

General Terms and Conditions Governing Contract Research and Development Work at Universität des Saarlandes

1 Scope

The following terms and conditions apply to all research and development contracts granted to Universität des Saarlandes (UdS). Contracts shall not include any divergent, conflicting or supplementary conditions issued by the contracting party (hereinafter: the ‘Sponsor’), unless these have been accepted in writing by UdS.

2 Offer and acceptance

- (1) Formation of contract shall require a binding written quotation for services by UdS and written acceptance thereof by the Sponsor.
- (2) If, in the course of contract performance, a service needs to be rendered that is not provided for in the order or the quotation, UdS shall notify the Sponsor immediately in writing. If this service is determined to be necessary or expedient, the parties to the contract (hereinafter: the ‘parties’) shall mutually agree to the required contractual amendments and the corresponding financial compensation.
- (3) UdS shall only conduct a freedom to operate (FTO) search (i.e. a search for potential infringements of third party intellectual property rights) if this has been expressly agreed in writing. If this has not been agreed, an FTO search shall not form part of the research and development contract.
- (4) If the Sponsor submits a written request for changes, UdS shall implement these changes subject to the necessary resources being available and within an amended time frame for completion and for a corresponding increase in compensation (provided that the rationale for the increase is provided). The same shall apply to any more detailed specifications submitted by the Sponsor if such specifications constitute a change in contract performance.

3 Subject of contract; Deadlines

- (1) The subject of the research and development contract is the services offered by UdS in its quotation.
- (2) If the quotation for services or the research and development contract contains a completion period or other deadlines, these shall be deemed binding only if UdS has expressly agreed to their binding character. If UdS becomes aware that the binding completion period will be exceeded or a binding deadline cannot be met, UdS shall notify the Sponsor immediately stating the reasons for the delay and shall reach a mutually acceptable contractual adjustment with the

Sponsor. The Sponsor shall not refuse a contractual adjustment without good cause, especially if the reason for the delay is beyond UdS' control.

4 Implementation; Cooperation

- (1) The project shall involve close cooperation between the parties and shall be conducted in accordance with the work schedule agreed for the research and development contract. UdS shall provide continuous updates in suitable form to the Sponsor regarding the results achieved and the experience gained during the contractual research project. The results of the research and development work shall be compiled in a final report, where this is required and represents usual practice.
- (2) The Sponsor undertakes to support UdS when carrying out the contractually agreed works and to provide UdS with all of the necessary documentation and information. This shall be done in good time so that UdS can perform the work without delay. If the Sponsor fails to fulfil its cooperative duties in full or does not provide the required support in time, the Sponsor shall bear the costs for any losses or additional costs incurred.

5 Compensation / Terms of payment

- (1) Compensation shall be in the form of an agreed lump sum. The parties may, however, agree to compensation on an at-cost basis. Value added tax (VAT) shall be added to the relevant compensation sum, unless VAT was specifically included in the quotation for services.
- (2) UdS shall notify the Sponsor immediately if it becomes apparent that the agreed compensation is insufficient to cover the intended research and development work. In this event, UdS shall submit an amended compensation scheme to the Sponsor. If additional costs are incurred, such as customs duties, import charges, packaging costs, these may be invoiced separately.
- (3) Payments shall be made in accordance with the agreed payment schedule. If a payment schedule has not been agreed, the due date for payment shall be as specified in the invoice issued by UdS. Payments shall be made net (without deduction) to the UdS bank account quoting the invoice number. In the case of late payment, the Sponsor shall be charged interest at the statutory rate.
- (4) The Sponsor may offset payment against claims arising from a separate contractual relationship only in respect of claims by the Sponsor that are undisputed or have been established by a final and binding court judgment.
- (5) The Sponsor is entitled to assert its right to withhold payment only in respect of claims derived from the same contractual relationship.
- (6) Unless otherwise agreed in the research and development contract, 50% of the total compensation plus VAT shall be due after the Sponsor has placed the order. A further 40% of the total compensation shall be due halfway through the completion period. The remaining

10% shall be due on completion of the project or on submission of the final report. Payments shall be made by bank transfer into UdS' business account as specified in the research and development contract. If the research and development contract does not contain the information necessary for proper invoicing, UdS shall raise separate partial invoices.

