

# General Terms and Conditions for Sale and Deliveries of Bayer (Schweiz) AG

(Pharmaceuticals and Consumer Health)

for use in business transactions between companies, valid from May 1, 2020

## 1. General aspects

1.1. These General Terms and Conditions (GTC) govern the offer, sale and delivery of all goods and services (hereinafter "goods" or "products") to a customer (hereinafter the "Buyer") by Bayer (Schweiz) AG (hereinafter the "Seller") for the divisions Pharmaceuticals and Consumer Health. The GTC shall be an integral part of the purchase agreement. Conflicting or deviating conditions or other restrictions stipulated by the Buyer shall not be recognised unless the Seller expressly agrees to this in writing in each individual case. Any additional conditions stipulated by the Buyer require written confirmation from the Seller.

## 2. Offers and orders

2.1. Offers, information and descriptions issued by the Seller, including Internet presentations and cost estimates, shall remain non-binding and subject to change unless they are expressly designated as binding by the Seller in written form.

2.2. The Buyer's orders shall become binding for the Seller upon written or electronic confirmation from the Seller (also including invoices and delivery receipts). This also applies to information regarding prices, quantities, delivery deadlines and delivery options.

2.3. Upon placement of the Buyer's first order, the Seller shall review the Buyer's practice/wholesale trade permit and creditworthiness.

## 3. Condition of goods, technical advice, use and processing

3.1. The condition of goods is to be assessed solely on the basis of the conditions described by the Seller by means of product descriptions, specifications and labels. Public statements, promotions and advertisements shall not be considered to provide information on the condition of goods. No assurances regarding a specific characteristic are provided by the information on shelf life, products, application or usage, nor by formulas, ingredients or weight and measurement information.

3.2. The Seller provides its technical application advice orally, in writing and in test-based form to the best of its knowledge, but this may only be considered non-binding information, including with regard to any third-party proprietary rights, and such information shall not release the Buyer from making an independent assessment of the goods delivered by the Seller to determine whether they are suitable for the intended processes and purposes. The application use and processing of goods falls beyond the Seller's scope of control and is therefore solely the Buyer's responsibility.

3.3. The products delivered generally have a minimum shelf life of at least 12 months. This does not include products from Consumer Health and Specialty Products, which generally feature a minimum shelf life of at least six months.

## 4. Export and import restrictions and obligations of the Buyer

4.1. If a delivery requires an official export or import authorisation from a government or governmental authority, or if the delivery is otherwise restricted or prohibited on the basis of legal import or export regulations, the Seller shall be entitled to suspend its delivery obligations and the Buyer's claim to the delivery until the permit is granted or the restriction or prohibition is lifted. In this case, the Seller shall also be entitled to terminate or withdraw from the agreement without any liability towards the Buyer. The Seller may also request presentation of the relevant authorisation at any time. If a declaration by the end customer or an export certificate is required, or if the Seller considers it necessary to obtain this, the Buyer must provide this in response to the first written request. If an import authorisation is necessary, the Buyer must immediately inform the Seller of this and send the authorisation to the Seller as soon as it is available.

4.2. By accepting an offer, concluding an agreement or accepting goods, the Buyer warrants that it shall not conduct any business with these goods or the relevant documentation in violation of the legal export and import restrictions.

## 5. Prices

Unless otherwise agreed, the seller's prices, valid at the time of delivery, are calculated plus any statutory VAT and other surcharges. An express delivery requested by the customer is charged at a flat rate of CHF 50, intercity express deliveries are charged according to expenditure. The minimum order value is CHF 300, orders below this amount will be subject to a surcharge of CHF 30.

According to the Regulation on integrity and transparency in the therapeutic products sector, a shipping costs fee of CHF 20 is charged for direct sale to specialists and organizations employing specialists.

## 6. Payment

6.1. Unless otherwise agreed in writing, payments shall be made by bank transfer. A payment shall only be considered complete when the relevant amount is definitively available in the Seller's account. Discounts may only be deducted on the basis of a special written agreement.

6.2. Unless otherwise agreed in writing, the payment deadline shall be 30 days net following the invoice date. In the event of payment delays, default interest of 5% shall be charged on the total outstanding amount. The right is reserved to present proof of higher default damages.

6.3. The Seller also reserves the right to use payments to settle the invoices which have been outstanding longest, plus any default interest and costs accrued thereon, in the following order: costs, interest, principal claim.

