



## **Bayer East Africa Standard Terms and Conditions of Purchase**

**Unless otherwise agreed in writing by an authorized Bayer representative, all orders are placed and are deemed to be accepted subject to the following conditions.**

These conditions together with any special condition of purchase agreed to in writing by the parties shall constitute the entire agreement between the parties for the supply of the goods (the "Goods") and any services (the "Services") and shall supersede any provisions incorporated or referred to in the Seller's quotation, sales literature, and acknowledgement of order or elsewhere.

### **1 Purchase Orders**

The Buyer will not be bound by any order unless it is placed on the Buyer's official order form and shall be entitled to cancel any order which is not accepted by the Seller within seven days from the date of the order form.

### **2 Price**

The price shall be inclusive of delivery and packaging materials and any expenses incurred, but exclusive of all taxes, duties, royalties or other payments due to Government Authorities or other third parties unless it is expressly agreed in writing that such payments are included in the price.

### **3 Terms of Payment**

For invoices dated before the 16th of the month, payment will be made on the second day of the second month following. For invoices dated on or after the 16th of the month, payment will be made on the 16th day of the second month following. The Buyer reserves the right to set off any payment due to the Seller against sums in respect of which the Seller may be in default to the Buyer.

### **4 Property and Risk**

Title to the Goods shall pass to the Buyer on delivery or, if earlier, on payment for the Goods to the Seller (without prejudice to any right of rejection by the Buyer) and risk in them shall pass to the Buyer upon delivery at the point of delivery stated in the order.

Any information (including but not limited to concepts, methodologies, drawings, standards, guidelines, specifications, formulations, and other information or documents) ("Information") prepared by the Seller in connection with the manufacture of the Goods and/or supply of the Services or otherwise under instruction from the

Buyer shall be the property of the Buyer. The Seller hereby assigns to the Buyer with full title guarantee all copyright, design right and any other intellectual property rights relating to such Information for no further consideration and subject only to the payment of the price of the relevant Goods and/or Services. The Seller undertakes to do all further acts as reasonably necessary in order to assign the ownership of such intellectual property rights to the Buyer.

## **5 Delivery and Performance**

The order is placed on the understanding that deliveries and/or performance will be provided strictly in accordance with the Buyer's requirements as stated in the order or in any agreed delivery or performance schedule and the Seller accepts that, where specified by the Buyer, time is of the essence. The Buyer reserves the right to refuse acceptance of goods which are supplied in excess of the Buyer's requirements as stated in the order and the Buyer accepts no liability for such goods. Such excess goods may be returned at the Seller's risk and expense. For the avoidance of doubt where it is agreed that the Seller shall unload the Goods on the Buyer's site, such activity will be construed as Services for the purpose of the order. The Buyer shall not be deemed to have accepted any Goods until the Buyer has had a reasonable period to inspect them.

## **6 Quality and Description**

- (a) The Goods shall conform as to quality, description and specification with the particulars specified by the Buyer and shall be of sound materials and workmanship. If the purpose for which the Goods are required has been indicated by the Buyer, either expressly or by implication then the Goods shall be fit for that purpose.
- (b) The Seller warrants that the design, construction, composition and quality of Goods shall comply in all respects with all relevant requirements of any statute, statutory instrument or regulation in force at the date of delivery, and that the Goods will conform to any trade description applied to them by the Seller.
- (c) The Seller further warrants that Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- (d) Without prejudice to its other rights the Buyer reserves the right to reject any Goods or Services supplied which fail to comply with the foregoing conditions. Upon notification or rejection by the Buyer, rejected Goods shall be returned to the Seller at the Seller's expense and the Seller shall within time acceptable to the Buyer, at the Buyer's sole option, either supply replacement Goods or Services in accordance with the order or return the purchase price.

## **7 Insurance**

The Seller shall maintain at its own cost a policy of insurance to cover the liability of the Seller in respect of any act or default for which it may become liable and to indemnify the Buyer under the terms of this Agreement.

## **8 Indemnity**

The Seller shall indemnify and keep indemnified the Buyer from and against any and all loss damage or liability (whether criminal or civil) suffered, and legal fees and

costs incurred, by the Buyer resulting from breach of the terms of the order by the Seller including, but not limited to:-

- (a) any act or neglect of the Seller's employees, agents or subcontractors.
- (b) breaches in respect of any matters arising from the supply of Services resulting in any successful claim by any third party.
- (c) breach of any warranty given by the Seller in relation to the Goods or the Services.
- (d) any liability under the Consumer Protection Act 2012 as amended or re-enacted from time to time in respect of Goods.