- (7) Compensation for contractual performance shall be subject to VAT at the statutory rate effective at the time when the contractual services have been rendered in full.

6 Research and development results

- (1) UdS shall provide to the Sponsor the research and development results that are generated during contract performance and that are within the scope of the contract.
- (2) Project results are understood to mean all of the scientific findings, knowledge, documents, prototypes, databases and know-how produced in the course of contract performance, insofar as these results are not covered by the provisions of Sections 7 and 8.
- (3) Once the Sponsor has paid all of the agreed compensation, the Sponsor shall be granted a non-exclusive, unrestricted, transferable and royalty-free right to use in any form all of the results generated through performance of the contractually agreed services ordered by the Sponsor in order to realize the Sponsor's intended application. An exclusive right of use for the intended application can be granted to the Sponsor in principle, but this would require a separate written agreement. The Sponsor should submit such a request for exclusive rights within a period of two months after being notified in writing by UdS about the emerging results. UdS is not obliged to grant the Sponsor an exclusive right of use.

7 Rights of use; Joint inventions; Third-party IP rights

- (1) UdS shall retain the rights pertaining to inventions that are eligible for patent or utility model protection and that are developed by members of UdS during the project. UdS shall immediately notify the Sponsor regarding any inventions for which applications for intellectual property (IP) protection have been submitted. UdS alone shall decide whether it will claim an invention and apply for IP rights.
- (2) For the purpose of realizing its original intended application, the Sponsor is entitled to acquire at normal market conditions a licence for the non-exclusive right to use the inventions developed during the project and the IP rights applied for or granted to UdS. Unless otherwise agreed, the Sponsor shall, within six months of receiving notification of the invention, inform UdS in writing of its interest in exercising the aforementioned right. Normal market conditions cover the reimbursement of a percentage of the costs incurred for the application, maintenance and defence of the IP rights (percentage is to be agreed between the parties and shall reflect the normal market rate), the statutory remuneration payable to UdS in accordance with the German Employees' Inventions Act (ArbnErfG), compensation for the value of the invention,

and agreement regarding additional future compensation if the partners to the contract consider the use of the invention by the Sponsor to be unexpectedly successful at the time the licence agreement is signed. To grant an exclusive right of use for the intended application, the parties shall conclude a separate written agreement and the Sponsor shall pay reasonable compensation at the normal market rate.

- (3) In the case of joint inventions involving members of UdS and the Sponsor, the parties shall agree on the approach to be adopted on a case-by-case basis. Unless otherwise agreed, each of the parties is entitled to use the inventions for its own purposes and to grant non-exclusive licences to third parties without requiring the consent of the other party. If the Sponsor itself exploits the joint invention commercially, the Sponsor shall regularly pay reasonable compensation to UdS, the amount of which reflects market-typical licensing fees and the respective inventors' shares. The terms and conditions agreed shall be set out in a separate contract with UdS. Non-commercial research with and for third parties does not constitute commercial use. An application to acquire IP rights shall require the mutual consent of both parties.
- (4) If existing IP rights held by UdS are used during the project and if these rights are necessary for the Sponsor to be able to exploit the research and development results, the Sponsor shall be granted a non-exclusive, non-gratuitous right of use, which shall be agreed separately in writing, provided that this does not conflict with other obligations of UdS. Such requests shall be submitted by the Sponsor to UdS no later than six months after the contract has ended.
- (5) During performance of the contract, UdS shall inform the Sponsor immediately if it becomes aware of any third-party IP rights that could be prejudicial to the contractually agreed use. The parties shall mutually agree how to take these IP rights into consideration for the remaining duration of the project.

8 Copyright

- (1) If copyrightable research and development results arise and unless otherwise provided for in research and development contract, the Sponsor shall be granted an irrevocable, non-exclusive, worldwide, perpetual and transferable right to use these results for purposes limited to the realization of the Sponsor's intended application. In particular, the Sponsor is entitled to exploit, lease, loan, reproduce, reconfigure or change any customizations and to transmit them or make them publicly available in part or in whole, for a fee or free of charge, by wired or wireless means and to publicly report on them. Any such reconfigurations or changes shall require the prior written consent of the Sponsor.
- (2) In all other respects, the provisions of Section 7 shall apply accordingly.

