



General Terms and Conditions of Bayer Consumer Care AG

1. Sole application

- 1.1. The terms and conditions set forth below apply generally to supplies of goods and services to Bayer Consumer Care AG by third parties and form an integral part of the agreement between the Supplier and Bayer Consumer Care AG.
- 1.2. Any alternative or supplementary terms and conditions, including, but not limited to, any general terms and conditions of the Supplier, shall only apply if expressly agreed in writing. Specifically the general terms and conditions of sales from the Supplier are void.

2. Offers

The Supplier shall ordinarily submit offers to Bayer Consumer Care AG free of charge. Should Supplier require any remuneration, this shall be subject to prior written agreement. Any payments shall be agreed in advance. Offers shall remain binding for a period of 120 days unless an alternative period is agreed in writing.

3. Acceptance (order)

- 3.1. The acceptance of any offer by Bayer Consumer Care AG shall not be binding unless the offer has been accepted in writing.
- 3.2. If Bayer Consumer Care AG accepts the offer other than on the terms specified therein, the agreement shall only take effect once the Supplier has agreed to the different terms by confirming the order.
- 3.3. If the confirmation of any order differs in any material respect from the statement of acceptance, for example in terms of pricing, dates or performance, such statement of acceptance shall not be binding upon Bayer Consumer Care AG unless Bayer Consumer Care AG has agreed to the variations in writing.
- 3.4. Bayer Consumer Care AG shall have the right at any time to request changes to the goods or services supplied, or to the quantities or scope thereof, at any time. The Supplier shall advise Bayer Consumer Care AG if any such changes have cost, timing or other material implications. Insofar as there are such implications, no instructions may be carried out without the prior written consent of Bayer Consumer Care AG.

4. Prices

Unless otherwise agreed, the prices indicated in the order shall be deemed to be fixed prices.

5. Testing

If testing is specified in respect of goods or services to be supplied, the Supplier shall pay all technical costs and any costs associated with its own personnel. Bayer Consumer Care AG shall pay the costs associated with its personnel. The Supplier shall notify Bayer Consumer Care AG not less than one week in advance of the date on which the goods or services will be ready for testing and shall agree with it a date for the tests.

If the goods or services are not presented for testing on this date, any personnel expenses incurred by Bayer Consumer Care AG in connection with the tests shall be payable by the Supplier. If any defects are found in the goods or services which make it necessary to repeat the tests or conduct further tests, the Supplier shall pay any and all technical and personnel costs entailed. The Supplier shall pay all technical and personnel costs that may be due in connection with any certificates that may be required for primary materials.

6. Supply of goods and services and consequences of delay

- 6.1. Goods and services shall be supplied on the agreed delivery date, which shall be deemed to be a set date. If the Supplier fails to deliver on the delivery date it shall thereafter be deemed to be in default.
- 6.2. The Supplier shall inform Bayer Consumer Care AG immediately if it has reason to believe that it will be unable to deliver any or all of the goods or services on the agreed date, indicating the reasons for and likely duration of the delay.
- 6.3. If it has been agreed that liquidated damages shall apply in the event of any delay in delivery, the liquidated damages shall be payable even if the goods or services supplied are accepted unconditionally. The payment of liquidated damages shall not release the Supplier from the contractual obligations applying to it. However, any liquidated damages paid shall be offset against any compensation or damages that may be due.
- 6.4. The Supplier shall only be entitled to claim that Bayer Consumer Care AG has failed to provide documents or parts that it was required to supply if the Supplier requested such documents or parts in good time. In such circumstances, the delivery period shall be extended as appropriate.
- 6.5. If in the event of default of acceptance there is a delay in supplying the goods or services, or it is impossible to supply the goods or services for reasons beyond the Supplier's control, the supply shall be suspended by agreement with Bayer Consumer Care AG. Goods to be supplied shall be stored by the Supplier for the account and at the risk of Bayer Consumer Care AG. The Supplier shall take out adequate insurance cover for such purpose at the expense of Bayer Consumer Care AG.
- 6.6. No subcontractors may be appointed without the prior written consent of Bayer Consumer Care AG. Upon request, the Supplier shall provide evidence to Bayer Consumer Care AG that it has paid in full for any services rendered by a subcontractor, or that appropriate guarantees (bank guarantee/joint and several guarantee) have been obtained. If no such evidence is provided, Bayer Consumer Care AG shall be entitled to withhold payment of the relevant sums due to the Supplier.

