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 additional terms and conditions, and 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, such statement of acceptance shall not be binding upon Bayer Consumer Care AG unless Bayer Consumer Care AG has agreed to the variation in writing.

3.4. Bayer Consumer Care AG shall have the right at any time to request changes to the method of transport.

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 and personnel costs associated with its own personnel. Bayer Consumer Care AG shall pay the costs associated with its personnel.

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 the dispatch 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 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 all and any 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.

6.4. The Supplier shall notify 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.

6.5. If it has been agreed that liquidated damages shall apply in the event of any delay in delivering products in accordance with the national and international regulations in force at the time, the Supplier shall pay the liquidated damages to Bayer Consumer Care AG for all transport, insurance and 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.

6.6. Goods and services shall be supplied on the agreed delivery date, which shall be deemed to be the dispatch date. If the Supplier fails to deliver on the delivery date it shall thereafter be deemed to be in default.

6.7. Bayer Consumer Care AG shall be entitled to reject the goods or services supplied or any part of them if they are not in accordance with the order.

6.8. Bayer Consumer Care AG shall be entitled to rescind the agreement if the Supplier shall fail to comply with the applicable rules. Bayer Consumer Care AG shall be entitled to rescind the agreement if the Supplier cannot comply with the applicable rules.

6.9. The warranties provided by the Supplier shall also apply to any parts or components supplied by subcontractors.

6.10. Bayer Consumer Care AG reserves the right to make any claim or exercise any rights permitted by law.

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.

10.3. Bayer Consumer Care AG shall be entitled to rescind the agreement with immediate effect and to waive performance if the course of the Supplier’s performance for the 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 not be entitled to satisfy the requirements for the performance of the obligations without delay.

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 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. Bayer Consumer Care AG shall take out and maintain adequate insurance to cover any personal injury, property damage and other liabilities that may be caused to Bayer Consumer Care AG 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 are properly insured.

13.3. The Supplier shall insure any machinery and equipment supplied to Bayer Consumer Care AG.

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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 instructions 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 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

The following provisions on data privacy apply, insofar as personal data is processed by the contracting parties which is relevant pursuant to the applicable data privacy legislation.

16.1. The contracting parties are aware of the fact that concluding and performing the Agreement between the contracting parties may result in the processing of personal data in general and the contact details of the other contracting party and its contact persons in particular. The personal data exchanged in the context of this Agreement shall only be accessed, used, copied, disclosed or otherwise processed by the contracting parties and their affiliated companies to the extent required for managing the business relationship and providing the services under this Agreement. The personal data exchanged in the context of this Agreement 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, unless this is required due to legal requirements.

16.2. The service provider also undertakes to immediately report any security incidents to Bayer Consumer Care AG in the context of its business activities and in order to fulfil the purposes specified here to pass auxiliary 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 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.

16.3. Where the processing of personal data received from Bayer Consumer Care AG in the context of this Agreement is concerned, the service provider undertakes to adhere to the applicable data privacy legislation, including the Swiss Data Protection Act and the EU’s General Data Protection Regulation, to the extent applicable. Bayer Consumer Care AG may in particular exchange contact data of employees, agents, directors, representatives and other persons acting in the name of Bayer Consumer Care AG, in order to enable the service provider to contact Bayer, to meet its obligations under this Agreement and to perform the services under this Agreement in some other way. The service provider shall act as an independent contractor.

16.4. Insofar as Bayer Consumer Care AG intends to commission the service provider over and above the services to process personal data (order processing), the contracting parties agree to conclude any additional data privacy agreements (in particular a data processing agreement) in line with the provisions of the applicable data privacy legislation.

16.5. If the service provider or one of its affiliated companies or subcontractors is in the context of its business activities and in order to fulfill the purposes specified here to pass personal data to third parties, including other Group companies, service providers, suppliers or other business partners or collection agencies, it shall do so exclusively if required in order to fulfill the purposes specified here and, insofar as said third parties have their registered office outside of Switzerland or the European Economic Area, under the conditions and the QA Agreement. Bayer Consumer Care AG shall provide the 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, overheads and associated costs. Bayer Consumer Care AG shall not be responsible for any of the third parties and the associated costs shall be borne by Bayer Consumer Care AG, unless this is required due to unforeseeable and are beyond the control of the parties.

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

18.1. The following terms and conditions set forth in this section 17 shall apply for supplies of goods classified as pharmaceutical products, medicinal products / devices, cosmetics or foods for Bayer Consumer Care AG and shall form an integral part of the agreement between the Supplier and Bayer Consumer Care AG.

18.2. 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 supply of the products in scope of supply. The QA Agreement is an integral part of these terms and conditions.

18.3. In the event that there is conflict between, or ambiguity relating to these terms 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.

18.4. The supply of products in scope of this Section 17 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 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.

18.5. 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 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, overheads and associated costs. Bayer Consumer Care AG shall not be responsible for any of the third parties and the associated costs shall be borne by Bayer Consumer Care AG, unless this is required due to unforeseeable and are beyond the control of the parties.

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 price agreement with the service provider. Supplier shall not charge 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 or the logistics service provider. Additional customs fees of exipients and all other input materials required for the manufacturing of the products.

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. 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.

20.2. 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 includes an unforeseeable and are beyond the control of the parties.

22. Applicable law and place of jurisdiction

22.1. This agreement shall be governed by and construed in accordance with Swiss law. Contracts 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.

As of March 2020

Bayer Consumer Care AG
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