General Terms and Conditions for the execution of research and development orders and services at the Technical University of Darmstadt (TUDA)

1. Definitions

1.1 Work results. Outcomes of research and development work that are agreed in the Order, resulting from the Order’s implementation, including produced reports and documentation.

1.2 Background IP. Proprietary rights or knowledge and inventions resulting prior to the implementation of the Order that are incorporated into the Order.

1.3 Know-How. Entirety of non-patented practical knowledge and data acquired through experience and trials and that is confidential, i.e., not generally known and not readily accessible, important, i.e., of significance and use with respect to the subject matter of the agreement, and identifiable, i.e., described in sufficient detail to allow verification of whether such is to be considered “confidential” and “important.”

1.4 Foreground IP. Registered inventions with respect to work results in the course of implementing the Order (Art. 5 of the Act on Employee Inventions [Gesetz über Arbeitnehmererfindungen – ArbEG]), resulting proprietary rights and know-how.

1.5 Intellectual Property Rights. Patents applied for or granted, designs, topographies of semi-conductor products, supplementary protection certificates for medicines or other products for which such certificates may be acquired, and trademarks, important at its own expense.

1.6 Agreement to disclose all information, materials, equipment, documentation, processes etc. required for this, ensuring such are provided to TUDA where necessary at its own expense.

1.7 Where TUDA undertakes activity at the Client's premises, the Client shall provide employees of TUDA or to third parties commissioned by it access to all facilities, installations (hardware, software, networks etc.) and other work equipment required by TUDA to execute the scope of performance as necessary, for the agreed scope of performance during standard office hours and in line with its operational access rules. If necessary, the Client shall be required to provide, free of charge, appropriate workstations for the employees of TUDA or for third parties commissioned by TUDA.

1.8 If the Client fails to fulfil the obligations incumbent upon it in accordance with Sections 5.1 to 5.2 in sufficient time or at all, and, as a consequence of such, delays and/or additional overheads occur, the agreed schedule shall be extended and/or the agreed remuneration increased according to the additional incurred costs.

6. Background IP, work results, usage rights

6.1 All work results arising in connection with the contract, regardless of whether or not patentable, shall be attributable exclusively to the Client, unless as otherwise agreed below. Background IP in principle shall be fully retained by their respective owner, though may be used by charge or by combined contractual party for the duration and purpose of implementation of the Order for the purposes of achieving the intended research objective.

6.2 Insofar as Background IP of TUDA is utilised in the course of implementing the Order and this is necessary for the application of the work results, TUDA undertakes to grant to the Client in return for full payment of the remuneration due in accordance with Section 4.1, provided it is possible legally for TUDA to grant an unrestricted, non-exclusive usage right at fair market value for the purposes of the Client’s use or use by a third party including possible sub-licensing. Where restrictions on usage rights exist that TUDA is aware of, TUDA shall notify the Client of this and shall consult with the Client.

6.3 TUDA shall make use of inventions by its employees without restriction that arise in the course of implementing the Order and are attributable to the defined areas of application and shall transfer the corresponding rights to the Client. The Client may, in this respect, make use of the extent of the share of TUDA in the invention – a singular sum of EUR 5,000.00 plus VAT at the statutory rate per invention, provided, the transfer of rights is not already included in the remuneration due in accordance with Section 4.1 whereby accordingly an IA surcharge has already been calculated in the quotation for transfer. Payment shall become due upon invoicing by TUDA and transfer of the individual invention to the Client.

6.4 Insofar as inventions result in the registration of proprietary rights that are used to commercial effect by the Client, the Client additionally undertakes to pay to TUDA appropriate remuneration at fair market value requiring the agreement of the parties.

6.5 The Client shall decide with respect to inventions transferred to it by TUDA whether or not to register proprietary rights and shall bear all costs associated with such. In the case of the registration of proprietary rights domestically and internationally, TUDA must be cited as co-applicant.

6.6 TUDA shall grant the Client and its affiliated companies register for full payment of the remuneration due in accordance with Section 4.1 an irrevocable, non-exclusive licence to the work results for the duration of the copyright for commercial use. Insofar as Know-how is created in the course of implementing the Order, each contracting party shall remain entitled to use this Know-how. The provisions governing confidentiality in Section 9 are expressly indicated.

6.7 The research and teaching activities of TUDA and of its employees and experimental privilege according to Section 11 of the Patent Law (Patentgesetz – PatG) shall not be limited by the Order. TUDA shall be granted an irrevocable, non-exclusive, non-transferable, free usage right over the work results and the Foreground IP and copyrights for its own non-commercial and scientific purposes in research and teaching. The agreed provisions concerning the confidentiality of the work results shall not be affected by this. Use of the work results in connection with further research involving third parties shall be permitted only with the written approval of the Client. Section 10 shall apply in respect of publications.

7. Special regulations for purchase and service contract-based research and development orders

7.1 Insofar as is due from TUDA as work results the manufacture or supply of a state-of-the-art item based on an express commitment, in the case of defects, the relevant regulations of purchase or service contract law shall apply in accordance with the following paragraphs. The provision governing confidentiality in Section 9 are expressly indicated.