7. Shipping requirements

- 7.1. On the day on which the goods are dispatched, the Supplier shall send a detailed dispatch note for each consignment separately from the goods and invoice. A delivery note and packing slip shall be provided with the goods. If the goods are sent by ship, the shipping papers and any invoice shall state the name of the shipping company and of the vessel. The Supplier shall select the most cost-effective method of transport that is best suited to Bayer Consumer Care AG.
The full order reference and point of unloading specified by Bayer Consumer Care AG shall be indicated on all dispatch notes, delivery notes, packing slips, bills of lading, invoices and on the outer packaging etc.
- 7.2. As a general rule, the Supplier shall be responsible for packing, labelling and shipping hazardous products in accordance with the national and international regulations currently in effect. The accompanying documents shall indicate the risk category and any other information that may be required under the rules applying to the relevant method of transport.
- 7.3. The Supplier shall be liable for any loss or damage that may be suffered due to its failure to comply with the applicable rules. It shall also be responsible for ensuring that any subcontractors appointed by it also comply with such rules.

- 7.4. In the event that it is not possible to take delivery of any consignment due to the Supplier's failure to comply with the applicable rules, the goods concerned shall be stored at the Supplier's expense and risk. Bayer Consumer Care AG shall be entitled to ascertain the contents and condition of such consignments. Tools and equipment shall not be shipped together with the goods supplied.

8. Packaging, transport, insurance

- 8.1. Goods shall be properly packaged by the Supplier. The Supplier shall advise Bayer Consumer Care AG in the event that special care should be taken when removing the packaging. A clear and durable label shall be attached to all components of the delivery (order no., position no.).
- 8.2. Unless otherwise agreed the most recent INCOTERMS shall apply.
- 8.3. However, transport insurance shall be arranged by Bayer Consumer Care AG, unless otherwise agreed.

9. Warranties and liability

- 9.1. The Supplier warrants that the goods and/or services supplied are free from defects such as to reduce their value or render them unfit for their intended purpose, have the attributes promised, meet the applicable performance requirements and specifications, and do not vary in any other respect from the provisions of the agreement. Any goods or services supplied shall comply with Swiss legislation, health and safety standards and other rules (e.g. issued by Electrosuisse (Swiss Association for Electrical Engineering, Power and Information Technologies), Swiss Association for Technical Inspections, Swiss Accident Insurance Fund (SUVA)). The Supplier shall be informed of any requirement to comply with specific in-house rules and standards of Bayer Consumer Care AG.
- 9.2. If at any time during the warranty period it becomes evident that the goods or services supplied, or any component thereof, are not as warranted in clause 9.1. through no material fault of Bayer Consumer Care AG, the Supplier shall, at its own expense, rectify the defects onsite, or if it is impossible to do this within a reasonable period of time, supply replacement goods or services that are free from defects. If the Supplier fails to proceed as aforesaid, even though a reasonable period of time has been granted or the situation is particularly urgent, Bayer Consumer Care AG shall be entitled to rectify the defects itself or have them rectified by a third party at the Supplier's expense. Bayer Consumer Care AG shall only pay transport costs and travel expenses in relation to work undertaken in respect of warranties if this has been agreed in writing.
- 9.3. The warranties provided by the Supplier shall also apply to any parts or components supplied by subcontractors.
- 9.4. Unless otherwise agreed, the warranty period shall be 12 months, commencing on the date on which the goods or services are received by Bayer Consumer Care AG. Where a formal acceptance process has been agreed, the warranty period shall commence once the process has been successfully completed. The warranty period applying to goods which are not put into operation immediately upon delivery shall commence on the date on which the goods are put into operation, as notified to the Supplier immediately in writing. In any event, the warranty period shall not exceed 24 months from the date on which the Supplier advised Bayer Consumer Care AG that the goods or services were due to be supplied or the date on which the goods or services were received by Bayer Consumer Care AG.
- 9.5. The warranties applying to goods and services supplied shall apply equally to any replacement goods or services and in respect of any work performed to rectify defects. In all circumstances, such warranties shall expire 24 months after the commencement of the warranty period for the original goods or services supplied and, in the case of work under warranty, at the end of an additional 6-month period following completion of the work.
- 9.6. As an alternative to having defects rectified in accordance with clause 9.2, Bayer Consumer Care AG shall be entitled to a reduction in the purchase price. Bayer Consumer Care AG shall only exercise its right to rescind the agreement if the work undertaken to rectify defects in accordance with clause 9.2. has been unsuccessful even though a reasonable period of time was granted in which to complete such work.
- 9.7. Bayer Consumer Care AG reserves the right to make any claim or exercise any rights permitted by law.
10. **Rescission**
 - 10.1. In the event that the Supplier is in default in respect of either performance or work carried out under warranty and the situation has not been rectified within a reasonable additional period of time, Bayer Consumer Care AG shall be entitled to rescind the agreement and to waive performance.
 - 10.2. If it becomes apparent before performance is due that the Supplier will not supply the goods or services by the date agreed through no fault of Bayer Consumer Care AG and timely performance is deemed to be unlikely, Bayer Consumer Care AG shall be entitled to rescind the agreement prior to the due date and to waive performance.
 - 10.3. Bayer Consumer Care AG shall also be entitled to rescind the agreement with immediate effect and to waive performance if in the course of the Supplier performing its obligations it appears likely that the goods or services will not be fit for purpose, through no fault of Bayer Consumer Care AG, and that the Supplier will be unable to satisfy the requirements for performance as specified in the agreement within a further reasonable period of time.
 - 10.4. Bayer Consumer Care AG reserves the right to make any claim for compensation or damages permitted by law.
 - 10.5. Upon rescission of the agreement, the Supplier shall, at the request of Bayer Consumer Care AG, deliver all results of work, including any plans and calculations.

