



General Purchase Terms and Conditions of Bayer AG and its affiliated companies with registered offices in Germany

## 1. GENERAL

- 1.1 These terms and conditions ("Purchase Terms and Conditions") are incorporated by reference into the purchase agreement or other agreement entered into for the purchase of goods and/or services ("Agreement") between Bayer AG or the company affiliated with Bayer AG within the meaning of §§ 15 et seq. of the German Corporation Act with its registered office in Germany that includes these Terms and Conditions ("Purchaser") and the contractual partner ("Supplier").
- 1.2 These Purchase Terms and Conditions apply exclusively. These Purchase Terms and Conditions shall not apply only if and to the extent that the validity of Purchaser's special terms and conditions is agreed on. In that case, the Purchase Terms and Conditions apply only additionally and secondarily. These Purchase Terms and Conditions shall in particular not apply if there is an express reference to the Purchase Terms and Conditions for IT Services/Work Services, for Construction Services, for Engineering Work Services and/or General Engineering Services or for Equipment.
- 1.3 Supplier's conflicting or differing terms and conditions or other terms and conditions or other general business terms and conditions are not recognized. Conflicting or differing terms and conditions shall apply only if the Purchaser has expressly accepted them in writing in each individual case. This provision applies even if goods and/or services are accepted by the Purchaser in awareness of Supplier's general business terms and conditions.
- 1.4 Individual contractual agreements always have priority over these Purchase Terms and Conditions.

## 2. PROVISIONS OF THE AGREEMENT

- 2.1 No oral side agreements or assurances made by Purchaser before the conclusion of the Agreement are legally binding. All such agreements or assurances are replaced in full by the Agreement. The above provision does not apply if the assurances expressly indicate that they are intended to remain binding, or if the assurances are expressly confirmed in writing by Purchaser.
- 2.2 Individual provisions of these Purchase Terms and Conditions that make express reference to a specific type of purchase category (e.g. purchase of goods, purchase of work and materials, work services, general services or equipment) apply exclusively for the respective type of purchase category. Otherwise, the provisions set forth below apply for all types of purchase categories.

## 3. SUPPLIER'S OFFER

- 3.1 Supplier shall orient its offer to Purchaser's inquiry.  
  
The offer must be prepared and submitted free of charge. The offer shall not create any obligations on the part of the potential Purchaser. Cost proposals shall be remunerated only by express prior agreement.
- 3.2 If in an individual case and notwithstanding the provisions of Section 17.1, third-party costs and expenses are to be compensated, they must be indicated in the offer, itemized by quantity and with an indication of unit and total prices.

## 4. PURCHASE ORDER AND ACCEPTANCE

- 4.1 Supplier shall check each purchase order received from Purchaser for discernible errors, ambiguities, omissions and unsuitability of the specifications selected by Purchaser for the intended purpose. Supplier shall immediately inform Purchaser of any necessary amendments or clarifications to the purchase order.
- 4.2 Each purchase order and/or amended purchase order must be acknowledged in writing by Supplier. The start of execution of the purchase order by Supplier shall be equivalent to this express acceptance by Supplier of the offer.
- 4.3 Supplier must indicate the following information in all correspondence: Purchasing department, complete purchase order number, date of purchase order and Purchaser's reference.
- 4.4 Purchaser is entitled to demand modifications to the goods or services to be supplied even after the conclusion of the Agreement, provided Supplier can be reasonably expected to make such modifications. Such amendments to the Agreement shall consider the effects for both parties, in particular, sufficient account shall be taken to cost increases or decreases and effects on the schedule.
- 4.5 Supplier is not authorized by the purchase order to represent Purchaser.

## 5. PERFORMANCE OF SERVICES BY SUPPLIER AND THIRD PARTIES

- 5.1 Supplier shall perform the services itself or have them performed by third parties integrated into its operating organization and on its own responsibility. Supplier is authorized to use other third parties only with Purchaser's prior express consent. If Purchaser consents to the use of third parties, they shall be commissioned by Supplier in its own name and for its own account.
- 5.2 If the performance of the service takes place at the Purchaser's site, Supplier must comply with the safety and organizational requirements for outside companies and/or the internal operating regulations applicable at the respective site. Supplier must also comply with all other requirements displayed for its information on the site. If Supplier considers the requirements unreasonable, it must immediately register its objections with Purchaser.
- 5.3 Supplier shall use only qualified persons for the performance of the service. Persons whose employment with Purchaser was previously terminated by Purchaser for personnel or performance-related reasons may not be used, or persons who have repeatedly damaged or continue to cause particularly serious damage to Purchaser's interests. Supplier shall bear any increased costs resulting from a replacement of the personnel used for the performance of the service.

## 6. TIME OF PERFORMANCE AND DELIVERIES

- 6.1 If a specified period of time has been stipulated for the performance, unless otherwise agreed, this period begins with receipt of the purchase order by Supplier.
- 6.2 As soon as Supplier becomes aware that it can no longer perform its contractual obligations in whole or in part, or not in a timely manner, it must immediately notify Purchaser of this indicating the reasons for and the projected duration of the delay. Notification must be made in writing. If Supplier fails to provide this notification, it may not plead the obstacle to Purchaser as the cause of the delay.



