

# In-Vitro Diagnostics Terms incl. CPR (“IVD-CPR-Terms”)

(Version: 17.05.2024)

These IVD-CPR-Terms govern the provision of products of the in-vitro diagnostic portfolio distributed by Siemens Healthineers and related services in addition to (i) the Commercial Form and (ii) the General Terms and the Supplemental General Terms (together “Terms”). These IVD-CPR-Terms shall be read as complementary to the Terms and prevail in case of conflict.

## 0. Definitions

- 0.1. Wherever the following terms are used in the Terms, when applied in relation to IVD-Deliverables and related services, they shall be interpreted and understood to have the meaning ascribed to them herein.
- 0.2. “Business Model” means the combination of Deliverables, pricing method and invoicing concept defined in the Commercial Form, such as Cost per Test, Cost per Reportable Result.
- 0.3. “Customer Commitment” means a minimum purchase commitment, a minimum order volume commitment, a commitment to pay for a minimum number of Reportable Results during a specified period, or a similar commitment of Customer as may be included in the Commercial Form.
- 0.4. “Defect” means, for Hardware, any defect in material or workmanship or non-conformance with the Specifications; for Software and IVD-Consumables, any failure to perform substantially in accordance with the Specification or a statement of work; and, for Services, any failure to perform the Services in a professional, competent, and businesslike manner.
- 0.5. “First Productive Use” means Customer’s first processing of a sample utilizing Deliverables where such sample produces what would qualify as a Reportable Result.
- 0.6. “Instructions for Use” means the information provided by the manufacturer of a medical device to inform the user of a device’s intended purpose and proper use and of any precautions to be taken, e.g. as Hardware operating manual, package insert or in electronic format.
- 0.7. “IVD-Consumables” means any Deliverable that is intended for consumption in the course of the processing of samples. It includes reagents, calibrators, controls, system fluids and all other consumables delivered by Siemens Healthineers.
- 0.8. “Reportable Result” means any test result generated using Siemens Healthineers Deliverables and reported to physicians for inclusion in patient charts and any results from proficiency samples, clinical studies, and health fairs. The following are not considered to be “Reportable Results” and will not be included on invoices: auto-repeats, operator-requested repeats, open channels, correlation/cross-over testing, quality control, calibration, troubleshooting, out-of-range results, and error-tagged results.
- 0.9. “Specification(s)” means Siemens Healthineers’ summary description of the function and properties of the Deliverables included or referenced in the Commercial Form and/or Instructions for Use. Specification excludes all marketing materials and promotional information.
- 0.10. “Target Efficiency Ratio” means a ratio defined in the Commercial Form of the amounts of IVD-Consumables delivered by Siemens Healthineers and the (i) expected amounts of related IVD-Consumables, or (ii) number of tests performed using a combination of such IVD-Consumables, charged at a total price which includes the not separately charged IVD-Consumables, or (iii) expected number of Reportable Results generated using such IVD-Consumables.

## 1. Siemens Healthineers owned Hardware/IVD-Consumables

If the Business Model includes Customer’s use of Hardware and/or IVD-Consumables owned by Siemens Healthineers, as a lease or otherwise, the following applies:

