

Conditions for the execution of research and development contracts within the framework of the joint industrial project "Elastomers in alkaline oxidative conditions for electrochemical devices" of the Fraunhofer Institute for Structural Durability and System Reliability LBF ("Fraunhofer")

Fraunhofer exclusively and directly serves public-benefit purposes within the scope of the joint industrial project. Fraunhofer performs contract research and in doing so explores uncharted technological territory. It is thus in general uncertain whether it will be possible for the particular research and development objectives to be met. Fraunhofer has a political mandate to promote applied research. The aim is the practical application of scientific findings for various fields of technology. The same or similar tasks can therefore be worked on by the Fraunhofer Institutes at the same time and independently of one another.

1. Scope

The following terms and conditions apply exclusively to participation in the joint industrial project (hereinafter "Project"). Differing, conflicting, or supplementary conditions of the client do not form part of the Contract unless Fraunhofer has agreed to their validity expressly in writing. Insofar as the following terms and conditions do not stipulate otherwise, the provisions of service contract law (*Dienstvertragsrecht*; sections 611 et seq. of the German Civil Code (BGB)) shall apply to research and development contracts within the scope of the Project (hereinafter "Contract").

2. Object of the Contract

2.1 The object of the Contract is the work to be carried out within the framework of the Project (hereinafter referred to as "Services").

2.2 The nature and scope of the Services to be provided are based on the project sketch and the Project content and scope of work presented by Fraunhofer at a kick-off meeting, including any updates as the Project progresses.

2.3 A participant in the project is anyone who has sent the relevant application to Fraunhofer and whose application has been confirmed by Fraunhofer (hereinafter referred to individually or together with other "Participant").

2.4 The contracting parties in the project are each participant and Fraunhofer.

2.5 Fraunhofer is obliged to apply scientific care and to comply with the accepted scientific standards. No representation or warranty is given that a particular research and development result will be achieved or that the result will be exploitable.

3. Duration, Deadlines

3.1 The duration of the Project results from the project sketch. It starts with the kick-off meeting and ends with the final meeting.

3.2 Fraunhofer defines a minimum number of Participants that, if reached, will result in the Project. The minimum number of Participants required is derived from the project sketch. If this number is not reached by the planned start date, the Participants will reach agreement with Fraunhofer on the further procedure. In doing so, the Participants and Fraunhofer may agree on a corresponding increase in the remuneration pursuant to Section 4 or a reduction in the Services provided by Fraunhofer in order to ensure that Fraunhofer's funding covers its costs.

If no agreement is reached, Fraunhofer reserves the right to cancel the Project or postpone the start date until the required minimum number is reached.

4. Funding, Payment

4.1 The Services specified by Fraunhofer shall be financed by payment of an annual fee based on the project sketch. The first instalment is due with the start date. Alternatively, at the Participant's request, payment of the entire remuneration is possible with the start date.

4.2 The amount of remuneration depends on the number of Participants, is calculated according to the required minimum number of Participants and can be found in the project sketch. If more Participants than the required minimum number are reached, the Participants and Fraunhofer will agree on the adjustment of the Services or reduction of the remuneration.

4.3 The Participant shall make payment to the account designated by Fraunhofer no later than 30 days after receipt of the invoice.

4.4 Setoff against claims from Fraunhofer shall only be permitted if the counterclaim is uncontested or has been determined in a final court decision.

4.5 The Participant may assert a right of retention only if its counterclaim is based on the same contractual relationship.

4.6 If Participants withdraw from the project during its term or if Participants fail to pay their remuneration even after being reminded by Fraunhofer, Section 3.2 shall apply accordingly.

5. Meetings and structure

5.1 The Participants and Fraunhofer meet regularly as part of the project to exchange information on the progress of the project. The number of meetings will be determined by the project sketch. Fraunhofer will invite to the meetings in due time and send out the TOPs.

5.2 Details regarding individual research, studies, tests and samples within the scope of outstanding Services may be determined by the Participants and Fraunhofer in the meetings. The Participants shall then have the opportunity to vote on these details in the meetings. Each Participant has one vote. The proposal that has received the most votes of the contracting parties present shall be deemed selected and shall be binding on Fraunhofer insofar as the performance is actually and legally possible for Fraunhofer. In the event of a tie, Fraunhofer shall decide at its own discretion.

5.3 Each Participant is aware that the exchange of information between companies may have antitrust relevance and that agreements and practices restricting competition are prohibited. Each Participant will therefore only provide the information that is substantively necessary for the performance of the Contract.

