

General Terms and Conditions for the execution of research and development orders in the Deutsches Krebsforschungszentrum (German Cancer Research Center) Heidelberg,

Status: January 2019

The Deutsches Krebsforschungszentrum (German Cancer Research Center) (hereinafter: DKFZ) exclusively and directly pursues non-profit-making objectives. It carries out contract research in the field of applied cancer research and therefore develops new technological areas. The following terms and conditions specifically take these special features into consideration.

1. Scope

1.1 The following terms and conditions shall apply exclusively. The scope of application covers all research and development orders which are placed with the DKFZ. Contradictory, deviating or supplementary terms and conditions of the client shall not be recognised unless they have been agreed upon individually or the DKFZ has given its prior written consent. The provisions of the German Civil Code (§§ 611 et seq. BGB) shall apply to all research and development orders provided that the following terms and conditions do not codify any deviating regulations.

1.2 The General Terms and Conditions for the execution of research and development orders shall apply for companies within the meaning of § 310 Par. 1 BGB.

2. Subject and term of contract

2.1 The subject of the research and development orders is the work offered by the DKFZ.

2.2 Insofar as the offer or the concrete order contains deadlines or dates these are principally non-binding unless the DKFZ has explicitly approved their binding nature in writing. Should the DKFZ recognise that the processing times or deadlines which are declared binding cannot be met the DKFZ shall inform the client about the reasons for the delay and agree upon a reasonable adjustment with the client.

3. Fee

3.1 The fee is calculated and agreed as a fixed price. Deviating regulations may be agreed upon on an individual basis for example according to actual work performed and where applicable upon the agreement of an upper cost limit. The applicable rate of value added tax shall be added to the fee in each case.

3.2 Should the DKFZ foresee that the intended research and development results cannot be achieved at the agreed fee the DKFZ shall inform the client immediately. At the same time the DKFZ shall propose client a corresponding adjustment of the fee. Should this be necessary for reasons which were neither foreseeable when the order was placed nor the responsibility of the DKFZ and no other agreement is reached with the client then the proposed price adjustment will become binding.

4. Terms of payment

4.1 The payments are due according to the contractually agreed payment plan. In the absence of such a plan the due date shall be as stated in the invoice. Payments are always to be made without deduction to the designated account of the DKFZ by stating the invoice number and the processing department of the DKFZ.

4.2 Setoff against claims of DKFZ shall only be allowed if the client's counter-claims have

been declared final and binding or if they are uncontested. The client is only entitled to exercise a right of retention if its counter-claim is based on the same contractual relationship.

5. Research and development results, Rights of use

5.1 The research and development results are made available to the client after completion of the order in accordance with the offer.

5.2 The client shall be granted a non-exclusive, royalty-free right of use for the purpose of application on which the contract is based to inventions generated during the performance of the order as well as to the intellectual property rights filed by or granted to the DKFZ for these inventions. The client shall reimburse the DKFZ an appropriate share of the costs for application, maintenance and defence of the intellectual property rights which is to be agreed upon and shall pay to the DKFZ a fixed rate for employees' invention remuneration, the amount of which will be agreed in each individual case.

5.3 Alternatively, the client may request in lieu of the right granted under Clause 5.2 an exclusive, royalty-bearing right of use to inventions generated during the performance of the order for the application on which its order is based and to the intellectual property rights filed by or granted to the DKFZ for these inventions. This right shall be requested in writing to the DKFZ no later than 3 months after notification of the invention. In this case a non-exclusive, royalty-free right of use for research and development purposes including the right of cooperation with third parties shall remain with the DKFZ.

5.4 The client is granted a non-exclusive, royalty-free right of use to the copyright protected works, databases created and know-how generated during the performance of the order for the application upon which its order is based. The granting of an exclusive right of use for the intended application on which the contract is based requires a separate agreement.

5.5 Co-inventions, i.e. inventions which are generated jointly by the contractual partners during the performance of the order may be used and licensed by each contractual partner without any financial compensation to the other partner. In the event of 5.2 the contractual partners shall each bear a share of the costs to be agreed upon for application, maintenance and defence of the relevant property rights. In the event of 5.3 the client shall bear all costs for application, maintenance and defence of the property rights concerned. Clause 5.5 Sentence 1 shall apply correspondingly for works protected under copyright law and which are created jointly by the contractual partners when executing the order.

