

# General Conditions of Purchase of BASF SE and its Affiliated Companies Located in Germany for Standard Software



## 1. General

**1.1.** These Conditions of Purchase of BASF SE and its Affiliated Companies Located in Germany for Standard Software (hereinafter “Conditions of Purchase”) form an integral part of all contracts on the delivery of standard software (hereinafter “Software”) for an unlimited period against a one-time fee between the supplier of standard software (hereinafter “Contractor”) and BASF SE or its affiliated companies located in Germany, respectively, (hereinafter “Principal”). Insofar as the Contractor has accepted these Conditions of Purchase, they shall also apply to future contracts with the Contractor.

**1.2.** The Contractor's general terms of business for standard software are only applicable if and when the written agreement of the Principal is received stating direct acknowledgment of the Contractor's terms of business. The mere reference to correspondence from the Contractor containing or referring to the Contractor's general terms of business does not constitute the Principal's acceptance of the validity of these terms of business.

The Contractor's general terms of business for standard software shall in addition not apply should the Principal accept without reservation any delivery/services with full awareness of any such terms of business of the Contractor that deviate from or are in conflict with these Conditions of Purchase.

## 2. Offer

**2.1.** Offers and price quotes shall not be remunerated and shall not create any obligations on the part of the Principal.

**2.2.** In its offer the Contractor shall explicitly expose any discrepancies between its offer and the Principal's inquiry. If the Contractor has an alternative solution for an inquiry which is technologically or economically favorable it shall additionally present this offer to the Principal.

**2.3.** The offer has to include all components, including products of other producers and other services insofar as these are necessary for the constant operational capability of the Software.

**2.4.** Insofar and to the extent that the software contains products from other manufacturers, in particular other proprietary software, open source software, freeware, public domain software etc. (hereinafter collectively referred to as “Third Party Components”), the Contractor is obliged to disclose in the offer any and all Third Party Components including the respective version number to the Principal, and submit the respectively relevant supplementary terms of use and all other documents that are required for the proper use of the Software. In this context, the Contractor shall warrant that the list of Third Party Components is complete and final and that all applicable license terms have been adhered to.

**2.5.** If the Contractor culpably neglects the obligation arising from clause 2.4, the Principal is entitled to an extraordinary right of termination as well as the right to assert a claim for all damages resulting thereof.

**2.6.** The format which the Contractor is to use for submitting the supplementary terms of use to the Principal shall be agreed by both parties on a case-by-case basis.

**2.7.** The Contractor shall train three (3) of the Principal's employees in use of the software at the Principal's request. The Contractor shall bear the costs of the training. The training shall take place at the Principal's premises.

**2.8.** Insofar as not explicitly agreed otherwise in a frame-order the Principal shall have no purchase obligation with

regard to possible total quantities / contingents defined in the frame-order.

## 3. Rights of Use

**3.1.** The Contractor grants the Principal a non-exclusive, perpetual, transferable, and irrevocable right of use unrestricted by place to use or allow the use of the Software in any system environment or on any kind of hardware by the Principal itself or (if applicable) through any third parties acting on behalf of and for the Principal (e.g. Outsourcing or Hosting). In the latter case the Principal will inform the Contractor in advance in written form of this fact and – upon the Contractor's demand – provide a declaration of such third party that it will keep in confidence the Software and solely use it for the purposes of the Principal and its affiliated companies.

**3.2.** The term “Right of use” in the sense of these conditions encompasses (i) the rights of use in all possible types of use in accordance with §§ 15–27 and §§ 69 a–g of the German Copyright Act (UrhG) and (ii) includes the right to transfer the Software to another location, to sell, lend or adapt it using configuration tools, copy it for backup and archiving purposes or combine it with other hardware and software products made by other manufacturers. Furthermore, the Software can also be used on a backup system as well as within a network.

