



**GTC – A PARTNERSHIP NEEDS A LEVEL PLAYING FIELD**  
**General terms and conditions of sale of bioMérieux (Suisse) SA ("bioMérieux") for the**  
**rental of equipment and the purchase of products**

Last updated: January 1, 2026

**1. Scope and applicable terms**

- 1.1 These Terms and Conditions apply both to the rental of diagnostic equipment, including accessories ("**Equipment**") and to the purchase of reagents and consumables ("**Products**"), collectively referred to as the "**Goods**".
- 1.2 The legal relationship between bioMérieux and the Customer in relation to rental and purchase is governed by these General Terms and Conditions and, where applicable, by the specific offer made by bioMérieux to the Customer and the technical documentation relating to the goods shipped or made available to the Customer. By placing an order, the Customer agrees fully and unreservedly to these General Terms and Conditions. In the event of any contradiction between the contractual documents, the following order of precedence shall apply: (i) the offer, (ii) these General Terms and Conditions, (iii) if it contains contractual aspects, the technical data sheet.
- 1.3 These Terms and Conditions shall also apply to all future orders and transactions between the parties. They replace the provisions of any terms and conditions of sale of the Customer, which cannot be enforced against bioMérieux even if bioMérieux has not expressly objected to them in the individual case and even if it provides products or services in the knowledge of different or conflicting provisions of the Customer.
- 1.4 Changes, additions and ancillary agreements to these General Terms and Conditions must be made in writing. bioMérieux reserves the right to modify these Terms and Conditions at any time if circumstances warrant it. Changes are deemed to have been accepted unless objected to in writing within 30 days of their notification to the Customer. In the event of a dispute, the Customer can terminate the business relationship with immediate effect, unless otherwise agreed.
- 1.5 Except as otherwise provided or required by law, (i) the terms "in writing" and "in writing" mean the representation or reproduction of words or symbols or other information in a conspicuous form in any way, whether sent or transmitted in electronic form (e.g., by email) or otherwise; and (ii) similarly, the terms "signed" or "signature" include electronic signatures (e.g., DocuSign or Adobe Sign) and handwritten signatures exchanged in electronic form (e.g., B. PDF), each of which has the same legal effect, validity, and enforceability as an original handwritten signature.

**2. Quality of the goods to be delivered**

- 2.1 The agreed quality of the goods is specified in the corresponding technical data sheet or in the bioMérieux offer, which is indicated in each individual case. This quotation and the attached technical data sheets also indicate the agreed intended use of the equipment provided.  
  
In the event of any discrepancy between the technical data sheet and the offer, bioMérieux's individual offer shall prevail.
- 2.2 All goods supplied by bioMérieux are for analytical purposes only. They should not be used on humans. bioMérieux's goods are medical devices and not medicines.

**3. Order**

- 3.1 Customer inquiries regarding the rental and delivery of goods do not usually constitute a binding offer or contract. Contracts are only binding if the customer accepts the offer sent by bioMérieux to the customer, at least in written form (e.g. by e-mail).  
  
Unless otherwise agreed, bioMérieux's offers are valid for four weeks.  
  
If the Customer modifies bioMérieux's offer, this will be considered a new offer by the Customer, subject to written acceptance by bioMérieux.
- 3.2 Orders placed by the Customer for the delivery of the Products are only binding in exceptional cases if bioMérieux accepts a corresponding order from the Customer at least in writing (e.g. by e-mail) or ships the Products to the Customer.

**bioMérieux (Switzerland) SA**

- 3.3 bioMérieux is entitled to accept the Customer's offers pursuant to Article 3.1 paragraph 2 and the Customer's requests pursuant to Article 3.2 within two weeks. During this time, the Customer remains bound by his offer.
- 3.4 Orders must always be placed via the BIOMERIEUX+ customer portal, where the Customer can register. For orders placed by post or email, bioMérieux reserves the right to charge a handling fee per order. Fax orders will not be accepted. All orders must include the customer account number, delivery and billing address, reference of the item, its full name, quantity, desired shipping or delivery date. bioMérieux reserves the right not to accept or cancel an order if it considers that the Customer's situation poses a risk for the recovery of bioMérieux's receivables or if the goods are not available.