11. Patent infringement

The Supplier warrants that no third-party patents or proprietary rights are or will be infringed as a result of supplying and using the goods or services. The Supplier shall, at its own expense, indemnify Bayer Consumer Care AG in full from any claims and costs that may result from any infringement of third-party proprietary rights.

12. Assembly

Unless otherwise agreed in writing, any assembly costs shall be included in the prices quoted for the goods or services supplied.

13. Insurance, work permits

- 13.1. The Supplier shall take out and maintain adequate insurance to cover any personal injury, loss or damage that may be caused by it or its employees.
- 13.2. The Supplier shall ensure that any employees who are assigned to work on the premises of Bayer Consumer Care AG hold a valid Swiss work permit.
- 13.3. The Supplier shall insure any machinery and equipment etc. supplied on loan to Bayer Consumer Care AG against the usual risks. Any further liability on the part of Bayer Consumer Care AG in respect of the destruction of or damage caused to such machinery, equipment etc., is hereby excluded, unless such destruction or damage was caused



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deliberately or through gross negligence.

14. Technical documents and operating instructions

Prior to supplying the goods or services, the Supplier shall, upon request, present any technical documents (e.g. blueprints) to Bayer Consumer Care AG for approval. Such approval by Bayer Consumer Care AG shall not relieve the Supplier from its responsibility to ensure functional and technical accuracy and viability. In supplying the goods or services, the Supplier shall provide to Bayer Consumer Care AG free of charge four copies of the final, amended versions of any technical plans, maintenance and operating specifications and lists of replacement parts which may be required for the proper maintenance of the goods or services supplied.

15. Confidentiality

- 15.1. Any information, drawings etc., which may be disclosed or provided to the Supplier by Bayer Consumer Care AG for the purposes of preparing an offer or executing an order, shall be treated as confidential and shall not be used, reproduced or disclosed to third parties for any other purpose. All related proprietary rights shall belong to Bayer Consumer Care AG. Upon request, all documents, including any copies or duplicates, shall be returned immediately to Bayer Consumer Care AG without delay. If no agreement is concluded, the Supplier shall return all documents to Bayer Consumer Care AG without being specifically requested to do so.
- 15.2. Technical documents belonging to the Supplier, or any subcontractor appointed by it, shall be treated as confidential by Bayer Consumer Care AG and shall remain the intellectual property of the Supplier or its subcontractors.

