

TERMS AND CONDITIONS OF PURCHASE OF PRODUCTS OR SERVICES

1. Definitions and Interpretation

In these Terms and any Contract, unless the contrary intention appears:

Bayer means Bayer Australia Limited (ABN 22 000 138 714).

Business Day means a day that is not a Saturday, Sunday or public holiday at the place of delivery of the Products or Services.

Contract means a contract of sale as referred to in clause 2.4.

Delivery Terms means the delivery terms specified in an Order.

GST has the same meaning as *A New Tax System (Goods & Services Tax) Act 1999 (Cth) (as amended)*.

Insolvency Event means circumstances in which a party is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeking protection or being granted protection from its creditors, under any applicable legislation.

Intellectual Property means all statutory and other rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, registered and unregistered trade marks, registered and unregistered designs, circuit layouts, rights to require information be kept confidential, and other rights arising out of intellectual activity in the industrial, scientific, literary or artistic fields, but does not include moral rights that are not transferable.

Modern Slavery Legislation means the *Modern Slavery Act 2018* (Cth), and to the extent to which it applies, the *Modern Slavery Act 2018* (NSW), and any equivalent state or territory legislation.

Modern Slavery Offence means any activity or action which is an offence under the Modern Slavery Legislation.

Order means a purchase order for Products or Services which has been accepted or is deemed to have been accepted by Supplier under clause 2.2, but excluding any terms or conditions printed on or referred to in Supplier's Products or Services list, acceptance of an Order or other documentation unless expressly agreed to in writing by Bayer.

PPSA means the *Personal Properties Securities Act 2009* (Cth) (as amended from time to time).

Price means the price for the Products or Services payable by Bayer to Supplier under clause 3.1, as specified in the relevant Order.

Products mean the goods purchased or to be purchased by Bayer from Supplier which are the subject of a Contract.

Services mean the services purchased or to be purchased by Bayer from Supplier which are the subject of a Contract.

Supplier means the person who is to supply Products or Services to Bayer under a Contract.

Terms means these terms and conditions of purchase.

2. Orders

2.1 Bayer may from time to time request Supplier to supply it with quantities of Products or Services. All orders for Products or Services will be placed by Bayer in writing using its standard purchase order form or such other form as may be reasonably required by Bayer from time to time.

2.2 Supplier must confirm acceptance of each order of Products or Services or notify any reason for non-acceptance in writing within 5 Business Days of receipt. All orders which are not responded to within that period will be deemed to have been accepted by Supplier.

2.3 Once accepted or deemed to have been accepted by Supplier, an Order is final and binding upon the parties.

2.4 Upon the acceptance or deemed acceptance of each Order by Supplier, a separate contract of sale (**Contract**) will arise. Each Contract will comprise the accepted Order and these Terms. If there is any inconsistency between these Terms and another provision in a Contract then the other provision will prevail over these Terms only to the extent of the inconsistency.

2.5 For the avoidance of doubt, no terms or conditions of Supplier, including any terms or conditions printed on or referred to in any Product or Services list, acceptance of an Order or other documentation, will be binding on Bayer or have any legal effect unless expressly agreed to in writing by Bayer.

2.6 Supplier must supply Products or Services to Bayer in accordance with the relevant Order.

3. Price and Payment

3.1 Bayer will pay the Price for Products or Services delivered to it to the Supplier within 45 days after receipt of a valid tax invoice from the Supplier. The applicable Price will be the Price current at the time of acceptance or deemed acceptance of the relevant Order by Supplier, provided that if Supplier reduces its prices for any Products or Services between the date of acceptance or deemed acceptance of the relevant Order and the date of dispatch, the Price valid at the date of dispatch will apply. The Price of Products includes the cost of wrapping, packing, cartons and crating unless specifically stated otherwise in the relevant Order.

3.2 Bayer may withhold payment of the Price under any Contract for Products or Services which do not comply with Supplier's obligations under clause 4.1 and 4.3 or Supplier's warranties under clause 5 or are otherwise defective, and may set-off any amounts owed by Supplier to Bayer under any Contract or these Terms against the Price payable by Bayer under any Contract.

3.3 The Price and any other payments by Bayer to Supplier under these Terms or any Contract are to be made in Australian currency and will be made by direct deposit into an Australian bank account notified by Supplier in writing at least 7 Business Days prior to the due date of payment.

3.4 Unless expressly stated otherwise, all amounts referred to in a Contract including amounts used to determine a payment are exclusive of GST (GST Exclusive Consideration). To the extent that GST is payable in respect of a supply made by the Supplier under or in connection with a Contract, the GST Exclusive Consideration to be provided for that supply is increased by an amount equal to the GST payable by the Supplier and Bayer must pay that additional amount to the Supplier at the same time and in the same manner as the GST Exclusive Consideration subject to Bayer having first received a valid Tax Invoice.

