

# GENERAL TERMS AND CONDITIONS of DAKO GmbH

## I. Scope of application

The following General Terms and Conditions as amended from time to time shall apply to all quotations, deliveries and services furnished by DAKO GmbH [hereinafter "DAKO"]. The general terms and conditions of the Ordering Party / Customer shall apply only to the extent DAKO expressly agrees thereto in writing. Even if DAKO is silent thereon or does not object expressly to such terms and conditions, DAKO will not, either wholly or in part, subject itself to any terms and conditions of Ordering Party / Customer.

## II. Contract

All quotations of DAKO are subject to change and non-binding. A contract shall only be deemed to have entered into if DAKO confirms the order in writing or if DAKO begins processing the order. In the event of non-performance of the contract for reasons Ordering Party / Customer is responsible for, DAKO may charge 15 per cent of the order value. All deliveries and services are subject to the condition that Ordering Party / Customer acknowledge the General Terms and Conditions of DAKO as legally binding.

### Delivery; delivery dates; delay

1. Compliance with delivery dates presupposes the timely receipt by DAKO of all documents, required approvals and releases, in particular of plans, to be supplied by Customer as well as fulfillment of any agreed payment terms and of any other obligations by Ordering Party / Customer. If such requirements are not fulfilled in time, the delivery period will be extended for a reasonable period of time; this shall not apply if DAKO is responsible for such delay.

2. If a delay is due to force majeure, such as mobilization, war, riot or similar events, as for example strike and lock-out, the delivery period will be extended for a reasonable period of time. The same applies in case deliveries to DAKO are delayed or incorrect.

3. If DAKO is in default, Ordering party – if Ordering party can prove that it has suffered a damage as result thereof – may demand, for each full week of delay, compensation in the amount of 0.5 per cent of the price of the part of the delivery which cannot be put into operation to serve its purpose due to the delay; the compensation will, however, not exceed 5 per cent of such price.

4. Claims to compensation of Ordering Party / Customer for delay of delivery as well as claims to compensation in lieu of performance exceeding the limits set forth under 3. hereof shall be excluded in all cases of delayed delivery, even after expiry of any delivery deadline granted to DAKO. This shall not apply to the extent strict and mandatory liability applies in cases of wilful intent, gross negligence or for injury to life, body or health. Ordering Party / Customer may – within the scope of legal provisions – withdraw from the contract only to the extent DAKO is responsible for the delay of delivery. The above regulations do not reverse the burden of proof to the disadvantage of Ordering party / Customer.

5. Ordering Party / Customer is obliged to declare, upon request of DAKO and within a reasonable period of time, whether Ordering Party / Customer withdraws from the contract due to the delay of delivery or if it insists on the performance of the delivery.

6. If dispatch or delivery is delayed at the Ordering Party's / Customer's request by more than one month after advice of readiness for dispatch was given, Ordering Party / Customer may, for each month commenced, be charged storage costs in the amount of 0.5 per cent of the price of the items to be delivered; the overall amount will, however, not exceed 5 per cent of such price. The contracting parties are at liberty to prove that storage costs are higher or lower.

7. The products are subject to changes at the manufacturer's site. Moreover, DAKO is entitled to deliver changed or adapted products that deviate from the order placed by Ordering Party / Customer if the characteristics of the product are similar or superior. The right to partial deliveries and to their invoicing is expressly reserved by DAKO. If DAKO accepts returned goods ordered or purchased in error, DAKO will charge a service fee covering the expenses of DAKO; the minimum amount of such service fee will be 5 per cent of the value of the goods. If Ordering Party / Customer commissions DAKO to implement third-party software or third-party data, Ordering Party / Customer will indemnify and hold harmless DAKO against any rights of third parties.

8. The return of software products cannot be accepted if the product packaging [including CD bags] has been opened or if DAKO has furnished such software products specifically upon Customer's request.

9. The Seller reserves the right to withdraw from the contract in the event of incorrect or improper self-supply. This only applies if the Seller is not responsible for the non-supply and if he has concluded a concrete hedging transaction with the supplier. The Seller shall make all reasonable efforts to obtain the goods. In case of non-availability or partial availability of the goods he shall inform the Client and grant him immediately counterperformance.