- 1.1. Unless explicitly agreed otherwise, Hardware provided by Siemens Healthineers for Customer’s processing of samples at Customer’s premises remains in Siemens Healthineers ownership. Payment of leasing or usage fees does not give rise to a claim to transfer ownership to Customer. Siemens Healthineers is entitled to transfer ownership to Hardware and IVD-Consumables located at Customer’s premises at any time to any third party in its sole discretion.
- 1.2. Customer is responsible that IVD-Consumables are (i) stored in accordance with the Instruction for Use, (ii) handled with adequate care at least at the level Customer applies with regards to its own similar goods, and (iii) used efficiently and in accordance with Siemens Healthineers’ instructions or guidance, if any, avoiding unnecessary waste.
- 1.3. Customer undertakes to (i) operate the Hardware and use IVD-Consumables solely for Customer’s business purposes and own use and in accordance with the User Documentation, (ii) keep the Hardware in good repair, condition and working order, ordinary wear and tear excepted, (iii) ensure that only currently trained personnel will operate the Hardware, (iii) carry out all operator routine maintenance for Hardware in accordance with the User Documentation, (iv) not relocate, take out of operation permanently or make alterations to the Hardware without the prior written consent of Siemens Healthineers, (v) inform Siemens Healthineers without undue delay of functional errors or damage to the Hardware, and (vi) provide reasonable access to Siemens Healthineers and its agents to inspect the Hardware and stored IVD-Consumables. Any costs arising from non-adherence to the above undertaking, improper use, neglect, accidents, interventions, modifications, or repairs of the Hardware without Siemens Healthineers’ prior consent shall be borne by the Customer.
- 1.4. Siemens Healthineers may, but is not obligated to, retrofit components or make changes to the Hardware, e.g. to improve reliability, at Customer’s premises in its discretion and at Siemens Healthineers expense, provided that such changes do not prevent Siemens Healthineers’ ability to comply with its contractual obligations and do not adversely affect performance. Customer shall provide reasonable access to Siemens Healthineers to its premises and the Hardware to make such changes.
- 1.5. Customer shall not permit or allow any attachment, lien, security interest, or other encumbrance to be filed against Siemens Healthineers’ owned Hardware and IVD-Consumables by any individual or entity other than Siemens Healthineers or its assignees. Customer shall inform Siemens Healthineers immediately of any circumstances that may impact Siemens Healthineers title and rights to its Hardware and IVD-Consumables, including loss, destruction, other loss of value, seizure or assertion of rights by any third party, Customer’s insolvency or any proceeding under bankruptcy or similar laws is initiated by or against Customer.
- 1.6. Customer will maintain (i) all risk property insurance, including fire, tap water, storm and natural hazards, covering the Hardware up to the replacement cost value, except for ordinary wear and tear, and (ii) a commercial general liability insurance with a combined single limit of at least \$1,000,000, covering any potential liability of Customer towards Siemens Healthineers under the Agreement. The insurance required herein shall be primary and non-contributory to any insurance maintained by Siemens Healthineers. Siemens Healthineers shall be provided

at least 30 days prior written notice if the required insurance is cancelled or materially altered.

## 2. Warranty

The warranty provisions of the Terms shall apply with the following exceptions: (i) in relation to Section 4.1 of the Supplemental General Terms Siemens Healthineers warrants that perishable Deliverables are free from Defects before the expiration date appearing on the applicable packaging, (ii) in addition to the reasons stated in Section 4.6 of the Supplemental General Terms, the warranty shall also not apply to conditions resulting from Customer's storage of Deliverables not in accordance with the Instruction for Use or from operation of Deliverables outside specified environmental parameters, and (iii) no warranty shall apply with regard to Hardware provided by Siemens Healthineers for Customer's processing of samples at Customer's premises that remains in Siemens Healthineers ownership.

## 3. Transfer of Title

If the applicable Business Model requires transfer of title to Deliverables to Customer, title shall pass upon Siemens Healthineers' receipt of full payment for the relevant Deliverable, prior to which Customer may not resell, transfer, pledge, or grant a security interest in such Deliverable.

## 4. Acceptance

- 4.1. The provisions of the Terms governing Customer acceptance shall apply, provided that the term "First Productive Use" shall have the meaning defined in these IVD-CPR-Terms.
- 4.2. If the Customer requires any test method validation that exceeds the basic/complimentary validation allowance specified in the Commercial Form, such additional testing shall not be considered an additional condition for Customer acceptance of the Deliverables and shall be carried out by Siemens Healthineers only subject to explicit agreement and at Customer's expense.

## 5. Ordering, Delivery and Payment

- 5.1. Unless stated otherwise in the Commercial Form Siemens Healthineers will ship all Deliverables free to Customer's address specified in the Commercial Form, subject to the minimum single order volume stated in the Commercial Form. In the following cases Siemens Healthineers may charge additional administrative fees:
  - (i) small quantity surcharge as stated in the Commercial Form per order below the minimum single order volume,
  - (ii) early deliveries, if explicitly ordered by Customer, of the value stated in the Commercial Form per delivery.
  - (iii) orders not received via Siemens Healthineers' electronic ordering tools (e.g. <https://shop.healthcare.siemens.com>), such as via telephone or telefax, of a value per order as stated in the Commercial Form.
  - (iv) all special deliveries outside of Siemens Healthineers' routine shipment schedules, based on cost per additional kilometer.
- 5.2. Siemens Healthineers may choose the delivery route and shipment method in its sole discretion. Customer shall bear all additional costs caused by diverging shipment request.
- 5.3. Siemens Healthineers may suspend all deliveries if the Customer is in arrears with its payment obligation.
- 5.4. Siemens Healthineers may invoice monthly in advance any leasing, usage, service or other fixed recurring fee. Fees that are variable depending on the extend of use, quantities of deliveries or otherwise may be invoiced as defined in the Commercial Form, unless down payments are agreed based on the predicted volumes. If down payments are agreed, Customer shall pay monthly installments that will be reconciled quarterly or after deviating periods of time defined in the Commercial Form, if any, with payments due based on actual performance and Siemens Healthineers will issue an according credit or debit note to Customer.

