



General Terms and Conditions for Research and Services of Bern University of Applied Sciences (GTC BFH R&D/S)

Scope of application

These General Terms and Conditions (GTC) apply to Research and Development contracts, offers (R&D contracts), and services, and are based on Swiss law. By confirming the order or signing the contract, the ordering party (Client) accepts these GTC. Amendments and ancillary agreements are only effective if they are confirmed by Bern University of Applied Sciences (BFH) in the text form, in which the contract was concluded. In all other respects, the provisions of the Swiss Code of Obligations (CO) and the University of Applied Sciences (UAS) legislation of the Canton of Bern, Switzerland shall apply. The Client and the BFH are collectively referred to as the Parties, or individually as a Party.

Offers from BFH and conclusion of contract

BFH offers are designated as such ("offer" or "quotation") and are made in text form with a simple electronic signature or, exceptionally, in another form that permits proof by text. They are deemed binding.

An offer is valid for three (3) months from the date of the offer, unless otherwise agreed in at least the form, in which the offer was made. If the Client requests deliveries, products or services that are not included in the offer, these will be invoiced additionally. All materials submitted with the offer remain the property of BFH. Third parties may not be granted access to the offer documents without the consent of BFH.

An offer is accepted when the Client declares this in at least the form, in which the offer was made.

If the Client wishes to make a change to the offer, they shall inform BFH accordingly. BFH shall inform the Client within two (2) weeks whether the change is possible and what effects it will have on the provision of services, deadlines and prices. The amendment confirmed by BFH shall become part of the offer, provided it is made in at least the same form as the original offer. The amendment shall not apply to products/services already delivered.

A contract is concluded upon acceptance of the offer.

Offers and contracts with a value of more than CHF 10,000 (ten thousand Swiss francs) or relating to intellectual property rights or continuing obligations must be signed with a simple electronic signature. A handwritten signature or an advanced or qualified electronic signature must be chosen if this is required by law or has been agreed between the contracting Parties. Otherwise, the contract is invalid.

These GTC of BFH form an integral part of offers, R&D contracts and service contracts. The provisions of the Swiss Code of Obligations apply subsidiarily.

Fulfilment by third parties

BFH may engage third parties to fulfil the services owed or transfer fulfilment in whole or in part to third parties. This may only be done in consultation with the Client and without any loss of quality in the agreed services.

Deadlines

BFH undertakes to deliver the agreed products or services to the Client on the agreed dates. The Client undertakes to accept and pay for these products or services on

the agreed dates. The deadlines shall be postponed appropriately if obstacles arise that are beyond the control (force majeure) of BFH.

In the event of other delays, the Client may

1. waive further services: the Client must inform BFH of this immediately.
2. demand partial services, if possible: this must be agreed immediately.
3. set a reasonable deadline for subsequent fulfilment by the BFH: if BFH does not fulfil the contract by the end of this grace period, the Client may, provided the Client declares it immediately, waive subsequent services or withdraw from the contract.

Contract fulfilment

The rights and obligations for the fulfilment of the contract are set out in the offer or in the contract.

Unless a special acceptance procedure has been agreed, the Client must inspect the products/services within two (2) weeks and report any defects in at least the form, in which the contract was concluded. If no notification is made within this period, the products/services shall be deemed free of defects and the delivery shall be deemed approved. The Client shall then be obliged to pay on time.

In the event of a defect, BFH is entitled to rectification within a reasonable period of time.

In the case of contracts with research components, the Client acknowledges that the fulfilment of the contract does not include any guarantee of any kind for the achievement of the research objectives and the functionalities of the research results. The research contract shall be deemed to have been fulfilled as soon as the final report has been delivered within the agreed scope.

The Parties shall provide each other with the necessary mutual assistance to a reasonable extent so that they can exercise the rights and obligations that they acquire through the contract. In particular, they shall make the necessary declarations and signatures for the acquisition or application/registration of intellectual property rights.

Exchange of information, documents, objects and auxiliary materials

The Parties shall provide each other with the information required for the realisation of the project in a timely manner and make the necessary documents, objects and auxiliary materials available on loan in good time for the duration of the project. At the end of the project, unless otherwise agreed, they must be returned in full or, in the case of electronic documents, deleted. This does not apply to materials that are subject to a statutory retention period or that are excluded from the obligation to return/delete in the main contract. Electronic documents that cannot be deleted immediately for technical reasons or due to disproportionate effort must be deleted as soon as possible.

Prices and terms of payment

Unless otherwise stated, the prices quoted are exclusive of statutory value-added tax (VAT).

