

GENERAL TERMS AND CONDITIONS OF PURCHASE

- A. Any Purchase Order, together with Conditions, and any attachments, exhibits, specifications, statements of work and other information, whether attached to these Conditions or incorporated by reference (collectively the “**Contract**”), constitute the entire and exclusive agreement between **[BAYER CO. (MALAYSIA) SDN. BHD.] [MONSANTO (MALAYSIA) SDN. BHD.]** (“**Bayer**”) and the supplier (“**Supplier**”) for the supply of the Goods and/or Services to Bayer, subject to sub-clause B below. The Supplier acknowledges and agrees that the Contract applies to the exclusion of any other terms and conditions of the Supplier (“**Supplier Terms**”) whether communicated orally or contained in any confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing. Further, the Supplier acknowledges and agrees that the Supplier Terms do not form a part of the Contract or the terms on which the Goods and/or Services are provided to Bayer, even if the Supplier purports to condition its acceptance of the Contract or any particular terms issued by the Supplier or Bayer’s agreement to such different or additional terms. The Supplier’s electronic acceptance or acknowledgement of this Contract or of any Purchase Order, or the commencement of performance of any Purchase Order constitutes the Supplier’s acceptance of these Conditions to the exclusion of any Supplier Terms.
- B. In case Bayer and Supplier have entered into a written agreement regarding the provision of such goods and/or services, the provisions of such written agreement shall prevail over the Contract.

1. Interpretation and Application of terms

1.1. The definitions below apply in these Conditions:

“**Claim**”: includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense, liability however arising whether present, unascertained, immediate, future or contingent whether based in contract, tort or statute and whether involving a third party or a party to this Contract or otherwise.

“**Conditions**”: these general terms and conditions of purchase, together with the Malaysia Special Conditions of Purchase.

“**Deliverables**”: any and all deliverables specified in the Contract.

“**Delivery Instructions**”: means any delivery instructions provided to the Supplier by Bayer.

“**Goods**”: means the goods manufactured and/or supplied by the Supplier and sold to Bayer under the Contract and specified in the applicable Purchase Order.

“**Intellectual Property Rights**”: any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models, and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however named) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force.

“**Purchase Order**”: Bayer's written instruction to Supplier to buy goods, incorporating these Conditions.

“**Preexisting IP and Materials**”: any Intellectual Property Rights or tangible personal property of the Supplier or Bayer created before the date of this Contract or outside the scope of this Contract.

“**Services**”: the services that the Supplier is to perform for Bayer under the Contract and specified in the applicable Purchase Order.

"Special Conditions": means the special conditions of purchase set out in any annexures to this Contract.

"Specifications": means the specifications, drawings, samples or other description or requirements of the Goods and/or Services furnished or specified by Bayer, or otherwise notified by Bayer to the Supplier.

"Supplier": means the supplier of the Goods and/or Services to Bayer as specified in the applicable Purchase Order.

"Work": the delivery of the Goods and/or Services to be supplied and/or performed under the Contract.

1.2. Bayer will not be bound by any Purchase Order unless it is placed on Bayer's official order form and shall be entitled to cancel any Purchase Order not yet accepted by the Supplier.

1.3. The Supplier is deemed to have accepted a Purchase Order if it does not reject the Purchase Order in whole or in part within 3 days of its receipt.

2. Quality and defects

2.1. The Supplier warrants that the Goods shall conform in all respects with the Specifications and that the Goods will be of merchantable quality. The Supplier warrants that it will only use sound materials and workmanship and the Goods will be free from any defect or fault whatsoever. If the purpose for which the Goods are required has been indicated by Bayer, either expressly or by implications, then the Goods shall be fit for that purpose.

2.2. The Supplier warrants that the design, construction, composition and quality of the Goods shall comply in all respects with all relevant requirements of any statute, statutory instrument or regulation in force at the date of delivery, and that the Goods will conform to any trade description applied to them by the Supplier.

