

Terms and Conditions for performance of Research and Development contracts



between
the CLIENT
and

Helion GmbH, Keniastr. 12, 47269 Duisburg, Germany (CONTRACTOR)

IMPORTANT NOTICE: This translation of the legally binding German version is for your information only.

1. Scope of Application

1.1 The following General Terms and Conditions shall apply to all research and development projects contracted to Helion GmbH. Contradictory, deviating or additional terms requested by the client shall not be recognized as part of the contract without the prior written consent of Helion GmbH.

1.2 Where the following General Terms and Conditions provide the barring or limitation of damage liability of Helion GmbH, its legal representatives or agents, such barring or limitation shall not apply to liability for damages from injury to life, body, or health.

2. Subject of the Contract, Period of Performance

2.1 The research and development project shall comprise the work defined in the offer from Helion GmbH.

2.2 Insofar as the offer or the research and development contract includes a period of performance or deadlines, these shall only be deemed to be binding after express acknowledgment by Helion GmbH. Should Helion GmbH realize, that the binding period of performance or the binding deadline cannot be met, then they shall notify the client with the reasons for delay and shall agree on an appropriate adjustment with the client.

3. Fee

3.1 The fee, if not otherwise stated shall be a fixed price. VAT shall be added to the fee in each case, if applicable.

3.2 Helion GmbH shall immediately notify the client if it foresees that the intended result of the research and development contract cannot be achieved at the agreed fee. Helion GmbH shall at the same time propose an adjustment of the fee to the client. Should this be necessary for reasons which were neither foreseeable when the contract was concluded nor the responsibility of Helion GmbH and if no other agreement is reached with the client, then Helion GmbH is entitled to withdraw from contract.

3.3 Should the parties agree to the fee being charged according to time and effort, then client is not entitled to receive a specific research and/or development result or to achieve a result within a certain time and cost limit. Deviation hereto must be in written form.

3.4 If the fee is been charged according to time and effort and is paid via a prepayment packet, the parties have to agree to either (a) continuing the work via post-payment or (b) to stop the work immediately when the prepayment is depleted. If the parties do not find an agreement, option (b) will be selected as default.

4. Payments

4.1 Payments shall be due according to the agreed payment schedule. In the absence of a payment schedule, the due date shall be the date stated in the invoice. Payments shall be made without cash discount and with indication of the invoice number and to the Helion GmbH account.

4.2 Set-off against claims of Helion GmbH shall only be allowed if the counterclaim is uncontested or if it is legally valid.

4.3 The client may only exercise a right of retention if its counterclaim is based on the same contractual relationship.

5. Result of Research and Development, Rights of Use

5.1 The research and development result shall be made available to the client after completion of the project in accordance with the offer.

5.2 The client shall be granted a non-exclusive right of use for inventions generated during the performance of the order as well as for industrial property rights registered by and issued to Helion GmbH for these inventions. The client shall reimburse Helion GmbH an appropriate part of the costs for registration, maintenance and defense of the industrial property rights and

shall pay on usage a flat rate for employees invention remuneration which will be agreed upon in each individual case.

5.3 Inventions jointly achieved by the contracting parties during the performance of the project (joint inventions) may be used and licensed according to Section 5.1 and 5.2 by each contracting party without any financial compensation. The contracting parties shall each bear a share of the costs to be agreed upon for registration, maintenance and defense of the industrial property rights concerned.

5.4 In the case of copyright protected works jointly created during the performance of the contract (joint authorship) correspondingly Section 5.3 sentence 1 shall apply.

5.5 If during the performance of the contract already existing industrial property rights of Helion GmbH are used which are required by the client's for exploiting the research and development results, then the client shall be granted a non-exclusive, royalty-fee bearing right of use under a separate license agreement unless other obligations entered into Helion GmbH preclude this.

6. Third Party Property Rights

6.1 Helion GmbH shall immediately notify the client of any third party industrial property rights of which it becomes aware during the performance of the contract and which could preclude the client's usage pursuant to Section 5. The contracting parties shall decide in joint consultation how such industrial property rights shall be taken into consideration in further performance of the project.

6.2 In case of Helion infringement to third party property rights Helion will only be liable if they breach their obligation to notify according to provisions of Section 7.2. and 8.6. Furthermore Helion GmbH liability for property rights of third parties is excluded. Helion GmbH will only be liable for purchase and works research and development contracts according to Section 8.

7. Liability

7.1 The liability of Helion GmbH, its legal representatives and agents in the case of violation of obligations and offenses shall be limited to willful intent and gross negligence. Only in case of violation of essential contractual obligations (cardinal obligations) Helion GmbH, its legal representatives and agents shall also be liable in case of slight negligence. In any case, liability shall be limited to the foreseeable, contractually typical damages.

7.2 Should Helion GmbH neither fulfill the performance as agreed upon nor do so at the time due nor in the manner agreed upon, then the client may only demand compensation in lieu of performance if the client has unsuccessfully set an appropriate deadline for the performance by Helion GmbH including the statement that it would otherwise reject acceptance of the performance after passing that deadline.

