



## General Terms and Conditions of Bern University of Applied Sciences (BUAS)

### Scope of Agreement

These General Terms and Conditions (GTC) are valid for R+D orders and services and are based on Swiss law. The ordering party accepts the GTC upon confirmation of an order or signing of an agreement. Changes and supplementary agreements are only effective if they are confirmed in writing by BUAS. Otherwise, the regulations of the Swiss Code of Obligations as well as the Higher Education Code of the Canton of Bern shall apply.

### BUAS Bids

Bids which are submitted in writing, via fax or email are considered binding. A bid shall remain valid for 3 months from the date of the bid, except as otherwise agreed in writing. Should the ordering party request deliveries, products or services which are not contained in the bid, they shall be added to the invoice. All materials submitted with the bid shall remain the property of BUAS. No third party may examine the bid submission without the prior written consent by BUAS.

A bid is accepted when the ordering party declares acceptance in writing, via fax or email.

Should the ordering party wish to alter the original bid, it must inform BUAS accordingly. BUAS shall inform the ordering party within two weeks if the alteration is possible and how it will affect the provision of services rendered, deadlines and prices. Any alteration confirmed by BUAS shall become part of the bid. Such alteration shall not apply to products already delivered or services already provided.

The General Terms and Conditions (GTC) of Bern University of Applied Sciences shall constitute an integral part of bids, R+D orders and services. The regulations of the Swiss Code of Obligations shall apply as supplemental law.

### Involvement of Third Parties

BUAS may involve third parties for the purpose of providing the services, either in whole or in part. This may only take place in consultation with the ordering party and without detriment to the quality of the agreed services.

### Deadlines

The Bern University of Applied Sciences commits to deliver the agreed products or services to the ordering party on the agreed deadlines. The ordering party commits to accept and pay for the products or services on the agreed deadline. The deadlines shall be postponed to the extent hindrances occur which are beyond the control of BUAS.

In the event of other delays, the ordering party may

1. forego further deliveries, of which it must inform BUAS without delay.
2. request partial deliveries, insofar as this is possible, which must be agreed by the parties without delay.
3. allow BUAS an adequate deadline to subsequently fulfil its obligations. Should BUAS not fulfil its obligations by the expiry of this extension, the ordering party may, upon stating so immediately, forego such service or withdraw from the agreement.

### Fulfilment of Agreement

The rights and duties for the fulfilment of the agreement are set forth in the bid, respectively, in the agreement.

Unless a specific acceptance procedure is agreed, the ordering party shall inspect the products/services within two weeks and report any possible defects in writing. Should no such report be made within this time period, the products/services shall be considered free of defects and the delivery shall be considered approved. The ordering party shall then be obliged to pay within the agreed time period.

In the event of a defect, BUAS shall be entitled to correct such defect within an adequate time period.

In the case of bids containing research components, the ordering party acknowledges that the fulfilment of the agreement contains no guarantee whatsoever for the achievability of the research goals and the functionality of the research results. The research mandate is considered as fulfilled as soon as the final report has been submitted within the agreed framework.

The parties to an agreement shall reasonably assist each other on a mutual basis as needed, so as to exercise the rights and obligations set forth in the agreement. In particular, they shall provide the declarations and signatures as required for obtaining or applying/registering for intellectual property rights.

### Exchange of Information, Documents, Objects and Auxiliary Material

The parties shall mutually provide each other in a timely manner the necessary information for carrying out a project and make available on loan in a timely manner the necessary documents, objects and auxiliary material for the duration of the project. Upon completion of the project, unless otherwise agreed, all such items shall be returned in their entirety, respectively, in the case of electronic documents, deleted in their entirety.

### Prices and Terms of Payment

The statutory VAT shall be added to the agreed prices.

In the case of fixed prices, the offered price shall be charged. Prices offered with a cost cap shall be charged according to actual services rendered, up to a maximum of the offered price. Target prices shall be subject to variations of up to 20% in all instances. The actual hours of work performed shall be charged.

Travel and other expenses shall be invoiced separately, unless otherwise agreed. The amount invoiced shall be payable upon transmission of the invoice and shall be paid to an account designated by BUAS within 30 days. As a rule, payments shall be effected in CHF (Swiss francs). Bank charges for payments in foreign currencies shall be paid by the ordering party.

If conditions of payment are not followed, BUAS shall be entitled to:

1. request payment immediately or
2. demand collateral for all outstanding payments and/or
3. perform or deliver outstanding services or products only upon advance payment.