- 6.3 If Supplier does not perform within the stipulated time, it shall be liable in accordance with the applicable laws and regulations. Purchaser is also authorized, in the event of delays in performance or delivery, after prior written notification to Supplier, to impose a contractual penalty in the amount of 0.5%, not to exceed 5% of the amount of the purchase order, for each week or portion thereof the performance or delivery is delayed, unless Supplier is not responsible for the delay. Any contractual penalty paid in accordance with this provision shall be credited toward the compensation for delayed performance owed by Supplier. The contractual penalty can be asserted until final payment is due, with no retention needed.
- 6.4 Partial services and/or deliveries shall be accepted only by express agreement.
- 6.5 If a delivery deadline is stipulated, Purchaser reserves the right to return goods delivered early at Supplier's expense. If Purchaser decides not to return early deliveries, the goods shall be stored until the stipulated delivery date at Supplier's expense and risk.

## 7. PLACE OF PERFORMANCE

The place of performance for all claims arising under this Agreement is for both parties the destination specified by Purchaser (i.e. the delivery address indicated in the purchase order or otherwise stipulated).

## 8. COOPERATION BY PURCHASER

- 8.1 Purchaser shall provide the contractually stipulated cooperation. Unless agreed otherwise, this cooperation is an obligation.
- 8.2 If Purchaser fails to provide or adequately perform required cooperation services, Supplier must register its complaint immediately and in writing. If Supplier does not fulfill this requirement to register its complaints, Purchaser shall not be in default of its duty of cooperation and Supplier cannot plead a lack of cooperation.

## 9. TESTS AND INSPECTIONS

If tests and inspections are stipulated for the goods or services to be supplied, Supplier shall bear the material and its personnel costs of the tests and inspections. Purchaser shall bear the costs of its testing and inspection personnel. Supplier must send binding notification to Purchaser that the service or goods are ready for testing or inspection at least one week before the date stipulated for the test or inspection. Supplier must also agree on a test date with Purchaser. If the item to be tested is not presented on this date, Purchaser's testing personnel costs shall be charged to Supplier. If defects are identified and repeated or additional tests are therefore necessary, Supplier shall be responsible for all material and personnel costs. Supplier shall bear the material and personnel costs of the material certificates for the primary materials.

## 10. PACKING AND SHIPMENT

- 10.1 Separately from the goods and the invoice, Supplier must send a complete shipping notice for each individual shipment on the date of dispatch. Bills of lading and packing lists must be included with each shipment. For shipments by ship, the name of the shipping company and the vessel must be indicated in the shipping documents and the invoice. The Supplier must select the best and most appropriate means of transport for the Purchaser. The purchase order references and information on the unloading point specified by Purchaser must be indicated in full on the shipping notices, bills of lading, packing lists, consignment notes, invoices and on the external packaging.

- 10.2 Goods must be packed to prevent damage during transport. Packing materials must be used only to the extent necessary to achieve this purpose. Supplier must take back the packing material as required by law and the applicable regulations. If, under the terms of an express agreement, Purchaser pays separate compensation for the packing material, it is entitled to return the packing material in good condition for a refund of 75% of the invoiced price, freight prepaid, to Supplier. The maximum weight of each package is 10 kg.
- 10.3 In general, Supplier must pack, identify and ship hazardous products in compliance with the applicable national/international requirements. The accompanying documentation, in addition to the hazard class, must also contain the additional information required by the respective transportation regulations. The applicable transport, shipping and hazardous goods regulations must also be observed.
- 10.4 Supplier shall be liable for damages and shall assume all costs incurred as a result of failure to comply with these regulations. Supplier shall also be responsible for compliance with these regulations by its subcontractors.
- 10.5 All shipments that cannot be accepted as a result of Supplier's failure to comply with these regulations shall be placed in storage at Supplier's expense and risk. Purchaser is entitled to ascertain the content and condition of such shipments.

## 11. COMPLIANCE WITH REACH REGULATION

- 11.1 If Supplier is a supplier within the meaning of Art. 3, No. 32 of the REACH Regulation (Regulation (EC) 1907/2006), it is responsible for compliance with its obligations with reference to the delivery of the goods. In particular it must in all cases covered by Art. 31, paras. 1 to 3 of the REACH Regulation provide the Purchaser with a Safety Data Sheet pursuant to Art. 31 of the REACH Regulation in the language of the receiving country and comply with its duty of information pursuant to Art. 32 of the REACH Regulation for materials, both individually and in mixtures for which no Safety Data Sheet is required.
- 11.2 Supplier must ensure that all the substances contained in the goods are effectively registered in compliance with the applicable requirements of the REACH Regulation for the applications indicated by Purchaser, unless they are exempt from the registration obligation, and that they have the necessary authorizations. The above requirement applies as appropriate for substances released from products within the meaning of Art. 7 of the REACH Regulation.
- 11.3 Supplier must immediately notify Purchaser if ingredients of an item supplied by Supplier contain a substance in a concentration greater than 0.1 percent by weight (w/w) that meets the criteria of Articles 57 and 59 of the REACH Regulation or is listed in Annex XV of the REACH Regulation. The same requirements apply for packing materials.

## 12. INSURANCE

- 12.1 In accordance with the transfer of risk under the stipulated INCOTERMS/delivery conditions, Purchaser bears the risk for the loss of or damage to the goods.
- 12.2 Supplier must, at its expense, purchase sufficient liability insurance in an amount standard in its sector to cover damage caused by services or work performed or property owned by it, its personnel or its subcontractors as a result of services performed or work or goods delivered. Proof of coverage must be provided to Purchaser



on request. More extensive damage claims to which Purchaser may be entitled in excess of insurance coverage remain unaffected.