#### 4. **Processing of customer-specific goods orders**

If the Customer entrusts bioMérieux with the supply of goods that bioMérieux manufactures specifically according to its requirements ("**Custom-made products**"), the purchase of such custom-made products will be subject exclusively to the special conditions agreed between the parties, as well as the general terms and conditions of sale applicable to the delivery and payment of bioMérieux products, to the exclusion of these General Terms and Conditions.

#### 5. **Standing Orders**

- 5.1 If it is agreed that the customer must be supplied with certain products on a regular basis ("**Standing Order**"), bioMérieux will automatically generate orders according to the agreed delivery schedules and deliver them to the Customer in accordance with these conditions.
- 5.2 Unless otherwise agreed, the minimum term of a standing order is 12 months from the date of the standing order by the Customer. While certain quantities have already been agreed in bioMérieux's offer, the 12-month period begins with the start of the supply contract. Standing Orders are automatically extended for a further 12 months, unless they are cancelled in writing by bioMérieux or the Customer one month before the expiry date.

In the event of cancellation of a Standing Order (whether by the Customer or by bioMérieux), bioMérieux reserves the right to terminate the rental of the equipment in question at the same time.

- 5.3 The implementation and modification of a Standing Order requires a period of 15 working days (Monday to Friday, except on public holidays). bioMérieux decides on a case-by-case basis whether to comply with the Customer's request for change or to cancel the delivery by means of Standing Orders with a notice period of one (1) month.

#### 6. **Equipment rental and rental period, termination, product purchase price, payment**

- 6.1 The monthly rent for the equipment depends on the offer, as does the length of the rental period. The rental begins on the date specified in the offer, but no later than the date of installation of the corresponding equipment at the customer's premises, and ends on the agreed expiration date or with the termination of the rental in accordance with these conditions.

bioMérieux charges a separate freight fee for the delivery of the rented item to the Customer. The amount of the shipping costs depends on the shipping method requested by the Customer: standard delivery on working days (Monday to Friday, except holidays) during office hours or special services such as early morning service, Saturday service or express delivery.

- 6.2 An early termination of the rental of the equipment by a party is only possible if there is an important reason or in the cases expressly provided for herein.

6.2.1 An important reason for bioMérieux exists in particular in the following cases:

- a significant deterioration in the customer's economic situation.
- in the event of repeated late payment by the customer.
- if regular maintenance, including remote maintenance or repairs or updates, can no longer be carried out due to the interruption of services for a particular device, e.g. due to its lifespan or technology, so that the proper functioning of the equipment can

no longer be guaranteed. In the event of termination for this reason, bioMérieux will regularly endeavour to offer the customer a functionally comparable solution

- a failure to insure the equipment in accordance with clause 11.4.

6.2.2 If the premature termination of the contract is due to a reason for which the customer is responsible, bioMérieux is entitled to demand immediate payment of the remaining rents that would have been due by the ordinary end of the contract and to claim further damages less a discount in the usual bank amount as well as saved expenses and costs. The customer reserves the right to prove that bioMérieux has suffered no or only minor damage.

6.3 Unless otherwise agreed, the prices applicable to the Products are those in force on the day the Customer places their order. This also applies to products that are the subject of a Standing Order: the day on which the order is automatically generated by bioMérieux is decisive.

Copies of the current price lists will be sent to the customer upon request.

The prices and other conditions contained in catalogues, brochures and price lists reflect only the conditions in force at the time of publication and are valid until modified, which may also occur during a calendar year without notice and at the sole discretion of bioMérieux.

The purchase price of the products is calculated on the basis of DDP (Incoterms 2020 plus the applicable statutory value added tax). Several orders can be combined into a single delivery by bioMérieux. By way of derogation from the DDP rule, bioMérieux will also charge the Customer a freight fee per order in the case of collective deliveries, as indicated in the quotation or price list, and in the case of orders placed by post or e-mail, the processing fees referred to in clause 3.3. The amount of the freight fee depends on the type of delivery requested by the customer: standard delivery on working days (Monday to Friday, except holidays) during office hours or special services such as early service, Saturday service or express service.

Current transport fees for standard deliveries, subject to change, are:

Orders <550 CHF	41.00 CHF
Orders >=550 CHF	30.00 CHF

6.4 The monthly rental payments for the equipment must be paid in advance in the previous month, at the latest on the 2nd working day of the mentioned month.