**3.3.** The right of use as per clauses 3.1 and 3.2 also includes the Principal's right to – in addition to its own use – permit its affiliated companies in the meaning of §§ 15 et seq of the German Stock Corporation Act (Aktiengesetz) as well as minority interests and joint ventures (jointly “Affiliated Companies”) to use or to have used the Software in accordance with these Conditions of Purchase for their own internal purpose. This also includes external third parties that are acting for and on behalf of the Principal and its Affiliated Companies for their own internal purposes. However, this right of use as per this clause 3.3 applies only temporarily and ends six (6) months after the Principal is no longer affiliated with such Affiliated Company.

**3.4.** Granting of rights in accordance with clauses 3.1 to 3.3 is always limited to the number of licenses issued.

**3.5.** In all cases involving transfer, the Principal shall also transfer all his duties arising from the license and cease his own use.

**3.6.** This granting of rights applies equally for the documentation in accordance with clause 4.2 and for updates supplied to the Principal for error correction as well as for all future versions of the Software, unless otherwise agreed on a case-by-case basis.

## 4. Delivery of the Software; Documentation

**4.1.** As a general rule the Software is to be delivered on a tangible data carrier free of charge. Only upon prior agreement with the Principal the Software may be delivered via download from the Contractor's server. In case the Contractor provides the Software via download the Contractor must ensure permanent access to the Software by the Principal and provide the Principal with all necessary access data to the Contractor's download portal. Premature or partial deliveries require the prior consent of the Principal.

**4.2.** The Contractor also undertakes to deliver the documentation necessary or appropriate for the use of the Software, and adapt it to the needs of the Principal, if necessary (e.g. as part of a customized adaptation of the Software).

**4.3.** For Software components, the documentation shall consist of a user documentation, brief description and a technical documentation. In particular, it must also be specified what consequences the Software product offered has on the storage capacity and the performance of the system.

**4.4.** The user documentation for installation and administration shall describe all necessary processes in such a way that it is comprehensible for trained personnel. Moreover, the documentation must also describe typical and foreseeable error scenarios and describe how to remedy them. The documentation must comply with the commonly accepted standards valid at the time of installation.

**4.5.** The documentation shall be provided to the Principal free of charge and in machine-readable form in German and English, and it must correspond to one of the following formats: MS Excel, MS Word, PDF.

**4.6.** The Principal is entitled to copy and use the documentation as required by the intended use and for training purposes as needed.

#### **5. Installation pre-requisites, Obligations to Provide Assistance and Materials**

**5.1.** The Contractor expressly and finally has to list in its offer the installation pre-requisites to be kept in reserve by the Principal as well as other necessary obligations of the Principal to provide assistance.

**5.2.** Apart from the obligations to provide assistance and materials, explicitly stipulated in individual contracts, the Contractor can only request further obligations to provide assistance or materials from the Principal insofar as these are necessary for the proper provision of the contractual service and are deemed reasonable for the Principal in particular by taking into consideration the interests of the company as well as the required time and financial expenses. The Principal can satisfy the obligations to provide assistance and materials, for which it is responsible, itself or by third parties.

**5.3.** The Contractor shall inform the Principal in time about the type, scope, time and other details of the assistance and material provision service, which was to be provided by the Principal, unless the respective details can be derived from the order.

**5.4.** The Contractor can only refer to a non-fulfillment of an obligation to provide assistance and materials by the Principal if it has set the Principal a reasonable final deadline in writing and informed it about the legal and actual consequences of the non-fulfillment.

#### **6. Delivery Date, Partial Delivery of Goods**

**6.1.** The Contractor must comply with the agreed dates of delivery. In case of the delivery of goods such compliance requires the delivery free of any defects to the Principal within the Principal's regular business hours accompanied by the required shipping documents to the address specified in the purchase order (hereinafter "Place of Destination") on customary machine-readable data carriers in the machine code. Insofar as an acceptance is envisaged by law or has been agreed as per contract, the time of the acceptance is decisive. However, if the Software is delivered via downloading from a server to be specified by the Contractor, the delivery of the Software shall be considered fulfilled when it has been received at the place of fulfillment and installed successfully.

