



German Biogasregister

General Terms of Contract for Registered Companies.

Valid from: 24/7/2017

concluded between

Deutsche Energie-Agentur GmbH (dena) (German Energy Agency), Chausseestrasse 128a, 10115 Berlin,
Germany

hereinafter referred to as “dena” or the “registrar”

and

the company registered with the German Biogasregister

hereinafter referred to as the “registered company” or “contracting party”



1. Introduction

The German Biogasregister is, in terms of its purpose and function, described in the document “General Principles Concerning its Mode of Operation”. Producers, traders or consumers of biogas can register with the German Biogasregister based on the terms set out in this contract.

2. Definitions

The contractual text uses specific technical terminology in some areas. The terms themselves are explained and placed in their correct contexts in the “General Principles Concerning its Mode of Operation” for the Biogasregister (section 2, annex 1).

3. Subject of the contract and services of the German Biogasregister

- 3.1. Registered companies must apply for access to the Biogasregister by sending to the registrar the application forms for opening a user account.
- 3.2. When the user account is activated by the registrar, a contract enters into force between the registrar and the registered user which shall be governed by the terms set out in the following “General Terms of Contract for Users”, the “General Principles Concerning its Mode of Operation” (annex 1) and the “Schedule of Fees” (annex 2) as amended. The most recent versions of the terms and conditions is available at www.biogasregister.de.
- 3.3. The user account gives the registered company full access to the functions of the Biogasregister as described in annex 1. For the purpose of using the Biogasregister, the registrar shall send to the registered company login details for all of the users the company has registered and that are authorised to perform operations on its account (the registered company receives a username and password for each registered user).
- 3.4. Where the registered company adds registered users on the user account, all actions by these registered users – as set out in sections 2.3(2) and (3) of the “General Principles Concerning its Mode of Operation” – shall be attributed to the registered company.
- 3.5. Registered companies have access to the Biogasregister’s service hotline. The registered companies pay for the telecommunications charges.
- 3.6. The Biogasregister services include a plausibility check by the registrar according to the method that is described in section 3.3.2 of annex 1. As a rule, the registrar will seek to complete this plausibility check within 2 working days after submission of the necessary information to the registrar. Not counted as working days shall be Sundays and public holidays in Berlin or dena’s company holidays, which are published for the current year at www.biogasregister.de; among others, they include the times from 2 p.m. on the last working day prior to 24/12 until the first working day after 31/12 of each calendar year. The registrar shall attempt to adhere to a processing time of 4 working days for the plausibility check in the period of five working days prior to 12 a.m. midnight on 28/02. This information on processing time is purely indicative and does not constitute an entitlement in



favour of the register company. Moreover, the registrar accepts no responsibility for the processing time required by registered audit organisations, i.e. the registered auditor.

- 3.7. The Biogasregister ensures that proofs of biomethane shall also remain clearly identifiable in cases of divisions and transfers and that every (partial) proof of biomethane that is booked in by a registered auditor shall only be booked out once.
- 3.8. The German Biogasregister is a mass balancing system that builds on the interpretation aid by the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) for mass balancing according to Section 27c paragraph 1 point 2 Renewable Energy Sources Act (EEG) of 29/6/2012 (hereafter: interpretation aid). Pursuant to section 8 of the “General Principles Concerning its Mode of Operation” (annex 1), the Biogasregister shall enable the import and export of proofs of biomethane concerning the property profiles of biogas batches that are entered in a cooperating register.

4. Technical requirements

- 4.1. Use of the Biogasregister requires a standard Internet browser (e.g. Internet Explorer or Mozilla Firefox): information on other technical system requirements can be obtained from the registrar.
- 4.2. A standard PDF reader (e.g. Acrobat Reader) must be installed to open the register statements, which are transmitted in PDF format.
- 4.3. The registrar will notify the registered companies in good time of changes to the material technical requirements.
- 4.4. The registered company is responsible for adherence to the technical requirements. The registrar shall not be liable for damage caused by a failure to adhere to the technical requirements.

5. Obligations of users

- 5.1. The login details must be kept confidential. They must be protected from unauthorised access.
- 5.2. The registered company is obliged to keep complete and current all data it enters in the Biogasregister. The content of all entries must be clearly identifiable. Ambiguously formulated entries or in particular incorrectly or non-completed fields can lead to delays in processing or errors.
- 5.3. The registered company is obliged to inform the registrar without undue delay of any inadequacies in the operation of the Biogasregister.
- 5.4. The registered company informs the registrar of any changes in the powers of representation assigned to staff within its organisation and of any changes to its billing address.
- 5.5. The registered company must ensure that the volume of a biogas batch to be shown in the Biogasregister is stated both as a total quantity and for a total period, and as a list of the partial quantities and periods for each proof of quantity. Moreover, the registered company must obtain contractual assurances from the registered audit organisation, i.e. the registered auditor, that the total quantity produced in a documentation period and the quantity documented within the German



Biogasregister are represented in the audit report. The registrar carries no responsibility in this regard.

