



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

Scope

These General Terms and Conditions (GTC) apply to research and development (R&D) contracts (synonymous with mandates and orders), offers as well as services (S), and are based on Swiss Law. By confirming the offer or signing the contract, the ordering party (hereinafter referred to as the "Client") accepts these GTC. Amendments and subsidiary agreements shall only be valid if they are confirmed in writing by Bern University of Applied Sciences (hereinafter referred to as "BFH"). In all other respects, the provisions of the Swiss Code of Obligations and the Higher Education Code of the Canton of Bern, Switzerland shall apply.

Offers of the BFH

Offers made in writing by e-mail or in any other written form shall be deemed binding. For an offer or contract sum of CHF 10'000, including value added tax (VAT) and above, the written form must be used for this purpose. An offer is valid for three (3) months from the date of the offer, unless otherwise agreed in writing. If the Client requires supplies, products or services that are not included in the offer, these shall be invoiced additionally. All materials supplied with the offer shall 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 writing by e-mail or in any other written form; from a sum of CHF 10'000 including VAT, the written form must be used for this purpose.

If the Client wishes to make a change to the offer, it shall inform BFH of this. BFH shall inform the Client within two (2) weeks whether the change is possible and what effects it will have on the provision of the services, deadlines, and prices. The amendment confirmed by BFH shall become part of the offer. The change does not apply to products/services that have already been delivered.

The General Terms and Conditions (GTC) of Bern University of Applied Sciences are an integral part of offers, R&D contracts and service contracts. The provisions of the Swiss Code of Obligations shall apply on a subsidiary basis.

Fulfilment by third parties

BFH may involve third parties in the execution of the services owed or transfer the execution 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.

Dates

Bern University of Applied Sciences undertakes to deliver the agreed-upon 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. If obstacles arise that are beyond the control of BFH (i.e., force majeure), the dates will be appropriately postponed.

In the event of any other delays, the Client may

1. waive further services: It must inform the BFH of this immediately.

2. demand partial services if this is possible: This must be agreed without delay.
3. may set a reasonable grace period for the BFH to subsequently fulfil its obligations: Should the BFH not fulfil its obligation by the expiry of this grace period, the Client may, if it declares so immediately, waive the 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 the contract.

Unless a special acceptance procedure has been agreed, the Client shall inspect the products/services within two (2) weeks and notify any defects in writing. 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, the BFH shall have the right to rectify the defect 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 imply 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 fulfilled as soon as the final report has been delivered within the agreed framework.

The contracting parties (hereinafter referred to as the "Parties") shall provide each other with the mutual assistance reasonably required to enable them to exercise the rights and obligations they acquire under the contract. In particular, they shall provide the necessary declarations and signatures for the purpose of obtaining or filing/registering intellectual property rights.

Exchange of information, documents, objects, and auxiliary materials

The Parties shall provide each other with the information required for the implementation of the project in a timely manner and shall make any required documents, objects, and auxiliary materials available on loan for the duration of the project in a timely manner. At the end of the project, unless otherwise agreed, they shall 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 exempt from the return/deletion obligation in the main contract.

Prices and terms of payment

The statutory VAT is added to the stated prices.

In the case of fixed prices, the invoiced amount shall be the amount quoted. In the case of prices offered as a cost cap, invoicing shall be based on services rendered, but no more than the amount quoted. In the case of targeted prices, we reserve the right to deviate by up to 20%. Only the services rendered shall be invoiced.

Unless otherwise agreed, any travel costs and expenses shall be invoiced separately. The invoice amount is due upon delivery of the invoice and is to be transferred within thirty (30) days to an account designated by BFH. Payments shall be made in CHF (Swiss francs). Bank charges for payments in foreign currencies shall be borne by the Client. If payment terms are not met, BFH shall be entitled to



1. demand immediate payment for outstanding claims not yet due from the Client.
2. request collateral for all outstanding claims.
3. perform or deliver outstanding products/services only upon receipt of advance payment.

Termination

Should one of the Parties not fulfil essential obligations, that party may be admonished in writing to comply with the obligations and to restore the contractual condition within a reasonable period of time. In the event of non-compliance after the expiry of this time period, the contract may be terminated at the end of a month upon one month's notice of termination.

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 as a result of obligations arising from the collaboration after termination of the contract; this obligation on the part of the Client to bear costs shall apply until the first opportunity for BFH to release itself from its obligations.

Warranty / Liability

BFH shall be liable for the necessary scientific standard and diligence in the fulfilment of the assigned tasks. BFH guarantees the professional evaluation of the results. In all other respects, the BFH does not provide any warranty of quality or of title. In general, the BFH is only liable in cases of gross negligence and wilful misconduct, as well as for damages arising directly from an event (direct damages).

Any liability and warranty is excluded for the use of research results or products. No liability is accepted for products or processes arising from research.