6.4. The Buyer may offset payment only against uncontested or legally established claims.

## 7. Delivery

7.1. Delivery deadlines shall be non-binding even if the Seller, upon concluding an agreement, indicates an exact date or a date that may be exactly determined. A binding delivery deadline requires express agreement to this effect between the parties.

7.2. If a fixed delivery deadline has been expressly agreed, but the delivery is delayed, the Buyer must grant a reasonable extended deadline, generally of two weeks. If no delivery is made within the extended deadline, the Buyer may withdraw from the relevant parts of the agreement if and to the extent that the Seller is responsible for the delay. Claims for compensation asserted by the Buyer due to non-delivery or delayed delivery, and claims for compensation in lieu of performance, are governed by section 14.

7.3. Partial deliveries are permissible. In the event of partial deliveries, the Seller shall be

entitled to corresponding partial payments.

7.4. If the Buyer delays the acceptance of goods or culpably violates any other duties of cooperation, the Seller shall be entitled to demand compensation for resulting losses, including any additional expenses. The right to further-reaching claims shall remain reserved.

## 8. Operational and production disruptions, force majeure, contractual obstacles

8.1. The Seller shall not be liable for the non-provision or delayed provision of services if this is due to operational disruptions, in particular if a delivery, due to transfer of the production unit to a different product in the meantime, is no longer available or if a necessary quality criterion of the goods cannot be guaranteed for technical reasons. This does not apply if the operational disruption is caused intentionally or by gross negligence on the part of the Seller.

8.2. In the event of a long-lasting disruption or hindrance to production – for whatever reason – the Seller shall be entitled to divide its available production capacities and available goods among its customers at its own commercial discretion, and as a result may deliver less than the contractually agreed quantity. Force majeure of any kind, unforeseeable production, traffic or shipping disturbances, fire, flooding, unforeseeable labour, energy, raw material or supply shortages, strikes, lockouts, official decrees or any other hindrances beyond the control of the relevant party, which reduce, delay, prevent or render infeasible the production, shipping, acceptance or use of goods and services, shall exempt this party from its delivery or acceptance obligations for the duration and scope of the disruption. If the disruption causes the delivery or acceptance to be delayed by more than eight weeks, both parties shall be entitled to withdraw from the agreement. Should the Seller's suppliers fail to supply in whole or in part, the Seller shall not be under obligation to purchase from other suppliers. In this case, the Seller shall be entitled to distribute the available quantities of stock, taking into account internal requirements.

## 9. Shipment and risk assumption

9.1. The Seller reserves the right to choose the route and mode of shipment. Additional costs caused by special shipping requests of the Buyer shall be at the Buyer's expense.

9.2. Unless otherwise agreed, the risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer ("transfer of risk") at the time of receipt of the goods by the Buyer or at the time of any delay in acceptance thereof.

9.3. If the Buyer exports the goods, it must provide the Seller with the necessary export information.

## 10. Retention of ownership

10.1. The goods shall only become the property of the Buyer after it has satisfied all of its obligations arising from the business relationship with the Seller, including ancillary claims and claims for compensation. The retention of ownership shall also continue to apply if individual claims of the Seller are included in a current invoice and the balance is established and recognised.

If the Buyer defaults on its obligations vis-à-vis the Seller, the latter shall be entitled, without setting an extended deadline or withdrawing from the agreement, to demand that the Buyer hand over the reserved goods. Repossession of the reserved goods only means withdrawal from the agreement if the Seller has expressly declared this in writing.

## 11. Warranty

11.1. Complaints due to incomplete or incorrect deliveries or obvious defects must be promptly submitted in writing, at the latest within seven working days after receipt of the goods, and sent back with the relevant delivery receipt, or else the goods shall be considered accepted.

11.2. Upon receiving goods, the Buyer must immediately check the following:

- identity (product name, comparison of lot or batch numbers, container label or seal label with delivery receipt),
- quantity,
- product presentation and labelling, and
- presence of transport damage.

Upon the receipt of temperature- and vibration-sensitive goods and perishable goods, the Buyer must conduct a quality check for any hidden defects resulting from transport or temporary storage, within the scope of what is technically feasible and economically reasonable.

11.3. In the case of hidden defects, the written complaint must be submitted immediately following identification of the defect, or else the goods shall be considered accepted. The burden of proof that there is a hidden defect lies with the Buyer. Expired goods shall be neither replaced nor credited.

