



# General terms and conditions (GTC) of the Confederation for research contracts (GTC for research contracts)

## 1 General

### 1.1 Scope

The general terms and conditions (GTC) of the Confederation for research contracts govern the framework for the content and performance of research contracts.

### 1.2 Hierarchy of norms

In the event of inconsistencies, the provisions of the research contract shall take precedence over the provisions of the GTC.

## 2 Definitions

### 2.1 Research contract

"Research contract" means a contract for the provision of research goods/services for which these GTC have been deemed applicable by the contracting parties.

### 2.2 Research goods/services

"Research goods/services" means technical or scientific activities which are generally aimed at the targeted search for and achievement of, but also the intellectual and creative evaluation of, new findings in a specific specialised field, coordinated where applicable across several specialised fields or relating to a specific object (e.g. product, method). Research goods/services may include any type of research and development performances, so research contracts may refer in particular to areas of basic research and applied research.

### 2.3 Contracting parties

"Contracting parties" means the parties designated in the research contract, i.e. the federal unit and the research institution.

### 2.4 Federal unit

"Federal unit" means the organisational unit and/or legal entity designated in the research contract which incorporates the GTC for the specific research contract and contractually binds the research institution with respect to the provision of the research goods/services so defined.

### 2.5 Research institution

"Research institution" means the natural or legal entity(ies) designated in the research contract which the federal unit binds with respect to the research goods/services defined therein.

### 2.6 Research results

"Research results" means all results generated within the framework of the specific research contract, whether capable of being protected or not (such as final and interim results, interim reports and final report, image and text material, including recording media, data, methods, materials, findings, know-how, inventions and copyrighted works such as software).

## 3 Remuneration

### 3.1 Definition and types

Remuneration is the monetary value defined in the research contract which the research institution receives from the federal unit in return for providing the research goods/services. The remuneration is generally agreed on a time and material basis with a cost ceiling, but it may also be at a fixed price.

The cost ceiling defines the upper limit of the remuneration paid by the federal unit to the research institution in return for providing the research goods/services. If the agreed cost ceiling is exceeded, the research institution shall be liable for the excess. The research institution shall not be entitled to exhaust the defined cost ceiling.

- a) If remuneration is at a fixed price, the full remuneration shall be due and paid to the research institution irrespective of the work performed.
- b) If remuneration is on a time and material basis, the federal unit shall remunerate the research institution for its research goods/services at cost, i.e. in accordance with the reported hours worked and proven expenses, whereby the cost ceiling may not be exceeded.

### 3.2 Scope

The contractually agreed remuneration covers all work which is necessary for proper performance of the contract. In particular, it includes all contractually agreed

ancillary deliverables, material, packaging, transport and insurance costs, the transfer or use of rights, documentation, secretarial and infrastructure costs (overheads), social benefits, expenses, fees and public levies. Any value added tax or import tax due shall be payable together with the remuneration, but must always be indicated separately in the offer, contract and invoice.

### **3.3 Due date**

The remuneration shall be due in accordance with the agreed invoicing and payment terms. The research institution shall issue an invoice requesting remuneration by the due date. The federal unit shall pay the amount due within 30 days of receipt of the properly issued invoice.

### **3.4 Electronic invoice**

If the federal unit is part of the central Federal Administration (Art. 7 of the GAOO [SR 172.010.1]), the research institution is obliged to submit an electronic invoice

(<https://www.efv.admin.ch/efv/en/home/efv/erechnung/aktuell.html>) to the federal unit if the contract value exceeds CHF 5,000 (excl. VAT). The federal unit determines the delivery options.

### **3.5 Assignment**

The claims to which the research institution is entitled under this contract may not be assigned or pledged without the written consent of the federal unit.

## **4 Performance/warranty**

### **4.1 Personal performance**

As a rule, the contracting parties shall render the research goods/services to be provided under the research contract through their employees. If the research contract designates specific persons for contract performance, these persons must provide the research goods/services personally. The involvement of third parties or an exchange of designated persons at the research institution may take place solely with the prior written consent of the federal unit.

