

1. APPLICATION

1.1. Without prejudice to the application of any special conditions contained in a separate written agreement, these general terms and conditions shall apply to any tender, offer, invoice or agreement between Bayer SA-NV (Kouterveldstraat 7A 301, 1831 Diegem, Belgium – VAT BE 0404.754.571) ("Bayer") and its customer (the "Customer"). In the event of inconsistency between these general terms and conditions and any separate written agreement, the provisions of the written agreement shall prevail if and to the extent that an authorised representative of Bayer has accepted and signed these in writing. These general terms and conditions are deemed to have been accepted by the Customer by the mere fact of it placing an order. Acceptance of these general terms and conditions also implies that the Customer fully renounces the application of its own general (purchase) terms and conditions. Bayer reserves the right to change and/or supplement these general terms and conditions from time to time. The amended terms and conditions will be notified by letter or email to the Customer at least fourteen (14) days before they come into effect. If the Customer does not accept the amended terms and conditions, he may terminate the agreement by registered letter within a period of two (2) weeks after receipt of notification of the amended terms and conditions. After this period, the Customer is deemed to have accepted the amended terms and conditions.

2. FORMATION OF AGREEMENTS

2.1. All Bayer tenders, offers and contract proposals are without obligation and do not bind it as such. An agreement is formed between Bayer and the Customer only through an order confirmation signed by an authorised representative of Bayer, the signing of a written agreement, or by delivery and invoicing of the products (hereafter "Agreement"). Oral commitments or agreements by or with its personnel do not bind Bayer unless and to the extent that an authorised representative of Bayer has confirmed these in writing. Any cancellation of an order shall be in writing and is only valid if accepted in writing by Bayer.

2.2. The Customer may not transfer to third parties the rights and obligations arising from an order confirmation without the prior written permission of Bayer.

3. PRICE AND PAYMENT

3.1. The orders will be invoiced at the prices and conditions indicated in the order confirmation or in the price lists communicated by Bayer. These prices are exclusive of value added tax ("VAT"). VAT and all duties, taxes, fees or any government-imposed payment on the execution of the order/purchase shall be borne by the Customer. All prices are subject to change at any time depending on possible price changes in but not limited to raw materials and taxes. New prices will be notified to the Customer in writing or by e-mail at least fourteen (14) days before coming into force. If the Customer does not accept the new price structure (only in the case of price increases), it may terminate the Agreement by registered letter within a period of two (2) weeks after notification of the price change. Bayer reserves the right to unilaterally change the payment terms for a valid reason. The weight used to calculate the invoice amount shall be determined at the place of dispatch unless the Customer requests weighing at the destination before the goods are collected. If the Customer wishes to make use of this option, it must reach an agreement with Bayer in this regard in due time and bear all the arising expenses.

3.2. The Bayer invoice is payable within thirty (30) days after the invoice date, unless exceptions are communicated by Bayer. Invoices must be protested within eight (8) calendar days after receipt of the invoice. Protest of the invoice does not suspend the Customer's payment obligation.

3.3. In the event of full or partial non-payment of an invoice by the due date, the Customer shall owe default interest per month from the following day, legally and without prior notice of default; the default interest rate shall be equal to the legal interest rate applicable to late payment in commercial transactions. The Customer's default ends on the date of full payment of the outstanding invoice. In the case of late payment of the invoice, the Customer also owes fixed damage compensation, legally and without prior notice of default, of 10% of the unpaid invoice amount with a minimum of € 250; the right of Bayer to claim higher damage compensation shall remain unaffected in all respects and is subject to proof of greater damage actually suffered. All legal and extrajudicial collection costs are for the expense of the Customer. In the case of non-payment, Bayer is also entitled to suspend all other orders by the Customer until full payment of the invoice is obtained.

3.4. All invoices shall be issued to the Customer in the form of a structured electronic invoice that complies with the European standard EN 16931, in the format Peppol BIS Billing 3.0, and sent via the Peppol network used by Bayer, unless otherwise agreed in writing. This invoice is deemed to be the only valid and legally binding invoice. The Customer expressly accepts the receipt of electronic invoices via the Peppol network or the system used by Bayer without needing to provide any additional consent. The Customer commits to timely provide the Bayer with all necessary technical information (such as VAT number, Peppol ID, or electronic invoicing address) required to enable electronic invoicing. If the Customer is unable to receive or process electronic invoices in accordance with legal and technical requirements, he remains fully liable for payment of the invoiced amounts within the contractual payment terms, regardless of the transmission channel used. Bayer cannot be held liable for any delay, error, or inability to deliver electronic invoices resulting from technical failures or negligence on the part of the Customer or its IT systems.