### III. Transfer of risk

1. The risk, also in cases of carriage paid delivery, shall pass to Ordering Party / Customer as follows:

- a. deliveries without installation or assembly: as soon as the goods are ready for dispatch or as soon as they are collected. Upon request of and at the cost of Ordering party, DAKO will insure deliveries against customary transport risks;
- b. deliveries including installation or assembly: on the day of taking delivery at the Ordering Party's / Customer's site or, if agreed, after a flawless test run.

2. If the dispatch, delivery, the start, the conduction of installation or assembly, the taking delivery of the goods at the Ordering Party's / Customer's site or the test run is delayed for reasons Ordering Party / Customer is responsible for or if DAKO is in default of acceptance for other reasons, the risk shall pass to Ordering Party / Customer.

3. If software is provided via electronic communication media [e.g. via Internet], the risk shall pass to Ordering Party / Customer as soon as the software leaves the area of influence of DAKO [e. g. when being downloaded].

### IV. Prices and terms of payment

All prices quoted are net prices plus applicable legal value added tax and subject to change. Prices are quoted ex works excluding packaging. DAKO will charge the price in EUR according to the price list as at the date of order confirmation or, if there is no order confirmation, as at the day on which the goods are collected or dispatched. If the procurement costs of third party products [regardless of the delivery term] turn out to be considerably higher for DAKO after order confirmation and prior to delivery [e.g. due to changes in exchange rates] or if there is a considerable increase in manufacturer prices, DAKO is entitled to adjust its prices accordingly. Ordering party may – excluding any further rights – withdraw from the contract to the extent DAKO is able to cancel third party delivery contracts with the manufacturer without penalties. Increases by 7.5 per cent and more are deemed to be considerable increases. Fixed prices shall be agreed in writing and expressly as fixed prices; in such cases, too, fixed prices do not apply to repeat orders and not to [any] subsequent change to delivery quantities and terms made by Ordering Party / Customer.

Payments shall be made without any deductions or charges to DAKO's account. Ordering Party / Customer may set off payments only against claims that are undisputed or established as final and absolute.

Discount deduction is excluded, unless expressly otherwise agreed in writing. Cheques are only accepted on account of performance. Bills of exchange are not accepted. If payment is made after the due date or if there is a default of payment, DAKO will be entitled to charge default interest at 8 per cent above the applicable base interest rate without further reminder. The right to claim compensation for default in excess thereof shall remain unaffected. In addition to the default interest, a lump sum in the amount of 5.00 EUR will be charged for the reminder costs incurred. DAKO is entitled to set off payments against older debts of Ordering party / Customer, notwithstanding any provisions to the contrary in the terms and conditions of Ordering Party / Customer. In doing so, DAKO will initially set off payments against principal performance in arrears and then against costs and interest payments in arrears. DAKO is entitled to check the Ordering party's / Customer's solvency in accordance with the customary practice. In case of any doubt regarding Party's / Customer's solvency or if circumstances and information gathered show that the economic situation of Ordering Party / Customer is bad, DAKO is entitled to revoke any payment terms granted and to make further deliveries only against prepayment or cash on delivery. All receivables will fall immediately due and payable, in particular if Ordering Party / Customer is in default with any payment, fails to honour cheques or other rights or revokes direct debit authorisations granted. Setting off counterclaims or asserting a right of retention due to counterclaims that are not acknowledged by DAKO or that are not established as final and absolute are excluded. Any right to refuse performance or any right of retention against DAKO is excluded if Ordering Party / Customer is a merchant, too.

### V. Retention of Title

1. DAKO retains title to the goods delivered [goods subject to retention of title] until any and all of DAKO's claims against Ordering Party / Customer arising from the business relationship are satisfied. As soon as the value of all security interests DAKO is entitled to exceeds the amount of all secured claims by more than 20 per cent, DAKO will, upon request of Ordering Party / Customer, release the corresponding part of its securities.