8. Special Conditions for Delivery and Work Performance

8.1 Where Helion GmbH on the basis of an explicit commitment owes performance or delivery of work results corresponding to state-of-the-art technology as result of research and development then in the case of defects the relevant conditions of the law governing purchase contracts or contracts for work and services shall be applicable subject to the following Sections.

8.2 Should the result of the research and development work generated by Helion GmbH prove to be defective, then Helion GmbH shall first be given the opportunity to supplementary performance - depending on the nature of the result of the research and development, the defect and other circumstances also repeatedly - either by means of remedying the defect or substitute delivery. In case of infringement of third party property rights the supplementary performance shall result in Helion GmbH obtaining authorization for client's use or the research

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- and development results are modified, that such third party property rights are no longer infringed.
- 8.3 Should Helion GmbH reject supplementary performance or if supplementary performance cannot be achieved or the client cannot reasonably be expected to accept supplementary performance, then the client may either demand reduction of the fee owed or in case of substantial damage terminate the contract. The right of termination shall lapse if the client does not declare the termination of the contract within 14 days after receiving notification of rejection or failure of supplementary performance or at the latest 14 days after the date at which it is recognized that the client cannot reasonably be expected to accept supplementary performance.
- 8.4 The client shall immediately examine the supplied research and development result and report any defects found immediately. Claims owing to recognizable defects shall only exist if they are reported to Helion GmbH within a period of 30 days from date of delivery.
- 8.5 Claims due to defects shall be statute-barred in accordance with the provisions of Section 7.1 and 7.2.
- 8.6 In the case of an infringement of third party intellectual property rights Helion GmbH shall only be liable if such rights apply in the Federal Republic of Germany, if the client uses the research and development result in a manner consistent with the contract, if a court decision based on infringement by the client of third party intellectual property rights is rendered against the client, and if the client has immediately notified Helion GmbH in writing of the claims asserted by such third party.
- 8.7 Claims due to damages shall become statute-barred according to section 9.
- 9. Statutes of Limitation**
- 9.1 The claims of client for breach of duty and tort shall be statute-barred within 12 months.
- 9.2 Should acceptance of the research and development result be agreed upon, the statute of limitations on claims due to defects pursuant to Section 9.1 shall commence upon acceptance, otherwise upon delivery.
- 9.3 Negotiations between the contracting parties over claims or over circumstances giving rise to claims shall suspend the statutes of limitation. The suspensive effect shall end if one of the contracting parties has not complied within four weeks the request to the other contracting party to continue negotiations.
- 10. Reservation of Title**
- 10.1 Through contracting the client obtains ownership to the research and development result.
- 10.2 The client receives ownership on research and development result as well as to the right of use according to Sections 5.2 and 5.5 after full payment of the agreed fee. Ownership and rights of use held by Helion GmbH may neither be mortgaged nor transferred as security.
- 10.3 In the event that the ownership of Helion GmbH to the result of the research and development lapses through combination, commingling, or processing it is already hereby agreed that the ownership to the combined object created in such a case shall, until full payment of the agreed fee, be proportionally assigned (invoiced value) to Helion GmbH. In the event of resale of the result of the research and development, the client shall assign all rights in rem from resale to Helion GmbH until the agreed fee is fully paid.
- 11. Confidentiality**
- 11.1 The contracting parties shall for the duration of the contract and for a period of five years after its termination not make accessible to third parties information of technical or commercial nature disclosed to each other and declared to be confidential. This shall not apply to information known or generally accessible to the other contracting party or to the public, or information which becomes known or generally accessible to the public after disclosure without any involvement or fault on the part of the other contracting party, or correspond to information disclosed or made accessible to the other contracting party by an entitled third party, or independently developed by an employee of the other contracting party not in possession of the information disclosed.
- 11.2 Third parties within the meaning of this provision are not sub-contractors of Helion GmbH who have been entrusted with a part of the services by Helion GmbH within the context of the assignment and if they have been placed under an obligation of confidentiality.
- 12. Publication, Advertising**
- 12.1 The client shall be entitled to publish the result of the research and development. For purposes of advertising, the client may only mention the name of Helion GmbH with their express consent.
- 12.2 Publications by Helion GmbH relating to the purpose of application after consultation with the client in due time prior to publication.
- 13. Termination**
- 13.1 Should no essential progress in work have been achieved after the expiry of a period of six months since performance then each contracting party shall be entitled to terminate the contract with one month notice to the end of a calendar month. However, there shall be no further right of termination. In event of non-fulfillment of work, Helion GmbH will report the amount of effort needed so far and only invoice the real effort to a reduced fee.
- 13.2 Each contracting party shall be entitled to terminate the contract without notice for good cause.
- 13.3 Upon termination Helion GmbH shall submit within four weeks the result of the research and development achieved. In the event that the termination is due to a fault by one of the contracting parties, this shall not affect damage compensation claims.
- 14. Miscellaneous**
- 14.1 Ancillary understandings, amendments and supplements hereto must be made in writing.
- 14.2 Place of performance for Helion GmbH is Duisburg. Place of fulfillment for payments is client's office address as stated in heading.
- 14.3 This contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Court of jurisdiction is Duisburg.
- 14.4 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. The same shall apply in the case of a gap in the provisions of these General Terms and Conditions.