



**GTC – A PARTNERSHIP NEEDS FAIR RULES**  
**Terms and Conditions of Sale, Delivery and Payment of bioMérieux (Suisse) SA**  
**("bioMérieux")**

Last updated: January 1, 2026

**1. Scope and applicable terms**

- 1.1 These Terms and Conditions apply to any order placed by the Customer for the supply of in-vitro diagnostic equipment including accessories ("**Equipment**") as well as to subsequent orders of reagents and consumables (together with the Equipment the "**Goods**").

The legal relationship between bioMérieux and the Customer will be governed by these General Terms and Conditions and, where applicable, by bioMérieux's offer specifically addressed to the Customer and the technical data sheets of the Goods 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) the technical data sheet if it contains contractual aspects.

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, even if bioMérieux provides services in knowledge of different or conflicting provisions of the Customer.

- 1.2 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.
- 1.3 Except as otherwise provided or required by law, (i) the terms "in writing" and "written" 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. 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 to be delivered is determined by the technical data sheet of the goods or the offer of bioMérieux, which is indicated in each individual case. This quotation and the technical data sheet also indicate the intended use of the goods supplied, as agreed between the parties.

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 Inquiries by the customer regarding the delivery of goods do not constitute a binding offer or a 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 in writing, 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 supply of reagents and consumables are only binding in exceptional cases if bioMérieux accepts a corresponding order from the Customer at least in written form (e.g. by e-mail) or ships the goods to the customer.

**bioMérieux (Switzerland) SA**

- 3.3 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 to the recovery of bioMérieux's claims or if the goods are not available.
- 3.4 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.

#### 4. Processing of orders for custom-made products

The Customer may request bioMérieux to supply the Customer with goods that bioMérieux manufactures specifically to its requirements (" **Custom Orders** "). If bioMérieux agrees (at its own discretion and in writing) to supply the custom-made products, the Customer is obliged to purchase the custom-made products in accordance with these Terms and Conditions and without prejudice to the Customer's rights under the Code of Obligations (as amended by these Terms and Conditions from time to time) in accordance with these Terms and Conditions after the effective conclusion of the contract.

#### 5. Standing Orders

- 5.1 If it is agreed that the customer is to be supplied with certain goods on a regular basis ("**Standing Order**"), bioMérieux will automatically generate orders in accordance with 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 first delivery under such a standing order. If certain quantities and delivery dates have already been agreed in bioMérieux's offer, the 12 months begin on the start date of the supply contract.
- Standing Orders are automatically renewed for a further 12 months, unless they are cancelled in writing by bioMérieux or the Customer one month before expiry.
- 5.3 Setting up and changing a Standing Order requires a period of 15 working days (Monday to Friday, excluding public holidays). It is incumbent on bioMérieux to decide on a case-by-case basis whether bioMérieux accepts the Customer's request for a change or whether to terminate the Standing Order with one month's notice.

#### 6. Price and Payment

- 6.1 Unless otherwise agreed, the prices in force on the day of the Customer's order shall apply. This also applies to goods that are subject to 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.

- 6.2 The purchase price for cross-border deliveries is calculated on a DDP basis (Incoterms 2020 plus the applicable statutory value added tax). For sales in Switzerland, the purchase price is as offered by bioMérieux (or, in exceptional cases, by bioMérieux's acceptance of the customer's offer). Several orders can be combined into a single delivery by bioMérieux. By way of derogation from the DDP regulation, bioMérieux will also charge the Customer a flat rate of transport costs per order in the case of collective deliveries, as indicated in the offer 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 transport fees depends on the type of delivery requested by the customer: standard delivery on working days (Monday to Friday, excluding public 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

6.3 The purchase price is payable within 30 days from the date of invoice by bank transfer (as stated on the invoice) without deduction. Payments made by the Customer are not considered to have been made until bioMérieux has received the amount. Any complaint must be notified to bioMérieux within 10 working days (Monday to Friday, excluding public holidays) of receipt of the invoice. The Customer must ensure that he is able to receive and process electronic invoices in accordance with the applicable requirements.

6.4 In the event of default of payment by the Customer, default interest of 5% per annum, calculated from the due date of the payment in question, as well as a flat-rate collection fee of CHF 50 will be charged. bioMérieux reserves the right to assert further damage caused by delay. 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 ongoing orders 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.

6.5 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.

6.6 bioMérieux reserves the right to charge a 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 will be made under DDP (Delivered Duty Paid) terms to the specified destination in accordance with Incoterms 2020. The specified destination is the delivery location agreed with the Customer. In deviation from the DDP regulation, in the case of domestic deliveries, the delivery person unloads the goods from the vehicle at the entrance on the ground floor of the place of delivery.

7.2. Delivery and execution deadlines are carefully coordinated according to the circumstances; bioMérieux strives to comply with them as far as possible.

The delivery time of the systems, including the reagents and consumables ordered with them, will be communicated separately to the Customer. For reagents and consumables, bioMérieux's goal is to deliver orders received in the morning (by 12 noon) by the next working day (Monday to Friday, excluding public holidays).

