



## General Terms and Conditions of the Federal Government for Research Contracts

(GTC for Research Contracts)

### 1. General provisions

#### 1.1 Scope of application

The General Terms and Conditions of the Federal Government for Research Contracts (GTC) shall govern the framework for the content and performance of research contracts.

#### 1.2 Hierarchy of norms

Where conflicts arise, the provisions of the research contract shall supersede the provisions of the GTC.

### 2. Terminology

#### 2.1 Research contract

"Research contract" means a contract for the provision of research performances for which the present GTC have been deemed applicable by the contracting parties.

#### 2.2 Research performances

"Research performances" means technical or scientific activities which as a rule are for the purpose of the targeted search for and achievement of, but also the intellectual-creative evaluation of, new findings in a specific specialized field, where applicable coordinated across several specialized fields or relating to a specific object (e.g. product, method). Research performances may include any type of research and development performances, so that research contracts may in particular also refer to areas of basic research and applied research.

#### 2.3 Contracting parties

"Contracting parties" means the parties referred to in the research contract, namely the federal office and the research institution.

#### 2.4 Federal office

"Federal office" means the organisational unit and/or legal person referred to in the research contract which incorporates the GTC for the specific research contract and contractually binds the research institution with respect to provision of the research performances so defined.

#### 2.5 Research institution

"Research institution" means the natural or legal person(s) referred to in the research contract which the federal office binds with respect to the research provisions defined therein.

#### 2.6 Research results

"Research results" means all results generated within the framework of the specific research contract, whether capable of being protected or not (such as final and in-

terim results, interim reports and final report, image and text material including recording media, data, methods, materials, findings, know-how, inventions and copyrighted works such as software).

### 3. Remuneration

#### 3.1 Definition and types

Remuneration is the monetary value defined in the research contract which the research institution receives from the federal office in return for providing the research performance. As a rule, the remuneration is agreed according to the work performed and with a cost ceiling, but may also be paid according to a fixed price or, in exceptional cases, only according to the work performed (without a cost ceiling).

The cost ceiling defines the upper limit of remuneration by the federal office which the research institution receives in return for providing the research performance. If the agreed cost ceiling is exceeded, the research institution shall be liable for the excess. The research institution shall not be entitled to exhaust the defined cost ceiling.

- If remuneration is according to a fixed price, the full remuneration shall be due irrespective of the work performed, and the research institution shall be paid in full.
- If remuneration is according to the work performed and without a cost ceiling, the federal office shall remunerate the research institution for its research performances at cost, i.e. in accordance with the reported working hours and proven expenses.

#### 3.2 Scope

The remuneration covers the provision of all research performances necessary to fulfil the contract. In particular, the remuneration includes all fees, all benefits and other reimbursements for sickness, invalidity and death, material and infrastructure costs (overhead costs), and any value added tax and other public duties and fees.

#### 3.3 Due date

The remuneration shall be due in accordance with the agreed invoicing and payment modalities. The research institution shall issue an invoice requesting remuneration by the due date. The federal office shall pay the amount due within 30 days of receipt of the properly issued invoice.

#### 3.4 Assignment

The claims to which the research institution is entitled pursuant to the present contract may not be assigned or pledged without written consent of the federal office.

## **4. Performance / Warranty**

### **4.1 Personal fulfillment**

As a rule, the contracting parties shall fulfill the research performances to be provided pursuant to the contract by way of their employees. If the research contract designates specific persons to fulfill the contract, these persons must provide the research performances in person. The engagement of third parties or an exchange of designated persons at the research institution shall only be permissible with the advance written consent of the federal office.

### **4.2 Duty of notification**

The contracting parties shall regularly notify each other of the progress of the work. All circumstances interfering with fulfillment according to the contract must be notified to the other contracting party immediately. The federal office shall at all times be entitled to exercise its right of inspection and information concerning all parts of fulfillment of the research contract.

### **4.3 Safety regulations and employment conditions**

For the research performances to be provided in Switzerland, the research institution shall comply with the safety regulations and employment conditions applicable to its employees in accordance with Swiss law in force. In particular, it shall ensure the equal treatment of women and men, specifically with regard to equality of wages. The collective and standard employment contracts shall determine the employment conditions. Where no such contracts exist, the employment conditions customary for the location and profession shall apply. The research institution shall only employ employees who have the necessary permits for providing the research performances.

If the performance is provided abroad, the research institution must at the least ensure compliance with the core conventions of the International Labour Organisation in accordance with Annex 2a of the Public Procurement Ordinance.

