

# General Conditions of Purchase for Bayer Companies in Japan



## 1 General

- 1.1 The following terms and conditions shall apply to the present purchasing transaction of goods or services (the "Transaction") made by and between the Supplier and the Purchaser, unless otherwise agreed in writing by the parties, or unless the parties enter into a separate written purchasing agreement. Purchaser shall mean Bayer Holding Ltd. and/or its affiliated companies in Japan.
- 1.2 The following terms and conditions shall not apply to those transactions which fall within the scope of the Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors (Act No. 120 of June 1, 1956).

## 2 Order

- 2.1 A purchase order shall be made in writing via the Purchaser's official order form. The content of discussions conducted verbally and by telephone shall be binding only if confirmed in writing.
- 2.2 Any expenses related to the provision of quotations to the Purchaser prior to the purchase order shall only be reimbursed on the basis of a separate agreement.

## 3 Acceptance

- 3.1 The purchase order shall be deemed to be accepted on the earlier of the Purchaser's actual receipt of the written confirmation from the Supplier or expiry of four (4) business days after the Supplier received the purchase order.
- 3.2 The Supplier shall refer to the order number, the order date and the Purchaser's purchasing department in the written confirmation and all other written communications.

## 4 Price

Unless otherwise specified in the purchase order, the purchase price includes costs for packaging, transportation, inspection, related documentation, insurance premiums, necessary license fees, and taxes (including consumption tax) in relation to the performance of the Transaction by the Supplier.

## 5 Delivery of Goods and Rendering of Services

- 5.1 Unless otherwise specified in the purchase order, the Supplier shall deliver the goods, and/or render the services on or by the date that is specified in the purchase order ("Delivery Date"). The Purchaser may refuse acceptance of non-conforming goods and/or the services to the terms specified in the purchase order.
- 5.2 The Purchaser shall inspect the received goods and services and notify the Supplier of any found deviations within a period of 30 days after the receipt.
- 5.3 In the event that the Supplier finds itself unable to fulfill its contractual obligations in whole or in part in a timely manner, the Supplier shall immediately notify the Purchaser thereof and state the reasons for and the potential duration of any such delay.
- 5.4 The title to and the risk regarding the delivered goods shall pass from the Supplier to the Purchaser upon the completion of delivery.
- 5.5 If assembly, maintenance, inspection, repair or other work needs to be carried out on the Purchaser's premises and/or its Affiliates, such work shall be subject to the safety and procedural regulations of the Purchaser and/or the Purchaser's Affiliates. Affiliates shall mean any entity that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with the party.
- 5.6 The Supplier shall provide the Purchaser in a timely manner with all documents necessary for using, assembling, installing, processing, storing, operating, servicing, inspecting, maintaining and/or repairing of the goods supplied.

## 6 Payment and Set-Off

- 6.1 The contents of the invoice shall be strictly consistent with those provided for in the corresponding purchase order. The Supplier shall refer to the order number, the order date and the Purchaser's purchasing department in the invoice.
- 6.2 Payment shall be made according to the terms specified in the purchase order by wire transfer to the bank account designated by the Supplier. The Purchaser may withhold tax if so required under applicable laws and/or regulations.
- 6.3 The Purchaser reserves the right to set off any monetary claim to be paid by the Supplier against the purchase price.

## 7 Warranty

- 7.1 The Supplier warrants:
  - (a) that the goods supplied do not have any defects, which may reduce their value or affect their usability;
  - (b) that the goods possess the agreed or guaranteed properties and quantity;
  - (c) that the goods are suitable for the purpose stipulated in the purchase order;
  - (d) that the goods conform to generally accepted technical practice, to the applicable laws and regulations and to the appropriate safety specifications and rules for the protection of workers and prevention of accidents;
  - (e) that the services shall be rendered in accordance with all applicable laws and performed by appropriately qualified and trained personnel, with due care and diligence and to such high standards of quality as it is reasonable to expect under the circumstances; and

(f) that the goods and/or the performance of services do not infringe patents, licenses or intellectual property rights of third parties.

- 7.2 The Purchaser has the right to demand delivery of goods or services to remedy any shortage, cure any defects, delivery of replacement goods or services, reduction of the purchase price and damages against the Supplier with a written notice to the Supplier within one (1) year from the completion of the delivery or service. This shall apply to any defects in the cured part or complementary or replacement goods or services provided by the Supplier.
- 7.3 The Supplier shall indemnify and hold harmless the Purchaser from any loss, damages, or any claims, including, but not limited to product liability claims, caused by the goods and/or the services provided by the Supplier.
- 7.4 The Supplier is recommended to carry adequate insurance (including liability insurance and product liability insurance) to cover the risk associated with the performance of the Transaction.

