

## Bayer General Purchase Conditions

Published on [www.bayer.nl](http://www.bayer.nl).

These General Purchase Conditions replace all versions published previously.

### 1. Definitions

1.1. Bayer: each company affiliated to Bayer AG belonging to the Bayer Group in the Netherlands to which the Other Party provides goods or services.

1.2. Agreement: an instruction, purchase order "PO", order confirmation or order placed by Bayer, a purchase or services agreement between Bayer and the Other Party or an offer accepted in writing by Bayer.

1.3. Other Party: Bayer's other party from which it purchases goods or services.

### 2. Objective

2.1. The present General Purchase Conditions will always form an integral part of the Agreement. Conflicting or deviating conditions adopted by the Other Party or other reservations by the Other Party will be deemed to not have been accepted, unless Bayer has accepted these expressly in writing.

2.2. Other agreements, proposed changes or additional agreements are not valid, unless they have been approved in writing by Bayer.

### 3. Agreement

3.1. Changes to the Agreement must be made in writing. Oral agreements and arrangements discussed over the telephone are only binding if they have been confirmed in writing.

3.2. Any change to an Agreement is only valid if it has been confirmed in writing by both Bayer and the Other Party and the Other Party is required to handle each Agreement or change to an Agreement separately in all correspondence.

3.3. In case a change to the Agreement results in additional work, the Other Party will not carry out this additional work until after it has been approved in writing by Bayer.

3.4. Unless otherwise agreed in writing, the Other Party will not have the right to make partial deliveries.

3.5. The Other Party may only transfer the delivery of goods or the performance of services to third parties if it has obtained Bayer's prior written approval. The Other Party remains responsible and liable for correct compliance with its obligations under the Agreement, also after Bayer has approved the transfer.

3.6. Delivery of goods will take place in adequate packaging in accordance with the manner in which the relevant goods are transported, handled and stored. The costs of the required packaging are included in the price. Special and/or costly packaging materials will be taken back by the Other Party against compensation of the costs charged on to Bayer.

3.7. The following details must be included in all correspondence: the PO number and the date of the Agreement.

### 4. Term of delivery

4.1. The term of delivery commences on the date of the Agreement. If the Other Party has reason to assume that it will not be possible to comply or to comply on time with all or part of its contractual obligations, it will be required to notify Bayer thereof immediately while stating the reasons for and

the presumed duration of the delay. If the Other Party fails to do so, it will not have the right to claim exemption from its liability for the delay resulting from the obstruction.

4.2. If the Other Party fails to deliver within the agreed term it will be liable for this default. The Other Party will automatically be in default when the agreed term of delivery ends, without such requiring any formality. In such cases, Bayer will have the right to consider the Agreement void, without Bayer owing any indemnification or compensation and, depending on the notification to the Other Party by registered letter, to order the items or services that were not delivered elsewhere, all of this without limitation of Bayer's rights to claim compensation.

### 5. Guarantee, liability and notification of defects

5.1. The Other Party guarantees that its goods and/or services are free from third-party rights or defects that could limit their value or impair their usefulness, that they have the agreed or guaranteed characteristics, that they are suitable for the purposes for the objective specified in the Agreement, that they comply with the requirements of generally-accepted technical practice, that the goods are provided with an indication of the manufacturer or the party that markets them, that they are provided with and accompanied by all documentation requested by Bayer, irrespective of when Bayer requested that documentation and that they comply with all applicable, most recent regulations in accordance with Dutch law as well as all applicable specifications and regulations, such as but not limited to those in the area of safety, the environment, working conditions and the protection of employees and accident prevention.

5.2. The Other Party furthermore guarantees that (i) none of the goods delivered or the services performed, including all parts, components and raw materials, were produced, delivered or performed in whole or in part contrary to any applicable trade or economic sanction, export control, embargo or any similar statutory order or ban, regulation, rule, measure, restriction, licence, including and without limitation those of the European Union, Switzerland, the United States of America and the United Nations (hereinafter the "Sanction Rules") and (ii) none of the third parties (such as auxiliary persons, suppliers or subcontractors) engaged in the production of the goods or the performance of the services come under any applicable Sanction Rules.