12.3 The purchase of special erection/installation insurance coverage in addition to the liability coverage stipulated in Section 12.2 must be coordinated between Purchaser and Supplier in each individual case.

12.4 Objects loaned to Purchaser, including but not limited to machines and equipment that are used on operating sites, must be insured by Purchaser against the standard risks. Purchaser shall have no further liability for loss of or damage to these objects except in cases of malicious intent or gross negligence.

### 13. NO TRANSFER OF EMPLOYEES, MINIMUM WAGE

13.1 Purchaser does not have supervisory authority over Supplier's employees. Supplier must ensure that no persons employed by it in the performance of the service are integrated into Purchaser's operation. The above requirement applies in particular if persons employed by Supplier perform the services in Purchaser's offices or on its property.

13.2 Supplier bears sole responsibility for the contractual, statutory, official and professional obligations toward the persons employed by it for the performance of the service. Supplier must hold Purchaser completely harmless from claims that may be brought against Purchaser resulting from infringement of the above obligations. This hold harmless obligation applies in particular to obligations for wage and/or salary payments and/or all other payment obligations that result from employment or service relationships (such as for Social Security contributions). It also applies for any and all claims arising from the hiring-out of employees.

13.3 Supplier must notify Purchaser as soon as it becomes apparent that pseudo self-employment of Supplier by Purchaser could be assumed or that the performance of the service by Suppliers might be qualified as subcontracted labor.

13.4 Supplier must ensure compliance with the respective applicable statutory provisions concerning the minimum wage. The above requirement applies in particular to statutory documentation obligations. Supplier shall also assume Purchaser's documentation obligations under the Minimum Wage Act with regard to Supplier's services performed for Purchaser. The above requirement also applies if and to the extent that Supplier engages a subcontractor for these services. In the event of a violation of the Minimum Wage Act by Supplier or its subcontractors, Supplier must immediately so notify Purchaser in writing. Supplier shall hold Purchaser harmless from any claims in connection with the minimum wage.

### 14. PURCHASER'S DOCUMENTS

14.1 Purchaser reserves title to all industrial property rights and copyright to all documents physically or electronically transmitted to Supplier. Purchaser retains title to all drawings, standards, guidelines, analysis methods, formulas and other documents that are transmitted by Purchaser to Supplier for the manufacture of the item to be delivered. Purchaser's documents are also covered by the requirements set forth in Section 25. The documents to which Purchaser retains title and/or that contain its business and operating secrets in drawings, standards, guidelines, analysis methods, formulas and other documents may be used, copied or made accessible to third parties by Supplier only for Purchaser's contractually stipulated purposes. Other requirements apply only with written consent of Purchaser. On request, all copies and reproductions that are necessary for the performance of the Agreement or are no

longer required under statutory retention obligations must be immediately returned to Purchaser and/or - in the case of electronic documents - deleted.

14.2 Documents of all types that are required by Purchaser for the use, setup, erection or installation, processing, storage, operation, maintenance, inspection, service and repair of the items supplied must be made available by Supplier promptly, unsolicited and free of charge.

14.3 Purchaser's internal standards (company standards) and guidelines must be requested by Supplier in good time, to the extent that they have not already been made accessible or transmitted.

14.4 Documents transmitted by Purchaser must be returned unsolicited and/or - in the case of electronic documents - deleted by Supplier, subject to the obligation set forth in Section 15 and/or existing statutory retention obligations, not later than at the time of the completion of the order.

### 15. PURCHASER'S DOCUMENT RETENTION OBLIGATION

All documents created by Supplier in the context of the Agreement (e.g. drafts, clean drawings, film copies, audio takes and final proofs) and the data transmitted to Purchaser must be retained by Supplier for an additional three (3) years after the expiration or cancellation of the Agreement and made available at no charge in response to a special request by Purchaser.

### 16. QUALITY ASSURANCE

16.1 Supplier must establish and maintain an effective Quality Assurance program (e.g. in accordance with ISO 9000 et seq. or equivalent). Supplier must demonstrate the corresponding measures to Purchaser on request.

16.2 Purchaser itself is entitled to verify the Quality Assurance measures by appointment or to have them verified by third parties engaged by Supplier.

### 17. COMPENSATION

17.1 Unless expressly agreed otherwise in writing, the compensation owed is a fixed price. Fixed prices also include expenses, third-party costs, travel costs and out-of-pocket expenses as well as packing and freight-paid delivery. Fixed prices also include compensation for sketches and drafts (including clean drawings or drawing stored on electronic media, including image data). Fixed price agreements are also valid for estimates prepared by Supplier before the conclusion of the Agreement, unless such estimates are explicitly identified as non-binding. Any increased costs necessary to perform the service shall be borne by Supplier.

17.2 Unless a fixed price has been stipulated, travel costs are reimbursable only on the basis of Purchaser's prior written consent according to Purchaser's conditions for the reimbursement of travel costs.

17.3 If Supplier's prices are reduced or Supplier's conditions improve during the period between the purchase order and delivery, the prices and conditions in effect on the date of delivery also apply for Purchaser. The above provision applies accordingly for individually approved third-party services, costs and expenses.

### 18. PAYMENT TERMS

18.1 Invoices must contain the purchase order number indicated in the purchase order and describe the components of the service or



goods in detail. Invoices must also correspond to the language, or order of invoice items and prices indicated in the purchase order. Any additional or reduced services or goods must be listed separately in the invoice.

