



## General Terms and Conditions (GTC)

for the provision of research services and scientific services of the University of Natural Resources and Life Sciences Vienna

### 1. Scope

- 1.1. These General Terms and Conditions (GTC) shall apply to all research services and/or scientific services performed by the University of Natural Resources and Life Sciences Vienna (BOKU) for a client (Service).
- 1.2. These GTC shall only apply insofar as they do not conflict with mandatory statutory provisions of the Consumer Protection Law (KSchG).
- 1.3. Any other general terms and conditions or deviations from these GTC shall only be valid if they have been agreed in writing between the client and BOKU in the individual case or have been expressly approved by BOKU in writing in the individual case.

### 2. Offer, placing of order

- 2.1. Offers of BOKU are not binding, unless a binding period is stated in the offer. A contract shall be concluded upon written order confirmation by BOKU.
- 2.2. If a binding period is stated in the offer, the contract shall be concluded within this period upon BOKU's receipt of the signed declaration of acceptance. A declaration of acceptance received after this period shall require a separate written order confirmation by BOKU.
- 2.3. Only what is agreed in writing is binding for the contracting parties. Verbal statements, information in catalogues, brochures, event programmes and the like are only applicable to the contract if they are confirmed in writing.
- 2.4. Silence on the part of BOKU to documents of any kind sent by the client shall in no way imply agreement to general terms and conditions which deviate from these GTC. Rather, acceptance of the offer by the client shall be deemed acceptance of these GTC.

### 3. Client's obligations to cooperate

- 3.1. The client shall be obliged to support BOKU in the execution of the contract and in particular to provide all information required for the execution of the contract in such way that BOKU can fulfil the contract in a timely manner. The client shall bear any additional expenses or damages arising from inadequate or untimely cooperation on the part of the client.

- 3.2. BOKU shall be entitled to use the information provided by the client free of charge for the execution of the contract.

### 4. Changes to Service / Service disruptions

- 4.1. If, in the course of the execution of the contract, a Service is required which is not stated in the contract, BOKU shall reach an agreement with the client prior to its execution. If the necessity or expediency of this Service is established by mutual agreement, the corresponding remuneration shall be agreed in writing at the same time. BOKU shall not be obliged to provide these additional Services as long as no written agreement has been concluded.
- 4.2. Requests for changes by the client must be as detailed as the task definition in the contract. BOKU will take over the implementation of the changes at the request of the client against an increase in remuneration and, if necessary, adaptation of the time schedule, subject to the resources available.
- 4.3. If a detailing of the order communicated by the client under clause 4.2. involves a change in performance, clause 4.1. of these GTC shall apply correspondingly.
- 4.4. If, in the course of the execution of the contract, circumstances become apparent that could endanger or delay the execution or the achievement of the meaning and purpose of the contract, BOKU shall inform the client without delay and submit any measures or proposals for changes including the associated technical, content-related, temporal and financial effects. The contracting parties shall decide mutually on the further course of action.

### 5. Personnel engaged in the execution of the contract

- 5.1. BOKU shall decide at its own discretion which employees and, if applicable, also subcontractors (both natural persons and legal entities) shall be used to execute the contract. The use of certain employees may be stipulated in individual contracts; however, such stipulations shall only apply as long as these employees are employees of BOKU. In any case, the client is not authorised to issue instructions to employees or subcontractors assigned by BOKU.
- 5.2. The contracting parties are obliged not to entice away employees of the other contracting party for

their own benefit or for the benefit of third parties during the execution of the contract and up to six months after the termination of the contractual relationship. This does not apply to employees who have been hired on a temporary basis exclusively for the performance of the contract.