The purchase price of the products is payable within 30 days of the invoice date without deduction. The payments made by the customer are only considered to have been made from the time when bioMérieux can dispose of the amount.

Any complaint regarding the delivery of the products must be communicated to bioMérieux within 10 working days (Monday to Friday, excluding public holidays) of receipt of the invoice.

6.5 The customer must ensure that he is able to receive and process electronic invoices in accordance with the applicable requirements.

6.6 In the event of late payment by the Customer, default interest at the rate of 5% per annum, calculated from the due date of the payment in question, as well as a flat-rate recovery fee of CHF 50 will be charged. The right to assert further damages for delay is reserved. If the Customer is considered a merchant, bioMérieux reserves the right to apply the commercial interest rate (Art. 104 para. 3 of the Code of Obligations).

Without prejudice to the foregoing, in the event of non-payment of a single instalment by the Customer, non-compliance with the terms of payment, or in the event that bioMérieux considers that the Customer's financial situation poses a risk for the recovery of its debts, bioMérieux further reserves the right to:

- immediately withdraw all payment facilities and special terms and conditions granted,

- suspend or cancel any current order or rental of such equipment without notice or compensation;
- request payment in cash before each shipment or any other means of payment at bioMérieux's discretion for the execution of a subsequent delivery, and/or
- to demand immediate payment of the entire outstanding balance.

6.7 If the amount paid by the customer exceeds the invoice amount and bioMérieux has to refund the difference between the customer's overpayment and the invoice amount, bioMérieux will charge a processing fee of CHF 50.

6.8 bioMérieux reserves the right to charge a flat handling fee in accordance with the current price list for all orders containing incomplete, misleading or manifestly incorrect information.

## **7. Delivery**

7.1. The delivery of the goods (rented or purchased) will be made under DDP (Delivered Duty Paid) conditions to the specified destination in accordance with the Incoterms 2020. The specified destination will be the place of delivery agreed with the customer or, failing that, up to the first entrance door on the ground floor of the place of delivery. In deviation from the DDP provision, for deliveries within Switzerland, the delivery person unloads the goods at the first entrance door on the ground floor of the destination.

7.2. Delivery and execution deadlines are carefully determined according to the given circumstances and adhered to as far as possible.

The delivery time of the devices is specified in the offer.

With regard to the products, bioMérieux's objective is to deliver the Customer orders received by bioMérieux in the morning (by 12 noon) of the next working day (Monday to Friday, excluding public holidays).

Events of force majeure such as traffic disruptions, strikes, epidemics and pandemics, failures or delays in the transport or delivery of raw materials, materials or parts, failures of means of communication, governmental measures or restrictions, riots, floods, wars, extreme weather conditions and any other event beyond the control and control of bioMérieux release bioMérieux from its obligation to deliver for the duration of the disruption and to the extent of its effects, which cannot be held liable for any damage resulting from it.

7.3. Delivery requires the proper and timely fulfilment of the Customer's obligations, in particular in the case of the delivery of equipment, in particular the adequate preparation of the installation site and the availability of the necessary contact persons at the Customer's premises. The exception of the plea of non-performance is reserved in this respect.

7.4. bioMérieux points out that the provision of certain goods (and related services) requires the installation of remote access via the software offered by bioMérieux, currently VILINK®. Details are explained in the offer. The Customer shall ensure that bioMérieux is authorized to install and access the Equipment through VILINK®. If access via VILINK® is not possible or is missing, bioMérieux may not be able to provide all or part of the services and maintenance. The customer bears the risk of such limited maintenance. Service and maintenance services that have to be provided on site are charged at a premium price (currently +20%).

7.5. If the Customer orders obviously defective goods, bioMérieux is not obliged to take them back or exchange them.

7.6. Early and partial deliveries are permitted. If bioMérieux delivers excess quantities, the Customer will notify bioMérieux immediately. bioMérieux will immediately reclaim the excess goods from the Customer. The Customer is obliged to store the goods properly at his own expense until collection.

