

Procurement Terms and Conditions

of Bayer AG and its affiliated companies

1. General

- 1.1 These conditions shall constitute the content of the present Procurement Agreement and of all future procurement contracts concluded with the Supplier. Conflicting or divergent delivery conditions or other restrictions of the Supplier shall not be acknowledged unless the Purchaser has expressly agreed to these conditions in writing in individual cases.
- 1.2 Other agreements, amendments and side agreements shall only be valid in the event that the Purchaser has agreed to such in writing.

2. Range of Products

- 2.1 The Supplier shall maintain the range of products precisely in accordance with demand and shall provide express information in the event of any deviations in product availability.
- 2.2 The range of products shall be provided free of charge and shall not constitute any obligation for the possible Purchaser. Any quotations shall only be remunerated on the basis of a separate agreement.

3. Ordering

- 3.1 Any orders and amended orders shall be made in writing. In case of doubt, the content of discussions conducted verbally and by telephone shall only be binding if confirmed in writing.
- 3.2 The Supplier shall check orders without delay for discernible errors, ambiguities, incompleteness or lack of suitability in respect of the specifications selected by the Purchaser for the intended use of such orders and shall notify the Purchaser immediately of any necessity for changes to or for specifying such orders in more detail.
- 3.3 The Supplier is obliged to confirm all orders and amended orders shall be confirmed in writing, treating them as separate correspondence.
- 3.4 All written communications must specify the Purchasing Department, complete order number, order date and reference of the Purchaser.

4. Delivery Period

- 4.1. The delivery period shall commence on the day on which our order is received. Insofar as the Supplier is aware that he is unable to fulfil his contractual obligations in whole or in part or in a timely manner, he shall notify the Purchaser of any such circumstance without delay and shall state the reasons for and the potential duration of any such delay. In the event that the Supplier fails to provide such information, he shall have no recourse to claim exemption from responsibility for the delay from the Purchaser on the grounds of hindrance.
- 4.2 In the event that the Supplier does not complete the order within the agreed delivery period, he shall be liable in accordance with statutory stipulations. This shall be without prejudice to any contractual penalty which may have been agreed in respect of a case of delayed delivery pursuant to § 340 Paragraph 2 of the German Civil Code (BGB). In the event that a contractual penalty has been agreed, a claim may be asserted in respect of the payment of such a penalty up to the due date of the final payment without reservation pursuant to § 341 Paragraph 3 German Civil Code (BGB) or § 11 Paragraph 4 of the German Contracting Rules for Awarding of Public Works Contracts, Part B (VOB/B).

5. Warranty, Notification of Defects and Liability

- 5.1 The Supplier shall warrant that the goods supplied are without any defects, which may reduce their value or affect their usability, that they possess the agreed or guaranteed properties, that they are suitable for the purpose stipulated in the Agreement, that they conform both to generally accepted technical practice and to the most recent regulations issued by public authorities as well as to the German Law on the Safety of Appliances (Gerätesicherheitsgesetz) and to the appropriate safety specifications and rules for the protection of workers and prevention of accidents. In the event that a product delivered by the Supplier is fully replaced by a new one, the limitation period shall begin anew. In the event that such a product is replaced in part, the limitation period shall begin anew in respect of such new parts. The recommencement of the limitation period shall not be

effective in the event that the Supplier is in clear breach of his duty to repair defects.

In the event that the Supplier has guaranteed the properties or durability of the goods supplied, the Purchaser may also assert a claim under the terms of such a guarantee. This shall not apply to defects or damage to the object of delivery caused by:

- a) normal wear and tear;
- b) improper handling on the part of the Purchaser.

The Purchaser shall notify the Supplier of any defects of the products delivered as soon as these are discovered in the regular course of business. The deadline for notification of defects shall depend on the circumstances of the individual case. Notwithstanding this, the minimum period of such a deadline for notification of defects shall comprise at least five (5) working days (Monday to Friday) after delivery has taken place in respect of obvious defects and at least five (5) such working days after discovery of the defect in respect of hidden defects.

The provisions hereinabove stated shall apply mutatis mutandis to services such as assembly, maintenance, etc.

