

General Terms and Conditions for the Performance of Research and Development contracted to Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V. ("Fraunhofer") Version June 2021

Fraunhofer exclusively and directly serves public-benefit purposes. Fraunhofer performs contract research and in doing so explores uncharted technological territory. It is thus in general uncertain whether it will be possible for the particular research and development objectives to be met. Fraunhofer has a political mandate to promote applied research. The aim is the practical application of scientific findings for various fields of technology. The same or similar tasks can therefore be worked on by the Fraunhofer Institutes at the same time and independently of one another.

1. Scope

The following General Terms and Conditions apply to all research and development projects that are contracted to Fraunhofer (individually hereinafter referred to as "Contract"). Differing, conflicting, or supplementary conditions of the client do not form part of the Contract unless Fraunhofer has agreed to their validity expressly in writing. Insofar as the following General Terms and Conditions do not stipulate otherwise, the provisions of service contract law (*Dienstvertragsrecht*; sections 611 et seq. of the German Civil Code (BGB)) apply to the Contract.

2. Object of the Contract

2.1 The object of the Contract are the services defined in the offer of Fraunhofer with regard to the research and development objective.

2.2 Fraunhofer is obliged to apply scientific care and to comply with the accepted scientific standards. No representation or warranty is given that a particular research and development result will be achieved or that the result will be exploitable, unless otherwise expressly stated in the offer.

3. Period of Performance, Deadlines

3.1 If the offer contains a period of performance or deadlines, they are only deemed binding if Fraunhofer has expressly agreed to their binding nature in the offer.

3.2 If Fraunhofer recognizes that a binding period of performance or a binding deadline cannot be met, Fraunhofer will notify the client of the reasons for the delay and agree on an appropriate adjustment with the client.

4. Remuneration, Payment

4.1 The remuneration is based on the offer, with VAT to be added as applicable. Unless otherwise specified in the offer, a fixed price is deemed agreed.

4.2 Payments become due in accordance with the agreed payment schedule. If no payment schedule has been agreed upon, Fraunhofer may demand appropriate partial remunerations. Payments shall be made in full to the account specified in the invoice, with indication of the invoice number and the Fraunhofer Institute performing the services.

4.3 Setoff against claims from Fraunhofer shall only be permitted if the counterclaim is uncontested or has been determined in a final court decision.

4.4 The client may assert a right of retention only if the client's counterclaim is based on the same contractual relationship.

5. The Client's Obligation to Cooperate

The client is obliged to cooperate to an appropriate degree throughout the entire term of the Contract. This includes handing over, in suitable quantity and number, all objects, data, and information from its own sphere that are required for Fraunhofer to provide performance. Disadvantages arising from lacking or delayed cooperation will be borne by the client.

6. Result of Research and Development, Rights of Use

6.1 The research and development result shall be made available to the client after completion of the project in accordance with the offer. Software is made available in the object code, unless otherwise expressly stated in the offer.

6.2 The client shall be granted a non-exclusive, non-transferable, non-licensable and royalty-free right to use the inventions generated by Fraunhofer during the performance of the project, and the intellectual property rights for such inventions filed by and issued to Fraunhofer, for the purpose of application that the Contract is based on. The client shall reimburse Fraunhofer an appropriate part of the costs, that has to be agreed upon between the contracting parties, of applying for, maintaining, and defending the intellectual property rights and shall pay Fraunhofer, in case of use of the invention, a lump-sum employee inventor fee which shall be agreed on a case-by-case basis.

6.3 Upon written request and in lieu of the right pursuant to Section 6.2, the client shall be granted an exclusive, royalty-bearing right to use the inventions generated by Fraunhofer during the performance of the project, and the intellectual property rights for such inventions filed by and issued to Fraunhofer, for the purpose of application that the Contract is based on and in accordance with a separate written agreement. This request must be declared to Fraunhofer in writing no later than three months after notification of the invention. Fraunhofer reserves in this respect a non-exclusive, royalty-free right of use for internal research and development purposes.