16. Data Privacy

- 16.1 For the purposes of this Section, the definitions set out in Article 4 of Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR") shall apply.
- 16.2 The Supplier shall at any time comply with its obligations under applicable data protection laws (such as the Swiss data protection law and/or the GDPR).
- 16.3 If, during and in connection with the performance of the Contract, the Supplier receives (or obtains access to) personal data or otherwise processes personal data for which data protection laws apply ("privacy relevance"), the parties agree hereby, in good faith, to negotiate any additional data protection arrangements (in particular a data processing agreement) that may be necessary and which are further described in the following paragraphs.
- 16.4 Unless the parties at the time of concluding this Agreement can determine in advance whether the performance of the Agreement will have any privacy implications, Parties hereby agree to review the privacy relevance whenever an existing or a new obligation of the supplier is changed in the context of the contract (e.g. with orders, individual call-offs). In the event that the parties discover privacy relevance as a result of such an evaluation, they proceed as described in clause 16.3.
- 16.5 In any event, the parties shall not commence processing personal data before meeting the requirements set out in this paragraph 16.
- 16.6 Insofar as during the execution of the supply of goods and/or services the Supplier is commissioned with the processing of personal data of the customer and thus is considered as the order processor of the customer, the parties agree that they will negotiate a corresponding contract in good faith, with the object and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the rights and obligations of the parties (contract data processing agreement, "Data Processing Agreement (DPA)").
- 16.7 If such processing on behalf of Bayer Consumer Care AG is subject to the provisions of the GDPR or Swiss data protection law, the DPA must fulfill the mandatory requirements of Art. 28 GDPR.
- 16.8 The Supplier shall take appropriate technical and organizational measures which comply with the applicable data protection laws and which in any case ensure a risk-adequate level of security, taking into account the state of the art, the costs of implementation and the nature, scope, circumstances and the purposes of the processing and the different likelihood and severity of the risk to the rights and freedoms of natural persons.
- 16.9 Insofar as the processing of personal data is governed by the GDPR or Swiss data protection law and to the extent that the parties jointly determine the purposes and means for processing personal data when implementing this contract within the meaning of Art. 26 GDPR, the parties shall determine in a transparent manner who of them fulfills the obligation of the GDPR, in particular as regards the exercise of the rights of the data subject, and who fulfills the information obligations under Articles 13 and 14 GDPR (if and insofar as the respective tasks of the parties have not already been regulated by European Union legislation or the Member States to which those responsible are subject).
- 16.10 The parties hereby agree that they will negotiate in good faith the conclusion of such agreement referred to in this Section, which duly reflects the respective roles and relationships of the parties to the data subjects and which determines a single point of contact for data subjects.
- 16.11 To the extent that Supplier or one of its affiliates or subcontractors receives personal data from the European Economic Area ("EEA") or gains access during the execution of the supply of goods and/or services, Supplier warrants that the processing of personal data will be limited to one Member State European Union, in a State Party to the Agreement on the European Economic Area or in a third country for which the European Commission has established an adequate level of protection, or in compliance with the provisions of paragraphs 16.13 and 16.14 below
- 16.12 Any transfer to any country other than the Member States and countries listed above ("Third Countries") requires the prior consent of Bayer Consumer Care AG in written or electronic form (e.g. e-mail) and compliance with the rules governing the transfer of personal data in Third Countries or international organizations (Articles 44 - 50 GDPR).
- 16.13 If a transfer of personal data to a Third Country requires the provision of adequate safeguards, the parties agree that the preferred safeguard is the conclusion of standard contractual clauses within the meaning of Art. 46 (2) (c) GDPR, as adopted by the European Commission were. The parties hereby agree to negotiate the conclusion of the most recent version of these standard contractual clauses in good faith. The choice of other adequate protective measures is at the sole discretion of Bayer Consumer Care AG.

17. Intellectual property

If any services agreed comprise development or project work, all results of such work, including know-how and all intellectual property rights, shall belong to Bayer Consumer Care AG. The Supplier and its employees shall assist Bayer Consumer Care AG in taking any action that may be required to protect its intellectual property rights and shall sign any documents that may be necessary for such purpose.

18. Additional special Conditions for supply of goods classified as pharmaceutical products, medicinal products / devices, cosmetics or food supplements

