide any and all information that the Client deems to be required for its administration or that of its Principal.

Article 26: Invoicing

1. The invoices of the Contractor must comply with the requirements of Section 35a of the Dutch Turnover Tax Act 1968. In addition, the Contractor must indicate the following on its invoices in a clear and transparent manner:
 - a. the date of issue;
 - b. a consecutive number, with one or more series, as a result of which the invoice is identified unambiguously;
 - c. the name and the address of the Client;
 - d. the name and the address of the Contractor;
 - e. whether or not the reverse-charge mechanism with regard to the turnover tax is applicable and, if not, the amount of the turnover tax;
 - f. the VAT identification number of the Contractor;
 - g. the VAT identification number of the Client, if the VAT contribution has been reversed-charged to the Client;
 - h. the invoice amounts, itemised by rate and subsequently divided into unit price and potentially applied discounts;
 - i. the number or reference, where available, of the agreement for which the Contractor delivered the invoiced performance(s);
 - j. the time frame(s) during which the said performance(s) was (were) delivered;
 - k. the name or the reference of the work to which the payment is related;

- l. where applicable: the number of the G account of the Contractor;
 - m. the scope of the wage costs and (separately) the percentage of wage tax and national insurance contributions of the wage amount.
2. The Contractor must add an itemisation of the hours worked to each and every invoice. In respect of the deployed employees, the itemisation must include the civil service numbers of the said employees as well as the days and the hours during which the said employees performed activities. The Contractor must also submit a document from which it becomes apparent that the Contractor is entitled to payment, e.g. a signed performance note.
 3. The Client shall only pay invoices after the work or the part of the work to which a payment instalment is related has been approved by the same and the invoices moreover comply with the requirements pursuant to this article.

Article 27: Hiring of staff by the Contractor

1. If the Contractor hires staff for the performance of the work then the Contractor is held to comply with the following provisions:
 - The Contractor pays 25% of each and every invoice amount (inclusive of VAT) into the G account of the supplier. In case of the reverse-charge mechanism, this shall be 20%;
 - With each and every payment the Contractor must specify the invoice number and potential other identification data of the invoice;
 - The administration of the Contractor must provide immediate insight into the data of the hiring, the workforce administration, and the payments;
 - The civil service numbers of the hired employees must be known to the Contractor;
 - The Contractor must be able to demonstrate the identity of the hired employees and the availability of potential residence or work permits.
2. The Contractor can only hire staff from a supplier who complies with NEN 4400-1 or NEN 4400-2 and who is included in the register of the Labour Standards Foundation (SNA).
3. The Contractor is held to agree with the supplier that the supplier must indicate the following on invoices:
 - The number or reference of the agreement to which the invoice is related;
 - The period or the periods to which the invoice is related;
 - The description or the reference of the work to which the invoice is related.

Article 28: Indemnification wage tax and national insurance contributions and VAT

1. The Contractor indemnifies the Client against claims of the Dutch Tax Administration or the Employee Insurance Agency (UWV) in connection with:
 - a. wage tax and national insurance contributions not paid by the Client;
 - b. wage tax and national insurance contributions not paid by the Contractor and VAT;
 - c. wage tax and national insurance contributions not paid by all parties to whom (parts of) the work was (were) outsourced;
 - d. wage tax and national insurance contributions and VAT not paid by all parties from whom staff was hired for the performance of (parts of) the work.
2. In particular, on demand of the Client, the Contractor shall forthwith compensate the Client for the following costs to the bank account number specified by the same:
 - a. The complete lawyer's expenses of the Client that are related to legal measures of the competent authorities at the expense of the Client, to the extent that the said legal measures are related to the provisions set forth in paragraph 1 of this article;
 - b. Any and all other costs that are related to legal measures as intended under a, including the court fees and costs of experts;
 - c. The costs of everything that the Client may be ordered to pay to the competent authorities in connection with the provisions set forth in paragraph 1 of this article and of which the ruling can be enforced.
 - d. Other costs that are related to the provisions set forth in paragraph 1 of this article and that are charged to the Client.
3. The Client is authorised to settle the amounts that the Contractor must pay to the Client in pursuance of paragraphs 1 and 2 of this article with the amounts that the Client is, on any account whatsoever, still held to pay to the Contractor.