- 5.5. If due to objective circumstances, such as repeated or continuous failure by Customer to make payment when due, Siemens Healthineers has reasonable doubt as to Customer's ability to make payments, Siemens Healthineers may condition the provision of any Deliverables to pre-payment by the Customer.

## 6. Contract Compliance Monitoring

- 6.1. If according to the Commercial Form, a Customer Commitment or a Target Efficiency Ratio is applicable, Siemens Healthineers may, on an annual basis or at its discretion, more frequently, periodically review at Customer's premises and/or via remote access, whether Customer (i) has, as applicable, made sufficient purchases or generated a sufficient number of Reportable Results, to meet the pro-rata portion of the Customer Commitment associated with the period under review, or (ii) achieved the agreed Target Efficiency Ratio. The frequency of the review shall not be deemed as a waiver of any of the rights or remedies contained herein.
- 6.2. If Customer's purchases or performance for the period under review is insufficient to achieve the Customer Commitment or the Target Efficiency Ratio is missed due to overuse of IVD-Consumables by more than 10% (collectively "Performance Failure"), Siemens Healthineers may, in addition to such other rights as are available, take one or more of the following actions to compensate for the Performance Failure: (i) immediately implement a price increase for any and all Deliverables, including fees for Services, for any subsequent period, and/or (ii) invoice Customer for the difference between Customer's amounts actually paid and the amounts payable if the Customer Commitment would have been achieved, and/or (iii) invoice Customer for IVD-Consumables shipped without separate charge in excess of the amounts expected according to the Target Efficiency Ratio, (iv) extend the term for as long as necessary to make up the shortfall, (v) request Customer to pay the purchase price defined in the Commercial Form, if any, in exchange for the transfer of title to Hardware utilized by Customer and up until then owned by Siemens Healthineers and/or (vi) terminate the Agreement pursuant to Section 9. The above remedies shall not apply to the extent the failure to comply with the Customer Commitment or the Target Efficiency Ratio is attributable to Siemens Healthineers as documented on a case-by-case basis by Customer and confirmed by Siemens Healthineers.

## 7. Specific Terms for CPR Business Model

The following specific terms shall apply, if the invoicing by Siemens Healthineers is based on Reportable Results according to the applicable Business Model designated in the Commercial Form.

- 7.1. As a basis for Siemens Healthineers' invoices, Customer shall furnish Siemens Healthineers monthly with a truthful net statistic of Reportable Results generated by Customer via means reasonably determined by Siemens Healthineers by no later than the fifth day of the month following the relevant reporting period. If necessary, Customer and Siemens Healthineers will work together during the Hardware installation process to prepare Customer to transmit such statistic. Siemens Healthineers may, in its sole discretion, conduct a review to verify a statistic of Reportable Results transmitted by Customer, including a review of the quantities of IVD-Consumables in Customer's inventory (which may include an on-site visit to Customer's facility by Siemens Healthineers to measure inventory). Customer shall fully cooperate in such review, including granting access to its premises to Siemens Healthineers.
- 7.2. At the beginning and the end of the term of the Agreement, Siemens Healthineers and Customer shall jointly take stock of the inventory of those products in Customer's stores that are IVD-Consumables under the Agreement. Any such products held in Customer's inventory and owned by Customer at the initial inventory with a remaining shelf life that allows full consumption in the ordinary course of Customer's laboratory operations may be purchased by Siemens Healthineers, at

Siemens Healthineers' discretion, based on the prices agreed for IVD-Consumables. The resulting amount will be set off against subsequent invoices under the Agreement. Such purchased products, if any, shall subsequently qualify as delivered by Siemens Healthineers and all provisions of the Agreement relating to IVD-Consumables shall apply. The reagents remaining in the laboratory at the time of the final inventory at the end of the term duration will be priced accordingly and subsequently purchased by Customer, unless Customer is transitioning to a new contract with Siemens Healthineers covering the provision of such IVD-Consumables. Towards the end of the term of the Agreement, Siemens Healthineers may decline delivery of IVD-Consumables ordered by Customer, if it is apparent that ordered quantities will not be needed for the remainder of the term based on previous ordering and consumption patterns of Customer and IVD-Consumables available in Customer's inventory.