- 18.2 Invoices not denominated in local currency must show the conversion rate between the foreign currency/local currency or the VAT amount in the local currency.
- 18.3 If in the specific instance the parties agree in writing, notwithstanding the provisions of Section 17.1, that Purchaser shall reimburse out-of-pocket expenses, costs of third-party services and other expenses, these expenses must be shown in the invoice, broken out by item, quantity, unit and total prices and documented by copies of the corresponding invoices or vouchers.
- 18.4 Payment periods begin to run from a specific date, although not earlier than the receipt of the goods or their acceptance, and in no case before receipt of the invoice and - if stipulated - the transmission of analysis certificates and/or manufacturing documentation. Unless expressly agreed otherwise between Purchaser and Supplier, payments are due within 30 (thirty) days net after receipt of the invoice, unless the above provision results in a later payment date.
- 18.5 Purchaser's payment shall be late only if Purchaser received an express warning after the date payment was due and/or a fixed payment deadline was stipulated. The lump-sum late interest rate applicable in the event of late payment is 9 percentage points over the base interest rate, unless Purchaser demonstrates that the actual pecuniary damage incurred by Supplier was less.
- 18.6 In the event of defective deliveries, Purchaser is entitled to withhold payment proportionally until proper performance.
- 18.7 Payment does not constitute any acknowledgment of terms, conditions or prices. The payment date has no effect on the beginning of the warranty periods and represents neither unrestricted acceptance of the item delivered nor a waiver of potential warranty claims.
- 18.8 Unless otherwise stipulated, invoices made out to the respective Purchaser must be sent by mail to the ordering company with the addition "Rechnungseingangsstelle" [Accounts Payable], D-51368 Leverkusen.

## 19. RETENTION OF TITLE

- 19.1 Title to goods must be transferred to Purchaser without restrictions and without regard to payment of the price.
- 19.2 If, under the terms of an individual agreement, the seller offers to transfer title conditional on payment of the purchase price, Supplier's reservation of title expires not later than payment of the purchase price for the goods delivered. Purchaser also remains authorized, even before payment of the purchase price, to resell the goods in the ordinary course of business, including the advance assignment of the claim resulting from resale; alternatively the simple retention of title extended to the resale applies. However, all other forms of retention of title are excluded. The above provision applies in particular for expanded and forwarded retention of title and retention of title extended to include reprocessing.

## 20. GRANTING/TRANSFER OF RIGHTS

- 20.1 The parties agree that all rights to the contractual works, designs, including but not limited to figures and graphics, photographs, software, data collections and/or other work results created by Supplier

individually for Purchaser, including the associated drafts, documentation and information (together "Work Results" below) are the exclusive property of Purchaser. The parties further agree that Purchaser is entitled to use, exploit, add to, modify and otherwise process these Work Results (including for purposes beyond the business purposes of the Purchaser and the objective pursued with the specific order) in any conceivable manner and otherwise to process them and connect or combine them with other works or items and to transfer them in modified or unmodified form to affiliated companies and other third parties.

- 20.2 Supplier, by entering into this Agreement, accordingly grants exclusive, irrevocable rights of use to the Work Results referenced above created by Supplier and protected under copyright law as well as to all revisions and/or modifications of these Work Results with no temporal, geographic or content-related restrictions, which rights of use may be transferred and/or sub-licensed in whole or in part. This granting of rights includes all rights of exploitation and use, including but not limited to the right of reproduction, dissemination, exhibition, presentation, performance and display, broadcasting, display, rental, leasing and database rights, cinema and video presentation rights (including all audiovisual storage systems), merchandising rights, as well as the rights to playback via interactive and non-interactive video or audio media, the playback of wireless transmissions and public access, digitization, on-line availability, transmission and playback, other public playback and access. Also included is the right to modify and process the Work Results (in particular to translate them into other languages and to synchronize them) and to combine or connect them with other works or items. The above granting of rights includes all known types of use, including but not restricted to use, application and/or exploitation for advertising purposes (such as in the form of posters, brochures, invitations, letters, reproductions on the Intranet and/or Internet, on websites, in apps and by all other digital media), in the context of books, press releases and/or other written works, in the context of television films, company videos, photographs and/or other recorded images, in all digital forms (such as in the context of multimedia products, on websites, in apps, availability on the Intranet and/or Internet) and/or in artistic and/or graphic images (including logos) that portray or integrate the Work Results. The above granting of rights to the use of the Work Results further includes rights for unknown types of use as well as use in processed form.
- 20.3 If third-party copyright arrangements allow it, Supplier also assigns to Purchaser the copyright to the Work Results as such. Supplier assigns to Purchaser all additional intellectual property rights to the Work Results as well as the film rights.
- 20.4 With regard to the contractual software created by Supplier individually for Purchaser and/or adaptations to software and/or parts of the software (including patentable databases, data or database structures and data collections, the terms and conditions set forth below also apply:
- If the Work Results are individually created software or adaptations to standard software, Purchaser shall be granted exclusive rights to said software or adaptations. Otherwise the rights shall be granted on a non-exclusive basis.
  - Purchaser is further granted the rights with regard to the contractual software or parts of the software individually, but also when they are included in other software and/or software parts and to that extent also jointly, in particular the right to exploit, lease, rent, reproduce, reconfigure and modify them, to transmit them wirelessly or by wire in whole or in part, to make them available for retrieval by the public free of charge or for consideration and to publicly report