2.3. The Supplier shall provide suitable containers and/or packing materials for the sale, delivery and reasonable storage of the Goods. All such containers and packaging shall comply with any requirements or Specifications in force at the time of delivery of the Goods to Bayer in accordance with the Delivery Instructions, these Conditions and the applicable Purchase Order.

2.4. Where it has been agreed that such containers and packing materials are returnable and charged for, their costs are to be credited in full on return by Bayer to the Supplier. The costs of and associated with the return of any such containers and packaging materials (to the point specified by the Supplier) will be at the Supplier's expense.

2.5. The Supplier warrants that it will act in good faith in the performance of the Services and that the Services will be performed in accordance with this Contract and any applicable Specifications by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as is reasonable for Bayer to expect in all of the circumstances.

2.6. Without prejudice to its other rights, Bayer reserves the right to reject and (if appropriate) return any Work supplied which fails to comply with this clause 2. Upon notification of rejection by Bayer, rejected Goods shall be returned to the Supplier.

2.7. The warranties and remedies provided for in this clause 2 are in addition to and not in substitution for those warranties or conditions which are implied by, or available under, any law, whether statutory or otherwise and will continue to exist notwithstanding the acceptance by Bayer of the Work in whole or in part.

2.8. The Supplier must pay Bayer for all packing, handling, sorting and transportation expenses incurred in connection with the return of any rejected Goods and must at Bayer's election either:

- (a) re-supply the Goods to Bayer in accordance with the terms of this Contract;
- (b) provide Bayer with a credit note for the re-supply of the equivalent value of Goods; or
- (c) where the price of the Goods has been paid, provide Bayer with a full refund for the Goods.

2.9. If the rejected Work relates to Services, then the Supplier must either:

(a) re-supply the Services to Bayer; or

(b) in Bayer's discretion, Bayer may itself, or through a third party, correct any issue with the Services at the Supplier's cost, and the Supplier must reimburse Bayer for any expenses or costs incurred in correcting (or replacing) such Services.

2.10. For the avoidance of doubt, to extent the Supplier has not already invoiced Bayer for any rejected Work, the Supplier must not render an invoice to Bayer in respect of such Work.

2.11. The Supplier shall obtain and maintain in force all licenses, permissions, authorizations, consents and permits needed to manufacture and supply the Goods and/or Services in accordance with the Contract. The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, marking, handling, packaging and delivery of the Goods.

3. Health and Safety

The Supplier must take all reasonable precautions to ensure the health and safety of its and Bayer's employees while on Bayer's premises (if applicable). The Supplier must ensure that hazardous Goods have prominent and suitable warnings on all containers, packages and documents and such markings shall comply with all applicable laws.

4. Indemnity and Insurance

4.1. The Supplier shall defend, indemnify and hold Bayer, its officers, employees and contractors harmless from and against any and all Claims (on a full indemnity basis) as incurred, arising out of or in connection with any (i) breach or non-performance of this Contract; (ii) act or omission of the Supplier (including its subcontractors) in the performance of the Work; (iii) wrongful, willful or negligent act or omission of the Supplier or any of its employees, agents or contractors; or (iv) infringement of a third party's Intellectual Property Rights.

4.2. If any of the Work breaches a third party's Intellectual Property Rights, then in addition to the Supplier's obligations under clause 4.1, the Supplier will use its best efforts to (i) obtain any licenses necessary to permit Bayer to continue to use the Work; (ii) replace or modify the Work as necessary to permit Bayer to continue to use of the Work; or if (i) and (ii) are not commercially reasonable, then (iii) promptly refund to Bayer the amount paid for any such Work.

4.3. Nothing in this clause shall prejudice any other remedy the parties have under the Contract, at law or in equity.

4.4. The Supplier shall maintain at its own cost a policy of insurance to cover the liability of the Supplier in respect of any act or default for which it may become liable and to indemnify Bayer under the terms of the Contract.

5. Delivery

5.1. The Supplier must deliver the Goods in accordance with the Delivery Instructions (if any).

5.2. The Supplier acknowledges and agrees that for the performance of the Work, time will be of the essence. The Supplier must immediately notify Bayer if the Supplier's timely performance under the Contract is delayed or is likely to be delayed. Bayer's acceptance of the Supplier's notice will not constitute a waiver of any of Bayer's rights under the Contract.