### **4.2 Notification duty**

The contracting parties shall regularly notify each other of the progress of the work. All circumstances interfering with performance according to the contract must be notified to the other contracting party immediately. The federal unit shall at all times be entitled to exercise its right of inspection and its right to information concerning all parts of performance of the research contract.

### **4.3 Workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law**

For research goods/services provided in Switzerland within the framework of contract performance, the research institution shall comply with the workplace health and safety provisions and employment conditions applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal Employment (IEA; SR 822.41) and the provisions on the equal treatment of men and women in terms of equal pay. The workplace health and safety provisions shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual employment conditions customary for the location and occupation.

For research goods/services provided abroad within the framework of contract performance, the research institution shall comply with the provisions applicable at the place of performance, but as a minimum with the Core Conventions of the International Labour Organization (ILO) in accordance with Annex 6 to the Federal Act of 21 June 2019 on Public Procurement (PPA; SR 172.056.1).

If the research institution second workers from a foreign country to Switzerland to provide the research goods/services, compliance with the provisions of the Posted Workers Act of 8 October 1999 (PWA; SR 823.20) must be ensured.

For goods/services provided in Switzerland within the framework of contract performance, the research institution shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA; SR 814.01), the Waters Protection Act (WPA; SR 814.20), the Nature and Cultural Heritage Act (NCHA; SR 451), the Forest Act (ForA; SR 921.0) and the Chemicals Act (ChemA; SR 813.1), as well as the ordinances based thereon.

For goods/services provided abroad within the framework of contract performance, the research institution shall comply with the environmental protection provisions applicable at the place of performance, but at least with the agreements on the environment in accordance with Annex 2 to the PPO (SR 172.056.11) that are relevant for the research institution's performance.

The research institution is obliged to contractually impose the above requirements on third parties it calls upon for contract performance.

**If the research institution itself or a third party engaged by it violates obligations arising from this section 4.3, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but at least CHF 3,000 per violation and no more than a total of CHF 100,000 per contract; in the case of a framework contract, this upper limit shall apply once for the entire contractual relationship. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

#### **4.4 Material warranty**

The research institution shall be liable for faithful and careful execution of the research work to be performed by it in accordance with recognised scientific and technical standards, and it shall guarantee that it observes the applicable public law provisions during contract performance. The same shall apply to the federal unit if it provides research goods/services.

Within a reasonable period after receipt of the research results, the federal unit shall be entitled to return insufficiently or inadequately documented research results to the research institution for revision or completion free of charge, setting a reasonable deadline therefor.

#### **4.5 Warranty of title**

In their capacity as specialists in their fields and with the knowledge of the intended use of the research results to be generated, the contracting parties confirm that, at the time of contract conclusion, no identifiable rights of third parties exist and, to the extent that rights of third parties are known, these have been sufficiently taken into account. The contracting parties shall notify each other of these rights. If, in the course of contract performance, an encumbrance arising from rights of third parties becomes known, the contracting parties shall notify each other without delay and shall jointly decide on the next steps.

If a third party justifiably asserts the violation of rights that were known to a contracting party or would have been identifiable for a contracting party, the contracting party concerned shall indemnify the other contracting party for the costs incurred by that party.

In the event of lawsuits arising therefrom or other claims by third parties, the contracting parties undertake to coordinate their defence and render mutual support.

#### **4.6 Measure of liability**

The contracting parties shall be mutually liable for damages they cause in the course of contract performance. Liability shall be limited to intent and gross negligence. This restriction shall not apply to the violation of essential contractual obligations and the absence of warranted characteristics. Liability for loss of profits is excluded.

### **5 Rights to the research results**

#### **5.1 Property**

Insofar as new intellectual property rights pertaining to research results arise in the course of performance of this contract, the following shall apply:

Intellectual property rights which

- a) arose pursuant to performance by employees of the research institution shall remain the property of the research institution;
- b) were generated jointly by employees of the federal unit and the research institution shall remain the joint property of both contracting parties; the contracting parties shall specify the registration and realisation strategy, as well as the division of costs in a separate agreement;
- c) arose pursuant to performance by employees of the federal unit shall remain the property of the federal unit.