2. As long as the goods are subject to retention of title, Ordering Party / Client is not allowed to pledge the goods or to transfer them by way of security, and their resale is only allowed to resellers in the ordinary course of business and on condition that the reseller receive payment from its customer or retain title to the goods until its customer has fully satisfied its payment obligations.

3.a] If Ordering Party / Customer resells goods subject to retention of title, Ordering Party / Customer hereby assigns to DAKO Ordering Party's / Customer's future claims arising out of such resale, including any ancillary claims – including balance claims, if any – by way of security, and no further special declaration will be necessary. If the goods subject to retention of title are resold together with other items and no individual price is fixed for the goods subject to retention of title, Ordering Party / Customer hereby assigns to DAKO the portion of the overall claim that corresponds to the price of the goods subject to retention of title invoiced by DAKO; such claim shall have priority over any other claim.

3.b] If DAKO can substantiate a legitimate interest, Ordering Party / Customer shall provide any information needed to assert DAKO's rights against the customer and hand over any documents needed.

3.c] Ordering Party / Customer is entitled to collect the assigned receivables arising out of the resale unless such entitlement is revoked. DAKO may revoke for cause the entitlement of Ordering Party / Customer to collect such receivables, in particular in case of payment

default, cessation of payment, initiation of an insolvency proceeding, bill protest or if there is any other good reason to believe that Ordering Party / Customer is insolvent. Additionally, DAKO may, after prior warning to disclose the assignment by way of security and/ or to exploit the receivables assigned and after granting a reasonable deadline, disclose the assignment by way of security, exploit any receivables assigned and request Ordering Party / Customer to disclose towards the customer the assignment by way of security.

4.a) Ordering Party / Customer may process, transform and combine the goods subject to retention of title with other items. The processing, transforming or combining shall be done for DAKO. Ordering Party / Customer will hold the new item for DAKO exercising the due care and diligence of a prudent merchant. The processed, transformed or combined items shall be deemed to be goods subject to retention of title.

4.b) If any goods subject to retention of title are processed, transformed or combined with items that do not belong to DAKO, DAKO will be entitled to co-ownership in the new item on a pro-rata basis in accordance with the value of the processed, transformed or combined goods subject to retention of title at the time when the goods subject to retention of title were processed, transformed or combined with such other items. If Ordering Party / Customer acquires sole ownership of the new item, DAKO and Ordering Party / Customer agree that Ordering Party / Customer grants DAKO co-ownership of the new item arising out of such processing, transformation or combination on a pro-rata basis according to the value of the processed, transformed or combined goods subject to retention of title as at the time when the goods were processed, transformed or combined.

4. c) If Ordering Party / Customer resells the new item, Ordering Party / Customer hereby assigns to DAKO by way of security any claim arising out of the resale Ordering Party / Customer may have against the customers, such claims shall include all ancillary rights, and no further special declaration will be needed. The assignment refers only to the amount corresponding to the value of the processed, transformed or combined goods subject to retention of title invoiced by DAKO. The part of the claim assigned to DAKO shall have priority over any other claim. With regard to the entitlement to collect any receivables and the conditions of revoking such entitlement, 3. c) hereof shall apply accordingly

4. d) If Ordering Party / Customer combines the goods subject to retention of title with real estate or with movable things, Ordering Party / Customer hereby also assigns to DAKO by way of security any claims of Ordering Party / Customer arising from the payment for the combination and any ancillary right on a pro-rata basis according to the value of the combined goods subject to retention of title at the time when the goods were combined, and no further declaration will be needed.

5. Ordering Party / Customer shall inform DAKO immediately of any pledge, attachment or of other court orders or intervention of third parties.

6. If Ordering Party / Customer culpably violates material contractual obligations, in particular if it defaults on its payment obligations, DAKO, after sending a reminder, is entitled to redemption. Ordering Party / Customer is obliged to hand over the goods. The redemption and / or assertion of the retention of title or the pledging of the goods delivered by DAKO shall not be deemed to be a withdrawal from the contract unless DAKO declares so expressly. After prior warning, DAKO is entitled to use the redeemed goods subject to retention of title and to satisfy its claims setting off its receivables against the sales price.

