

General Terms and Conditions of Graz University of Technology for the Performance of Scientific Work as well as Technical Testing and Expert Reports according to § 27 (1) lit 3. of the Austrian Universities Act (UG)

1. Field of Application and General

- 1.1 These General Terms and Conditions shall apply to all transactions and offers, in particular to research- and service contracts, scientific studies and other services according to § 27 (1) lit 3. UG, where Graz University of Technology (hereinafter referred to as "TU Graz") is contractor and where no other written agreements are valid.
- 1.2 Possible Terms and Conditions of the Customer are invalid, even if the Customer expressly refers to them within its order or acceptance of order.
- 1.3 Even in case of legal invalidity of individual items of these Terms and Conditions, the remaining parts of the Conditions shall remain binding. An invalid item shall be replaced by an item, which is valid and close to the defined aim.
- 1.4 Additional agreements, items changed or added to these Terms and Conditions shall only be effective if expressly confirmed in writing.
- 1.5 Place of execution is Graz, unless otherwise agreed in writing.
- 1.6 Payment shall be within thirty days after invoice without any deduction.
- 1.7 TU Graz reserves ownership until full receipt of payment.
- 1.8 TU Graz, as a corporation under public law, does not have any entrepreneurial status within the meaning of Austrian value-added tax law in the provision of these services under Austrian tax law (sovereign research institute pursuant to Section 2 para. 5 Corporation Tax Law 1988 in conjunction with Section 2 para. 3 Value Added Tax Law 1994), whereby the services provided are not subject to value added tax. The agreed remuneration shall therefore always be exclusive of value added tax (VAT). If a VAT obligation arises subsequently for the services rendered or parts of these services and TU Graz becomes the debtor of this VAT, TU Graz reserves the right to invoice this VAT subsequently and the Customer expressly agrees to pay this VAT to TU Graz subsequently; this applies irrespective of the Customer's right to deduct input tax. If, in the case of a VAT obligation, the place of performance is abroad and, by virtue of statutory provisions of the place of performance, the tax liability for the foreign VAT is transferred to the Customer as the recipient of the service (in particular, reverse charge pursuant to Article 44 in conjunction with Article 196 EU VAT Directive or purchase tax pursuant to Article 40 EU VAT Directive), the Customer must bear this local VAT liability. He expressly waives his right to regress against TU Graz with regard to the VAT paid in arrears; this applies in particular in the absence of the Customer's right to deduct input tax. The Customer irrevocably agrees to waive the objection of limitation for a period of seven years in any case of a subsequent VAT obligation.

2. Non Disclosure and Publication

- 2.1 All information about internal relations and actions as well as other technical or economical information about the Customer will be held in strict confidence by TU Graz and will only be disclosed after obtaining Customer's written approval. Unless otherwise agreed, confidentiality obligations remain in force beyond a period of 5 years after finishing work or after the end of project.
- 2.2 The confidentiality obligations shall not apply to information which is publicly known or elsewhere available without having violated the confidentiality regulations or which was legally disclosed by a third party without any restrictions or which was demonstrably known by TU Graz before the beginning with the work.
- 2.3 These confidentiality obligations shall be inversely as well be binding for the Customer, if it becomes aware of any internal information of TU Graz or other technical and/or economical circumstances.
- 2.4 The Customer is aware of the basic duty of TU Graz and its employees to independently publish academic papers with regard to its research work and its achievements. If therefore no regulations of disclosure are being violated and especially no commercial and/or other important interests of the

Customer are being concerned, TU Graz shall have the right to independently publish the results of its research work within the scope of a scientific publication. TU Graz will make sure that possible procedures relating to intellectual property rights will not be affected (harmful to newness).

3. Intellectual Property Rights (Copyright, Inventions)

- 3.1 TU Graz endeavours to undertake the research- and development works without infringement of intellectual/industrial property rights of third parties.
- 3.2 If not provided otherwise in clause 3.3, all rights (as well as rights, which arise during the performance of work), like in particular industrial/intellectual property rights, know-how and modifying rights remain at TU Graz. This shall as well apply for inventions and the connected know-how, which are being developed by TU Graz.
- 3.3 In case of work and services protected by copy right, in particular with regard to not patentable software applications, TU Graz grants - after full payment of the agreed remuneration - to the Customer a non-exclusive licence in terms of § 24 para 1, 1st sentence of the Austrian Copy Right Act (Urheberrechtsgesetz) for a special field of application complying with the business purpose of the Customer. A transfer of works or services developed by TU Graz for use by third parties needs the prior written approval of TU Graz.
- 3.4 If in the course of work a patentable invention is being made by TU Graz, TU Graz will inform the Customer without any delay about this fact in writing. In such a case both Parties are obliged to omit anything which may be harmful for the patentability of the invention. If TU Graz is going to patent the invention, the Customer shall within a period of six weeks after receipt of the information have the right, to demand a non-exclusive licence for a special field of application complying with its business purpose against licence fees which will be based on fair and non-discriminatory market conditions.
- 3.5 If TU Graz is not going to patent the respective invention or is not going to maintain patent protection, it will inform the Customer in writing about this fact. In such a case the Customer shall have to right to patent the invention respectively to maintain the patent protection at its own cost. If the Customer is not going to inform TU Graz in writing within a period of one month from the date of information that it is going to claim to the invention or if the Customer is not going to file a patent for the respective invention within a period of 6 months from the date of notification of its claim, than all rights in the invention shall automatically vest in the inventor.
- 3.6 In case of commercial use of the invention by the Costumer with third parties respectively in case of own commercial use of the invention within the organisation of the Customer, TU Graz shall be granted an adequate compensation based on fair and non-discriminatory market conditions. Anyway TU Graz shall have the right to use the results for scientific purposes in research and teaching as well as for further developments and its commercial use.

4. Warranties and Liability

The Customer is fully aware of the success risks of a research and development project. TU Graz will perform its works with the necessary scientific diligence, which is meaningful due to its known state of the art at the time of the performance of works and will endeavour to reach the aim of the project as well as the desired results, but TU Graz shall be under no obligation or liability that the desired objectives of the research and development project will be achieved. Furthermore TU Graz does not warrant or represent any industrial or commercial usability of the results of the research and development project. Therefore TU Graz shall under no circumstances have the development risks and undertakes no liability for any loss, damages or injury to the Customer or to any third parties resulting from the utilization of the results of its work.

5. Jurisdiction and Applicable Law for Customers having its place of business inside Austria or Germany

Exclusive jurisdiction shall have the competent courts of Graz. All relations arising out of these conditions shall be governed by the laws of Austria not including the Vienna Convention on the Sale of Goods of April, 11th, 1980 as applicable.

6. Arbitration and Applicable Law for Customers having its place of business outside Austria or Germany

- 6.1 All disputes arising between TU Graz and the Customer should finally and exclusively be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce <http://www.wko.at/arbitration/> by one or three arbitrators appointed in accordance with the said Rules.
- 6.2 The prevailing Party in any legal action brought to enforce these Terms and Conditions shall be entitled to reasonable costs and fees in connection with the Arbitration procedure, including reasonable attorney's fees.
- 6.3 Place of Arbitration is Vienna. The language of the Arbitration shall be conducted in English.
- 6.4 All relations arising out of these conditions shall be governed by the laws of Austria not including the Vienna Convention on the Sale of Goods of April, 11th, 1980 as applicable.