General Terms and Conditions of Bayer Consumer Care AG

1. Sole application
   1.1. The terms and conditions set forth below apply generally to supplies of goods and services to Bayer Consumer Care AG by third parties and form an integral part of the agreement between the Supplier and Bayer Consumer Care AG.

2. Offers
   The Supplier shall ordinarily submit offers to Bayer Consumer Care AG free of charge. Should Supplier require any remuneration, this shall be subject to prior written agreement. Any payments shall be agreed in advance. Offers shall remain binding for a period of 120 days unless an alternative period is agreed in writing.

3. Acceptance (order)
   3.1. The Supplier shall ordinarily submit offers to Bayer Consumer Care AG free of charge. Should Supplier require any remuneration, this shall be subject to prior written agreement. Any payments shall be agreed in advance. Offers shall remain binding for a period of 120 days unless an alternative period is agreed in writing.

4. Prices
   Unless otherwise agreed, the prices indicated in the order shall be deemed to be fixed prices.

5. Testing
   If testing is specified in respect of goods or services to be supplied, the Supplier shall perform all tests and any costs associated with its own personnel. Bayer Consumer Care AG shall pay the costs associated with its personnel.

6. Supply of goods and services and consequences of delay
   6.1. Goods and services shall be supplied on the agreed delivery date, which shall be deemed to be in full. If the Supplier fails to deliver on the delivery date it shall thereafter be deemed to be in default.

   6.2. The Supplier shall inform Bayer Consumer Care AG immediately if it has reason to believe that it will be unable to deliver any or all of the goods or services on the agreed date, indicating the reasons for and likely duration of the delay.

   6.3. If it has been agreed that liquidated damages shall apply in the event of delay, the liquidated damages shall be payable by the Supplier. If any defects are found in the goods or services which make it necessary to repeat the tests or conduct further testing, the Supplier shall pay all technical and personnel costs entailed. The Supplier shall pay all technical and personnel costs that may be due in connection with any certificates that may be required for primary materials.

7. Shipping requirements
   7.1. On the day on which the goods are dispatched, the Supplier shall send a detailed dispatch note for each consignment separately from the goods and invoice. A delivery note and a packing list shall be provided with the goods. If the goods are sent by ship, the shipping papers and any invoice shall state the name of the shipping company and of the vessel. The Supplier shall select the most cost-effective method of transport that is best suited to Bayer Consumer Care AG. The full order reference and point of unloading specified by Bayer Consumer Care AG shall be indicated on all dispatch notes, delivery notes, packing slips, bills of lading, invoices and on the outer packaging etc.

   7.2. As a general rule, the Supplier shall be responsible for packaging, labelling and shipping hazardous products in accordance with the relevant and current regulations currently in effect. The accompanying documents shall indicate the risk category and any other information that may be required under the rules applying to the relevant method of transport.

   7.3. The Supplier shall be liable for any loss or damage that may be suffered due to its failure to comply with the applicable rules. It shall also be responsible for ensuring that any subcontractors appointed by it also comply with such rules.

7.4. In the event that it is not possible to take delivery of any consignment due to the Supplier’s failure to comply with the applicable rules, the goods concerned shall be stored at the Supplier’s expense and risk. Bayer Consumer Care AG shall not incur any costs or loss in connection with the contents and condition of such consignments. Tools and equipment shall not be shipped together with the goods supplied.

8. Packaging, transport, insurance
   8.1. Goods shall be properly packaged by the Supplier. The Supplier shall advise Bayer Consumer Care AG in the event that special care should be taken when removing the packaging. A clear and durable label shall be attached to all components of the delivery (order no., position no.).

   8.2. Unless otherwise agreed the most recent INCOTERMS shall apply.

8.3. However, transport insurance shall be arranged by Bayer Consumer Care AG, unless otherwise agreed.

9. Warranties and liability
   9.1. The Supplier warrants that the goods and/or services supplied are free from defects such as to reduce their value or render them unfit for their intended purpose, have the attributes promised, meet the applicable performance requirements and specifications, and do not vary from any other performance requirements or specifications specified in the agreement. If the goods or services supplied comply with Swiss legislation, health and safety standards and other rules (e.g. issued by Electrosuisse (Swiss Association for Electrical Engineering, Power and Information Technologies), Swiss Accident Insurance Fund (SUVÁ)). The Supplier shall be informed of any requirement to comply with specific in-house rules and standards of Bayer Consumer Care AG.