- on the service. This right expressly also includes documentation, training materials or interim results of this software.
- Purchaser is entitled to assign rights of use to software that has been purchased by Purchaser on the basis of these Purchase Terms and Conditions in the event of restructuring, the formation of new entities for purposes of research and development (in particular including for joint ventures formed in this context), the sale of companies or the outsourcing of IT processes in whole or in parts to associated companies within the meaning of §§ 15 et seq. of the German Corporation Act and to third parties (in particular service providers in connection with this IT outsourcing). The assignment may to this extent also be only partial and in the context of the license scope shall include a usage authorization in favor of Purchaser.
- 20.5 Supplier also assigns all rights to and from inventions (including rights from patents and utility models), distinctive marks, trademarks, trade names and design rights on the Work Results created for Purchaser, to Purchaser in full and worldwide. This assignment further comprises all applications and interests in these rights. The assignment is independent of whether the rights, applications and interests are registered or unregistered. If any existing protective or identifying marks, trademarks, trade names or design rights cannot be assigned, Section 19.1 applies as appropriate.
- 20.6 If Supplier creates software and or adaptations to standard software on orders from Purchaser, the source and object code created in the context of execution of the order shall be assigned to Purchaser comprehensively and in appropriate form. If the subject matter of the Agreement is the supply of standard software and if Supplier does not transmit the source and object code for it to Purchaser, Supplier must, if Purchaser so wishes, deposit the source code with a suitable third-party, i.e. in particular an escrow agent, under standard market conditions and in favor of Purchaser.
- 20.7 In addition to the exclusive title to intellectual property, Purchaser also acquires exclusive title to all physical objects and data media created or conveyed in the context of this Agreement by Supplier or on the instructions of the Supplier for the performance of the purchase order (e.g. including but not limited to sketches, drafts, documents, molds, models, tools, films, photographs, transparencies, contact prints, film recordings, videotapes, masters, USB sticks, memory cards, advertising material, posters, signs, labels, packing materials etc.). The above provision applies even if some or all of the cited objects remain in Supplier's possession. These objects must be delivered to Purchaser on request.
- 20.8 With payment of the stipulated compensation, both the services contractually owed by Supplier and the above-mentioned transfers of rights shall be deemed fully compensated.
- 21. THIRD-PARTY RIGHTS AND ATTRIBUTION**
- 21.1 For image material, Supplier must obtain in advance any required permission of persons portrayed in the image and for its publication and exploitation as stipulated in Section 20.2.
- 21.2 If third parties such as photographers, illustrators, models, speakers, singers etc. are hired, Supplier shall extend to Purchaser the opportunity to restrict the scope of the service before they are hired, with regard to the determination of fees and legal safeguards.
- 21.3 Supplier must ensure that all creators or ancillary copyright holders who are involved in producing the services and items to be provided in the framework of this Agreement on the basis of an agreement concluded with it, or whose services or works it has used, receive an appropriate share of the proceeds therefrom within the meaning of §§ 32/32a of the German Copyright Act.
- 21.4 If Supplier is the (co-) author with reference to all uses of Purchaser's work, Supplier waives the requirement for attribution and shall require the third parties involved by it in the performance of its services to likewise waive their rights to attribution. Purchaser shall decide on the attribution of Supplier and/or any (co-) authors by name, as well as on any design of the citation.
- 21.5 Supplier shall ensure by means of corresponding agreements (in particular with any employees or third parties hired by it) that the contractual use of the Work Results and other objects conveyed by it may not be adversely affected by any (co-) authorship rights or other IP rights and that Purchaser is granted the rights described in Sections 20.1 to 20.7. Supplier must if necessary acquire the necessary rights and/or licenses. Supplier shall pay any license fees.
- 22. IP INFRINGEMENTS**
- 22.1 Supplier shall hold Purchaser harmless from all third-party claims, subject to the provisions of Section 22.2, that are brought on grounds of infringement of third-party IP rights by the Work Results and/or objects supplied when used as stipulated by the Agreement. This hold-harmless obligation includes all expenses that are incurred by Purchaser from or in connection with the third-party claim.
- 22.2 Supplier shall not be liable for services that are made available by Purchaser. Purchaser shall hold Supplier harmless from third-party claims if and to the extent that the respective claim is brought on grounds that Supplier has acted at Purchaser's express wish, although Supplier has notified Purchaser in writing of its objections with regard to the admissibility of the action.
- 23. CORPORATE DESIGN**
- Supplier shall use Purchaser's current Corporate Design appropriately, in particular in the creation of communications and public relations services (e.g. advertising material, signs, films, television or radio spots, product packaging, business letters, business reports or similar materials, regardless whether for Purchaser's internal use or for external purposes directed at third parties). In this regard, Purchaser must transmit the Corporate Design to Supplier in a suitable format or enable it to have access.
- 24. COMPLIANCE WITH THE REQUIREMENTS OF FAIR TRADE LAWS IN ADVERTISING AND PUBLIC RELATIONS SERVICES**
- 24.1 Supplier shall be liable for the compliance of advertising and public relations measures proposed by it with the provisions of fair trade laws applicable to these measures. Supplier shall bear any costs incurred by Purchaser as a result of and failure by Supplier to properly examine or verify the admissibility of the proposed public relations measure under fair trade laws.
- 24.2 Supplier shall not be liable for the accuracy of objective statements made about Purchaser's products and services in the proposed public relations measure if and to the extent that Purchaser has approved this content for publication.
- 25. CONFIDENTIALITY**
- 25.1 Supplier must use all information received orally or in writing from Purchaser only for the purposes stipulated in this Agreement, keep it confidential and not disclose it to third parties without Purchaser's prior written consent. Supplier must further make the information accessible only to those employees and subcontractors, if any, who



are bound by a confidentiality agreement equivalent to that stipulated in Section 25 and who are required to have the information to perform the Agreement between Supplier and Purchaser. At Purchaser's request, Supplier must confirm to Purchaser in writing the conclusion of corresponding agreements.

