

**General Terms and Conditions of the
Friedrich-Alexander University Erlangen-Nuremberg (FAU)**

for Research and Development Projects, Expert Opinions and other Services

Section 1 Sphere of Application

- 1.1 These General Terms and Conditions apply to research and development projects, expert opinions and other engineering services (below referred to as "projects") carried out and provided by the Friedrich-Alexander Universität Erlangen-Nürnberg (below referred to as University Erlangen-Nuremberg).
- 1.2 The Freistaat Bayern (Free State of Bavaria), represented by the University Erlangen-Nuremberg, Schlossplatz 4, 91054 Erlangen, is the Contractor.
- 1.3 A binding offer of the Contractor and the written order of the Customer are required for the project to come into existence. Contractor and Customer are referred to as "party" severally or as "parties" collectively below.
- 1.4 The Contractor is entitled to subcontract with third parties.
- 1.5. Deviations from these General Terms and Conditions are only valid, if they are stipulated explicitly in writing; in this event a contract has to be made on these deviations, which is subject to the Contractor's written consent. The Customer's deviating Terms and Conditions do not apply in any event, even if the Contractor does not object to them explicitly.

Section 2 Execution of the Project

- 2.1 The project is carried out in accordance with the state of the art and by observing the scientific rules.
- 2.2 The project-related workload is described by the offer and a time schedule is added, if required. Where it is not exactly foreseeable at the time of entering into the contract, which course the project will take, the project's description may be updated with regard to its content within the stipulated scope and by mutual agreement of both parties' heads of the project while the project is carried out. Possible deadlines for performance extend reasonably, if the Customer does not fulfill his duties of cooperation in time. The same is deemed to apply, if the Contractor is prevented to perform properly due to circumstances for which the Contractor is not responsible.
- 2.3 The project's description (offer) may provide for interim reports.
- 2.4 After completing the work, the Customer will receive a final or an examination report showing the result of the project in a comprehensible way and containing documents and calculation software that may have been created in the course of work.

Section 3 Remuneration

- 3.1 Remuneration is to be paid as a lump sum. It will be displayed explicitly in writing in the offer as the stipulated net amount of the project means. The statutory turnover tax will be charged additionally. Amendments are subject to the Contractor's consent.
- 3.2 Possible additional expenses for freight, customs, additional import taxes and packaging may be charged additionally.
- 3.3 The Contractor is entitled to invoice the Customer for reasonable advance payments on remuneration and expenses. Receivables will become due for payment without deductions within 14 days from the invoice date. Interest in the amount of the statutory interest rate of 8 percent over the base rate of the ECB valid at the time will be charged for any violation of the stipulated date for payment.
- 3.4 On receipt of the payment an infrastructure contribution (overhead) in the amount of 20% will be retained of the stipulated net amount of the project means. Exceptions are subject to the prior consent of the University's Drittmittelverwaltung (approx. Administration of External Funding).
- 3.5 The Customer agrees that the executive professor may be awarded a research allowance in the amount of 20% from the stipulated net amount of the project means after receipt of the payment, in accordance with the conditions laid down in the Bayerische Hochschulleistungsbezügeverordnung (approx. Bavarian Provisions on Emoluments of Senior University Employees).
- 3.6 Where the offer does not contain any other provision, the Customer will be invoiced separately for expenses actually arising for business travel and other expenses incurred on the Customer's initiative with regard to processing the order.

Section 4 Confidentiality, Publications

- 4.1 Each party will maintain confidentiality on the other party's confidential information, which becomes known to her and her employees due to carrying out the project. In particular, such confidential information will be used by the receiving party for the purpose of carrying out the project only, will not be given to third parties and will be safeguarded against unauthorized access by third parties.

- 4.2 "Confidential information" in the sense of this Section 4 is only such information that is explicitly marked as confidential. The duties to maintain confidentiality do not apply to information, which verifiably (a) was already known to the receiving party prior to the notification, (b) was already publicly known or generally accessible prior to the notification, (c) became publicly known or generally accessible after notification without participation or fault of the receiving party, (d) was disclosed or made accessible to the receiving party by an authorized third party, or (e) was developed by the receiving party or which the receiving party had developed without assistance independently of having knowledge of the information.
- 4.3 The above-mentioned obligations expire at the end of two years following termination of the project.
- 4.4 Regarding research projects, the Customer acknowledges the Contractor's fundamental obligation to publish kind, object and result of the research carried out in-house. Publications on the object of the research project, which are made over the project duration and within a period of time of up to one year following termination of the project will be coordinated with the Customer beforehand. The Customer will not refuse consent to the publication without cause. Should the Customer not object to a publication, which was submitted to him as original text, within six weeks following receipt of the full documentation, consent is deemed to have been granted.