- 5.6. The registered company undertakes, until the first stage of documentation, to book into the German Biogasregister only such volume of biogas that satisfies the requirements of mass balancing pursuant to the Renewable Energy Sources Act (EEG) as amended, annex item II no. 1c)bb Renewable Energy Heat Act (EEWärmeG) and the implementation aid. This shall mean in particular that upon first documentation of the batch in the German Biogasregister (“book-in”), the user must document and the registered audit organisation, i.e. the registered auditor, must confirm in the audit report and within the register that each transfer of rights associated with this biogas batch for the production of raw biogas, its processing into biomethane and its injection into the natural gas grid took place in a traceable and transparent form that is consistent with the mass balancing system.
- 5.7. The registered company undertakes to enter in the Biogasregister only such volumes of biogas that were actually produced and injected into the gas grid.
- 5.8. The registered company assures that it will not enter the biogas batches documented in the Biogasregister in other verification or documentation for the purpose of multiple marketing. Where the same biogas batch is entered in the German Biogasregister and another verification and documentation system (e.g. the Nabisy application by the Federal Office for Agriculture and Food (BLE)), the user shall only be entitled to market this biogas batch on one occasion for the purpose of obtaining support or payment, for compliance with a legal obligation in regard to its use or in connection with other contractual commitments. Registered companies acting on behalf of registered companies must assure at all times that upon first book-out of biogas batches for the purpose of obtaining support or payment, for compliance with a legal obligation in regard to their use or in connection with other contractual commitments, such batches are also booked out of or deleted in any other registers or databases such that multiple marketing of the same biogas batch is not possible.
- 5.9. Moreover, the registered company undertakes to adhere to the requirements prohibiting multiple sales pursuant to the Renewable Energy Sources Act (EEG).
- 5.10. Proofs of biomethane assigned green status that are booked out for the purpose of marketing outside of the register prior to their transfer to end users shall remain subject to the “other” (2.) stage of documentation at the time that they are booked out. The registered company must enter into suitable contractual arrangements with the recipient of the booked out proofs of biomethane to ensure that it documents the respective volume of biogas in line with a mass balancing system according to the requirements of the Renewable Energy Sources Act (EEG) as amended and annex item II no. 1c)bb Renewable Energy Heat Act (EEWärmeG).
- 5.11. In the special case of supplying biogas additive products, the German Biogasregister shall, contrary to section 3.8, only perform the mass balancing documentation until handover of the biogas to the supplier of the additive products. The aforementioned obligations for mass balancing documenta-



tion in the section from handover of the biogas to the producer of the additive product until injection of the additive product by the end user (refer to implementation aid, 3rd stage of documentation) are transferred to the supplier of the additive products, except where other arrangements are agreed by the participating parties (system user booking out the quantity and its recipient).

- 5.12. The registered user undertakes to document as yellow batches all volumes of biogas for which it separates or is required to separate the biogenic properties in the book & claim process (cf. section 6.5 annex 1) from the commodity gas (e.g. for sales by the balancing area grid operator where the flexibility framework pursuant to section 35(3) Gas Network Access Ordinance (GasNZV) has been exceeded).
- 5.13. Inasmuch as the registered company does not, does not punctually or does not properly satisfy its obligations in this regard, the registrar shall be entitled to demand indemnification for the damage it incurs, including any additional expenditure. The registered company holds the registrar harmless of all claims exercised by third parties in connection with a violation of the obligations set out above.

6. Rights of the registrar

Where there are reasonable grounds for the assumption that a registered company is in violation of rules of conduct in the Biogasregister or justified suspicions that the registered company is abusing or manipulating the register or other registered companies, the registrar shall be entitled to block the user account, terminate this contract with immediate effect and to take all measures that are necessary and reasonable to protect the other registered companies in the Biogasregister, the Biogasregister itself and all legal transactions. These registered companies will be given the opportunity to respond to the suspicions in writing before any such measures are taken.

7. Rights of use and management of data

- 7.1. The registered company extends to the registrar, upon conclusion of this contract, the right to use the audit reports, i.e. the uploaded documents (reports, test reports, etc.) in the scope that is necessary for operation of the Biogasregister. The registrar is authorised in particular to store, duplicate and transfer the documents to other companies registered in the Biogasregister or to recipients of register statements. As a rule, the right of use associated with operation of the Biogasregister shall be unrestricted.
- 7.2. The registered company assures that it owns the necessary rights of use and exploitation to the audit reports, i.e. the uploaded documents. The registrar shall otherwise be authorised to block the user's account. The registered company holds the registrar harmless of all claims exercised by third parties in connection with a violation of rights of use and exploitation.



8. Remuneration and invoicing

- 8.1. Use of the Biogasregister by registered companies is a paid service. The fees are composed of a basic annual remuneration (basic annual fee) and individual remunerations (system usage fees). Remuneration is paid separately for withdrawal of red status. The details and amounts of remuneration are set out in the “Schedule of Fees” (annex 2) as amended. The most recent version can be accessed on the website at www.biogasregister.de.
- 8.2. Invoicing of the basic annual fee takes place in the 1st quarter of each year, but no later than at the end of the quarter in which first registration occurred. Individual remuneration is invoiced quarterly. The invoices are itemised.