## **6. Deadlines and delivery**

- 6.1.** Deadlines are to be set in writing.
- 6.2.** In case of exceeding deadlines for which BOKU is not responsible, the provisions of clause 4.4. of these GTC shall apply correspondingly.
- 6.3.** If BOKU is responsible for exceeding deadlines (delay in delivery), the client shall be obliged to grant BOKU a reasonable grace period of at least 30 days. Any claims for compensation by the client resulting from a delay in delivery for which BOKU is responsible shall be excluded as far as legally permitted.
- 6.4.** In the event of delays caused directly or indirectly by force majeure, BOKU shall be entitled to,
  - 6.4.1.** suspend the execution of the contract for the duration of the delay and a reasonable start-up period, or
  - 6.4.2.** to terminate the contract in whole or in part.
- 6.5.** If the execution of the contract is delayed by more than three months due to force majeure, the client shall also be entitled to terminate the affected part of the contract.
- 6.6.** If the shipment of an item ready for shipment is not possible through no fault of BOKU or not desired by the client, BOKU may store the item at the client's expense. The delivery shall then be deemed to have been made.
- 6.7.** The assigned Service shall be deemed to have been provided in full upon written declaration of approval by the client. If the client does not submit a statement within four weeks of the demonstrable submission of the complete Service (e.g. final report), approval shall be deemed granted.

## **7. Rights of use and exploitation**

- 7.1.** BOKU shall be entitled to all rights to works within the meaning of the Austrian Copyright Act (such as reports, scripts, plans, construction documents, drawings, computer programmes) created in the course of the execution of the contract. The granting of rights of use to the client, including the payment thereof, shall remain subject to the contractual provisions.
- 7.2.** If, in the course of the execution of the contract, a industrially protectable or commercially exploitable result arises, BOKU shall notify the client thereof without delay. In such a case, the contracting parties undertake to refrain from

anything that could be detrimental to the patentability, licensability or commercial exploitability of this result. Unless otherwise contractually agreed, BOKU shall be entitled to all rights to this result.

## **8. Publications**

- 8.1.** The client acknowledges the fundamental duty of a university and its employees to continuously publish the nature, subject and results of its research and development activities. BOKU and its employees are therefore entitled to publish the results arising from the performance of the contract under their own name.
- 8.2.** In case of special reasons to be considered, in particular in the case of intended patent applications, it may be contractually stipulated that publications directly related to the contract may only be made with the consent of the client. The client may only refuse consent for good cause. If no objection is raised within four weeks of the planned publication being submitted, consent to publication shall be deemed granted. Results from research services may in any case be published after expiry of a maximum period of six months from submission of the planned publication after the end of the contract.
- 8.3.** In case a scientific thesis according to § 86 (1) Universities Act (UG) is to be written by BOKU students in the course of the execution of the contract, the client is free to conclude an agreement with the student on the exclusion from use in accordance with § 86 (4) UG.

## **9. Payment**

- 9.1.** (Partial) Payments by the client shall be made after invoicing. All (partial) payments shall be made in such a way that they are available to BOKU on the due date, free of charges, in the account stated on the invoice.
- 9.2.** If the client is in default with an agreed payment or other obligation, BOKU may:
  - 9.2.1.** postpone the execution of the contract until the overdue payment(s) or other obligation(s) have been effected and adapt the time and work schedule accordingly;
  - 9.2.2.** charge interests of six percentage points above the base rate published by the Austrian National Bank (the base rate in effect on the last day of a half-year shall apply to the next half-year);
  - 9.2.3.** charge all costs arising from the delay, in particular reminder fees and lawyer's fees.
- 9.3.** The client is not entitled to withhold payments (e.g. due to warranty claims) or to offset them against counterclaims.

**10. Early termination of contract / cancellation**

- 10.1.** Both contracting parties are only entitled to terminate the contract in whole or in part if there is good cause. In addition to the reasons mentioned elsewhere in these GTC and without prejudice to further (including legal) reasons, good cause shall be deemed to exist in particular if the other contracting party persistently and repeatedly fails to meet its contractual obligations.
- 10.2.** In the event of premature termination of the contract, BOKU shall be entitled to payment for Service already rendered. BOKU reserves the right to claim further damages.
- 10.3.** Any declaration in the course of a contract termination must be made in writing by registered letter.

