

**General Business Conditions for the Performance of Research and Development Agreements  
by Fraunhofer Austria Research GmbH****Version: July 2021**

The purpose of Fraunhofer Austria Research GmbH is the exclusive and direct promotion of applied research and science. To this effect, Fraunhofer Austria Research GmbH carries out research and development agreements in the field of applied research and explores new technological territory. The following conditions are tailored to the special features of such research and development agreements.

**1. Scope of Application**

The following terms and conditions shall apply to all research and development agreements ("Agreements") concluded with Fraunhofer Austria Research GmbH. Deviating, conflicting or supplementary terms and conditions of the Client shall only become part of the Agreement if Fraunhofer Austria Research GmbH has agreed to their validity in writing.

**2. Subject Matter of the Agreement**

- 2.1 The subject matter of an Agreement shall be those works, and services set forth in the offer of Fraunhofer Austria Research GmbH with regard to the objective of the research and development sought by the Agreement.
- 2.2 In the performance of the Agreement, Fraunhofer Austria Research GmbH shall apply scientific diligence and shall comply with the generally accepted rules of technology, but shall not warrant any achievement of the research and development objective pursued nor the economic exploitability of the results of the research and development, unless expressly agreed otherwise in writing.

**3. Development Times and Deadlines, Duty of Cooperation by the Client**

- 3.1 Development times and deadlines contained in the offer shall be an approximation, unless Fraunhofer Austria Research GmbH has expressly agreed to their binding nature in the written offer.
- 3.2 If Fraunhofer Austria Research GmbH recognizes that binding development times and deadlines agreed to cannot be met, it shall inform the Client of the reasons for the delay and shall agree with the Client on an appropriate extension.
- 3.3 If Fraunhofer Austria Research GmbH is dependent on the cooperation of the Client in order to carry out the Agreement, the Client shall be obliged to provide reasonable cooperation. This shall include, in particular, the provision of all objects, data and information from the Client's own sphere in the appropriate quality and quantity. Any negative consequences arising from the breach of the duty to cooperate shall be borne by the Client.

**4. Remuneration**

- 4.1 The remuneration shall be calculated in accordance with the offer either on a time and materials basis (number of personnel days at a specific daily rate) or as a fixed price. Value-added-tax shall be added to the remuneration.
- 4.2 Fraunhofer Austria Research GmbH shall inform the Client without delay if it is foreseeable that without its fault the research and development objective sought cannot be achieved with the agreed remuneration and shall propose an adjustment of the remuneration to the Client. If the contracting parties cannot reach an agreement, Fraunhofer Austria Research GmbH shall not be obliged to provide services beyond the original scope of services.
- 4.3 Payments shall become due in accordance with the agreed payment schedule. In the absence of a payment schedule, the due date shall be determined by the due date stated in the invoice. Payments shall be made without deduction to the specified account of Fraunhofer Austria Research GmbH, referencing the invoice number and the site undertaking the work.
- 4.4 A right of set-off or retention against Fraunhofer Austria Research GmbH is only permissible if the Client's claim is undisputed or has been finally adjudicated.

**5. Research and Development Results, Rights of Use**

- 5.1 The research and development results shall be made available to the Client after completion of the Agreement in accordance with the offer. Software shall be made available in object code unless expressly agreed otherwise.
- 5.2 The Client shall be granted a non-exclusive, royalty-free right of use to the inventions created by Fraunhofer Austria Research GmbH during the performance of the Agreement and to the industrial property rights applied for and granted thereon for the purpose on which the Agreement is based. The Client shall reimburse Fraunhofer Austria Research GmbH for a share of its costs for the registration, maintenance and defense of any industrial property rights, as well as a lump-sum employee inventor's remuneration in accordance with an agreement to be concluded separately.
- 5.3 Upon written request, which the Client must submit to Fraunhofer Austria Research GmbH within three months of receipt of the notification of the invention, the Client instead of the rights pursuant to Section 5.2, shall receive an exclusive right of use subject to remuneration to the inventions created during the performance of the Agreement and to the industrial property rights applied for and granted thereon for the purpose on which its Agreement is based, in accordance with an agreement to be concluded separately. In this case, Fraunhofer Austria Research GmbH shall retain a non-exclusive, royalty-free right of use for purposes of internal research and development.
- 5.4 The Client shall receive a non-exclusive, royalty-free right of use for the purpose on which the Agreement is based in respect

