

## General Conditions of Purchase for Bayer Legal Entities in the Philippines

### 1. General

- 1.1 These Conditions shall be an integral part of the purchase contract entered into between the Buyer and the Seller. Conflicting or deviating conditions of delivery stipulated by the Seller or other reservation made by the Seller shall not be deemed accepted unless the Buyer has expressly acknowledged accepting such delivery in writing for a specific order.
- 1.2 Other agreements, amendments or subsidiary agreements shall not be effective unless the Buyer has given its written consent thereto.
- 1.3 Where the context admits, words in any gender shall include any other gender, words in the singular shall include the plural and the plural shall include the singular.

### 2. Offer

- 2.1 The Seller's offer shall cover exactly the quantities and qualities specified in the Buyer's inquiry. Any deviation shall be expressly mentioned.
- 2.2 The offer shall be submitted and communicated to the Buyer cost-free and without any obligation whatsoever being imposed upon the Buyer.

### 3. Order

- 3.1 Orders and any alterations to any orders shall be made in writing. Verbal agreement or arrangements discussed over the phone shall only be binding when confirmed in writing.
- 3.2 Each order or alteration to an order shall be confirmed by the Seller in writing and shall be treated separately in all correspondence. The acceptance of the order is limited to and conditional upon acceptance by Seller of these Conditions.
- 3.3 The following details shall be stated in all correspondence: the product name, the purchasing department, the complete order number, the date of the order and the Buyer's reference.

### 4. Period for Delivery

The period for delivery shall either run from the date of the order or shall be as specified in the order. The Seller must comply with the delivery terms specified in the order, and time shall be of the essence in the performance by the Seller of the order. If the Seller has reason to assume that he will not be able to meet, or meet in time, all or part of its contractual obligations, he shall inform the Buyer thereof immediately, stating the reasons and the likely duration of the delay. Seller shall agree with Buyer the applicable penalty rate in case of late or overdue delivery. Buyer reserves the right to impose such penalty.

### 5. Warranty, Liability and Notification of Defects

- 5.1 The Quality Assurance Agreement (QAA) prevails over quality-related topics.
- 5.2 The Seller warrants the goods supplied by him to be: (i) free from defects which may reduce their value or affect their usability; (ii) to be in accordance with the specifications and conditions stipulated in the order; (iii) to have the warranted properties; (iv) to be in conformity with the generally accepted technical practice; (v) and to conform to the most recent applicable regulations and to the appropriate safety specifications. Should the delivered goods fail to meet any or all of these requirements, the Buyer shall be free to request either rescission of the contract or a reduction in the purchase price or replacement of the defective item by a non-defective one or, if the Seller has the necessary technical equipment, repair the defect within a mutually agreed reasonable time. This shall not apply to defects or damage caused by:
- (a) normal wear and tear; and/or
- (b) inappropriate or negligent handling by the Buyer.
- The Buyer shall notify the Seller of any defects in the delivered goods as soon as they are discovered in the regular course of business. The above provisions shall apply *mutatis mutandis* to services such as assembly, erection, maintenance, etc.
- 5.3 Unless agreed otherwise, the warranty period shall be 1 year, starting from the time the goods are put into operation or used for the first time, but shall not exceed two years from the date of delivery.
- 5.4 The Seller's warranty shall also cover any items manufactured by subcontractors.
- 5.5 If the Seller is notified of a defect, the warranty period shall be extended by the time which elapses between such notification and the repair of the defect. If the item supplied by the Seller is replaced in whole by a new one, the warranty period shall begin anew. If the item is replaced in part, the warranty period shall begin anew for the new parts. If the Seller fails to replace any rejected or defective goods within a reasonable time, the Buyer has the right to purchase replacement goods from another source. Any money paid by the Buyer to the Seller in respect of the rejected or defective goods together with any additional expenditure over and above the price reasonably incurred by the Buyer in obtaining replacement goods shall be paid by the Seller to the Buyer.
- 5.6 Goods which are subject to complaint under the warranty shall remain at the Buyer's disposal until replacements have been supplied, whereupon they shall become the property of the Seller.
- 5.7 In urgent cases, or if the Seller defaults or fails in repairing a defect, the Buyer may eliminate the defect himself at the Seller's expense or avail himself of any of the other warranty rights mentioned in clause 5.
- 5.8 Acceptance of the Seller's supplies and services by the Buyer shall not affect the Seller's obligations under the warranty.

### 6. Tests

If tests are specified for the goods to be supplied, the Seller shall bear the costs of such tests, including its own personnel costs, but excluding the Buyer's personnel costs.

The Seller shall inform the Buyer not less than one week in advance of the date on which the goods will be ready for testing and shall agree with him a date for the tests. If the goods are not presented for testing on this date, the Buyer's personnel costs shall be borne by the Seller. If any defects are found in the goods which make it necessary to repeat the tests or conduct further tests, the Seller shall pay all the personnel costs and other costs entailed. The Seller shall also pay all the personnel costs and other costs incurred in connection with testing the materials used by him in executing the order.

### 7. Insurance

- 7.1 Unless agreed otherwise the Seller shall insure the goods until they have been delivered to the Buyer and the receipt of which has been acknowledged by the Buyer.
- 7.2 The Seller shall obtain (at its own expense) adequate third party liability insurance to cover damage resulting from services rendered by or goods delivered by or property belonging to him its personnel, or third parties commissioned by him.
- 7.3 The procurement of special assembly/erection insurance in addition to the third party liability insurance mentioned in clause 7.2 shall in each case be subject to agreement between the Buyer and Seller.