## **VI. Liability**

1. The liability of DAKO is limited to damages whose occurrence could be foreseen upon entering into the contract considering the circumstances known at the time. DAKO is not liable for indirect damages, consequential damages caused by a defect, property damage or loss of profit arising from the use of the products unless such damage is caused by a grossly negligent violation of the contract on the part of DAKO.

2. Ordering Party / Customer shall take any and all necessary and reasonable measures to avoid or limit damage caused by the Software. In particular, Ordering Party / Customer shall ensure protection and regular backup of programmes and data. To the extent Ordering Party / Customer culpably violates this obligation, DAKO is not liable for the consequences of this violation, in particular DAKO is not liable for the retrieval of lost or damaged data or programmes. The above regulation does not reverse the burden of proof.

3. Ordering Party / Customer is solely responsible for the choice of the software programme with regard to the hardware compatibility and the specification it wishes.

## **VII. Acceptance**

Ordering Party / Customer must not refuse acceptance of deliveries because of insignificant defects.

## **VIII. Material defects**

DAKO warrants that the products provided under the contract are free from defects. The partners are aware of the fact that the state-of-the-art technology does not allow to exclude errors of the software under all conditions of use. Returning the goods in case of notifications of defects is not permissible without prior written consent of DAKO. Permitted returns of goods are given a return number by DAKO which the Customer must indicate on the returned goods. In case of returned goods, the risk shall pass to DAKO only upon the proper acceptance of the goods in the storehouse of DAKO. In the case of third-party products, specifications of the software are definitions of the contractual object given by the manufacturer and by the authors, and they are therefore no covenant under warranty law made by DAKO.

DAKO is liable for material defects as follows:

1. All parts or services having a material defect shall, at the option of DAKO, be remedied, replaced or re-performed at the cost of DAKO, if the cause of the defect was already present upon transfer of risk.

2. Claims to cure shall become statute-barred 12 months after the statutory commencement of a limitation period; the same applies to the withdrawal from the contract and the reduction of purchase price. This term does not apply to the extent German provides for longer terms as in section 438 §1 2. "buildings and things used for buildings", section 479 §1 "recourse claim" and 634a §1 2. "defects of a building" of the German Civil Code "BGB" in case of wilful intent, fraudulent concealment of the defect and the non-compliance with warranted quality. The legal provisions regarding suspension of expiry of limitation, suspension and new commencement of the limitation period shall remain unaffected.

3. Ordering Party / Customer shall make any notification of defects immediately and in writing. As soon as a defect occurs, the works on the goods and their processing shall be stopped immediately. The notification of defects shall describe the defect, and, in case of software, the corresponding data processing surrounding as detailed as possible.

4. In case of a notification of defects, Ordering Party / Customer may retain payments up to the amount that is in an appropriate proportion to the material defects. Ordering Party / Customer may retain payments only if a notification of defects has been made the justification of which is not dubious. Ordering Party / Customer is not entitled to retention if its claim arising from a defect has become statute-barred. If the notification of defects is not justified, DAKO is entitled to request Ordering Party / Customer to reimburse to DAKO any expenses incurred.

5. A material defect of the Software is a deviation from the specification that is proved by Ordering Party / Customer and that can be reproduced. There is, however, no material defect, if such defect does not occur in the last version of the Software provided to Ordering Party / Customer and if its use is acceptable to Ordering Party / Customer.

6. DAKO shall be granted a reasonable term to remediate the material defect.

If the good has a material defect, DAKO shall initially be granted an appropriate term to conduct supplementary performance. DAKO may, at its option, choose the type of cure.

