

Terms and Conditions for DAKOWeb Services

DAKO GmbH hereinafter referred to as DAKO

1. Definitions

"DAKOWeb Services"

includes all TachoWeb Services, Hybrilog Services, pharma2web Services, care2web Services, TachoEU Services and future services of a similar nature; accessible at the relevant service-specific website;

"Agreement"

the agreement between DAKO and the Customer consisting of the Framework Agreement and any schedules thereto, including the service specific Terms and Conditions;

"Master Agreement"

the agreement based on which DAKO provides the DAKOWeb Services to the Customer in accordance with the terms of the Agreement;

"Customer"

the Customer named in the Master Agreement;

"Effective Date"

the date on which the Master Agreement is signed by the Customer;

"Fleet"

the vehicles, assets or persons tracked through the DAKOWeb Services and/or recorded (inventoried) through the DAKO Platform;

"User"

a person authorised by the Customer to access and use the DAKOWeb Services;

"Force Majeure"

any circumstance beyond the reasonable control of the parties which affects the performance of the Agreement, including prolonged instances of traffic, telecommunications or power failures;

"General Terms and Conditions"

these Terms and Conditions for DAKOWeb Services and DAKO GmbH's General Terms and Conditions, and these Terms and Conditions shall be superseded by services specific Terms and Conditions;

"Initial Term"

the number of calendar months specified in the General Terms and Conditions, the Service Specifications or the Order List, as the case may be;

"Order List"

the attached list of Products ordered;

"Mobile Communications Services"

the mobile electronic communications services used to transmit the data;

"On-Board Unit"

a device listed in the Order List or a device purchased from a third-party supplier, either purchased or rented by the Customer, that can be used to receive Location Data via a GNSS satellite (e.g. NAVSTAR GPS, GLONASS, Galileo) and to send and receive such data and other messages via the Mobile Electronic Communication Services (either automatically according to an established procedure or by manual information retrieval);

"Location Data"

data relating to the geographical position of the Fleet and other messages or data sent to or from the Fleet;

"Employees"

those Employees that the Customer has registered with the relevant DAKOWeb Service;

"Price List"

the prices specified in the Order List;

"Territory"

the area specified in the Order List;

"Affiliate"

any legal entity owned by the party (subsidiary), by which a party is owned (parent) or that is under common ownership as a party (sister).
"Owned" for the purposes of this definition means controlling more than 50% of the shares in an entity;

"DAKO"

DAKO GmbH, a private limited liability company with its registered office and business premises in Jena and Dresden, respectively, and companies affiliated with it;

"DAKO Platform"

the IT system with which the DAKOWeb Services are operated;

"Data Protection Laws"

including the General Data Protection Regulation (2016/679/EC, "DS-GVO"), the German Federal Data Protection Act (*Bundesdatenschutzgesetz*, "*BDSG*"), if its scope of application is applicable; and any successor laws to the DS-GVO;

"Personal Data"

means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2. Scope of application

2.1. These General Terms and Conditions for the DAKOWeb Services apply to and are expressly made the subject matter of the Agreement and all subsequent agreements entered into between DAKO and the Customer in connection with the DAKOWeb Services.

2.2. The applicability of the Customer's general terms and conditions is hereby expressly excluded.

2.3. Any amendment must be expressly made in writing.

3. Subject matter of the agreement; type and scope of the transfer of use

3.1. The Customer is granted a non-exclusive, non-sublicensable and non-transferable right to use the DAKOWeb Services for fleet evaluation, analysis, optimisation, monitoring and tracking and for reporting, planning and notification purposes.

The Customer acknowledges that DAKO uses services of Webfleet Solutions Sales B.V. (German branch), Inselstraße 22, 04103 Leipzig, Germany in parts of the DAKOWeb Services and also offers them to the Customer for use.

For DAKOWeb Services, which are based on the service "Dedicated Server", DAKO uses the services of 1&1 IONOS SE, Elgendorfer Str. 57, 56410 Montabaur, Germany.