11.4. The timeliness of notification depends on the time of receipt by the Seller. Defects claimed in violation of the preceding duties of inspection and notification shall be excluded from all warranties.

11.5. Unless the parties have agreed otherwise, defect claims asserted by the Buyer shall be limited to the right to subsequent performance. In the event of failure of the subsequent performance by the Seller, the Buyer may lower the purchase price or withdraw from the agreement, at its discretion. This does not affect claims for compensation in accordance with section 14.

## 12. Returns

12.1. Goods subject to a complaint may only be sent back with the Seller's express consent and only in accordance with section 11.1. Returns must always be sent back to their original place of dispatch.

12.2. No replacements shall be provided under any circumstances for a) products designated as samples, b) damaged, broken or opened packaging, provided this is not a delivery error, or c) expired goods.

12.3. Products that have been recalled for reasons of drug safety (on the initiative of authorities or a company) shall be reimbursed at the purchase price provided the return is made in accordance with section 12.2 within one (1) month after the publication or notification of

- the product recall.
- 12.4. Products that BAYER has eliminated from its product range shall be neither reimbursed nor taken back.
- 13. Infringement of proprietary rights**
- 13.1. The Seller shall not be liable for the infringement of patents, copyrights, trademarks, trade secrets or other rights where such infringement is due to the Buyer's instructions or to a use of the goods that the Seller could not foresee or to changes made to the goods by the Buyer or on the Buyer's initiative. This particularly concerns cases in which, on the Buyer's initiative, a particular product package or label is delivered that could result in the infringement of name or trademark rights.
- 13.2. The Buyer must inform the Seller in writing as soon as possible if a third party claims a proprietary right or asserts such a right on a judicial or extrajudicial basis, with regard to a product concerned by the agreement. If the Buyer culpably violates this obligation, it shall be liable to the Seller for any resulting losses.
- 13.3. The Seller shall, at its own expense, (i) defend the Buyer against any third-party claims asserting a direct infringement of proprietary rights by the goods delivered by the Seller, and (ii) indemnify the Buyer against compensation payments and other costs imposed on it by legal judgement where these are directly and exclusively attributable to such infringement.
- 13.4. The Seller shall not be liable to the Buyer if the Seller (i) is not promptly notified in writing of a claim, (ii) is not granted the exclusive right to investigate, prepare, defend and handle the case, as well as the choice of legal representation, and (iii) does not receive all reasonable support and cooperation from the Buyer in its relevant investigation, handling, preparation and defence activities. The Seller shall also cease to be liable if the claim is asserted one year or more after the time of delivery.
- 13.5. If a product is subject to infringement proceedings such as described above under 13.2, or if such proceedings are probable in the Seller's opinion, the Seller may, at its discretion, (i) obtain the right for the Buyer to further use or sell the product, (ii) provide a replacement delivery, (iii) rework the product such that it no longer infringes proprietary rights or (iv) withdraw from an agreement covering such a product. Any further rights and claims in terms of reductions, withdrawal or compensation may only be based on these GTC.
- 13.6. For claims for compensation, section 14 also applies. The Buyer is not entitled to assert any further claims regarding the actual or alleged infringement of proprietary rights or other industrial property rights apart from the claims specified in this section 13.
- 14. Compensation**
- 14.1. Regardless of the legal nature of asserted claims, the Seller shall only be liable for losses incurred by the Buyer due to deliberate or grossly negligent conduct on the part of the Seller. All other liability is excluded as far as permissible.
- 14.2. The Seller shall under no circumstances be liable to the Buyer or others for indirect damage, consequential damage, losses, costs or expenses that were not foreseeable at the time of concluding the agreement, in particular for lost revenue or profit, delivery delays, work or production stoppages, the deterioration of other goods, or on the basis of damage arising from other causes, regardless of whether this is caused by the violation of guarantees, contractual violations, negligence or in any other way.
- 14.3. The liability exclusions and restrictions according to this section 14 further apply to the same extent with regard to the activities of the Seller's staff, employees, workers, representatives and agents. They also apply to the personal liability thereof.
- 15. Software**
- 15.1. If software or documentation is embedded in a product, or is delivered along with the product, no ownership rights in respect of this software or documentation shall be transferred to the Buyer through sale of the product. With respect to the proprietary rights contained in the software or documentation and belonging to the Seller or its affiliated companies, the Buyer shall merely have a non-exclusive and non-transferable right to use the software and documentation in connection with the products and in the form embodied in the delivered products or delivered along with them.
