

# General Terms and Conditions for Research and Development contracted to Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V.

## Version 2002/II

Fraunhofer-Gesellschaft pursues exclusively and directly non-profit objectives, conducting contractual research in the field of applied research and breaking new ground in doing so. The following General Terms and Conditions reflect the nature of these objectives.

### 1. Scope of application

- 1.1 The following General Terms and Conditions shall apply to all research and development projects contracted to Fraunhofer-Gesellschaft. Divergent, contrary, or additional terms requested by the client shall not form part of the contract without the prior written consent of Fraunhofer-Gesellschaft. Where the following General Terms and Conditions do not provide any other regulation of the matter, the provisions of service contract law (Arts 611 et seq. German Civil Code) shall apply to all research and development contracts.
- 1.2 Where the following General Terms and Conditions provide the barring or limitation of damage liability of Fraunhofer-Gesellschaft, its legal representatives or agents, such barring or limitation shall not apply to liability for damages from injury to life, body, or health.

### 2. Object of the contract, period of performance

- 2.1 The research and development project shall comprise the work defined in the offer of Fraunhofer-Gesellschaft.
- 2.2 Where the offer or the research and development contract includes a period of performance or deadlines, these shall only be deemed to be binding after express acknowledgement by Fraunhofer-Gesellschaft. Should Fraunhofer-Gesellschaft recognise that the binding period of performance or the binding deadline cannot be met then it shall notify the client of the reasons for delay and shall agree on an appropriate adjustment with the client.

### 3. Fee

- 3.1 The fee shall be a fixed price. Notwithstanding this, the contracting parties may agree that the fee will be charged according to cost, where applicable with a maximum cost limit. VAT shall be added to the fee in each case, if applicable.
- 3.2 Fraunhofer-Gesellschaft shall immediately notify the client if it foresees that the result intended by the research and development contract cannot be achieved at the agreed fee. Fraunhofer-Gesellschaft shall simultaneously propose an adjustment of the fee to the client. Should this be necessary for reasons which were neither foreseeable when the contract was concluded nor the responsibility of Fraunhofer-Gesellschaft and if no other agreement is reached with the client, then the adjustment proposed by Fraunhofer-Gesellschaft shall be binding.

### 4. Payments

- 4.1 Payments shall be due according to the agreed payment schedule. In the absence of a payment schedule, the due date shall be the date stated in the invoice. Payments shall be made without a cash discount and with an indication of the invoice number and the performing Fraunhofer-Institute to the account designated by Fraunhofer-Gesellschaft.
- 4.2 Setoff against claims of Fraunhofer-Gesellschaft shall only be allowed if the counterclaim is uncontested or if it is the subject of a final court decision.
- 4.3 The client may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

### 5. Result of Research and Development, Rights of Use

- 5.1 The research and development result shall be made available to the client after completion of the project in accordance with the offer.
- 5.2 The client shall be granted a non-exclusive, royalty-free right of use for the purpose of application on which the contract is based to inventions generated during the performance of the project as well as to industrial property rights filed by and granted to Fraunhofer-Gesellschaft for these inventions. The client shall reimburse Fraunhofer-Gesellschaft an appropriate part of the costs for registration, maintenance and defence of the industrial property rights to be agreed upon between the contracting parties and shall pay, in case of use of the inventions, a comprehensive employee inventors fee, the amount of which shall be agreed in each individual case.
- 5.3 Upon request and in lieu of the right according to Section 5.2, the client shall be granted an exclusive, royalty bearing right of use for the purpose of application on which the contract is

based to inventions generated during the performance of the project as well as to industrial property rights filed by and granted to Fraunhofer-Gesellschaft for these inventions. The request shall be made in writing addressed to Fraunhofer-Gesellschaft, at the latest three months after the client's notification of the invention. Fraunhofer-Gesellschaft shall insofar retain a non-exclusive, royalty-free right of use for purposes of research and development.

- 5.4 The client shall be granted a non-exclusive, royalty-free right of use for the purpose of application on which the contract is based to copyright protected works, databases, and know-how created during the performance of the project. The granting of an exclusive right of use for the purpose of application on which the contract is based shall require a separate agreement.
- 5.5 Inventions jointly achieved by the contracting parties during the performance of the project (joint inventions) may be used and licensed by each contracting party without any financial compensation. The contracting parties shall each bear a to be agreed portion of the costs for registration, maintenance and defence of the industrial property rights in question. In the case of copyright protected works jointly created during the performance of the contract (joint authorship) Section 5.5, sentence 1 shall apply correspondingly.
- 5.6 If during the performance of the contract already existing industrial property rights or copyrights of Fraunhofer-Gesellschaft are used which are required for the client's commercialisation of the result of the research and development project, then the client shall be granted a non-exclusive, royalty-bearing right of use under a separate agreement unless other obligations entered into by Fraunhofer-Gesellschaft preclude this.