   9.2. If at any time during the warranty period it becomes evident that the goods or services supplied, or any component thereof, are not as warranted in clause 9.1, through no material fault of Bayer Consumer Care AG, the Supplier shall, at its own expense, rectify the defects onsite, or if it is impossible to do this within a reasonable period of time, supply replacement goods or services that are free from defects. If the Supplier fails to proceed as advised, even though a reasonable period of time has been granted or the situation is particularly urgent, Bayer Consumer Care AG shall be entitled to rectify the defects itself or have them rectified by a third party at the Supplier’s expense. Bayer Consumer Care AG shall only pay transport costs and travel expenses in relation to work undertaken in respect of warranties if this has been agreed in writing.

   9.3. The warranties provided by the Supplier shall also apply to any parts or components supplied by subcontractors.

   9.4. Unless otherwise agreed, the warranty period shall be 12 months, commencing on the date on which the goods or services are received by Bayer Consumer Care AG. Where a formal acceptance process has been agreed, the warranty period shall commence once the process has been completed. The warranty shall extend to the goods or services which are not put into operation immediately upon delivery shall commence on the date on which the goods or services are put into operation immediately upon delivery as notified to the Supplier.

   9.5. In any event, the warranty period shall not exceed 24 months from the date on which the Supplier advised Bayer Consumer Care AG that the goods or services were due to be supplied or the date on which the goods or services were received by Bayer Consumer Care AG.

   9.6. The warranties applying to goods and services supplied shall apply equally to any replacement goods or services and in respect of any work performed to rectify defects. In all circumstances, such warranties shall expire 24 months after the commencement of the warranty period for the original goods or services supplied. The warranty period thereby rendered warranty, at the end of an additional 6-month period following completion of the work.

   9.7. As an alternative to having defects rectified in accordance with clause 9.2, Bayer Consumer Care AG shall be entitled to a reduction in the purchase price. Bayer Consumer Care AG shall only exercise its right to rescind the agreement if the work undertaken to rectify defects in accordance with clause 9.2 has been unsuccessful even though a reasonable period of time was granted in which to complete such work.

   9.8. Bayer Consumer Care AG reserves the right to make any claim or exercise any rights permitted by law.

10. Rescission
   10.1. In the event that the Supplier is in default in respect of either performance or work carried out under warranty and the situation has not been rectified within a reasonable additional period of time, Bayer Consumer Care AG shall be entitled to rescind the agreement and to waive performance.

   10.2. If it becomes apparent before performance is due that the Supplier will not supply the goods or services by the date agreed through no fault of Bayer Consumer Care AG and timely performance is deemed to be unlikely, Bayer Consumer Care AG shall be entitled to rescind the agreement and to waive performance.

   10.3. Bayer Consumer Care AG shall also be entitled to rescind the agreement with immediate effect and to waive performance if in the course of the Supplier performing its obligations it appears likely that the goods or services will not be fit for purpose, through no fault of Bayer Consumer Care AG, and that the Supplier will be unable to satisfy the requirements of the agreement.

   10.4. Bayer Consumer Care AG reserves the right to make any claim for compensation or damages permitted by law.

   10.5. Upon rescission of the agreement, the Supplier shall, at the request of Bayer Consumer Care AG, deliver all results of work, including any plans and calculations.

11. Patent infringement
   The Supplier warrants that no third-party patents or proprietary rights are or will be infringed as a result of supplying and using the goods or services. The Supplier shall, at its own expense, indemnify Bayer in full from any claims and costs that may result from any infringement of third-party proprietary rights.

12. Assembly
   Unless otherwise agreed in writing, any assembly costs shall be included in the prices quoted for the goods or services supplied.

13. Insurance, work permits
   13.1. The Supplier shall take out and maintain adequate insurance to cover any personal injury, damage or damage to the property or goods of Bayer Consumer Care AG or its employees and staff.

   13.2. The Supplier shall ensure that all employees who are assigned to work on the premises are in possession of a valid Swiss work permit.