## **9 Health and Safety**

- (a) The Seller shall take all reasonable precautions to ensure the health and safety of its and the Buyer's employees while on the Buyer's premises and, without prejudice to the generality of the foregoing, shall provide all Health and Safety Data Sheets as may be required to be provided to comply with all statutory requirements.
- (b) The Buyer shall not be liable to the Seller in any civil proceedings brought against the Seller under any Health and Safety Regulations made pursuant to the Occupational Health and Safety at Work etc. Act 2007 as amended or re-enacted from time to time, where such exclusion of liability is permitted by law.
- (c) The Seller shall indemnify and keep indemnified the Buyer in respect of any liability, monetary penalty or fine in respect of or in connection with the goods or services incurred directly or indirectly by the Buyer under the Occupational Health and Safety at Work Act 2007 as amended or re-enacted from time to time and/or Regulations, orders, directions or Codes of Practice made thereunder arising or resulting from the Seller's default.

## **10 Cancellation**

- (a) In the event of non-performance or under-performance of Services or of non-delivery of the whole or any part of the Goods within the period stated in the order or, if no period is stated, within three months, the Buyer shall have the right to cancel the order or the part then undelivered or not performed without prejudice to any claim which the Buyer may have arising out of such non-delivery, non-performance or otherwise.
- (b) The Buyer is entitled to cancel any undelivered or non-performed part of this order forthwith by notice given to the Seller in writing, by fax or email, if the Seller makes any assignment for the benefit of creditors or if a receiver or administrator is appointed in respect of all or substantially all of the Seller's property or if the Seller becomes insolvent or goes into liquidation (except for the purposes of amalgamation or reconstruction).

## **11 Force Majeure**

Either party may totally or partially cancel an order or delay delivery or performance during any period which:-

- (a) its performance is prevented or hindered by circumstances beyond its reasonable control including but not limited to requisitions by Government Authority, war, strike, lock-out, plant break-down, unavailability of raw materials, riots, disease, Act of God, storm, failure of public utilities or common carrier, or
  
- (b) the need to comply with legislation or reasonably anticipated legislation has the effect of preventing or hindering the free manufacture, sale, delivery, use or supply of the Goods or Services or of materials to be made by the Buyer from or incorporating the Goods.

## **12 Packing**

The Seller shall provide suitable containers and/or packing materials for the sale, delivery and reasonable storage of Goods supplied, all such containers and packaging to comply with any requirements in force at the time of delivery. Where it has been agreed that such containers and packing materials are returnable and charged for, their cost is to be credited in full when they are returned. Such return (to the point specified by the Seller) to be at the Seller's expense.

## **13 Hazardous Goods**

In addition to providing any Health and Safety Data Sheets which may be required in terms of Clause 9 hereof, the Seller must ensure that hazardous Goods have prominent and suitable warnings on all containers, packages and documents and such markings shall comply with statutory requirements. Without prejudice to the generality of the foregoing the Seller will comply with The Classification, Packaging and Labelling of Dangerous Substances Regulations and, if appropriate, such international Codes of Regulations which may from time to time apply.

## **14 Non-Assignment**

All orders are placed on the understanding that the Seller has the capacity to supply the Goods and/or Services. The Seller shall not sub-contract or assign this order without the Buyer's written consent.

## **15 Patent Rights**

The Seller shall indemnify the Buyer against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement or any patent, trade mark or registered design or other intellectual property rights whether in the Republic of Kenya or elsewhere resulting from the use of or resale of any Goods or Services.

## **16 Confidentiality**

- (a) The Seller undertakes on behalf of itself, its employees, agents and sub-contractors (if any) to treat all Information obtained as a result of fulfilling the order regarding the business, products, operations and organization of the Buyer as confidential.

- (b) All Information supplied by the Buyer to the Seller shall remain the exclusive property of the Buyer, but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer.
- (c) The Seller shall use the Information referred to in paragraphs 16(a) and (b) above solely for the manufacture of the Goods and/or supply of the Services and shall not copy or make available any such Information to any third party.

### **17 Safety and Security**

- (a) The Seller undertakes on behalf of itself, its employees, agents and sub-contractors (if any) to comply with all site safety and security instructions notified to it by the Buyer or persons acting on the Buyer's behalf.
- (b) The Buyer's security staff have been instructed to notify all personnel entering our sites of its current security procedures which may result in additional checks being made whilst they are on site. The Seller shall ensure this information is passed to the appropriate staff, subsidiary companies, hauliers e.t.c who need to be made aware of the situation.

### **18 Supplier Code of Conduct**

The supplier is expected to organize its business with Bayer in line with the Bayer Supplier Code of Conduct (<http://www.supplier-code-of-conduct.bayer.com>). Bayer shall have the right to audit the sustainability performance of the supplier, either by assessment (online, paper, questionnaire, e.t.c) or by an onsite audit, executed directly by Bayer or by a third party. The sustainability performance will be evaluated by comparing it with the Bayer Supplier Code of Conduct principles.

### **19 Applicable Law**

These terms and conditions and the order generally shall be governed in all respects by the Kenyan Law and all disputes arising from it shall be subject to the exclusive jurisdiction of Kenya Courts.

Effective Date: **1<sup>st</sup> May 2019**