Section 5 Results of the Project

- 5.1 All knowledge, documents, computer programs, data bases, prototypes etc. that will be gained or created by carrying out the stipulated project in the stipulated field of research and development are the results of the project.
- 5.2 Subject to the following paragraphs, all rights to the results of the project as well as the ownership of results, which have to be delivered in physical form, are assigned to the Customer on full payment of the stipulated remuneration.
- 5.3 With regard to the works, data base works and know-how protected by copyright, the Customer is granted the right unlimited as to time or place, which can be assigned by the Customer only, to use these in unchanged or changed form for all kinds of use as he sees fit, in particular to copy them, have them copied and to process them and grant rights of use to third parties for all kinds of use.
- 5.4 Where the results consist of software, the following is deemed to apply as a deviation from the previous paragraph: On delivery, the Customer is granted the right, which is non-exclusive and cannot be sublicensed, to use the software (object code) created by the Contractor for his own purposes. Disclosure to third parties is subject to the Contractor's consent. Should the software created be subject to

contractual obligations to third parties (e.g. when using software in accordance with an open-source-license), these have priority and do also apply to the Customer.

- 5.5 For their own purposes in research and teaching the Contractor and his employees concerned, in any event will retain a right of use of the research results, which is non-exclusive, non-assignable, royalty-free, unlimited as to time or place.

Section 6 Inventions, Property Rights

- 6.1 The Contractor is entitled to the rights to inventions eligible for patent or utility model protection, which are made by the Contractor's employees while carrying out the project. The Contractor notifies the Customer without undue delay of inventions brought to his attention. The Contractor alone is entitled to make the decision, whether to use an invention and apply for a property right.
- 6.2 With regard to all these inventions and intellectual property rights resulting from them, the Contractor gives the Customer an option to enter into a user agreement on market-standard conditions. In accordance with the parties' agreement, this can be an exclusive or a non-exclusive license or an acquisition of a property right. The option has to be exercised within two months from the Customer being notified of the invention. In the event of an exclusive use Section 5.5 applies accordingly for the property rights resulting from the invention.
- 6.3 With inventions made by the Contractor's and the Customer's employees collectively, the parties will agree on the way to proceed in the individual case. Unless otherwise agreed by the parties, each of them is entitled to use these inventions for their own purposes and grant non-exclusive licenses to these inventions to third parties. An application for a property right may only be filed by mutual agreement.
- 6.4 The Contractor notifies the Customer without undue delay, if he gains knowledge of third parties' property rights that may prevent use of the results. The Contractor is not obliged to conduct a search of property rights.

Section 7 Liability

- 7.1 When carrying out the stipulated work, the Contractor is responsible for applying scientific care and for observing the recognized standards of good practice, but not for actually achieving an intended research and development result. Also, no liability will be assumed for the results being suitable for economic exploitation and free of third parties' property rights.
- 7.2 The contractual and tortious liability of the parties and the persons performing their obligations to the other party for damage not caused by injuring life, body or health, is limited to intention and gross negligence. As to

the amount, the liability is limited to the total amount of the remuneration to be paid according to the contract, in case of a breach of primary contractual duties, it does not exceed the triple of the total amount. Liability for production downtime, business interruption, lost profit and other consequential damage is excluded, where they are not caused by intention.

Section 8 Premature Termination of the Project

- 8.1 A termination of the project by termination notice will only be possible, if this was specifically permitted in the project's description.
- 8.2 Each party is entitled to terminate all or part of the project for cause with immediate effect subject to the conditions of Section 314 BGB (German Civil Code). In particular, separation of the academic head of the department or of the head of the project from the University is deemed to be cause.
- 8.3 In any event, the termination must be in writing.
- 8.4 In case of premature termination, the Contractor will deliver to the Customer the documents available and results achieved by this time to the extent given in Section 4. After the date of premature termination of the project, the Customer will continue to reimburse the Contractor for these expenses, which have to be incurred yet in consideration of the project and for meeting legal obligations, unless the Contractor fails to meet his obligation to ensure termination of the legal obligations in time. With premature termination, the expenses to be reimbursed to the Contractor after the termination date must not exceed the total remuneration stipulated.

Section 9 Final Provisions

- 9.1 The Contract entered into on the basis of these General Terms and Conditions is governed by German Law, excluding the provisions concerning conflicts of law and the UN Convention on Contracts for the International Sale of Goods.
- 9.2 Erlangen is the place of performance. If the Customer has merchant status, is a legal entity under public law or a special fund under public law or does not have a general jurisdiction within the country, Erlangen is stipulated to be the general jurisdiction for all disputes arising from and relating to the contract. This does not apply, where an exclusive jurisdiction is provided for by law.
- 9.3 Amendments and additions to these General Terms and Conditions have to be made in writing. This does also apply to waiving this written form requirement.

- 9.4 Should a provision of the General Terms and Conditions be or become invalid, the validity of the other provisions is not affected thereby. Instead of the expired provision, the parties will agree on a provision in this case, which comes closest to the economic content of the expired provision and satisfies both parties' interests to the same extent. The same applies, if these General Terms and Conditions contain an omission.

Erlangen, dated 2018-03-19

On behalf of the Friedrich-Alexander University of Erlangen-Nürnberg:



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Christian Zens
Chancellor FAU