

**GENERAL TERMS AND CONDITIONS**  
**OF**  
**INDIVU**T**EST GMBH**  
**("INDIVU**T**EST" HEREIN)**

**§ 1 Preamble**

(1) IndivuTest offers its customers preparation, storage and research-based tumor analysis of cell samples (tissue/blood) that are taken in a controlled manner.

(2) The General Terms and Conditions apply to all services comprised by the contract relationship, including consulting services and any follow-up and supplemental orders. Customers for the purpose of these terms and conditions are natural persons of both genders ("**Customer**" herein) with whom contractual relations exist or will exist.

**§ 2 Subject matter of the order**

Depending on the individual request in conjunction with these General Terms and Conditions, the subject matter of the order may be the preparation and storage of samples, tumor analysis and/or the monitoring of therapeutic success through further blood analyses. IndivuTest is entitled to collaborate with other laboratories to render the services. Specifically:

*(1) Sample preparation and storage:*

Upon submission of the customer's declaration of consent and agreement on the place and time of the operation/biopsy, a specially trained nurse engaged by IndivuTest will be present at the drawing and prepare and conserve the drawn tissue in accordance with the certified standard under ISO 9001:2008; blood samples are refrigerated.

The conserved tissue samples and blood plasma are stored in specially secured rooms with constant temperature control and backup systems in case of power outages or the occurrence of other perils.

*(2) Research-based tumor analysis:*

If it is part of the order, a tissue and blood analysis is performed to identify potential targets for conducting individualized cancer treatment. In the course of this, various technologies may be combined depending on the requirements, particularly:

1. Sequencing of the tumor DNA ("next generation sequencing")

2. Verification of specific targets with the aid of automated staining methods for protein identification through antigen-antibody reactions ("immunohistochemistry")
3. Verification of the activity of protein molecules which are of importance for the regulation of cancer cell growth ("phosphoprotein analysis")

IndivuTest presents the findings in writing, assesses the results of the analyses, develops treatment recommendations, summarizes the overall result in a written report and delivers it to the customer's treating physician.

The analytical methods are based not on clinical experience, but on inferences drawn from scientific experimental research. It is therefore not proven and not foreseeable whether an individualized cancer treatment based on this can provide a better chance of recovery for the customer.

*(3) Verification of tumor DNA in the blood for treatment monitoring:*

Based on the data for the sequencing of the tumor DNA and using blood plasma samples, if it is included in the request, IndivuTest will conduct further blood analyses in collaboration with the partner enterprise Sysmex-Inostics Inc. for monitoring of therapeutic success.

**§ 3 Scope of order**

(1) All agreements must be in written form. No oral side agreements have been made.

(2) An order comes into existence when an order form signed by the customer is received at IndivuTest.

(3) IndivuTest will fill the order as quickly as possible. No fixed delivery deadlines exist unless confirmed individually in writing.

(4) In individual cases, there may be occasions when a tumor analysis cannot be performed if not enough cancer cells are present in the tissue sample that has been drawn. In such case, IndivuTest is exempted from the duty to perform. The customer only has to pay expenses which are incurred up to the determination of impossibility.

(5) If sample storage is ordered, it is offered for one year, and the flat fee for obtaining and storing the samples includes payment for such period. Storage may be extended for another year in each case through receipt of payment of the annual fee no later than eight weeks after invoicing. Receipt of the fee at IndivuTest is controlling for compliance with the deadline.

(6) If the customer's respective declaration of consent has been received, ownership of the customer's samples passes to IndivuTest at the end of the storage period. IndivuTest is entitled to use the samples for scientific purposes, but must anonymize the appurtenant data.

#### **§ 4 Data privacy**

(1) IndivuTest is entitled to store and process the customer's data if such is necessary for filling the order. The provisions of the Data Protection Act (Datenschutzgesetz) apply. Personal data in particular is conscientiously protected against loss, destruction, tampering, manipulation and unauthorized access or disclosure.

(2) Upon expiration of the retention period, the cell samples and appurtenant data are destroyed unless the samples continue to be used for scientific purposes in anonymized form if the customer's respective declaration of consent has been received (see § 3 (6)).

#### **§ 5 Due date of fee**

Unless otherwise expressly agreed, the fee is due upon invoicing of the customer. During default, the customer shall pay interest on the debt at the statutory rate.

#### **§ 6 Liability**

(1) The customer may not claim damages for deficient performance until IndivuTest has refused to attempt to cure it or the cure has failed. This does not affect customer's right to claim further damages.

(2) Irrespective of the legal grounds on which they are based, IndivuTest shall only be liable for losses of the customer to the extent they have been caused by IndivuTest or its agents intentionally or in a grossly negligent manner, unless a material contractual obligation has been breached. A material contractual obligation is one which must be fulfilled before the agreement can be properly performed and upon whose fulfillment the customer has relied or could rely.

(3) Unless they were occasioned through intent, the customer's claims for damages are limited to losses that are typical of contract.

(4) The liability of IndivuTest is limited to direct damages. Liability for indirect or consequential damages is excluded altogether unless the loss is based on intent or gross negligence.

(5) To the extent the liability of IndivuTest is limited, this is also true for the personal liability of its employees, workers, staff, representatives and/or agents.

(6) IndivuTest has liability in accordance with the statutory provisions for injury to life, limb and health. Liability under the Product Liability Act (Produkthaftungsgesetz) is similarly unaffected.

(7) Acts of God, interruptions of operations, labor disputes or other obstacles for which IndivuTest or its agents are not responsible release IndivuTest from the obligation to perform for the duration of the disruption and its consequences. Should performance become unreasonable as a result of the disruption, either party is entitled to rescind the agreement.

#### **§ 7 Final provisions**

Even if individual clauses above should be legally invalid, this shall not affect the binding nature of the remaining parts of the contract. This does not apply if adherence to the agreement presents an unreasonable hardship for a party. The parties shall replace invalid provisions with ones that come as close as possible to the economic purpose of the invalid provision.