   13.3. The Supplier shall insure any machinery and equipment etc. supplied on loan to Bayer Consumer Care AG against the usual risks. Any further liability on the part of Bayer Consumer Care AG in respect of the destruction or damage caused to such machinery and equipment etc., is hereby excluded, unless such destruction or damage was caused
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14. Technical documents and operating instructions

Prior to supplying the goods or services, the Supplier shall, upon request, present any technical documents (e.g., blueprints) to Bayer Consumer Care AG for approval. Such approval by Bayer Consumer Care AG shall not relieve the Supplier from its responsibility to ensure functional and technical accuracy and viability. In supplying the goods or services to the Supplier, the Supplier shall provide to Bayer Consumer Care AG free of charge four copies of the final, amended versions of any technical plans, maintenance and operating instructions and lists of replacement parts which may be required for the proper maintenance of the goods or services supplied.

15. Confidentiality

15.1. Any information, drawings etc., which may be disclosed or provided to the Supplier by Bayer Consumer Care AG, shall be treated as confidential and shall not be used, reproduced or disclosed to third parties for any other purpose. All proprietary rights shall belong to Bayer Consumer Care AG. Upon request, all documents, including any copies or duplicates, shall be returned immediately to Bayer Consumer Care AG without delay. If no agreement is concluded, the Supplier shall return all documents to Bayer Consumer Care AG without being specifically requested to do so.

15.2. Technical documents belonging to the Supplier, or any subcontractor appointed by it, shall be treated as confidential by Bayer Consumer Care AG and shall remain the intellectual property of the Supplier or its subcontractors.

16. Data Privacy

The following provisions on data privacy apply, insofar as personal data is processed by the contracting parties which is relevant pursuant to the applicable data privacy legislation.

16.1. The contracting parties are aware of the fact that concluding and performing the Agreement between the contracting parties may result in the processing of personal data in general and the contact details of the other contracting party and its contact persons in particular. The personal data exchanged in the context of this Agreement shall only be accessed, used, copied, disclosed or otherwise processed by the contracting parties and their affiliated companies to the extent required for managing the business relationship and providing the services. The personal data shall be kept in the strictest confidence and securely stored for the term of the Agreement and – if legally required – beyond the termination date by implementing appropriate technical and organizational measures.

16.2. The service provider also undertakes to immediately report any security incidents to Bayer Consumer Care AG privacy officer, should such incidents occur as soon as they become aware of them and to return, delete or destroy personal data at Bayer Consumer Care AG’s request. In the context of this Agreement, Bayer Consumer Care AG shall have the right to verify compliance with the obligations specified in this Agreement and the applicable legislation.

16.3. Where the processing of personal data received from Bayer Consumer Care AG in the context of this Agreement is concerned, the service provider undertakes to adhere to the applicable data privacy legislation, including the Swiss Data Protection Act and the EU’s General Data Protection Regulation, to the extent applicable. Bayer Consumer Care AG may in particular exchange contact data of employees, agents, directors, representatives and other persons acting on its behalf with Bayer Consumer Care AG, in order to enable the service provider to contact Bayer, to meet its obligations under this Agreement and to perform the services under this Agreement in other way. The service provider shall act as an independent contractor.

16.4. Insofar as Bayer Consumer Care AG intends to commission the service provider over an extended period of time or to execute an order, the Supplier shall inform the Supplier’s Data Protection Officer of Bayer Consumer Care AG at privacy_ch@bayer.com or at the following address:

Data Protection Officer Bayer Consumer Care AG
Peter Merian-Strasse 84
CH-4002 Basel
Bayer AG is designated as our representative in the European Union in accordance with Art. 27 GDPR. You may contact the representative at the following address:

Data Privacy Representative Bayer AG
Kaiser-Wilhelm Allee 20
51368 Leverkusen
Germany
E-Mail: dp-representative@bayer.com

17. Intellectual property

If any services agreed comprise development or project work, all results of such work, including know-how and all intellectual property rights, shall belong to Bayer Consumer Care AG. The Supplier and its employees shall assist Bayer Consumer Care AG in taking any action that may be required to protect its intellectual property rights and shall sign any documents that may be necessary for such purpose.

18. Additional special Conditions for supply of goods classified as pharmaceutical products, medicinal products / devices, cosmetics or for services classified as pharmaceutical services

18.1. The following terms and conditions set forth in this section shall apply for supplies of goods classified as pharmaceutical products, medicinal products / devices, cosmetics or for services classified as pharmaceutical services, and shall form an integral part of the agreement between the Supplier and Bayer Consumer Care AG. Insofar as the QA Agreement (as defined in Section 17.9) is an integral part of this terms and conditions.