## **8. Transfer of risk**

The risks, in particular the risks of damage or loss of the goods, even in the case of rental, are transferred to the Customer upon delivery to the destination in accordance with the DDP clause (Incoterms 2020 for cross-border deliveries; for deliveries within Switzerland, the DDP clause applies in the same way to the transfer of risk). If the delivery person transports the goods beyond

the front door to the ground floor of the destination, he acts as the Customer's vicarious agent and under the responsibility of the Customer. The place of destination shall be the place agreed between the parties as the place of delivery.

Subject to clause 12, title to the Products purchased by the Customer shall pass to the Customer at the same time as the risks.

## **9. Obligation to inspect and notify the Customer**

- 9.1. The Customer must inspect the products in accordance with Article 201 of the Code of Obligations. The obligation to inspect also applies in the same way to rented equipment.
- 9.2. Any obvious defect must be reported within 7 calendar days of delivery of the goods, attaching samples (in the case of products), the delivery note or indicating the date of the order, the invoice and the shipping number. In the absence of a complaint within the aforementioned period, all goods delivered will be considered to be in good condition, received without defects or damage and accepted as they are.
- 9.3. Any defect that has not been detected within the above period, despite careful examination, must be reported in writing to bioMérieux immediately after its discovery. Any defects must also be reported via the bioMérieux hotline.

## **10. Warranty**

- 10.1. The exercise of the Customer's right to warranty requires compliance with its inspection and complaint obligations under the law and these General Terms and Conditions.
- 10.2. Warranty rights for purchased products expire within 12 months from the transfer of risk.
- 10.3. For the rented equipment, bioMérieux undertakes to keep the equipment in a condition suitable for the agreed use for the duration of the rental and to remedy any defects in accordance with these conditions.
- 10.4. In the event of a defect in a device, the defect will be rectified at bioMérieux's option by supplying a new device or by remedying the defect. bioMérieux reserves the right to refuse to remedy a defect if bioMérieux reasonably determines that the equipment meets the expected characteristics, that its condition is suitable for its intended use or that it is a defect for which the customer is obliged to reimburse his costs or which are attributable to the Customer.
- 10.5. In the event of defects in a product, the Customer's right to remedy defects is limited to the supply of new, compliant reagents or consumables.
- 10.6. In the event of a recall of these goods, the customer is obliged to confirm that he no longer uses the recalled goods.
- 10.7. bioMérieux is entitled to make several attempts to remedy defects at its own discretion. In the event of failure of these attempts, the Customer shall be entitled to terminate the Agreement with immediate effect by notifying bioMérieux in writing. In this case, bioMérieux will refund the purchase price for the defective goods to the Customer, provided that this amount has already been paid by the Customer. The payment of any other compensation by bioMérieux is excluded.
- 10.8. The remedy of the defect by bioMérieux is subject to the payment of the purchase price owed by the Customer, it being specified that the Customer is temporarily entitled (until the actual remedy of the defect) to retain part of the purchase price in proportion to the defect determined in agreement with bioMérieux. For rented equipment, the Customer may request a reduction in the rent due agreed with bioMérieux, corresponding to the period between the notification of the defect to bioMérieux and the complete elimination of the defect. The reduction may in no case exceed 50% of the purchase price or the monthly payment due.
- 10.9. The Customer is obliged to provide bioMérieux with the time and means necessary to remedy the defect, in particular by making the goods that are the subject of the complaint available for inspection. In the event of a replacement, the Customer must return the defective goods to bioMérieux, which will become the property of bioMérieux, or, in the case of products at bioMérieux's option, destroy the defective products and confirm their destruction to bioMérieux.



The remedy of the defect does not include the dismantling of the defective goods or their reinstallation, if bioMérieux was not originally obliged to install them.

- 10.10. The costs necessary for the assessment of the defective goods and the remedy of the defect, in particular the costs of transport, travel, labour and materials (with the exception of the costs of removal and installation), shall be borne by bioMérieux if there is a defect and bioMérieux is obliged to remedy the defect. Otherwise, bioMérieux may claim reimbursement from the Customer for the costs incurred as a result of the unjustified demand for the removal of the defects (in particular inspection and transport costs), unless the absence of the defect was not apparent to the Customer.
- 10.11. Unless otherwise specified in the offer, the customer reserves the right to assert further damage arising from the defect in accordance with mandatory provisions of the Code of Obligations.
- 10.12. In addition, the warranty claim against bioMérieux is excluded if the Customer moves the equipment provided by bioMérieux without notice from bioMérieux in accordance with these Terms or uses it in a manner that does not comply with bioMérieux's technical data sheet or instructions for use or in violation of the Customer's obligations under these Terms violates. Warranty claims are also excluded in the case of the use of non-approved spare parts or reagents or the execution of work by an external service provider or personnel not approved by bioMérieux.