7.3. Force majeure events such as traffic disruptions, strikes, epidemics, pandemics, failures or delays in the transport or delivery of raw materials, materials or parts, failures of means of communication, official measures or restrictions, riots, floods, wars, extreme weather conditions and any other events beyond the control and control of bioMérieux shall release bioMérieux (which shall not be liable for any resulting damages) from its obligation to deliver for the duration of the disruption and to the extent of its effects.

7.4. The delivery requires the proper and timely fulfilment of the customer's obligations, in particular with regard to the delivery of systems, in particular the appropriate preparation of the installation site

and the availability of the necessary contact persons at the Customer. The right to refuse performance is reserved in this respect.

- 7.5. bioMérieux points out that the provision of certain goods (and related services) requires the installation of remote access through the software offered by bioMérieux, currently VILINK.® The Customer shall ensure that bioMérieux is authorized to install and access the Equipment and its System through the VILINK Software®. 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. Customer bears the risk of such limited use or maintenance. Service and maintenance services that have to be provided on site are charged at a premium price (currently +20%).
- 7.6. If the Customer orders goods that are manifestly false, bioMérieux is not obliged to accept their return or exchange.
- 7.7. Early and partial deliveries are permitted. If bioMérieux delivers excess quantities, the Customer will notify bioMérieux immediately. bioMérieux will immediately collect 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**

Subject to the specific provisions of these Terms and Conditions, the risk and title of the goods for each unit shall pass to the Customer on the day they are made available to the destination designated by DDP in accordance with Incoterms 2020 for cross-border deliveries. In the case of domestic deliveries, the DDP clause applies mutatis mutandis to the regulation of the transfer of ownership and risk. If the delivery person transports the goods beyond the entrance to the ground floor at the destination, he acts as a representative of the Customer and at the Customer's risk. The place of destination shall be the place agreed between the parties as the place of delivery.

## **9. Customer's Inspection and Notification Obligations**

- 9.1. The Customer must inspect the goods (including the bespoke products, subject to clause 10 below) in accordance with Article 201 of the Code of Obligations.
- 9.2. Any obvious defect must be reported within 7 calendar days of delivery of the goods, attaching samples (in the case of reagents and consumables), 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, the goods 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.
- 9.4. Any defects must also be reported via the bioMérieux telephone hotline.

## **10. Derogating and supplementing provisions from Articles 6, 8 and 9 for custom-made products**

### **10.1. Purchase price**

In the case of custom-made products, bioMérieux is entitled to demand a deposit of 20% of the agreed purchase price. The amount of the deposit is due immediately after invoicing at the time of the respective conclusion of the contract. The balance is to be paid in accordance with the above provisions.

### **10.2. Acceptance of custom-made products**

The acceptance of the custom-made products by the customer is considered to have taken place when the custom-made product is installed at the customer's premises for the first time. This also applies to customer-specific reagents. With the use of the first batch of reagents, the series is considered accepted. An acceptance protocol is drawn up, which must be signed by both parties.

### **10.3. Transfer of Risk**

In the case of custom-made products, the transfer of risk takes place with the acceptance of the custom-made product by the Customer within the framework of the aforementioned protocol.

## **11. Warranty**

- 11.1 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.

- 11.2 Warranty rights for new items expire within 12 months from the transfer of risk. Warranty rights for used goods expire within 6 months from the transfer of risk.
- 11.3 In the event of a defect in a device, the defect will be remedied at the discretion of bioMérieux 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.
- 11.4 In the event of defects in reagents or consumables, the Customer's right to remedy defects is limited to the supply of new, compliant reagents or consumables.
- 11.5 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 by written notice to bioMérieux. 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.
- 11.6 The remedy of defects by bioMérieux implies the payment of the purchase price owed by the customer, it being specified that the Customer is temporarily entitled (until the defect has actually been remedied) to retain part of the purchase price in proportion to the defect determined in agreement with bioMérieux, but not more than 50% of the purchase price.
- 11.7 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 replacement, the Customer must return the defective goods to bioMérieux, which will become the property of bioMérieux, or, in the case of products of bioMérieux's choice, destroy the defective reagents or consumables and confirm their destruction to bioMérieux. In the event of a recall of the goods, the Customer is obliged to confirm that he no longer uses the recalled goods. The remedy of the defect does not include the dismantling of the defective goods (or components) or their reinstallation, if bioMérieux was not originally obliged to install them.
- 11.8 The costs necessary for the assessment of the defective goods and the elimination 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 in the event of a 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.
- 11.9 The Customer's right to assert further damage or reimbursement of costs that the customer has unnecessarily incurred as a result of the defect exists only within the limits of section 12 and is otherwise excluded.
- 11.10 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. The above warranty and the warranty against hidden defects is the only warranty offered by bioMérieux and accepted by the customer to the exclusion of any other written or oral, express or implied warranty or guarantee.

## **12. Liability**

- 12.1. 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 12.1(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 orders paid by the Customer to bioMérieux in the year preceding the occurrence of the damage.

