



# The University of Bayreuth's General Terms and Conditions for research and development projects, expert opinions und other services using funds from private third parties („AGB-DriMi“)

## § 1 Scope

1.1 These General Terms and Conditions („AGB-DriMi“) apply to the implementation of research and development projects, expert opinions and other services (hereinafter referred to as "projects") by the University of Bayreuth, D-95440 Bayreuth.

1.2 The Contractor is the State of Bavaria, represented by the University of Bayreuth, D-95440 Bayreuth, in turn represented by the President

1.3 A binding offer from the University of Bayreuth and a written order from the Client is required for the project to come to fruition.

1.4 The Contractor is entitled to conclude subcontracts with third parties.

1.5 Deviations from these General Terms and Conditions shall only be effective if they have been expressly agreed in writing; in this case, a contract must be drawn up regarding these deviations, which requires the written consent of the Contractor. Any other general terms and conditions of the Client shall not apply under any circumstances, even if the University does not expressly object to them.

1.6 For the contract to become effective, the offer must be signed by the Central University Administration.

## § 2 Implementation of the project

2.1 The project is carried out according to the state of the art and in compliance with the rules of science.

2.2 The scope of work in the project is described in the offer and, if necessary, supplemented with a time schedule. If the course of the project is not yet foreseeable in detail at the time the contract is concluded, the project description can be updated during the implementation of the project within the agreed framework and in agreement with the project managers of both contracting parties. Any performance deadlines shall be extended appropriately if the Client does not fulfil its obligation to cooperate in due time. The same shall apply if circumstances for which the Contractor is not responsible prevent the Contractor from properly performing the services.

2.3 The project description (offer) may provide for interim reports.

2.4. Upon completion of the work, upon request the Client shall receive a final report or audit report reflecting the results of the project in a comprehensible manner and containing any documents and computer programmes that may have been created in the process.

## § 3 Compensation

3.1 Compensation shall be paid as a lump sum. It is expressly stated in writing in the offer as the agreed net sum of the project funds. In addition, the legal value added tax will be charged. Changes require the consent of the Contractor.

3.2 Any additional costs for freight, customs, import duties and packaging can be charged additionally.

3.3 The Contractor is entitled to charge reasonable cost advances on compensation and expenses. The claim for payment is due within 14 days of the invoice date without deduction. If the agreed payment date is exceeded, interest will be charged at the statutory rate of 8 percentage points above the relevant base interest rate of the ECB.

3.4 Unless the offer provides otherwise, expenses for business trips and other costs incurred at the Client's instigation in connection with the processing of the order will be invoiced separately to the Client on a time and material basis.

3.5 The Client declares his agreement that under the conditions of Art. 57 of the Bavarian Salary Act (BayBesG), the chair may be granted a research and teaching allowance of 10% of the agreed net project funds after receipt of payment.

## § 4 Confidentiality, Publications

4.1 Each party to the contract shall treat as confidential any confidential information of the other party that becomes known to it and its employees as a result of the implementation of the project. In particular, such confidential information shall be used by the receiving contracting party only for the purpose of implementing the project, shall not be disclosed to third parties and shall be secured against unauthorised disclosure by third parties.

4.2 "Confidential information" for the purposes of this § 4 is only such information that is expressly marked as confidential. The confidentiality obligations shall not apply to information which can be proven to have been (a) already known to the receiving party prior to the communication, (b) already publicly known or generally accessible prior to the communication, (c) publicly known or generally accessible after the communication without the cooperation or fault of the receiving party, (d) disclosed or made accessible to the receiving party by an authorized third party, or (e) independently developed by the receiving party or developed independently by the receiving party, irrespective of knowledge of the information.

4.3 The above-mentioned obligations shall expire after a period of two years from the date of termination of the project.

4.4 In the case of research projects the Client acknowledges the fundamental duty of the university to publish the nature, subject matter, and results of the research and development work carried out at the university. Publications relating to the subject of the research project during the course of the project and within a period of up to one year after completion of the project will be agreed with the Client in advance. The Client will not refuse its consent to publication without good reason. If the Client does not object to a publication submitted to him in the original text within six weeks after receipt of the complete documents, his consent shall be deemed granted.

## § 5 Results of the Project

5.1 The results of the project are all knowledge, documents, computer programmes, databases, prototypes, etc., which are achieved or created within the scope of the implementation of the project in the agreed research and development area.

5.2 All rights to the results of the project as well as the ownership of results to be handed over in embodied form shall, subject to the following paragraphs, pass to the Client upon full payment of the agreed compensation.