#### **5.2 Pre-existing rights**

Subject to the provisions of section 6.3, pre-existing rights of the parties shall not be affected.

#### **5.3 Waiver**

If a contracting party waives the protection or preservation of its intellectual property rights pertaining to the research results, it shall offer the rights to the other contracting party for assumption in a timely manner. The conditions for assumption of these rights shall be set out in a separate agreement.

### **6 Use of the research results**

#### **6.1 Principle**

All research results developed in the course of provision of the research goods/services by employees of the research institution in collaboration with employees of the federal unit may be realised by both parties

independently of each other, subject to the following provisions.

## **6.2 Rights to use the research results**

In the case of section 5.1 letter a., the research institution shall grant the federal unit a free, irrevocable, non-exclusive, non-transferable and non-sublicensable right to use these intellectual property rights.

In the case of section 5.1 letter b., the contracting parties shall mutually grant each other a free, irrevocable, non-exclusive, non-transferable and non-licensable right to use these joint intellectual property rights, subject to section 6.4. Any use beyond this shall be by mutual agreement by both contracting parties.

Insofar as rights of use are to be granted to the research institution in the case of section 5.1 letter c., this shall be set out in the research contract.

## **6.3 Use of pre-existing rights**

If, in the course of performance of the research contract, the research institution uses its pre-existing intellectual property rights which are necessary for the use of the research results by the federal unit, the federal unit shall receive a simple right to use those intellectual property rights, to the extent not excluded by any other obligations of the research institution. The granting of this right of use shall be free of charge, unless agreed otherwise.

## **6.4 Access of third parties to research results**

Unless otherwise agreed, the research institution is generally entitled to publish the research results first or to make them available to third parties. It shall agree in advance with the federal unit on the time of first publication or granting of access.

The federal unit shall have the right, during or after contract performance, to limit the granting of access in terms of time or content where overriding public interests exist, and it shall disclose the grounds for such limitation. If the federal unit legitimately demands such a limitation and if this gives rise to consequences relating to value added tax, the federal unit shall compensate for these consequences.

The contracting parties undertake to jointly specify the other effects on remuneration.

## **6.5 Registration of licences**

The federal unit shall be entitled to have licences obtained within the framework of the research contract entered in the register of IP rights of the Swiss Federal Institute of Intellectual Property (or foreign patent offices, etc.) at its own expense.

## **7 Confidentiality and handling of information and data**

### **7.1 Principle of due care**

The contracting parties undertake to treat all data and information of the other party that they receive within the framework of the contractual relationship with due care and to protect it effectively against unauthorised access by third parties. This shall be without prejudice to deviating arrangements in the contract or provisions below, as well as more extensive confidentiality agreements or provisions.

The provisions of the Federal Act of 25 September 2020 on Data Protection (FADP; SR 235.1), including the implementing ordinance, must be complied with.

### **7.2 Confidentiality obligation**

The parties shall treat as confidential all facts and information that are neither obvious nor generally accessible and for which, by their nature, there is an interest in maintaining confidentiality in good faith. In case of doubt, facts and information are to be treated confidentially. The confidentiality obligation shall exist before the contract is concluded and shall persist after termination of the contractual relationship.

### **7.3 Exceptions to the confidentiality obligation**

The confidentiality obligation will not apply for the federal unit if it is obliged to publish the following facts and information: name and address of the research institution, item(s) procured and mandate value, award procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the FoIA [SR 152.3], the PPA [SR 172.056.1], PPO [SR 172.056.11]).

### **7.4 Advertising and references**

Without the written consent of the federal unit, the research institution may not advertise the fact that cooperation exists or existed with the federal unit, and the research institution may not list the federal unit as a reference either.