- 12.2. The limitations of liability resulting from Section 12.1 shall also apply in the event of breaches of duty by or for the benefit of persons for whom bioMérieux is responsible under 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.
- 12.3. 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-performance apply (Art. 107 et seq. of the Code of Obligations).

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

- 13.1. By way of derogation from clause 8, bioMérieux reserves the right, on a case-by-case basis, to make the transfer of ownership of a system, reagent and/or consumables subject to the full payment of the purchase price by the Customer 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.
- 13.2. The goods subject to retention of title may not be resold to third parties until the secured receivables have been paid in full.
- 13.3. Reagents and consumables 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.

The Customer hereby assigns all remuneration claims of the Customer against its customers resulting from the resale of the consumables and reagents, as well as the claims of the Customer with regard to the reagents and consumables that arise against its customers or third parties for any other legal reason, to bioMérieux including all outstanding receivables on current account. 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.

- 13.4. Neither the equipment nor the reagents and consumables may be pledged to third parties or transferred as a guarantee without the consent of bioMérieux.
- 13.5. The Customer must notify bioMérieux immediately, at least in writing, if bankruptcy proceedings are opened against the Customer or if third parties gain access to the reserved assets (e.g. by seizure). The Customer must declare ownership of bioMérieux.
- 13.6. In the event of a breach of contract by the Customer, in particular in the event of non-payment of the purchase price 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 demand the return of the goods in default of payment at the expense of the Customer, provided that they have not yet been used, or, if it has not yet been delivered, to refuse delivery without further compensation.

- 13.7. The Customer is obliged to handle and use the supplied equipment 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. He must also insure them at his own expense against fire, water and theft damage up to the amount of the replacement value of the goods delivered.

#### **14. Software and hardware**

- 14.1. Insofar as bioMérieux provides the Customer with a PC with operating software as part of the delivery of the Equipment ("**Device Computer**"), the Device Computer 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.
- 14.2. 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.
- 14.3. 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.
- 14.4. If an update of the instrument software is required in order for the reagents to continue to be used with the system, the Customer grants bioMérieux access to the instrument and the system so that bioMérieux can perform the software update.
- 14.5. 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, device or device software in violation of these General Terms and Conditions or by modifying, supplementing or installing third-party software, unless such damage was caused intentionally or through 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 Device Software, caused at least in part by the modification of the Device Software or the installation or use of third-party software via the Customer's Device Computer or the connection of the Computer to the Customer Device. 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.

#### **15. Maintenance measures, relocation of the device, methods of use, waste**

- 15.1. bioMérieux reminds the Customer that the goods delivered are medical devices. In order to ensure correct test results, the Customer is therefore obliged to maintain and maintain its equipment during and after the warranty period, in accordance with the applicable conditions of use, in order to ensure the proper functioning of the systems. The Customer remains responsible for the interpretation and use of the results obtained through the use of the equipment and the reagents and consumables. The Customer indemnifies bioMérieux against all third-party actions relating to the consequences of improper use of the goods.
- 15.2. 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 unauthorized movement of the equipment, or from improper use of the goods by the customer or its representatives.

- 15.3. 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.
- 15.4. It is agreed that bioMérieux will ensure the removal and treatment of waste from equipment labelled as electrical and electronic equipment. With regard to the contribution to the costs of certified waste treatment, bioMérieux reserves the right to charge fees at an appropriate level.

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 device, 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. Any cost or damage caused by the customer's negligence and/or failure to comply with the above obligations will result in full compensation in favor of bioMérieux.

## 16. Set-off, right of retention

The customer can only invoke set-off or the defence of non-performance of the contract 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.

## 17. Sanctions

- 17.1. 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.
- 17.2. The Customer shall ensure that the purpose of clause 17.1 is not affected by third parties in the retail chain, including potential resellers. The Customer is further 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 17.1.
- 17.3. Any breach of clauses 17.1 or 17.2 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 placed in the year preceding the breach or the price of the exported goods, whichever is higher.
- 17.4. The Customer is obliged to inform bioMérieux immediately of any incident related to the application of clauses 17.1 to 17.3, including any third-party activities that may affect the purpose of paragraph 17.1. The Customer will provide bioMérieux with proof of compliance with the above obligations within two weeks of the request.

## 18. Processing of personal data

- 18.1. 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 that of the Customer's employees and representatives (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). For more information on data processing and a form to exercise your rights, please visit: [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).

#### 18.2. 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.

To the extent that bioMérieux, as a subcontractor, processes personal data of the Customer or the Customer's patients in the context 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 systems sold), bioMérieux undertakes to process such personal data in accordance with (i) the regulations applicable to subcontractors, (ii) the documented instructions from the Customer and (iii) solely 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 the 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 18.1. A list of subcontractors who provide services to other companies in the bioMérieux Group, as well as their location, can be found under <https://www.biomerieux.com/en/data-processors-list>.

#### 19. 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 reagents and consumables (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.

**20. 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.

**21. Applicable law, competent jurisdiction, partial nullity and assignment**

- 21.1. 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.
- 21.2. 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.
- 21.3. 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.