5.3 The Client shall be granted the right to use copyrighted works, database works and know-how, unlimited in time and place and solely transferable by the Client, to use them in unchanged or modified form for all types of use as desired, in particular to reproduce them, have them reproduced and process them, and to grant third parties rights of use for all types of use.

5.4 If the results consist of software, the following applies in deviation from the previous paragraph: Upon delivery, the Client is granted the non-exclusive and non- sublicensable right to use the software (object code) created by the university for its own purposes. Passing it on to third parties

requires the consent of the university. If the created software is subject to contractual obligations vis-à-vis third parties (e.g. when using software under an open source license), then these take precedence and also apply vis-à-vis the Client.

5.5 The University of Bayreuth and its staff members retain in all cases a non-exclusive, non-transferable, free of charge, temporally and spatially unlimited right to use the results of the research work for their own purposes in research and teaching.

#### **§ 6 Inventions, Property Rights**

6.1 The rights to patentable or utility-modelable inventions made by employees of the university during the implementation of the project shall belong to the university. The university shall immediately inform the Client of the inventions reported to it. It is solely authorized to make decisions as to whether to claim an invention and file an application for property rights.

6.2 With regard to all such inventions and the resulting industrial property rights, the university shall grant the Client an option to enter into an agreement on use at normal market conditions. This can, if so agreed by the parties, consist of an exclusive or non-exclusive license or a purchase of property rights. The option must be exercised within two months of sending the notification of the invention to the Client. In the case of exclusive use, § 5.5 applies mutatis mutandis to the property rights resulting from the invention.

6.3 In the case of joint inventions by employees of the university and the Client, the parties will agree on the procedure on a case-by-case basis. Unless otherwise agreed, each of the parties is entitled to use such inventions for its own purposes and to grant non-exclusive licenses to third parties. An application for property rights can only be made by mutual agreement.

6.4 The University shall inform the Client immediately if it becomes aware of any third party property rights that may prevent the use of the results. The university is not obligated to conduct a search for protective rights.

#### **§ 7 Liability**

7.1 In carrying out the agreed work, the university shall be responsible for the application of scientific diligence and compliance with the recognized rules of technology, but not for the actual achievement of the desired research and development results. Likewise, no guarantee is given for the economic usability or their property rights of third parties.

7.2 The contractual and tortious liability of the contractual partners and their vicarious agents to the other contracting party for damages which are not based on injury to life, body or health is limited to intent and gross negligence. The degree of liability is limited to the total amount of the compensation to be paid according to the contract, or in case of a breach of main contractual obligations, to three times the total amount. Liability for loss of production, interruption of operations, loss of profit and other consequential damages is excluded, unless they are based on intent.

#### **§ 8 Premature Termination of the Project**

8.1 Ordinary termination of the project is only possible if expressly permitted in the project description.

8.2 Under the conditions of § 314 BGB (German Civil Code), each contractual partner is entitled to terminate the project in whole or in part with immediate effect for good cause. Good cause is in particular resignation of the chair and/or the project manager from the University of Bayreuth.

8.3 Termination must be carried out in writing in any case.

8.4 In the event of premature termination, the Contractor shall hand over to the Client the documents and results

available up to that point in time to the extent resulting from § 4. Beyond the time of the premature termination of the project, the Client shall reimburse the Contractor for those expenses that are still incurred in view of the project and for the fulfilment of legal obligations, unless the Contractor fails in breach of duty to ensure the timely termination of the legal obligations. The expenses to be reimbursed to the Contractor in the event of premature termination beyond the date of termination may not exceed the total agreed compensation.

#### **§ 9 Final Provisions**

9.1 The contract concluded on the basis of these General Terms and Conditions is subject to German law, excluding the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods.

9.2 The place of performance is Bayreuth. If the Client is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in Germany, Bayreuth is agreed as the exclusive place of jurisdiction for all disputes arising from and in connection with the contract. This shall not apply if an exclusive place of jurisdiction is prescribed by law.

9.3 Changes and amendments to these general terms and conditions must be made in writing. This also applies to the waiver of the requirement of the written form.

9.4 Should any provision of this general be or become invalid, this shall not affect the validity of the remaining provisions. In this case, the parties will agree on an arrangement in place of the omitted provisions, which comes closest to their economic content and takes the interests of both parties into account equally. The same applies in case the General Terms and Conditions are incomplete.

Bayreuth, 25 August 2021  
University of Bayreuth

Signed by

- The Provost -

Dr. Nicole Kaiser (Provost)