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- of the copyright-protected works and know-how created during the performance of the order. The granting of any exclusive right of use for the same purpose shall require a separate agreement. In this case, Fraunhofer Austria Research GmbH shall retain a non-exclusive, royalty-free right of use for purposes of internal research and development.
- 5.5 Inventions jointly achieved by the contracting parties during the performance of the Agreement shall belong to the contracting parties jointly in accordance with their respective shares in the invention, if their shares in the invention cannot be registered for industrial property rights separately for the contracting parties. They may be used and licensed on a non-exclusive basis by each contracting party without financial compensation between the parties. The contracting parties shall reach an agreement on the application (including lead management), maintenance and defence of industrial property rights to joint inventions as well as on the associated costs in each individual case. In the case of works protected by copyright, which are jointly created by the contractual partners during the performance of the Agreement (joint copyrights), this provision shall apply *mutatis mutandis*.
- 5.6 If the Client requires pre-existing industrial property rights used by Fraunhofer Austria Research GmbH for the performance of the Agreement in order to exploit the research and development results, the Client shall be granted a non-exclusive right of use thereto at standard market conditions for such purpose of application, provided that such does not conflict with any other obligations of Fraunhofer Austria Research GmbH. The Client shall submit its written application in this respect no later than 6 months after acceptance or handover of the research and development results.

**6. Industrial Property Rights of Third Parties**

- 6.1 Unless expressly agreed otherwise with the Client in writing, Fraunhofer Austria Research GmbH shall not conduct any patent research or other searches for third-party industrial property rights that could conflict with the agreed use pursuant to Section 5. However, each contracting party shall notify the other contracting party without delay of any such third-party industrial property rights. This shall apply both to patents and other industrial property rights of third parties already known at the time of conclusion of the Agreement and to patents and other industrial property rights of third parties, of which the parties become aware in the course of the performance of the Agreement. In any case, the contracting parties shall decide by mutual agreement how these third-party industrial property rights shall be dealt with in the further performance of the Agreement.
- 6.2 Fraunhofer Austria Research GmbH shall only be liable for the infringement of third-party industrial property rights under the conditions of Section 7.2 if it has breached its duty to notify pursuant to Section 6.1.

**7. Liability**

- 7.1 Fraunhofer Austria Research GmbH shall be responsible for the application of scientific diligence and compliance with the generally accepted rules of technology, but not for the actual achievement of any research and development objectives.
- 7.2 Liability of Fraunhofer Austria Research GmbH for slight negligence shall be excluded. Otherwise, the liability of Fraunhofer Austria Research GmbH shall be limited to the amount of the remuneration agreed with the Client, and in the case of Agreements running for several years, to the remuneration of the year in which the claim arose. To the extent legally permissible, Fraunhofer Austria Research GmbH shall not be liable for any loss of profit, damages arising from third-party claims, indirect damages and consequential damages, unless such damages were caused by intentional acts.

**8. Warranty**

- 8.1 If Fraunhofer Austria Research GmbH, on the basis of a written undertaking, expressly owes the achievement of a specific research and development result or the production or delivery of a work in accordance with the recognized standard of technology as the result of the research and development, the following provisions shall apply with regard to any warranty claims of the Client.
- 8.2 If the research and development result achieved by Fraunhofer Austria Research GmbH proves to be defective, Fraunhofer Austria Research GmbH shall first be given the opportunity to remedy the defect within a reasonable period of time by way of improvement (subsequent improvement or provision of what is missing) or by replacing the part owed. If a defect is due to insufficient cooperation or incorrect or incomplete information provided by the Client, Fraunhofer Austria Research GmbH shall not be responsible for any warranty in this regard.
- 8.3 If Fraunhofer Austria Research GmbH refuses to improve/replace the part owed, if such fails or is unreasonable for the Client, the Client shall in any case be entitled to demand a reduction of the remuneration owed (price reduction). Cancellation of the Agreement may only be exercised in the event of a material defect.
- 8.4 The Client shall examine and test the research and development results delivered by Fraunhofer Austria Research GmbH without delay and shall give notice of defects in writing in an understandable form. Claims based on recognizable defects are excluded unless if Fraunhofer Austria Research GmbH is notified of them without delay.
- 8.5 Claims based on defects shall become time-barred after 12 months. If acceptance of the research and development result is provided for, the limitation period shall commence upon acceptance, otherwise upon handover.

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- 9.1 Claims for damages shall be time-barred after a period of 12 months, which period shall commence at the time when the contractual partner becomes aware of the damage.
- 9.2 Negotiations between the contracting parties concerning claims or the circumstances giving rise to the claim shall suspend the limitation period. The suspending effect ends if one of the contracting parties has not complied with the request of the other contracting party to continue the negotiations within 4 weeks.