The cure through removal of the material defect of the software shall be conducted as follows:

- a. DAKO will provide a new update or a new upgrade of the Software as replacement to the extent such replacement exists at DAKO's site or to the extent it can be obtained with reasonable effort and expense. If DAKO has granted to Ordering Party / Customer a multi-user licence, Ordering Party / Customer may make copies of the update or upgrade version provided as replacement, and such number of copies shall correspond to the number provided for under the multi-user licence.
- b. Until DAKO provides an update or an upgrade, DAKO will provide to Ordering Party / Customer an interim solution to bypass the material defect to the extent this is possible with appropriate effort and expense and to the extent Ordering Party / Customer, due to the material defect, can no longer work on tasks allowing no delay.
- c. If a recording medium or any documentation is defective, Ordering Party / Customer may request DAKO only to replace such recording medium or documentation with a recording medium or documentation free from defects.
- d. Remediation of the material defect shall be conducted, at the option of DAKO, at the Ordering Party's / Customer's site or at DAKO's site. If DAKO chooses to remediate the material defect at the Ordering Party's / Customer's site, Ordering Party / Customer shall provide to DAKO hardware and software as well as other operating states "including required computing time" together with qualified operating staff. Ordering Party / Customer shall provide DAKO with any documents and information existing at the Ordering Party's / Customer's site which is needed to remediate the material defect.

7. If the supplementary performance fails, Ordering Party / Customer may – without prejudice to compensation claims, if any, in accordance with 11. hereof, – withdraw from the contract or reduce the price.

8. There are no claims for defects if

- the deviation from the agreed quality is insignificant,
- the use is only insignificantly impaired,
- there is wear and tear,
- the defects are the consequence of incorrect or negligent treatment, overuse, unsuitable operating materials, defective construction works, unsuitable building ground,
- the defect is caused by external influences that are not provided for in the contract,
- Ordering Party / Customer or third parties make changes or conduct unprofessional maintenance work,
- Ordering Party / Customer or a third party extends the software beyond the interface intended for such purpose by DAKO
- the provided Software is incompatible with the data processing surrounding used by Ordering Party / Customer.

There will be no warranty either if any serial number, type designation or similar designations are removed or made illegible.

9. Claims of Ordering Party / Customer for any expenses necessary for the supplementary performance, in particular costs of transport, travel, work and material, are excluded to the extent such expenses increase because the delivered item has been brought subsequently to another place which is not the premises of Ordering Party / Customer, unless such new location corresponds to its intended use.

10. Recourse claims of Ordering Party / Customer against DAKO pursuant to section 478 of the German Civil Code [BGB] [recourse of the entrepreneur] exist only to the extent Ordering Party / Customer and its customer has made no agreement exceeding the statutory claims for defect. Regarding the scope of the recourse claims of Ordering Party / Customer against DAKO pursuant to section 478 [2] of the German Civil Code [BGB], no. 8. hereof shall apply accordingly.

11. Compensation claims of Ordering Party / Customer for material defect are excluded. This shall not apply in case of fraudulent concealment of the defect, non-compliance with warranted quality, injury to life, body, health or freedom and in case of wilful or grossly negligent breach of duty on the part of DAKO. The above regulations do not reverse the burden of proof to the disadvantage of Ordering party / Customer. Further claims for material defects of Ordering Party / Customer or claims other than those listed in art. IX. hereof are excluded.

If the software is provided on a temporary basis, only 1., 3., 5., 6. and 8. shall apply accordingly; 7. shall apply on condition that the right to withdrawal is replaced with the right to termination without notice.

#### **IX. Industrial property rights and copyrights; defective titles**

1. Unless otherwise agreed, DAKO is obliged to perform delivery only in the country of the delivery address and free from any industrial property rights and copyrights of third parties [hereinafter: property rights]. If a third party asserts justified claims against Ordering Party / Customer for violation of property rights through deliveries conducted by DAKO and used in accordance with the contract, DAKO will be liable towards Ordering Party / Customer within the term provided for in art. VIII. 2. hereof, as follows:

- a. DAKO will, at your option and at your cost, obtain the right to use the deliveries concerned, or change such deliveries in a manner that no property right is violated or replace the deliveries. If DAKO cannot do these things under reasonable conditions, Ordering Party / Customer is entitled to execute the right to withdraw from the contract or to reduce the price provided by law.
- b. The obligation of DAKO to damage compensation is subject to art. XI. hereof
- c. The above obligations of DAKO exist only to the extent Ordering Party / Customer informs DAKO immediately about any claims asserted by a third party, and to the extent Ordering Party / Customer does not acknowledge a violation and DAKO has sole control over any and all actions of defence and settlement negotiations. If Ordering Party / Customer stops using the delivery in order to mitigate damage or for other good reason, it is obliged to inform the third party that stopping the use shall not be deemed to be an acknowledgement of a property right violation.