6.4 Fraunhofer shall make the decision to apply for intellectual property rights for the inventions generated during the performance of the project in the light of Fraunhofer's research policy mandate; however, there is no obligation of Fraunhofer to apply for any intellectual property rights. If Fraunhofer decides to file an application, Fraunhofer will apply for intellectual property rights for the relevant invention in its own name.

If the client has issued a request pursuant to Section 6.3, Fraunhofer shall offer the client the right to file an application within a reasonable time limit in the countries in which Fraunhofer has decided against an application. Fraunhofer may waive its applications and intellectual property rights at any time; if the

client has issued a request pursuant to Section 6.3, this only applies insofar as these rights were offered to the client in advance within a reasonable time limit. In case of acceptance by the client in the two above-mentioned cases, Fraunhofer reserves at least a non-exclusive, royalty-free right of use for internal research and development purposes.

6.5 The client shall be granted a non-exclusive, non-transferable, non-licensable and royalty-free right to use copyrighted works, including software programmed by Fraunhofer, and know-how created by Fraunhofer during the performance of the project for the purpose of application that the Contract is based on.

6.6 The joint inventions generated in performance of the project (i.e. inventions that employees of both contracting parties were involved in and for which the intellectual property right cannot be applied for separately for the individual shares of the invention) belong to the contracting parties jointly in accordance with their share in the invention. The contracting parties shall reach an agreement on a case-by-case basis regarding the application for (including lead management), maintenance of, and defense of intellectual property rights to joint inventions and the associated costs. Unless otherwise agreed, the contracting parties shall each bear 50% of the costs. The contracting parties may use such inventions like their own, along with the intellectual property rights applied for or issued to them, for their duration and license them non-exclusively without any financial compensation. For copyrighted works, including programmed software, and know-how that were created jointly by the contracting parties in performing the project, this Section 6.6 applies – where applicable – accordingly.

6.7 If existing intellectual property rights of Fraunhofer used by Fraunhofer in the performance of the project are necessary for the exploitation of the research and development result by the client, the client shall be granted, on written request and under a separate agreement, a non-exclusive, royalty-bearing right of use for the purpose of application that the Contract is based on, insofar as Fraunhofer has no other contrary obligations. This request must be declared to Fraunhofer in writing no later than six months after handover of the research and development result.

7. Conflicting Intellectual Property Rights

7.1 Unless otherwise expressly stated in the offer, Fraunhofer does not perform any patent research or research regarding conflicting intellectual property rights.

7.2 The contracting parties shall inform each other of third-party intellectual property rights they become aware of before and during the performance of the project that could conflict with the agreed use pursuant to Section 6. Fraunhofer is not obliged to examine the potential infringement of such third-party intellectual property rights, unless otherwise expressly stated in the offer.

7.3 The contracting parties shall mutually decide in what way such discovered intellectual property rights are to be taken into account in the further performance of the project.

8. Contractual and Tortious Liability

8.1 Unlimited liability: Fraunhofer shall be liable without limitation for willful misconduct and according to the provisions of the German Product Liability Act (*Produkthaftungsgesetz*). Fraunhofer shall be liable without limitation for negligence in the event of damage arising from loss of life, personal injury, or damage to health.

8.2 Apart from that, the following limited liability applies: the liability for negligence shall be limited to the damage that was foreseeable and typically to be expected when the Contract was concluded. Fraunhofer shall be liable for slight negligence otherwise only in the case of the breach of a material contractual obligation that must be fulfilled for due implementation of the Contract and that the client can reasonably expect to be fulfilled.

This liability limitation also applies in favor of Fraunhofer's legal representatives and performing agents (*Erfüllungsgehilfen*).

9. Foreign Trade Law regulations, Export Control

9.1 The contracting parties shall observe all applicable national, European, foreign, and international regulations of foreign trade law including embargoes (and/or other sanctions).