**6.2.** If the Contractor recognizes that it will not be able to fulfill its contractual obligations either in full or in part, or

not within the stipulated timeframe, it must notify this to the Principal in writing forthwith. The notice must state both the reason(s) for the delay and the predicted delay in delivery time. Any acceptance by the Principal of a delayed or partial delivery of goods / provision of services [(Teil-)Lieferung / (Teil-)Leistung] shall by no means constitute a waiver of any rights of the Principal related to late or partial delivery of goods / provision of services [(Teil-)Lieferung / (Teil-)Leistung].

**6.3.** If any documents are being prepared by the Principal to enable the Contractor to carry out the order, it is the responsibility of the Contractor to request these documents in due time.

#### **7. Sustainability**

**7.1.** The Principal conducts its business in accordance with the principle of sustainable development and adheres to internationally recognized fundamental standards for occupational health and safety, environmental protection, labor and human rights as well as responsible corporate governance (hereinafter "ESG Standards"). The Principal has described its understanding of the ESG Standards in the Supplier Code of Conduct (<http://www.basf.com/supplier-code-of-conduct>). The Principal expects the Contractor to adhere to the ESG Standards. Furthermore the Principal calls upon the Contractor to ensure that all its subcontractors of any tier adhere to the ESG Standards likewise. The Principal shall have the right to check adherence to the ESG Standards on the part of the Contractor, either itself or through third parties commissioned by the Principal.

**7.2.** While performing the contract, the Contractor must adhere to the occupational health and safety and environmental protection requirements as specified in the Principal's purchase order.

#### **8. Quality**

The Contractor shall carry out and maintain effective quality assurance and, if requested, provide proof of this to the Principal. The Contractor shall use a quality assurance system containing elements of ISO 9000 et seq or equivalent. The Principal is entitled to inspect the quality assurance system used by the Contractor, either itself or through third parties commissioned by the Principal following prior notification.

#### **9. Use of Subcontractors**

Third parties (in particular any subcontractors) may only be employed or replaced by the Contractor with the Principal's prior written consent. If the Contractor intends to use subcontractors to perform the contract from the outset, the Contractor must inform the Principal of this when submitting its offer.

#### **10. Condition of the Delivery, Complaints, Rights in the Event of Defects**

**10.1.** The Contractor is responsible for delivering goods free of defects, in particular compliance with the agreed specification of Software as well as in addition the existence of contractually guaranteed properties and attributes. The Software, which is to be delivered by the Contractor, is deemed as faultless if it features the contractually agreed condition at the time when the risk is passed. This is in particular not the case if contractually agreed functionalities of the Software cannot be used or only with no just insignificant amount of work or in conjunction with third

party systems of the Principal interfere with these to such an extent that the Software cannot be used or not to a reasonable extent. Insofar as the condition has not been reasonably agreed the Software shall be deemed as free of defects of quality if it is suitable for the use presumed as per contract or if it is suitable for the customary use and hereby features a condition, which is customary with software of the same kind. The Contractor in addition is responsible for ensuring that the deliveries comply with the state of the art and the generally recognized safety provisions of authorities and specialist federations, are provided with qualified personnel and comply with all relevant legal regulations.

**10.2.** Where the commercial inspection and notification obligation applies as per section 377 HGB, the Principal shall notify any obvious defects to the Contractor within ten (10) days following delivery of the goods. Any defects that only become apparent at a later point in time must be notified by the Principal within ten (10) days following their discovery.

**10.3.** In the event of any defects, the Principal has the right to demand rectification of such defects according to applicable law. The mode of rectification shall be at the Principal's discretion. The Contractor shall bear any costs associated with the rectification or replacement. In the event of a replacement delivery, the Contractor is also entitled to deliver a new program version with, at least, equal scope of functions, unless this is unreasonable for the user, for example, due to the requirement of a different operating system or more efficient hardware. Retraining of the user in a possibly amended program structure or user guidance does not generally constitute unreasonableness.

**10.4.** The Contractor must execute rectification in all respects in accordance with the Principal's instructions and requirements.