5.3. The Other Party will arrange for all licences and permits that are required in the country of origin. Timely availability of the required licences and permits is a condition for existence of the Agreement.

5.4. If the goods delivered or the services provided do not comply with any requirement, the Other Party will be liable in respect thereof and Bayer will be free to demand remedy of the defect or the delivery of goods without defects, to cancel the Agreement or reduce the purchase price of the goods or services in accordance with the existing statutory conditions, or to demand compensation or reimbursement of costs.

Bayer will also have the right to submit a claim on the basis of the conditions of the guarantee if the Other Party guaranteed the characteristics or sustainability of the goods delivered. This does not apply to defects or damage resulting from normal wear or incorrect processing by Bayer.

Bayer is required to notify the Other Party of any defects in the goods delivered as soon as they are discovered during the customary course of affairs within its business.

5.5. The guarantee by the Other Party must extend to all goods and services that were created or delivered by subcontractors.

5.6. If the Other Party is notified of a defect, the term of the guarantee must be extended by the time that passes between that notification and the remedy of the defect. If the good or service delivered by the Other Party is replaced in its entirety by a new good or a new service, the guarantee period will start again; if part of the good or service is replaced, the guarantee period will start again for the new parts.

5.7. Goods or services that are the subject of a complaint pursuant to the guarantee remain available to Bayer until the replacement goods have been delivered, after which they become the property of the Other Party.

5.8. In urgent cases or if the Other Party fails to remedy a defect, Bayer will have the right to remedy the defect at the expense of the Other Party or to exercise one of the other guarantee rights referred to in article 5.4.

Bayer's acceptance of the delivery of goods or services by the Other Party does not release the latter from its obligations arising from the guarantee.

5.9. The Other Party indemnifies Bayer against all third-party claims in connection with the Agreement between the Other Party and Bayer and against all claims in connection with (product) liability as well as claims that arise from legislation relating to product liability if the defect that gives reason for the claim was caused by the good or service delivered, by the Other Party or by any supplier of the Other Party.

5.10. Notwithstanding these General Purchase Conditions, the Other Party remains responsible for the goods and services delivered pursuant to the existing statutory provisions.

## **6. Tests**

6.1. If tests have been prescribed for the goods or services to be delivered, the Other Party will be obliged to pay for the costs of these tests, including its own personnel expenses, but with the exception of Bayer's personnel expenses.

6.2. The Other Party is obliged to notify Bayer at least five working days in advance of the date on which the goods or services are ready for testing and it will be required to agree a date for the tests with Bayer. The Other Party will be obliged to pay Bayer's personnel expenses if the goods or services are not presented for testing on this date.

6.3. If defects are discovered in the goods or services during the performance of the tests, which defects make it necessary to repeat the tests or perform further tests, the Other Party will be obliged to pay for all related personnel expenses and other costs. The Other Party will also be obliged to pay for all necessary personnel expenses and other costs in connection with testing the materials that are used by it in the performance of the Agreement.

## **7. Insurance**

7.1. Goods in transit insurance policies are always the responsibility of the Other Party and are always for its account.

7.2. The Other Party is required to take out adequate third-party liability insurance for its own account that covers damage caused by or related to the goods or services provided by it or property belonging to it, its personnel or to third parties engaged by it. The Other Party will be obliged, at request, to submit documents to Bayer in which the sums insured per event are stated.

7.3. Taking out special insurance for assembly/construction activities in addition to third-party liability insurance referred to in article 7.2 is always subject to a written agreement between Bayer and the Other Party.