- 25.2 The confidentiality requirement stipulated above extends as appropriate to the request for quotation and purchase order as well as to the work performed in this regard.
- 25.3 The above obligations do not apply to information that
- at the time of its disclosure was already known to Supplier without any obligation to the Purchaser to keep it confidential, or
  - was disclosed to Supplier by third parties who received and forwarded this information without violating any confidentiality obligation, or
  - at the time of its disclosure by Purchaser was already in the public domain, or
  - entered the public domain thereafter through no fault on the part of Supplier.
- 25.4 Nor does the confidentiality obligation apply if disclosure of the information to a court or a government authority is required by an order of the court or other government authority for the execution of the order. If permitted under the specific circumstances, Supplier shall immediately notify Purchaser before information is forwarded to a court or government authority.
- 25.5 The confidentiality obligation stipulated above survives the completion of the order unless one of the exceptions cited above occurs subsequently.

## 26. DATA PROTECTION

- 26.1 For purposes of the Agreement, the definitions set forth in Art. 4 of the Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR") apply.
- 26.2 Each party must at all times comply with its respective obligations under the applicable data protection laws and regulations (including but not limited to the GDPR).
- 26.3 If, during and in connection with the performance of the Agreement, the Supplier receives the transmission of (or gains access to) personal data or in any other manner processes personal data to which the data protection laws and regulations apply ("data protection relevance"), the parties hereby agree to negotiate in good faith all additional data protection agreements that may be necessary and that are described in greater detail below.
- 26.4 If at the time this Agreement is entered into the parties are unable to determine in advance whether the performance of the event has any data protection relevance, the parties hereby agree to repeat an assessment of its data relevance whenever an existing or new obligation on the part of the Supplier is amended in the framework of the Agreement (e.g. for purchase orders, individual orders). If, -as the result of an assessment of this type- the parties determine that there is data protection relevance, they shall proceed as stipulated in Section 26.3.
- 26.5 In each case, the parties may not start to process any personal data until they have complied with the requirements set forth in this Section 26.
- 26.6 If, during the performance of this Agreement, Supplier is requested to process Purchaser's personal data and is therefore considered Purchaser's processor, the parties agree that they shall negotiate in good faith to enter into a corresponding agreement that defines

the subject and duration of the processing, the type and purpose of the processing, the type of personal data and the categories of data subjects and the rights and obligations of the parties (Data Processing Agreement, "DPA").

- 26.7 If processing of the type described above on behalf of Purchaser is subject to the rules of the GDPR, the DPA must meet the mandatory requirements of Art. 28 of the GDPR.
- 26.8 Supplier must employ appropriate technical and organizational measures that meet the requirements of the applicable data protection laws and regulations and in all cases guarantee a level of security adequate to the risks, taking into consideration the state of the art, the implementation costs and the type, scope, conditions and purposes of processing as well as the varying probability of occurrence and severity of the risks to the rights and freedoms of individuals.
- 26.9 If the GDPR applies to the processing of personal data and if the parties, in the performance of this Agreement, jointly define the purposes and means for the processing of personal data within the meaning of Art. 26 GDPR, the parties shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular with regard to the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14 of the GDPR by means of an arrangement between them (unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject).
- 26.10 The parties hereby agree that they will negotiate in good faith the conclusion of an agreement of the type described in Section 26.9 that reflects the roles and relationships of the parties with due respect to the data subjects and that establishes a central contact point for data subjects.
- 26.11 If the parties cannot agree on their respective responsibilities under Section 26.9, both parties agree to at least ensure that they will fully comply with their respective obligations as the parties responsible for the processing of personal data, including the obligation to provide all the information required under Articles 13 and 14 of the GDPR and to respond to all inquiries from data subjects.
- 26.12 If, during the performance of this Agreement, Supplier or one of its associated companies or subcontractors receives or gains access to personal data transmitted from the European Economic Area ("EEA"), Supplier guarantees that the processing of personal data shall be performed exclusively in a member state of the European Union, in a convention state of the agreement on the European Economic Area or in a third country for which the European Commission has determined there exists a guarantee of an appropriate level of protection, or is carried out in compliance with the requirements of Sections 26.13 and 26.14 below.
- 26.13 Any transmission to a country other than the member states and countries ("third countries") listed above requires the prior consent of Purchaser in written or electronic form (e.g. email) and compliance with the requirements governing the transmission of personal data to third countries or to international organizations (Art. 44-50 GDPR).
- 26.14 If a transmission of personal data to a third country requires the application of adequate protection measures, the parties agree that the preferred protective measure is the conclusion of standard contractual data protection clauses within the meaning of Art. 46(2)(c) GDPR in accordance with the procedure enacted by the European Commission. The parties hereby agree to negotiate the conclusion



of the current version of these standard contractual data protection clauses in good faith. The choice of other adequate protection measures shall be made at Purchaser's sole discretion.