18.2. The Supplier is expected to organize its business with Bayer Consumer Care AG in line with the Bayer Supplier Code of Conduct (accessible under http://www.bayer.com/en/SUPPLIER-management.aspx) as updated from time to time.

18.3. Bayer Consumer Care AG shall have the right, after having written notice to Supplier at least thirty (30) working days prior to the respective date, to audit Supplier, including but not limited to quality management and the sustainability performance of the Supplier, by way of exchange of contacts (online, paper questionnaire, etc.) to be answered by Supplier and, if practical, within a reasonable period of time or by an on-site audit during normal business hours, executed directly by Bayer Consumer Care AG or a third party. The scope of the audit will be GMP, Quality- and EHS-relevant topics.

18.4. Specification. The supply of the product shall always be in compliance with the specifications as defined in the Quality Dossier as approved by the relevant regulatory authorities, i.e. any governmental regulatory authority involved in the approval process for the manufacturing, marketing, sale, reimbursement and/or pricing of the products in the local country where the products are to be sold.

18.5. Prices. Unless otherwise agreed, the prices indicated in the order shall be deemed to be fixed. No automatic price adjustment or indexation is applicable. Inflation does not entail automatic price adjustment to any adjustment of price. Unless otherwise agreed, the prices are full unit service prices per unit of the product. The price shall be calculated as the sum of quality control, ongoing stability/product quality review (PQR) costs, conversion fee, raw materials cost, the invest cost (if applicable) and packaging material cost, whereas the conversion fee includes but is not limited to all related fourth party direct and indirect costs, overheads, handling fees and costs whereas raw material costs reflect actual purchasing costs of excipients and all other input materials required for the manufacturing of the products.

18.6. Delivery terms are specified in the purchase order and shall be in accordance to Incoterms 2010. If responsibility of transportation is with Supplier, Supplier shall enter into a price agreement with the service provider. All costs shall be charged separately from the unit price per shipment and purchase order number. Supplier’s invoice shall not be attached to the goods, invoice shall be sent separately to Bayer Consumer Care AG.

18.7. Goods need to be transported under controlled conditions as specified in the QA Agreement. When needed, data loggers and thermo blankets are provided by Bayer Consumer Care AG to the Suppliers, free of charge. Supplier shall handle, store and add data loggers and thermo blankets to the shipments as specified in the QA Agreement. Aforesaid is organized by Bayer Consumer Care AG on the responsibility of the Suppliers. Any costs not specified in the QA Agreement and associated costs shall be borne by Bayer Consumer Care AG, unless this is required due to a delivery delays vs. agreed delivery dates, by the Supplier, in which case the associated costs have to be considered included in the Price.

19. Publicity material

No reference may be made to the business relationship with Bayer Consumer Care AG in any information or publicity material without its express prior written consent.

20. Billing and payment

20.1. Any payments made by bank transfer shall be deemed to have been made once the amount owed to the Supplier is transferred into Supplier’s bank account. Supplier shall promptly notify the Supplier’s bank of the occurrence of the event and its likely duration, failing which it shall not be entitled to claim force majeure.

20.2. Payment does not constitute acknowledgement of any terms and conditions or prices. The timing of payments shall not affect any warranties made by the Supplier or the right to make a complaint.

21. Force majeure

21.1. The parties to the agreement shall not be liable in respect of any failure to perform their contractual obligations by reason of circumstances amounting to force majeure. An event of force majeure means any circumstances arising after the agreement is concluded which were unforeseeable and are beyond the control of the parties.

21.2. Any party claiming force majeure shall inform the other party immediately of the occurrence of the event and its likely duration, failing which it shall not be entitled to claim force majeure.

22. Applicable law and place of jurisdiction

22.1. This agreement shall be governed by and construed in accordance with Swiss law. Conflicts of laws rules and the harmonized United Nations Convention on Contracts for the International Sale of Goods shall not apply.
22.2. Basel shall be the exclusive place of jurisdiction.

As of March 2020

Bayer Consumer Care AG
Peter Merian-Strasse 84
4052 Basel / Switzerland