- 15.2. Without the Seller's written consent, the Buyer (i) may not modify, adapt, change, translate or use for the making of derivative works any software contained in the products or provided by the Seller in connection with the products, (ii) may not assign, lease, rent, loan, transfer, transmit to third parties or sub-license the software, or make it available to others in any way, (iii) may not combine the software or incorporate it into other software products, and (iv) may not reverse-engineer, decompile or disassemble the software or otherwise attempt to determine its source code. This does not apply in cases where this is expressly permitted by law. The Buyer must reproduce in unchanged form the references to the proprietary rights of the Seller and its affiliated companies or sub-contractors in all software and documentation provided by the Seller. Third-party licensing requirements may apply.
- 16. Sales and quality assurance**
- 16.1. Medications may only be acquired from and delivered to companies and establishments that are authorised to this end under the relevant laws. The Buyer warrants that its sale of goods and further planned trading steps comply with the applicable laws. Upon request, the Buyer shall provide the Seller with proof to this effect.
- 16.2. The Buyer must promptly inform the Seller if it becomes aware of potential counterfeit drugs, relevant suspicious facts, illegal trading involving the goods or complaints from the market.
- 17. Obligations to disclose risks, side effects, etc.**
- 17.1. The Buyer must comply with all applicable legal and official requirements for the disclosure of risks, side effects and harmful unintended reactions that occur through use of the goods as intended, and any similar occurrences, which it must communicate to the appropriate parties. In addition, even if the Buyer is not subject to legal or official duties of disclosure, it must always inform the Seller of such occurrences in writing via fax (+41 44 465 83 86) or email ([drug.safety.switzerland@bayer.ch](mailto:drug.safety.switzerland@bayer.ch)) under the subject heading "Adverse event reporting".
- 18. Termination or other cessation of the agreement**
- 18.1. Without prejudice to other contractual and legal claims, each party may terminate or withdraw from the agreement in full or in part, and with immediate effect, by means of a written notice, without being liable towards the other party,
- a. if insolvency proceedings are initiated concerning the other party's assets, or if restructuring, liquidation or dissolution proceedings are initiated. This applies both in the event of voluntary proceedings initiated by the other party itself and in the event of compulsory proceedings, when an insolvency or forced administrator is appointed or an assignment is made in favour of the other party's creditors.
- b. if there are major changes in the other party's capital or ownership circumstances, and the party freely judges that these changes make further execution of the agreement unreasonable.
- 18.2. If the Seller asserts its right of termination in accordance with section 18.1 and it has already fulfilled its obligations arising from the agreement, all payments to be made under this agreement shall become due immediately.
- 18.3. In the event of termination, withdrawal or expiry of an agreement, the provisions which, in spirit and meaning, should continue to apply beyond the duration of the agreement shall continue to be valid.
- 19. Place of performance, customary clauses, warranties, effectiveness clause**
- 19.1. The place of performance for delivery is the respective point of shipment, and the place for payment is that indicated in the Seller's invoice.
- 19.2. Any warranty agreed must be put in writing. A warranty statement shall only be considered valid if it adequately describes the content of the warranty as well as the length and geographical scope of its coverage.
- 19.3. Should individual clauses of these General Terms and Conditions be invalid in whole or in part this shall have no effect on the validity of the other clauses or the other parts of such clauses. The invalid clause shall be replaced by an appropriate valid provision that corresponds as closely as possible to the economic purpose of the invalid provision.
- 20. Data protection**
- 20.1. All data required by the Seller, for example for delivery and invoicing purposes, is stored in electronic form. The data is subject to the applicable data protection laws and is only used for internal purposes.
- 20.2. When a customer communicates an email address, it automatically consents to the Seller's use of this email address (e.g. for information, newsletters or similar) unless otherwise noted. The consent for use of the email address may be withdrawn at any time.
- 21. Applicable law and place of jurisdiction**
- 21.1. The rights and obligations of the parties arising from or in connection with these General Terms and Conditions shall be subject to and interpreted under Swiss law, disregarding its conflict of law provisions.
- 21.2. The parties agree that they shall first attempt an amicable resolution, through discussion and negotiation, of all disputes arising from or in connection with an agreement. Any disputes that cannot be amicably resolved shall fall under the exclusive jurisdiction of the competent courts of the city of Zurich, with the proviso that the Seller shall also be entitled to assert its claims at the Buyer's general place of jurisdiction.