

# General Terms and Conditions

for the provision of research and development services as well as  
academic services  
by FH Campus Wien  
A-1100 Wien, Favoritenstraße 226

[Translation from German]

## 1 Scope of Application

(1) These General Terms and Conditions (GTC) shall apply to all services in the area of science, research and development provided by FH Campus Wien (FHCW) for a customer. Modifications of or amendments to these GTC shall be made in writing in order to be valid and shall be expressly marked as such.

(2) The name "FH Campus Wien" includes FH Campus Wien - Verein zur Förderung des Fachhochschul-, Entwicklungs- und Forschungszentrums im Süden Wiens (ZVR [Central Register of Associations] No. 625976320) and all its subsidiaries (such as, e.g., FH Campus Wien Forschungs- und Entwicklungs GmbH (FN [Business Register Number] 222135 w, Commercial Court Vienna)).

## 2 Offer, Placing of Orders

(1) A contract is concluded with a written order by the customer to the entity at the FHCW named in the offer within the period stated in the offer of the FHCW or by signing of the specific contract by the contracting parties.

(2) Only written agreements shall be binding on the contracting parties. Information included in catalogues, brochures, programme calendars and the like as well as any other oral statements shall only be relevant if agreed upon in writing.

(3) The customer shall be responsible for obtaining any permits to be issued by public authorities or other third parties which are required for execution of the order. FHCW will start to execute the order only after such permits were provably granted in a legally effective manner. The customer shall indemnify and hold harmless FHCW in this connection.

(4) All offer documents shall remain the property of FHCW; any use (such as, e.g., editing or passing on to

third parties) of the offer documents (or only parts thereof) shall thus only be permitted with FHCW's consent. In the case no offer is placed, the offer documents shall be shelved immediately or verifiably destroyed.

(5) Subsequent changes or additions to the order or the individual contract must be in writing and have the consent of all contracting parties. Otherwise point 5 applies.

## 3 Project Staff

(1) FHCW shall decide at its own discretion which staff and which subcontractors, if any, it will use for execution of the order. Assignment of specific staff to an order may be stipulated in a separate contract; however, such assignments shall only be valid as long as those staff members are employees of FHCW. The customer shall not be entitled to give the project staff instructions.

(2) The contracting parties shall not be allowed to entice away any permanently employed staff of the other contracting party for their own advantage or that of a third party for the term of execution of the order and for up to six months after termination of the contractual relationship. Staff members who are employed for a limited period of time exclusively for execution of the order shall be exempt from this regulation.

## 4 Participation of Customer

(1) The customer shall be obliged to support FHCW in the execution of the order and, in particular, to provide all information required for execution of the order in such a timely manner that FHCW is able to carry out the works for the order with no loss of time. Any expenses or damage caused by the customer's poor or delayed co-operation shall be borne by the customer.

## 5 Changes in Services, Disturbances in Services

(1) If a service that is not included in the order becomes necessary in the course of execution, FHCW shall immediately inform the customer thereof in writing. If both contracting parties come to the conclusion that this service is necessary or expedient, they shall mutually agree on the required changes in the order in terms of technical contents, time and money.

(2) The customer shall describe the change requests in as much detail as the task is described in the order documents. FHCW shall carry out the requested changes subject to available resources and against an adequate increase in the remuneration and adaptation of the time schedule. The same shall apply mutatis mutandis if an order detail advised by the customer leads to a change of a service.

(3) If in the course of execution of the order circumstances become apparent that may put at risk or delay execution of the order or fulfilment of the purpose of the order, FHCW shall immediately inform the customer in writing and present to the customer any measures and/or proposals for changes including the related consequences in terms of technical contents, time and money. The contracting parties shall mutually agree on the further steps to be taken.

## 6 Delivery, Deadlines

(1) FHCW shall prepare a written time and work schedule including deadlines in agreement with the customer; if the framework conditions on which the time and work schedule is based change in the course of execution of the order, it shall be adapted by mutual consent.

(2) If deadlines are not met (delay in delivery) by FHCW for reasons for which FHCW is not responsible, the procedure stated in Clause 5.3 shall be followed.

(3) If deadlines are not met (delay in delivery) by FHCW for reasons for which FHCW is responsible, the customer shall be obliged to grant FHCW a reasonable grace period of at least 30 days. To the extent permitted by law claims for damages shall be excluded.

(4) In the case of delays caused directly or indirectly by force majeure, FHCW shall be entitled (a) to suspend execution of the order (delivery) for the duration of the impediment and a reasonable start-up period or (b) to terminate the contract in whole or in part. If execution of the order (delivery) is delayed due to force majeure for more than three months, also the customer shall be entitled to rescind the affected part of the contract.

(5) If dispatching an item that is ready for shipment (as, for example, the work ordered or any other product under the contract) is not possible with FHCW not being responsible therefor or if the customer does not desire so, FHCW may store the item at the customer's cost. Delivery shall be deemed effected thereby.

(6) The services ordered shall be deemed provided in full upon the customer's acceptance. If the customer makes no statement within four weeks of proved transmission of the work ordered (final report), it shall be deemed accepted.

## 7 Research and Development Results

(1) If, in the course of the execution of the order, a patentable or licensable invention arises, the FHCW shall immediately notify the customer accordingly. In such a case, both parties undertake to refrain from anything that could be detrimental to the patentability or licensability of this invention. All rights to the invention are owned by the FHCW. In the case of the registration of industrial property rights by the FHCW, the customer shall pay a share of the costs for the registration, maintenance and defense of the industrial property rights as well as for the payment of the service invention fee in the amount of EUR 3,500.

(2) The customer will receive a non-exclusive right to use the research and development results, unless otherwise agreed.

