

BAYER PLC TERMS OF BUSINESS



1. INTERPRETATION

1.1 Definitions

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time.

Containers: includes crates, boxes, drums, beams and other containers in which Goods are packed for delivery.

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from the Supplier.

Force Majeure: has the meaning given in clause 13.

Goods: the goods (or any part of them) set out in the Order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form.

Parties: the Supplier and the Customer.

Supplier: **Bayer plc** is registered in England number 935048. Registered office: 400 South Oak Way, Green Park, Reading, Berkshire RG2 6AD, England.

Supplier's Recommendations for Use: means the Supplier's recommendations for use (if any) contained in the Supplier's published literature current at the time of the Contract.

1.2 Interpretation

- a) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- b) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- c) A reference to **writing** or **written** includes emails.

2. INCORPORATION OF CONDITIONS

- 2.1 The Supplier shall sell and the Customer shall purchase the Goods subject to these Conditions, which shall apply to each Contract. Acceptance by the Customer of the delivery of Goods shall (without prejudice to condition 3 or any other manner in which incorporation of these conditions is evidenced) be deemed to constitute unqualified acceptance of these Conditions.
- 2.2 These Conditions shall override any other terms or conditions stipulated or referred to by the Customer, whether in the Order or any document issued by the Customer or in any negotiations and so that these Conditions of Sale are the only terms or conditions upon which the Supplier sells or supplies the Goods.
- 2.3 No variation of these Conditions shall be effective unless made in writing and signed by a duly authorised representative of the Supplier.

3. ACCEPTANCE OF ORDERS

- 3.1 Without limitation, a quotation, a price list or any other price display prepared or disseminated by the Supplier does not constitute an offer by the Supplier. The Supplier reserves the right to withdraw or revise a quote or price at any time. An order from the Customer shall constitute an offer to buy (the "Offer") and acceptance of an Order by the Supplier shall constitute acceptance of the offer (the 'Acceptance').
- 3.2 An Acceptance by the Supplier pursuant to Condition 3.1 shall only be effective where it is either in writing and signed by the Supplier's authorised representative or in the event a delivery is made pursuant to an Order such delivery will constitute unqualified Acceptance.
- 3.3 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any Order submitted by the Customer.
- 3.4 Supply of Goods pursuant to each Order is subject to availability of the Goods at the time of despatch.
- 3.5 The Supplier shall impose a delivery charge of £30 on any Order of less than £200 (excluding VAT).
- 3.6 Each Order and Acceptance constitutes a separate Contract between the Parties. Where the Goods are supplied by instalments each instalment shall be deemed to be the subject of a separate Contract.
- 3.7 The Supplier reserves the right to refuse to supply goods to the Customer at any time until it is satisfied that the Customer possesses all regulatory approvals and has in place an adequate emergency plan to ensure that it can successfully carry out a product recall which may be required by the regulatory authorities or reasonably required by the Supplier.

4. PRICES

- 4.1 Prices are quoted by the Supplier exclusive of Value Added Tax and other applicable taxes or duties and the cost of any import or other licences or clearances and, unless otherwise specified, inclusive of delivery charges (subject to clauses 3.5 and 4.2 and provided the time and place such delivery has been agreed in advance by the Parties).
- 4.2 Where, at the Customer's request, the Supplier undertakes urgent delivery, the Supplier reserves the right to make an exceptional charge for delivery irrespective of the value of the Order in question.
- 4.3 In the event where the Acceptance sets out a delivery schedule which provides for the delivery to be made in whole or in part on a date falling two weeks or more from the date of Acceptance the Supplier may at any time before delivery vary the price of the Goods by notice to the Customer provided such notice is given to the Customer on a date falling no later than the date falling ten days prior to the date of delivery. The Customer may within one week of receipt of such notice cancel the Order for the Goods, but if delivery of the Goods is to be made by instalments the Customer shall be entitled to cancel only the underdelivered portion of the Order. No other remedy shall be available to the Customer in respect of such variation in price. If the Customer shall not make any such cancellation within such one-week period the varied price shall apply to the Contract except as regards those of the Goods already delivered when the variation is made.