The research institution shall contractually oblige third parties it engages for contract fulfillment to comply with the aforementioned principles.

If the research institution fails to comply with these principles, it shall owe liquidated damages amounting to 10% of the total remuneration, but at least 3,000 francs and at most 100,000 francs per contract, without prejudice to article 8.3.

### **4.4 Warranty of quality**

The research institution shall be liable for faithful and careful execution of its agreed research performances in accordance with recognized scientific and technical standards, and it shall guarantee that it observes the applicable provisions under public law when fulfilling the contract. The same shall apply to the federal office if it provides research performances.

The federal office shall be entitled, within a reasonable time after receiving the research results, to send research results back to the research institution that are insufficiently or faultily documented, for purposes of revision or completion free of charge, and it shall impose a reasonable deadline.

## **4.5 Warranty of title**

In their capacity as specialists in their fields and with the knowledge of the intended use of the research results to be generated, the contracting parties confirm that, at the time of conclusion of the contract, no identifiable rights of third parties exist and, to the extent that rights of third parties are known, these have been taken into account sufficiently. The contracting parties shall notify each other of these rights. If, in the course of fulfillment of the contract, an encumbrance arising from rights of third parties becomes known, the contracting parties shall notify each other without delay and shall jointly agree further steps.

If a third party justifiably asserts the violation of rights that were known to a contracting party or would have been identifiable for a contracting party, the contracting party concerned shall indemnify the other contracting party for the costs incurred by that party.

In the event of lawsuits arising there from or other claims by third parties, the contracting parties shall be obliged to coordinate their defense and render mutual support.

### **4.6 Measure of liability**

The contracting parties shall be mutually liable for damages they cause in the fulfillment of the contract. The liability shall be limited to intent and gross negligence. This restriction shall not apply to the violation of essential contractual obligations and the lack of warranted characteristics. To the extent legally permissible, liability shall be excluded for financial damage and consequential damage.

## **5. Rights to research results**

### **5.1 Property**

To the extent that new intellectual property rights pertaining to research results arise in the course of fulfillment of the present contract, the following shall apply:

Intellectual property rights which

- a. arose pursuant to performances by employees of the research institution shall remain the property of the research institution;
- b. were generated jointly by employees of the federal office and the research institution shall remain the joint property of both contracting parties. In a separate agreement, the contracting parties shall specify the registration and realization strategy as well as division of costs;
- c. arose pursuant to performances by employees of the federal office shall remain the property of the federal office.

### **5.2 Pre-existing rights**

Subject to the rule set out in article 6.3, pre-existing rights of the parties shall not be affected.

### **5.3 Waiver**

If a contracting party waives the protection or preservation of its intellectual property rights pertaining to the research results, it shall offer the rights to the other contracting party in a timely manner for purposes of assuming the rights. The conditions for assumption of these rights shall be set out in a separate agreement.

## **6. Use of research results**

### **6.1 Principle**

All research results developed in the course of provision of the research performances by employees of the research institution in collaboration with employees of the federal office may be realised by both parties independently of each other, subject to the following provisions.

### **6.2 Right to use of research results**

In the case of article 5.1(a), the research institution shall grant the federal office a free, irrevocable, non-exclusive, non-transferrable and non-sublicensable right to use of these intellectual property rights.

In the case of article 5.1(b), the contracting parties shall, considering article 6.4, mutually grant each other a free, irrevocable, nonexclusive, non-transferrable, non-licensable right to use of these joint intellectual property rights. Any use beyond this shall be upon mutual consent of both contracting parties.

To the extent that, in the case of article 5.1(c), rights of use are to be granted to the research institution, this shall be set out in the research contract.

### **6.3 Use of pre-existing rights**

If, in the course of performance of the research contract, pre-existing intellectual property rights of the research institution are used by the research institution which are necessary for utilisation of the research results by the federal office, then the federal office shall receive a simple right to use those intellectual property rights, to the extent not excluded by any other obligations of the research institution. The granting of this right of use shall be free, to the extent not otherwise agreed.

### **6.4 Access of third parties to research results**

Unless otherwise agreed, the research institution shall in principle be entitled to publish the research results first or to make them available to third parties. It shall agree with the federal office in advance on the time of first publication or granting of access.

The federal office shall have the right, during or after performance of the contract, to limit the granting of access in terms of time or content where overriding public interests exist, and it shall disclose the grounds for such limitation. If the federal office legitimately demands such a limitation that gives rise to consequences relating to value added tax, the federal office shall compensate these consequences.

