

General Terms and Conditions of Empa for Research (Empa GTC for Research)

1. Scope of Application

The *Empa GTC for Research* apply to the execution of Empa research activities with the project partner.

Empa and the project partner shall hereinafter be jointly referred to as “the Contractual Partners”.

2. Execution of the Agreement

When the Contractual Partners sign the Research Agreement with *Empa GTC for Research*, the Agreement shall be considered as concluded containing as integral part the project description and the *Empa GTC for Research*.

Changes to the Agreement and project must be agreed in writing and they shall become integral parts of the Agreement only if they are signed by all Contractual Partners. In the case of contradictions, the provisions of the written Agreement shall prevail over the provisions of the *Empa GTC for Research*.

3. Research Results, Ownership and Use

3.1 Research results include all results, irrespective of whether they are subject to potential patent protection, that arise as part of contract-based activities (e.g., final and interim results, final and interim reports, image and text material, data, methods, materials, knowledge, know-how, inventions and work protected by copyright, such as software).

3.2 If new intellectual property rights arise within the framework of performing the Agreement, the following shall apply:

- a) Intellectual property rights which arise due to the work performed by the employees of one Contractual Partner shall remain the exclusive property of that Contractual Partner.
- b) Intellectual property rights which arise due to the joint work performed by the employees of the Contractual Partners shall be the joint property of the Contractual Partners, with reservation to Article 3.2 d) below. The Contractual Partners shall agree on the registration, use and exploitation strategy for such results in a separate agreement. Unless it has been otherwise agreed, the project partner, in case of joint inventions, shall be granted the right to apply for patent registration at its own cost and in the name of the Contractual Partners.
- c) The project partner shall discuss the patent registration with Empa in advance and shall take into account the interests of Empa when formulating the application for registration. Empa has the right to receive copies of the relevant correspondence with patent lawyers and patent officers related to registering and maintaining a patent. If the project partner does not apply for patent registration within three (3) months after the invention notification, Empa shall be entitled to register the joint invention at its own cost. In this case, the project partner undertakes to timely provide the signatures necessary for the patent procedure or to assign its share in ownership to Empa.

d) If Empa develops new methods or other knowledge in the area of its analysis, within the framework of the research activities (in particular measurement technology, sample preparation or evaluation methodology), these shall remain the exclusive property of Empa. Any right of use by the project partner must be agreed separately.

3.3 The Contractual Partners obtain a non-exclusive, non-transferable, non-sublicensable right of use at no cost from the sole owner for the intellectual property rights which arise within the framework of the research activities according to Article 3.2 a).

3.4 Intellectual property rights according to Article 3.2 b) may be used and licensed by the Contractual Partners independently of each other without the right to any financial compensation. The confidentiality obligations mentioned in Article 8.2 must be respected.

3.5 On request, the Contractual Partners may negotiate an exclusive right of use against payment for a specifically defined area of application by means of a separate agreement.

3.6 The Contractual Partners are entitled to a non-exclusive, independent right of use free of charge of all unprotected research results (including know-how) of the research activities.

3.7 In any case, the Contractual Partners obtain an unlimited and free of charge right to use all research results of the research activities for research and teaching purposes.

3.8 If, for the performance of the research activities, pre-existing intellectual property rights (Background) of one Contractual Partner are used, the other Contractual Partner shall be granted a non-exclusive, non-transferable right of use in this Background, provided that such right of use is necessary for the exploitation of research results by the other Contractual Partner. This is subject to obligations to the contrary which have to be respected by the Contractual Partner providing the Background. Unless otherwise specified, this right of use is free of charge.

4. Deadlines/Delay

As far as adherence to the agreed deadlines is concerned, the Contractual Partner in duty has timely to provide the required documents or sample material for the research activities.

5. Third Party Industrial Property Rights

5.1 The Contractual Partners shall immediately inform each other about any third party industrial property rights which they learn about during the performance of the research activities and which may be an obstacle to free use of the research results. The Contractual Partners shall decide together how to take into account these industrial property rights during their further work.

5.2 If third party industrial property rights are breached, any liability shall be limited to the breach of the information obligation mentioned in Article 5.1.

6. Remuneration

Remuneration shall be payable according to the agreed invoicing and payment terms. Empa invoices the remuneration when it is due, payable within thirty (30) days of receipt of invoice. Offsetting, assignment or pledging of a receivable is excluded.

7. Guarantee and Liability

7.1 The Contractual Partners are responsible for using scientific due diligence and respecting the commonly recognised technical standards, but are not responsible for the actual achievement of a research or development objective. If necessary, insufficiently or wrongly documented research services shall be revised or completed within the appropriate extended period of time.

7.2 The warranty of title is waived with reservation to the information obligations mentioned in Article 5.

7.3 The Contractual Partners are liable for any damage which they cause in performance of the Agreement. The liability is limited to wilful acts and gross negligence. This limitation does not apply to the breach of the main contractual obligations and the lack of guaranteed qualities. To the extent permitted by law, the liability for financial and consequential damage is excluded.

In the case of third party claims, such as claims for product liability, the project partner using the research results for commercial purposes shall indemnify Empa.

8. Confidentiality

8.1 The Contractual Partners undertake to carefully handle all information and data of the other Contractual Partner obtained within the framework of the research activities and to treat them as confidential for three (3) years after the end of research activities. Confidentiality rules agreed at a later time, binding decisions and legal regulations which require disclosure shall remain unaffected.

8.2 The confidentiality obligation shall also apply to all research results that are created under the Agreement. The research results must be treated as confidential by all Contractual Partners for the agreed period of the Agreement.

9. Publication

Empa is entitled to publish the research results after the research activities have been completed. Publications related to an academic degree of an employee may not be delayed without justification. In the case of planned industrial property right registration, the publication may be postponed for a maximum of three (3) months, if necessary.

10. Sample Material

The Contractual Partner which provides the sample material must clearly state before the start of research activities if it wishes to obtain the sample material back (e.g. test material, products, facilities, etc.) after completion of the activities or if it

should be disposed of. The delivery and return transportation costs as well as any costs of disposal of the sample material must be borne by the Contractual Partner which provides the material.

In the absence of the relevant information, the Contractual Partner which receives the material is entitled to freely dispose of the sample material after completion of the research activities.

11. Logo Use

The logo of the other Contractual Partner may only be used upon prior written consent.

12. Earlier Termination of Agreement

12.1 If the Contractual Partner does not perform a contractual obligation despite being granted an extended period of time to do so, the other Contractual Partner may terminate the Agreement after the expiry of the extended period of time with thirty (30) days notice. There shall be no termination before the expiry of a period of six (6) months from the start of the Agreement.

12.2 After the effective termination, the Contractual Partners shall within four (4) weeks hand over the research results obtained until the expiry of the termination period to the entitled Contractual Partner. The agreed remuneration is owed until the expiry of the termination period.

13. Final Provisions

13.1 If individual provisions of the Agreement prove to be invalid or unlawful, this shall not affect the validity of the Agreement. In such cases, the relevant provision should be replaced by a valid provision which best reflects the intention of the invalid provision. The same shall apply to unintentional gaps in the Agreement.

13.2 Applicable law: exclusively **Swiss law, in particular the stipulations of the simple mandate (Swiss Code of Obligations OR 394 ss)**, shall apply to the contractual relationship. The conflict of laws provisions and the Vienna Convention on the International Sale of Goods are waived.

13.3 Place of jurisdiction: The **Commercial Court of Zurich** shall be competent for any disputes.