## **11. Liability**

- 11.1. bioMérieux is liable for all damages – regardless of the cause – that are based on intent or gross negligence on the part of bioMérieux. In the event of simple negligence, bioMérieux shall only be liable in the following cases (subject to a lower standard of liability under the law or any exclusion of liability set out herein or in the Offer):
- (a) for damage resulting from negligent injury to life, limb or health,
  - (b) for damages resulting from the material breach of a material contractual obligation (i.e. an obligation the fulfilment of which is essential for the proper performance of the contract and on the fulfilment of which the customer regularly relies and can rely);
  - (c) any liability that cannot be excluded or limited under applicable law.
- In any event, bioMérieux's liability for loss or damage under clause 11.1(a) or (b) shall be limited (i) to direct damages, except for special, indirect, consequential or incidental damages, such as loss of profits or loss of data, and (ii) limited to the value of the amounts paid by the Customer to bioMérieux in the year preceding the occurrence of the damage.
- 11.2. The limitations of liability resulting from Clause 11.1 shall also apply in the event of breaches of duty by or for the benefit of persons for whom bioMérieux is liable in accordance with the statutory provisions. They do not apply to the extent that bioMérieux has fraudulently concealed a defect or has assumed a special guarantee in writing for the quality of the goods, as well as to claims by the customer under the Product Liability Act.
- 11.3. In the event of a breach of an obligation that does not constitute default within the meaning of these General Terms and Conditions, the Customer may only terminate the Agreement if (i) the breach relates to a material obligation of bioMérieux, (ii) bioMérieux is liable for the breach of such obligation under this Agreement and (iii) bioMérieux fails to remedy it within a reasonable period of time. In all other respects, the statutory provisions on non-compliance apply (Art. 107 et seq. CO).
- 11.4. The Customer is obliged to take out appropriate insurance for the rented equipment, in particular against fire, water damage and theft, up to the amount of the replacement value of the delivered goods during the entire term of the contract and to maintain it at all times. Upon request, the Customer shall provide bioMérieux with a written document certifying its insurance cover.

## **12. Retention of title, contractual transfer restrictions and security claims**

- 12.1. By way of derogation from Article 8, bioMérieux reserves the right to make the transfer of ownership of the Products subject to the full payment of the purchase price by the Customer on a

case-by-case basis and, where required by law, to register this retention of title with the relevant registry. The customer undertakes to take all necessary steps and to provide all signatures in order for bioMérieux to give effect to the retention of title.

- 12.2. Rented equipment must always be marked as bioMérieux's property. The Customer is obliged to report to bioMérieux immediately any infringement of the property by third parties.
- 12.3. The products subject to retention of title may be resold and consumed by the Customer in the course of its proper business operations, as long as the Customer is not in default of payment.

The Customer hereby assigns to bioMérieux all remuneration claims of the Customer against its customers arising from the resale of the Products, as well as the claims of the Customer in relation to the Products arising from any other legal reason against its customers or third parties, including all outstanding claims arising from current accounts. bioMérieux accepts this sale. The Customer undertakes to provide bioMérieux with a written, hand-signed confirmation of this order upon request.

The Customer is entitled to collect the claims assigned to bioMérieux in its own name on behalf of bioMérieux, as long as bioMérieux does not revoke this authorization. This shall not affect bioMérieux's authority to collect such claims itself unless bioMérieux enforces the claims itself and does not revoke the Customer's direct debit authorization, as long as the Customer duly meets its payment obligations.