5. PAYMENT

- 5.1 Unless otherwise agreed in accordance with Clause 2.3, payment for the Goods is due on or before the twentieth day of the calendar month following the date of the invoice issued by the Supplier for the Goods ('the due date for payment') and time of payment is of the essence.
- 5.2 Payment shall be deemed not to have been made until the Supplier has received all sums payable in cleared funds and the Customer is not entitled by reason of any set-off, counterclaim, abatement or analogous deduction to withhold payment of any amount due to the Supplier.
- 5.3 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then without prejudice to any other of its rights, the Supplier shall be entitled to:-
- 5.3.1 cancel any Contract and/or suspend any further deliveries to the Customer and
- 5.3.2 charge interest on payments outstanding after the due date for payment at the rate (both before and after judgment) of four percent per annum above Barclays Bank PLC base lending rate in force on the date for payment or eight percent per annum, whichever shall be the higher, calculated on the outstanding balance (including interest) due from the due date for payment

until receipt by the Supplier of payment in cleared funds. The Supplier reserves the right to reduce or cancel the amount of interest payable under this Clause 5.3.2 and the Customer acknowledges that any such reduction or cancellation for whatever reason shall not amount to a waiver of Supplier's rights or a course of conduct varying the items of these Conditions.

6. DELIVERY

- 6.1 Any dates, times or periods for delivery of Goods quoted by the Supplier are estimates only and the Supplier shall not be liable for failure to meet such estimates or for any costs, charges or expenses incurred as a consequence of such failure. Accordingly, the Customer shall not be entitled to refuse to accept Goods or to terminate any Contract merely because of such failure.
- 6.2 Delivery shall take place:
- 6.2.1 where the Supplier undertakes delivery, when the Goods are loaded off the Supplier's medium of transport at the station, port or address specified by the Customer; or
- 6.2.2 where the Customer undertakes to collect the Goods, when they are loaded onto the Customer's vehicle or other transport at the address of the Supplier.
- 6.3 The Goods shall be at the Customer's risk from the time of delivery as defined in Clause 6.2 or if earlier, when the Goods are made available for collection by the Customer at the Supplier's premises.
- 6.4 The Supplier shall not be liable for and the Customer shall fully indemnify the Supplier against any and all costs, charges and expenses incurred due to delay in delivery of the Goods where such delay is a result of the Customer's failure to provide as and when requested by the Supplier all instructions, licenses, guarantees, deposits and all such information and other assistance as may be reasonably required by the Supplier.

7. QUANTITIES

- 7.1 Where the Supplier's published literature indicates that certain Goods are supplied in packages of a minimum number, such Goods will only be supplied in multiples of such minimum number. Any Order which is not for such a multiple will be grossed up to the nearest such multiple and supplied and invoiced as such.
- 7.2 In the case of non-packaged Goods, the Supplier shall be entitled to deliver against an Order up to 10% more or less than the weight or volume ordered. Where the quantity of Goods delivered by the Supplier is more or less than the quantity ordered (and the amount of the shortfall or excess has been identified by the Supplier and the Customer), the Supplier shall invoice the Customer for the quantity ordered and shall subsequently:-
- 7.2.1 issue the Customer with a credit note in respect of any shortfall in the amount actually delivered against the Order quantity; or

7.2.2 issue the Customer with an additional invoice in respect of any excess in the amount actually delivered against the Order quantity and that invoice shall be payable by the Customer in accordance with Clause 5.

The quantity actually delivered will be stated in the delivery note.

8. CONTAINERS AND PALLETS

- 8.1 Returnable Containers will be returned to the Supplier's address (as notified by the Supplier) in good condition and at the Customer's cost within three months of delivery. Any deposit made by the Customer on such Containers shall be forfeited in the event of failure to return them undamaged within the specified period. When no deposit is required, the Customer agrees to reimburse the Supplier the full replacement value of any Containers damaged or not returned within the period of three months from delivery. The Supplier's account and rejection of damaged returnable Containers shall be accepted as final.
- 8.2 Returnable pallets must be returned to the address given on the delivery note within thirty days of delivery or a charge will be made, the amount of which will be notified by the Supplier to the Customer from time to time.

