

## **General Terms and Conditions for the implementation of industrial research and development contracts at BIBA-Bremer Institut für Produktion und Logistik GmbH, Bremen (hereinafter 'BIBA')**

BIBA directly pursues solely non-profit activities. BIBA performs industrial contract research and develops technological innovation to do so. The following Terms and Conditions are tailored to those special features.

### **1. Scope of application**

1.1 The following Terms and Conditions shall apply to all industrial research and development contracts entered into by BIBA.

Any deviating, conflicting or additional terms provided by Client shall not become terms of the contract unless expressly agreed to in writing by BIBA.

Regarding matters not regulated in these Terms and Conditions, the provisions of the law on service contracts (secs 611 et seq. of the German Civil Code) shall be applicable to all industrial research and development contracts.

1.2 To the extent that these Terms and Conditions exclude or limit damages liability of BIBA, its legal representatives or its vicarious agents, such exclusion or limitation shall not apply in the case of liability for damages due to injury to life, body or health.

### **2. Subject matter, Period of performance**

2.1 The subject matter of the contract shall consist of the work as described in the offer from BIBA.

2.2 Any period of performance or deadlines included in the offer or the contract shall be binding only if expressly agreed to by BIBA. BIBA shall notify Client immediately if it realises that a binding period of performance or a binding deadline cannot be respected, and BIBA shall inform Client of the reasons for delay and shall agree an appropriate adjustment with Client.

### **3. Remuneration**

3.1 The remuneration shall be calculated as a fixed price. Alternatively, the contracting parties may agree that the remuneration shall be based on the actual cost, in such case with an agreed cost ceiling. In either instance, the applicable value added tax shall be added to the remuneration.

3.2 BIBA shall notify Client immediately if it realises that it will not be possible to achieve the targeted research and development results at the agreed remuneration, at which time BIBA shall also propose an adjustment of the remuneration to Client. If this becomes necessary for reasons which were unforeseeable when the order was placed and for which BIBA is not responsible, and if no other agreement is reached with Client, then the adjusted remuneration proposed by BIBA shall be binding.

### **4. Payments**

4.1 Payments shall be made according to the payment schedule agreed by the contracting parties. If no payment schedule is agreed, payments shall be due on the date specified on the invoice. Payments shall be made in full and without

reduction to the account designated by BIBA and shall indicate the corresponding invoice number.

4.2 Set-off against any claim of BIBA shall be allowed only if the counterclaim is uncontested or if the set-off has been determined by a final adjudication.

4.3 Client may exercise a right of retention only if the counterclaim arises from the same contractual relationship.

### **5. Research and development results, Rights of use**

5.1 The research and development results shall be made available to Client after the project concludes, as provided for in the offer.

5.2 Client shall acquire a non-exclusive, royalty-free right of use to be applied to the underlying purpose of the contract to inventions generated during the performance of the contract as well as to intellectual property rights filed by and granted to BIBA for these inventions. Client shall reimburse BIBA an appropriate part, the amount of which the contracting parties shall agree, of the costs for registration, maintenance and defence of the intellectual property rights. In the case of use of the inventions, Client shall pay a comprehensive employee inventor's fee, the amount of which shall be agreed in each case. Client shall have the right, at Client's own expense, to join BIBA in defending intellectual property rights related to this contract.

5.3 Upon request and subject to the consent of BIBA, Client may acquire, in place of the right of use provided for in Section 5.2, an exclusive, royalty-bearing right of use to be applied to the underlying purpose of the contract to inventions generated during the performance of the contract as well as to intellectual property rights filed by and granted to BIBA for these inventions. Client shall declare such request in writing to BIBA no later than three months after disclosure of the invention. BIBA shall retain a non-exclusive, royalty-free right of use for research and development purposes.

5.4 Client shall acquire a non-exclusive, royalty-free right of use to be applied to the underlying purpose of the contract to copyrighted works, databases, and know-how created in the course of performance of the contract. A separate agreement shall be required for the granting of an exclusive right of use to be applied to the underlying purpose of the contract.

5.5 Inventions jointly created by the contracting parties during the performance of the contract may be used and licensed by each contracting party with no financial compensation. The contracting parties shall each bear a portion of the costs for registration, maintenance and defence of the intellectual property rights in question, such portion

to be agreed by the contracting parties. Section 5.5, sentence 1 shall apply also to any copyrighted works jointly created during the performance of the contract.

