

General Conditions of Purchase of Bayer (Schweiz) AG

1. Exclusive validity

- 1.1. The following terms and conditions shall be generally valid for goods supplied and other services provided by third parties to Bayer (Schweiz) AG (hereinafter Bayer) and form an integral part of the contract between the service provider and Bayer.
- 1.2. Any differing or supplementary conditions, in particular the General Contractual Terms and Conditions of the service provider, shall only apply if expressly so agreed in writing.

2. Tenders

- 2.1. Tenders made by service providers shall generally be at no cost to Bayer. Any remuneration involved shall be subject to prior agreement. If no other validity period is stipulated in writing, tenders shall be binding for 90 days.

3. Acceptance (orders)

- 3.1. Acceptance of a tender by Bayer shall be binding only if such acceptance is in writing.
- 3.2. If acceptance by Bayer is subject to conditions not contained in the tender, then the contract shall only be concluded once the service provider has signalled his consent to the differing conditions by way of order confirmation.
- 3.3. If an order confirmation deviates from the declaration of acceptance in significant respects, in particular with regard to price, deadlines or performance, Bayer shall be bound by the declaration of acceptance only if it declares in writing that it consents to the differing conditions.
- 3.4. Bayer has the right to dictate changes to the nature and/or scope of the services rendered by the service provider at any time. The service provider shall inform Bayer of the potential impact of such changes on costs or deadlines or any other major consequences. The execution of instructions involving any such effects shall require the prior approval of Bayer in writing.

4. Prices

- 4.1. Unless otherwise agreed, the prices agreed in the order shall be fixed prices.

5. Inspections

- 5.1. If the delivered goods are to be inspected, the supplier shall bear the cost of the technical inspection and the cost of his own inspection personnel. Bayer shall bear his own personnel inspection costs. The supplier shall give Bayer at least one week's legally binding notice that the goods are ready for inspection and shall agree an inspection time with Bayer. If the goods to be inspected are not produced at the appointed time, the personnel inspection costs of Bayer shall be borne by the supplier. If defects are found that necessitate repeat or further inspections, the supplier shall bear all the technical and personnel costs incurred. The supplier shall bear all technical and personnel costs in connection with any material certificates required for primary materials.

6. Provision of services and consequences of delays

- 6.1. Delivery shall be due on the agreed delivery date, which shall be deemed a fixed date. If the service provider fails to deliver by the agreed date, he shall be in default when the deadline expires.
- 6.2. If the service provider has cause to believe that part or all of the delivery cannot be made within the agreed time, the provider must immediately inform Bayer, stating the reasons for and likely length of the delay.
- 6.3. If it has been agreed that a delay in delivery will incur a contractual penalty, such penalty shall also apply if the service delivered has been unconditionally accepted. The contractual penalty shall not release the service provider from the applicable contractual obligations; but this penalty shall be taken into account in the event of any compensation for damages.
- 6.4. The service provider shall only be entitled to invoke a failure on the part of Bayer to supply parts or documents that are required if the service provider has requested them in good time. In such cases, the delivery deadline shall then be extended as appropriate.
- 6.5. In the event of a delay in acceptance or if service is delayed or prevented for reasons beyond the service provider's control, the provision of the service shall be suspended after consultation with Bayer. Goods to be supplied shall be stored by the service provider on account and at the risk of Bayer. In so doing, the service provider shall take out suitable insurance cover at the expense of Bayer.
- 6.6. The involvement of subcontractors shall require the prior written approval of Bayer. At the request of Bayer the service provider shall demonstrate that the services rendered by the subcontractor have been paid in full or that suitable sureties (bank guarantee/joint and several guarantee) have been obtained. Failing this, Bayer shall be entitled to withhold the corresponding amounts from payments to the service provider.