9. LOSS, DAMAGE OR NON-DELIVERY

- 9.1 Where the Customer agrees to collect the Goods, the Supplier shall not in any circumstances be liable for any damage from whatever cause which arises while the Goods are in transit.
- 9.2 The Customer shall inspect the Goods immediately on delivery (as defined in Clause 6.2) and shall have no claim in respect of any shortage in quantity or defect in the Goods which would be apparent on inspection unless the Customer notifies the Supplier in writing giving details of such shortage or defect within three days of delivery. If the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such shortage or defect and the Customer shall be bound to pay the price as if the Goods have been delivered in accordance with the Contract.
- 9.3 Where the Customer claims that any Goods are damaged or defective, the Customer must retain the Goods for the Supplier's inspection. Such inspection will be carried out by the Supplier within 14 days of receipt by the Supplier of notification of the damage or defect.

10. WARRANTY

- 10.1 Subject to the provisions of this Clause 10, the Supplier warrants that the Goods are of satisfactory quality but that the Supplier shall have no liability under this warranty:-
- 10.1.1 in respect of any defect in the Goods arising from:

- a) fair wear and tear;
- b) wilful damage;
- c) negligence;
- d) abnormal use or working conditions;
- e) failure to follow the Supplier's Recommendations for Use or;
- f) misuse or alteration of the Goods without the Supplier's approval; or

10.1.2 if the total price for the Goods has not been paid by the due date for payment.

- 10.2 Subject to the provisions of this Clause 10 where, in connection with the supply of Goods, the Supplier provides technical advice or consultancy services to the Customer in relation to the Goods, the Supplier warrants that such advice and services shall be provided with all reasonable skill and care.
- 10.3 Prior to its use of, or supply of, any Goods, the Customer shall carry out its own examination, investigation and tests in relation to the Goods to ensure that they are suitable for the Customer's intended purposes and applications. Immediately upon discovery of any defects in the Goods and, in any event, within a reasonable period after delivery, the Customer shall notify the Supplier specifying the defect identified. The Customer shall retain the Goods for the Supplier's inspection. The Supplier shall have no liability for defects which are not notified to it in accordance with this Clause 10.3 or which are notified to it after the end of the Supplier's recommended shelf life for the relevant Goods.
- 10.4 Except as set out in Clauses 10.1 and 10.2 or in any other warranty (or guarantee) given in writing by the Supplier in connection with the sale of any specific Goods, all other conditions, guarantees or warranties whether express or implied by statute, common law or otherwise (including any warranty as to the non-infringement of third party intellectual property rights), are hereby excluded to the fullest extent permitted by law.
- 10.5 The Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), any implied warranty, condition or other term, any duty at common law or under the Contract, for any loss of profit, loss of data, loss of contracts, loss of production or any indirect, special or consequential loss or damage.
- 10.6 Notwithstanding any other provision of these Conditions, the entire liability of the Supplier in relation to any Goods and/or any associated advice or services, whether by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under the Contract shall not exceed two (2) times the price of the Goods.
- 10.7 Nothing in this Clause 10 shall limit or exclude the Supplier's liability in respect of death or personal injury caused by the Suppliers negligence or liability for defective

products under the Consumer Protection Act 1987 or any other equivalent legislation in force in the jurisdiction of the Customer.

11. RETENTION OF TITLE

- 11.1 Notwithstanding delivery and the passing of risk in the Goods under Clause 6, the Goods shall remain the absolute property of the Supplier until payment of all amounts invoiced by the Supplier to the Customer and outstanding from time to time, or until the Goods are processed or re-sold by the Customer in the normal course of the Customer's business, whichever shall first occur.
- 11.2 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods on behalf of the Supplier in a fiduciary capacity and shall:-
- 11.2.1 not allow the Goods to become the subject of any charge or lien or other third party interest;
- 11.2.2 keep and maintain the Goods in a good and stable condition (at no cost to the Supplier) and store the Goods until they have been paid for or processed and/or re-sold in the normal course of the Customer's business in such a way that they are readily identifiable as the property of the Supplier;
- 11.2.3 maintain comprehensive insurance cover in respect of the Goods to the full replacement value against all risks and if required prove to the Supplier that such insurance has been effected;
- 11.2.4 at the Supplier's request, deliver up the Goods to the Supplier and if the Customer fails to do so straight away, permit the Supplier to enter upon the premises of the Customer with such transport as may be necessary to re-possess any Goods to which the Supplier has title.
- 11.3 In the event that the Customer processes or resells the Goods in the normal course of the Customer's business, if requested by the Supplier, the Customer shall assign to the Supplier any right or claim of the Customer over any third party in respect of the Goods and impose upon any third party the same restrictions as are imposed upon the Customer by this Clause 11. In addition, in such circumstances the Customer will hold all monies received by the Customer from such dealings in trust for the Supplier.
- 11.4 Where the Customer is situated in Scotland and the delivery of Goods is made in Scotland, Clauses 11.1 to 11.3 shall not apply but notwithstanding delivery the Goods shall remain the absolute property of the Supplier until the purchase price of the Goods has been paid in full by the Customer.