5.3. Goods shall be delivered, carriage paid, to Bayer's place of business or to such other place of delivery as is agreed by Bayer in writing prior to delivery of the Goods. The Supplier shall off-load Goods at its own risk as directed by Bayer. The Supplier shall assume responsibility for all shipping and delivery charges including, without limitation, customs, duties, costs, taxes and insurance.

5.4. Title to the Goods shall pass to Bayer on delivery or, if earlier, on payment for the Goods to the Supplier (without prejudice to any right of rejection by Bayer). Risk in the Goods shall pass to Bayer upon delivery at the point of delivery stated in the Contract.

5.5. Bayer reserves the right to refuse acceptance of Goods which are supplied in excess of Bayer's requirements as stated in the Contract and Bayer accepts no liability for such Goods. Such excess Goods may be returned at the Supplier's risk and expense. For the avoidance of doubt where it is agreed that the Supplier shall unload the Goods on Bayer's site, such activity will be construed as Services for the purpose of the Purchase Order.

5.6. If any Goods are rejected by Bayer in accordance with this Contract risk in those Goods will pass back to the Supplier at the time of the notification of the rejection by Bayer and title to those Goods will pass back to the Supplier at the time the Goods are collected or otherwise returned to the Supplier.

5.7. Acceptance of a delivery (or supply) of any Good does not indicate acceptance by Bayer that the Good complies with the Specifications or otherwise complies with this Contract.

5.8. Bayer shall not be deemed to have accepted any Goods until Bayer has had a reasonable period to inspect those Goods. Bayer shall also have the right to reject Goods in accordance with this Contract, within 14 days of receipt of the Goods in accordance with the Delivery Instructions, these Conditions and the applicable Purchase Order.

6. Assignment and subcontracting

The Supplier shall not assign any of its rights without the prior written approval of Bayer, which may be withheld at its discretion. The Supplier may delegate or subcontract its duties, obligations and tasks necessary for the performance or delivery of the Work to duly qualified independent subcontractors, provided that (i) the prior written approval of Bayer is obtained; and that (ii) the Supplier ensures that the independent contractor has the necessary qualifications and skills to supply the Work in accordance with the Contract. The Supplier understands and agrees that Bayer's decision to give or withhold such approval will be discretionary and that, notwithstanding such approval, the Supplier shall remain fully responsible for the performance of its obligations under this Contract in respect of any Work performed by its subcontractors. Any attempted assignment of rights or subcontracting of duties without the prior written approval of Bayer shall be void and ineffective. It is agreed by both parties that Bayer may assign, transfer or novate, in full or in part, its rights and obligations hereunder without the prior written consent of the other party to (a) any affiliated entity, or (b) to a successor or transferee, whether by merger, consolidation, purchase or otherwise, of the business or assets of Bayer, or parts thereof, to which the subject matter of this agreement relates. This agreement shall be binding upon and inure to the benefit of the parties and their respective successors and transferees.

7. Confidentiality

7.1. The Supplier undertakes on behalf of itself, its employees, agents and sub-contractors (if any) to treat all information obtained as a result of the Contract regarding the business, products, operations and organization of Bayer as confidential and to use such information solely for the purpose of complying with its obligations under this Contract.

7.2. The Supplier must obtain Bayer's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier of Bayer or in relation to any matter concerning the Contract, unless any such information is required to be disclosed under any law.

7.3. The provisions of this clause 7 shall survive any termination of this Contract for a period of 5 years.

8. Bayer's property

8.1. All Intellectual Property Rights in all materials, media, information and data supplied by Bayer to the Supplier or not so supplied but used by the Supplier specifically in the Work shall at all times be and remain the exclusive property of Bayer and shall not be disposed of other than in accordance with Bayer's written instructions, nor shall such items be used otherwise than as authorized by Bayer in writing.

8.2. Unless otherwise agreed by the parties in writing and without prejudice to clause 8.3, Bayer shall be the sole and exclusive owner of all Deliverables and the Supplier hereby irrevocably assigns and transfers to Bayer all of its worldwide right and title to the Deliverables, including all Intellectual Property Rights associated with the Deliverables.

