

TERMS AND CONDITION STANDARD TEXT - PURCH_ENG_US (YTC/EN)

&SPACE(90)&TERMS AND CONDITIONS

1. GENERAL. These terms and conditions apply (whether used as an offer, an acceptance of an offer, or a confirmation of a contract) to purchase the goods, services, or other deliverables (collectively, "Work") included in this purchase order ("&t166u-drtyp&"). Acceptance is strictly limited to and conditioned on the terms and conditions in this Purchase Order. By performing or by acknowledging receipt of Purchase Order, Seller assents to all its terms and conditions. Unless specifically agreed to in writing by Buyer's authorized procurement representative, Buyer objects to, and is not bound by, any terms in Seller's quotations, acknowledgements, acceptances, or similar documents that differ from or add to this Purchase Order. Seller's provision of the Work shall be governed solely by this Purchase Order unless the Purchase Order is controlled by an agreement signed by both parties, which has terms and conditions covering the same subjects as this Purchase Order. For avoidance of doubt, this Purchase Order is not a guarantee of volume.
2. WARRANTY. Seller warrants that the Work as applicable: (a) will be of high quality design, material and workmanship, free of defects, (b) will conform to applicable specifications, drawings, data and samples, (c) is fit for the purposes sold, and (d) will be performed in a knowledgeable, competent and ethical manner in keeping with best practices in the industry. This warranty is effective for one year after delivery or completion of the Work. This warranty is in addition to any other warranties offered by Seller. Seller assigns to Buyer any manufacturers' warranties pertaining to the Work.
3. PRICE COMPETITIVENESS. Seller warrants that prices for the Work are not higher than those charged other customers for the same or similar Work in similar quantities. Buyer may inform Seller if it can purchase Work of like quality at a lower delivered cost than under this Purchase Order. Seller shall have 15 days to inform Buyer if it will meet such lower cost for an equal quantity of Work. If it does not, Buyer may purchase such Work from the other source and such quantity shall be deducted from Buyer's obligation hereunder, but the Purchase Order otherwise shall remain unaffected.
4. INVOICES/PAYMENT/TAXES. Separate invoices shall be supplied for each purchase order shipment. Each invoice shall be itemized and shall show terms, discounts, date of shipment or performance, and purchase order number. Failure to show said items may result in delay of payment with all rights reserved, including cash discounts. Payment will not be made to any entity other than that shown as the Seller on the face hereof without written assignment by Seller and acceptance by Buyer. Payment is due 60 days after (a) Buyer receives the invoice, or (b) Seller completes performance, whichever is later. Buyer is liable only for taxes which Seller is authorized to collect from Buyer by law. Seller's invoices shall list taxes separately. Buyer offers payment terms of 15 days for Sellers who accept a virtual credit card payment process only if no surcharge or fee is assessed for paying with a virtual credit card.
5. FINANCIAL STABILITY. Seller gives Buyer permission to conduct a credit check on Seller and its principal owners.
6. SHIPPING/DELIVERY. Seller shall plainly indicate the purchase order number on all shipping documents, shipping labels, bills of lading, invoices, correspondence any other documents pertaining to this Purchase Order. Each package must contain a memorandum showing Seller's name, contents of the package, and the purchase order number. Shipments of goods specified on this Purchase Order number should result in lowest possible freight rate unless otherwise specified by Buyer. Penalties or increased charges due to failure to observe this provision will be charged to Seller. Shipping costs for goods on back order shall be paid only at the rate which would have been applicable had the complete order been shipped at one time. All excess costs shall be borne by Seller. Partial shipments must be identified as such on shipping memoranda and invoices. When shipping, Seller will make no declaration of value to carrier, except where shipment is subject to released value ratings. Any materials supplied to Buyer which are covered by the OSHA Hazard Communication Standard must be accompanied by the applicable Material Safety Data Sheet ("MSDS") at the time of delivery. Unless otherwise expressly provided, Seller shall deliver all Work to Buyer's premises, free of all freight, handling, transportation, drayage, boxing, and similar charges. Seller bears all risk of loss or damage to the Work until delivery of the Work at Buyer's premises. Title passes to Buyer when the completed Work is delivered at Buyer's premises. All times in this Purchase Order are of the essence. Seller shall give Buyer prompt notice of any event or circumstance that is reasonably likely to result in Seller's inability to deliver the Work on time.
7. DRAWINGS/SPECIFICATIONS/INSPECTIONS. If requested, Seller shall submit drawings and specifications ("Descriptions") to Buyer for approval. Buyer may, at reasonable times, inspect the Work at Seller's plant. Such approval/inspection shall not reduce Seller's obligations. Approved Descriptions become Buyer's property and part of this Purchase Order. Seller shall not use or permit others to use such Descriptions for any other work.
8. PATENTS. Seller warrants that Work furnished under this Purchase Order does not infringe any intellectual property of a third party and agrees to indemnify and save harmless Buyer, its employees, officers, agents, and subcontractors from any and all claims, suits, liabilities, damages, losses, or expenses incurred by Buyer or its vendees by reason of any alleged infringement of any such rights. Seller shall defend, indemnify and hold Buyer, its employees, officers, agents, and subcontractors harmless: (a) from claims for infringement of any patent, copyright, trademark or trade name because of the manufacture, use, or sale of the Work, and (b) for any costs, expenses, liability and damages, including attorneys' fees, which Buyer may incur because of any suit or claim of any alleged infringement. Buyer shall give Seller written notice of any such suit or claim. If Buyer requests, Seller shall promptly assume the defense of such suit or claim. If either party believes that an infringement proceeding is likely, Seller will either procure for Buyer the right to use the allegedly infringing Work, or substitute functionally equivalent but non-infringing Work.