### 6. Third party property rights

- 6.1 Fraunhofer-Gesellschaft shall immediately notify the client of any third party industrial property rights of which it becomes aware during the performance of the contract and which could preclude the client's use agreed pursuant to Section 5. The contracting parties shall decide in joint consultation how such industrial property rights shall be taken into consideration in the further performance of the project.
- 6.2 In the case of infringement of third party industrial property rights Fraunhofer-Gesellschaft shall be liable under the provisions of Sections 7.2 and 8.4, sentence 1 if it has violated its obligation to notify the client. Notwithstanding the liability under Section 8, the client shall have no further claims against Fraunhofer-Gesellschaft.

### 7. Liability

- 7.1 Fraunhofer-Gesellschaft shall be responsible for applying scientific care and for complying with accepted scientific standards but not for actually achieving the research and development goal.
- 7.2 The liability of Fraunhofer-Gesellschaft, its legal representatives and agents in the case of violation of obligations and tort shall be limited to intent and gross negligence. Only in case of violation of essential contractual obligations (cardinal obligations) Fraunhofer-Gesellschaft, its legal representatives and agents shall also be liable in case of slight negligence. In any case, liability shall be limited to the foreseeable, contractually typical damages.
- 7.3 Should Fraunhofer-Gesellschaft neither fulfil the performance as agreed upon nor do so at the time due nor in the manner agreed upon, then the client may only demand compensation in lieu of performance if the client has unsuccessfully set an appropriate deadline for the performance by Fraunhofer-Gesellschaft including the statement that it would otherwise reject acceptance of the performance after the passing of that deadline.

### 8. Special conditions for delivery and work performance within the research and development project

- 8.1 Where Fraunhofer-Gesellschaft on the basis of an express commitment owes performance or delivery of work results corresponding to the accepted state-of-the-art as the result of research and development then in the case of defects the