## 27. LIABILITY FOR DEFECTS AND OTHER WARRANTIES

- 27.1 Supplier warrants that the goods and or services owed do not have any defects that would adversely affect their value or suitability for use, that they have the contractually stipulated or required qualities and are suitable for the use specified in the Agreement. Supplier further warrants that the goods or services owed correspond to the generally accepted rules of the art, the latest requirements of government authorities, the Product Safety Act, the respective applicable safety requirements and the occupational safety and accident prevention requirements.
- 27.2 Supplier's liability also extends to the parts manufactured and/or supplied by subcontractors and the services performed by subcontractors.
- 27.3 Purchaser must report defects in the contractual goods to Supplier as soon as they are identified in the ordinary course of business. The complaint period shall be determined on the basis of the individual circumstances. For apparent defects the complaint period is at least five (5) days from the date of shipment. For concealed defects the complaint period is at least five (5) days after the discovery of the defect.
- 27.4 Purchaser shall retain possession of and title to defective parts until they are replaced. Defective parts shall be returned to Supplier in exchange for the delivery of and transfer of title to the replacement.
- 27.5 Supplier shall bear the costs of testing, inspection and rectification (including any costs of removal, installation and transport). The above requirement shall also apply if it is determined that no defect actually existed. Any potential liability for damages on the part of the Purchaser in the event of unjustified warranty claims remains unaffected. Purchaser shall to this extent be liable only if it was aware or was grossly negligently unaware that no defect actually existed.
- 27.6 In urgent cases if a rectification by Supplier cannot be expected, notwithstanding its statutory rights under the warranty, Purchaser can also have the defect rectified itself or by third parties at Supplier's expense and demand reimbursement from Supplier of the expenses incurred. Purchaser also has this right if Supplier negligently fails to cure the defect in spite of being given an extended deadline, the deadline extension is superfluous or the attempted rectification is ultimately unsuccessful.
- 27.7 If Supplier has provided a guarantee for the properties or durability of the object supplied, Purchaser can file claims under the guarantee in addition to its rights arising from defects.

## 28. SUPPLIER'S RECOURSE

- 28.1 In addition to its claims arising from defects, Purchaser also has unrestricted access to Supplier's statutory recourse claims within a supply chain (supplier's recourse). In particular, Purchaser is entitled to specify the exact type of cure (repair or replacement) that the seller owes its customer in the specific case. Its statutory options (§ 439, para. 1 of the German Civil Code) are not thereby limited.
- 28.2 Before Purchaser accepts or honors a warranty claim brought by one of its customers (including compensation for expenses pursuant to §§ 478, para. 2, and 439, para. 2 of the German Civil Code),

Purchaser shall notify Supplier with a brief description of the situation and a request a written response. If the response is not received within a reasonable period and agreement on a solution cannot be reached, the warranty claim actually honored by Purchaser shall be owed to its customer. In this case, Supplier must present proof to the contrary.

- 28.3 Purchaser's claims from supplier recourse are valid even if the goods were subjected to further processing before they were sold to a consumer by Purchaser or to one of its customers (e.g. by incorporation in another product).

## 29. CANCELLATION

- 29.1 If the Agreement is a continuous obligation, Purchaser, in the case of the exercise of its ordinary cancellation rights, is also entitled to partial cancellation, if it can reasonably be expected of Supplier.
- 29.2 If the Agreement is a continuous obligation it can be canceled without notice for cause. Sufficient cause exists in the following cases in particular:
- Supplier defaults on a contractual obligation and does not cure the default within a reasonable period of time set by Purchaser, accompanied by the threat of cancellation.
  - If the deadline for compliance cannot be extended depending on the type of breach, Supplier has not successfully cured the breach in spite of a warning.
  - Supplier has not complied with its obligation to withhold taxes and/or social security contributions.
  - There has been significant deterioration of Supplier's financial situation that endangers performance of the Agreement.

## 30. LIABILITY

- 30.1 Supplier must hold Purchaser harmless from producer liability claims and claims under the Product Liability Act if the cause is within the area of control or operation of Supplier or its subcontractors.
- 30.2 In the framework of its own liability for damages pursuant to Article 30.1, Supplier must also reimburse any expenditures pursuant to §§ 683, 670 or pursuant to §§ 830, 840 or 426 of the German Civil Code incurred by Purchaser or in connection with a recall campaign conducted as required by law. The above also applies for precautionary recall campaigns.
- 30.3 Purchaser shall be responsible for instructing government authorities in compliance with the Product Safety Act. Purchaser shall coordinate with Supplier as necessary.
- 30.4 Apart from that, Supplier shall be liable in accordance with the statutory provisions.

## 31. LIMITATION PERIODS

- 31.1 Unless expressly agreed otherwise, the statutory periods of limitation apply. Notwithstanding the above, the provisions set forth below apply.
- 31.2 Notwithstanding § 438, para. 1, No. 3, and § 634a, para. 1, No. 1 of the German Civil Code, the general period of limitation for contractual claims on grounds of material defects and defects of title is three (3) years following delivery to Purchaser at the place of performance. If early acceptance is stipulated in the cases covered by § 634a, para. 1, No. 1 or No. 2 of the German Civil Code, the period of limitation starts not later than the final acceptance.



31.3 Non-contractual claims on grounds of material defects and defects of title and contractual claims on grounds other than defects are subject to the statutory periods of limitation.