3.5. In the case of non-payment of an invoice by the due date, all other not yet overdue claims against the Customer shall automatically become payable, without prior notice. Setoff on the part of the Customer is explicitly excluded. The issuance of bills of exchange requires prior approval by Bayer.

3.6. Payments are first used to settle the costs due, then the interest, and then the principal of the oldest unpaid invoice.

3.7. Bayer has the right at all times to claim full or partial advance payment and/or to otherwise obtain a guarantee of payment. If the Customer fails to comply with this, or fails to pay any amount owed, Bayer is entitled to suspend the execution of every order of any kind and to revoke the agreed payment terms. In this case, all outstanding claims will be due immediately.

3.8. The agreed compensation does not include value added tax. VAT will be added if legally owed by Bayer. The Customer is obliged to pay these additional costs after receiving an invoice that complies with the legal requirements as prescribed in the applicable VAT legislation.

3.9. Each party is allowed to retain withholding tax if supported by a legal obligation. If withholding tax is withheld, supporting documentation and/or certificates must be submitted to the other party in due time. Both parties will cooperate in order to reach the application of the lowest possible withholding tax rate, e.g. under a treaty to prevent double taxation.

4. DELIVERY, TRANSPORT, RISK AND TRANSFER OF OWNERSHIP

- 4.1. Delivery dates are provided by Bayer for information purposes only and do not bind Bayer. The missing of these deadlines may never give rise to termination of the Agreement or to any form of damage compensation. An exception to this are cases of force majeure where delivery is delayed by more than one (1) month; in such case the Customer is entitled to cancel the sale, but only for the amount that could not be delivered for reasons of the said case of force majeure. Bayer may suspend deliveries to the Customer, without prior notice or damage compensation, as long as the Customer has any obligations towards Bayer. For the application of these general terms and conditions, each partial delivery is considered an independent delivery.
- 4.2. Unless expressly agreed otherwise, the delivery will take place CIP to the delivery address agreed between the parties (Incoterm 2020). Transport costs are for the expense of Bayer. However, if the Customer imposes specific requirements on the transport of the products, these additional transport costs are for the expense of the Customer. The same applies to increases in freight rates as well as storage and insurance costs that incurred after completion of the contract, in so far as carriage paid delivery was not agreed.
- 4.3. The sold products remain the property of Bayer until full payment of the invoice (including costs and interest). This retention of title also covers products originating from the processing of Bayer products and this for the full values. If the processing implies the incorporation of goods owned by third parties, Bayer has a right of ownership on the processed goods; the proportion regarding the right of ownership shall be determined by the invoice amounts for the processed goods. In the processing of the goods, the Customer will act on Bayer's account but without having any claim against Bayer on the occasion of this processing. Until the time of complete payment, the Customer is expressly forbidden to use the delivered products as a means of payment or to encumber them with any security right. Moreover, the Customer shall place a clearly readable sign on the delivered products that indicates that the goods delivered are the property of Bayer. If the Customer stores the products in a leased space, which must comply with the GDP guidelines, the Customer must notify Bayer of the lessor's identity and address.
- 4.4. For all items subject to Bayer's retention of title, the Customer will remain liable with respect to third parties for all damages to or caused by any of these items, in any manner whatsoever. For all those items, the Customer is furthermore obliged to apply the generally accepted level of care, to provide Bayer with access to such items and to inform Bayer in writing without delay of any action by third parties that has or might have adverse consequences for Bayer concerning the delivered items.

- 4.5. Bayer has the right to take back or have taken back items delivered to the Customer that remain the property of Bayer, if the Customer fails to fulfil its obligations or gives Bayer reason to assume that the Customer will not fulfil its obligations. The Customer is obliged to make this take-back possible. Bayer will charge all associated costs to the Customer. In the case of a take-back, credit will be given based on the value that the goods appear to have on return.