9 Use of results for teaching and research

- (1) It is agreed that UdS is entitled to publish the results of the research and development project via the usual academic or scientific channels and for these results to be used free of charge to acquire academic degrees.
- (2) UdS and any employee inventors reserve the non-exclusive, royalty-free, sub-licensable, irrevocable right of use in relation to the rights set out in the preceding Sections 6 to 8 for the purposes of research, teaching and medical treatment, including research and development contracts for third parties and collaborative research work with third parties. The right of use in the field of medical treatment shall also be granted to Saarland University Hospital, irrespective of whether an exclusive right of use was agreed.

10 Confidentiality

During the term of the contract and for a period of five years thereafter, the parties agree to keep and hold confidential and to not disclose to third parties any technical and commercial information that they have exchanged and that has been declared confidential. Each party shall hereby apply the same degree of care that it uses to protect its own confidential information. This shall not apply to information that was already known to the other party or was already in the public domain or was generally accessible prior to disclosure, or that subsequently became part of the public domain or became generally accessible through no action or fault of the other party, or to information that was disclosed or made accessible to the other party by an authorized third party or by an employee of the other party who developed this information independently and who had no knowledge of the previously disclosed information.

11 Publication; Advertising

- (1) After consulting with and obtaining consent from UdS, the Sponsor is entitled to publish the results of the research and development project provided that the publication acknowledges the copyright owner and the involvement of UdS. Such consultations shall be conducted so as not to be prejudicial to doctoral theses, final-year research theses or IP rights applications. For advertising purposes, the Sponsor may use UdS's name only with the latter's express consent.
- (2) During the project, publications by UdS that relate to the Sponsor's intended application shall, insofar as the Sponsor has been granted exclusive rights, be submitted to the Sponsor for consultation no later than two weeks before the planned publication. The Sponsor shall not withhold from UdS its consent to publication without good cause. Consent shall be deemed to have been given, if the Sponsor does not object within two weeks of receiving notification of intent to publish from UdS. If consent is not given, the parties shall endeavour to find a mutually agreeable solution that amends the content of the planned publication in a manner

that better reflects the interests of the Sponsor. In no case shall publication be delayed by more than three months.

12 Special provisions for research and development work governed by a sales or service contract

- (1) If UdS has made an express commitment to produce a good or supply a service as the result of a research and development contract, where such good or service is consistent with the generally accepted state-of-the-art, and if such good or service is found to be defective, the relevant provisions governing sales contracts or service contracts shall apply, but subject to the following paragraphs.
- (2) Should the result of the research and development work produced by UdS prove to be defective, then UdS shall first have the opportunity to effect a remedy through supplementary performance by choosing either to rectify the defect or to supply a replacement. Remedy through supplementary performance may be attempted more than once depending on the nature of the good produced or the service supplied, the type of defect and other circumstances.
- (3) If UdS rejects remedy through supplementary performance or if the remedy fails or if it is unreasonable to expect the Sponsor to accept remedy through supplementary performance, then the Sponsor may either withdraw from the contract or claim a reduction of the compensation owed or claim damages. The right to terminate the contract may be exercised only in case of a serious defect. The right to termination shall lapse if the Sponsor does not terminate the contract within two weeks of receiving notification from UdS that remedy through supplementary performance has been rejected or has failed, or no later than two weeks after the date on which it becomes apparent that it is unreasonable to expect the Sponsor to accept remedy through supplementary performance. UdS shall pay damages only in accordance with the provisions of Section 13.
- (4) The Sponsor shall immediately examine the result of the research and development work produced by UdS and shall give immediate notice of any defects. Claims relating to apparent defects shall only be admitted if UdS is notified of the claims no later than two weeks after delivery. Notification of latent defects shall be given immediately after discovery.
- (5) Defect liability claims shall expire in accordance with the limitation periods set out in Section 14.