3.5 Each party agrees to do all things that may be necessary to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to GST paid or payable in respect of any supply made under or in connection with these Terms or any Contract. A party is not obliged to make a payment if the other party does not provide a valid tax invoice.

3.6 If a payment to a party under these Terms or any Contract is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense before any adjustment is made for GST.

4. Supply of Products or Services

4.1 Supplier must supply the Products or Services to Bayer in the quantities, at the delivery time, and in accordance with the Delivery Terms specified in the relevant Order.

4.2 Time of delivery is of the essence in each Contract.

4.3 Supplier must deliver the Products or Services:

- (a) in the manner and at the place specified in the relevant Order;
- (b) Products must be properly labelled and packaged so as to ensure no damage occurs during transportation and delivery to Bayer;
- (c) Products must be accompanied by a delivery note and a packing slip describing the contents of each package or container showing the weight, quantity and relevant purchase order number, and the names of the shipping company and the ship if applicable; and
- (d) in accordance with any special instructions contained in the relevant Order.

4.4 Supplier must provide to Bayer a detailed dispatch note on the date of dispatch of each shipment of Products separate from the Products and the relevant invoice.

4.5 Bayer agrees to accept delivery of the Products at the times specified in the relevant Order, or if not specified at any time between 9.00am and 5.00pm on a Business Day at the place of delivery.

4.6 Supplier may deliver the Products or Services by

separate instalments only with Bayer's prior written consent.

4.7 Bayer has no obligation to inspect the Products or Services upon delivery. Bayer's acceptance of Products or Services upon delivery does not constitute any waiver of any of Bayer's rights under these Terms or the relevant Contract and is without prejudice to any right or remedy it may have in respect of defective Products or Services.

4.8 Supplier must replace any Product or Service which is not accepted by Bayer within 10 Business Days.

4.9 Risk in and title to the Products passes to Bayer on delivery. Supplier must fully insure the Products against loss, destruction and damage until such time as risk passes to Bayer.

5. Supplier's Warranties

5.1 Supplier warrants that, at the time of delivery and for a period of 12 months thereafter or such longer period as specified in the relevant Order, all Products supplied by it to Bayer under a Contract will:

- (a) be of merchantable quality;
- (b) be of sound workmanship;
- (c) be free from defects and faulty materials;
- (d) comply with all specifications, and correspond with all samples, for those Products provided by Supplier; and
- (e) be fit for the purpose for which they are intended.

5.2 If a Product does not comply with any of the warranties set out in clause 5.1, without prejudice to any other right or remedy which Bayer may have, upon Supplier receiving written notice from Bayer that any Product does not comply with Supplier's warranties, Supplier must, at Bayer's option:

- (a) collect any such defective Product, or make alternative transport arrangements for such defective Product to be returned to Supplier, repair or replace the defective Product, and deliver the repaired or replacement Product to Bayer within 10 Business Days of Supplier being notified of the defect; or
- (b) pay or reimburse to Bayer all costs and expenses required for, or incurred by or on behalf of, Bayer to repair or replace all or part of any such defective Product,

provided that Supplier will not be liable for a defective Product to the extent the defect arose as a direct result of the improper use or handling of the Product by Bayer.

5.3 Supplier warrants that:

- (a) in entering into and performing its obligations under these Terms it is not, and will not be, in breach of any relevant law or any obligation owed to another person;
- (b) there is no current; pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved that will or may have adverse effect on Supplier's ability to provide the Products or Services and deliverables in accordance with these Terms;

- (c) it has all necessary skills, experience, qualifications, resources, technology and know-how to provide the Products or Services and deliverables in accordance with these Terms;
- (d) it has all necessary licences, approvals, permits and consents to enter into these Terms and to provide the Products or Services and deliverables;
- (e) it will provide the Products or Services and deliverables with all due care and skill, in a good and workmanlike manner and in accordance with all applicable laws, regulations, industry standards and codes of conduct;
- (f) the deliverables will comply with any specifications set out in the relevant Service Schedule or otherwise agreed by the parties, and will be of merchantable quality and fit for their intended purpose; and
- (g) the supply or use of the Products or Services and deliverables will not infringe, directly or indirectly the intellectual Property rights of any other person, and for Products, upon delivery Bayer will obtain absolute and unencumbered legal and beneficial ownership of the Products.