7.2 The guarantee of TUDA shall extend only to the application of assured scientific findings and ordinary care and to compliance with recognised rules of technology, unless TUDA expressly commits to specific characteristics of results. In the case of war damage, TUDA shall remedy the缺陷 in work free of charge within a reasonable time frame, or where this is not possible or possible only at disproportionately high cost, shall reproduce the work.

7.3 The warranty obligation shall run for 12 months from acceptance of performance.

8. Liability

8.1 TUDA shall execute the agreed scope of performance with scientific due diligence and in compliance with the state of the art in science and technology. TUDA undertakes contractual research in the area of applied research and breaks new technological ground. The Client is aware of this and recognises the associated risks of research and development objectives potentially not being achieved or not being fully achieved. Under no circumstances does
9. Confidentiality

9.1 The contractual partners shall be obliged to refrain from using, exploiting or sharing with third parties beyond the scope of the intended contractual purpose any commercial, technical or other information or knowledge made available by the opposing contractual partner or becomes known to them in connection with this contract, provided scientific findings or knowledge that do not constitute trade secrets.

9.2 The obligation in accordance with Section 9.1 shall not apply to the disclosure or becomes known after disclosure without involvement or blame on the part of the opposing contractual partner or becomes generally accessible, or corresponds to information that has been disclosed or made accessible to the opposing contractual partner by an authorised third party or has been independently produced by an employee of the opposing contractual partner without knowledge of the disclosed information.

If the disclosure of confidential information is mandated by a public authority or a court or on account of the law, the contractual partner required to do so shall be authorised to disclose such to the extent required. The contractual partner concerned must immediately notify the opposing contractual partner who disclosed the confidential information under this obligation provided the notification is legally permissible.

9.3 The obligation in accordance with Section 9.1 shall apply to both contractual partners for a further five years from completion of the Order.

9.4 The Client recognises the need on the part of TUDA for scientific papers and publications and shall not unreasonably withhold any necessary permission for such in accordance with Section 9.1.

10. Negative and positive freedom to publish, publication

10.1 TUDA and its employees shall be entitled in coordination with the Client to produce scientific publications concerning the work results attained in connection with this contract, provided scientific findings are the subject of such. Coordination must duly ensure that examination procedures (in particular as relating to diploma, bachelor’s, master’s and doctoral studies) that contain work results are not challenged. The Client must not unreasonably withhold consent. Approval to publish shall be considered to have been granted if the Client does not refuse such within 14 days of notification in writing and the Contractor again appeals to the Client to respond after 7 days at the latest. The approval requirement shall not apply where TUDA, in fulfilment of legal or statutory obligations to publish research results, publishes only fundamental scientific statements or knowledge that do not constitute trade secrets.

10.2 The Client shall be entitled, subject to agreement with TUDA, to publish the work results citing the originator. Employees of TUDA involved in the work results shall be listed in publications as part of this agreement. Coordination must duly ensure that e.g. dissertations, theses or professorial dissertations that contain work results are not impeded.

11. Term; termination

11.1 The contract shall come into force upon signing by both contracting parties and shall be effective until the proper fulfilment of all obligations in accordance with this contract by the parties, provided not terminated by way of extraordinary termination for cause by either of the contracting parties in accordance with Section 11.2.

11.2 Each contracting party shall be entitled to terminate the contract by way of extraordinary termination for cause. The departure of the project manager from the employ of TUDA shall in particular be considered cause.

11.3 Following effective termination, TUDA shall surrender to the Client within a reasonable time frame the work results attained up to the expiration of the notice period. The Client shall be obliged to pay to TUDA all costs incurred up to the expiration of the notice period. This shall also include the costs for actions or personnel already incurred by TUDA as contractually stipulated in connection with the proper fulfilment of the contract prior to expiration of the notice period where no longer possible to avert such. Personnel costs shall be reimbursed based on time expenditure unless where considered fixed costs. Where termination is based on culpability on the part of a contractual partner, claims for damages shall not be affected. The opposing contractual partner, however, shall be required in accordance with the duty of mitigation to make all reasonable effort to minimise losses as far as possible.

11.4 Termination must be made in writing. Electronic format in accordance with Art. 126a of the German Civil Code ([BGB – Bürgerliches Gesetzbuch]) shall be similarly considered the written form.

12. Legal succession

If in the scope of the Order Intellectual Property Rights are licensed, the licensing contractual partner shall be responsible for ensuring that, in the event that the Intellectual Property Rights on which the licence is based is transferred, the liabilities resulting from the license are also assumed by the receiver of the Intellectual Property Rights.

13. General provisions

13.1 The transfer of rights and obligations from the contracts by the Client to a third party shall require the prior written consent of TUDA.

13.2 Additions and amendments to the contract as well as subsidiary agreements must be in writing or must be confirmed in writing to be effective. Additions and amendments, like this agreement, must be signed and shall be appended as an addendum to this agreement.

13.3 The invalidity of individual provisions in these General Terms and Conditions shall not affect the validity of the remaining provisions. If individual parts of this agreement are found to be legally invalid, the remaining parts of the agreement shall remain in force. In such cases, the contractual partners agree to replace any invalid provision with a legally valid provision that fulfills the wording and economic purpose of the replaced provision as far as possible.

13.4 The place of jurisdiction for all disputes shall be Darmstadt.

13.5 The law of the Federal Republic of Germany shall exclusively apply to the exclusion of international private law.

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