(3) If the customer, instead of the right under point 7 (1), has an interest in an exclusive right to use the research and development results for the purpose underlying the order, this shall be regulated separately by contract. The FHCW reserves a non-exclusive, gratuitous right of use for its own scientific purposes and purposes of teaching.

(4) The customer will receive a non-exclusive right to use the copyrighted research and development results arising from the implementation of the project. The granting of an exclusive right of use for the intended application is to be agreed separately. The FHCW reserves a non-exclusive, gratuitous right of use for its own scientific purposes and purposes of teaching and research

## 8 Publications

(1) The customer acknowledges that it is one of the fundamental tasks of a university of applied sciences [Fachhochschule] and its staff to make regular publications on the type, subject and the results of its research and development work. FHCW and the project staff shall therefore be entitled to publish results obtained in the course of execution of the order in their own name (and with reference to the customer's financing).

(2) If there are special reasons worth considering, in particular in the case of planned applications for patent registrations, it may be agreed that publications directly related to the order shall be subject to the customer's approval.

(3) With regard to agreed waiting periods it has to be observed that any final academic papers as defined in Section 19 (2) of the Austrian University of Applied Sciences Studies Act [Fachhochschul-Studiengesetz/FHStG] or Section 86 (1) of the Austrian Universities Act 2002 [Universitätsgesetz/UG] which are prepared in the course of execution of the order can be banned from publication for a maximum of five years (Section 19 (3) FHStG and Section 86 (2) UG 2002). If results obtained in the course of execution of the order are to be permanently excluded from publication, the specific contract shall provide that no final academic papers must be prepared in connection with the order.

## **9 Payment**

(1) Unless otherwise agreed, payment of the remuneration shall be made as follows: 40% upon conclusion of the contract, 30% after the first half of the contract term (upon presentation of the interim report), 30% after acceptance.

(2) Payments shall be made upon issuing of an invoice. All payments shall be made in such a way that they are available to FHCW in the account advised without deductions on the due date.

(3) If the customer is in default with an agreed payment or other performance, FHCW shall be entitled to

- a) suspend execution of the order until payment of the arrears or other performance and to adapt the time and work schedule accordingly;
- b) charge default interest at a rate of 8 percentage points above the base interest rate of the Austrian Central Bank [*OeNB*] (the base rate applicable on the last day of a half-year being decisive for the next half-year);
- c) invoice all costs resulting from such default, including but not limited to dunning charges and lawyer's fees.

(4) The customer shall not be entitled to withhold payments or set off its own claims against counterclaims (e.g. on the ground of warranty claims).

(5) Agreed rights to use a work and other ownership rights shall pass to the customer only upon payment of the full remuneration for the order.

## **10 Warranty**

(1) The customer acknowledges and agrees to the fact that a performance risk is connected with service orders in the area of research, development and

science. FHCW shall carry out the order in a professional manner and with due care but shall not be liable for occurrence of a specific result. If the service rendered by FHCW does not objectively comply with the agreement in terms of type, contents or scope, the customer shall only be entitled to demand improvement or delivery of missing parts; any other warranty claims shall be excluded.

(2) The warranty period shall be 3 months from acceptance of the work ordered. FHCW shall repair proved defects without any additional entitlement to remuneration within a reasonable period of time.

(3) Warranty claims may only be asserted in court within three months of expiration of the period fixed for repair of defects; otherwise they shall be excluded. If no period was fixed, the warranty period shall end one year after dispatch of the request to repair the defect(s).

## **11 Liability and Damages**

(1) FHCW shall not be liable for damage caused to the customer or third parties in connection with use of the order results.

(2) Apart from that, FHCW shall only be liable for damage caused with wilful intent or gross negligence. Any liability for lost profit shall be excluded, unless caused wilfully.

(3) Irrespective of the legal ground, FHCW's total liability shall be limited to the amount of the agreed contract value.

(4) Claims for damages of the customer vis-à-vis FHCW shall become statute-barred six months after knowledge of the damage and of the party who caused the damage and in any case three years after acceptance.

## **12 Termination**

(1) Both contracting parties shall only be entitled to rescind the contract in whole or in part for cause. In addition to the grounds stated elsewhere in these GTC and notwithstanding other (including statutory) grounds, cause shall include but not be limited to situations where the other contracting party persistently and repeatedly fails to fulfill its contractual obligations.

(2) In the case of early termination of the contract FHCW shall be entitled to payment for services already rendered. FHCW reserves the right to claim additional damages. What is more, in the case that the customer terminated the contract for reasons for which the FHCW is not responsible, the FHCW also reserves the right to charge a reasonable cancellation fee in the amount of max. 20% of the order amount.

(3) Every statement made in the course of termination of a contract shall be made in writing by registered letter.

### **13 Retention of title**

(1) All delivered products and project results remain the property of FHCW until full payment.

### **14 Confidentiality**

(1) The contracting parties shall not disclose to third parties any information mutually communicated and declared confidential for the duration of the contractual relationship and for a further three years after conclusion of the contract. This does not apply to information that is generally accessible or whose confidential treatment the contracting parties have renounced.

### **15 Data Protection**

(1) The contracting parties undertake to comply with the applicable data protection provisions, in particular the GDPR and the Research Organization Act.

### **16 Final Provisions**

(2) If any provision of these GTC is or becomes legally ineffective, the effectiveness of the remaining provisions of these GTC shall not be affected thereby. The ineffective provision shall be replaced by an effective provision which comes as close as possible to the meaning and the purpose of the ineffective one.

(3) These GTC shall be exclusively subject to Austrian law and the conflict of laws rules shall be excluded. The court having jurisdiction over the subject-matter at the place of FHCW's registered office shall be the place of jurisdiction.

Vienna, 1st April 2019