**10. Retention of Title**

- 10.1 The Client shall only receive ownership of the research and development results and the rights of use referred to in Section 5 upon full payment of the remuneration owed in accordance with Section 4. Neither the property of Fraunhofer Austria Research GmbH nor the rights of use referred to in Section 5 may be pledged or assigned by way of security.
- 10.2 In the event that the research and development results are resold, the Client shall assign all rights arising from the resale to Fraunhofer Austria Research GmbH in rem until the agreed remuneration has been paid in full.

**11. Confidentiality**

- 11.1 The contracting parties shall keep mutually disclosed information of a technical or commercial nature (confidential information), which has been designated to be confidential, secret for the duration of the Agreement and for a period of five years after fulfillment of the Agreement, use it only for the performance of the Agreement and shall take all reasonable measures to prevent it from becoming accessible to third parties. This shall only apply to the extent that the confidential information was not known or generally accessible to the public prior to the communication and only for as long until the confidential information becomes known or generally accessible to the public without a breach of the confidentiality obligation by the other contracting party. Furthermore, there shall be no duty of confidentiality with regard to confidential information that was already known to the other contracting party prior to the communication, that was independently discovered or compiled by employees of the other contracting party, who had no knowledge of the confidential information, as well as to confidential information that is communicated or made accessible to Fraunhofer Austria Research GmbH by third parties authorised to do so.
- 11.2 "Third parties" within the meaning of Section 11.1 do not include subcontractors of Fraunhofer Austria Research GmbH, which have been entrusted by Fraunhofer Austria Research GmbH with partial services within the scope of the Agreement and have been obligated to maintain confidentiality.

**12. Publications, Advertising**

- 12.1 The Client shall only be entitled to publish the research and development results after prior agreement with Fraunhofer Austria Research GmbH, stating the author and the respective site of Fraunhofer Austria Research GmbH. This agreement shall be made with due regard to the fact that e.g. dissertations, diploma theses or applications for industrial property rights are not negatively impacted.
- 12.2 The Client may only use the name and trademark of Fraunhofer Austria Research GmbH and/or of the site performing the Agreement for advertising purposes with the express written consent of Fraunhofer Austria Research GmbH.
- 12.3 Envisaged publications by Fraunhofer Austria Research GmbH in connection with the research and development results of an Agreement shall be timely coordinated with the Client in writing, provided the Client has been granted exclusive rights of use to the research and development results in accordance with Section 5.

**13. Termination**

- 13.1 Each contracting party shall be entitled to terminate the Agreement without the requirement of a material reason with four weeks' notice as of the end of any calendar month if no substantial project progress has been achieved after the expiry of a substantial time of work, which may not be less than six months from the beginning of the Agreement. Otherwise, there shall be no right of termination without the requirement of a material reason.
- 13.2 Each contracting party shall be entitled to terminate the Agreement for a material reason. Should the Client fail to provide the cooperation required in accordance with Section 3.3 despite being granted a reasonable grace period in writing, this shall constitute an extraordinary reason for termination.
- 13.3 Termination shall be effective only if in writing. After an effective termination, Fraunhofer Austria Research GmbH shall within four weeks hand over to the Client the research and development results achieved by the end of the termination period. The Client shall be obliged to reimburse Fraunhofer Austria Research GmbH for the costs incurred up to the expiry of the notice period. Personnel costs shall be reimbursed according to the time expended. In the event that the termination is due to the fault of one of the contracting parties, claims for damages shall remain unaffected.

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- 14.1 All ancillary agreements, amendments and additions with regard to these General Business Conditions must be in writing in order to be effective.
- 14.2 The place of performance for the services of Fraunhofer Austria Research GmbH shall be the registered office of the site entrusted with the services. The place of performance for the Client's payments shall be Vienna.
- 14.3 Exclusively the laws of the Republic of Austria shall apply, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and any conflict-of-laws provisions (e.g. Rome I Regulation, Austrian Act on Conflicts-of-Law).
- 14.4 The exclusive place of jurisdiction for all disputes between the contracting parties shall be, depending on the amount in dispute, the District Court for Commercial Matters Vienna or the Commercial Court Vienna. Fraunhofer Austria Research GmbH shall however be entitled to file a claim at the principal place of business of the Client.
- 14.5 Should one or more provisions be or become invalid in whole or in part or should there be a regulatory gap, this shall not affect the validity of the remaining provisions.