

# General Terms of Sale and Delivery Conditions of UTS, 15/08/13

## § 1 Area of validity, seller, definitions

(1) These general terms and conditions apply exclusively toward companies, legal entities under public law and special assets under public law for all purchase, delivery and works delivery contracts with and without an obligation of assembly and transport in which one of the following UTS companies is the seller and/or supplier: UTS companies in this sense are: UTS Biogastechnik GmbH, Zeppelinstraße 8, 85399 Hallbergmoos, Germany, entered in the commercial register of the Munich District Court under HRB 172222 as of 01/11/2011, as well as UTS Products GmbH, Oestinghausener Strasse 12, 59510 Lippetal, entered in the commercial register of the Arnsberg District Court under HRB 8524 as of 01/11/2011 and UTS Service GmbH (formerly incorporated as UTS Biogas GmbH), Zeppelinstraße 8, 85356 Hallbergmoos, entered in the commercial register of the Munich District Court under HRB 180863 as of 17/02/2013. The respective UTS company that is party to the contract will hereinafter be referred to as UTS.

(2) A customer in the sense of these UTS terms of sale and delivery conditions is an entity which issues an order to UTS or concludes a contract with UTS.

(3) These UTS terms of sale and delivery contain the exclusively applicable general terms and conditions between UTS and the customer, insofar as this is not expressly changed through individual agreements or other types of stipulations in the contract. Any general terms and conditions of the customer which deviate from, contradict or supplement these UTS terms of sale and delivery - even if UTS is aware of them and provides the delivery or service without reservation - are not recognised and are hereby expressly rejected on the part of UTS.

(4) UTS reserves the right to employ subcontractors for its service provision, even without the approval of the customer, especially for assembly and transport services.

## § 2 Conclusion of contract

(1) The quotations of UTS are valid for 30 days, insofar as a shorter period is not contractually agreed upon. Contracts take effect once they have been confirmed by UTS with a written order confirmation or if UTS provides the service.

(2) The brochures published and issued by UTS or other promotional documentation and the information on the homepage of UTS do not represent a quotation for a conclusion of contract; they are only to be understood as a prompt to customers to submit a legally binding offer to UTS. Therefore, UTS reserves the right to make changes to the technical data and the shape, colour or weight in comparison with the promotional documentation and the homepage, insofar as this is reasonable for the customer.

(3) UTS reserves the right to make technical and creative deviations from descriptions and data in brochures, offers and written documentation of UTS, as well as implementation, design and material changes in the course of technical progress of the supplies and services of UTS, without regress by the customer of his rights. Specifications for the products of UTS (technical data, measurements, etc.) are only approximations and are to be understood as such; even the approximate adherence these specifications only applies as guaranteed or assured if this has been expressly agreed upon in writing in an individual contract.

(4) UTS retains the title, industrial property rights, usage rights and other commercial copyrights to samples, drawings, cost recommendations, etc. as well as in quotations and in electronic form. They may not be passed on to third parties without consent and must be immediately returned on request. That also applies for such written documentation that is designated as "confidential".

## § 3 Prices, default of the customer, delivery within the European Union

(1a) All price specifications of UTS, regardless of the form, are to be understood as net prices without the statutorily prescribed value-added tax at the rate prevailing at the time of invoicing and without shipping/delivery costs, unless something different is expressly specified in the item description. In the absence of special arrangement, all UTS prices are valid ex works, inclusive of loading and exclusive of packaging. The costs of packaging are additionally calculated.

(1b) If receiving a delivery or shipment within the European Union in accordance with paragraph 6 a of the Value Added Tax Act, the customer is required to immediately provide UTS with proper confirmation of arrival or other types of evidence in order to prove that the delivery or shipment is VAT-exempt (documentary evidence). UTS has the right to demand that the customer or third parties commissioned by the customer for this purpose (e.g. carriers) use the reference samples specified by UTS, e.g. the confirmation of arrival sheet.

(1c) After entering the contract, the customer will notify UTS in writing without delay or being prompted to do so, if he or a recipient has been denied a valid VAT ID from a responsible member state of the EU for a delivery or shipment within the European Union. Otherwise, the customer will provide UTS with the VAT ID he has been given. Until provided with the final invoice and receiving the complete shipment, the customer is also required to notify UTS in writing, without delay and without being prompted to do so about any alterations of the corresponding VAT ID.