7.3. Without prejudice to clause 10 (Termination), in case of a material breach of Customer's obligations hereunder as determined by Siemens Healthineers acting reasonably and at Siemens Healthineers, the parties shall use reasonable endeavours to change the applicable Business Model to a Cost Per Test Business Model, applying the purchase prices for Deliverables stated in the Commercial Form or, in case not stated, purchase prices to be reasonably calculated by Siemens Healthineers on the basis of the prices previously applicable under the Reportable Results Business Model.

#### 8. Subscription Delivery

If according to the Commercial Form Customer agreed to apply a subscription-based delivery of IVD Consumables, Siemens Healthineers shall deliver IVD Consumables as per the agreed, fixed delivery schedule indicated on the Commercial Form based on automatically generated orders. The Parties shall jointly review and adjust as appropriate the quantities of IVD Consumables to be so delivered on a quarterly basis. Siemens Healthineers reserves the right to terminate the subscription-based delivery and any benefits to the Customer directly linked thereto, such as price discount amount, at any time in its sole discretion, reverting to delivery upon individual Customer order.

#### 9. Term

This Agreement shall become effective, and the Parties shall be subject to its terms as of the date it is fully executed, provided that any obligations of either Party requiring completed installation shall only commence upon completion of the applicable acceptance procedure or agreed testing period. The term of the Agreement defined in the Commercial Form shall start upon Customer's First Productive Use. Following the initial term, this Agreement shall automatically renew for consecutive three-month periods, unless terminated at the end of the initial term or any renewal term by either Party with six weeks prior written notice.

#### 10. Termination

10.1. Irrespective of other termination rights stipulated by the Agreement, if a Party materially breaches this Agreement and does not remedy such breach within 30 days from receipt of written notice specifying the breach by the other Party or, if a plan to remedy such breach has not been mutually agreed within the same period, the non-defaulting Party shall be entitled to terminate that distinct part of the Agreement to which such breach is limited, if any, or otherwise terminate the Agreement in full. It shall always qualify as a material breach that allows for a full termination by Siemens Healthineers, if:

- (i) Customer falls into arrears with an aggregated amount of payments at a value of at least two months projected on the basis of monthly deliveries and services contractually committed or otherwise mentioned in the Commercial Form;
- (ii) Customer fails to adhere to its obligations regarding Hardware/IVD-Consumables owned by Siemens Healthineers according to Section 1 of these IVD-CPR-Terms;
- (iii) Customer becomes insolvent, ceases doing business, assigns this Agreement in full or partially for the benefit of creditors, a trustee or receiver for Customer or for a substantial part of Customer's property is appointed or any proceeding under bankruptcy law is initiated by or against Customer;
- (iv) Customer achieves less than 80 percent of the Target Efficiency Ratio, if any, during a period of at least six months; or
- (v) Customer fails substantially to achieve the Customer Commitment, if any.

10.2. In the event of a termination under Section 10.1. by Siemens Healthineers, Customer shall be obligated to pay to Siemens Healthineers (i) any unpaid principal balance on the Hardware and applicable taxes, as determined by Siemens Healthineers, plus (ii) all other amounts due and unpaid, plus (iii) the difference between the applicable Commitment Amount for the entire term of the Agreement and the total amount of payments actually made by the Customer with regard to performance relevant to the Customer Commitment, plus (iv) any costs and expenses, including reasonable attorney's fees, which are incurred by Siemens Healthineers as a result of the relevant Customer default. If addition of the amounts listed in (i) through (iv) results in any redundancy, Customer will only be responsible for paying each amount one time.

10.3. At expiration or termination of the Agreement, Customer shall permit Siemens Healthineers to enter Customer's premises and recover possession of any Hardware or IVD-Consumables owned by Siemens Healthineers.

#### 11. Changes in Law

If applicable laws, rules, regulations, engineering standards, codes of practice, clinical or diagnostic guidelines, decisions or guidance issued by courts or public authorities are issued or changed after the Agreement, or part thereof, comes into effect that is subject to recurring fees (such as agreements for continuous deliveries or services), Siemens Healthineers may, in its reasonable discretion, adjust the Agreement and/or the Deliverables to reflect the effects of such changes.

#### 12. Change of Control

Customer must provide Siemens Healthineers with prompt written notice of any change in ownership, change in control or operations or any other change which would affect the ordering, shipment, invoicing or payment of Deliverables.