8.3. Unless otherwise agreed by the parties in writing, each party owns all right, title and interest in and to any of its Preexisting IP and Materials. The Supplier hereby grants Bayer a perpetual, irrevocable, worldwide, transferable, royalty-free, nonexclusive license, with the right to sublicense, to use and reproduce the Supplier's Preexisting IP and Materials in the Deliverables to the extent necessary for Bayer's exercise and exploitation of its rights in the Deliverables.

8.4. Unless otherwise agreed by the parties in writing, the Supplier will obtain and assign to Bayer a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all Intellectual Property Rights incorporated into, required to use, or delivered with the Work.

9. Termination

9.1. These Conditions apply to all Bayer's purchases of Work and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by an authorized representative of Bayer.

9.2. Bayer shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Supplier written notice of termination.

9.3. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Bayer accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

10. Remedies

10.1. Without prejudice to any other right or remedy which Bayer may have, if any Goods or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, Bayer shall be entitled to avail itself of any one or more of the following remedies in its absolute discretion, whether or not any part of the Goods or Services have been accepted by Bayer:

(a) to rescind the Purchase Order;

(b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund shall be paid forthwith to Bayer by the Supplier;

(c) at Bayer's option, to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Work, or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

(d) to refuse to accept any further deliveries of Goods and/or Services without any liability to the Supplier;

(e) to carry out, at the Supplier's expense any work necessary to make Goods and/or Services comply with Contract; and

(f) to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract, provided that where Goods have already been accepted by Bayer and not returned to the Supplier in part satisfaction of an Order, Bayer must pay for such Goods in accordance with the terms of Contract.

11. Liability

11.1. NOTWITHSTANDING ANYTHING ELSE IN THE CONTRACT OR OTHERWISE OR UNLESS IT IS PROHIBITED UNDER THE STATUTORY AND MANDATORY UNDER APPLICABLE LAW, BAYER'S MAXIMUM AGGREGATE LIABILITY TO THE SUPPLIER FOR ALL PROVEN LOSSES, DAMAGES AND CLAIMS ARISING OUT OF THE CONTRACT, INCLUDING FOR BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE ACTION IS LIMITED TO THE AMOUNT IN VALUE OF THE GOODS AND /OR SERVICES ORDERED BY BAYER UNDER THE CONTRACT.

11.2. IN NO EVENT WILL BAYER BE LIABLE TO THE SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE CONTRACT, WHETHER OR NOT BAYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

12. Indemnification

12.1 The Supplier agrees to indemnify, defend and hold Bayer harmless from and against any and all claims, damages, liability, harm, loss, costs, penalties, lawsuits, threats of lawsuit or other governmental action, including reasonable attorneys' fees, brought or claimed by any third-party which arise out of or result from: (i) Supplier's breach of this Contract or of any warranty or representation made by Supplier to Bayer under this Contract; (ii) the negligence or misconduct of the Supplier, its officers, employees, agents or subcontractors; and (iii) claims made by employees or representatives of the Supplier or its subcontractors whether or not based on employment contract, or any laws prohibiting discrimination in employment, or under worker's compensation or similar laws.

13. Force majeure

13.1. Either party may totally or partially suspend the performance of the Contract or any Purchase Order during any period which:

(a) its performance is prevented or hindered by circumstances beyond its reasonable control including but not limited to requisitions by government authority, war, strike, lock-out, plant break-down, unavailability of raw materials, riots, disease outbreak, epidemic, pandemic, Act of God, storm, failure of public utilities or common carrier; or the need to comply with legislation or reasonably anticipated legislation has the effect of preventing or hindering the free manufacture, sale, delivery, use or supply of the Work or any Deliverable.

14. Sustainability

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"), Version dated December 31, 2022, which can be accessed through <https://www.bayer.com/en/procurement/supplier-code-of-conduct>, **Version dated December 31st, 2022**. Bayer reserves the right to amend this Sustainability Clause 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 SCoC or clause, as the case may be.