Each Participant is responsible for compliance with antitrust regulations. Should a Participant have antitrust concerns regarding individual agreements and/or actions during the meeting, it should expressly object to these; Fraunhofer shall record the objection. Furthermore, in this case Fraunhofer shall be entitled, at its own discretion, to admonish the Participant who may have violated antitrust law and, after the second unsuccessful admonition, to exclude this Participant from the meeting in whole or in part. The excluded Participant shall not be reimbursed for any costs or expenses incurred in connection with the order or the exclusion.

6. Result of Research and Development, Rights of Use

6.1 "Research and Development Result" within the meaning of this Clause shall mean all results produced within the framework of the Project.

6.2 Fraunhofer will report on the Research and Development Results it has achieved and/or the progress of the work in the meetings. The Research and Development Results achieved will be summarized in writing in a final report after completion of the Project and made available to the Participants.

6.3 Each Participant shall receive a non-exclusive, royalty-free, non-transferable right of use to the research and development results achieved by Fraunhofer, which may only be sublicensed to affiliated companies within the meaning of Section 15 of the German Stock Corporation Act (AktG), and which shall be unlimited in time. During the term of the Project, Fraunhofer shall not grant third parties any rights of use to the Research and Development Results achieved. Third parties within the meaning of this Section 6.3 are all non-participants in the Project.

6.4 In the event that a Participant also generates Research and Development Results alone or together with another contracting party, the following shall apply:

Contracting parties participating in the research and development results may use them as their own and grant non-exclusive licences (i) with regard to involved Participant to affiliated companies within the meaning of Section 15 AktG of the respective Participant and (ii) with regard to and in the case of Fraunhofer's participation in joint research and development results to third parties, without compensation. Section 6.3 sentence 2, sentence 3 shall apply accordingly.

With regard to the non-participating contracting parties, section 6.3 sentence 1 shall apply accordingly. For Fraunhofer with the condition that Fraunhofer receives a right of use that can be sublicensed to third parties. In this case, clause 6.3 sentence 2, sentence 3 shall apply accordingly.

6.5 All intellectual property rights of Fraunhofer used by Fraunhofer in the performance of the project are necessary for the exploitation of the research and development result by the Participant, the Participant shall be granted, on written request and under a separate agreement, a non-exclusive, royalty bearing right of use for the purpose of application that the Contract is based on, insofar as Fraunhofer has no other contrary obligations. This request must be declared to Fraunhofer in writing no later than six months after handover of the Research and Development Result.

7. Conflicting Intellectual Property Rights

7.1 Unless otherwise expressly stated, Fraunhofer shall not conduct any patent searches or searches for conflicting property rights.

7.2 The contracting parties shall inform each other of third-party intellectual property rights they become aware of before and during the performance of the project that could conflict with the agreed use pursuant to Section 6. Fraunhofer is not obliged to examine the potential infringement of such third-party intellectual property rights, unless otherwise expressly stated in the offer.

7.3 The contracting parties shall mutually decide in what way discovered intellectual property rights are to be taken into account in the further performance of the Project.

8. Contractual and Tortious Liability

8.1 Unlimited liability: Fraunhofer shall be liable without limitation for wilful misconduct and according to the provisions of the German Product Liability Act (*Produkthaftungsgesetz*). Fraunhofer shall be liable without limitation for negligence in the event of damage arising from loss of life, personal injury, or damage to health.

8.2 Apart from that, the following limited liability applies: the liability for negligence shall be limited to the damage that was foreseeable and typically to be expected when the Contract was concluded. Fraunhofer shall be liable for slight negligence otherwise only in the case of the breach of a material contractual obligation that must be fulfilled for due implementation of the Contract and that the client can reasonably expect to be fulfilled.

This liability limitation also applies in favour of Fraunhofer's legal representatives and performing agents (*Erfüllungsgehilfen*).

9. Foreign Trade Law regulations, Export Control

9.1 The contracting parties shall observe all applicable national, European, foreign, and international regulations of foreign trade law including embargoes (and/or other sanctions).

9.2 If Fraunhofer fails to provide performance or delays in providing performance as the result of a foreign trade law prohibition, a required foreign trade law approval not being issued, or a delay in the foreign trade law official approval procedure, any liability for damages on the part of Fraunhofer shall be excluded. This shall not apply in the event of wilful or grossly negligent causation on the part of Fraunhofer or its legal representatives or performing agents (*Erfüllungsgehilfen*) of (i) the approval not being issued or (ii) the approval procedure being delayed.

9.3 The contracting parties shall support each other mutually in the observance of the regulations of foreign trade law, insofar as this is required to fulfil obligations arising from the Contract.