- 12.4. Neither the equipment nor the products may be assigned, pledged or transferred to third parties as a guarantee.
- 12.5. The Customer shall notify bioMérieux immediately, at least in writing, if bankruptcy proceedings are opened against the Customer or if third parties gain access to assets owned by bioMérieux (e.g. through foreclosure). The Customer must declare ownership of bioMérieux.
- 12.6. In the event of a breach of contract by the Customer, in particular in the event of non-payment of the purchase price or the rents due, and the Customer does not remedy the breach within 30 days of written notification of the breach by bioMérieux, bioMérieux shall be entitled to terminate the contract with immediate effect and in respect of the Products, at the expense of the Customer, the return of the Products, which are the subject of non-payment, if they have not been used, or, if they have not yet been delivered, to refuse delivery without further compensation. Rented equipment must be returned immediately at the customer's expense. The legal rights of bioMérieux in the event of defects in the returned equipment are otherwise fully reserved.
- 12.7. The Customer is obliged to handle and use the equipment supplied with due care, only by duly trained and qualified personnel and in accordance with this contract, bioMérieux's instructions, the relevant data sheets and the standards applicable to the goods.

### 13. Software and hardware

- 13.1. Insofar as bioMérieux provides the Customer with a PC with operating software as part of the delivery of the Equipment ("**Device Computer**"), the system contains the software required for the use of the subject matter of the Agreement, i.e. the operating system and the application software ("**Device Software**"). The Device Computer and Device Software are intended for use with the Equipment and may not be used by Customer for any other purpose, nor may they be modified, adapted or loaded with any other software without the written consent of bioMérieux. Customer's use of the Device Software is at its own risk and is responsible for the complete and regular backup of its data.
- 13.2. The device software provided by bioMérieux is free of malware or computer viruses known at the time of manufacture. After that, it is the Customer's responsibility to protect against such risks. bioMérieux is not responsible for the compatibility of the software of the equipment provided by bioMérieux with the Customer's computer hardware.
- 13.3. The device software remains the property of bioMérieux. The Customer is granted a non-exclusive, non-transferable right to use the device software. Customer agrees not to reproduce or modify, transfer, license, or otherwise make available the Device Software to any third party.

- 13.4. If an update of the device software is required in order for the reagents to continue to be used with the device, the Customer will provide bioMérieux with access to the device so that bioMérieux can perform the update of the device software.
- 13.5. bioMérieux shall not be liable for any damage caused to the subject matter of the contract or to the device software by the use of the computer, the devices or the device software in violation of these General Terms and Conditions or by a modification, supplement or installation of third-party software, unless such damage was caused intentionally or by gross negligence on the part of bioMérieux. In addition, any liability is excluded for damage to the Customer's software, hardware or other equipment, loss or alteration of information and data, including data generated by the Customer's device software, which is at least partially caused by a modification of the device software or the installation or use of third-party software via the device computer installed at the customer or the connection of the device's computer to other customer devices without Approval of bioMérieux. bioMérieux shall not be liable for the delay or non-performance of updates and upgrades, as well as for any resulting interruption of service or the impossibility of using the subject matter of the contract. Liability for lost profits, loss of data and other indirect damages of any kind is also excluded.

#### **14. Maintenance measures, relocation of equipment, methods of use, waste**

- 14.1. bioMérieux emphasizes that the devices supplied are medical devices. Therefore, in order to ensure correct test results, the Customer is obliged to maintain and maintain the rented equipment in accordance with the applicable bioMérieux Terms of Use, in order to ensure the proper functioning of the equipment. The customer remains responsible for the interpretation and use of the results obtained through the use of the equipment. The customer indemnifies bioMérieux against all third-party actions relating to the consequences of improper use of the goods.
- 14.2. When moving a device, it is important to note that the device can be very sensitive, especially to vibrations and displacements, which can negatively affect the analysis results of the device. The Customer is obliged to inform bioMérieux immediately and in writing of a planned relocation of an Equipment and to coordinate this with bioMérieux so that it can be ruled out as the cause in the event of defects in the Equipment. bioMérieux shall not be liable for any defects or damage resulting from lack of maintenance or unauthorised movement of the equipment, or from improper use of the goods by the customer or its representatives.
- 14.3. Since the goods supplied by bioMérieux are medical devices, the customer is also obliged to inform bioMérieux immediately of any malfunction of any delivered goods and to use the goods in accordance with this contract, bioMérieux's instructions, the relevant data sheets and the standards applicable to the goods.
- 14.4. To the extent applicable and for the duration of the rental, it is agreed that bioMérieux will ensure the removal and treatment of waste from the equipment labelled and labelled as electrical and electronic equipment. With regard to the contribution to the cost of certified waste treatment, bioMérieux reserves the right to charge fees of up to CHF 500 per device.