5.6 Unless precluded by other obligations entered into by BIBA, Client shall acquire through a separate agreement a non-exclusive, royalty-bearing right of use in already-existing intellectual property rights of BIBA used during the performance of the contract for such intellectual property rights that Client requires for the commercial exploitation of the research and development results.

## 6. Third party intellectual property rights

6.1 BIBA shall immediately notify Client of any third party intellectual property rights which it becomes aware of during the performance of the contract and which could preclude Client's use agreed pursuant to Section 5. The contracting parties shall decide in joint consultation how such intellectual property rights shall be taken into consideration in the further performance of the contract.

6.2 BIBA shall be liable according to the provisions of Section 7.2 and Section 8.4, sentence 1 in the event of infringement of third party intellectual property rights if it has not fulfilled its obligation to notify Client. Client shall have no further claims against BIBA, liability under Section 8 notwithstanding.

6.3 BIBA shall not be liable for damages arising from Client's infringement of intellectual property rights.

## 7. Liability

7.1 BIBA advocates the application of scientific care and observance of accepted scientific standards, but BIBA shall not be responsible for the actual achievement of the pursued research and development goals.

7.2 Liability for breach of contract or tort violations by BIBA, its legal representatives and its vicarious agents shall be limited to cases of intent and gross negligence. BIBA, its legal representatives and its vicarious agents shall also be liable due to ordinary negligence only for violation of fundamental contractual obligations (these are obligations, the fulfilment of which is required for the proper implementation of the contract and in which compliance therewith the contracting parties regularly trust and may trust). Liability shall be limited in each case to foreseeable damage typical for this type of contract.

7.3 If BIBA fails to perform as agreed, fails to perform by the deadline or fails to perform in the manner agreed, Client may demand damages compensation instead of performance only if Client fixes an additional time period of reasonable length for performance accompanied by a statement that Client would reject any performance delivered after expiry of the additional time period and BIBA fails to perform in the manner agreed before expiry of the additional time period.

## 8. Special provisions for research and development projects related to sales contracts and services contracts

8.1 If and to the extent BIBA expressly obligates itself to produce or deliver research and development results in conformity with the current state of technology, the relevant provisions of German sales law and German law on service contracts shall be applicable in case of nonconformity, subject to the following sections.

8.2 In the event the research and development results reached by BIBA prove to be nonconforming, BIBA shall be granted the opportunity to remedy the nonconformity by choosing either to repair the nonconformity or to deliver substitute conforming results, more than once if necessary depending upon the nature of the research and development result, the nature of the nonconformity and other circumstances.

8.3 If the remedy of the nonconformity is declined by BIBA, is attempted and fails, or acceptance thereof cannot be reasonably expected of Client, then Client may choose to either terminate the contract, demand reduction of the remuneration or demand damages compensation. Client may terminate the contract only in the case of a serious nonconformity. Client's right to terminate the contract lapses if Client fails to declare the termination of the contract within 14 days after receiving notification that BIBA has declined or failed to remedy the nonconformity or at the latest 14 days after the date at which it is recognised that acceptance of the remedy of the nonconformity cannot be reasonably expected of Client. BIBA shall be liable for damages only under the other conditions set out in Section 7.2, and Section 7.3 shall also apply if BIBA declines to remedy the nonconformity.

8.4 BIBA shall be liable for a defect in title due to infringement of third party intellectual property rights only if such rights apply in the Federal Republic of Germany, if Client uses the research and development results in a manner consistent with the contract, if a court decision is rendered against Client based on infringement by Client of third party intellectual property rights, and if Client has immediately notified BIBA in writing of the claims asserted by such third party. BIBA shall remedy the infringement pursuant to Section 8.2 either by obtaining a contractual authorisation for use by Client or by modifying the research and development results as needed to end the infringement of the relevant third party intellectual property rights.

8.5 Client shall immediately examine the research and development results delivered by BIBA and immediately notify BIBA of any nonconformity. Warranty claims due to an identifiable nonconformity shall arise only if BIBA receives notice of the nonconformity within 14 days after the date of delivery.