- i. The following terms and conditions set forth in this section shall apply for supplies of goods classified as pharmaceutical products, medicinal products / devices, cosmetics or food supplements, and related services to Bayer Consumer Care AG by third parties and form an integral part of the agreement between the Supplier and Bayer Consumer Care AG.
- ii. Bayer Consumer Care AG and the Supplier have signed / shall sign a Quality Assurance Agreement ("QA Agreement"), which defines the functions and responsibilities related to the manufacture of the products in scope of supply. The QA Agreement is an integral part of this terms and conditions.
- iii. To the extent that there is conflict between, or ambiguity relating to these term and conditions and the QA Agreement, the wording of the QA Agreement shall govern as far as the quality, safety or efficacy of the products in scope of the supply are concerned.
- 18.1. Applicable regulations. The supply of products in scope of this Section and related services shall be in compliance with all laws, rules, regulations, and regulatory authority's advisory opinions applicable to the manufacturing, sampling, packing, transportation, marketing, sale and distribution of the products and any and all permits, licenses, filings and certifications required by a regulatory authority for any of Bayer Consumer Care AG and Supplier to perform its obligations hereunder including, but not limited to national or international laws, EU GMP, WHO GMP, US FDA and Health Canada regulation, guidelines and requirements as applicable in the territory where the product is marketed and sold..
- 18.2. The Supplier is expected to organize its business with Bayer Consumer Care AG in line with the Bayer Supplier Code of Conduct (accessible under <http://www.bayer.com/en/SUPPLIER-management.aspx>) as updated from time to time. Supplier commits to execute Ecovadis assessment at his own cost, if required so by Bayer Consumer Care AG.
- 18.3. Bayer Consumer Care AG shall have the right, after having given written notice to Supplier at least thirty (30) working days prior to the respective date, to audit Supplier, including but not limited to quality management and the sustainability performance of the Supplier, either by assessment (online, paper questionnaire, etc.) to be answered by Supplier within a reasonable period of time or by an onsite audit during normal business hours, executed directly by Bayer Consumer Care AG or a third party. The scope of the audit will be GMP- / Quality- and EHS-relevant topics.
- 18.4. Specification. The supply of the product shall always be in compliance with the specifications as defined in the Quality Dossier as approved by the relevant regulatory authorities, i.e. any governmental regulatory authority involved in granting approvals for the manufacturing, marketing, sale, reimbursement and/or pricing of the products in the country where the products are sold.
- 18.5. Prices. Unless otherwise agreed, the prices indicated in the order shall be deemed to be fixed. No automatic price adjustment or indexation is applicable. Inflation does not entail automatically to any adjustment of price. Unless otherwise agreed, the prices are full service prices per unit of the products. The price shall be calculated as the sum of quality control, ongoing stability/product quality review (PQR) costs, conversion fee, raw materials cost, the invest cost (if applicable) and packaging material cost, whereas the conversion fee includes but is not limited to all related Supplier direct and indirect costs, overhead, handling fees and profit, and whereas raw material costs reflect actual sourcing costs of excipients and all other input materials required for the manufacturing of the products.
- 18.6. Delivery terms are specified in the purchase order and shall be in accordance to Incoterms 2010. If responsibility of transportation is with Supplier, Supplier shall enter into a service agreement with the logistics service provider. Transportation costs shall be charged separately from the unit price per shipment and purchase order number. Supplier's invoice shall not be attached to the goods, invoice shall be sent separately to Bayer Consumer Care AG.
- 18.7. Goods need to be transported under controlled conditions as specified in the QA Agreement. When needed, data loggers and thermo blankets are provided by Bayer Consumer Care AG to the Suppliers, free of charge. Supplier shall handle, store and add data loggers and thermo blankets to the shipments as specified in the QA Agreement. Airfreight is organized by Bayer Consumer Care AG only in exceptional cases and the associated costs shall be borne by Bayer Consumer Care AG, unless this is required due to delivery delays vs. agreed, caused by Supplier, in which case the associated costs have to be considered included in the Price.

19. Publicity material

No reference may be made to the business relationship with Bayer Consumer Care AG in any information or publicity material without its express prior written consent.

20. Billing and payment

- 20.1. Invoices shall display the same wording, sequence and prices stated in the order.
- 20.2. Unless otherwise agreed, invoices received by Bayer, shall be paid 60 days after the invoice was received. In any event the invoices will not be paid earlier than the date of delivery and/or acceptance of the goods or services supplied. Any claims or sums owed may be set off against the amounts charged.
- Any payments made by bank transfer shall be deemed to have been made once the debtor has given its bank a transfer order, which is covered by sufficient funds, to transfer the amount owed to the Supplier.
- 20.3. Payment does not constitute acknowledgement of any terms and conditions or prices. The timing of payments shall not affect any warranties made by the Supplier or the right to make a complaint.

21. Force majeure

- 21.1. The parties to the agreement shall not be liable in respect of any failure to perform their obligations by reason of circumstances amounting to force majeure. An event of force majeure means any circumstances arising after the agreement is concluded which were unforeseeable and are beyond the control of the parties.
- 21.2. Any party claiming force majeure shall inform the other party immediately of the occurrence of the event and its likely duration, failing which it shall not be entitled to claim force majeure.

22. Applicable law and place of jurisdiction

- 22.1. This agreement shall be governed by and construed in accordance with Swiss law. Conflict of laws rules and the harmonized United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 22.2. Basel shall be the exclusive place of jurisdiction.



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As of January 2019

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