9. COMPLIANCE WITH LAWS. Seller represents that the Services will comply with all Buyer's rules and site policies and all applicable state, federal and local laws, rules, regulations and executive orders. These include, but are not limited to environmental, health and safety laws and regulations, and the Fair Labor Standards Act. Buyer is at times a Federal contractor and for the following clause Buyer is referred to as contractor and Seller is referred to as subcontractor: This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, gender identity, sexual orientation, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a), 60-250.5 and/or 60-300.5, 60-741.5, EO 13496 and 29 C.F.R. Part 471, Appendix A to Subpart A, if applicable. Notwithstanding the foregoing, Seller shall not use North Korean citizens or nationals to perform any type of labor to produce goods, whether wholly or partially, for Buyer under this Purchase Order.

10. TERMINATION. Buyer may terminate all or part of this Purchase Order at any time upon written notice to Seller. Buyer shall pay Seller reasonable charges for the portion of the Work already performed.

11. CONFIDENTIALITY. Seller may gain information about Buyer's operations, plans, equipment, finances, products, processes and customers. Seller shall ensure that such information is kept confidential and not divulged to others except as authorized by Buyer. However, Seller may disclose or use such information which it can show: (a) is published and a matter of common knowledge other than through acts or omissions of Seller; (b) was rightfully made known to Seller by third parties without restriction on disclosure; or (c) was known, without restriction on disclosure, at the time of entering into this Purchase Order, and was not acquired from Buyer, its employees or agents. These obligations shall continue beyond the termination of this Purchase Order.

12. CHANGES. Buyer may change the scope or specifications of the Work, quantities, shipment or packing methods, and the place of delivery at any time. If the change substantially affects the cost or time required for performance, a fair adjustment will be made and confirmed by Buyer issuing a change order if requested by Seller within 20 days after the change is ordered. Seller shall notify Buyer before making any changes to raw materials, methods of manufacture, production equipment or locations involved in the performance of this Purchase Order and shall obtain Buyer's agreement that such changes do not make the Work unsuitable for Buyer before making any such change(s). Buyer may terminate this Purchase Order if Buyer does not agree.

13. INDEMNITY. If Seller enters Buyer's premises, Seller shall obey Buyer's site policies, practices and rules. Whether or not Seller enters Buyer's premises, Seller shall indemnify, defend, and hold harmless Buyer, its employees, officers, agents, and subcontractors against all liabilities and losses of any kind, including claims, demands, costs, expenses and attorneys' fees, due to action or inaction of Seller, its agents or subcontractors, or any of their employees or officers. This section's indemnity includes injuries or damages caused by the joint or concurring negligence of Buyer but does not include those caused by the sole negligence of Buyer. Seller will maintain at least the following minimum insurance: (i) Worker's Compensation - Statutory; (ii) Employer's Liability \$1,000,000 each occurrence; (iii) Commercial General Liability (including contractual liability, bodily injury and property damage, and completed operations coverage)—\$1,000,000 per occurrence; (iv) Comprehensive Automobile (Bodily Injury and Property Damage)—\$1,000,000 each occurrence, or the full limits of the underlying policy, whichever is greater. Seller's General Liability insurance shall (i) be on an occurrence policy form, (ii) name Buyer as an additional insured, and (iii) be primary to any other valid and collectible insurance. Seller shall secure from its Workers' Compensation insurer a waiver of subrogation in favor of Buyer, its employees and agents. Seller will furnish Buyer certificates of insurance confirming such coverage.