The Customer's obligations (especially in relation to decontamination, such as securing the device before removal, deletion of patient data, etc.) that the Customer must comply with are defined in the user manual of the device in question. The conditions for the provision of the equipment, as well as the tariffs associated with these services, will be communicated to the Customer upon request. It is recalled that the Customer is responsible for the integrity of the equipment and its provision for the benefit of bioMérieux. bioMérieux undertakes to provide all necessary information about the equipment concerned. The Customer is fully responsible for the proper documentary, technical and administrative management in this context. It is responsible to bioMérieux for this and indemnifies bioMérieux against any damage, costs or actions taken by third parties, including the authorities concerned, in the event of poor performance of the above obligations.

#### **15. Offsetting and right of retention**

The Customer can only invoke set-off or the exception of non-performance if the claim has been legally established or is undisputed. In addition, the Customer can only assert the defence of non-performance to the extent that his counterclaim is based on the same legal relationship.



## 16. Sanctions

- 16.1. The Customer shall not sell, directly or indirectly, any products supplied under or in connection with this Agreement that fall within the scope of Article 12g of Regulation (EU) No 833/2014 and Article 8g of Council Regulation (EU) No 765/2006, Article 14f of the Ordinance of the Swiss Federal Council of 4 March 2022 introducing measures in connection with the situation in Ukraine or Article 11a of the Ordinance of the Swiss Federal Council of 16 March 2022 imposing measures against Belarus or the Russian Federation or for use in the Russian Federation or Belarus or for re-export. In general, the Customer undertakes to comply with mandatory economic, financial or trade sanctions enacted, administered or implemented by Switzerland ("**International Sanctions**") and **undertakes not to conduct any transactions that directly or indirectly violate them.** This includes, but is not limited to, the sale, supply, export, re-export or transfer of the Goods delivered under or in connection with this Agreement to any person or entity subject to international sanctions or to territories subject to international sanctions. The Customer further declares that it is not subject to or controlled by international sanctions.
- 16.2. The Customer shall ensure that the purpose of Clause 16.1 is not impaired by third parties in the business chain, including potential resellers. The Customer is also obliged to put in place an appropriate monitoring mechanism to detect any conduct of third parties downstream in the distribution chain, including potential resellers, that would be contrary to the objective of paragraph 16.1.
- 16.3. Any breach of clauses 16.1 or 16.2 shall constitute a material breach of the contractual obligations and shall entitle bioMérieux to take appropriate measures, including: (i) the immediate termination of the legal relationship between the parties and (ii) the obligation of the Customer to pay a contractual penalty equal to ten times the total value of the orders for goods placed in the year preceding the breach, or the price of the exported goods, whichever is higher.
- 16.4. The Customer is obliged to inform bioMérieux immediately of any incident related to the application of clauses 16.1 to 16.3, including any activities of third parties that may affect the purpose of paragraph 16.1. The Customer will provide bioMérieux with proof of compliance with the above obligations within two weeks of the request.

## 17. Processing of personal data

- 17.1. Processing of the customer's personal data by bioMérieux as data controller

As part of the contractual relationship between the parties, bioMérieux and bioMérieux's affiliates process certain personal data, including those of the customer's employees and agents (names and business contact information, including postal and email addresses, Landline and mobile phone numbers of natural persons and their location)) necessary for the conclusion, performance and termination of the contract, in accordance with applicable data protection laws, in particular the Federal Act of 25 September 2020 on Data Protection (FADP) and its Implementing Regulation of 31 August 2022 (LPP), as well as, where applicable, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons Processing of personal data and the free movement of such data of this data, General Data Protection Regulation (GDPR). Further information on the Data processing and a form to exercise your rights can be found at: [bioMérieux Schweiz SA, Privacy Policy FR](#); [bioMérieux Schweiz SA, Privacy Policy EN](#). In order to exercise their rights, data subjects may to bioMérieux's Data Protection Officer (DPO) at the following email address turn: [privacyofficer@biomerieux.com](mailto:privacyofficer@biomerieux.com).

