

Bayer Leading Terms and Conditions for Software and Related Services

Preamble

These Bayer Leading Terms and Conditions for software and Related Services (“LTC”) are between Bayer AG or one of its Affiliates (hereinafter individually or together “Customer”) and Supplier. Customer agrees to conclude a contract based on Supplier's Standard and these LTC provided that the LTC take precedence over Supplier's Standard. The precedence of the LTC shall not apply if (i) the Supplier's Standard contains more favorable provisions for Customer, or (ii) the LTC do not contain provisions with respect to a matter covered by the Supplier's Standard. **For clarity:** The LTC are NOT NEGOTIABLE. The LTC even take precedence, if the provisions of Suppliers' Standard stipulate that no terms and conditions of Customer apply. Provisions in Supplier's Standard deviating from the LTC to Customer's disadvantage do not apply, even if Customer does not separately object to their application in individual cases. Even if Supplier refers to a letter that contains or refers to Supplier's Standard or a third party's terms and conditions, this does not constitute an agreement to the validity of those terms and conditions to the extent that the provisions deviate to Customer's disadvantage from the LTC.

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1 Definitions

- 1.1 **"Affiliate(s)"** shall mean with respect to a Party, any person, corporation, firm, joint venture or other entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such Party. As used in this definition, "control" means possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of the outstanding voting securities or by contract or otherwise.
- 1.2 **"Agreement"** all contractual provisions between Supplier and Customer relating to the provision of a specific Solution and a Related Service, including these LTC, Supplier's Standard and, as the case may be, any Purchase Orders.
- 1.3 **"Customer"** means, as the case may be, Bayer AG or any of its Affiliates, individually or together.
- 1.4 **"Customer Data"** means any and all materials, data (including Personal Data), either originally uploaded by Customer/Defined Users or processed by computing operations of Supplier's Solution, other working results derived when using the Solution and Related Services and information made available to Supplier by Customer or by Defined Users.
- 1.5 **"Confidential Information"** has the meaning as defined in Supplier's Standard.
- 1.6 **"Defined Users"** means the staff, agents, subcontractors, advisors, customers and suppliers of Customer and Customer's Affiliates that have been authorized by Customer to use the Solution and Related Services for the business purposes of Customer or Customer's Affiliates according to the terms of the LTC and Supplier's Standard.
- 1.7 **"Grant"** means the scope of license and use rights granted by Supplier.
- 1.8 **"LTC"** mean these Bayer Leading Terms and Conditions for software and Related Services.
- 1.9 **"Purchase Order"** or **"PO"** means the document defining the scope, term and prices of the Solution and any Related Services to be provided by Supplier.
- 1.10 **"Personal Data"** means any information relating to an identified or identifiable natural person.
- 1.11 **"Related Services"** means any service (e.g., provision of implementation-, customization-, configuration-, maintenance-, hotline support-, specific software development- or training-services) provided together with the Solution for the Customer or Customer Affiliate.
- 1.12 **"Solution"**, means any on-premise or off-premise provision of a computer program (e.g. Software as a Service), including any related documentation, as described as the subject matter in the underlying Purchase Order and/or Supplier's Standard.
- 1.13 **"Supplier"** means the company that will provide the Solution and Related Services.
- 1.14 **"Supplier's Standard"** shall mean Supplier's standard agreement or terms and conditions for the Solution and Related Services.
- 1.15 **"Usage Data"** means all system generated data such as log-in data, counting of load-ups or use of the Solution, created through the use of the Solution by Customer.
- 1.16 **"Work Result"** means any deliverable resulting from a Related Service performed for Customer or Customer Affiliate, e.g. from any customization, configuration, implementation or any other specific software development services.

2 License Grant

- 2.1 Customer is authorized to use and to make available the Solution and Related Services to Defined Users without geographical restrictions, unless stipulated otherwise in the Agreement and subject to all applicable laws on export and import.
- 2.2 Unless the Solution exclusively runs in an operating environment controlled by the Supplier, Customer may – limited to the business purposes of Customer and Customer's Affiliates – allow third parties to use and operate the Solution and any related Work Results, both in dedicated data centers and in shared operating environments (physically or virtually), both owned by third parties (e.g. as Infrastructure as a Service or Platform as a Service).

