

# General Terms and Conditions for Contract Research

## 1. General Provisions

- 1.1. These General Terms and Conditions (hereinafter referred to as the "GTC") are issued pursuant to Section 1751 et seq. of Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as the "Civil Code"), by

**Ústav přístrojové techniky AV ČR, v. v. i. (Institute of Scientific Instruments of the Czech Academy of Sciences)**

Registered office: Královopolská 147, 612 64 Brno (e-mail communication: institute@isibrno.cz)

Company ID Number: 68081731, Tax ID Number: CZ68081731

Legal representative: prof. Ing. Josef Lazar, Dr., director

Registered as: the institute is a public research institution established by the Czech Academy of Sciences under Act No. 341/2005 Coll.

Bank details: Československá obchodní banka a.s., account number: 372707963/0300

(Hereinafter referred to as the "Contractor")

- 1.2. These GTC provide for the mutual rights and obligations of the Ordering Party and the Contractor (individually also "Party", collectively also "Parties") for contract research based on the Contractor's know-how and the use of their unique scientific equipment.
- 1.3. These GTC form an integral part of every contract and order concluded for contract research, provided that any deviating provisions agreed in the contract or expressly confirmed by the Contractor upon acceptance of the order shall prevail over the provisions of these GTC.

## 2. Subject Matter of the Contract Research

- 2.1. The contract research is based on the use of the Contractor's know-how for the benefit of the Ordering Party provided that no state aid is used by the Contractor and the contract research is carried out at the market price that at least covers the costs.
- 2.2. Each order or contract shall have the subject matter of the contract research (hereinafter also referred to as the 'Work') described in a manner that allows the identification of the know-how used by the Contractor.

## 3. Establishment of the Contractual Relationship

- 3.1. The Contractor reserves the right to decide whether to carry out the contract research based on a written contract or order.
- 3.2. The contractual relationship established by the contract shall come into force on the date of signature of the authorised representative by the last contracting Party.
- 3.3. A contractual relationship based on a purchase order is established at the time of confirmation of the purchase order by the Contractor, who declares in this context that these GTC of the Contractor apply to the contractual relationship entered into. The applicability of Section 1740 (3) of the Civil Code, which allows the conclusion of a contractual relationship even if there is no complete agreement of the will of the contracting parties, is excluded. In particular, the acceptance of the Ordering Party's GTC is excluded. If there is a conflict between the Ordering Party's and the Contractor's terms and conditions, the application of Section 1751(2) is excluded and the contractual relationship does not arise.
- 3.4. The legal relations between the contracting parties exclude the application of Section 558 of the Civil Code on the priority of business practices.
- 3.5. By entering into a contractual relationship, both contracting parties confirm that they have been informed of all relevant factual and legal circumstances concerning the possibility of entering into a contractual relationship under Section 1728 of the Civil Code and that they do not expect or request any further information on the matter. If required by Act No. 340/2015 Coll., on the Register of Contracts, the Contractor shall publish anonymized documents proving the conclusion of the contractual relationship, whereby the contractual relationship takes effect. Any performance prior to the effective date shall be deemed to be a performance without legal justification with all the consequences arising therefrom.
- 3.6. By entering into a contractual relationship, the Contractor undertakes to carry out contract research at his own expense and risk and with all due professional care and the Ordering Party undertakes to accept the Work and pay the agreed price for it.

## 4. Place of Performance

- 4.1. The place of performance of the contract research is usually the Contractor's headquarters.
- 4.2. The Ordering Party shall hand over the items or documents necessary for the performance of the contract research to the Contractor in the agreed manner at the agreed time after the conclusion of the contractual relationship. The price of the contract research shall not be deemed to be reduced by the price of these items.

## 5. Delivery Time

- 5.1. The delivery time for the Work shall be agreed by the contracting parties at the conclusion of the contractual relationship, or in an accepted specification thereof. The Contractor may, in agreement with the customer, deliver the Work before the agreed deadline.
- 5.2. If the Contractor concludes during the course of the contractual research that it is not possible to carry out the contractual research properly with all due professional care, it shall notify the Ordering Party immediately, at the latest within the time limit referred to in paragraph 5.1.