- 17.2. Processing of personal data by bioMérieux as a processor – Subject: Customer and patient data

In the context of services (warranty or maintenance) on the Equipment or remote maintenance, the Customer, as Data Controller, may grant bioMérieux, as a data processor, access to certain personal data of patients for a limited period of time, if this is necessary for the provision of the Services.

Insofar as bioMérieux, as a subcontractor, processes the personal data of the customer or the customer's patients within the framework of the contractual relationship with the customer and on behalf of the customer (e.g. in the context of the service relationship, warranties, maintenance or quality control of the rented equipment or the products sold), bioMérieux undertakes to process

this personal data in accordance with (i) the regulations applicable to subcontractors, (ii) the customer's documented instructions and (iii) exclusively for the purpose of providing the services agreed between the parties. The parties will also, where necessary, comply with the provisions of Art. 28 GDPR on the initiative of the Controller.

bioMérieux ensures that its own subcontractors, including its affiliates who have access to personal data, take technical and organisational measures to ensure the security, confidentiality, integrity, availability and traceability of all customer data processed. bioMérieux may only transfer, store or process personal data in countries where it or its sub-processors have branches or facilities, provided that the requirements of the FADP and/or the GDPR for cross-border transfers are complied with. If bioMérieux transfers or makes available personal data to countries that do not provide an adequate level of data protection within the meaning of the FADP and/or the GDPR, it must take appropriate technical, organisational and/or contractual measures to ensure an adequate level of data protection in accordance with applicable laws (e.g. entering into standard contractual clauses with data recipients adopted by the EU and regulated by the Swiss Federal Data Protection Authority). and the Information Officer, and have been necessarily amended to comply with the FADP and/or the GDPR. The parties agree to provide each other with all reasonable assistance and assistance necessary to enable each party to perform its obligations under applicable laws and this Agreement. Upon reasonable notice, the Customer may monitor bioMérieux in relation to the processing of personal data under this Agreement in order to determine compliance with applicable laws and these Terms and Conditions. bioMérieux ensures that its subcontractors agree to be controlled by the customer to the same extent as bioMérieux. In the event of a personal data breach within the meaning of applicable laws, bioMérieux will immediately notify the Customer, indicating the nature of the breach, its consequences and the measures planned or taken to limit the damage. For information on data transfer by bioMérieux, please refer to the Privacy Policy referred to in Section 17.1. For a list of subcontractors providing services to other companies in the bioMérieux Group, as well as their location, please visit <https://www.biomerieux.com/en/data-processors-list>.

#### **18. Intellectual Property**

bioMérieux and its potential licensors are and will remain the exclusive owners of all intellectual property rights in the Goods, including the Equipment, the Products (including the Custom Products) and the Equipment Software. Nothing in this document or any act of bioMérieux shall be construed as transferring ownership of bioMérieux's intellectual property rights for the benefit of Customer or as conferring any right or license to such rights on Customer, unless otherwise agreed in writing between the parties or herein.

#### **19. Confidentiality**

Each party undertakes to treat confidentially the confidential information of the other party, in particular the trade and trade secrets of the other party, which are disclosed to them in the course of their business relationship. Each party will use any disclosed Confidential Information only to the extent necessary to exercise such rights and obligations under this contractual relationship and will not disclose such information to any third party without the prior written consent of the other party, except as permitted herein. This provision does not apply to confidential information (i) which was demonstrably already independently known to the recipient at the time of disclosure or which is subsequently brought to the attention of a third party without violating a contractual obligation, statutory provisions or other confidentiality obligations, or (ii) which must be disclosed due to legal obligations or pursuant to a court or administrative order.

#### **20. Applicable law, competent jurisdiction, partial nullity, non-transferability**

- 20.1. These General Terms and Conditions and the contractual relationship between bioMérieux and the Customer shall be governed by and construed in accordance with substantive Swiss law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of law rules of private international law.
- 20.2. The ordinary courts of the Canton of Geneva shall have exclusive jurisdiction to settle any dispute, controversy or claim arising directly or indirectly from the contractual relationship between the parties, in particular with regard to its validity, invalidity, infringement and/or termination.
- 20.3. Should any provision of these General Terms and Conditions be or become invalid, this shall not

affect the validity of the remaining provisions or agreements.

- 20.4. The Customer is not entitled to assign or transfer the legal relationship or the rights or obligations contained therein to third parties without the prior written consent of bioMérieux.