- 2.3 With regard to Work Results and with regard to new versions, updates or upgrades forming part of maintenance services as part of the Solution, Sections 2.1 and 2.2 apply mutatis mutandis.

3 Acceptance test

- 3.1 Work Results – if owed by Supplier under the Agreement – shall be subject to an acceptance test.
- 3.2 Unless otherwise agreed in the Purchase Order, Customer will perform such acceptance test within 4 weeks after delivery of the Work Result and receipt of the information in text form from Supplier that the Work Result is ready for acceptance. Such acceptance test shall be subject to the acceptance criteria agreed on in the Purchase Order, if any, or any generally applicable quality criteria.
- 3.3 If the acceptance test fails, Supplier shall rectify any defects within a reasonable period determined by Customer before Customer repeats the acceptance test. In the event the acceptance test fails again and Supplier is not able to rectify defects within the period determined by Customer, Customer is entitled to, by declaration to Supplier, either (i) abate the remuneration accordingly or (ii) rescind the Agreement in part or, (iii) in case the defect is not trivial, in full, it being understood that Customer is entitled to a reimbursement of any fees paid in advance.

4 Suspension of Solution and Related Services

To the extent that Supplier is entitled to suspend Customer's use of the Solution and Related Services under the Agreement, Supplier will (i) provide contemporaneous notice (within one business day) of such suspension to the extent that prior information is not prohibited by law, by any competent supervisory authority or by courts, (ii) limit the suspension to the necessary amount of time and (ii) make commercially reasonable efforts to resolve, with Customer, the reason for the suspension.

5 Rights on Data

- 5.1 Customer shall retain all rights on Customer Data. Any disclosure of Customer Data is prohibited without Customer's prior written consent. The restrictions do not apply if Supplier has a legal obligation to disclose respective Customer Data to authorities. Supplier is obligated to inform Customer about such disclosure without undue delay.
- 5.2 At any time, Customer is entitled to retrieve Customer Data back in an industry standard format and demand the deletion of Customer Data or portions of it. As far as technically possible and economically feasible, Customer shall be provided with an industry standard interface through which Customer may extract Customer Data independently at any given time. Any Customer Data extraction executed by Customer itself is free of charge.
- 5.3 Supplier may only use Customer Data to the extent necessary for the provision of the Solution and Related Services. Supplier must cease such use of Customer Data after termination or expiration of the Agreement.
- 5.4 Supplier's right to use Usage Data is restricted to i) Usage Data in anonymized or aggregated format that does not contain any Personal Data or Confidential Information or ii) the purpose of the provision and improvement of Supplier's Solutions.
- 5.5 Thirty (30) calendar days upon termination or expiration of the Purchase Order and Customer's subsequent confirmation that the Customer Data has been received and can be construed (deletion approval, email being sufficient), Supplier shall carry out the permanent and irrevocable deletion of any Customer Data that is still on the servers and/or any other data carriers, if and to the extent that no mandatory further retention of such data is required by any applicable laws and regulations. Subject to the foregoing, Supplier shall have no right to retain Customer Data after termination or expiration of the Purchase Order.
- 5.6 Upon termination or expiration of a Purchase Order or the Agreement, Customer may request additional exit assistance services from Supplier. The scope and remuneration of such services are subject to good faith negotiations between the Parties, unless such services are already covered by the Agreement.

6 Liability

- 6.1 The aggregate liability of a Party to the other Party for all claims and damages related to the Agreement, whether based on an action in contract, equity, negligence, tort or other theory, does not exceed an amount equal to one

hundred (100) percent of the charges paid and payable by Customer (including Affiliates) under the Agreement during the twelve (12) months immediately preceding the date of the initial written notice of the applicable breach or other event, act or omission on which such liability is based.

- 6.2 The limitations and exclusion of liability set forth in this Section 6 do not apply to damages caused by willful misconduct or gross negligence.

7 Warranty

- 7.1 Supplier warrants that each Solution, Related Service or Work Result will materially conform to the specifications set forth in the applicable documentation and in the applicable Purchase Order.
- 7.2 Unless longer in Supplier's Standard, the warranty period is six (6) months starting at the date of installation and/or usage of the Solution respectively declaration of acceptance by Customer with regard to Related Services.
- 7.3 During the warranty period and/or the duration of a maintenance contract and as a minimum, the Supplier is obliged to provide security-relevant updates for the Solution. In the event of publicly known security vulnerabilities that pose a significant security risk, Supplier shall provide updates without undue delay. For any other publicly known security vulnerabilities, Supplier shall provide an update within a reasonable period.