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- relevant provisions for sales contracts (Kaufrecht) and contracts for work and services (Werkvertragsrecht) shall only be applicable subject to the following Sections.
- 8.2 Should the result of the research and development work generated by Fraunhofer-Gesellschaft prove to be defective, then Fraunhofer-Gesellschaft shall first be given the opportunity to supplementary performance - depending on the nature of the result of the research and development, the defect and other circumstances also repeatedly - either by means of remedying the defect or substitute delivery.
- 8.3 Should Fraunhofer-Gesellschaft reject supplementary performance or if supplementary performance cannot be achieved or the client cannot reasonably be expected to accept supplementary performance, then the client may either terminate the contract or demand reduction of the fee owed (reduction) or damages. The right to termination may be exercised only in case of a serious defect. Such right lapses if the client does not declare the termination of the contract within 14 days after receiving notification of rejection or failure of supplementary performance or at the latest 14 days after the date at which it is recognised that the client cannot reasonably be expected to accept supplementary performance. Fraunhofer-Gesellschaft shall pay damages only under the further conditions of Section 7.2 and, if Fraunhofer-Gesellschaft has rejected supplementary performance, Section 7.3 shall apply also.
- 8.4 In the case of an infringement of third party intellectual property rights Fraunhofer-Gesellschaft shall only be liable if such rights apply in the Federal Republic of Germany, if the client uses the research and development result in a manner consistent with the contract, if a court decision based on infringement by the client of third party intellectual property rights is rendered against the client, and if the client has immediately notified Fraunhofer-Gesellschaft in writing of the claims asserted by such third party. Supplementary performance under Section 8.2 will be carried out by Fraunhofer-Gesellschaft by either obtaining a contractual authorisation for the client's use or by modifying the result of the research and development that the relevant third party intellectual property rights are no longer infringed.
- 8.5 The client shall immediately examine the research and development result supplied by Fraunhofer-Gesellschaft and report any defects found without undue delay. Fraunhofer-Gesellschaft only warrants for recognisable defects if it has been notified thereof within a period of 14 days from the date of delivery.
- 8.6 Claims due to defects shall be statute-barred in accordance with the provisions of Section 9.
- 9. Statutes of limitation**
- 9.1 The claims of the client for breach of duty and tort shall be statute-barred within 12 months. This shall not apply where legislation prescribes longer periods of time in Arts 438, para 1, no 2, 479, para 1 (regress claim) and 634a, para 1, no 2, alt 1 (construction defects) German Civil Code or Fraunhofer-Gesellschaft is liable due to intent or gross negligence.
- 9.2 Should acceptance of the research and development result be agreed upon, the statute of limitations on claims due to defects pursuant to Section 9.1 shall commence upon acceptance, otherwise upon delivery.
- 9.3 Negotiations between the contracting parties over claims or over circumstances giving rise to claims shall suspend the statutes of limitation. The suspensive effect shall end if one of the contracting parties has not complied within four weeks with the request of the other contracting party to continue negotiations.
- 10. Retention of title**
- 10.1 The client shall only be granted ownership to the result of the research and development as well as the right of use according to Sections 5.2, 5.3, 5.4, and 5.6 after full payment of the agreed fee. Ownership and rights of use held by Fraunhofer-Gesellschaft may neither be mortgaged nor transferred as security.
- 10.2 In the event that the ownership of Fraunhofer-Gesellschaft to the result of the research and development lapses through combination, commingling, or processing it is already hereby agreed that the ownership to the combined object created in such a case shall, until full payment of the agreed fee, be proportionally assigned (invoiced value) to Fraunhofer-Gesellschaft.
- 10.3 In the event of onward sale of the result of the research and development, the client shall cede all rights in rem to onward sale to Fraunhofer-Gesellschaft until full payment of the agreed fee.
- 11. Confidentiality**
- 11.1 The contracting parties shall for the duration of the contract and for a period of five years after its termination not make accessible to third parties information of a technical or commercial nature disclosed to each other and declared to be confidential. This shall not apply to information known or generally accessible to the other contracting party or to the public, or information which becomes known or generally accessible to the public after disclosure without any involvement or fault on the part of the other contracting party, or correspond to information disclosed or made accessible to the other contracting party by an entitled third party, or independently developed by an employee of the other contracting party not in possession of the information disclosed.
- 11.2 Third parties within the meaning of this provision shall not include subcontractors of Fraunhofer-Gesellschaft if these have been entrusted with a part of the services by Fraunhofer-Gesellschaft within the context of the assignment and if they have been placed under an obligation of confidentiality.
- 12. Publication, advertising**
- 12.1 The client shall be entitled to publish the result of the research and development including identification of the author or the Fraunhofer-Institute involved only after prior consultation of Fraunhofer-Gesellschaft. Such consultation shall take into consideration that, for instance, dissertations, master's theses or applications, and/or registrations of intellectual property rights are not impaired. For purposes of advertising, the client may only mention the name of Fraunhofer-Gesellschaft or of the Fraunhofer-Institute involved with their express consent.
- 12.2 Publications by Fraunhofer-Gesellschaft relating to the purpose of application on which the contract is based and for which the client has been granted an exclusive licence as specified in Section 5.3, shall only be made after consultation with the client in due time prior to publication.
- 13. Termination**
- 13.1 Should no essential progress in work have been achieved within a significant period of performance then each contracting party shall be entitled to terminate the contract with one month notice to the end of a calendar month. However, termination is excluded within a six months period since the beginning of the contract. Except as provided in this Section 13, there shall be no further right of termination.
- 13.2 Each contracting party shall be entitled to terminate the contract with immediate effect for good cause.
- 13.3 Upon termination Fraunhofer-Gesellschaft shall submit within four weeks the result of the research and development achieved until expiry of the period of notice. The client shall be obliged to compensate Fraunhofer-Gesellschaft for costs incurred up to the expiry of the period of notice. Personnel costs shall be reimbursed as incurred up to the date of termination. In the event that the termination is due to a fault by one of the contracting parties, this shall not affect damage compensation claims.
- 14. Miscellaneous**
- 14.1 Ancillary understandings, amendments and supplements hereto must be made in writing.
- 14.2 Place of performance for Fraunhofer-Gesellschaft shall be the place of business of the Fraunhofer-Institute involved. Place of performance for payments by the client shall be Munich.
- 14.3 This contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) shall not apply.
- 14.4 Should one or more provisions of these General Terms and Conditions be or become fully or partially void then the validity of the remaining provisions shall remain unaffected. The same shall apply in the case of a gap in the provisions of these General Terms and Conditions.