8.6 Claims based on nonconformities are subject to the statute of limitations according to Section 9.

## **9. Statute of limitations**

9.1 An action for any claim of Client based upon breach of contract or tort violations shall be barred unless commenced within twelve months of the date of the breach or violation. This shall not apply where longer limitation periods are prescribed by the German Civil Code in sec. 438 para. 1 no. 2 (limitation of claims for defects), sec. 479 para. 1 (limitation of recourse claims) and sec. 634a para. 1 no. 2 (limitation of claims for defects in construction), or in the case of liability of BIBA based upon intent or gross negligence.

9.2 If the research and development results are accepted, the limitation period on claims for nonconformity pursuant to Section 9.1 shall begin upon acceptance, otherwise upon delivery.

9.3 Negotiations between the contracting parties over claims or over circumstances underlying the claims shall toll the statute of limitations. The tolling shall end when one of the contracting parties has not complied within four weeks with a request by the other contracting party to continue negotiations.

## **10. Retention of ownership**

10.1 Client shall acquire ownership of the research and development results and the right of use pursuant to Sections 5.2, 5.3, 5.4, and 5.6 only after full payment of the agreed remuneration is received by BIBA. The ownership rights of BIBA and rights of use may be neither mortgaged nor transferred as security.

10.2 If the ownership rights of BIBA in the research and development results lapse due to conflation, commingling or processing, the contracting parties hereby agree that the ownership of the combined property created in that case shall be proportionally assigned to BIBA, based on the invoice value, until BIBA receives full payment of the agreed remuneration.

10.3 In the event Client resells the research and development results, Client shall assign to BIBA all rights in rem from the resale until BIBA receives full payment of the agreed remuneration.

## **11. Confidentiality**

11.1 During the contract and for a five year period after its termination, the contracting parties shall not make available to a third party information of a technical or commercial nature that has been communicated between the contracting parties and has been declared confidential. This provision shall not apply to information known or generally available to the other contracting party or to the general public prior to its communication, information that through no action or fault of the other contracting party becomes known or generally accessible to the general public after its communication, information disclosed or made available to the other contracting party by an entitled third party, or information developed independently by an employee of the other contracting party who had no knowledge of the communicated information.

11.2 Subcontractors of BIBA and subcontractors of Client that are entrusted by BIBA or by Client, respectively, with services in the context of this contract and are under an obligation of confidentiality are not third parties within the meaning of this provision.

## **12. Publication, Advertising**

12.1 Subject to prior consultation with BIBA, Client shall be entitled to publish the research and development results including an indication of the author. Such prior consultation shall be held with regard given to ensuring that interests such as dissertations, diploma theses or applications for the registration of intellectual property rights are not adversely affected. Client may mention BIBA for advertising purposes only with its express consent.

12.2 If and to the extent Client has acquired an exclusive licence pursuant to Section 5.3, BIBA shall be entitled to make publications relating to the underlying purpose of the contract only after timely consultation with Client prior to publication.

## **13. Termination**

13.1 Each contracting party shall have the ordinary right to terminate the contract with a notice period of one month from the end of the calendar month in which notice is given if no material progress is accomplished within a significant amount of time during the period of performance.

There shall be no right to give notice of termination before the end of the six month period beginning from the start of the contract. There shall be no other ordinary right of termination.

13.2 Each contracting party shall have the extraordinary right to terminate the contract immediately only upon a showing of good cause.

13.3 In the event of termination of the contract, BIBA shall transfer any research and development results accomplished until expiry of the notice period to Client within four weeks of expiry of the notice period. Costs incurred by BIBA until expiry of the notice period shall be reimbursed by Client. Personnel costs shall be reimbursed according to time expended. Claims for damages shall not be affected by the fact that the termination is related to the fault of one of the contracting parties.

## **14. Miscellaneous**

14.1 Additional agreements, modifications and supplements hereto must be made in writing to be valid.

14.2 Place of performance for BIBA shall be Bremen, Germany. Place of performance for payments by Client shall be Bremen, Germany.

14.3 This contract shall be governed by the laws of the Federal Republic of Germany.

14.4 Any legal action arising from this contract shall be heard in Bremen, Germany.

14.5 Neither the complete or partial invalidity of any of these provisions nor a gap in these provisions shall affect the validity of any of the other provisions herein, which shall remain in full force and effect.