The rights of use granted to the Customer in this context are limited in scope to the rights of use granted to DAKO by Webfleet Solutions or 1&1 IONOS SE DAKO.

A physical transfer of the software does not take place.

3.2. DAKO provides the Customer with the use of the DAKOWeb Services at the router exit of the DAKO Platform ("Handover Point"). The scope of services of the DAKOWeb Services at the time of the conclusion of the agreement is based on the applicable service descriptions. The software remains on the servers of DAKO at all times. DAKO does not owe the guarantee of the data connection between the transition point and the IT systems of the Customer. It is the responsibility of the Customer to fulfil the technical requirements for the reception of the DAKOWeb Services at the Handover Point and their use.

3.3. The Customer is entitled to use the DAKOWeb Services within the scope and to the extent of the licences purchased.

3.4. It is the Customer's responsibility to:

- i. provide the Fleet with functioning On-Board Units and to ensure the ability of such On-Board Units to establish a connection,
- ii. to ensure that it has functional browser software and internet access to the DAKOWeb Services with sufficient transmission capacity,

The Customer undertakes to:

- i. inform DAKO without undue delay in written or text form (e-mail or fax) about changes of the company data, especially the invoice address, contact person authorised to give instructions, e-mail addresses, telephone number, complete and correct bank details, VAT identification number or tax number (only for Germany and EU),
- ii. enter changes in the affiliation of employees to his company in the respective DAKO Web Services without undue delay,
- iii. use software products supplied or made available by the DAKO only in accordance with the applicable licence conditions,
- iv. to check the data sent for completeness, readability and plausibility - defects are to be reported to DAKO without undue delay and
- v. to maintain the confidentiality of the access data of the relevant system access.

3.5. DAKO does not warrant that NAVSTAR GPS, GLONASS, Galileo or other location services or the Mobile Communication Services will continue to support the functionality offered by the DAKOWeb Services, nor that Customer will be able to successfully use the DAKOWeb Services for the intended use set forth in Article 3.1. This is due to the fact that such use depends in part on circumstances beyond DAKO's reasonable control, including circumstances for which the Customer is responsible under Article 3.4 or 5.1.

3.6. DAKO reserves the right to change the design of the DAKOWeb web pages and the way in which the tachograph or Location Data is displayed.

DAKO undertakes to:

- i. maintain the confidentiality of the Customer's business secrets towards third parties,
- ii. ensure the protection of the data handed over for archiving against unauthorised access by third parties, against loss and destruction, and
- iii. perform the DAKOWeb Services with the reasonable technical facilities available.

4. Customer registration, password

4.1. The registration is carried out independently by the Customer or its service provider by creating the required access data, e.g. via the DAKOWeb web pages. Alternatively, for certain components, access can be initially set up by a Customer service representative of DAKO and then transmitted to the Customer.

4.2. The Customer is responsible for the immediate change of the initial password and the definition of the password for the administrator access, as well as the creation of further accesses for employees, if necessary.

Access data must be treated confidentially.

4.3. DAKO reserves the right to delete the initial registration in the Customer database (Company Identifier) after 14 calendar days if DAKO does not have an applicable, legally valid Master Agreement within this period.

4.4. The Customer is responsible and liable for any use of the DAKOWeb Services and/or the relevant Services if the User obtains access to such Services through the Customer's Access Information, even if the Customer did not consent to or was unaware of such use, unless such use occurs after the expiration of three (3) business days after DAKO receives a written request from the Customer to block access and its Access Information.

5. Transmission of data

5.1. DAKO will provide the Mobile Communication Services necessary for the transfer of data between the On-Board Units and the DAKOWeb Platform. The Customer acknowledges that DAKO will provide these services subject to the performance of third parties providing these services and therefore cannot guarantee:

- i. that the Mobile Communications Services will be continuous and available throughout the Territory (for example, due to gaps in network coverage and due to the fact that such providers reserve the right to interrupt their services for maintenance purposes, security purposes, due to governmental orders, etc.);
- ii. the speed as such at which data such as tachograph, message or Location Data is transmitted.