5. INSPECTION AND CLAIMS

- 5.1. The Customer is obliged to receive the ordered products on the stated delivery dates (or any other date notified by Bayer to the Customer). Upon receipt, the Customer signs the proof of delivery, stating its name and indicating "for receipt of the number of packages sent". Any visible damage to the shipping packages must be noted on the proof of delivery, before the carrier departs. The Customer must verify that the contents and the quality of the shipping packages correspond with what was agreed on previously within two (2) days after delivery. Any deviations in number, size, weight and/or externally visible shortcomings or defects regarding the delivered products must be indicated on the delivery note and must be reported to Bayer in writing via email or fax within that same period. Such a report must include supporting documentation, samples, packing slip and delivery documents as well as an indication of the delivery note number, order number, invoice number, invoice date and markings on the packaging. After this period, no recourse is possible against Bayer. Complaints concerning defects are only valid and will only be investigated on condition that the Customer has not yet used the sold products. Moreover, such complaints do not suspend the Customer's payment obligation. If the Customer wishes to return to Bayer incorrect or damaged products, it must ensure that collection can take place within ten (10) calendar days after delivery to the Customer and provide to Bayer a properly completed Certificate of good safekeeping. Bayer can initiate the return process and give approval for a refund only after receipt of this document. The completed certificate of good safekeeping must be mailed to Bayer no later than three (3) days after delivery of the goods. In the case of hidden defects, the complaint must be made immediately after their discovery but no later than two (2) months after arrival of the goods; the statutory limitation periods remain in force unchanged. The Customer bears the burden of proof regarding the existence of a hidden defect. In the event that the Customer does not accept the products at the time of delivery, Bayer is entitled to store the goods on behalf of and at the risk and expense of the Customer. This precautionary measure does not suspend the Customer's payment obligation.
- 5.2. For the products supplied by Bayer, the duration and extent of Bayer's warranty is limited to the warranty Bayer itself enjoys with the manufacturer of the products or its supplier (back-to-back). Notwithstanding any mandatory statutory provisions to the contrary, Bayer's obligations arising from the aforementioned warranty are limited to the (partial) crediting of the relevant invoice amount. The application of the warranty can never give rise to any form of damage compensation.
- 5.3. Returns require the prior written approval of Bayer and take place at the Customer's risk until actual receipt by Bayer. The costs associated with a return are for the expense of the Customer.
- 5.4. No right to warranty coverage exists:
 - a. if the instructions for use given by Bayer are not followed exactly;
 - b. if the goods delivered have been used improperly or not in accordance with the agreed or customary use;
 - c. if the goods delivered are damaged due to external causes (such as (rain) water, overheating, fire, etc.);
 - d. for shortcomings discovered more than five (5) months after the date of delivery;
 - e. if the customer fails to comply with the conditions communicated to it in writing by Bayer in an order confirmation or other written communication, or if the Customer fails to do so properly or on time.
- 5.5. Goods for which a complaint has been submitted may only be returned with Bayer's express agreement. No complaint will be accepted in the case of second choice goods, remnants or waste that was sold as such. If the Customer has filed its complaints in the manner provided above and these are accepted by Bayer as well-founded, the Customer has the right to have the delivered goods replaced. If the Customer waives this right, or if the replacement delivery is not executed within a reasonable period, or is also defective, the Customer has the option to request either (i) a reduction in the purchase price or (ii) the cancellation of the entire purchase.

6. LIABILITY

- 6.1. All Bayer's commitments under these general terms and conditions are obligations of means.
- 6.2. Notwithstanding any mandatory statutory provisions to the contrary, Bayer (including its appointees or employees) is only liable for damages caused due to the failure to comply with its contractual obligations, if and to the extent that this damage was caused by wilful or serious fault, fraud or deception on its part or, except in case of force majeure, for the failure to perform its essential obligations that are the subject of the Agreement. Bayer is not liable for any other faults. In the event that Bayer is held liable for any damages, Bayer's liability is limited to the replacement of the products delivered or to a return of the goods in accordance with these general terms and conditions of sale and delivery. Bayer is only liable for direct damages. Bayer may never be held liable for indirect damages, including but not limited to consequential damage, loss of profits, lost savings, or damage to third parties.
- 6.3. The Customer is solely responsible for the application, use and processing of the products. Bayer's technical application information given verbally, in writing and by means of testing is provided without any obligation on the part of Bayer, and excludes all liability; it is intended as non-binding information only, also in respect to any protected rights of third parties, including intellectual property. It does not release the Customer from the obligation to practically inspect the products delivered by Bayer for their suitability for the intended processings and purposes.
- 6.4. Bayer is by operation of law absolved from, and is not obliged to comply with any commitment to the Customer in the case of force majeure (including but not limited to Bayer's suppliers, contracting authorities and subcontractors). In the case of force majeure, Bayer's obligations are suspended (except for the situation provided for in Art. 4.1).
- 6.5. The Customer waives any right to claim extra-contractual liability that he or his auxiliary persons could bring against Bayer or Bayer's auxiliary persons for damage arising from the non-fulfilment of any contractual obligation between the Parties, as defined in Book 6 of the new Civil Code. This exclusion of extra-contractual liability does not apply in cases of fraud or wilful misconduct by Bayer or its auxiliary persons, and is without prejudice to provisions of public order and mandatory law.
For the purposes of this article, auxiliary persons of Bayer are understood to mean: subcontractors, employees, directors, and other persons acting under the authority or on behalf of Bayer.
Bayer's auxiliary persons may invoke the provisions of this article directly as third-party beneficiaries.
The Customer shall impose the same waiver as stipulated in this article on his own co-contractors (including end customers or principals).
The Customer holds Bayer and/or Bayer's auxiliary persons harmless for all direct damages that Bayer and/or Bayer's auxiliary persons may suffer as a result of an extra-contractual claim brought against them by the Customer's co-contractors (end customer or principal), if this claim arises from the Customer's failure to comply with the obligation mentioned in the preceding paragraph.

