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 projects 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 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.
5.2 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 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.
5.3 Upon request 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 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.
5.4 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.
5.5 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 8.2, 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 in writing to Fraunhofer-Gesellschaft to Fraunhofer-Gesellschaft. Fraunhofer-Gesellschaft 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 in the offer to perform in accordance 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.

8.2 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 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.
8.3 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.
8.4 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.

8.5 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 8.2, the client shall have no further claims against Fraunhofer-Gesellschaft.

8.6 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 in writing to Fraunhofer-Gesellschaft to Fraunhofer-Gesellschaft. Fraunhofer-Gesellschaft would otherwise reject acceptance of the performance after the passing of that deadline.

8.7 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.
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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 exclusion 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 defect) 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 other
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 by Fraunhofer-
Gesellschaft may either be mortgaged or 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 (invoked 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 subcontracts 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 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
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.