- 5.2 Unless otherwise expressly agreed, the statutory limitation warranty periods shall apply.
- 5.3 The Supplier's warranty shall also cover any items manufactured by subcontractors.
- 5.4 In the event of notification of defect, the limitation period shall be extended by the time elapsing between such notification of defect and repair of the defect. In the event that a product is fully replaced by a new one, the limitation period shall begin anew. In the event that such a product is replaced in part, the limitation period shall begin anew in respect of such new parts.
- 5.5 Products, which are subject to complaint under the warranty, shall remain at the Purchaser's disposal until replacements have been supplied, whereupon they shall become the property of the Supplier.
- 5.6 In urgent cases when it is not possible to wait for the Supplier to remedy a defect or in the event that the Supplier fails to repair a defect notwithstanding the setting of an additional deadline or in the event that an attempt to remedy a defect is ultimately unsuccessful, the Purchaser may eliminate the defect himself at the Supplier's expense or may have recourse to asserting the other warranty rights pursuant to Clause 5.1 hereinabove.
- 5.7 Acceptance of the Purchaser's supplies and services by the Purchaser shall be without prejudice to the Supplier's obligations under the warranty.
- 5.8 The Supplier shall exempt the Purchaser from any product liability claims arising or any claims asserted under the German Product Liability Law if the defect giving rise to the claim has been caused by the Supplier or any of the Supplier's sub-suppliers.
- 5.9 Notwithstanding these provisions hereinabove stated, the Supplier shall be liable under existing statutory regulations.

6. Tests

In the event that tests are specified for the products supplied, the Supplier shall bear the costs of such tests in respect of the expense of conducting such tests and the human resources expenses incurred by the Supplier. The Purchaser shall be responsible for his own personnel costs incurred by the tests. The Supplier shall provide the Purchaser with binding notification no less than one week prior to the date on which the goods will be ready for testing and shall agree with him a date for conducting such tests. In the event that the products are not presented for testing on the date stipulated, the Purchaser's personnel costs shall be borne by the Supplier. In the event that defects are discovered, which render it necessary to repeat the tests or conduct further tests, the Supplier shall bear all personnel costs thus incurred and all costs incurred for conducting the tests. The Supplier shall also bear all personnel costs and other costs incurred in connection with testing the materials used in executing the order.

7. Insurance

- 7.1 Transport insurance shall in all cases be taken out by the Purchaser.
- 7.2 The Supplier shall conclude at his own expense adequate third party liability insurance to cover any damage caused by

him, his staff or his representatives resulting from services rendered or any goods or items delivered. The Supplier shall provide the Purchaser with documentation indicating the amount insured per occurrence of damage if the Purchaser so requests.

- 7.3 The conclusion of specific assembly insurance in addition to third party liability insurance stated pursuant to Clause 7.2 shall in each case be subject to separate agreement on an individual case basis between the Purchaser and the Supplier.

- 7.4 Any machines, appliances, etc. supplied to the Purchaser on a loan basis shall be insured by the Purchaser against the usual risks. Any further liability of the Purchaser concerning the destruction or damage to such machines, appliances, etc. shall be excluded, insofar as such destruction and damage is not the result of a wilful or grossly negligent act.

8. Dispatch Requirements

- 8.1 The Supplier is obliged to provide for each individual consignment a detailed despatch note on the date of dispatch, separate from goods and invoice. Goods shall be accompanied by a delivery note and a packing slip. In the event that goods are to be dispatched by ship, the dispatch documentation and invoice shall specify the names of the shipping company and the ship. The Supplier shall choose a mode of transport, which is most beneficial and most suitable for the Purchaser. All dispatch notes, packing slips, bills of lading and invoices as well as all outer packaging etc. must indicate the complete order reference and details concerning the unloading point specified by the purchaser.
- 8.2 The Supplier is obliged to pack, mark and dispatch dangerous goods in accordance with relevant national or international regulations. Accompanying documentation must indicate the risk category of the goods supplied and any further stipulations, which may be required pursuant to the relevant transportation regulations.
- 8.3 The Supplier shall be liable for any damage caused by the non-compliance with these provisions and shall be responsible for the payment of any costs thereby incurred. The Supplier shall be responsible for ensuring compliance with said shipping requirements on the part of sub-suppliers.
- 8.4 Any consignments of which the Purchaser is unable to take delivery due to the non-compliance with these provisions shall be stored at the Supplier's expense and risk. The Purchaser shall be entitled to ascertain the contents and condition of such consignments. Tools and equipment shall not be loaded in the same consignment as the goods supplied.