In the case of fixed prices (also referred to as flat rate), the quoted amount shall be charged. In the case of prices quoted as a cost cap (also referred to as cost ceiling), invoicing shall be based on actual expenditure, but no



more than the amount quoted. The right to deviations of up to 20% is reserved for targeted prices. The actual hours worked shall be invoiced.

Unless otherwise agreed, any travelling costs and expenses shall be invoiced separately. The invoice amount shall be due upon delivery of the invoice and must be transferred within thirty (30) days to an account to be specified by BFH. Payments are generally made in CHF (Swiss francs). Bank charges for payments in foreign currency shall be borne by the Client. If payment terms are not adhered to, BFH shall be authorised

1. to immediately make claims against the Client that are not yet due and/or
2. to demand collateral for all outstanding receivables and/or
3. to perform or deliver outstanding services only against advance payment.

Cancellation

If one of the Parties fails to fulfil essential obligations, it may be warned in at least the form, in which the contract was concluded to comply with the obligations and to restore the contractual situation within a reasonable period of time. If this period expires without success, the contract may be terminated with one (1) month's notice to the end of a month.

The Client is obliged to reimburse BFH for the costs incurred up to the premature termination. The Client shall also be obliged to bear any costs incurred by BFH due to obligations arising from the cooperation after termination of the contract; this obligation of the Client to bear costs shall apply until the first opportunity BFH has to release itself from its obligations.

The following provisions apply to cancellations of a service contract (mandate under the Swiss Code of Obligations) at an inopportune juncture, as defined in Art. 404 para. 2 CO:

- A cancellation is deemed to occur at an inopportune juncture if it takes place 14 days or less before the service is to be performed.
- From that point onward (14 days before the service is to be performed), compensation amounting to at least 50% of the contractually agreed remuneration is owed without further proof; higher compensation is due upon presentation of relevant evidence.
- In the event of cancellation three days or less before the service is to be performed, compensation equal to the full contractually agreed remuneration is owed without further proof.

In all other cases, the provisions of the Swiss Code of Obligations shall apply to cancellations.

Warranty / Liability

BFH is liable for the required scientific rigour and care in the performance of the tasks assigned. BFH guarantees professional evaluation of the results. Otherwise, BFH does not assume any warranty of quality or title. In general, BFH is only liable for gross negligence and intent, as well as for damages directly resulting from an event (direct damages).

No liability or warranty is accepted for the use of research results or products. No liability is accepted for products or processes resulting from research.

Confidentiality

The Parties undertake to maintain confidentiality of the information and materials provided to them before and during the term of the contract, even if these have not been expressly designated as secret or confidential, insofar as this does not run counter to the purpose of the contract. Statutory, officially ordered or contractually agreed disclosure obligations between the Parties remain reserved. In the event of disclosure, the other party shall be informed of the information and materials provided to the extent permitted by law. Further agreements shall be regulated in a non-disclosure agreement or non-disclosure clauses.

The Parties shall oblige their employees, third parties involved and other persons, who have access to confidential information and materials in any form whatsoever to maintain the confidentiality of the information and materials provided.

Confidential information is all information disclosed to the recipient, either in conversation or in text or other form (e.g. plans and graphics), which is related to the Parties and their associates (employees and students) and their partners. This includes, for example, technology or business concepts, knowledge, ideas, methods, explanations of products and services, business plans, designs, financial data, personal data, customer lists, pricing policies, marketing plans and strategies, sales and customer information, written and other digital documents.

Confidential materials are all physical materials that contain confidential information. This includes, for example, drawings, diagrams, written or printed documents, any objects and electronically stored data and documents.

Unless otherwise agreed, all information and materials created or produced as part of the collaboration shall be deemed confidential. Provided that the recipient can prove this with documentation, the following information and materials shall not be deemed confidential

- which were already in the possession of the recipient prior to the collaboration or were developed without using the confidential information or materials,
- which are generally known or publicly accessible at the time of transfer or become generally known or publicly accessible at a later time without breach of the agreed confidentiality by the recipient,
- which were already known to the recipient without restriction at the time of handover,
- which have been made known to the recipient by an authorised third party.

If the recipient becomes aware of an obligation to disclose confidential information or materials due to legal regulations, legal or official proceedings, the recipient shall inform this to the disclosing party immediately.

Reporting

The report is always prepared in the language of the contract, either German, French or English. If the report is to be prepared in another language, the translation shall be at the expense of the Client. If the report is requested in more than one (1) copy or in more than one (1) language, this shall be invoiced additionally.

Data protection and information security

The Parties shall comply with the applicable data protection laws. The Parties guarantee – even after termination



of the underlying contractual relationship – full data protection and information security in accordance with the laws applicable to them for all data and information provided or created within the scope of the contract.