### 8. Shipping Requirements

- 8.1 On the day on which the goods are dispatched, the Seller shall send the Buyer a detailed dispatch note for each consignment separately from the goods and invoice.

- 8.2 The goods shall be accompanied by a delivery note and packing slip. If the goods are sent by ship, the shipping papers and invoice shall state the name of the shipping company and of the ship. The Seller shall choose the mode of transport most favorable and suitable for the Buyer. The Seller shall show in full the order reference number and point of unloading specified by the Buyer in all dispatch notes, delivery notes, packing slips, bill of lading and invoices, on the outer packaging of the goods, and elsewhere if appropriate.
- 8.3 The Seller shall always pack, mark and ship dangerous goods in compliance with the appropriate national/international regulations. The accompanying documents shall show not only the risk category but also any further particulars required by the appropriate transport regulations.
- 8.4 The Seller shall be liable for any damage caused by non-compliance with these provisions and shall pay any costs incurred thereby. He shall also be responsible for ensuring that these shipping requirements is complied with by subcontractors.
- 8.5 Any consignments of which the Buyer is unable to take delivery because of non-compliance with these provisions shall be stored at the Seller's expense and risk until such non-delivery is completely resolved.
- 8.6 The Buyer shall have the right to ascertain the contents and condition of such consignments. Tools and/or construction equipment shall not be loaded together with the goods.
9. Prices and Conditions  
Should the Seller reduce its prices or grant better conditions between the placing of the order and delivery thereof, the prices and conditions effective at the date of delivery shall apply.
10. Title and Risk  
The property and risk in the goods passed to the Buyer upon delivery and acceptance of the goods by the Buyer in accordance with these Conditions and the purchase contract, without prejudice to any right of rejection which may accrue to the Buyer under these Conditions or otherwise.
11. Invoice and Payment
- 11.1 The Seller's invoice shall agree with the respective orders in their wording, in particular the order of items and prices. Any additional or deleted services or supplies shall be stated separately in the invoice.
- 11.2 Periods for payment shall begin on the specified dates, but not before the dates on which the goods and invoices are received.
- 11.3 Payment shall not be deemed to constitute acceptance of conditions and prices.
- 11.4 The Buyer may deduct from any monies due or becoming due to the Seller any monies due from the Seller to the Buyer.
- 11.5 If laws or regulations require that withholding tax be withheld on behalf of Seller by Buyer, Buyer may deduct such withholding tax from payment to Seller. This is unless otherwise stated in the contract or in the event there is separate agreement between Buyer and Seller that Buyer will bear the withholding tax.
- 11.6 Buyer only pays its own bank charges in the case of outgoing payments, unless stated otherwise in the contract Seller bear its own bank charges and any deductions in transit.
12. Confidentiality Information
- 12.1 All information supplied by the Buyer shall be treated as confidential, and shall remain the Buyer's property and shall not be disclosed or used for any other purpose, reproduced or made available to third parties by the Seller. The Seller shall, if so requested, surrender them and all copies and duplicates thereof, to the Buyer without delay. The Buyer reserves the property rights to all documents he supplies to the Seller.
- 12.2 The Seller shall regard the inquiry and the order and all work in connection therewith as a trade secret and treat them accordingly as confidential. The Seller shall be liable for any loss suffered by the Buyer because he has failed to fulfill any or all of these obligations.
- (a) The Seller shall supply to the Buyer in good time at no cost to the Buyer and without being specially requested to do so, all documents needed by the Buyer for the use, erection, installation, processing, storage, operation, servicing, inspection, maintenance or repair of the goods supplied.
- (b) Whenever the Buyer specifies standards or regulations, the latest version shall apply. The Seller shall request the Buyer to supply him with its works standards and regulations, as far as they have not already been supplied.
13. Assembly, Erection, Maintenance, Inspection Repairs. Etc.
- 13.1 If assembly, erection, maintenance, inspection, repairs, etc. are carried out in any of the Buyer's premises, such work shall be subject to the safety and conduct regulations for contractors and their personnel working on the premises of the Buyer or its subsidiaries.
- 13.2 The Buyer shall not be liable for any property of the Seller or its personnel, which is brought onto the Buyer's premises.
14. Patent Infringement  
The Seller shall indemnify the Buyer against any liability arising from any infringement of patents, licenses or protective rights of third parties that may result from the supply, use or resale by the Buyer of the goods. Any license fees payable shall be borne by the Seller.
15. Advertising Material  
The Seller shall not refer to its business connection with the Buyer in any information or advertising material except with the Buyer's written consent.
16. Force Majeure
- 16.1 The Seller shall not be held responsible for any delay in shipment or non-delivery of goods due to force majeure such as war, acts of government, serious fire, flood, typhoon, earthquake, acts of nature, which might occur during the process of manufacturing or in the course of loading or transit. The Seller shall promptly notify in writing the Buyer of any force majeure event, and shall send evidence of the occurrence of a force majeure event.
- 16.2 During the period of the force majeure event, the Seller shall take all necessary measures to hasten the delivery of the goods. If, as a result of the force majeure event, delivery is delayed by more than five weeks, the Buyer shall have the right to rescind the contract.
17. Governing Law and Settlement of Disputes  
The present Conditions and the purchase contract shall be subject to the laws of the Philippines. The parties agree to submit to the non-exclusive jurisdiction of the courts of the Philippines.