10. Statutes of Limitation

10.1 The Participant's claims arising from a breach of obligation or from tort lapse within one year. The statute of limitation begins with the handover of the research and development result, unless the start of the limitation period is linked in law to awareness of the facts upon which the claim is based and the Participant can prove that the Participant became aware of the facts upon which the claim is based only at a later point in time. The legal maximum limitation periods remain unaffected.

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10.2 The shortening of the limitation period and the modification of the start of the limitation period pursuant to Section 10.1 do not apply for damages arising from loss of life, personal injury, or damage to health or insofar as Fraunhofer is liable as the result of wilful misconduct, gross negligence, according to the provisions of the German Product Liability Act (*Produkthaftungsgesetz*) or for the breach of a material contractual obligation (Section 8.2). The legal statutes of limitation provisions apply in these cases.

10.3 Negotiations between the contracting parties regarding claims or facts upon which the claim is based suspend the limitation period. The suspension effect ends if one contracting party fails to follow within four weeks the other contracting party's wish to continue the negotiations.

12. Confidentiality

12.1 The contracting parties shall keep confidential (i) any information disclosed by Fraunhofer and/or by any other Participant provided to them and declared confidential and (ii) Research and Development Results for the term of the Contract and for a period of five years after the end of the Contract, use such information only to perform the project, and take all appropriate measures to prevent third parties from accessing such information. This applies only insofar as the information was not known by or generally accessible to the public before the information was provided or insofar as the information did not become known by or generally accessible to the public after the information was provided without the other contracting party breaching this confidentiality obligation. The obligations pursuant to sentence 1 do not apply insofar as the other contracting party was aware of the information before the information was provided or an employee of the other contracting party who was not aware of the provided information developed the information independently or the information corresponds to information that was disclosed or made accessible to the other contracting party by a third party, unless to the other contracting party's knowledge the third party's disclosure of this information breaches a confidentiality obligation.

12.2 The internal disclosure of the confidential information on the part of a contracting party is permitted only insofar as this is required for the Services or the cooperation in the Project (need-to-know) and it is ensured that employees receive the confidential information only if they are obliged to equivalent confidentiality within the legal possibilities.

12.3 For the purposes of this provision, third parties do not include parties entrusted by Fraunhofer with partial performance in relation to the Contract and obliged to observe confidentiality.

13. Publications

13.1 The contracting parties are not entitled to publish Research and Development Results during the term of the Project. Each contracting party is entitled to publish the Research and Development Results with the prior written consent of the other contracting parties. In the case of publications by the Participants, Fraunhofer shall be named as the executing research institution.

13.2 After completion of the Project, the contracting parties are entitled to publish Research and Development Results (for example, in professional journals).

13.3 Fraunhofer shall be entitled to advertise the Project with the name of the Participants already during the project, e.g., on Fraunhofer's homepage. This shall not apply if the Participant has expressly objected to the advertising in writing.

14. Termination

14.1 Each contracting party may terminate the Contract with 4 weeks' notice to the end of the calendar month only for good cause. Good cause shall be deemed to exist in particular if, due to the Participant's behaviour, constructive and trusting cooperation under this Contract does not appear possible despite a corresponding request by Fraunhofer and/or if the Participant does not properly meet his payment obligations, or if circumstances exist which show that the intended Services cannot be achieved or can only be achieved with disproportionate effort. An ordinary termination shall be excluded.

14.2 Terminations must be made in writing. After effective termination, Fraunhofer shall make available to the Participant the Research and Development Results achieved up to the end of the period of notice. The Participant shall remunerate Fraunhofer the costs arising up to the end of period of notice on the basis of the remuneration agreed in accordance with Section 4.2. Personnel costs shall be reimbursed according to time expenditure. Other costs shall be reimbursed in accordance with the actual costs incurred.

14.3 In the event of the termination being based on the fault of one of the contracting parties, claims for damages remain unaffected.

15. Miscellaneous

15.1 Ancillary agreements, alterations and additions require the written form in order to be valid. The requirement of written form can only be deviated from in writing.

15.2 The place of performance for services provided by Fraunhofer shall be the place of business of the commissioned Fraunhofer Institute. The place of performance for payments made by the client shall be Munich.

15.3 The Contract shall be governed by the law of the Federal Republic of Germany, without reference to its conflict of law provisions and excluding the provisions of the UN convention on the international sale of goods (CISG). With regard to Participants with a registered office not located in the Federal Republic of Germany, the ordinary courts of Munich are hereby agreed as place of jurisdiction for all disputes arising from or connected with the Contract.

15.4 Should one or more provisions of these General Terms and Conditions be or become fully or partially void then the validity of the remaining provisions shall remain unaffected. In this case, each contracting party may demand that a valid provision is agreed to that most closely approximates the purpose of the void provision. The same shall apply in the event of a gap.