7. Shipping regulations

- 7.1. For each individual shipment, the supplier shall send a detailed dispatch advice, separately from the goods and the invoice, on the day of shipment. Delivery note and packing slip must be enclosed with the delivery. In the event of shipment by sea, the dispatch documents and invoices shall include the names of the ship owners and the vessel. The supplier shall select the means of transport most appropriate and most favourable to Bayer who placed the order.
The order references and information on the unloading point as specified by Bayer shall be indicated in full on all dispatch advices, delivery notes, packing slips, consignment notes, invoices, external packaging and so on.
- 7.2. In principle the supplier shall be responsible for packaging, labelling and shipping hazardous products in accordance with national and international regulations. The accompanying documents must indicate the hazard class and all other information required by the relevant shipping regulations.
- 7.3. The supplier shall be liable for all damages and costs incurred as a result of failure to comply with said regulations. He shall also be responsible for ensuring compliance with these shipping regulations by his subcontractors.
- 7.4. All shipments that cannot be accepted as a result of failure to comply with these regulations shall be stored at the supplier's risk and expense. Bayer shall be entitled to ascertain the content and condition of such shipments. Work tools and equipment shall not be shipped together with delivery items.

8. Packaging, transport, insurance

- 8.1. Goods supplied shall be correctly packaged by the service provider. If the removal of packaging requires particular care, the service provider must inform Bayer accordingly. All parts of the delivery shall be clearly and durably labelled (order no., item no.).

- 8.2. Barring instructions to the contrary, the most recent INCOTERMS shall apply.
- 8.3. Unless otherwise agreed, the transport insurance shall be concluded by Bayer.

9. Warranty and liability

- 9.1. The service provider shall guarantee that the goods supplied contain no defects which compromise their value or their suitability for the stated purpose, possess the guaranteed characteristics, conform to the required performance criteria and specifications and do not otherwise deviate from the contract. The goods supplied must comply with all relevant Swiss legislation, accident prevention regulations and other applicable norms (e.g. SEV, SVTI or SUVA). If there is a need to comply with special in-house rules and standards, Bayer shall inform the service provider accordingly in the order document.
- 9.2. If during the warranty period it is revealed that the goods supplied or parts thereof do not fulfil the warranty as per section 9.1. through no significant fault of Bayer, the service provider shall rectify the defects on the spot at his own expense or, should this be impossible within a reasonable period, supply non-defective goods by way of replacement. If the service provider fails to do so despite being allowed a reasonable period of time or if the situation is particularly urgent, Bayer shall be entitled to rectify the defects itself or have them rectified by a third party at the service provider's expense. Transport costs and travel expenses in connection with works covered by warranty shall only be borne by Bayer if so agreed in writing.
- 9.3. The warranty provided by the service provider shall also cover parts supplied by subcontractors.
- 9.4. Unless otherwise agreed, the warranty period shall be 12 months. It shall commence on receipt of the goods or services by Bayer. Where a formal inspection has been agreed, the warranty period shall commence on successful completion of the inspection. In the case of goods supplied which are not taken into commission immediately following delivery, the warranty period shall commence on the date such goods are taken into commission, which must be notified to the supplier immediately in writing. In any event, however, the warranty period shall last no longer than 24 months from the date on which the service provider notified its readiness to provide the service or the date on which such notification was received by Bayer.
- 9.5. Work carried out and goods supplied by way of replacement or improvement shall be covered by warranty just as the original goods and services are. This warranty shall expire 24 months after commencement of the warranty period for the original goods or services and 6 months after completion of the work under warranty.
- 9.6. As an alternative to improvement work as per section 9.2., Bayer may demand a reduction in the purchase price.
Bayer shall demand annulment of the sale only if the improvement as per section 9.2., paragraph 1, has not resulted in a successful outcome within a reasonable period.
- 9.7. The right for further claims remains reserved.
10. **Rescission**
- 10.1. If the service provider is in default in respect of either performance or warranty and the situation has not been rectified within a reasonable period of time, Bayer shall be entitled to terminate the contract and to waive performance.
- 10.2. If it becomes apparent even before performance is due that the service provider will fail to meet the deadline through no fault of our own and there is no prospect of a punctual performance, Bayer may withdraw from the contract even before the due date and waive performance.
- 10.3. If during the course of the service provision it emerges that the goods supplied will very likely be unsuitable through no fault of Bayer and that the service provider will not manage to satisfy the requirements specified in the contract within a reasonable timeframe, Bayer may likewise withdraw from the contract with immediate effect and waive performance.
- 10.4. All rights to damages under the law remain reserved.
- 10.5. In the event of rescission of the contract, the service provider shall hand over all results of the work including all plans and calculations to Bayer on request.