1d) The customer will also be liable to pay VAT and for other types of damage if responsible for the fact that the information and proofs required in accordance with sections 1b and 1c are incorrect and delayed.

(2) If the applicable prices of suppliers of UTS or other costs for the products increase between the conclusion of contract and the delivery, UTS is entitled to increase the agreed prices according to its own reasonable discretion unless something different is expressly regulated in the contract.

(3) In the absence of special arrangement, the following part payments – without discount – are due as follows:

- 30% of the gross total price on conclusion of contract
- 60 % of the gross total price on delivery or declaration by UTS of readiness for shipment, whichever comes first
- 10 % of the gross total price after delivery.

(4) Payment is due 14 calendar days after invoicing without deductions.

(5) In the event that a payment is not received on time, the customer automatically enters into default of payment and default interest is due according to the legal rates.

(6) If the customer is in default with the acceptance of services/deliveries of UTS, UTS is entitled store the goods at the risk and expense of the customer. UTS is entitled to bill the customer for the storage at a flat rate of 1 % of the net price of the stored goods per month as compensation, however this may not exceed a period of four months. In the process, UTS is also entitled to demand compensation from the customer for any additional costs on presentation of verification. The customer is, in turn, entitled to provide evidence that no storage costs or lower storage costs were incurred. UTS reserves the right to further compensation for damages on the basis of default in acceptance.

(7) If, on the basis of the customer's default in acceptance, UTS withdraws from the contract, UTS is entitled to demand compensation for damages at the flat rate of 20 % of the agreed net total price, if the further legal requirements for such damage claims are met. In this connection, UTS reserves the right to the assertion of greater actual damag-

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es. The customer is entitled to provide evidence that no damages or lower damages were incurred.

### § 4 Offsetting and right of retention of the customer

The customer can only exercise offsetting rights or the right of retention if its counter-claim is based on the same contractual relationship. Moreover, the customer is only entitled to the right of offsetting and retention if its counter-claim has been determined to be legally valid or was recognised or undisputed by UTS.

### § 5 Duty of cooperation of the customer

(1) Insofar as UTS has to perform assembly operations and other types of work in accordance with paragraph 1 of the contract, the customer has a duty of cooperation and to guarantee UTS and its employees as well as the subcontractors of UTS and their employees unrestricted access to all locations, properties and areas necessary for the proper performance of these types of work. The preparation and safeguarding of the properties as required by law is the responsibility of the customer. Delays or damages which are based on a breach of the duty of cooperation by the customer do not go to the encumbrance of UTS.

(2) It is incumbent on the customer to obtain any necessary official approvals as well as supply and connection approvals from the responsible energy supply companies, network operators, agencies, and authorities and to provide these bodies with all necessary announcements and notifications.

### § 6 Delivery, reservation of self-supply and scope of service

(1) Agreements on a delivery or assembly time or corresponding deadlines or periods are only binding for the contractual parties if they have been expressly agreed upon and confirmed in the written form and have been expressly specified as "binding". They are not binding without this addition. "Binding" does not mean that it entails business to be settled on a fixed date.

(2) An agreed delivery time or delivery deadline is based on the respective time at which the product has left the plant of UTS or their distributing warehouse or at the time of the notification of readiness for delivery by UTS, whichever comes first. If the goods must be picked up by the customer, however, the time of the readiness for pick-up is authoritative.

(3) On enquiry, the customer must be informed about the foreseeable non-observance of the binding delivery time as soon as possible.

(4) If UTS is not responsible for the delay, in the event of an energy shortage, import difficulties, operating and traffic disruptions, strikes, *force majeure*, delays by suppliers of UTS, etc., the implementation period is extended accordingly. The customer shall be informed immediately about the extension of the delivery time. The customer is only entitled to withdraw from the contract if it has granted UTS a reasonable grace period for the delivery and, after its expiry, a second grace period granted by the customer has also lapsed unsuccessfully. In the event of a withdrawal, the customer shall be reimbursed for services in return which were already provided. Damage claims of the customer on the basis of the withdrawal or the delay are subject to the limitation of liability in accordance with § 10 of these terms of sale and delivery conditions of UTS. UTS is entitled to withdrawal if the delays for which it is not responsible persist for longer than two months. UTS reserves further rights to withdrawal on the basis of default in acceptance.