**10.5.** If rectification has not been executed within a reasonable period of time, the rectification has failed, or fixing a time limit for rectification has not been necessary, the Principal shall be entitled to claim further legal rights in the event of defects. A failure of rectification or replacement shall be assumed if and when one of the following alternatives applies: (i) the Contractor was granted two (2) opportunities for rectification or replacement without being able to achieve the desired success; (ii) rectification or replacement is impossible; (iii) the Contractor refuses or delays rectification or replacement in an unreasonable manner; (iv) there is reasonable doubt regarding the chances for success; or (v) in the case of unreasonableness for any other reasons.

**10.6.** In the case of defects of title, the Principal may demand rectification from the Contractor to the extent that the Contractor eliminates these defects through relevant license agreements with the respective rights holder.

**10.7.** The applicable statutory legal provisions shall apply in all other cases. Additional rights of the Principal from liability for defects or any guarantees remain unaffected.

**10.8.** The Contractor is obligated to provide the Principal with all subsequent program versions containing an error correction for the Software supplied ("updates") free of charge within the limitation period for warranty claims.

**10.9.** Claims under warranty shall become time-barred twenty-four (24) months after the passing of risk unless a longer expiration period is prescribed by law. The Principal shall not be deemed to have waived any of its rights to make claims under warranty in the absence of an express written waiver.

## **11. Software Maintenance**

The Contractor undertakes to conclude a separate software maintenance contract at the request of the Principal for a period of three (3) months beginning from the date of issuing the respective purchase order for the Software.

## **12. Infringing Property Rights**

It is the Contractor's responsibility to ensure that the delivery of the Software and the use thereof by the Principal pursuant to the contract will not infringe any patent laws, copyright or other proprietary rights of third parties. Notwithstanding legal claims, the Contractor shall indemnify the Principal from any third party claims for which the Principal may be held liable as a result of the infringement of any of the aforementioned property rights. The Contractor shall bear the cost of any licensing fees, expenses and fees incurred by the Principal in preventing and / or rectifying any infringements of property rights. If the assertion of a claim by the third parties leads to a ban on use the Contractor shall immediately take the necessary measures in order to re-establish the possibility for use as per contract for the benefit of the Principal as soon as possible.

## **13. Contract Penalty**

If a contract penalty has been agreed upon, the Principal is entitled to claim such penalty until the final payment is due without requiring a reservation pursuant to section 341 paragraph 3 of the German Civil Code ("BGB").

## **14. General Liability, Insurance**

**14.1.** The Contractor is liable in accordance with statutory provisions, provided these Conditions of Purchase do not specify otherwise.

**14.2.** The Contractor shall maintain sufficient liability insurance at its own expense for damage for which it or its subcontractors or agents for which it is vicariously liable are responsible. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to the Principal upon request. The Contractor's contractual and legal liability remains unaffected by the extent and amount of its insurance coverage.

## **15. Invoicing, Payment**

**15.1.** The agreed prices are net of any applicable value-added tax. Invoices are to be issued for deliveries made and services provided. These invoices shall comply with the relevant statutory invoicing requirements according to the national value-added tax legislations to which the deliveries being invoiced are subject. If the usage of self-billing is agreed (evaluated receipt settlement), the Contractor must transfer to the Principal all data required as per the applicable value-added tax legislation specified in advance.

**15.2.** The Contractor must provide a separate invoice for each purchase order which shall contain all legally required mandatory data in accordance with German law. The Contractor must provide a separate invoice for each purchase order. The invoice must include the Principal's full order number and, if applicable, the Contractor's delivery note number. Certificates of work completed and any other records are to be submitted with the invoice. Invoices must correspond to the information in the purchase order in respect of Software designation described, price, quantity, the order of the items and item numbers. Invoices

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are to be sent to the billing address specified by the Principal in the purchase order.

**15.3.** Unless agreed otherwise the payment period shall commence as soon as an invoice, which meets the applicable value-added tax requirements, has been received at the billing address. In the case of self-billing, the payment period commences the day the credit memo is issued. Payment will be made subject to verification that the delivery conforms to the contract and is complete. Payment will be made subject to verification of the delivery provided.