31.4 The period of limitation on justified defect complaints is extended by the length of time between the defect complaint and its satisfaction. If the object supplied is replaced in its entirety, the period of limitation begins again. For a partial replacement, the period of limitation applies to the replaced parts. The period of limitation shall not start over if Supplier is visibly not acting in the framework of its obligation to cure defects.

## 32. WITHHOLDING TAX

32.1 Purchaser has the right to withhold from the compensation owed under this Agreement any taxes due at the source, the withholding of which is Purchaser's statutory responsibility, including any solidarity surtax legally due on such taxes. Any tax withheld shall be treated for all purposes of this Agreement as if it has been paid by Purchaser to Supplier. Supplier must as soon as possible receive a tax receipt from Purchaser indicating the amount of the tax withheld at the source that documents the amount of the taxes withheld and deducted.

32.2 No tax shall be withheld at source or the amount withheld shall be reduced if Supplier, before payment of compensation, presents a corresponding certificate of exemption from the Federal Central Tax Office that indicates that the compensation is subject to reduced withholding or is fully tax-exempt in the Federal Republic of Germany on the basis of a current double taxation agreement.

32.3 If Purchaser cannot deduct the withholding tax, including any solidarity surtax, from the payment because the compensation is paid by offsetting of mutual claims, Supplier must pay the withholding tax, plus any solidarity surtax, to Purchaser separately. If Purchaser has neglected to deduct withholding tax although it is required under the law to pay withholding taxes to the tax authorities for Supplier's account, Supplier shall assist Purchaser with regard to all procedures that are necessary to obtain a refund from the tax authorities. If the tax authorities do not refund the subsequently paid withholding taxes including any solidarity surtax, Supplier shall immediately refund to Purchaser the amount of the tax owed by law, including any solidarity surtax.

## 33. VAT

All stipulated compensation amounts are net amounts. If owed by Supplier under the law, value-added tax must be paid after receipt of a correct invoice within the meaning of the Value-Added Tax Act in addition to the stipulated compensation.

## 34. ORIGIN OF GOODS/CUSTOMS STATUS

### 34.1 Origin of goods

The goods supplied must meet the origin requirements of the EU Generalized System of Preferences unless not expressly stipulated otherwise in the order acknowledgment. Supplier must issue all supplier declarations required by the Implementing Regulation (EU 2015/2447) and confirm the preferential status of the products supplied by it. This requirement is not satisfied by the indication of the country of origin on the invoice. Supplier is responsible for the accuracy of the supplier's declaration and shall be liable to Purchaser for any damage incurred. A long-term supplier's declaration may be issued; at Purchaser's request, however, an individual supplier's declaration must be issued in each case. At Purchaser's request,

however, a certificate of origin must be issued in each case, if necessary.

### 34.2 Customs status

Unless otherwise agreed between Supplier and Purchaser, Supplier must always supply Union goods for deliveries from an EU loading point. Supplier must indicate the customs status of the goods in its shipping documents (e.g. bill of lading). Unless otherwise indicated: goods that are shipped from an EU loading point are Union goods.

## 35. SUSTAINABILITY

Purchaser expects that Supplier's business operations and business practices comply with the Bayer Supplier Code of Conduct in the version current as of the entry into force of the Agreement (<https://www.bayer.com/en/supplier-code-of-conduct.aspx>). Purchaser is entitled to verify Supplier's level of sustainability in the form of a self-evaluation (e.g. online, written questionnaire etc.) or an on-site audit conducted by Purchaser or by a third party. The sustainability level shall be determined by a comparison with the standards set by the Bayer Supplier Code of Conduct.

## 36. FINAL PROVISIONS

36.1 Supplier is permitted only with Purchaser's express written consent to cite the business relationship with Purchaser or to refer to it in informational and advertising material.

36.2 Supplier may assign claims against Purchaser that are not monetary claims only with Purchaser's express consent.

36.3 Purchaser may transfer the Agreement and the rights and obligations related to it at any time and without Supplier's consent to Bayer AG or to companies affiliated with it within the meaning of §§ 15 et seq. of the German Corporation Act or in connection with the sale or transfer of all or substantially all of (i) its business, (ii) a given business unit or (iii) a given site, or in connection with a merger or other consolidation of Purchaser or any of its affiliated companies with another entity.

36.4 Supplier may offset only against undisputed or legally upheld claims. If Supplier has a right to withhold performance, Supplier may do so only against claims that originate from the same contractual relationship.

36.5 Otherwise the statutory provisions governing offsetting and withholding rights apply.

36.6 Supplier must immediately notify Purchaser in writing of any transfer of the Agreement by operation of law and of any change in its company name.

36.7 German law shall apply. The UN Convention of April 11, 1980, on agreements for the International Sale of Goods shall not apply.

36.8 If a purchase order references INCOTERMS without indicating the year, INCOTERMS apply in the version in force at the time of the purchase order.

36.9 If Supplier is a registered trader [*Kaufmann*], the courts of Cologne shall have exclusive jurisdiction.

36.10 If individual provisions of the Agreement are or become invalid or unenforceable in whole or in part, the remaining provisions shall be unaffected thereby.

36.11 If provisions are excluded from the Agreement, are invalid or unenforceable, the content of the agreement shall be as required by law





(§ 306, para. 2, of the German Civil Code). Only otherwise and if no additional interpretation of the Agreement takes priority or is possible, the parties shall replace the invalid or unenforceable provision with a valid and enforceable provision that comes economically as close as possible to the original provision in consideration of their mutual interests.

Updated: Leverkusen, March 2019