(5) If the goods ordered by the customer are no longer available from the supplier, UTS reserves the right to deliver a different product that is technically equivalent to the product ordered by the customer at the agreed price (this applies in particular to products which have the same or

better capability, such as successor models). This does not apply if it would be unreasonable for the customer according to the specific circumstances. The customer shall be informed of this in advance.

### § 7 Transfer of risk, insurance

The risk transfers to the customer as soon as the product has left the plant of UTS or the distributing warehouse or the customer has been notified of the readiness for shipping or pick-up, whichever comes first. The same also applies if UTS assumes additional services, such as shipping, transport, delivery or assembly or monetary compensation for these services.

### § 8 Obligation to notify of defects for commercial transactions

(1) If the customer is a merchant in the sense of German Commercial Code and the transaction forming the basis of the contract is a part of the customer's commercial operations, the customer must inspect the delivered goods immediately upon receipt for potential transport damages with the diligence of a prudent businessman. Obvious defects which are recognised in the inspection on the receipt of goods must be reported to UTS immediately in an appropriate manner, however, no later than within 6 work days of the receipt of goods.

(2) If defects which were not obvious or recognisable in the course of the inspection on receipt are discovered at a later time, these defects must also be reported in an appropriate manner immediately upon discovery, however within 12 work days of their discovery.

(3) In the event of a complaint in accordance with the preceding clauses, the customer must return the rejected goods to UTS, as well as – insofar as supplied – all accompanying accessories and a copy of the delivery note with specification of the model/serial number with inclusion of a brief description of the error/symptom, which enables UTS to immediately register the objected defects. The goods are, insofar as possible, to be returned in the original packaging or at least in correspondingly suitable packaging. The customer must inform UTS prior to the return shipment and also discuss the possibility of retrieval by UTS. The costs of the return shipment are reimbursed to the customer if the defect is confirmed.

(4) If no complaint to UTS is made or it does not take place on a timely basis, the delivered goods apply as accepted by the customer and any warranty or other liability of UTS on the basis of the defect is voided in this respect, insofar as legally permissible.

(5) However, the warranty is not voided if and insofar as the defect is maliciously concealed by UTS or has been caused intentionally or on the basis of gross negligence.

### § 9 Warranty

(1) The liability for defects of UTS is initially limited to the supplementary performance or improvement, which means UTS can rectify the defects or provide a replacement delivery according to its own discretion. The customer must give UTS the immediate and sufficient opportunity for the supplementary performance and improvement. In the event of a violation of this duty, UTS is exempt from the liability for the consequences resulting in this respect. The commercial customer may only rectify the defects itself or employ a third party to do so at the expense of UTS if this is an urgent necessity and a supplementary performance or improvement by UTS would be unreasonable for the customer, especially in order to prevent imminently-threatening, disproportionately high damages. Replaced goods must be returned to UTS immediately.

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(2) In the event that the supplementary performance or improvement does not take place on a timely basis despite a reasonable grace period granted by the customer in writing, or the supplementary performance or improvement should be considered unsuccessful, or a grace period for supplementary performance is unnecessary on other legal grounds, the customer is entitled to reduce its service in return or to withdraw from the contract. The right of withdrawal does not exist for deliveries and services which also comprise constructions or built-in construction products. For damage claims in accordance with §§ 437, 280 German Civil Code (BGB) for defects resulting from no more than minor negligence, the limitations and exclusions of liability in accordance with § 10 of these terms of sale and delivery conditions of UTS apply.

(3) Excluded from this regulation is the statute of limitation for damages claimed on account of personal injury that has been culpably caused and is contingent on defects as well as damages contingent on defects that can be attributed to gross negligence.

Also excluded from this regulation are any claims filed on account of defects on buildings including any corresponding planning and monitoring services as well as construction materials, insofar as they are built into a structure, as well as other items which have been used for a structure in accordance with the ordinary use and have caused the deficiency. The legally prescribed period of limitation applies for these deliveries and services.

For contracts which comprise both services and deliveries in accordance with Clause 1 or in accordance with Clause 3, the various periods of limitation based on the respective service components apply.

(4) Deviating from this, in the event of the sale of used products, the liability for defects is excluded. Excluded from this regulation is the statute of limitation for damages claimed on account of personal injury that has been culpably caused and is contingent on defects as well as damages contingent on defects that can be attributed to gross negligence.

(5) The adherence to assembly and installation regulations of all types (e.g. VDE, VDI, TÜV) is exclusively a matter for the customer.

(6) The liability for defects of UTS does not extend to normal wear.