9.2 If Fraunhofer fails to provide performance or delays in providing performance as the result of a foreign trade law prohibition, a required foreign trade law approval not being issued, or a delay in the foreign trade law official approval procedure, any liability for damages on the part of Fraunhofer shall be excluded. This shall not apply in the event of willful or grossly negligent causation on the part of Fraunhofer or its legal representatives or performing agents (*Erfüllungsgehilfen*) of (i) the approval not being issued or (ii) the approval procedure being delayed.

9.3 The contracting parties shall support each other mutually in the observance of the regulations of foreign trade law, insofar as this is required to fulfill obligations arising from the Contract.

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10. Statutes of Limitation

10.1 The client's claims arising from a breach of obligation or from tort lapse within one year. The statute of limitation begins with the handover of the research and development result, unless the start of the limitation period is linked in law to awareness of the facts upon which the claim is based and the client can prove that the client became aware of the facts upon which the claim is based only at a later point in time. The legal maximum limitation periods remain unaffected.

10.2 The shortening of the limitation period and the modification of the start of the limitation period pursuant to Section 10.1 do not apply for damages arising from loss of life, personal injury, or damage to health or insofar as Fraunhofer is liable as the result of willful misconduct, gross negligence, according to the provisions of the German Product Liability Act (*Produkthaftungsgesetz*) or for the breach of a material contractual obligation (Section 8.2). The legal statutes of limitation provisions apply in these cases.

10.3 Negotiations between the contracting parties regarding claims or facts upon which the claim is based suspend the limitation period. The suspension effect ends if one contracting party fails to follow within four weeks the other contracting party's wish to continue the negotiations.

11. Reservation of Title and Right of Use

11.1 The client shall be granted ownership of the embodied research and development result and the rights of use named in Section 6 only on complete payment of the remuneration owed pursuant to Section 4.

11.2 In the event of Fraunhofer's ownership of the embodied research and development result becoming void through combining, mixing, or processing, it is hereby agreed that the ownership of the single item created in this case shall be transferred to Fraunhofer in proportion to the value (the invoice value) until the agreed remuneration has been paid in full.

11.3 In the event of resale of the embodied research and development result, the client shall transfer all rights arising from the resale to Fraunhofer in rem until the agreed remuneration has been paid in full.

12. Confidentiality

12.1 The contracting parties shall keep confidential all information of the other contracting party provided to them and declared confidential for the term of the Contract and for a period of five years after the end of the Contract, use such information only to perform the project, and take all appropriate measures to prevent third parties from accessing such information. This applies only insofar as the information was not known by or generally accessible to the public before the information was provided or insofar as the information did not become known by or generally accessible to the public after the information was provided without the other contracting party breaching this confidentiality obligation. The obligations pursuant to sentence 1 do not apply insofar as the other contracting party was aware of the information before the information was provided or an employee of the other contracting party who was not aware of the provided information developed the information independently or the information corresponds to information that was disclosed or made accessible to the other contracting party by a third party, unless to the other contracting party's knowledge the third party's disclosure of this information breaches a confidentiality obligation.

12.2 The internal disclosure of confidential information on the part of a contracting party is permitted only insofar as this is required for the performance of the project (on a need-to-know basis) and it is ensured that employees receive the confidential information only if they are obliged to equivalent confidentiality within the legal possibilities.

12.3 For the purposes of this provision, third parties do not include parties entrusted by Fraunhofer with partial performance in relation to the Contract and obliged to observe confidentiality.

13. Publications

13.1 The client may with prior written consent of Fraunhofer publish the research and development result if the author and the involved Fraunhofer Institute are mentioned. Fraunhofer shall issue consent if the interests of Fraunhofer, including dissertations, theses, or applications for intellectual property rights, are not compromised.

13.2 The client is not entitled to advertise with the name of Fraunhofer or one of its Institutes or other facilities or to use trademarks or other signs of Fraunhofer unless otherwise expressly agreed in writing in an individual case.