2. Claims asserted by Ordering Party / Customer are excluded to the extent Ordering Party / Customer is responsible for the property right violation.

3. Moreover, claims asserted by the Ordering Party / Customer are excluded to the extent the property right violation is caused by special requirements made by Ordering Party / Customer or by an application not to be foreseen by DAKO, or if Ordering Party / Customer makes changes to the delivered items or uses them together with products not delivered by DAKO.

4. In the case of property right violations, the provisions of art. VIII. 4., 6. und 10. hereof shall apply accordingly to the claims of Ordering Party / Customer set forth under 1. a.

5. If any further defective titles exist, the provisions of art. IX. hereof shall apply accordingly.

6. Any further claims and any claims other than the claims set forth in this art. X. hereof asserted by Ordering Party / Customer for defective title against DAKO and its agents are excluded.

#### **X. Impossibility of performance; adaptation of the contract**

1. To the extent delivery is impossible, Ordering Party / Customer is entitled to claim damage compensation, unless DAKO is not responsible for such impossibility. The claim to damage compensation of Ordering Party / Customer shall, however, be limited to 10 per cent of the value of the part of the delivery that could not be put into operation and serve its purpose due to the delay. Such limitations shall not apply to cases of strict liability, i.e. for gross negligence or injury to life, body or health. The above regulations do not reverse the burden of proof to the disadvantage of Ordering party / Customer. The right of Ordering Party / Customer to withdraw from the contract shall remain unaffected.

2. If unforeseeable events for the purpose of art. III. 2. hereof considerably change the economic significance or the contents of the delivery or have considerable impact on the operations of DAKO, the contract will be appropriately adapted thereto and in good faith. To the extent such adaptation is economically not acceptable, DAKO is entitled to withdraw from the contract. If DAKO wishes to exercise its right to withdrawal, it shall, after becoming aware of the significance of the event, inform Ordering Party / Customer thereof immediately, even if an extension of the delivery period has initially been agreed with Ordering Party / Customer.

#### **XI. Further damage compensation claims, statute of limitation**

1. Any damage compensation claim asserted by Ordering Party / Customer, irrespective of its legal foundation, in particular for violation of obligations arising from the contractual obligations and in tort, are excluded.
2. This shall not apply to the extent liability is strict and statutory, for example under the German Product Liability Act [Produkthaftungsgesetz], in cases of wilful intent, gross negligence, in cases of injury to life, body or health or for the violation of material



contractual obligations. The damage compensation claim for violation of material contractual obligations is, however, limited to foreseeable damages that are typical of this type of contract unless there is liability for wilful intent, gross negligence, injury to life, body or health. The above regulations do not reverse the burden of proof to the disadvantage of Ordering party / Customer.

3. Any damage compensation claims of Ordering Party / Customer shall become statute-barred after the statute of limitation applicable in accordance with art. VIII. 2. hereof has elapsed. The same shall apply to claims of Ordering Party / Customer in connection with measures taken to prevent damage [e.g. product recall campaigns]. In the case of damage compensation claims under the German Product Liability Act [Produkthaftungsgesetz], the statutory provisions pertaining to the statute of limitation shall apply.

## **XII. Export**

The delivered products may contain technologies and software which are subject to the applicable export control regulations of the Federal Republic of Germany and to the export control regulations of the United States of America or of the countries to which the products are delivered or where they are used. Ordering Party / Customer commits itself to comply with such provisions. In accordance with the export regulations listed above, the products must, in particular, not be delivered or licenced to defined users or to or in defined countries that are involved in activities connected to weapons of mass destruction or to genocide. Ordering Party / Customer declares that it is aware of the fact that the export control regulations provide for various restrictions depending on the goods purchased and that such provisions are subject to regular amendments, and Ordering Party / Customer declares that, prior to any export or re-export of the product, it will consult the regulations as amended at that time. If any export regulation is violated, DAKO is entitled to withdraw from the contract.