**15.4.** Payments by the Principal shall not represent an acceptance of the conditions and prices stated in the invoice, and shall not constitute a waiver of the Principal's rights with regard to deliveries made that differed from those as agreed upon, the Principal's rights to inspection, and the right to find fault with an invoice due to other reasons.

**15.5.** If the Principal pays license fees to foreign Contractors, the Principal is obliged to withhold taxes pursuant to section 50a German Income Tax Law. The Principal can only abstain from deducting or reduce the withholding tax if the Contractor provides the Principal with a valid exemption certificate pursuant to section 50d German Income Tax Law.

## **16. Assignment of Contract, Transfer, Change of Company Name, Offsetting, Retention**

**16.1.** The Contractor may assign the rights and obligations under the contract with the Principal to third parties only with the prior written consent of the Principal.

**16.2.** The Contractor is required to notify the Principal forthwith in writing of any assignment of the contract by virtue of law and of any change of its trade name.

**16.3.** The Contractor has to inform the Principal about further developments (incl. updates and upgrades) of the Software and to report faults to the Software to the Principal directly after they have become known in writing. If the Contractor is intending to discontinue the further development or service of the Software, it has to inform the Principal hereof immediately in writing.

**16.4.** The Principal may assign the rights and obligations under the contract with the Contractor to BASF SE, Ludwigshafen (Rhine) or to any affiliated company pursuant to section 15 of the German Stock Corporation Act at any time without the Contractor's prior agreement.

**16.5.** The Contractor is only permitted to offset claims that are undisputed or substantiated by court judgment. The Contractor is only entitled to a right of retention if the claim, due to which the right of retention shall be deemed valid, has its origins in the same contractual relationship.

## **17. Termination, Rescission**

**17.1.** The Principal's right to rescission from the contract shall follow statutory provisions unless set forth otherwise in the individual contract.

**17.2.** If the Principal is entitled to a right of rescission from this contract and if upholding other contracts concluded with the Contractor (e.g. software maintenance contracts in accordance with clause 11) proves unreasonable for the Principle for the same good cause, the Principal may also terminate other contracts existing at the time of termination or may terminate contracts not completed against payment of pro-rata compensation for services already rendered. In the above case, the Contractor is not entitled to any further claims for damages, reimbursement of expenses or remuneration.

**17.3.** If the Contractor has acquired from the Principal any documents, records, plans or drawings within the scope of or for the purposes of fulfilling the contract the Contractor must forthwith hand them over to the Principal in the event of termination of the contract by the Principal. These requirements apply likewise in the event of rescission.

## **18. Non-disclosure obligation, data security, data protection**

**18.1.** The Contractor must submit to the Principal the agreed quantity of any plans, calculations or other documents in order not to exceed the contractual deadline for execution.

**18.2.** The review of any documents by the Principal shall not relieve the Contractor of any of its responsibilities under the contract.

**18.3.** Any models, samples, drawings, data, materials and other documents provided to the Contractor by the Principal (hereinafter "Principal Documentation") shall remain the property of the Principal and must be returned to the Principal forthwith upon its request at any point in time. The Contractor shall have no rights to retain any Principal Documentation. The Contractor must observe the proprietary rights of the Principal in and to all Principal Documentation.

**18.4.** The Contractor is obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the contract, in particular the information given in Principal documentation (hereinafter "Confidential Information"). The Contractor may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass it on or make it accessible to third parties in any way, or use it for any purpose other than fulfilling the contract. This obligation shall be subject to any disclosure requirements of a legal, judicial or official nature. The aforementioned confidentiality obligation shall continue to apply for a period of ten (10) years after the contract has ended. This confidentiality requirement shall not include any information that the Contractor lawfully possessed prior to the Principal's disclosure of such information, or is lawfully known to the public, or has been lawfully obtained from a third party. Also excluded from this confidentiality requirement shall be information that is disclosed to persons subject to a legal obligation to confidentiality, whereas the Contractor shall not release such a person from his / her obligation to confidentiality. The burden of proof for such an exception lies with the Contractor. The Contractor shall ensure that his / her employees and vicarious agents subject to this confidentiality agreement are obliged to confidentiality according to the rules set forth in these Conditions of Purchase by means of appropriate contractual agreements, too. Upon request, the Contractor shall demonstrate compliance with these obligations to the Principal in writing.

