General Terms and Conditions of Bayer CropScience Schweiz AG

1. Sole application
1.1. The terms and conditions set forth below apply generally to supplies of goods and services rendered to Bayer CropScience Schweiz AG by third parties and form an integral part of the agreement between the Supplier and Bayer CropScience Schweiz AG.

1.2. Any 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 CropScience Schweiz 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 CropScience Schweiz AG shall not be binding unless the offer has been accepted in writing.

3.2. If Bayer CropScience Schweiz 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, the Supplier shall be bound to the difference in respect of the acceptance. The Supplier shall not be bound by any unconfirmed or erroneous statements of the order. 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.

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 CropScience Schweiz 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 a set date. If the Supplier fails to deliver on the delivery date it shall thereafter be deemed to be in default.

6.2. If the Supplier shall fail to deliver, the Supplier shall be liable for liquidated damages that 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. Any liquidated damages paid shall be offset against any compensation or damages that may be due.

6.3. The Supplier shall only be entitled to claim that Bayer CropScience Schweiz AG has failed to perform its obligations or parts of it that 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.

6.4. 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 CropScience Schweiz AG. Goods to be supplied shall be stored by the Supplier for the account and at the risk of Bayer CropScience Schweiz AG. The Supplier shall take out insurance in respect of the risks it may incur in such a case.

6.5. No subcontractors may be appointed without the prior written consent of Bayer CropScience Schweiz AG. The full order reference and point of unloading specified by Bayer CropScience Schweiz AG shall be binding in all dispatches, delivery notes, packing slips, bills of lading, invoices and on the packaging etc.

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 services. A delivery note and packing list shall be signed in accordance with the rules applicable to goods and services. The delivery note and packing list shall be signed in accordance with the rules applicable to goods and services. The delivery note shall be made out in accordance with the rules applicable to goods and services. The delivery note shall be made out in accordance with the rules applicable to goods and services.

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 costs incurred are borne by the Supplier.

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 costs and expenses incurred by the Supplier’s expense and risk. Bayer CropScience Schweiz AG shall be entitled to ascertain the contents and condition of such consignments. Tools and equipment shall not be shipped together with the goods involved.

8. Packaging, transport, insurance
8.1. Goods shall be properly packed by the Supplier. The Supplier shall advise Bayer CropScience Schweiz 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 CropScience Schweiz 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 violate any other respect to the provisions of the agreement. Bayer CropScience Schweiz AG shall be entitled to request changes to any such changes in the event of any other material implications. Insofar as there are such implications, no instructions may be carried out without the prior written consent of Bayer CropScience Schweiz 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., the Supplier’s obligations shall commence once the process has been successfully completed. The warranty period applies 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 CropScience Schweiz AG that the goods or services were due to be supplied or the date on which the goods or services were received by Bayer CropScience Schweiz AG.

9.3. The warranties applying to goods and services supplied shall apply equally to any replacement parts or components supplied by subcontractors.

9.4. Unless otherwise agreed, the warranty shall be 12 months, commencing on the date on which the goods or services are received by Bayer CropScience Schweiz AG. Within a formal acceptance process has been agreed, the warranty period shall commence once the process has been successfully completed. The warranty period applies 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 CropScience Schweiz AG that the goods or services were due to be supplied or the date on which the goods or services were received by Bayer CropScience Schweiz AG.

9.5. The warranties applying to goods and services supplied shall apply equally to any replacement parts or components in respect of any work performed to rectify defects. In all circumstances, such warranties shall expire 24 months after the expiry of the warranty period for the original goods or services supplied and, in the case of work undertaken in respect of warranties if this has been agreed in writing.

9.6. As an alternative to having defects rectified in accordance with clause 9.2., the Supplier may request that the goods or services supplied, or any component thereof, are not as warranted in clause 9.1. through no material fault of Bayer CropScience Schweiz 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. The Supplier shall be entitled to rescind the agreement with Bayer CropScience Schweiz 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.

9.7. Bayer CropScience Schweiz 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 Supplier is not willing to be bound by an additional reasonable period of time, Bayer CropScience Schweiz 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 CropScience Schweiz AG and timely performance is deemed to be unlikely, Bayer CropScience Schweiz AG shall be entitled to rescind the agreement prior to the due date and to waive performance.

10.3. Bayer CropScience Schweiz AG shall also be entitled to rescind the agreement with immediate effect and to waive the performance of the agreement if the Supplier’s performance of its obligations appears likely that the goods or services will not be fit for purpose, through no fault of Bayer CropScience Schweiz 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 CropScience Schweiz 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 CropScience Schweiz 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 CropScience Schweiz AG 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 CropScience Schweiz AG hold a valid Swiss work permit.
13. The Supplier shall insure any machinery and equipment etc. supplied on loan to Bayer CropScience Schweiz AG against the usual risks. Any further liability on the part of Bayer CropScience Schweiz 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 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 CropScience Schweiz AG for approval. Such approval by Bayer CropScience Schweiz 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 CropScience Schweiz 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 CropScience Schweiz 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 CropScience Schweiz AG. Upon request, all documents, including any copies or duplicates, shall be returned immediately to Bayer CropScience Schweiz AG without delay. If no agreement is concluded, the Supplier shall return all documents to Bayer CropScience Schweiz 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 CropScience Schweiz 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 in the context of this Agreement, kept in the strictest confidence and securely stored for the term of the Agreement and if legally required – beyond the termination date by implementing appropriate technical and organizational measures.

16.2. The service provider also undertakes to immediately report any security incidents to Bayer CropScience Schweiz AG. privacy.ch@bayer.com as soon as they become aware of them and to return, delete or destroy personal data at Bayer CropScience Schweiz AG’s request on termination of this Agreement. Bayer CropScience Schweiz AG shall have the right to verify compliance with the obligations specified in this Agreement and the applicable legislation.

16.3. Where the processing of personal data received from Bayer CropScience Schweiz 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 CropScience Schweiz AG may in particular exchange contact data of employees, agents, directors, representatives and other persons acting in the name of Bayer CropScience Schweiz 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 CropScience Schweiz AG intends to commission the service provider over and above this 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 intends in the context of its business activities and in order to fulfil the purposes specified here to pass on 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 fulfil the purposes specified here and, insofar as said third parties have their registered office outside of Switzerland or the European Economic Area, under the application of appropriate security measures aimed at protecting said personal data, including the conclusion of approved, standard EU contractual clauses in compliance with the applicable data privacy legislation.

16.6. The contact persons shall have the following rights to the extent provided for by the legislation applicable to them:
Contact persons whose personal data is processed can – within the scope of the law applicable to them – request the processing on their personal data and request that it be corrected, limited or deleted, or object to the further processing of their data. Insofar as the processing of the personal data is based on consent of the contact persons, they shall have the right to withdraw their consent at any time. Under certain circumstances, they shall also have the right to data portability. Over and above this, the contact persons shall have the right to appeal to a supervisory authority.

16.7. The service provider and contact persons can exercise their rights by contacting the Data Protection Officer of Bayer CropScience Schweiz AG at privacy.ch@bayer.com or at the following address:
Data Protection Officer Bayer CropScience Schweiz AG
Peter Merian-Strasse 84
4052 Basel / Switzerland