Personal data contained in contractual texts, exchanged or generated in connection with the R&D contract, the offer or the service agreement (“personal data of the agreement”) may be processed by the Parties. The Parties may not use the personal data of the agreement for purposes other than the execution of the agreement.

The Parties undertake to take all necessary organisational and technical protective measures, in particular to protect the IT and telecommunications systems used for processing the data (in particular infrastructure systems, networks, devices and applications as well as data and information) in their area of responsibility against attacks in accordance with the current state of the art by means of technically and organisationally possible and economically reasonable precautions.

Data, records and reports shall be retained by BFH in accordance with its archiving and retention regulations, provided that no other statutory retention obligations exist; as a rule, this is five (5) years. Otherwise, data and records must be deleted by the Parties as soon as they are no longer required for the fulfilment of the contract or documentation.

Publication rights

Results from Research and Development may be made accessible to the public, provided that there are no overriding public or private interests to the contrary. The Parties shall obtain mutual consent before publication. Until this time, the results shall remain confidential. The results of publicly funded Research and Development work must generally be published in an appropriate form. The contractually agreed confidentiality remains reserved.

If reports are to be made accessible, they must always be published in full. The publication of extracts requires the authorisation of the responsible Project Manager.

Intellectual property

The ownership and use of intellectual property¹ are governed by the “IP Policy of Bern University of Applied Sciences of 16 November 2022”². Any provisions deviating from this policy must be contractually agreed between the Parties.

A fundamental distinction must be made between services and R&D contracts:

a) R&D contracts:

Intellectual property created within the scope of an R&D contract with BFH shall remain with BFH unless otherwise agreed. If the intellectual property is transferred to the Client for use in the Client’s field of business, BFH shall be entitled to an exclusive licence for use and sublicensing outside the Client’s field of business. BFH shall be entitled to have this licence entered in the register.

BFH reserves the right to freely use intellectual property created in the context of R&D contracts for commercial and non-commercial purposes in research and teaching. Other agreements regarding publication and confidentiality remain reserved.

b) Services:

Intellectual property rights to results and measurement results arising in the context of services are transferred to the Client. BFH receives the right to use these results and measurement results for commercial and non-commercial purposes in research and teaching.

All rights and entitlements to methods, computer programmes or tools that are used or developed as part of the service remain with BFH. In addition, BFH may use intellectual property from service contracts for commercial and non-commercial purposes in research and teaching.

Technical inspections

The participation of the Client in expert inspections requires the approval of the responsible Project Manager at BFH. The Client shall receive a report in text form upon completion of the assignment. Inspection of the assignment documentation must be authorised by the Project Managers.

Transport, examination material, storage

The risks and costs of transport on delivery or return shall be borne by the Client. BFH is liable for negligent damage to objects as soon as they are in its possession. Material to be analysed shall be stored for four (4) weeks after completion of the contract. If the material is not collected by the Client during this period, it shall be disposed of professionally or returned to the Client after consultation with the Client. The costs of disposal shall be borne by the Client.

Information obligation

The Parties shall inform each other in a timely manner of any special requirements as well as legal, official and other regulations at the place of destination, insofar as they are relevant to the fulfilment of the order. The Parties shall inform each other in a timely manner of any obstacles that could jeopardise the fulfilment of the contract or lead to inappropriate solutions.

Representation vis-à-vis third parties

The Parties are not authorised to perform legal acts in the name of the other Party or in the name of the Parties without express authorisation.

Correspondence

All correspondence should be addressed to the Project Manager(s). For questions concerning the protection of intellectual property, please contact the Head of Research of the respective department/school.

Handling of complaints

If the contract provides for the provision of services under the framework conditions of a certification system that prescribes a documented procedure for receiving, evaluating and making decisions on complaints, a description of the corresponding process is available to all Parties on request. The Party providing the service shall handle complaints in compliance with the requirements of the certification criteria.

Severability clause

Should individual provisions of a contract or these GTC be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, this shall not

¹ Copyrights, industrial property rights (patent, trademark, design, plant variety and topography rights) as well as business methods, concepts, results and expertise.

² https://www.bfh.ch/dam/icr:094b02dc-210f-4379-a078-b9b86d51f5b6/VF_IP-Policy_221106_EN.pdf



affect the validity of the remaining parts of the contract or these GTC. In this case, the contracting parties undertake to immediately replace the affected provision with a valid and effective agreement that comes closest to the original intention in terms of its content. The same applies in the event of a contractual loophole.

Final provisions

Amendments and additions to contracts require at least the form, in which the contract was concluded. Contracts are subject to Swiss law (excluding conflict of laws and the Vienna UN Convention on Contracts for the International Sale of Goods). The place of jurisdiction is Bern, Switzerland. The Parties shall endeavour to settle any disputes arising from the execution of a contract amicably.

24 January 2025