6. Additional Obligations

- 6.1 Supplier must act in good faith in its dealings with Bayer.
- 6.2 Supplier must comply with:
 - (a) All applicable laws, regulations, industry standards and codes of conduct in Australia and any other relevant jurisdiction including but not limited to the *Privacy Act 1988 (Cth)* as amended from time to time; and
 - (b) All applicable laws, regulations, industry standards and codes of conduct in Australia any other relevant jurisdiction relating to the nature, method of manufacture, acquisition, testing, packaging, labelling, release for supply and delivery of the Products or Services, including the Bayer Supplier Code of Conduct, a copy of which is available at www.bayer.com.au or upon request.
- 6.3 Bayer also has a published Privacy Policy which is incorporated herein by reference and can be viewed at www.bayer.com.au. Bayer will only use personal information provided to it in accordance with its Privacy Policy and the *Privacy Act 1988 (Cth)*. To the extent that the Supplier collects, holds or deal with personal information of Bayer or Bayer's Affiliates, Supplier must comply with Bayer's Privacy Policy and the *Privacy Act 1988 (Cth)*.
- 6.4 Supplier must provide to Bayer free of charge all documents required for using, assembling, installing, processing, storing, operating, servicing, inspecting, maintaining or repairing the relevant Products.
- 6.5 Supplier must take out and maintain at its cost adequate insurance, including public and product liability insurance, with a reputable insurer in respect of its obligations under these Terms and any Contract with a limit of liability for each and every event of a commercially reasonable amount to cover risk arising from its manufacture or supply of the Products or Services. Within 5 Business Days of Bayer's request, Supplier must provide to Bayer a certificate of currency

of such insurances.

- 6.6 Supplier grants to Bayer a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, transferable licence (including the right to sublicense) of all Intellectual Property in or relating to the Products or Services to the extent necessary for the supply and use of the Products or Services for any purpose.
- 6.7 All drawings, standards, guidelines, instructions, specifications, methods of analysis, formulae and other documents provided by Bayer to Supplier will remain the property of Bayer.
- 6.8 Supplier must not make press or other announcements or releases relating to these Terms or any Contract or the matters referred to therein without Bayer's prior written approval.
- 6.9 Supplier confirms that it has not made or provided, and will not make or provide any payment or benefit, directly or indirectly, to government officials, customers, business partners, healthcare professionals or any other person in order to secure an improper benefit or unfair business advantage, affect private or official decision making, affect prescription behaviour or induce someone to breach professional duties or standards.
- 6.10 Supplier will immediately report to Bayer in writing any potential breach of the principles contained in this clause in connection with Bayer's business and, in such cases, will cooperate fully with Bayer in reviewing the matter. In the event that Bayer believes in good faith, that Supplier has breached any of the principles, Bayer shall have the right to terminate these Terms.
- 6.11 During the period that these Terms apply and for one year following the termination or expiry of these Terms, Bayer or its duly authorised third party auditor, upon reasonable advance notice and at Bayer's expense, shall have the right during normal business hours to examine and copy such books, record and other documents and materials, except individual salary information, with respect to the subject matter of these Terms.

7. Indemnity

- 7.1 Supplier releases and indemnifies Bayer, its related bodies corporate, and their respective officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with Supplier, and whether at common law, in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of:
 - (a) a breach of Supplier's warranties or obligations contained in these Terms or any Contract; or
 - (b) any negligent or wrongful act or omission by or on behalf of Supplier,
 and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim, proceeding or demand.

8. Termination

- 8.1 Either party may terminate a Contract by giving 7 days'

written notice to the other party if:

- (a) the other party commits a breach (other than a trivial breach causing no material harm) of any provision of the Contract and, where the breach is capable of remedy, fails to remedy the breach within 30 days of receipt of written notice from the first party describing the breach and calling for it to be remedied; or
- (b) an Insolvency Event occurs in relation to the other party.

8.2 Bayer may terminate a Contract at any time by giving 14 days' written notice subject to payment to Supplier of reasonable compensation for any costs or expenses incurred by Supplier as at the date of the notice in connection with that Contract.

8.3 A breach of any Contract by Supplier will constitute a breach of all other Contracts by Supplier.

8.4 Upon termination or expiry of a Contract for any reason, Supplier must fulfil any outstanding Orders for Products or Services from Bayer under that Contract existing at the date of termination or expiry unless Bayer cancels such Orders in writing prior to delivery of the relevant Products or Services.

8.5 Clauses 5, 6.6, 6.7, 6.8, 7, 8.4 and 9 survive the termination or expiry of a Contract for any reason. Any right that has accrued prior to termination or expiry will not be affected.

9. Dispute Resolution

9.1 If a dispute arises out of or related to these Terms or any Contract, no party may commence court or arbitration proceedings (other than proceedings for urgent interlocutory relief) unless it has complied with this clause 9.

9.2 A party claiming a dispute has arisen out of or related to these Terms or any Contract must give written notice to the other party specifying the nature of the dispute. On receipt of that notice by the other party the parties' representatives must endeavour in good faith to resolve the dispute expeditiously and in any event within 10 Business Days, failing which either party may bring such proceedings as it sees fit.