13 Liability / Warranty

- (1) UdS shall conduct research with a degree of diligence that accords with the generally accepted rules of research practice and that appears reasonable based on its understanding of the then current state of technical and scientific knowledge. UdS shall endeavour to achieve the desired project objectives but does not assume any further liability or provide any further guarantee or

warranty that the project objectives or their industrial or commercial exploitation will be achieved.

- (2) The Sponsor shall notify UdS immediately in writing about any defects that become apparent.
- (3) If UdS becomes aware of the rights of third parties, it shall immediately notify the Sponsor, but does not guarantee that the results from the research and development work are unencumbered by third-party rights.
- (4) Unless otherwise contractually agreed, the warranty shall be governed by the relevant statutory provisions.
- (5) The liability of UdS, its legal representatives and its vicarious agents for breach of contract and tort shall be limited to cases of intent or gross negligence. UdS, its legal representatives and its vicarious agents shall also assume liability for a negligent breach of essential contractual obligations (cardinal obligations). Liability shall be limited to foreseeable damages that are typical for the type of contract entered into.
- (6) UdS shall be liable for damages arising from an infringement of third-party IP rights (defect of title) only if such rights apply in the Federal Republic of Germany, if the Sponsor is using the research and development result in a manner consistent with the contract and the third party is therefore justified in asserting its claim, and if the Sponsor immediately notified UdS in writing of the claims asserted by the third party.
- (7) Liability for damages in respect of loss of life, personal injury or other impairment to health cannot be excluded or limited, nor can liability for compensatory damages in product liability claims.

14 Period of limitation

- (1) Claims for breach of contractual duty and tort claims shall be subject to a limitation period of twelve months. This shall not apply in cases where Section 438(1) No. 2 and Section 634a(1) No. 2 of the German Civil Code (BGB) prescribes longer limitation periods, or where UdS is liable by intent or gross negligence, or where claims have been brought for damages in respect of loss of life, personal injury or other impairment to health.
- (2) If the results of the research and development project are subject to an acceptance procedure, the period of limitation governing claims for defects shall begin upon acceptance, or, in the absence of an acceptance procedure, upon delivery of the results to the Sponsor.
- (3) The limitation period shall be suspended if the parties enter into negotiations regarding claims or the circumstances relating to a claim. This suspensive effect shall cease if one of parties has not complied within four weeks to the request of the other party to continue the negotiations.

15 Contract period; Termination

- (1) The effective period of contract shall be determined by the specifications in the research and development contract.
- (2) Notwithstanding the foregoing, each of the parties is entitled to terminate the contract without notice for good cause.
- (3) Notice of termination shall be made in writing.
- (4) Once termination has become effective, UdS shall, within a period of four weeks, deliver to the Sponsor those results of the research and development project that were produced up to the end of the period of notice. The Sponsor is obliged to compensate UdS for the services performed until the end of the period of notice and to reimburse all costs (including personnel costs) that UdS unavoidably incurs through performance of its contractual obligations. If the contract is terminated owing to the fault of one of the parties, claims for damages shall be unaffected.

16 Final provisions

- (1) Any supplementary agreements, changes and amendments shall be in writing.
- (2) The place of fulfilment for performance and payment is Saarbrücken.
- (3) The place of jurisdiction is Saarbrücken.
- (4) These terms and conditions are subject to the law of the Federal Republic of Germany. The provisions of the United Nations Convention on the International Sale of Goods (CISG) shall not apply.
- (5) Should one or more provisions of these terms and conditions be or become ineffective or legally unenforceable, either in part or in whole, without invalidating the aim and purpose of the entire agreement, this shall not affect the validity of the other provisions. The same applies, mutatis mutandis, to any gaps or omissions. UdS and the Sponsor agree to replace the ineffective or unenforceable provision with a provision that comes as close as possible to the intended purpose of the provision deemed ineffective or unenforceable. In the case of an incomplete provision, the parties undertake to fill any gap or omission with a new provision that is as close as possible to the economic intent of the provision that the parties would have agreed originally (based on the purpose and economic objectives of the contract) had they been aware at the time of the incomplete provision.