## 6. Handover and acceptance of the Work

- 6.1. The place and manner of handing over the Work shall be agreed between the parties at the conclusion of the contractual relationship.

- 6.2. The Contractor shall hand over the Work to the Ordering Party in a protocol, thereby enabling the Ordering Party to use it. By signing the handover protocol, the Ordering Party confirms acceptance of the Work.
- 6.3. If the parties agree, the Work may be handed over without a handover protocol, e.g., against signature by handing over to an authorised employee of the Ordering Party or by sending the Work to the client by a carrier. In this case, the handover of the Work is deemed to be the handover of the consignment to the first carrier, provided that the Contractor allows the Ordering Party to exercise his rights under the transport contract against the carrier.

#### **7. Price of the Work and Payment Terms**

- 7.1. The contract price agreed by the contracting parties under Section 2 of Act No. 526/1990 Coll., on Prices, and including the entire subject matter of the contractual relationship including all agreed related services, is binding on the Contractor and must not be exceeded.
- 7.2. If the price for contract research cannot be determined in advance with sufficient certainty, the Contractor shall state in the offer or when accepting the order an estimate of the price, with the understanding that the final price will be determined according to the actual scope of Work.
- 7.3. The price shall be increased by VAT at the rate applicable at the time of invoicing.
- 7.4. The Ordering Party shall pay the price for the Work on the basis of an invoice issued by the Contractor after the signing of the protocol pursuant to paragraph 6.2 or after/at the handover of the consignment pursuant to paragraph 6.3.
- 7.5. If the invoice, which is also a tax document, contains incorrect or incomplete data in terms of Act No. 235/2004 Coll., on value added tax, the Ordering Party is entitled to return it to the Contractor by the due date. Likewise, if the Ordering Party discovers a defect in the delivered Work before payment of the invoice, the Ordering Party is entitled to return the invoice to the Contractor. The Contractor shall submit a new invoice to the Ordering Party after the defect has been rectified or the Contractor's liability for the defect has otherwise ceased.
- 7.6. The invoice is due 30 calendar days from the date of its proven delivery to the Ordering Party.

#### **8. Transfer of Ownership**

- 8.1. The risk of damage to the results of the contractual research shall pass to the Ordering Party upon handover and acceptance in accordance with Article 6.
- 8.2. Title to the tangible results of the contract research shall pass to the Ordering Party upon payment of the price pursuant to paragraph 7.4.

#### **9. Contractual Penalties**

- 9.1. Delay by the Contractor in meeting the agreed performance deadline according to paragraph 5.1 shall entitle the Ordering Party to demand a contractual penalty of 0.05 % of the total agreed price for performance under the contract or the order for each day of delay.
- 9.2. In the event of the Ordering Party's default in the timely payment of the price, the Contractor shall be entitled to demand interest on late payment from the Ordering Party in the amount specified by applicable law.

#### **10. Defective Performance, Quality Warranty**

- 10.1. The Work is defective if it does not conform to the contractual agreement. The Ordering Party's right to defective performance is based on the defect that the item has when the risk of damage passes to the Ordering Party, even if it becomes apparent later. A defect that arises later and is caused by the Contractor's breach of duty also establishes the Ordering Party's right. The Ordering Party is obliged to notify the Contractor of defects in performance without undue delay after he has discovered them or should have discovered them with due care. The Ordering Party has the right to have the defect removed free of charge during the guarantee period.
- 10.2. The contractor guarantees the Work for a period of 1 year from its handover to the Ordering Party.

#### **11. Withdrawal from the Contractual Relationship**

- 11.1. Either Party may withdraw from the concluded contractual relationship due to a material breach of contractual obligations by the other Party. The legal effects of withdrawal from the contract shall commence on the date of delivery of the notice of withdrawal to the other Party. The relevant provisions of the Civil Code shall apply to the withdrawal.
- 11.2. The contracting parties shall not be liable for breach of the contractual provisions if such breach is the result of force majeure.