The Contractor shall specifically undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or against unauthorized access. This includes in particular the creation and maintenance of appropriate, required access and entry precautions for facilities, repositories, IT systems, data storage devices and other information storage devices, especially those which contain Confidential Information. This also includes informing and instructing those people who are granted access to Confidential Information pursuant to this clause. The Contractor

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is required to promptly notify the Principal in writing in the event that Confidential Information is lost and / or accessed by unauthorized parties.

**18.5.** In case the Contractor, in the course of the performance of the respective contract, receives from the Principal or otherwise obtains personal data related to employees of Principal (hereinafter referred to as "Personal Data") the following provisions shall apply.

If processing of Personal Data disclosed in the aforementioned manner is not carried out on behalf of the Principal, Contractor shall only be entitled to process Personal Data for the performance of the respective contract. Contractor shall not, except as permitted by applicable laws, process Personal Data otherwise, in particular disclose Personal Data to third parties and/or analyze such data for its own purposes and/or form a profile.

If and to the extent permitted by applicable laws, Contractor is entitled to further process the Personal Data, in particular to transmit Personal Data to its affiliated companies for the purpose of performing the respective contract.

Contractor shall ensure that Personal Data is only accessible by its employees, if and to the extent such employees require access for the performance of the respective contract (need-to-know-principle). Contractor shall structure its internal organization in a way that ensures compliance with the requirements of data protection laws. In particular, Contractor shall take technical and organizational measures to ensure a level of security appropriate to the risk of misuse and loss of Personal Data.

Contractor will not acquire ownership of or other proprietary rights to the Personal Data and is obliged, according to applicable laws, to rectify, erase and/or restrict the processing of

the Personal Data. Any right of retention of Contractor with regards to Personal Data shall be excluded.

In addition to its statutory obligations, Contractor shall inform Principal in case of a Personal Data breach, in particular in case

of loss, without undue delay, however not later than 24 hours after having become aware of it. Upon termination or expiration of the respective contract Contractor shall, according to applicable laws, erase the Personal Data including any and all copies thereof.

## **19. Escrow**

If the Contractor is simultaneously also the manufacturer of the Software, the Principal may request the Contractor to deposit the source code of the purchased Software with an independent escrow agent and to grant the Principal the right to demand release of the source code in case of the insolvency of the Contractor and to grant a restricted right to use, process and exploit the source code for the purposes of the contract.

For this purpose the contracting parties will make a separate agreement with the escrow agent which results in release of the source code in at least the following situations:

- The Licensor gives written consent to the release
- The assets of the Licensor have been placed in insolvency or such an act has been rejected due to insufficient assets
- The Licensor is liquidated and/or deleted from the commercial register
- The Licensor refuses to correct fundamental defects or to provide information on the program interfaces necessary for the establishment of interoperability.

The Principal agrees to use the source code in the case of such a release only for its own purposes and only in order to maintain suitability for use for the Software based on the present Terms and Conditions.

## **20. Publicity Ban, Severability Clause, Applicable Law, Place of Jurisdiction**

**20.1.** The Contractor may only refer to or publicly disclose otherwise its business relationship with the Principal with the prior written consent of the Principal or if and when this is unavoidable for executing the contract.

**20.2.** The invalidity or unenforceability of any provision or part of a provision of these Conditions of Purchase shall not affect the validity of the entire Conditions of Purchase.

**20.3.** These Conditions of Purchase shall be construed and be subject to the laws of the Federal Republic of Germany with the exclusion of (i) the United Nations Convention on Contracts for the International Sale of Goods ("CISG") dated April 11, 1980 and (ii) the conflict-of-law provisions applicable in the Federal Republic of Germany.

**20.4.** At the Principal's option the place of jurisdiction shall be either the court competent for the Principal's registered office or the court competent according to the applicable law.