### § 10 General limitation of liability

(1) Insofar as the contract, including these terms of sale and delivery conditions of UTS, does not contain any different provisions, UTS is liable as follows:

UTS is liable without limitation for premeditation and gross negligence. The liability of UTS for minor negligence in the event of a breach of significant contractual duties is limited to the typical damages foreseeable for this type of contract and on conclusion of contract and is otherwise excluded. Significant contractual obligations are the primary, elementary duties arising from the contractual relationship; in the first place they enable the correct realisation of the contract, their violation jeopardises achieving the purpose of the contract, and the customer relies and may rely on their adherence as a matter of course. Liability for personal injury, liability in accordance with the German Product Liability Act and liability on the basis of expressly provided guarantees are excluded from the preceding limitation of liability and exclusion of liability.

(2) The limitations of liability also apply for the corporate entities as well as the vicarious agents and installation assistants (e.g. subcontractors) of UTS in the relationship with the customer.

### § 11 Guarantees, assured characteristics

(1) Employees of UTS are not empowered to assure specific characteristics and properties of the goods and/or issue guarantees. Assured characteristics and guarantees are only valid if they have been issued in writing by the management of UTS or have been confirmed in writing by the management or are expressly identified in writing as such in the contract.

(2) If and to the extent that the manufacturer of the goods issues a guarantee for the goods it has produced, which entitles the customer directly, the customer is only entitled toward the respective manufacturer. The customer cannot derive any claims against UTS from the manufacturer's guarantees. If UTS informs the customer of the manufacturer's guarantees, this does not mean that UTS is liable to provide this information, assumes corresponding guarantees toward the customer or is liable for these guarantees.

### § 12 Retention of title

(1) The goods supplied by UTS remain the property of UTS (goods subject to retention of title) until payment in full.

(2) The customer keeps the goods subject to retention of title for UTS at no charge. Pledging or provision as security in regard to the goods which remain the (co-)property of UTS is not permitted. In the event of attachments to the goods subject to retention of title by third parties, the customer shall notify the third parties of the ownership of UTS and immediately inform UTS.

(3) The purpose of the pledging of the goods subject to retention of title mentioned in the preceding clauses extends to all receivables (including balance claims from accounts current) from the ongoing business relationship between UTS and the customer, if the customer is a company.

(4) UTS is obligated to release the securities it is entitled to at the request of the customer if and to the extent that their value exceed the claims to be secured by more than 30 % (protection against over-collateralisation). The selection of the securities to be released is made at the discretion of UTS.

### § 13 Data privacy

The customer's personal data collected in the course of the business relationship, regardless of whether the data originated from the customer itself or from third parties, shall be exclusively stored and processed by UTS in accordance with the applicable data privacy laws and, in this respect, only insofar as this is necessary for the implementation and processing of the contract and the business relationship, including legal disputes as well as for the fulfilment of the duties of UTS according to public law (fiscal law, etc.). Against this backdrop, personal data of the customer is only transferred to third party companies, such as delivery services and/or the primary bank of UTS, if and insofar as this is necessary for the delivery of our goods and/or the handling of payments. Additional personal data shall only be transferred to third parties with the approval of the customer – with the reservation of a compulsory legal duty to inform law enforcement agencies, etc. Corresponding duties apply to the customer in regard to the respective data of UTS and its employees.

### §14 Severability clause, applicable law, jurisdiction

(1) The law of the Federal Republic of Germany applies exclusively for the business relationship with the customer, especially for the legal grounds and handling of the contract, to the exclusion of the UN Convention on the International Sale of Goods.

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(2) If a contractual provision is partly or wholly invalid, the validity of the remaining contractual provisions remains unaffected by this. The respective, applicable legal provisions shall apply instead of the invalid provision.

(3) The exclusive jurisdiction for all disputes from or in connection with this contractual relationship is Munich, if the customer is also a merchant and any other contractual partners in addition to UTS are only salespersons. In the process, UTS is also entitled to bring the dispute before the general court of jurisdiction of the customer.

(4) The language of the contract is German.

(5) These general UTS terms of sale and delivery, dated 15/08/2013, substitute the general UTS terms of sale and delivery, dated 15/11/2011, applicable for contracts concluded between the customer and UTS in accordance with paragraph 1 on August 15, 2013 or later and into which these general UTS terms of sale and delivery are incorporated expressly or implicitly as well as their amendments and any follow-up contracts.