12. INTELLECTUAL PROPERTY

- 12.1 The Customer shall not be entitled to use any of the intellectual property of the Supplier including without limitation any of the Supplier's trademarks except with the prior written approval of the Supplier.

13. FORCE MAJEURE

13.1 The Supplier shall not be liable in any way for any loss or damage arising directly or indirectly as a result of delivery of the Goods being prevented or delayed by events due to the Customer or by reason of any matters or events beyond the reasonable control of the Supplier including (but without limitation):

- a) Acts of war, terrorism or sabotage, Government action or riots;
- b) Lockouts, strikes or industrial action wherever taking place, shortage of labour, raw materials, fuel or power as a result of non-delivery or any other cause, lack of transport, breakdowns, accidents to machinery or late provision to the Supplier of any materials, information or instructions pertinent to the fulfilment of the Contract by the Supplier; and
- c) Act of God, accidents, fire, epidemic, flood or storms,

and in these circumstances the Supplier expressly reserves the right to cancel or suspend the whole or any part of the Contract or any delivery.

14. CUSTOMER'S UNDERTAKINGS

14.1 The Customer undertakes to use, handle and store the Goods in accordance with the Supplier's Recommendations for Use and all relevant Statutory provisions and will notify any person to whom it passes the Goods of the need to comply with such Recommendations of Use.

14.2 The Customer will at all times indemnify the Supplier in respect of all loss, damage and expenses suffered, incurred or paid by the Supplier or any affiliated company of the Supplier as a result of any claims brought by third Parties in connection with the Customer's use of the Goods otherwise than in accordance with the Supplier's Recommendations for Use.

14.3 The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

14.4 The Customer shall undertake its best efforts to ensure that the purpose of Clause 14.3 is not frustrated by any third parties further down the commercial chain, including by possible resellers.

14.5 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of Clause 14.3.

14.6 Any breach of Clause 14.3, 14.4 or 14.5 shall constitute a material breach of this Agreement, and Supplier shall be entitled to seek appropriate remedies, including, but not limited to:

- a) termination of this Agreement; and
 - b) refund of the price of the goods exported, whichever is higher.
- 14.7 The Customer shall immediately inform the Supplier about any problems in applying Clause 14.3, 14.4 or 14.5, including any relevant activities by third parties that could frustrate the purpose of Clause 14.3. The Customer shall make available to the Supplier information concerning compliance with the obligations under Clause 14.3, 14.4 or 14.5 within two weeks of the simple request of such information.

15. ASSIGNMENT

- 15.1 Each Contract is personal to the Customer and the Customer shall not assign or charge the benefit of any Contract without the Supplier's prior written consent.
- 15.2 The Supplier is a member of a group of companies and accordingly the Supplier shall be entitled to assign any Contract to any member of its group without the need for the consent of Customer and in the event of any such assignment, the Customer shall execute such documents as the Supplier may request to ensure that the benefit and the burden of the Contract is properly transferred to the Supplier's group company.