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14. ASSIGNMENT/SUBCONTRACTING/INDEPENDENT CONTRACTOR. Seller shall not assign, subcontract or delegate any of its rights or obligations under all or any part of this Purchase Order without the prior written consent of Buyer. Any unauthorized assignment or delegation of this Purchase Order by Seller is void and of no effect. Seller is and shall remain an independent contractor.

15. BUYER'S PROPERTY. Seller shall have all risk of loss and liability for loss or damage to any of Buyer's property in Seller's active or constructive possession or custody hereunder, and Seller agrees to reimburse Buyer for any loss or damage to such property however caused.

16. Supplier acknowledges receipt of the Bayer Supplier Code of Conduct (the "Code") (posted at <https://www.bayer.com/en/supplier-code-of-conduct.aspx>) and will endeavor to comply with the Code in performing its obligations under this Agreement.

17. FOREIGN SHIPMENTS. Seller shall execute a formal consular invoice before sending any foreign shipments. At time of shipment, Seller shall forward in triplicate directly to the purchasing agent issuing this Purchase Order all bills of lading, consular invoices, and commercial invoices related to the shipment. Additionally, Seller shall ship all foreign shipments in compliance with the Arms Export Control Act ("AECA") and the regulations thereunder ("ITAR"); the Export Administration Act ("EAA") and the regulations thereunder ("EAR"); section 5(b)(1) of the Trading with the Enemy Act and Foreign Assets Control, Transaction Control, and Cuban Assets Control regulations; the International Economic Emergency Powers Act; Securities and Exchange Act of 1934 and the Foreign Corrupt Practices Act; Internal Security Act of 1950; and National Security Act of 1947. Seller hereby agrees to indemnify, defend and hold the Buyer its employees, officers, agents, and subcontractors harmless from and against all claims, charges, action, and proceedings brought against Buyer by any lawful government authority or by any person on account of any alleged violation of export or import laws by Seller of any such material referred to above.

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18. **SECURITY PROCEDURES.** The Seller shall develop and implement, within a framework consistent with the United States Customs Trade Partnership Against Terrorism (C-TPAT) recommendations/guidelines, a verifiable, documented program to enhance security procedures throughout its supply chain process. Where the Seller does not exercise control of a production facility, transportation or distribution entity, or process in the supply chain, the Seller shall communicate the C-TPAT recommendations/guidelines to its suppliers and transportation/distribution service providers and, where practical, condition its relationships to those entities on the acceptance and implementation of the C-TPAT recommendations/guidelines. Seller shall further comply with Monsanto's C-TPAT requirements which can be found at <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism>.

19. **CONFLICTING TERMS.** In case of a direct conflict between this Purchase Order's terms and conditions and those of a separate written agreement signed by both Buyer and Seller, the separate written agreement shall prevail.

20. **PUBLICITY.** Seller may not refer to Monsanto Company or any of its subsidiaries ("Monsanto") or use or refer to any Monsanto trademarks including logos and taglines in any way, including but not limited to promotional and marketing materials or press releases, without prior written permission from Monsanto.

21. **AUDIT.** During the term of this Purchase Order and for three years thereafter, Seller shall maintain, in accordance with generally recognized commercial accounting principles and practices, complete and accurate records of all matters relating to Seller's performance hereunder. Buyer or its representatives may audit Seller's records, during normal business hours, at any time during this Purchase Order's term and up to three years after this Purchase Order terminates or expires. Seller shall refund all amounts determined in an audit to have been overpaid to Seller by Buyer plus interest on any overpaid sums at the rate of 1.5 percent per month.

22. **GOVERNING LAW.** This Purchase Order shall be exclusively governed by and interpreted according to the laws of the State of Missouri, without regard to any conflicts of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Missouri. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods ("CISG") does not apply to this Purchase Order.

23. **VENUE.** The parties hereby irrevocably submit to exclusive venue in the St. Louis County Circuit Court or in the Federal District Court for the Eastern District of Missouri, Eastern Division to adjudicate any dispute arising hereunder or relating hereto and waive any objection relating to improper venue or forum non conveniens to conduct any suit, action or proceeding in such courts.

24. **MISCELLANEOUS.** This Purchase Order and any exhibits or work orders which may be attached hereto and hereto and incorporated herein by reference at any time, shall be the complete understanding and statement of the Purchase Order. Unless this Purchase Order is controlled by a contemporaneous or prior written agreement, any modification, rescission or waiver must be in writing and signed by both parties. A waiver of any breach of these terms shall not be a waiver of any other breach. Seller must comply with all time limits shown in this Purchase Order. Section headings are provided for reference and convenience only and are not intended to be definitive or to affect the meaning, content or scope of this Purchase Order.