Article 29: Vicarious tax liability for wages (Dutch Labour Market Fraud (Bogus Schemes) Act)

1. The Contractor is held to:
 - a. comply with the applicable legislation and regulations and an applicable collective labour agreement (CLA) during the performance of the work;
 - b. establish any and all arrangements on terms and conditions of employment for the benefit of the performance of the work in a transparent and accessible manner;

- c. if so required, provide competent authorities access to the said arrangements on terms and conditions of employment and to lend cooperation in checks, audits or wage validation;
 - d. if so required, provide the Client access to the said arrangements on terms and conditions of employment if it deems this to be required in connection with the prevention or the handling of a claim for wages regarding activities performed for the benefit of the performance of the work.
2. If the Contractor violates the obligations pursuant to this article then this shall entitle the Client to - after a notice of default - rescind the agreement either in whole or in part.
 3. The Contractor indemnifies the Client against claims of employees in pursuance of Section 616a and Section 616b of Book 7 of the Dutch Civil Code for non-payment of the payable wages.
 4. In the event that the Contractor outsources (parts of) the work, the Contractor shall be held to impose the obligations as intended in paragraph 1 of this article on the party to whom (parts of) the work is (are) outsourced and to also stipulate that the hired third party includes the said obligations in full in agreements that it concludes for the benefit of the performance of (parts of) the work.

Article 30: Organisation of the work

1. The Contractor is held to exclusively follow the orders and instructions given by the Client.
2. The Client is authorised to deny employees of the Contractor access to the work or to remove them (have them removed), for instance due to unsuitability, disorderly conduct, misbehaviour, etc., without further compensation for the potential damages that the Contractor consequently incurs.
3. The working hours and rest periods at the work and rest days, holidays or other days off generally or locally recognised, prescribed by the official authorities or in pursuance of the CLA are also applicable to the Contractor and its employees who perform activities at the work. Damages on the part of the Contractor potentially deriving from this cannot be recovered from the Client. The latter also applies if due to industrial action or other causes at the Client or at third parties the services of the Contractor cannot be relied on.
4. Unless stipulated otherwise, from the start of the activities up to and including the delivery the Contractor must ensure that a permanent foreman is present at the work with whom organisational as well as technical arrangements can be made. Their name must be known to the persons and entities designated by the Client.
5. The Contractor must provide its employees with the correct personal protective equipment and monitor the correct use of the same. Any and all costs deriving from this shall be at the expense of the Contractor.
6. The Contractor must provide for such staffing that the performance of the activities is fully geared to the planning established by the Client and must be such that other activities do not stagnate. In the event that the Client changes the planning / progress, the Contractor shall be held to adapt to the same. Changes in the staffing are only permitted after consent of the Client.
7. If the Contractor is co-insured pursuant to a CAR policy of the Client or its Principal and damages caused by the Contractor occur then the Contractor must compensate the Client for the excess, uncovered damages and the costs to be incurred.
8. The Contractor is held to ensure that equipment that can be qualified as a motor vehicle (subject to compulsory insurance pursuant to the Dutch Civil Liability Insurance (Motor Vehicles) Act) is insured adequately. The risk of work-related damages must also be insured. In addition, the Contractor must also have taken out adequate insurance for the risk of damages arising from or related to the use of other equipment deployed by the Contractor.
9. In respect of cables, pipes and other above-ground and underground assets of third parties the Contractor always remains held to provide for localisation of the positioning. The Contractor must forthwith inform the Client of potential damages.
10. Required material, like scaffolding, aerial platforms, hoisting means, and small equipment, including manual tools, measuring devices, mobile scaffolds, ladders, steps, etc., are made available by the Contractor and are included in the total price.
11. If activities need to be performed on or at parts of the work that have already been completed, e.g. plastered walls, tiling, paintwork, etc., then the Contractor must take protective measures in order to prevent damage and/or contamination. Damage and/or contamination observed after or during the work are deemed to have been caused by the Contractor.
12. After termination of the activities the Contractor must deliver the work broom-clean and leave the building site behind in a clean fashion.

Article 31: Work permits

1. The Contractor is held to comply strictly with the provisions pursuant to the Dutch Foreign Nationals (Employment) Act. At the work the Contractor can only have persons perform activities who are in possession of all required documents and permits and, in particular but not limited to,

the required work permits or combined residence and work permits.

2. The Contractor shall indemnify the Client against any and all claims of third parties, including, for instance, fines of the Dutch Social Affairs and Labour Inspectorate, that are the result of a violation by the Contractor of the provisions set forth in paragraph 1 of this article.
3. If an administrative fine is imposed on the Client on account of non-compliance with the obligations pursuant to the Dutch Foreign Nationals (Employment) Act based on intent or gross negligence then the Client can, in derogation from paragraph 2 of this article, not recover the said fine from the Contractor.

Article 32: Authorisations and safety measures

1. The Contractor shall at its own expense provide for the authorisations and safety measures that are required in connection with the deliveries to be performed and the performance of the work accepted by the Contractor.