7. TAKE-BACK AND RECALL

- 7.1. Sold products will only be taken back with Bayer's express consent and provided that the products are undamaged. In any case, the cost of handling and returning the goods is for the expense of the Customer. In addition, in such cases, up to 60% of the invoice amount can be repaid.
- 7.2. At first demand by Bayer, the Customer undertakes to remove from the market any products it has put into circulation that are defective or liable to be defective at its own expense and within a time limit to be determined by Bayer (recall). Bayer will bear the costs related to recalls based on safety and/or quality issues and which are inherent to the delivered product.
- 7.3. Unsolicited returns will be refused and will not be refunded. Each return must be accompanied by a unique return number provided by Bayer.

8. DISSOLUTION

- 8.1. If Bayer has doubts at any time about the Customer's creditworthiness or solvency, Bayer explicitly reserves the right to ask for prior payment or (other) guarantees for deliveries yet to be made, even if the goods were already fully or partially shipped. If the Customer refuses to meet this request, Bayer reserves the right to terminate the Agreement immediately, and without any compensation.
- 8.2. In the following cases Bayer has the right to terminate the Agreement with the Customer at any time with immediate effect and without judicial authorisation, preliminary notice of default and payment of any damage compensation: (i) if the Customer, despite a written notice of default in which a period of at least seven (7) calendar days is observed, remains in default with respect to the (timely) fulfilment of one or more obligations resulting from the Agreement; (ii) in the case of suspension of payment or (filing for) bankruptcy or any reorganisation by the Customer under the Book XX of the Code of economic law; (iii) liquidation or discontinuation of the activities of the Customer; or (iv) if (a part of) the assets of the Customer are seized. In the case of dissolution, Bayer also retains the right to claim compensation for all costs and damages incurred; all claims of Bayer against the Customer are payable immediately.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. All intellectual property rights, including but not limited to copyrights, model rights, patents, trademarks, trade names and domain names, with respect to the items delivered by Bayer (including but not limited to calculations, sketches, technical data, know-how and advice developed by Bayer), hereinafter referred to as the "Intellectual Property Rights", shall be wholly owned by Bayer and its group companies. They shall never be transferred to the Customer unless expressly agreed in writing between the parties.
- 9.2. The Customer will refrain from infringements of any Intellectual Property Rights.
- 9.3. The Customer indemnifies Bayer and its group companies against all third party claims in respect of an alleged infringement to third party intellectual property rights associated with the manufacture, delivery or use of an item developed by Bayer or its group companies in accordance with the specifications or instructions of the Customer. This indemnity also applies if Bayer or a group company of Bayer makes changes to an existing item on behalf of Customer.
- 9.4. Bayer indemnifies the Customer against all third-party claims in respect of an alleged infringement of intellectual property rights of these third parties related to an item independently developed by Bayer or a group company of Bayer, provided that Bayer has been informed of such claims without delay in writing by the Customer.

- 9.5. When offering or delivering similar items in price lists, promotional material and in all its communications, the Customer will refrain from referring to the items and intellectual property rights of Bayer and its group companies.
- 9.6. In the processing of (raw) materials of Bayer or its group companies, the Customer also refrains from using the names given by Bayer or any Bayer trademark on the goods in printed matter and advertising materials. Each notice stating that the Customer's product contains any Bayer component or (raw) material requires the prior written permission of Bayer. The delivery of products under this trademark cannot be considered as an agreement with Bayer to use this trademark for goods manufactured by the Customer. Authorisation to use Bayer's registered trademarks is always subject to the Customer's compliance with the applicable regulations.

