

**General Terms of Service
of the Ferdinand-Braun-Institut gGmbH, Leibniz-Institut für Höchstfrequenztechnik (FBH)
for the conduct of research and development contracts, version February 2021**

The FBH exclusively and directly pursues non-profit purposes. The institute carries out contractual research in the field of applied research and thereby develops new technologies. The following terms are adapted to these peculiarities.

1. Scope

1.1 The following terms apply to all research and development services to be performed by FBH. Differing, contrary or complementary terms of the client are not part of the contract, unless FBH confirms the validity of such in writing.

1.2 If not otherwise agreed upon in the following terms, the regulation concerning service contracts according to Sec. 611 ff. German Civil Cod (BGB) apply.

2. Subject of contract, contract conclusion and scope of performance

2.1 Subjects of the research and development contract are exclusively the designated services offered by FBH. Additional oral agreements are not binding.

2.2 A written confirmation of the contract by FBH is required to conclude a contract between FBH and the client.

2.3 As long as the offer or the research and development contract contains due dates or deadlines, those are only binding if FBH explicitly confirms the bindingness. If FBH realises that the binding deadline or the binding due date cannot be met, FBH can communicate reasons for a delay to the client and agree on reasonable adaptation with the client. FBH shall not be liable for any costs or damages caused by such delays.

3. Prices and methods of payment

3.1 The agreed prices are without VAT and excluding packaging, insurance, shipping, assembly or other delivery and transport costs.

3.2 The respective VAT applicable at the time of the performance is to be added to the agreed prices and will be separately stated on the invoice.

3.3 Off-setting or the right to lien may only be execute if the counter claim is unchallenged and established as final and absolute.

3.4 The client may only execute his/her right to lien if his/her counter claim results from the same contractual relation.

4. Research and development results

4.1 Research and development results will be provided to the client after accomplishing the assignment according to the contractual offer.

4.2 Inventions that are made by employees of FBH or commissioned third parties during the execution of an assignment are property of FBH, unless otherwise agreed upon. The client shall have a right of use to such inventions only for the purposes of the individual specific order, which in case of doubt shall be interpreted narrowly. Insofar as the client wishes to use such inventions for further purposes and in particular for commercialization to third parties, this shall only be permissible if prior express consent of FBH has been given and only against remuneration to be agreed upon.

4.3 Inventions that are made in co-operation between the employees of FBH and the client during the execution of an assignment as well as the respective protective rights are joint property of both contractual partners. Individual activities subject to protection rights require mutual agreement and/or individual agreements for individual cases. Every contractual party is entitled to use joint inventions free of charge. For works protected by copyright laws which are created in co-operation during the execution of the assignment (joint copyright), this applies accordingly. With regard to FBH's rights to such inventions and copyrights, 4.2 sentences 2 and 3 apply accordingly.

5. Liability

5.1 The FBH stands for scientific care as well as the compliance with common technology standards, but not for the actual achievement of the research and development goals.

5.2 FBH assumes no liability unless this is mandatory by law. The liability of FBH, their legal representatives and vicarious agents for damages resulting from violations of contractual duties and tort is limited to intention and gross negligence. In particular this applies to alterations or damage to materials or to objects to be worked on which are supplied by the client and which due to their nature can easily be altered or damaged. In any case liability is limited to the typical, foreseeable contractual damage. This exclusion of liability does not apply to claims resulting from harm to life, body and health. Liability for subsequent, secondary damages is explicitly excluded.

5.4 The FBH is liable for violations of protection rights of third parties subject to paragraphs 5.2 and 7.4 if FBH has violated their informational duties. Further liability is excluded, except in cases described in paragraph 7.

6. Export protocols

6.1 The FBH explicitly points out that the shipment/export of products (items, software, technology) in order to fulfill the contract might be subject to European and German Foreign Trade Law and restriction according to export control regulations and prohibitions. The respective legal regulations are EU-regulations 728/2009 (Dual Use CD) as well as its appendices, the German Foreign Trade Act (AWG) and the Foreign Trade Regulation (AWV) as well as the German Export List in its valid version at the time of shipment.