5.6 Should existing property rights of the DKFZ be used during the performance of the order which are necessary for the client for exploiting the research and development results, the client shall be granted a non-exclusive, royalty-free right of use hereto which shall be agreed upon separately, provided that this is not precluded by any other obligations of the DKFZ.

6. Property rights of third parties

6.1 DKFZ shall inform the client immediately if property rights of third parties become known to the DKFZ during the performance of the order which could preclude the client's use pursuant to Section 5. The contractual partners shall then decide by mutual agreement how to take these property rights into consideration for the further performance of the contract.

6.2 In the case of infringement of property rights of third parties DKFZ shall only be liable under the provisions of Clauses 7.2 and 8.4, sentence 1, in case the obligation of notification has been breached. Incidentally, the liability, except in the event of Clause 8, shall be excluded.

7. Liability

7.1 The DKFZ does not assume any liability for the actual achievement of the research and development objectives. The DKFZ, however, undertakes to safeguard the application of scientific care and to comply with accepted scientific standards.

7.2 No compensation claims asserted by the Client will be admitted. Exceptions to this are the Client's compensation claims for damages arising from death, personal injury or physical harm, or from a breach of important contractual duties (cardinal duties) as well as liability for other damages attributable to an intentional or grossly negligent breach of duty by DKFZ, its legal representatives, or assistants. Important contractual duties are those the fulfilment of which is necessary to achieve the objective of the contract.

In the event of a breach of an important contractual duty, DKFZ shall only be liable for foreseeable damages typical for the contract if they have been caused by ordinary negligence, unless the Client's compensation claims for damages are based upon death, personal injury or physical harm.

The two paragraphs above may be curtailed for the benefit of the legal representatives and assistants of DKFZ if claims are asserted against them directly.

7.3 The limitations of liability described above shall not apply if DKFZ has concealed the defect with fraudulent intent, or has furnished a warranty for the condition of the goods. The same shall apply if DKFZ and the Client have entered into an agreement about the condition of the goods.

7.4 Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected.

8. Special conditions for delivery and work performance within the research and development contract

8.1 Should the DKFZ on the basis of an explicit written promise owe the production or delivery of work results corresponding to the accepted state-of-the-art then in case of defects the relevant conditions of the law governing purchase contracts or contracts for work and services shall only apply according to the following Clauses. Should the generated research and development results of the DKFZ prove to be faulty then the DKFZ shall receive the opportunity to remedy the defect – depending on the type of the research and development results, the defect and also the other circumstances repeatedly – by way of supplementary performance or at the DKFZ's choice by remedying the defect or substituting the delivery.

8.2 Should the DKFZ reject supplementary performance or if supplementary performance fails or if this is deemed unreasonable for the client, the client may either terminate the contract or request the reduction of the owed fee or request damages. The right of termination may only be exercised in case of a substantial defect. The right to termination shall lapse if the client does not declare the termination of the contract within a period of time no later than 14 days after having received the notification about the rejection or the failure of the supplementary performance or within a period of time no later than 14 days after the client declared that the supplementary performance will be unreasonable. The DKFZ is only obliged to provide works under the pre-requisites of Clause 7.2 and – if DKFZ has rejected the supplementary performance – also pursuant to Clause 7.3.

8.3 In case of an infringement of third parties' property rights DKFZ shall only be liable if these rights apply in the Federal Republic of Germany, the client uses the research and development results in a manner consistent with the contract and if they are justifiably used by the third party and the client has informed the DKFZ about the claims asserted by the third party immediately in writing and in detail. A liability for infringements of property rights overseas

is excluded. The supplementary performance within the meaning of Clause 8.2 shall apply that the DKFZ obtains authorization for the client's use or the research and development results are modified such that third parties' property rights are not longer infringed.

8.4 The client shall immediately examine the supplied research and development results of the DKFZ and report any defects found immediately in writing. Claims owing to recognisable defects shall only exist if they are reported towards the DKFZ in writing within a period of 14 days from the date of delivery.

8.5 Claims owing to defects shall become statute-barred pursuant to Section 9.

9. Statute-of-limitations

9.1 The general period of limitation for claims arising from quality defects and legal defects is one year from delivery. If acceptance has been agreed, the period of limitation shall begin to run from acceptance. Other statutory special regulations on limitation shall also continue to remain the same (in particular Section 438 Para 1, 71 Para 3, Section 444 and Section 445b of the German Civil Code [BGB]).