8 Subcontractors

Supplier may not subcontract any of Supplier's obligations under the Agreement, in whole or in part, without obtaining Customer's prior written consent, such consent not to be unreasonably withheld or delayed. If Customer has authorized the use of a subcontractor any such approved subcontractor is not permitted to further subcontract any portion of the obligations without Customer's written approval, which shall not be unreasonably withheld.

9 Confidentiality, Usage of Logo

- 9.1 Any provision regarding the protection of Confidential Information in Suppliers Standard shall apply mutually.
- 9.2 Supplier is not allowed to use any Customer or Customer Affiliate's logo, name, brand names or corporate identity for any purposes, especially marketing purposes, without prior written consent from Customer.

10 Tax

All agreed consideration is exclusive of European or other similar Value Added Taxes (VAT, IVA), Goods and Services Taxes (GST, ITBMS, ITBIS), Sales and Services Taxes (SST), and General Sales Taxes (IGV, ISV) (collectively, "Indirect Taxes"). If any Indirect Taxes are applicable, such Indirect Taxes shall be invoiced additionally according to the applicable tax law. Such Indirect Taxes shall be paid to Supplier only, if Supplier is obliged to transfer such Indirect Taxes to the respective tax authorities and after receipt of a corresponding invoice. Supplier shall issue correct invoices in accordance with the applicable tax law.

11 Assignment and Divestment

- 11.1 Customer may transfer the Agreement and the rights and obligations related to it fully or partly without Supplier's consent but with reasonable notice to any of Customer's Affiliates or, in connection with the sale or transfer of all or substantially all of (i) its business, (ii) a given business unit or (iii) a given site, or in connection with a merger or other consolidation of Customer or any of its Affiliates with another entity, to any third party.
- 11.2 In addition, if Customer divests a legal entity, business division, or significant portion of its assets by way of sale or transfer of assets or equity ownership ("Divested Entity"), Customer may, upon prior written notice to Supplier, allow the Divested Entity to use the Solution, any Related Services and any related Work Results for that Divested Entity's internal business purposes as service recipient under and according to the terms of this Agreement for a transition period of (a) 12 months from the date of divestiture or (b) if shorter, the remaining subscription period of the Solution ("**Transitional Services**"). Upon expiry of the transition period, the fees payable by Customer shall be reduced by the proportionate share that is attributable to the Divested Entity.

12 Sustainability

- 12.1 Supplier is obligated to organize its business with Customer in compliance with Customer's human rights-related and environment-related expectations as well as other sustainability topics as outlined in Customer's Supplier Code of Conduct ("**Bayer SCoC**"), Version dated December 31, 2022, which can be accessed through <https://www.bayer.com/en/procurement/supplier-code-of-conduct>. Customer reserves the right to amend this Sustainability Clause as well as the Bayer SCoC, if Customer's human rights-related and environment-related expectations change and will inform Supplier thereof as soon as reasonably possible. Supplier shall acknowledge continued compliance to such amended SCoC or clause, as the case may be.
- 12.2 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 Customer's complaint portal specified in the Bayer SCoC.
Customer 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 Customer or by a qualified third party.
- 12.3 Supplier shall, without undue delay, (i) report to Customer in text form 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. Customer 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, Customer 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 Customer's exclusive discretion.
- 12.4 Supplier acknowledges and supports Customer'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.

13 Miscellaneous

- 13.1 In the event of contradictions between the provisions of the LTC, the PO (and other referenced or attached documents therein) as well as the Supplier's Standard, the following order of priority applies:
- (a) These LTC;
 - (b) the PO and any other documents referred or attached to therein (except for the General Purchase Terms and Conditions of Bayer and its Affiliates, which shall not apply at all);
 - (c) the Supplier's Standard.
- 13.2 Any changes or supplements to these LTC require text form. The same applies to the agreement on any waiver of this text form requirement.
- 13.3 Should any part of the purchase order violate statutory prohibitions or be or become null and void on any other grounds, the Parties shall be obligated to replace the part concerned with provisions that come close to the intended economic and legal purpose. The validity of the remaining parts of these LTC shall not be affected.

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