16. DEFAULT OR INSOLVENCY OF CUSTOMER

- 16.1 If the Customer shall breach any of these Conditions or any other of its obligations to the Supplier, or suffers any judgment or any distress, seizure or execution is levied against it, or if the Customer makes or offers any arrangement or composition with creditors, or commits any act of bankruptcy, or if any petition or receiving order shall be presented or made against it, or if the Customer is a limited company and any winding-up resolution or petition (other than for the purpose of solvent amalgamation or reconstruction) shall be passed or presented or if a receiver, administrator or administrative receiver is appointed over its undertaking, property or assets or any part, or if the Customer ceases to trade, or if the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly, then without prejudice to any other right or remedy available to the Supplier the Supplier may without notice:
- 16.1.1 cancel suspend or terminate a Contract or any unfulfilled part of any Contract; and
 - 16.1.2 halt any Goods in transit and decline to make further deliveries except upon receipt of advance payment or satisfactory security; and/or
 - 16.1.3 either by an agent or itself have access to the Customer's premises for the protection, removal, realisation, and disposal of any Goods at any time and from time to time in which the property shall not have passed from the Supplier to the Customer.

- 16.2 The granting by the Supplier to the Customer of time or any other relief or concession shall in no way prejudice or constitute a waiver of the Supplier's entitlement to enforce any of its rights under any Contract or these Conditions (except and to the extent that it shall constitute a variation of these Conditions which has been made in accordance with Clause 2.3).
- 16.3 If the Supplier terminates any Contract in accordance with this Clause 16, then, without prejudice to any other rights the Supplier may have, it shall be entitled to retain any advance payment made by the Customer.

17. ANTI-BRIBERY

- 17.1 Both Parties to the Contract are expected not to practise or tolerate any form of bribery, corruption, extortion or embezzlement. Both Parties will not offer to, or accept from the other party, any bribes or other unlawful incentives.
- 17.2 Both Parties shall:
- a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
 - b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom.
 - c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of the Contract; and
 - d) immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and both Parties warrant that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).
- 17.3 If either party breaches this clause 17~~17~~, the other party shall be entitled to terminate the relevant Contract with immediate effect.

18. NOTICES

- 18.1 All notices shall be in writing and sent by first class post and shall be effective from the time received. Notices shall be deemed to have been received two working days after posting; in proving such service it shall be sufficient to show that the envelope was put in the post and properly addressed to the Customer's or Supplier's address as shown on the Order or Acceptance (respectively) failing that to the address at which one party reasonably believes the other to be carrying on business.

19. LAW AND JURISDICTION

- 19.1 The validity, construction and performance of the Contract shall be governed by the Law of England and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales for the resolution of all disputes arising under the Contract.

20. TERMINATION

- 20.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) days of that party being notified in writing to do so;
 - b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 20.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 20.1 a) to clause 20.1d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 20.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 20.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 20.5 Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

- 20.6 Any provision of the Contract that expressly or by implication is intended to come into, or continue in, force on or after termination shall remain in full force and effect.

21. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

- 21.1 The Customer shall be responsible for and shall exclusively finance (all costs and expenses):
- a) the collection and delivery of all Waste Electrical and Electronic Equipment (WEEE) arising or deriving from the Goods to an Authorised Treatment Facility as approved by the Environment Agency (“ATF”); and
 - b) the treatment, recovery and environmentally sound disposal of all WEEE arising or deriving from the Goods as required by the UK Waste and Electronic Equipment Regulations 2013 as enacted, amended, replaced or supplemented from time to time (“WEEE Regulations”).
- 21.2 The Customer shall comply with all additional obligations placed upon the Customer by the WEEE Regulations by virtue of the Customer accepting the responsibility set out in clause 21.
- 21.3 The Customer shall provide the Supplier’s WEEE compliance scheme operator, (as appointed by the Supplier and identified to the Customer from time to time), with such data, documents, information and other assistance as such scheme operator may from time to time reasonably require to enable such operator to satisfy the obligations assumed by it as a result of the Supplier’s membership of the operator’s compliance scheme.
- 21.4 If the Customer resells the electrical and electronic equipment to a UK based Supplier or end-user of such equipment, the Customer will ensure that this clause in its entirety is included in the contractual arrangements governing the sale to such reseller or end-user. The Customer agrees to indemnify and keep indemnified and hold harmless the Supplier and its compliance scheme operator from and against all costs and expenses which the Supplier or the compliance scheme operator incurs or suffers in the UK as a result of a direct or indirect breach or negligent performance or failure in performance by the Customer of its obligations in this clause 21.

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