## **XIII. Secrecy**

DAKO and Ordering Party / Customer will keep confidential any commercial or technical trade secret of the other contractual party which they have acquired or which they will acquire in connection with the business relationship and which are designated as confidential or which are obviously confidential. This obligation to secrecy will outlast the end of the business relationship.

## **XIV. Applicable law**

1. The law of the Federal Republic of Germany shall apply to all legal relationships between the parties under exclusion of the laws governing the international purchase of movable goods. For consumers, this choice of law only applies to the extent that the granted protection is not withdrawn by mandatory provisions of the law of the country, in which the consumer has his habitual residence.

2. Furthermore, this choice of law regarding the right to cancel does not apply to consumers, who are not nationals of a member state of the European Union at the time of concluding the contract and whose exclusive domicile and delivery address is located outside of the European Union at the time of concluding the contract.

## **XV. Place of jurisdiction**

1. If the Ordering Party / Customer is a businessman, a legal entity of public law or a separate estate under public law with its seat in the territory of the Federal Republic of Germany, the Seller's place of business shall be the sole place of jurisdiction for all legal disputes arising from this contract.

2. If the Ordering Party / Customer is domiciled outside the territory of the Federal Republic of Germany, DAKO's place of business shall be the sole place of jurisdiction for all legal disputes arising from this contract provided that the contract or claims from the contract can be assigned to the Ordering Party / Customer professional or commercial activities.

3. In any event however, regarding the aforementioned cases DAKO is entitled to call the court responsible for the seat of the Ordering Party / Customer.

## **XVI. Final provisions**

1. Neither party shall be entitled to assign, sub-agreement, transfer or dispose of any of its rights or obligations under the Agreement, in whole or in part, without the prior written consent of the other party, save that DAKO shall be entitled to assign, sub-agreement, transfer or dispose of its rights and obligations under the Agreement, in whole or in part, to Affiliates without the prior consent of the Customer provided that, if the whole of the Agreement is to be transferred to an Affiliate, such Affiliate shall be similarly solvent to DAKO.

2. Should individual provisions of this Agreement be or become invalid or unenforceable, this shall not affect the validity of the Agreement as a whole, nor the validity of the article or paragraph containing the relevant provision or other provisions of the Agreement.

3. To the extent that the other provisions are not affected, the parties shall use reasonable endeavours to agree within a reasonable time such lawful and reasonable modifications to the Agreement as are necessary to achieve as far as possible the same effect as would have been achieved by the article or the part of the article in question.

4. In the case of continuing obligations, DAKO reserves the right to amend these Terms and Conditions at any time if this is necessary for valid reasons, in particular due to a change in the legal situation or supreme court rulings, technical changes or further developments, new organisational requirements of mass traffic, regulatory gaps in the Terms and Conditions, changes in market conditions or other equivalent reasons and if this does not unreasonably disadvantage the Customer. Amendments to the Terms and Conditions shall be notified to the Customer in writing or by e-mail at least six weeks before they come into force. The amendments shall become effective if the customer does not object in writing or by e-mail within this period of six weeks [commencing after receipt of the written or textual notification of

amendment and DAKO has drawn the Customer's attention to this legal consequence in the notification of amendment.

5. In the case of services provided free of charge, DAKO shall be entitled at any time to amend, cancel or replace the Terms and Conditions with other terms and conditions and to make new services available free of charge or against payment.

6. The aforementioned terms and conditions of business and licensing have been acknowledged and recognised by the Customer. Other terms and conditions of the Customer shall have no effect whatsoever. The respective current version shall apply; inspection/download at <https://www.dako.de/agb>.

7. In the event of any inconsistency between the German version and other language versions of these Terms and Conditions, the German version alone shall prevail.

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