10. ADVERSE EVENT (AE) / PRODUCT TECHNICAL COMPLAINT (PTC) REPORTING

- 10.1. Customer agrees to provide Bayer pharmacovigilance with written reports of all Adverse Events and Complaints regarding Bayer product(s) that come to its attention in connection with the services performed by the Customer by e-mail (drugsafety.belux@bayer.com) within one (1) Business Day from the receipt of such information.
- 10.2. All known cases of exposure via mother/father (exposure during conception, pregnancy, childbirth and breastfeeding); drug interactions; addiction / dependence; withdrawal syndrome; lack of drug effect / lack of effect; suspected transmission of an infectious agent; intentional and accidental product use issues and medication errors including but not limited to off-label use, intentional and accidental misuse, abuse, overdose, and inappropriate administration; counterfeit product, including diverted and falsified product; occupational and environmental exposure; unexpected therapeutic benefit (pre-existing condition improved) with respect to the Product(s) supplied by Bayer must be reported in the same manner as an Adverse Event / Complaint.
- 10.3. For the purposes of these terms and conditions, an Adverse Event shall mean any untoward medical occurrence in a patient, clinical investigation subject, user or other person administered a pharmaceutical product, or after use of a cosmetic product or medical device, and which does not necessarily have a causal relationship (association) with this treatment. An Adverse Event can therefore be any unfavorable and unintended sign (including an abnormal laboratory finding), symptom, or disease temporally associated with the use of the product, whether or not related to the product.
- 10.4. A Complaint is any report received (written, electronic or verbal communication) about a potential or alleged failure of a product in its quality (including the identity, durability, reliability, safety, efficacy, or performance) or a suspected counterfeit. The complaint may or may not represent a potential risk to the patient/customer/user/environment.

11. CONFIDENTIALITY

- 11.1. The Customer must treat all confidential information and know-how received from Bayer and its group companies with strict confidentiality, and the Customer is not permitted to disclose this information and know-how to third parties without the written permission of Bayer. In addition, the Customer is not permitted to use this information and know-how for cases other than those provided for in an order confirmation.

12. FORCE MAJEURE

- 12.1. Bayer is entitled to suspend its obligations if the execution of an order confirmation is prevented or impeded in whole or in part by circumstances reasonably beyond its will, including company blockades, strikes, selective strikes, work-to-rule campaigns, import and export prohibitions and restrictions, fire, war, mandatory laws, exclusion as well as delayed delivery to Bayer of parts, items or services ordered from third parties for reasons non attributable to Bayer.
- 12.2. In the case of force majeure on the part of Bayer, its obligations will be suspended. In this case, the Customer may not claim compensation for any damage. If the force majeure lasts longer than one (1) month, both Bayer and Customer are authorised to cancel the order confirmation for the non-executable part by a written declaration, without prejudice to the provisions of Article 8 of these general terms and conditions.

13. DATA PROTECTION

- 13.1. "personal data", "process/processing", "controller", "processor", "data subject" shall have the same meaning as in Regulation (EU) 2016/679. Any personal data included in or relating to this Contract shall be processed in accordance with Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data within the Union.
 - i. The data shall be processed solely for the purposes of the performance, management and monitoring of this Contract to which the data subject is party.
 - ii. Where processing is to be carried out on behalf of the controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that processing will meet the requirement of the Regulation (EU) 2016/679 and ensure the protection of the rights of the data subject.
 - iii. The processor may act only under the supervision of the data controller, in particular with regard to the purposes of the processing, the categories of personal data which may be processed, the recipients or categories of recipients to whom the personal data have been or will be disclosed, and the means by which the data subject may exercise his/her rights.
 - iv. Personal data will no longer be kept than necessary for the purposes for which they are processed and will be processed in a manner that ensures their protection against unauthorized or unlawful processing, accidental loss, destruction or damage.

14. MISCELLANEOUS PROVISIONS

- 14.1. If a (part of a) provision of these general terms and conditions would be invalid or unenforceable, this shall not affect the validity and enforceability of the other provisions of these general terms and conditions. Bayer and the Customer will renegotiate a legally valid and enforceable provision that most closely matches the purpose and intent of the original provision. If Bayer and the Customer fail to agree on a valid and enforceable provision within 30 days from the start of the negotiations, each Party shall have the right to terminate the Agreement in the event that the Agreement cannot continue to exist without the invalid or unenforceable provision.
- 14.2. All Agreements to which these general terms and conditions apply, as well as all other resulting Agreements, are exclusively governed by and construed in accordance with Belgian law. Application of the Vienna Sales Convention of 11 April 1980 is explicitly excluded. All disputes between parties concerning Agreements subject to these general terms and conditions belong exclusively to the competence of the Courts of Brussels.