Confidentiality

The Parties undertake to keep confidential 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 disclosures, the other party shall be informed of the information and materials provided to the extent legally permissible. Further agreements shall be regulated in a non-disclosure agreement (NDA) or non-disclosure clauses.

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

Confidential information is all information disclosed to the recipient, either in conversation or in writing, which is related to the Parties and their relatives (employees as well as students) and their partners. This includes, for example, technology or business concepts, knowledge, ideas, methods, statements on products and services, business plans, designs, financial data, personal data, customer lists, pricing policies, marketing plans and strategies, sales and customer information, written 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.

Furthermore, all information and materials created or produced by the recipient in the course of the collaboration are considered confidential.

Information and materials are not considered confidential - provided that the recipient can prove this with written documents - which

- were already in the recipient's possession prior to the cooperation or were developed without using the confidential information or materials,
- are generally known or in the public domain at the time of transfer or become generally known or in the public domain at a later date without any breach of the agreed confidentiality by the recipient,
- were already known to the recipient without restriction at the time of handover.

Reporting

The report shall in principle be drawn up in the language of the written order, either in German, French or English. If the report is to be prepared in another language, the translation shall be carried out 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 will be invoiced additionally.

Data protection and information security

The Parties shall comply with the applicable data protection laws. They shall ensure - 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 under the contract.

Personal data contained in contract 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 contract's personal data for any purpose other than the execution of the contract.

The Parties shall undertake to implement all necessary organisational and technical security measures. This includes safeguarding information technology (IT) and telecommunication systems used for data processing (including infrastructure systems, networks, devices, applications, as well as data and information) within their respective domains of responsibility against potential attacks, in accordance with the prevailing industry standards. These protective measures shall be implemented using technically and organisationally possible and economically viable precautions.

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

Publication rights

Results from research and development may be made available 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 that time, the results shall remain confidential as a matter of principle. As a rule, results of research and development work financed with public funds shall be published in an appropriate form. The contractually agreed confidentiality shall remain reserved.



If reports are to be made accessible, they must be published in their entirety. The publication of excerpts requires the approval of the responsible project manager.

Intellectual property (IP)

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

Intellectual property rights to results and measurement data arising within the scope of services shall be transferred to the Client. All rights and entitlements to methods, computer programs or tools used or developed within the scope of the service shall remain with BFH.

The ownership and use of intellectual property shall be governed by the "IP-Policy of Bern University of Applied Sciences of 16 November 2022"¹. Provisions that deviate from this policy are to be contractually regulated between the Parties.

BFH always reserves the right to freely use intellectual property created within the scope of R&D contracts for commercial and non-commercial purposes in research and teaching. The agreed provisions regarding publication and confidentiality remain reserved.

Technical inspections

The participation of the Client in expert inspections requires the approval of the responsible project manager at BFH. The Client will receive a written report after completion of the order. Inspection of the order documentation must be authorised by the project manager.

Transport, examination material, storage

Risks and costs of transport for delivery or return shipment 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 examined shall be stored for four (4) weeks after completion of the order. If the material is not collected by the Client during this period, it will be professionally disposed of 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 one another in a timely manner to special requirements as well as to legal, official, and other regulations at the place of destination, insofar as they are relevant for the execution of the order. The Parties shall inform one another in a timely manner of any obstacles which might hinder the fulfilment of the contract or lead to undesirable outcomes.

Representation towards third parties

The Parties are not authorised, without express consent, to act on behalf of the other party or in the name of the Parties to the contract.

Correspondence

All correspondence shall be addressed to the project manager. For questions concerning the protection of intellectual property, the head of research of the respective department/school of BFH should be contacted.

Handling of complaints

If the contract provides for the provision of services within the framework of a certification system that

prescribes a documented procedure for the receipt, evaluation and adjudication of complaints, a description of the corresponding process is available to all Parties upon request. The service provider shall handle complaints in accordance with the requirements of the certification criteria.

Severability

Should individual clauses of a contract or these GTC be ineffective or unenforceable or become ineffective or unenforceable after conclusion of the contract, this shall not affect the validity of the remaining clauses of the contract or these GTC. In this case, the contracting parties undertake to immediately replace the affected clause with a permissible and effective clause which, in terms of its content, comes as close as possible to the original intention. The same applies in the event of a contractual gap.

Final provisions

Amendments and supplements to contracts must be made in writing. Contracts are subject to Swiss Law (excluding conflict of law provisions and the Vienna Convention on Contracts for the International Sale of Goods). The place of jurisdiction is Bern, Switzerland. The Parties commit to amicably settle any disputes that may arise from the execution of an agreement.

8 January 2024

¹ https://www.bfh.ch/dam/jcr:094b02dc-210f-4379-a078-b9b86d51f5b6/VF_IP-Policy_221106_EN.pdf