11. Infringement of patents

- 11.1. The service provider shall guarantee that the provision and use of the goods and services offered do not in any way infringe the patents or intellectual property rights of third parties. The service provider shall release Bayer fully and at the service provider's own expense from all claims for any infringements of intellectual property rights of third parties and costs arising out of said claims.

12. Assembly

- 12.1. Unless otherwise agreed in writing, any assembly costs shall be included in the prices indicated for goods and services provided.

13. Insurance, work permits

- 13.1. The service provider shall maintain sufficient insurance to cover any personal injuries or damage caused by the service provider or his employees.
- 13.2. The service provider shall ensure that non-Swiss employees assigned to work at the Bayer site are in possession of a valid permit for gainful employment in Switzerland.
- 13.3. Machinery and equipment loaned to Bayer shall be insured by the latter against the usual risks. Above and beyond this, Bayer shall bear no liability for damage or destruction of machinery and equipment loaned to it, except in cases of wilful or gross negligence.

14. Execution documents and operating instructions

- 14.1. Before the commencement of work, execution documents (e.g. drawings) shall be presented on request to Bayer for approval. Such approval by Bayer shall not release the service provider from his responsibility to ensure functional accuracy and feasibility. Four copies each of the definitive adjusted execution plans, maintenance and operating instructions and spare parts lists required for the proper maintenance of the goods supplied shall be provided to Bayer at no cost in the course of service provision.

15. Confidentiality

- 15.1. All information, plans and drawings, etc. that Bayer makes available to the service provider for the purpose of drawing up a tender or executing an order shall be treated in strict confidentiality and shall not be used for other purposes, duplicated or made available to third parties. Any intellectual property rights deriving therefrom shall belong to Bayer. On request, all documentation, including all copies and duplicates, shall be surrendered to Bayer without delay.
If a contract is not concluded, the service provider shall return all documentation to Bayer unsolicited.

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15.2 Technical documents of the service provider and his subcontractors shall be treated in confidence by Bayer. They remain the intellectual property of the service provider or his subcontractors.

16. Intellectual property

16.1 If the services agreed upon constitute development or project work, the results of the work, associated know-how and all intellectual property rights shall belong to Bayer. The service provider and his employees shall support the efforts of Bayer to protect its intellectual property rights and shall sign the documents necessary for this.

17. Publicity material

17.1 No reference may be made to the commercial relationship with us in information or publicity material without the express written approval of Bayer.

18. Billing and payment

18.1 Invoices must conform to the wording, text sequence and prices of the order document.
18.2 Unless otherwise agreed, payment shall be made within 60 days of receipt of the invoice, but at all events not before delivery and/or acceptance of the goods or services supplied. We reserve the right to set off invoices against counterclaims. Any payment by bank transfer shall be deemed to be made as soon as the debtor instructs his bank to effect the transfer to the supplier and provided the balance on the account is sufficient to cover such a transfer.
18.3 Payment does not constitute acknowledgement of conditions and prices. The time of the payment has no bearing on the supplier's warranty or on the right to make a complaint.

19. Force majeure

19.1 The contracting parties shall not be liable for failure to fulfil contractual obligations as a result of circumstances amounting to *force majeure*. The term *force majeure* shall here denote circumstances arising after conclusion of the contract which were unforeseeable and beyond the control of the contracting parties.
19.2 The contracting party who invokes *force majeure* shall inform the other party immediately of its occurrence and likely duration. In case the party concerned fails to inform the other party as described before it cannot invoke *force majeure*.

20. Applicable law and venue

20.1 This contract is subject to Swiss law to the exclusion of any conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods.
20.2 Venue shall be Zürich.

Last revised: June 2015