#### **12. Intellectual Property Protection**

- 12.1. The Contractor is the rightful owner of all intellectual property rights relating to the delivered results of contract research.
- 12.2. If the subject of contract research is the delivery of intangible work, i.e. the disclosure of Contractor's know-how, the know-how remains the property of the Contractor who grants the Ordering Party a non-exclusive license to use but not to further distribute the know-how.
- 12.3. If the Ordering Party intends to disseminate the result of the contractual research in the course of its business, or if it intends to sell the Work to a third party, the Ordering Party shall initiate negotiations between the parties for the purpose of transferring the licence to use the aforementioned intangible work into its ownership.

#### **13. Protection of Information**

- 13.1. With regard to paragraph 2.2, it is stipulated that the subject of the contractual research fulfils the conceptual features of the Contractor's trade secrets within the meaning of Sections 504 and 2985 of Act No. 89/2012 Coll., the Civil Code. As a direct consequence, the subject of the contract research is anonymized when the order or contract is published in the public administration information system, insofar as Act No 340/2015 Coll., on the Register of Contracts, requires such publication.
- 13.2. The Parties undertake not to disclose commercial and technical information entrusted to them by the other Party to third parties without the written consent of the other Party and not to use such information for purposes other than for the performance of the subject matter of this Agreement. Exceptions to this provision are described in paragraphs 13.3 to 13.5.

- 13.3. The Contractor is subject to financial control pursuant to Act No. 320/2001 Coll., on Financial Control in Public Administration.
- 13.4. As the concluded contractual relationship can be used within the Contractor's projects to show a monitoring indicator for contract research, the Contractor is obliged to ensure that project control authorities have access to relevant documents. The documents must be archived for at least 15 years.
- 13.5. The subject matter of the contract research shall become the basis for the research summary report to be prepared by the Contractor in connection with its obligation to record the contract research carried out. The report, stored by the Contractor in a special archive, will be marked as confidential in the Register of Information on Results (RIV) operated on the basis of Section 4 of Government Regulation No. 397/2009 Coll., on Information Systems, and all information about it will be regulated with regard to the protection of business secrets.

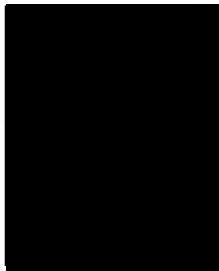
**14. Liability for Damages**

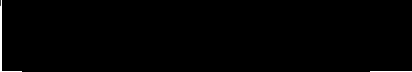
- 14.1. The Contractor has liability insurance for damage to other people's movable property located on the premises of the institute with a limit of indemnity of 1 million CZK, which can be applied to the items and documents mentioned in paragraph 4.2.
- 14.2. The Contractor shall be liable for damages incurred in connection with the performance of the contract research.
- 14.3. The Contractor shall not be liable for damages that may be incurred by the Ordering Party or third parties in connection with the use of the duly delivered and accepted performance.
- 14.4. A Party who demonstrably violates the rules defined in Articles 12 and 13 shall be liable to pay the other Party for the damage demonstrably caused. This also applies in the event of withdrawal from the contractual relationship.

**15. Final Provisions**

- 15.1. The rights and obligations arising from the relationship between the Contractor and the Ordering Party shall be governed by the Czech law.
- 15.2. In the event of a dispute, the court in Brno has territorial jurisdiction.
- 15.3. Legal acts shall be performed in writing, whereby email communication shall also be deemed to be in writing for the purposes of these GTC. In this case, the moment of delivery shall be deemed to be the receipt of the system message of delivery confirmed by the addressee's action.
- 15.4. If individual provisions of these GTC become invalid, the validity of the other provisions of these GTC shall not be affected.
- 15.5. These GTC come into force and effect on the day of their announcement by the Contractor

In Brno, 1 January 2023



  
prof. Ing. Josef Lazar, Dr., Director of the Institute