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.

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.

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.

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.

15. General

15.1. Each right or remedy of Bayer under this Contract is without prejudice to any other right or remedy of Bayer whether under this Contract or not.

15.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions and remainder of such provision shall continue in full force and effect.

15.3. Failure or delay by Bayer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract or prevent Bayer from insisting on strict compliance therewith. Any waiver by Bayer of any breach of, or any default under, any provision of this Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default.

MALAYSIA SPECIAL CONDITIONS OF PURCHASE

1. Special Conditions of Purchase

If any Special Conditions of Purchase are inconsistent with the general terms and conditions of purchase, these Special Conditions will override the general terms to the extent of such inconsistency.

2. Definitions

"**GST**" or "**VAT**" or "**SST**": means Goods and Services Tax or Value Added Tax or Sales and Services Tax
"**GST Act**" or "**VAT Act**" or "**SST**": means specific regulation which regulates GST or VAT or SST or SST in the country where Bayer legal entity conducts the purchase of goods and/or services.

3. Price and payment

I. In this clause 2:

- (a) the expressions "Input Tax", Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST or VAT or SST Act; and
- (b) Supplier means any party treated by the GST or VAT or SST Act as making a Supply under this Contract.

II. Unless otherwise expressly stated in the Purchase Order, all prices or other sums payable or Consideration to be provided under or in accordance with this Contract are exclude of GST or VAT or SST, or any equivalent value-added tax.

III. If laws or regulations require that taxes be withheld on behalf of Supplier by Bayer on any such payment, Bayer will (i) deduct those taxes from the remittable payment, (ii) timely pay the deducted taxes to the proper taxing authority and (iii) send proof of payment to Supplier within thirty (30) days of confirmation from the relevant tax authority. In case a reduction of the withholding tax rate is possible, Bayer will assist Supplier in the exemption procedure with the relevant tax authorities.

IV. If Bayer omits to deduct withholding tax but is still required by tax law to pay withholding tax on account of Supplier to the tax authorities, (a) Supplier shall assist Bayer with regard to all procedures required in order to obtain reimbursement by tax authorities or, (b) in case tax authorities will not reimburse withholding tax to Bayer, Supplier will immediately refund the tax amount to Bayer, and Bayer shall provide Withholding Tax Receipt. If Bayer does over-withhold tax, Bayer must get tax refund from Tax Authority of the Bayer and the tax refund must be reimbursed/repaid to Supplier. Supplier shall assist/support Bayer with all data requested by Tax Authority of Bayer.

V. If the Purchase Order expressly states that the supply of the Work is exclusive of GST or VAT or SST, then if GST or VAT or SST is applicable and imposed on any Supply made under or in accordance with the Contract, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST or VAT or SST payable for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.

VI. Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Contract.

VII. Bayer only pays its own bank charges in the case of outgoing payments, unless stated otherwise in the contract. Supplier shall bear its own bank charges and any deductions in transit.

VIII. Unless otherwise expressly stated in the Purchase Order, all prices or other sums payable or Consideration to be provided under or in accordance with this Contract are inclusive of all other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges (**Additional Charges**).

IX. For each delivery or supply of Work, the Supplier must provide an invoice to Bayer (**Invoice**). The Invoice must contain a clear description of each item of Work supplied by the Supplier to Bayer in the relevant Purchase Order, the Purchase Order reference number to which the Work relates and provide a breakdown of the price of each item or part of the Work and all taxes and other charges.

X. Subject to a genuine dispute, Bayer will pay the full amount of the Invoice within such number of days from delivery of Goods and/or Services to Bayer as set out in the applicable Purchase Order, provided that such number of days shall be at least 90 days from receipt of the Invoice or delivery of the Work (whichever is the later) unless otherwise regulated by local regulations or agreed by both parties. If Bayer disputes any Invoice or other statement of monies due, Bayer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to resolve the dispute promptly. Parties shall provide such evidence as may be reasonably necessary to verify the disputed Invoice or request for payment. If the parties have not resolved the dispute within five (5) days of Bayer giving notice to the Supplier, the dispute shall be settled by the courts of Malaysia.