9. Pricing

If the Supplier reduces his prices and improves the conditions during the period between order and delivery, the prices or conditions valid at the date of dispatch shall apply.

10. Invoicing and Payment

- 10.1 Invoices must be in accordance with the phraseology used, the sequence of the text and the prices stated in the order placed. Any additional or reduced services must be specified separately in the invoice.
- 10.2 Terms of payment shall begin on the dates specified and shall not commence prior to the date on which goods and invoices are received. Any payment by bank transfer shall be deemed to be made as soon as the debtor has instructed his bank to affect the transfer to the supplier; provided, however, that the debtor's bank account must have sufficient cover for such transfer.
- 10.3 A payment shall not be deemed to constitute the acceptance of conditions and prices. The time of payment shall be without prejudice to the Supplier's warranty obligations or the Purchaser's right to complain about defects.

11. Documentation

- 11.1 All drawings, standards, guidelines, methods of analysis, formulas and other documents provided to the Supplier by the Purchaser for the purpose of manufacturing the goods to be supplied and any such documents drawn up by the Supplier in accordance with special instructions submitted by the Purchaser shall remain the property of the

Purchaser and may not be used for any other purpose, reproduced or made available to third parties by the Supplier. The Supplier shall surrender all such documentation and all copies and duplicates thereof without delay if so requested. The Purchaser shall retain the industrial property rights to all documents provided to the Supplier. The Supplier is obliged to treat all enquiries and orders and all work associated therewith with strictest confidence. The Supplier shall be liable for any loss incurred by the Purchaser arising as a result of a breach of any one of these obligations by the Supplier.

The Supplier shall provide the Purchaser with all documents required for discussing any details of the goods to be supplied. Any such detailed discussion concerning the goods to be supplied or any other involvement of the Purchaser shall take place exclusively within the area of responsibility of the Supplier and shall not release the Supplier from any warranty or other obligations.

- 11.2 The Supplier shall provide the Purchaser free of charge with all documents required by the latter for using, assembling, installing, processing, storing, operating, servicing, inspecting, maintaining or repairing the goods supplied and shall provide any such documents in a timely manner, and without being specifically requested to do so.
- 11.3 Any standards and guidelines specified by the Purchaser shall apply as amended. The Supplier shall request the Purchaser in time to provide him with the Purchaser's factory standards and guidelines, provided these have not already been made available.

12. Objects

Any moulds, models, tools, films, etc. that have been manufactured by the Supplier for the purpose of fulfilling the order, shall become the property of the Purchaser once payment has been made for such objects. This shall apply even in the event that said objects remain in the possession of the Supplier. Said objects shall be handed over to the Purchaser on request.

13. Assembly, Maintenance, Inspection, Repairs, etc.

- 13.1 In the event that assembly, maintenance, inspection, repair work, etc. is carried out on the Purchaser's premises, such work shall be subject to the safety and procedural regulations applying in respect of external companies executing orders on the premises of Bayer AG or its affiliated companies. These regulations will be supplied at the commencement of work or should be requested from the Corporate Security Department of Bayer AG.
- 13.2 The Purchaser shall not assume liability in respect of any property of the Supplier brought onto the Purchaser's premises by the Supplier or the Supplier's staff.

14. Patent Infringement

The Supplier guarantees that patents, licenses or industrial property rights of third parties will not be infringed against as a result of the supply or use of the goods supplied. Any license fees are borne by the Supplier.

15. Advertising Material

The Supplier shall not refer to business relations with the Purchaser in any information or advertising material without the Purchaser's express written agreement.

16. Applicable Law, Interpretation of the Provisions of the Agreement etc.

- 16.1 German Law shall apply. Application of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980, as amended on January 1, 1991, shall be excluded.
- 16.2 Customary trade terms shall be interpreted in accordance with the Incoterms as amended.

17. Origin of Goods

Goods supplied must conform to the conditions of origin specified in the Preferential Agreements of the EEC insofar as nothing to the contrary is expressly stated in the confirmation of order.

18. Agreement on Place of Jurisdiction

Insofar as the Supplier is a registered trader under German Commercial Code, sole place of jurisdiction shall be Cologne.

As at: Leverkusen, April 2009