



BAYER LIMITED CONDITIONS OF BUSINESS

The Customer's attention is drawn in particular to the provisions of clause 9.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Dublin are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.5.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Force Majeure: has the meaning given in clause 12.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Parties: the Supplier and the Customer.

Specification: any specification for the Goods, as updated by the Supplier from time to time.

Supplier: Bayer Limited (incorporated in the Republic of Ireland with registered number 16996 whose registered office is at 1st Floor, The Grange Offices, The Grange, Brewery Road, Stillorgan, Co. Dublin A94 H2K7 Ireland).

1.2 Interpretation

1.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(a) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(b) A reference to **writing** or **written** includes emails.

2. INCORPORATION OF CONDITIONS

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of twenty (20) Business Days from its date of issue.

3. GOODS

- 3.1 The Goods are described in the Supplier's Specification.
- 3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Supplier shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by

instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure or the Supplier's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not

taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

- 4.8 If the Supplier delivers up to and including ten per cent (10.0%) more or less than the quantity of Goods ordered the customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 Any return of the Goods by the Customer to the Supplier is subject to the Supplier's Returns Policy.

5. QUALITY

- 5.1 The Supplier warrants that on delivery the Goods shall:
- (a) conform in all material respects with the Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 and all other conditions, guarantees or warranties whether express or implied by statute, common law or otherwise (including any warranty as to the non-infringement of third party intellectual property rights), are hereby excluded from the Contract to the fullest extent permitted by law.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

7.2 The Supplier may, by giving notice to the Customer at any time up to twenty (20) Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer

7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of four percent (4.0%) per annum above Bank of Ireland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. TERMINATION

8.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) days of that party being notified in writing to do so;
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by law that are not excluded from the Contract; or
- (d) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one hundred per cent (100.0%) of the price of the Goods.

10. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

10.1 In relation to any electrical and electronic equipment (**EEE**) purchased by the Customer from the Supplier, the Customer shall be responsible for and shall exclusively finance all costs and expenses relating to:

- (a) the collection and delivery of all Waste Electrical and Electronic Equipment (**WEEE**) arising or deriving from the Goods to an authorised treatment facility as approved by the Environment Protection Agency; and
- (b) the treatment, recovery and environmentally sound disposal of all WEEE arising or deriving from the Goods as required by the European Union (Waste Electrical and Electronic Equipment)

Regulations 2014 as enacted, amended, replaced or supplemented from time to time (**WEEE Regulations**).

- 10.2 The Customer shall comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out in clause 10.1.
- 10.3 The Customer shall provide the Supplier's WEEE compliance scheme operator, (as appointed by the Supplier and identified to the Customer from time to time), with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Supplier's membership of the operator's compliance scheme.
- 10.4 If the Customer resells the EEE to an Irish based reseller or end-user of the EEE, the Customer will ensure that this clause in its entirety is included in the contractual arrangements governing the sale to such reseller or end-user. The Customer agrees to indemnify and keep indemnified and hold harmless the Supplier and its compliance scheme operator from and against all costs and expenses which the Supplier or the compliance scheme operator incurs or suffers in Ireland as a result of a direct or indirect breach or negligent performance or failure in performance by the Customer of its obligations in this clause 10.

11. ANTI-BRIBERY

- 11.1 Both parties to the Contract are expected not to practise or tolerate any form of bribery, corruption, extortion or embezzlement. Both parties will not offer to, or accept from the other party, any bribes or other unlawful incentives.
- 11.2 Both parties shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Criminal Justice (Corruption Offences) Act 2018 (**Relevant Requirements**);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under the Criminal Justice (Corruption Offences) Act 2018 if such activity, practice or conduct had been carried out in the Republic of Ireland;
 - (c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and clause 11.2(b), and enforce them where appropriate;

- (d) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of the Contract; and
- (e) immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and both parties warrant that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).

11.3 Both parties shall ensure that any person associated with that party who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the parties in this clause 11 (**Relevant Terms**). Each party shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the other party for any breach by such persons of any of the Relevant Terms.

11.4 If either party breaches this clause 11, the other party shall be entitled to terminate the relevant Contract with immediate effect.

12. FORCE MAJEURE

12.1 The Supplier shall not be liable in any way for any loss or damage arising directly or indirectly as a result of delivery of the Goods being prevented or delayed by events due to the Customer or by reason of any matters or events beyond the reasonable control of the Supplier including (but without limitation):

- a) Acts of war, terrorism or sabotage, Government action or riots;
- b) Lockouts, strikes or industrial action wherever taking place, shortage of labour, raw materials, fuel or power as a result of non-delivery or any other cause, lack of transport, breakdowns, accidents to machinery or late provision to the Supplier of any materials, information or instructions pertinent to the fulfilment of the Contract by the Supplier; and
- c) Act of God, accidents, fire, flood or storms,

and in these circumstances the Supplier expressly reserves the right to cancel or suspend the whole or any part of the Contract or any delivery.

13. GENERAL

13.1 Assignment and other dealings

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.2 Confidentiality

- (a) Each party undertakes that it shall not at any time during this agreement, and for a period of three (3) years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs. For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- (b) Each party may disclose the other party's confidential information:
 - a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
 - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

13.3 Audit

- (a) For the purpose of assessing the proper performance of the Contract, the Customer will, on reasonable written notice from the Supplier: (a) send to the Supplier such documentation as requested by the Supplier; and/or (b) permit the Supplier and its third-party representatives during normal working hours to access,

inspect and take copies of related information. The Customer will give all necessary assistance to the conduct of such audits.

13.4 **Entire agreement**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.5 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.8 **Notices**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by pre-paid first class post.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred

to in clause 13.8(a); if sent by pre-paid first class post at 9:00 am two Business Days after posting.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.9 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.

13.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of the Republic of Ireland.

13.11 **Jurisdiction.** Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

December 2022 edition