### **7.5 Contract penalty**

**If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the maximum total agreed remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a**

**shorter remaining contract term, but no more than CHF 50,000 in total per case. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

#### **7.6 Breach of official secrecy**

Irrespective of these confidentiality agreements, the research institution and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC (SR 311.0).

#### **7.7 Information Security Act (ISA)**

If information of the Confederation and the Armed Forces is exchanged, used or generated in the course of the conclusion and performance of the research contract, the Federal Act of 18 December 2020 on Information Security in the Confederation (Information Security Act, ISA; SR 128) shall apply, insofar as the protection of this information is called for in the interests of the Swiss Confederation. If the information in question is military information classified as "confidential" or "secret", the Ordinance of 8 November 2023 on the Operational Security Procedure (SR 128.41) shall necessarily apply.

#### **7.8 Data return and deletion or destruction**

If the research institution is provided with data of the federal unit within the scope of contract performance, the research institution shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to the federal unit in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the research institution is subject to a legal obligation to retain data, the return, deletion or destruction of the data subject to this retention obligation must take place within 30 days after the end of the retention period.

#### **7.9 Right to audit data protection and data security**

Any right of the federal unit to audit the research institution's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.

### **8 Default**

#### **8.1 Commencement of default**

If the contracting parties fail to meet firmly agreed deadlines (expiry date transactions), they shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.

#### **8.2 Withdrawal**

The party in default shall be granted a reasonable period of time to subsequently fulfil its obligations. If the obligations are not fulfilled by the set deadline, the other party may withdraw from the research contract. It shall notify the party in default in writing of its withdrawal from the contract and shall pay for the goods/services provided until the time of termination of the contract.

#### **8.3 Contract penalty/compensation for damages**

**If the research institution is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0.1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term at the beginning of the default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against any claims for damages.**

### **9 Contract amendments/termination**

#### **9.1 General contract amendments**

Amendments or addenda to the research contract shall be valid only if they are agreed in writing.

#### **9.2 Partial invalidity/gaps in the contract**

If individual provisions of the research contract prove to be invalid or unlawful, this shall not affect the validity of the research contract. In that event, the provision in question shall be replaced by an effective provision that is as equivalent as possible. The same shall apply in the event of a gap in the contract.

#### **9.3 Revocation and legal consequences**

a) The federal unit shall be entitled to revoke the research contract in whole or in part at any time. Such

revocation must be notified to the research institution in writing without delay.

- b) In the event of revocation, the research institution shall be entitled to compensation for research goods/services already provided or for proven expenses. These shall include payments for wages and salaries that will continue to be due for a limited time pursuant to the research contract and the obligations arising therefrom. The research institution undertakes not to enter into obligations within the framework of the research contract that go beyond the necessary scope in terms of time and volume.
- c) There shall be no entitlement to remuneration or gains for the part of the research contract no longer to be performed, without prejudice to claims for compensatory damages due to contract termination at an inopportune time.
- d) All costs incurred by the research institution as a result of the revocation must be fully justified and substantiated by the research institution. The payments to be made may not exceed the amount to which the research institution would be entitled if the entire research contract were completed. The federal unit shall be obliged to pay these costs only to the extent that the research institution makes available to it all research results as referred to in sections 4 to 6 that have been produced up to that time.

## **10 Final provisions**

### **10.1 Applicable law**

The contractual relationship shall be governed exclusively by substantive Swiss law. The Vienna Convention is expressly excluded.

### **10.2 Place of jurisdiction**

If the federal unit is a unit of the central Federal Administration or a unit of the decentralised Federal Administration without legal personality, the exclusive place of jurisdiction shall be **Bern**; in all other cases, it shall be at the federal unit's registered office.

### **10.3 Temporal scope of application**

The following articles of these GTC shall continue to apply after termination of the research contract:

- 3.5 Assignment
- 4.5 Warranty of title
- 5.3 Waiver
- 6.4 Access of third parties to research results
- 6.5 Registration of licences
- 7. Handling of information
- 10.1 Applicable law
- 10.2 Place of jurisdiction

Federal Procurement Conference (FPC)

Edition: June 2010

Status as at January 2024