7.4. Any machines, equipment etc. provided to Bayer on loan will be insured by Bayer against the customary risks. Any further liability on the part of Bayer for damage caused to such machines, equipment etc. is excluded, unless it is caused intentionally or as a result of gross negligence on the part of Bayer.

## **8. Transport requirements and acceptance of goods**

8.1. The Other Party is required to send Bayer, separately from the goods and the invoice, a detailed notice of shipment for each shipment on the day on which the goods are sent. The goods must be accompanied by a delivery note and a packing slip. Bayer's PO number and item line number must be stated in all delivery documents. If the goods are sent by ship, the shipping documents and the invoice must state the name of the transport company and the ship.

The Other Party is required to select the mode of transportation that is most favourable and suitable for Bayer. The delivery documents must be enclosed with the transport documents separately and in three copies.

The Other Party is required to state the PO number and delivery address, as stated by Bayer, in full on all dispatch notes, delivery notes, packing slips, waybills and invoices, as well as on the outside of the packaging of the goods and in other places if applicable.

8.2. The Other Party is required to package, mark and transport dangerous goods in accordance with the applicable national and international regulations. The accompanying documents must state not only the risk category but also any other particulars that are required by the applicable transport regulations.

8.3. The Other Party is liable for any losses that result from a failure to comply with the conditions mentioned in article 8 and is required to pay any costs that are caused as a result. The Other Party is responsible for ensuring that its subcontractors comply with the conditions referred to in this article 8.

8.4. Any shipments that cannot be accepted by Bayer because these regulations were not complied with will be stored for the account and risk of the Other Party. Bayer has the right to inspect the content and condition of those shipments. Tools and equipment for assembly/construction must not be sent together with the goods.

8.5. The goods must be delivered in the place indicated by Bayer DDP (ICC Incoterms 2010) unless otherwise agreed. The risk and ownership of the goods passes from the Other Party to Bayer upon Bayer's receipt of the goods at its branch (which means when Bayer signs the delivery documents that accompany the transport of the goods). In principle, deliveries are made on any statutory working day from

Monday to Friday between 08:00 hours and 16:00 hours, unless otherwise prescribed in writing.

8.6. The goods delivered must comply with the conditions regarding their origin as specified in the relevant EU regulations, unless expressly otherwise provided for in the Agreement.

## 9. Occasional items

Templates, models, tools, films etc. that were created by the Other Party in order to be able to perform the Agreement will become Bayer's property if Bayer has paid for them, even if they remain in the Other Party's possession. The Other Party is obliged to hand them over at Bayer's request.

## 10. Assembly, construction work, maintenance, inspection, repairs, conformity

10.1. In the event assembly, construction work, maintenance, inspection, repairs etc. are carried out at any of Bayer's branches, such activities will be subject to the rules pertaining to safety, security and conduct for contractors and their personnel who are active at branches of Bayer or those of the parties for whom the purchase is intended. These rules are provided when the assembly or construction activities commence or must be requested from the safety department of the relevant Bayer branch. All suppliers of goods and providers of services who are involved in assignments relating to property must be registered in accordance with Dutch legislation before they carry out their assignment.

10.2. Bayer is not liable for any property of the Other Party or its personnel that is brought inside the Bayer branch.

10.3. The Other Party guarantees that it, its personnel, its subcontractors and their personnel comply at all times with all binding statutory provisions concerning the delivery of goods and/or services in the Netherlands, such as - but not limited to - mandatory provisions of labour legislation, tax legislation and social security legislation (e.g. valid work permits, visas, A1 forms, certificates, declarations etc.). The Other Party indemnifies Bayer, its representatives and any other party in whose name and for whose account Bayer acts, against all claims in this connection and, in relevant cases, the Other Party holds Bayer, its representatives and any other party in whose name and for whose account Bayer acts harmless against all costs and expenses they are required to incur in this connection.