10. Modern Slavery

10.1 Supplier acknowledges that Bayer has obligations to comply with the Modern Slavery Legislation and warrants that as at the commencement of these Terms, Supplier:

- (a) has no knowledge of Modern Slavery Offences; and
- (b) has taken reasonable steps to prevent the occurrence of Modern Slavery Offences within its organisation or supply chain.

10.2 Supplier agrees to comply with the Modern Slavery Legislation in its business and operations and not engage in any conduct or activity which constitutes a Modern Slavery Offence.

10.3 Supplier shall undertake commercially reasonable efforts, due diligence, and ongoing monitoring to ensure there are no Modern Slavery Offences being conducted by any party in Supplier's supply chain, including

Supplier's sub-contractors, irrespective of whether such sub-contractors are involved in provision of services under these Terms.

10.4 Supplier agrees to cooperate with Bayer and to:

- (a) Support and respond in a timely manner to any due diligence or monitory activities undertaken by Bayer or its agent under the Modern Slavery Legislation;
- (b) provide Bayer with an annual report, and if requested, further information upon which the Supplier has relied in preparing such report, to enable Bayer to prepare and submit reports under applicable Modern Slavery Legislation; and
- (c) notify Bayer as soon as practicable upon becoming aware of any Modern Slavery Offence, or of changes being laid in relation to such offence, within its organisation or supply chain.

11. Sustainability

11.1 Supplier is obligated to organize its business with Bayer in compliance with Bayer's human rights-related and environment-related expectations as well as other sustainability topics as outlined in Bayer's Supplier Code of Conduct ("**Bayer SCoC**"), which can be accessed through <https://www.bayer.com/en/procurement/supplier-code-of-conduct>. Bayer reserves the right to amend this clause 11 as well as the Bayer SCoC if Bayer'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 Bayer SCoC or clause, as the case may be.

11.2 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 Bayer's complaint portal specified in the Bayer SCoC.

11.3 Bayer 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 Bayer or by a qualified third party.

11.4 Supplier shall, without undue delay, (i) report to Bayer in writing 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. Bayer 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, Bayer 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 Bayer's exclusive discretion.

- 11.5 Supplier acknowledges and supports Bayer'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. Supplier will use reasonable efforts to employ qualified diverse suppliers and subcontractors where appropriate and feasible, keep record of their use, and be able to produce a report upon Bayer's request of spend percentages with diverse suppliers.
- 12. General**
- 12.1 In these Terms and any Contract, unless the contrary intention appears:
- (a) a person includes a corporation, unincorporated association, partnership, joint venture or public, statutory or governmental association or agency;
 - (b) a statute or regulation includes an amendment, replacement or re-enactment of that statute or regulation;
 - (c) a reference to dollars is to Australian Dollars;
 - (d) the word "including" and similar expressions are not words of limitation;
 - (e) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing; and
 - (f) where an act is to be performed on a day that is not a Business Day, the act will be required to be performed on the following Business Day.
 - (g) The Supplier must not register these Terms and any Contract as a security interest (as defined in the PPSA) against Bayer without first obtaining Bayer's written consent. Such consent may be withheld by Bayer in its absolute discretion.
- 12.2 Any notice given by a party in connection with these Terms or any Contract shall be in writing and will be deemed to have been given when delivered or sent by post or email to the party to whom such notice is intended to be given at the postal address or email address of that party provided in these Terms or as otherwise notified in writing to the other party.
- A notice is deemed to be given and received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, 3 Business Days after the date of posting, or 6 Business Days if sent to or from another country; or
 - (c) if sent by email the earlier of the sender receiving an automated message confirming delivery, or two hours after the time that the email was sent (as recorded on the device from which the email was sent) provided that the sender does not, within such 2 hour period, receive an automated message that the email has not been delivered or an out of office automated reply.
- 12.3 If any provision of these Terms or any Contract is invalid, illegal or unenforceable, these Terms or the Contract (as applicable) take effect (where possible) as if they did not include that provision.
- 12.4 Any failure by Bayer to insist upon strict performance by Supplier of any provision in these Terms or any Contract will not be taken to be a waiver of any existing or future rights of Bayer in relation to the provision.
- 12.5 Supplier must not assign or otherwise deal with its rights or obligations under these Terms or any Contract without the prior written consent of Bayer.
- 12.6 These Terms and all Contracts are governed by the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- 12.7 These Terms (together with the Contracts) contain the entire agreement of the parties with respect to their subject matter and may only be amended in writing.
- 12.8 Neither these Terms nor any Contract create a relationship of agency, partnership, joint venture or employment between the parties. Neither party has any authority to act for or incur any liability or obligation on behalf of the other party in any manner.
- 12.9 The parties agree that subject to the provisions of these Terms, the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 do not apply to the supply of Products or Services under these Terms or any Contract.