## 8 Documentation and Confidentiality

- 8.1 All drawings, standards, guidelines, methods of analysis, formulas and other information in any form provided to the Supplier by the Purchaser for the purpose of the Transaction shall remain the property of the Purchaser. The Supplier shall immediately return or destroy all such documentation and copies thereof and provide written certificate of such destruction if so instructed by the Purchaser.
- 8.2 Neither party may disclose to any third party or use for any purposes other than the performance of the Transaction any information of the other party which the party receives in the course of the Transaction without the prior written consent of the other party.
- 8.3 Notwithstanding the foregoing paragraph, the parties may disclose information to their Affiliates on a clear need-to-know basis.
- 8.4 The Supplier shall not refer to the business relations with the Purchaser, nor use Purchaser's logo, trademark or trade name, in its advertising material or any other information without Purchaser's written consent.

## 9 Intellectual Property

If any intellectual property rights (including copyright) arise from the performance of the Transaction, the Supplier and the Purchaser shall discuss in good faith to decide the ownership of such property rights.

## 10 Assignment

The Supplier may not assign or pledge any right or obligations arising under the Transaction without the prior written consent of the Purchaser.

## 11 Termination

- 11.1 Either party may terminate all or a part of this Transaction with a written notice specifying reasonable cure period if:
  - (a) the other party has failed, or, in the reasonable judgment, seems to fail, to complete the delivery by the Delivery Date; or
  - (b) the other party breached this Agreement.
- 11.2 Either party may immediately terminate all or a part of this Transaction if:
  - (a) Application for commencement of procedures for bankruptcy, special liquidation, civil rehabilitation or corporate reorganization has been filed against the other party; or
  - (b) the other party becomes insolvent, discontinues the business for any reason, or makes any assignment of the business for the benefit of creditors, or goes into liquidation or receivership.
- 11.3 For the avoidance of doubt, termination shall not prevent either party from claiming damages for breach of contract against the other party.

## 12 Force Majeure

Neither party shall be liable for failure or delay to perform contractual obligations, provided that such failure or delay is caused by or is the result of any acts of God, acts of the public enemy, wars, terrorism, insurrections, riots, and embargoes. The party so affected shall give prompt notice to the other party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

## 13 Applicable Law

This Transaction shall be governed by the laws of Japan and the terms and conditions set forth herein are construed in accordance with the laws of Japan. The UN Convention on Contracts for the International Sale of Goods dated April 11, 1980 shall not apply.

## 14 Jurisdiction

Any disputes arising from or related to this Transaction shall be regarded as falling under the exclusive jurisdiction of the District Court located at the Purchaser's head office.

Effective as of July 10, 2010

## **Appendix: Sustainability**

Supplier is obligated to organize its business with Bayer in compliance with Bayer's human rights-related and environment-related expectations as well as other sustainability topics as outlined in Bayer's Supplier Code of Conduct ("Bayer SCoC"), which can be accessed through <https://www.bayer.com/en/procurement/supplier-code-of-conduct> as of the issuance date of the Purchase Order. Bayer reserves the right to amend the Bayer SCoC if Bayer's human rights-related and environment-related expectations change and will inform Supplier thereof in advance pursuant to Japanese laws. Supplier shall acknowledge continued compliance to such amended SCoC.

Supplier will address the substantive provisions of the Bayer SCoC to its suppliers and ensures that the substantive provisions of the Bayer SCoC are adhered to by itself and its suppliers, including access to Bayer's complaint portal specified in the Bayer SCoC.

Bayer reserves the right to evaluate, control or audit (onsite or remote audit, online or paper questionnaire, recognized certification systems or audit-systems, etc.) to ensure and verify compliance with the aforementioned. An evaluation, control or audit can be executed directly by Bayer or by a qualified third party.

Supplier shall, without undue delay, (i) report to Bayer in writing any identified risks for and violations of the principles outlined in Bayer SCoC and (ii) take appropriate remedial actions to prevent, end, or minimize the violation. Bayer reserves the right to (i) apply a concept for ending or minimizing a violation and (ii) ask for Supplier's cooperation in this respect. If Supplier fails to comply with the requirements of the Bayer SCoC, and after a grace period of three months has lapsed without the violations having been eliminated, Bayer reserves the right to either (i) suspend the agreement until such violations have been remedied, or (ii) give extraordinary notice of termination after the aligned timeline for execution has lapsed unfruitful and at Bayer's exclusive discretion.

Supplier acknowledges and supports Bayer's Supplier Inclusion & Diversity efforts, its commitment to the participation of diverse businesses and the prohibition of discriminatory treatment in the supply chain as outlined in Bayer SCoC. Supplier will use reasonable efforts to employ qualified diverse suppliers and subcontractors where appropriate and feasible, keep record of their use, and be able to produce a report upon Bayer's request of spend percentages with diverse suppliers.

Supplier shall indemnify and keep the Bayer legal entity which has issued the pertinent Purchase Order and its affiliates, including Bayer AG (all Bayer affiliates listed at [https://www.bayer.com/sites/default/files/GDIS\\_Companies\\_EN.pdf](https://www.bayer.com/sites/default/files/GDIS_Companies_EN.pdf)) harmless from any damages, third party claims, fines, or losses arising out of violations of the obligations described in the Bayer SCoC.