6.2 Further, European and national embargo regulations against certain countries and individuals exist that prohibit a delivery or make a delivery subject to permission.

7. Special regulations for purchase and service contracts concerning research and development assignments

7.1 As long as FBH owes the production or delivery of an item conforming to the respective state of technology as research and development result according to an explicitly given guarantee, the regulations for purchase and service contract only apply according to the following paragraphs:

7.2 If the work performed by FBH appears to be defective, the FBH firstly are granted to choose the way of correction of the defect – multiple correction attempts allowed with respect to the nature of the defect and the respective circumstances – within the scope of supplementary performance by rectification or replacement.

7.3 If FBH rejects the supplementary performance or if the supplementary performance fails or is unreasonable for the client, the client is entitled either to withdraw from the contract, to demand a reduction of the agreed price or to claim compensation within the limits of section 5.2 above. The right to withdrawal may only be executed in cases of severe defects. The right to withdrawal expires if the client does not declare the withdrawal latest 14 days after notification about the rejection or failure of supplementary performance and/or later than 14 days after the moment the unreasonableness of the supplementary performance becomes evident.

7.4 In case of legal defect due to violation of third-party protection rights, the FBH is only liable if those rights exist within the Federal Republic of Germany, the client uses the research and development result according to the contractual purpose and in so far used by entitled third parties and if the client has informed the FBH about the asserted claims by third parties immediately in writing. The supplementary performance according to paragraph 7.2 takes place in a way that FBH obtains the usage right for the client or modifies the research and development result in a way that does not violate the respective protection rights of third parties.

7.5 The client is to examine the services performed by the FBH and to report defects immediately. Claims resulting from obvious defects are only legitimate if reported to FBH within a period of 14 days beginning with the day of delivery.

8. Expiry periods

8.1 Material and lack-of-title claims expiry after 12 months, unless otherwise prescribed by law.

8.2 The expiry period for claims resulting from defects begins with the handover of the contractual items or the notification of the research results.

8.3 Negotiations between the contractual partners concerning claims or circumstances justifying a claim shall not result in the suspension of the expiry period.

9. Reservation of title

9.1 In case the owed performance includes the delivery of material items to the client, the client gains ownership not until the complete payment of the agreed price. The property of FBH may neither be given away in mortgage nor be handed over for the purpose of security.

9.2 In case the ownership of FBH expired due the item being merged, mixed or processed, already now the contractual partners agree that the ownership towards the newly created unified item transfers to FBH until complete payment of the agreed price proportionally to the value percentage.

9.3 In cases of re-sale of the research and development results, the client transfers all rights resulting from the re-sale to FBH with physical effect until complete payment of the agreed price.

10. Confidentiality

10.1 The contractual partners agree not to reveal mutually provided technical or business information considered as confidential to third parties for the duration of 5 years after accomplishment of the assignment. This does not apply to information revealed to the client or the public before notification or revealed to the public after notification without participation or fault of the respective contractual partner or information equal to those revealed to the contractual partner by entitled third parties or information generated by employees of the other contractual partner not having knowledge about the transmitted information.

10.2 Entitled third parties in the sense of this regulation are sub-clients of FBH commissioned to perform partial services within the scope of the assignment and who are instructed concerning confidentiality.

11. Cancellation

11.1 Every contractual partner is entitled to extraordinarily cancel the contract due to important reasons.

11.2 After effective cancellation the FBH will hand over the research results achieved until the end of the cancellation deadline within 4 weeks to the client. The client is obligated to compensate FBH for costs occurred until expiry of the cancellation deadline. Personnel costs are compensated according to their occurred extend.

12. Other regulations

12.1 Supplementary agreements, changes and amendments require written form.

12.2 Place of performance for services by FBH is the residence of the institute.

12.3 The law of the Federal Republic of Germany applies under exclusion of CISG law.

12.4 If single or multiple regulations are or become partly or entirely invalid, the validity of other regulations remains unchallenged. The same applies to legal gaps.