5.2. For technical reasons, the On-Board Unit can only transfer data to and from DAKO's servers.

5.3. DAKO will provide the Customer with a SIM chip (or a technically equivalent device) for each On-Board Unit for which the Customer has acquired a usage licence in connection with the DAKOWeb Services, which the Customer shall use exclusively

- i. in combination with the On-Board Unit; and
- ii. for the purposes of transferring data between the Fleet or the Company and the DAKOWeb Platform.

5.4. The Customer shall indemnify, defend and hold DAKO and its Affiliates harmless from and against any loss, damage, fines, costs or expenses (including attorneys' fees) arising out of or in connection with any claim by a third party that the tachograph data or Location Data (or the content thereof) sent from or to the DAKOWeb Platform violates any applicable law or infringes the rights of such third party or is otherwise unlawful against any third party.

5.5. The Customer shall indemnify, defend and hold DAKO and its Affiliates harmless from and against any loss, damage, fines, costs or expenses (including legal fees) arising out of or in connection with any claim by any third party, including without limitation the relevant Mobile Communications Service Provider, that Customer's use of the SIM Chips (or any technically equivalent device) supplied by DAKO is not in accordance with the Agreement.

6. Charging

6.1. The Customer shall pay DAKO for the provision of the DAKOWeb Services the fees set out in the Price List. The currency used is the Euro (EUR). The fees apply plus

- i. value added tax and all other taxes, incidental costs, expenses that may be incurred; and
- ii. costs in connection with the purchase, rental or use of the items and services referred to in Articles 3.4 and 5.1 hereof (unless otherwise agreed).

6.2. Charges are fixed for the Minimum Term and may be adjusted by DAKO once in each calendar year thereafter, provided that DAKO gives the Customer at least three (3) calendar months' notice.

6.3. Unless otherwise agreed, DAKO shall collect all payments by SEPA core direct debit with a pre-notification period of one (1) day. Individual agreements deviating from this must be in writing.

If a collection is unsuccessful:

- i. there is a breach of this agreement by the Customer without the need for a reminder and DAKO's claims against the Customer become without undue delay due and payable,
- ii. Customer shall pay interest from the date of default at the legal rate for legal transactions between entrepreneurs on the outstanding amounts, and all judicial and extrajudicial costs incurred by DAKO in connection with the collection and recovery of the overdue amounts shall be borne by the Customer,
- iii. DAKO reserves the right to suspend Customer's access to and use of the DAKO Web Services until all outstanding amounts (including interest and costs) have been paid; and
- iv. The costs of suspension and re-authorisation shall be borne by the Customer.

6.4. All payments to be made by the Customer shall be made without set-off or deduction.

7. Liability

7.1. In the event of a simple negligent breach of essential contractual obligations (cardinal obligations), DAKO's total liability is limited to the foreseeable damage typical for this type agreement. The parties agree that within the scope of these terms and conditions the agreement-typical foreseeable damage is limited to the net price paid or payable by the Customer in the calendar year preceding the calendar year in which the loss or damage occurred.

7.2. Liability is excluded in all other cases.

7.3. Nothing in this Article 7 or the whole of the Agreement shall limit or exclude DAKO's liability in respect of loss or damages

- i. which are caused by DAKO or one of its legal representatives or vicarious agents intentionally or through gross negligence
- ii. arising out of injury to life, body or health of any person caused by DAKO or any of its legal representatives or agents,
- iii. for which DAKO is liable due to the German Product Liability Act (*Produkthaftungsgesetz*) or
- iv. due to the absence of a guaranteed quality.

7.4. Claims for compensation of expenses or damages which are not made within twelve (12) months after the end of the year in which the expense or damage occurred and the Customer became aware or should have become aware of DAKO as (possible) infringer are excluded, unless the liability is based on an intentional act, in which case the statutory limitation rules apply.

7.5. Any statutory warranties or other conditions not expressly stated in this Agreement are excluded to the extent permitted by law.