## 11. Guidelines and code of conduct

11.1. If the Other Party or third parties on the instructions of the Other Party visit and/or perform activities at Bayer's branch(es), they are required at all times to comply with the guidelines pertaining hygiene and safety, as drawn up and maintained by Bayer. These guidelines will be communicated upon arrival.

11.2. The supplier is expected to organize its business with Bayer in line with the Bayer Supplier Code of Conduct (<https://www.bayer.com/en/supplier-code-of-conduct.aspx>). Bayer shall have the right to evaluate the sustainability performance of the supplier, either by assessment (online, paper questionnaire, etc.) or by an onsite audit, executed directly by Bayer or by a third party.

## 12. Provision of services

12.1. Expressly indicated above or not, these General Purchase Conditions also apply to the provision of services.

12.2. The Other Party must comply with any delivery dates regarding the services that are specified in the Agreement or that were communicated by Bayer to the Other Party.

12.3. When providing the services, the Other Party must:

- (a) cooperate with Bayer and comply with all of Bayer's instructions in all matters related to the services;
- (b) provide the services with the best possible care, skill and dedication in accordance with the best practices in the Other Party's industry, occupational group or trade sector;
- (c) deploy personnel that is sufficiently trained and experienced for the performance of the tasks they have been charged with and deploy a sufficient number of them so that the obligations of the Other Party are complied with;
- (d) provide all tools, equipment and vehicles and other items that are required for the provision of the services;
- (e) use goods, materials, standards and techniques of the highest quality and ensure that all goods and materials that are provided or used in connection with the services or that are transferred to Bayer are free from defects as regards workmanship, installation and design;
- (f) obtain and maintain at all times all necessary permits and approvals and comply with all applicable legislation and regulations;
- (g) comply with all health and safety rules and any other safety requirements that apply at any of Bayer's branches.

## 13. Place of performance

Unless otherwise laid down in the Agreement, the place of performance is the place of delivery specified by Bayer.

## 14. Invoice and payment

14.1. The agreed compensations are exclusive of Value Added Tax ("VAT"). VAT is charged additionally if legally payable by the Other Party and must be paid additionally by Bayer following receipt of an invoice that complies with the statutory requirements as prescribed in the applicable VAT legislation. The Other Party's invoices must be sent to the invoice address stated in the Agreement separately from the goods. Bayer's PO number must be stated in all correspondence. Any additional or cancelled services and goods must be stated separately on the invoice.

14.2. Unless explicitly stated otherwise, the Other Party shall invoice the delivered goods and/or services only after receipt by Bayer of the compliant delivery.

14.3. Payment must be made within sixty (60) days after receipt of the relevant invoice, unless otherwise laid down in the relevant Agreement. Bayer has the right to set off its payable claims against the payable debts to the Other Party.

14.4. Payment does not alter the Other Party's guarantee obligations or Bayer's right to submit a complaint.

14.5. Each party has the right to withhold withholding tax if this is based on a legal obligation. It must be possible to submit substantiating documentation and/or certificates to the other party on time in the event withholding tax was withheld. Both parties will adopt a cooperative attitude in order to be able to apply the lowest possible withholding tax rate, e.g. under a convention for preventing double taxation.

## 15. Documents and confidentiality

15.1. All equipment and tools, drawings, standards, guidelines, methods of analysis, recipes and other documents that are provided by Bayer to the Other Party for the purpose of the creation of the goods to be delivered or the services to be provided, as well as such documents that were created by the Other Party in accordance with Bayer's special instructions, remain the property of Bayer and must not be used for any other purpose, reproduced or made available to third parties by the Other Party. The Other Party is required to transfer all of the above as well as copies and duplicates thereof to Bayer immediately if it is requested to do so or destroy them at Bayer's request. Bayer reserves the intellectual property rights concerning all documents it provides to the Other Party.

15.2. The Other Party will consider the request for an offer and the Agreement as well as all activities related thereto as a trade secret and treat these in confidence accordingly. The Other Party is liable for any losses on the part of Bayer attributable to the Other Party's failure to comply with any or all of these obligations.