**11. Retention of title**

Contractually agreed rights of use and other property rights within the meaning of section 7 of these GTC shall not pass to the client until the remuneration has been paid in full.

All other services rendered (unless they are rights to works pursuant to section 7 of these GTC) shall remain the property of BOKU until payment has been made in full.

**12. Confidentiality and data protection**

- 12.1.** The contracting parties shall keep confidential any information disclosed to each other and declared to be confidential, unless otherwise stipulated in these GTC or the contract.
- 12.2.** This does not apply to information,
- 12.2.1.** which are generally known or subsequently become generally known through no fault of the contracting parties, or
  - 12.2.2.** are known or become known to third parties who are not bound by a confidentiality agreement, or
  - 12.2.3.** were already known to the contracting party obliged to confidentiality prior to this confidentiality obligation, or
  - 12.2.4.** are disclosed to the contracting party bound to confidentiality by third parties after the conclusion of this contract without any direct connection to the contractual relationship, or
  - 12.2.5.** become known to the contracting party obliged to confidentiality or its employees in the course of their own development or research work or through other activities without the use of trade and business secrets of the other contracting party.
- 12.3.** If one contracting party is obliged to disclose confidential information due to an official order or a statutory provision, it shall inform the other

contracting party as far as possible in advance of the planned disclosure.

- 12.4.** The contracting parties undertake to comply with the applicable data protection provisions.

**13. Warranty and liability**

- 13.1.** The client acknowledges and accepts the risk of success associated with research, development and scientific service contracts. BOKU shall perform the contract with reasonable care and in accordance with the state of the art in science and technology at the time of conclusion of the contract. BOKU does not warrant that the results are free from third party property rights and that they are economically exploitable.
- 13.2.** If the Service provided by BOKU does not objectively comply with the contract in terms of type, content or scope, the client shall only have the right to demand improvement or supplementation of what is missing; other warranty claims shall be excluded.
- 13.3.** The warranty period is three months from approval of the Service. Regarding the approval, clause 6.7. of these GTC shall be considered. BOKU shall remedy proven defects within a reasonable period of time without any additional claim for payment.
- 13.4.** Warranty claims may – in case of other exclusion - only be enforced in court within three months after expiry of the deadline set for the rectification of defects. If no deadline was set for the rectification of defects, the warranty period shall end one year after approval in accordance with clause 6.7. of these GTC.
- 14. Compensation for damages**
- 14.1.** BOKU shall not be liable for damages incurred by the client or third parties in connection with the use of the Service rendered and/or results delivered, provided that the execution of the contract has been carried out in accordance with the state of the art in science and technology.
- 14.2.** Furthermore, BOKU shall only be liable for damages caused intentionally or by gross negligence. Liability for indirect damage is excluded.
- 14.3.** Irrespective of the legal grounds, BOKU's liability shall be limited to the amount of the agreed remuneration.
- 14.4.** Claims for compensation by the client against BOKU shall become statute-barred six months after knowledge of the damage and the damaging party, but in any case three years after approval.

**15. Severability clause**

Should one or more provisions of these GTC be or become legally invalid, the validity of the remaining provisions of these GTC shall remain unaffected. The invalid provision shall be replaced, insofar as legally permissible, by a valid provision that comes as close as possible to the meaning and purpose of the invalid provision. The same shall apply in the event of a loophole.

**16. Jurisdiction and applicable law**

**16.1.** All disputes arising out of or in connection with contracts to which these GTC apply, including the question of the valid formation, nullity and pre- and post-effects of the contract, shall be governed by Austrian law, excluding conflict of law rules.

**16.2.** The place of jurisdiction is the court in Vienna which has subject-matter and local jurisdiction for commercial matters.