

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 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, registered designs, topographies of semiconductor products, supplementary protection certificates for medicines or other products for which such certificates may be acquired, and type proprietary rights; designs and community designs, and copyright and related proprietary rights.

2. Area of application

2.1 The following General Terms and Conditions apply to contracts between TUDA and its Clients concerning the execution of research and development orders and the provision of services by TUDA. This does not include services associated with higher education and teaching. Conditions imposed by the Client and alternative agreements shall apply only if such have been duly recognised in writing by TUDA. Electronic format in accordance with Art. 126a of the German Civil Code [Bürgerliches Gesetzbuch – BGB] shall be similarly considered the written form. Neither silence on the part of TUDA nor execution of the Order without reservation shall be considered acknowledgement.

2.2 Alternative agreements shall apply in each case only to the specific contract and not to any future contracts unless otherwise expressly agreed in writing.

3. Subject Matter of the Contract

3.1 The subject matter of the research and development order or services is the scope of performance commissioned by the Client as quoted by TUDA (the "Order").

3.2 Lead times and schedules shall be considered binding only where TUDA has expressly agreed in writing to such. If TUDA identifies that agreed lead times and schedules cannot be met, TUDA shall communicate to the Client the reasons for such delay and agree with the Client an appropriate adjustment.

3.3 Should the need become evident in the course of implementing the Order to modify the scope of performance to achieve the research objective, the contractual partners shall jointly examine the implications of any such modification on the nature and scope of performance, quality, schedule and additional costs. Where the contractual partners agree to the implementation of any such modification, this must be recorded in writing in the modification agreement, specifying in particular the schedule change, any differences in quality and, where applicable, additional remuneration.

4. Remuneration and payment terms and conditions

4.1 A fixed price plus VAT shall be calculated in payment for the scope of performance provided in accordance with **Section 3.1**; the contracting parties shall be free to agree upon remuneration according to expenditure. Should it become apparent in the course of implementing the Order that the cost limit will be exceeded or the agreed fixed price will be insufficient to achieve the intended research objective, the contractual partners shall agree upon an adjustment to the remuneration.

4.2 Payments shall become due in accordance with the agreed payment schedule. VAT must be indicated on invoices separately with the applicable VAT rate. If no payment schedule has been agreed, invoices shall become due for payment by the due date indicated on the invoice. Payments must be made in full to the account specified by TUDA indicating the reference stated on the invoice. Unless otherwise agreed, the Client shall be considered in default of payment 14 days from invoicing.

4.3 Default interest shall be charged at a rate of 9% per annum above the respective base rate. The right to assert claims for further damages is not excluded.

4.4 Multiple clients shall be jointly and severally liable.

4.5 The Client may offset claims only insofar as its counterclaims are legally established, uncontested or are recognised by TUDA.

5. Obligations to cooperate of the Client

5.1 The Client shall be required to duly cooperate in the implementation of the Order and shall allocate to TUDA free of charge and in good time prior to implementation of the Order all information, materials, equipment, documentation, processes etc. required for this, ensuring such are provided to TUDA where necessary at its own expense.

5.2 Where TUDA undertakes activity at the Client's premises, the Client shall provide to 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 Order free of charge 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.

5.3 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 additionally 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 utilised free of charge by either contracting 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 such 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 that are attributable to the defined areas of application and shall transfer the corresponding rights to the Client. The Client shall pay in this respect – irrespective 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 Insofar as the work results can be protected by copyright or come under related proprietary rights, TUDA shall grant the Client and its affiliated companies in return 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.

6.8 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 only in accordance with the following paragraphs.

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 warranty, TUDA shall remedy any deficiency 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

TUDA guarantee and/or provide assurances with respect to the subject matter of the contract, provided such has not been expressly agreed in writing. TUDA expressly points out that measurement and testing equipment are calibrated only if this is expressly agreed with the Client.

8.2 TUDA does not guarantee that the research and development objective will actually be achieved, in particular no guarantee is given that the work results of the research and development order will yield usable economic and technical value. TUDA does not guarantee that the work results produced by it and any Background IP as well as the usage rights provided by it will be free from third party rights. Insofar as conflicting rights become known, TUDA shall notify the Client of this immediately.

8.3 TUDA, its legal representatives and vicarious agents shall be liable for culpable breaches of duty, with the exception of breaches of non-essential duties as a result of ordinary negligence. In the case of a breach of duty as a result of ordinary negligence that is significant with respect to achieving the contractual purpose (cardinal obligation), liability shall be limited in extent to the damages considered foreseeable and typical for the nature of the activity in question.

The liability limitations according to **Section 8.3** shall not apply to claims (a) relating to death, physical injury or damage to health, (b) relating to an accepted guarantee, (c) relating to a fraudulently concealed defect or (d) in accordance with the Product Liability Act.

8.4 Liability for indirect damages, loss of profit, loss of production or other indirect losses shall be excluded, except in the case of wilful intent or gross negligence.

8.5 Where TUDA fails to execute the scope of performance incumbent upon it, fails to do so upon becoming due or does not do so as agreed, the Client may demand compensation in place of performance only if it has been unsuccessfully in setting TUDA a reasonable deadline to execute the scope of performance, declaring that it will duly refuse acceptance of performance upon expiry. **Section 8.6** shall remain unaffected.

8.6 Should TUDA be unable as a result of force majeure e.g. fire, industrial action, lockouts, acts of war, state interventions, natural disasters, sabotage etc. to execute the agreed scope of performance, TUDA shall be exempted from the contractual obligations while such circumstances of force majeure persist. This shall also apply in the case of a pandemic (e.g. Covid-19) where such has a substantial effect in an economic or legal sense on the feasibility of executing the agreed scope of performance (e.g. officially mandated lockdowns, mandated business closures, quarantines etc.).

9. Confidentiality

9.1 The contractual partners shall be obligated 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 of which they otherwise become aware in the course of preparing and executing orders for the duration of the Order without the prior written consent of the opposing contractual partner.

9.2 The obligation in accordance with **Section 9.1** shall not apply to information or knowledge that was previously known to the opposing contractual partner or to the public or was generally accessible prior to disclosure or becomes publicly 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 obligated 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 license 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 fulfil 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.