15.3. The Other Party is obliged to impose similar obligations on its employees and/or third parties engaged in the performance of the Agreement.

15.4. The Other Party is required to provide Bayer with all documents that are necessary for or related to the goods and services to be delivered without such having an impact on any guarantee or other obligation on the part of the Other Party.

15.5. The Other Party is required to provide Bayer on time, free of charge and without a prior request, with all documents Bayer requires for using, constructing, installing, processing, storing, operating, having in operation, inspecting, maintaining and repairing the goods and services that have been delivered.

15.6. Each time Bayer specifies standards and regulations, the most recent version will apply.

## **16. Right to Audit**

Bayer and its authorized representatives shall have the right to audit, examine and copy without charge the Other Party's relevant books, records, all other documents, materials and accounts except for individual salary information, in the possession of and/or under the control of the Other Party with respect to the subject matter and terms of this Agreement that, in Bayer's reasonable judgment, have a bearing on or pertain to matters, rights, duties or obligations covered by this Agreement. The audit takes place during the Other Party's normal business hours, and upon at seventy two (72) hours' prior notice. Bayer will pay all fees and expenses of the audit. The Other Party shall grant Bayer or its third-party auditor access to its facilities and all necessary records; it shall allow interviews with key employees and shall provide a reasonably furnished and adequate workspace without any charges. Bayer has the right to conduct audits under the aforementioned conditions for the duration of the agreement and for a period of max. one (1) year following its termination. Should an audit show that the Other Party has overcharged Bayer, Bayer shall be entitled to a refund in the amount of the overcharge.

## **17. Intellectual property rights**

17.1. The Other Party grants Bayer a non-exclusive, perpetual, irrevocable, worldwide and transferable right of

use concerning possible intellectual property rights relating to the goods and/or services delivered by the Other Party. This right of use also comprises the right to grant such a right of use to (possible) purchasers or other third parties with which Bayer maintains a business relationship in connection with the conduct of its business.

17.2. All intellectual property rights that arise as a result of the performance of the Agreement by Bayer and the Other Party, its personnel or third parties involved in the performance of the Agreement by the Other Party, vest in Bayer. The Other Party will do whatever is necessary to have Bayer obtain these rights.

17.3. The Other Party is liable for any infringement of patents, permits and rights of ownership or other rights held by third parties that may arise from the delivery or the use of goods and/or the provision of services by the Other Party. Any permit fees must be paid by the Other Party.

## **18. Advertising materials**

The Other Party will not include any reference in its information or advertising material or its websites to its commercial relationship with Bayer unless it has obtained Bayer's prior written approval.

## **19. Termination**

Without prejudice to Bayer's other rights, Bayer has the right to terminate all or part of the Agreement without further notice of default and without being obliged to compensate any loss if:

- the Other Party fails to comply with an obligation arising from the Agreement;
- a bankruptcy petition has been filed against the Other Party or the Other Party has been declared bankrupt or has applied for a suspension of payments;
- the business of the Other Party has been/is suspended, liquidated or transferred;
- the Other Party's permits required for the performance of the Agreement have been withdrawn;
- an attachment is levied against an important part of the Other Party's operating assets; or
- an attachment by garnishment is levied against Bayer for the Other Party's expense.

All claims Bayer may have or acquire in the abovementioned cases will be immediately due and payable in full.

## **20. Transfer**

Bayer has the right to transfer its rights or obligations arising from the Agreement to a third party. The Other Party can only transfer its rights or obligations arising from the Agreement to a third party with Bayer's prior written approval.

## **21. Applicable legislation and jurisdiction**

The present General Purchase Conditions and the Agreement are governed by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, which became effective on 1 January 1991, is excluded. Any disputes that may arise will be subjected to the exclusive jurisdiction of a competent court in the Netherlands.

April 5, 2019