9.2 The above periods of limitation shall also apply for contractual and non-contractual compensation claims for damages attributable to a defect, unless the application of the normal statutory period of limitation (Sections 195 and 199 BGB) would, in a given instance, result in a shorter period of limitation. Compensation claims for damages on account of death, personal injury or physical harm and/or compensation claims for damages attributable to damages caused as a result of gross negligence, or intent, as well as under the German Product Liability Act shall, however, only become time-barred as laid down by the statutory periods of limitation.

9.3 The statutory regulations on the suspension of the statute-of-limitations shall apply under the condition that the suspensive effect ends if one contractual partner has not complied within 4 weeks to the wish of the other partner to continue the negotiations.

10. Reservation of title

10.1 The usage rights stated in Clause 5.2, 5.3, 5.4 and 5.6 and the ownership to the respective research and development results shall only be granted to the client upon the full payment of the agreed fee. The ownership of the DKFZ and usage rights may neither be pledged nor assigned as collateral.

10.2 If the ownership of the DKFZ to the research and development results lapses due to combination, mixing or processing then it is hereby already agreed that the ownership to the combined object produced in such case shall be assigned to DKFZ pro rata (according to the invoice value) , until the full payment of the agreed fee.

10.3 In the event of the resale of the research and development results the client hereby assigns all rights in rem from the resale to the DKFZ until the agreed fee is fully paid. The DKFZ hereby accepts the assignment.

11. Non-disclosure obligation

11.1 The contractual partners shall for a period of 5 years after termination of the order not make available to third parties any information of a technical or business nature declared to be

confidential. This shall not apply to information which was known to the other contractual partner or the public before the notification or was generally accessible or became known or generally accessible to the public after the disclosure without the assistance or fault of the other contractual partner, or corresponded to information disclosed or made accessible to the other contractual partner by an authorized third party or independently developed by an employee of the other contractual partner not in possession of the disclosed information.

11.2 Sub-contractors of the DKFZ, who are commissioned with a part of the work within the framework of the performance of the order and are obliged to non-disclosure, shall be deemed authorized third parties within the meaning of this contract.

12. Publication/advertising

12.1 Both contractual parties shall be entitled, after prior consultation, to publish the research and development results by naming the respective author and shall be carried out by respecting the fact that e.g. diploma theses, applications for property rights or dissertations are not impaired.

12.2 For the purpose of advertising being directly associated with the research and development results each contractual partners must obtain prior consent to use the respective other partners name.

13. Termination

13.1 Should no essential progress in work have been achieved after the expiry of a period of 6 months of performance both contractual partners shall be entitled to terminate the contract with one month notice to the end of the calendar month if. Apart from that the right of ordinary termination is explicitly excluded.

13.2 Each contractual partner shall have the right to terminate the contract without notice for good cause.

13.3 After effective termination the DKFZ shall submit the research and development results achieved until the expiry of the period of notice within 6 weeks to the client. The client shall be obliged to compensate the DKFZ for the costs incurred until the expiry of the period of notice. Personnel costs shall be reimbursed as incurred up to the expiry of the period of notice. Claims for damages shall remain unaffected in the event that the termination is due to a fault of one contractual partner.

14. Miscellaneous

14.1 This contract and the entire legal relationships of the contractual parties are subject to the law of the Federal Republic of Germany hereby excluding the UN Convention of the International Sale of Goods (CISG).

14.2 The place of performance and exclusive place of jurisdiction for all disputes from this contract is Mannheim.

14.3 All agreements, which have been reached between the partners for the purpose of executing the contract, are to be recorded in writing. Collateral agreements, amendments and addendums always shall be made in writing.

14.4 Should individual provisions of this contract be or become fully or partially void the validity of the other provisions shall not be affected. The same shall apply in case of a gap. The parties undertake to agree upon a legally admissible replacement of the void provision which shall as far as possible correspond to the commercial intention of the void provision or

to fill the gap.

14.5 The English version of the General Terms and Conditions is provided as a courtesy for reading purposes only. In case of any disputes between the partners the German version of the General Terms and Conditions will prevail and is the only legally binding version.