9. Contractual conclusion, term, termination

- 9.1. The contract is concluded for an indefinite period.
- 9.2. The notice can be terminated by serving notice to the end of the calendar year by 31/10 of the year. Notice must be served in writing.
- 9.3. Where the contract is terminated, the registered company’s account will be deactivated when the termination comes into effect. Neither the registered company nor any of the registered users acting on its behalf will have the permission to access the account from this time. From this time, register statements can only be prepared for proofs of biomethane on third-party accounts that have already been assigned green status. The Biogasregister will no longer be able to continue documentation for proofs of biomethane of the registered company that are entered on third-party accounts and assigned grey status. The registered company is obliged to notify its contracting partners of the termination of the contract and its implications.
- 9.4. The right to terminate this contract without notice for good cause remains unaffected. Section 9.3 applies analogously.

10. Liability

- 10.1. The registrar is fully liable for wilful intent or gross negligence, but is only liable for ordinary negligence in the following cases:
 - violation of essential contractual obligations, i.e. obligations without which performance of the contract would not be possible and on whose fulfilment the contracting party may ordinarily rely (so-called cardinal obligations), and
 - damages arising from injury to a person’s life, limb or health.
- 10.2. In the following cases, the extent of dena’s liability is limited to damages that were foreseeable upon conclusion of the contract and that are typical of this kind of contract:



- violation of essential contractual obligations due to ordinary negligence, i.e. obligations without which performance of the contract would not be possible and on whose fulfilment the contracting party may ordinarily rely (so-called cardinal obligations), and
- grossly negligent behaviour on the part of ordinary vicarious agents (non-management staff) outside the area of essential contract duties and damages to life, limb or health.

10.3. The limitation of liability pursuant to section 10.2 is also applied analogously to the liability of the contracting parties' officers, assistants and vicarious agents.

10.4. The registered company must report any damage to the registrar without undue delay.

10.5. The provisions under product liability law remain unaffected.

11. Force majeure

Where the contracting parties are materially obstructed or entirely prevented from the performance of services due to unforeseeable events that would have been unavoidable even by means of adequate technical or economic undertakings (especially force majeure such as failure of the telecommunications network, natural disasters, war, industrial action, administrative orders), the parties shall be released from their duty of performance for as long as these circumstances and their consequences have not been finally remedied. The parties shall not be entitled to exercise claims for indemnification in any of these cases of release from performance obligations, except where a party claiming force majeure is at fault.

12. Availability of the Biogasregister

The registrar shall make efforts to ensure undisturbed operation of the Biogasregister. Operation may nevertheless be restricted by circumstances that the registrar is unable to influence. It is also necessary to shut down the Biogasregister temporarily for maintenance purposes. The registrar will notify the registered company of scheduled maintenance periods with a lead time of 5 working days. Scheduled maintenance will not be performed between 01/01 and 28/02. When the registrar becomes aware of the requirement to perform unscheduled maintenance that was either unforeseeable or became necessary on short notice, it will notify the registered company on its homepage and login screen, as well as possibly by newsletter also.

13. Contractual amendments

The provisions of these terms of contract, the "Schedule of Fees" (annex 2) and the "General Principles Concerning its Mode of Operation" (annex 1) for the Biogasregister are based on the statutory and other framework conditions at the time of contractual conclusion. Unforeseen changes to the statutory or other framework conditions (e.g. by amendments of laws where the contents of these amendments were not already predictable – for instance in the period between conclusion of the formal legislative process and the entry into force of new provisions) that were neither caused by the registrar nor can be influenced by the registrar may have potentially significant implications for the balance of contractual rights and obligations. Moreover, an omission that emerges in these terms of contract, the "Schedule of Fees" (annex 2) and



the “General Principles Concerning its Mode of Operation” (annex 1) after conclusion of the contract may have potentially significant implications for the performance of the contract (for instance if case law rules a provision to be void), which can only be remedied by modifications or additions. The registrar shall be obliged in these cases to amend and/or add to the corresponding provisions – excepting only the fees – in such a way as is necessary to restore the balance of contractual rights and obligations and/or to accommodate an omission in the contract. Modifications of the corresponding provisions may only take effect on the first of a month. The modifications only become effective if the registrar notifies the registered company in writing by no later than three weeks prior to their entry into force. The registered company may terminate the contract in these cases, effective from the time at which the contractual modification enters into force. The registered company will be informed of this termination right in the notification of changes according to sentence 1.

14. Final provisions

- 14.1. Any supplementary agreements, amendments or additions to this contract must be made in writing for them to be effective. This also applies for the cancellation of the written form requirement. No oral ancillary agreements have been made.
- 14.2. The registered company’s Terms and Conditions are not applicable. In cases of doubt, the provisions under this contract supersede those specified in the annexes.
- 14.3. If any individual provisions of this contract are or become void, the validity of the remaining provisions will not be affected.
- 14.4. The place of jurisdiction is Berlin.
- 14.5. This contract shall be governed by the law of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods shall not apply.