The contracting parties shall undertake to jointly specify the other effects on remuneration.

### **6.5 Registration of licences**

The federal office shall be entitled to have licences obtained within the framework of the research contract registered with the register of protective rights of the Swiss Federal Institute of Intellectual Property (or foreign patent offices, etc.) at its own expense.

## **7. Treatment of information**

### **7.1 Principle of due care**

The contracting parties shall undertake to treat with due care all data and information of the other party

they obtain within the framework of the contractual arrangement, without prejudice to deviating rules in the contract or in the GTC or more extensive confidentiality agreements and provisions. The provisions of the Federal Law of 19 June 1992 on Data Protection (DSG; SR 235.1) shall be complied with.

### **7.2 Information Protection Ordinance (ISchV)**

If, upon conclusion and fulfilment of the research contract, information of the federal government and the Swiss Armed Forces is exchanged, used, or generated, the Ordinance of 4 July 2007 on the Protection of Federal Information (Information Protection Ordinance, ISchV; SR 510.411) shall apply, to the extent the protection of this information is called for in the interest of the Swiss Confederation. If the information is military information classified as CONFIDENTIAL or SECRET, the Ordinance of 29 August 1990 on Secrecy Protection pertaining to Contracts with Classified Military Content (Secrecy Protection Ordinance; SR 510.413) shall necessarily apply.

## **8. Default**

### **8.1 Occurrence of default**

If the contracting parties fail to meet fixed agreed deadlines (transactions for delivery by a fixed date), then they shall immediately be deemed in default, otherwise pursuant to an overdue notice.

### **8.2 Rescission**

The party in default shall be given a reasonable deadline to subsequently fulfil its obligations. If the obligations are not fulfilled by the imposed deadline, the other party may rescind the research contract. It shall notify the party in default in writing of its rescission of the contract and shall pay for the performances provided until the time of termination of the contract.

### **8.3 Liquidated damages / Compensation**

If a contracting party is in default, it shall owe liquidated damages. These shall amount to 0.1% per day of delay, but at most 10% of the entire remuneration. The liquidated damages shall also be owed if the delayed performances are accepted by the other party. Payment of the liquidated damages shall not relieve the party in default of compliance with its contractual obligations. This provision is without prejudice to additional claims for damages.

## **9. Amendments / Termination**

### **9.1 General amendments of contract**

Amendments or additions to the research contract shall only be valid if they are agreed in writing.

### **9.2 Partial invalidity / Gaps in the contract**

If individual provisions of the research contract prove to be invalid or unlawful, this shall not affect the validity of the research contract. In that event, the provision in question shall be replaced by an effective provision that is as equivalent as possible. The same shall apply in the event of a gap in the contract.

### **9.3 Revocation and legal consequences**

- a. The federal office shall be entitled at any time to revoke the research contract in whole or in part. Such revocation must be notified to the research institution in writing without delay.
- b. In the event of revocation, the research institution shall be entitled to compensation for research performances already provided or for demonstrated expenses. These shall include payments for wages and salaries that will continue to be due for a limited time pursuant to the research contract and the obligations arising there from. The research institution shall undertake not to enter into obligations within the framework of the research contract that go beyond the necessary scope in terms of time and volume.
- c. There shall be no entitlement to remuneration or gains for the part of the research contract no longer to be performed, without prejudice to compensation claims if the contract is terminated in an untimely manner.
- d. All costs incurred by the research institution arising from the revocation must be fully justified and substantiated by the research institution. The payments to be made may not exceed the amount that would be paid to the research institution if the entire research contract were completed. The federal office shall be obligated to pay these costs only to the extent that the research institution makes all research results available as referred to in articles 4 to 6 that are generated up to that time.

## **10. Final clauses**

### **10.1 Applicable law**

Swiss law shall apply to the contractual relationship. Choice of law provisions and the Vienna Sales Convention are explicitly excluded.

### **10.2 Place of jurisdiction**

The place of jurisdiction is **Berne**.

### **10.3 Temporal scope of application**

The following articles of the present GTC shall continue to apply after termination of the research contract:

- 3.4 Assignment
- 4.5 Warranty of title
- 5.3 Waiver
- 6.4 Access of third parties to research results
- 6.5 Registration of licenses
- 7. Treatment of information
- 10.1 Applicable law
- 10.2 Place of jurisdiction

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