8. Force majeure

In cases of force majeure, such as in particular fire damage, floods, strikes, lawful lockouts and epidemics (including epidemics and pandemics) insofar as a risk level of at least "moderate" is defined by the Robert Koch Institute (Germany), the party affected thereby shall be released from the obligation to deliver or accept for the duration and to the extent of the effect.

The party released from the obligation agrees to do everything reasonable to overcome or circumvent the force majeure in order to be able to fulfil its obligations under the agreement.

The aforementioned principles apply equally in the case of virus attacks and other attacks by third parties on the DAKO platform, insofar as these take place or have taken place despite compliance with the usual care in protective measures.

9. Fair use principle

9.1. By agreeing to these Terms and Conditions for the DAKOWeb Service, the Customer agrees to the fair use principle as set out in Article 9. The aim of the DAKO fair use principle is to ensure great value, high quality and reliability of the DAKOWeb Services.

9.2. Since many customers access the shared network of our DAKOWeb Services at peak times, DAKO has a fair use principle. The vast majority of DAKO's Customers use the DAKOWeb Services considerably so that the shared network capacity is not overused. Very few of our customers use the DAKOWeb Services inappropriately, for example by running automated systems that generate heavy messaging traffic over the DAKOWeb platform. This leads to high data consumption. As a result of this excessive usage, the quality of DAKOWeb Services suffers for all Users. Through the fair use principle, we regulate inappropriate and/or excessive use and ensure that the DAKOWeb Services can be used by everybody.

9.3. If the Customer regularly uses the DAKOWeb Services inappropriately and/or excessively, and DAKO believes that such use is interfering with the DAKOWeb Services, DAKO will notify Customer and require Customer to change its usage patterns. If the Customer continues to use the DAKOWeb Services inappropriately, DAKO reserves the right to suspend the DAKOWeb Services in whole or in part or to terminate the Agreement unilaterally by written notice to the Customer.

9.4. The principle of fair use applies to all Customers, but will only apply if the Customer is one of a small group of those who use the DAKOWeb Services unreasonably or excessively

10. Data protection

10.1. The parties shall at all times comply with their respective obligations under the Data Protection Laws.

10.2. Without prejudice to the generality of Article 10.1 of these Terms and Conditions for the DAKOWeb Services, the Customer shall ensure that all necessary notices and the appropriate legal basis are in place to enable the transfer of Personal Data to DAKO to the extent permitted by law during the Agreement term and for the purposes set out therein.

10.3. The Parties agree that the Customer will respond to requests from Data Subjects and supervisory authorities regarding the processing of Personal Data.

11. Intellectual property

11.1. All intellectual property rights in the DAKOWeb Services, the DAKOWeb Sites, the DAKO Platform and the Products shall remain vested in DAKO. The use of the Intellectual Property as set out in the Agreement shall not at any time confer on Customer any right, title or interest in or to such Intellectual Property.

11.2. Customer (I) shall not encourage or permit any third party to infringe or compromise DAKO's Intellectual Property Rights; (II) without prejudice to any other rights of DAKO, shall indemnify DAKO for any loss suffered by DAKO as a result of Customer's or User's use of DAKO's Intellectual Property Rights unless such use is in accordance with the terms of the Agreement; (III) shall not alter in any way the packaging or labelling of any Products supplied by DAKO unless such alterations have been approved in writing in advance by DAKO; (IV) shall not alter, remove, counterfeit or affix a different name to any trademark, logo, design or symbol on any Product or its packaging unless DAKO has consented in writing to such alteration, removal, counterfeiting or affixing; (V) shall not use any trademark to the detriment of the distinctive character or validity or goodwill of DAKO; (VI) must not use the Trademarks, other than in relation to the Products, on or in connection with any other products or services; (VII) must not use the Trademarks in any way in any name, trademark or logo of Customer, whether or not such name, trademark or logo is used in connection with the performance of any Agreement; (VIII) must not use any name, trademark, logo, design or symbol in such a way that it resembles a trademark and confusion and misleading may result; (IX) must ensure that all references to and use of the trademarks have been approved by DAKO; (X) must not challenge the validity or enforceability of DAKO's intellectual property rights or its right to use its intellectual property rights.