13.3 Publications of the research and development result on the part of Fraunhofer shall be agreed with the client in due time insofar as the client has received exclusive rights pursuant to Section 6.3.

14. Termination

14.1 Each contracting party may terminate the Contract with effect at the end of a calendar month, subject to four weeks' notice, if no substantial project progress has been made after a significant processing period, but no earlier than six months after conclusion of the Contract. There is otherwise no ordinary right of termination.

14.2 Each contracting party may terminate the Contract for good cause. Good cause for Fraunhofer includes cases where the client fails to provide cooperative action that is essential to this Contract after a set deadline has expired.

14.3 Terminations must be made in writing. After effective termination, Fraunhofer shall make available to the client the research and development result achieved up to the end of the period of notice. The client shall remunerate

Fraunhofer the costs arising up to the end of the period of notice. Personnel costs shall be reimbursed according to time expenditure. Other costs shall be reimbursed in accordance with the actual costs incurred.

14.4 In the event of the termination being based on the fault of one of the contracting parties, claims for damages remain unaffected.

15. Special Conditions regarding Research and Development under Purchase and Work Contract Law (*Kauf- und Werkvertragsrecht*)

15.1 Insofar as the fulfillment of a particular research and development objective was expressly agreed to in Fraunhofer's offer or Fraunhofer is obliged to create a product that incorporates the accepted state-of-the-art as the result of research and development, by way of derogation from Section 2.2 alt. 1 of sentence 2 and instead of the provisions of service contract law (*Dienstvertragsrecht*; sections 611 et seq. of the German Civil Code (BGB)), purchase or rather work contract law applies for defects in accordance with the following subsections.

15.2 If the research and development result achieved by Fraunhofer proves to be defective, Fraunhofer is initially given the opportunity to rectify the defect – possibly multiple times, depending on the type of research and development result, defect and other circumstances – by means of supplementary performance, at its option either through repair or replacement.

15.3 If Fraunhofer declines the supplementary performance without justification, if the supplementary performance fails twice, or if the supplementary performance cannot reasonably be imposed on the client, the client may at its discretion demand a reduction in price or withdraw from the Contract. The right to withdrawal may only be exercised in the event of a major defect. It becomes void if the client does not declare withdrawal at the latest within 14 days after receiving notification of the declining or the failure of the supplementary performance or at the latest within 14 days after the time when it became recognizable for the client that the supplementary performance posed an unreasonable imposition.

15.4 The client shall inspect the research and development result delivered by Fraunhofer without delay and report defects without delay. Claims arising from recognizable defects are only valid if Fraunhofer is notified of the defects within a period of 14 days.

15.5 By way of derogation from Section 10.1: the statute of limitation for claims arising from defects pursuant to Section 15.2 begins with acceptance. The period is one year, unless longer periods are prescribed by law in sections 438(1) No. 2, 445b(1) (recourse claims), and 634a(1) No. 2, first alternative (construction defects) of the German Civil Code (BGB).

15.6 Section 14.1 shall not apply. The contracting parties' statutory rights of termination and Fraunhofer's right to any compensation for delay remain unaffected.

15.7 Otherwise, the provisions of these General Terms and Conditions (Sections 1 to 14, 16) remain unaffected.

16. Miscellaneous

16.1 Ancillary agreements, alterations and additions require the written form in order to be valid. The requirement of written form can only be deviated from in writing.

16.2 The place of performance for services provided by Fraunhofer shall be the place of business of the commissioned Fraunhofer Institute. The place of performance for payments made by the client shall be Munich.

16.3 The Contract shall be governed by the law of the Federal Republic of Germany, without reference to its conflict of law provisions and excluding the provisions of the UN convention on the international sale of goods (CISG). With regard to clients with a registered office not located in the Federal Republic of Germany, the ordinary courts of Munich are hereby agreed as place of jurisdiction for all disputes arising from or connected with the Contract.

16.4 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. In this case, each contracting party may demand that a valid provision is agreed to that most closely approximates the purpose of the void provision. The same shall apply in the event of a gap.