

## **Bayer's General Conditions of Purchase**

### **1 General**

- 1.1 These Conditions shall be an integral part of the purchase contract. 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 accepted them in writing for a specific order.
- 1.2 Other agreements, amendments or subsidiary agreements shall not be effective unless the Buyer has given his written consent thereto.

### **2 Offer**

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

### **3 Order**

- 3.1 Orders and alterations to orders shall be made in writing. Verbal agreement or arrangements discussed over the phone shall only be binding if confirmed in writing.
- 3.2 Each order or alteration to an order shall be confirmed by the Seller and agreed by the Buyer in writing and shall be treated separately in all correspondence. The acceptance of the order is limited to and conditional upon acceptance by the Seller of these Conditions.
- 3.3 The following details shall be stated in all correspondence: the product name, quantities and pricing of products, payment terms, trade terms, date of delivery, and other ancillary terms in relation to the transaction, the complete order number and the date of the order.

### **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. Save for reasons of force majeure as specified in Article 16, the Seller shall be liable for late delivery charges calculated at a daily rate at 0.3% of the order value for delay of delivery of goods up to a maximum of 10% of the total order value. The Buyer shall have the right to set off the late delivery charges owed by the Seller against any payments due to the Seller. Without restricting the rights of the Buyer to claim the late delivery charges or other damages on any other basis, the Buyer shall have the option to cancel the order if delivery is delayed for over 15 days, or if the Buyer has express prior notice that delivery will be delayed for over 15 days.

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

- 5.1 The Seller warrants the goods supplied by him to be free from defects which may reduce their value or affect their usability, to be in accordance with the specifications and conditions stipulated in the order or product specification sheet, to have the warranted properties, to be in conformity

with the generally accepted technical practice, and to conform to the most recent 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 nondefective one in accordance with the product specifications agreed between Seller and Buyer or, if the Seller has the necessary technical equipment, repair of the defect. This shall not apply to defects or damage caused by

- (a) normal wear and tear
- (b) inappropriate 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.

- 5.2 Unless agreed otherwise, the warranty period shall be at least one (1) year, starting from the time the goods are put into operation or used for the first time.
- 5.3 The Seller's warranty shall also cover any items manufactured by subcontractors.
- 5.4 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.
- 5.5 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.
- 5.6 In urgent cases, or if the Seller defaults or fails in repairing a defect, the Buyer may repair the defect himself at the Seller's expense or avail himself of any of the other warranty rights mentioned in clause 5.
- 5.7 Acceptance of the Seller's supplies and services by the Buyer shall not affect the Seller's obligations under the warranty.

## **6 Tests**

- 6.1 If tests are specified for the goods to be supplied, the Seller shall bear the costs of such tests, including his own personnel costs, but excluding the Buyer's personnel costs.
- 6.2 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.
- 6.3 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.
- 7.2 The Seller shall take out at his own expense adequate third party liability or other insurance to cover damage resulting from services rendered by or goods delivered by or property belonging to him, his personnel, or third parties commissioned by him.

## **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. 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.
- 8.2 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.
- 8.3 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 are complied with by subcontractors.
- 8.4 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. The Buyer shall have the right to ascertain the contents and condition of such consignments.

## **9 Prices and Conditions**

Should the Seller reduce his 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 pass 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 invoices shall be consistent 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. The complete order number shall be specified 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 delivery.
- 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.

## **12 Confidential 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 works in connection therewith as confidential. The Seller shall be liable for any loss suffered by the Buyer because he has failed to fulfil 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, the latest version shall apply. The Seller shall request the Buyer to supply him with his works standards, 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 his personnel, which is brought onto the Buyer's premises.

## **14 Indemnity**

The Seller shall indemnify, defend and hold the Buyer harmless against any and all claims, liabilities, expenses, loss, damages and costs which the Buyer may sustain or incur as a result of:

- (a) breach of these Conditions by the Seller;
- (b) breach of any contract or order by the Seller;
- (c) non-compliance with any applicable laws and regulations;
- (d) 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.

## **15 Advertising Material**

The Seller shall not refer to his business connection with the Buyer in any information or advertising material except with the Buyer's written consent.

## **16 Force Majeure**

16.1 If a party is prevented, hindered or delayed from or in performing any of its obligations under the purchase contract by an event of force majeure being an event which is, or the consequences of which are, beyond the reasonable control of the party such as war, acts of government, serious fire, flood, typhoon or earthquake, the affected party's obligations under the purchase contract are suspended while the force majeure event continues.

16.2 Except where the nature of the force majeure event shall prevent it from doing so, the affected party shall notify the other party in writing forthwith after occurrence of the force majeure event and shall, within fourteen (14) days thereafter, send to the other party a certificate issued by the competent government authorities evidencing the occurrence of the force majeure event.

16.3 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 one (1) month, the Buyer shall have the right to terminate the purchase contract by written notice to the Seller.

16.4 Notwithstanding any provision to the contrary, if cuts in supply cannot be avoided due to the force majeure event arising from the part of the Seller, the Seller shall make all reasonable efforts to ensure that the supply to the Buyer is allocated on a fair and equitable basis.

## **17 Governing Law and Dispute Resolution**

These Conditions and the purchase contract shall be subject to the laws of Taiwan, Republic of China. Any dispute arising out of or in connection with these Conditions and the purchase contract, including any question regarding its existence, validity or termination, shall be submitted to the non-exclusive jurisdiction of the District Court of Taipei as court of first instance.