XI. Notwithstanding clause VII, if there is any reduction in any Additional Charges prior to the due date of the relevant Invoice (**Reduction**), then the Supplier must pass that Reduction on to Bayer as a reduction in the price of the Work (and the amount of the applicable Invoice) for the relevant Purchase Order.

XII. Without prejudice to any other right or remedy, Bayer reserves the right to set off any amount owing at any time from the Supplier to Bayer against any amount payable by Bayer to the Supplier whether under the Contract or otherwise.

4. Notwithstanding clause 11.2 of the Conditions above, nothing herein shall limit or exclude any damages or claims to the extent: (i) arising out of a breach of the non-disclosure and non-use obligations under this Contract, (ii) arising out of a party's obligations hereunder to indemnify the other party for third party claims, (iii) made for bodily injury or death or damage to real or personal property, or (iv) resulting from a party's gross negligence or willful misconduct.

5. If the Supplier is required to indemnify Bayer pursuant to clause 12 of the Conditions above, the Supplier shall promptly notify Bayer of any such claim or action, and Bayer shall promptly assume and vigorously undertake the defense of any claim or action. Where necessary, the Supplier shall reasonably cooperate with Bayer in the defense of such claim or action. The Supplier shall permit Bayer to control the defense and settlement of such claim or action, all at the Supplier's cost and expense, except that Bayer may, at its option and expense, select and be represented by separate counsel. The Supplier shall not, however, absent the written consent of Bayer, consent to the entry of any judgment or enter into any settlement (1) that provides for any relief other than the payment of monetary damages for which

the Supplier shall be solely liable; and (2) where the claimant or plaintiff does not release Bayer and its and their respective directors, officers, employees, agents and representatives from all liability in respect thereof. In no event shall Bayer be liable for any claims that are compromised or settled in violation of this clause.

6. Compliance with Bayer's SCoC: Supplier represents that it can access and download a copy of Bayer's SCoC found in the link provided in Clause 14 of the General Terms and Conditions of Purchase and agrees to adhere and comply with the same (the "**Code**"), that it has provided copies of same to Supplier employees who will be involved in the performance of activities undertaken pursuant to this Agreement ("**Services**"), and such employees have read and agree to perform Services subject to the contents of the Code. Further, Supplier warrants that its aforementioned employees will comply with these requirements and will endeavor to live up to them in performing all activities undertaken pursuant to this Agreement. The Supplier agrees to be advised on a continuing basis and from time to time by Buyer and/ or its Affiliates on the terms of the Code.

7. The relationship hereby established between Bayer and the Supplier is solely that of independent contractors. This Contract is not intended to create, and shall not be construed as creating, between Bayer and the Supplier, the relationship of principal and agent, joint ventures, co-partners, or any other such relationship, the existence of which is expressly denied. No employee or agent engaged by the Supplier shall be, or shall be deemed to be, an employee or agent of Bayer and shall not be entitled to any benefits that Bayer provides to its own employees.

8. Each party hereto agrees to execute such further documents and take such further steps as may be reasonably necessary to effectuate the purposes of this Contract.

9. Any notice required to be given hereunder shall be in writing and shall be deemed to have been sufficiently given: (i) when delivered in person, (ii) on the 2nd business day after mailing by registered or certified mail, postage prepaid, return receipt requested, (iii) on the next business day after mailing by overnight courier service, or (iv) when delivered via facsimile with the original delivered via one of the preceding methods; to the registered office address of the party.

10. This Contract shall be governed by and construed in accordance with the laws of Malaysia. The parties submit to the exclusive jurisdiction of the courts of Malaysia.

This Purchase Order and its attachments has been generated using electronic data processing and will be valid and binds the parties without any signature. Supplier acknowledges and agrees to Bayer Purchase Order General Terms and Conditions of Purchase and its Special Conditions of Purchase ("**Bayer PO T&C**") as attached and part of this Purchase Order. In any case of conflict between Bayer PO T&C and Supplier terms and conditions (if any), Bayer's version will prevail.