11.3. If Customer directly or indirectly disputes DAKO's Intellectual Property Rights or takes any action that jeopardises or restricts DAKO's right to use the DAKOWeb Services, the DAKOWeb Sites, the DAKO Platform or the Products, or the value of any Intellectual Property Rights associated therewith, DAKO shall be entitled to terminate this Agreement immediately.

11.4. Customer shall refrain from taking any action that, in DAKO's opinion, is or may in the future be detrimental to DAKO's business or to the marketing of DAKO's Products.

12. Term, termination and written form requirement

12.1. The Agreement shall come into force as soon as it has been duly signed by both parties.

Unless otherwise agreed in individual cases, contracts for services of the DAKOWeb Services can be terminated with a notice period of two (2) months to the end of the month.

The effectiveness of the termination of the Agreement requires the timely receipt of the termination notice in text form or in a documented electronic format.

In case of doubt, the Customer bears the burden of proof of the timely receipt of the termination letter by DAKO.

12.2. Each party is entitled, without prejudice to its other rights hereof, to terminate the agreement with immediate effect by written notice of termination if:

- i. the other party fails to observe or comply with any material provision hereof, including failure to make or delay in making payments, and such default or breach (if curable) is not cured within twenty (20) calendar days after written notice specifying the breach and requesting that the same be cured,
- ii. one of the following events occurs:
 - a. the existence of a winding-up petition by the other party;
 - b. the other party is the subject of a winding-up decision or an effective order has been made to wind up the other party;
 - c. the making of an application for the appointment or assignment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect of the other party; and
 - d. appointment of a receiver, administrative receiver, administrator or similar officer over the whole or any part of the other party's property or undertaking;
 - e. the other party enters into a comprehensive composition or arrangement with its creditors or an assignment for the benefit of its creditors or similar arrangement;
 - f. the other party goes into liquidation;
 - g. the other party ceases to be able to meet its liabilities or otherwise becomes insolvent; or
 - h. the other party ceases or threatens to cease to carry on business; or
- iii. there is a delay or failure to perform under this Agreement for a period exceeding three (3) months resulting from a Force Majeure Event.

12.3. Any amendments or additions shall only be effective if agreed in writing. This shall also apply to any amendment of this written form requirement.

13. Data storage period

13.1. DAKO shall store driver card, tachograph and Location Data transmitted by the Customer on its servers for twelve (12) months as standard.

The data of the "Digital Driver and Vehicle File" are stored in deviation from this without any time limit, unless the customer has set the relevant entity (driver / vehicle) to "inactive", in which case the resulting storage period is twelve (12) months.

13.2. Any storage period deviating from this term is mentioned in the applicable service descriptions.

13.3. This storage period may be extended at the express request of the Customer against payment of a fee set out in the Price List.

14. Release and deletion of data

14.1. Upon the end of the Agreement, DAKO provides the data created and/or transmitted by the Customer without request one (1) month completely for the Customer for download via the DAKO-platform or the used component. The data will be made available in a delimiter file (csv) or as a tachograph container (ddd) and the data of the "Digital Driver and Vehicle File" in the respective formats uploaded by the customer.

14.2. Alternatively, the Customer has the option of exporting its stored data in full using its admin account until the expiry of the term specified in 14.1.

14.3. Within one (1) month after the end of the Agreement, DAKO will completely delete all data stored by the Customer on DAKO's servers.

15. Final provisions

15.1. 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.

15.2. 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.

15.3. 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.

15.4. 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, by e-mail or via message requiring confirmation in the DAKOWeb Services portal at least six weeks before they come into force. The amendments shall become effective if the customer does not object in writing, by e-mail or by setting a corresponding entry in the portal of the DAKOWeb Services 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 the resulting legal consequences in the notification of amendment.

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.

15.5. 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>.

15.6. 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.