### Termination

Should one of the parties not fulfil its essential obligations, such party may be notified in writing to fulfil such obligations and to restore its compliance with the agreement within an adequate time period. In the case of



non-compliance after expiration of such time period, the agreement may be terminated at the end of the month upon one-months' notice of termination.

The ordering party is obligated to reimburse BUAS for the expenses accrued up to the early termination and to continue to bear for a limited period those expenses resulting from research co-operation and any obligations entered into in connection therewith.

#### **Guarantee/Liability**

BUAS shall be liable for the provided scientific standard and diligence in the execution of the assigned tasks. BUAS shall guarantee the professional evaluation of the results. Except as set forth herein, BUAS shall not assume any warranty of title or warranty of quality. Generally, BUAS shall only be liable for gross negligence.

Any and all liability and warranty related to the use of research results or products is excluded. There shall be no liability for products or processes which result from the research.

#### **Non-Disclosure**

The parties shall not disclose any information and material provided to them before or during the course of the agreement, even if these have not specifically been designated as secret or confidential. 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 as far as legally permissible. Details shall be set forth in non-disclosure agreements.

Both parties must ensure that the obligation of non-disclosure of confidential project information and material extends to all staff members, third parties involved in the project and further persons who have access in any manner to such information and material.

#### **Reports**

Reports shall, in principle, be written in the same language as the written order, i.e., either in German, French or English. If reports are to be provided in any other language, the costs of translation shall be assumed by the ordering party. If reports are to be provided in more than one copy or in more than one language, corresponding charges will be added to the invoice. The BUAS archives records and reports and stores them for 5 years.

#### **Publication Rights**

Research and development results may be made available to the public insofar as they do not conflict with any public or private interests. The parties shall seek mutual consent prior to any publication. The results shall remain confidential until such time. Results of research and development financed with public funds shall, as a rule, be published in a suitable form, subject to the agreed non-disclosure obligations.

In principle, only complete versions of the reports shall be published. Publication of excerpts must be authorized in writing by the responsible BUAS project manager.

#### **Intellectual Property**

Intellectual property which results at BUAS within the framework of a R+D order funded by a third party shall, unless otherwise agreed, be ceded to such third party, with the exception of moral rights.

Intellectual property resulting from projects in which the costs of BUAS are partly covered by third parties and

partly by public funding or the BUAS's own funds shall, unless otherwise agreed, be ceded to the third party, subject to BUAS receiving an exclusive, registered licence for use and sublicensing outside the business of the third party.

Ownership and use of intellectual property results shall otherwise be treated in accordance with the "Policy of Bern University of Applied Sciences regarding Intellectual Property". Provisions which deviate from this policy shall be contractually agreed by the parties.

BUAS reserves the right at all times to freely use intellectual property resulting within the framework of R+D orders for non-commercial purposes in research and teaching. However, this shall remain subject to the agreed provisions regarding publication and non-disclosure.

#### **Technical Inspections**

The ordering party's participation in expert inspections requires the approval of the responsible BUAS project manager. The ordering party will receive a written report after completion of the order. The project manager must approve any inspection of the order documentation.

#### **Transport, Examination Material, Storage**

Risks and costs of transport for delivery or return shall be assumed by the ordering party. BUAS shall be liable for negligent damage to the objects as soon as they are in its possession. The material to be examined will be stored for 4 weeks after completion of the order. If the ordering party does not pick up the material during such period, it shall be professionally disposed of after arrangement with the ordering party or returned to the ordering party. The disposal costs shall be charged to the ordering party.

#### **Information Requirement**

The parties shall inform each other in a timely manner of particular pre-requisites as well as of statutory, administrative and other regulations at the destination, insofar as they are relevant for carrying out the order. The parties shall inform each other in a timely manner of any hindrances which might jeopardize the performance of the Agreement or lead to unreasonable outcomes.

#### **Representation towards Third Parties**

The parties are not authorized, without express consent, to act on behalf of the other party or in the name of both parties to the agreement.

#### **Correspondence**

All correspondence shall be addressed to the project manager. For questions regarding the protection of intellectual property, the departmental body for knowledge and technology transfer (DZS) is to be contacted.

#### **Handling of complaints**

If the contract provides for the provision of services under the framework of a certification system that prescribes a documented procedure for receipt, evaluation and decision-making for complaints, a description of the corresponding process is available to all parties upon request. The service provider shall handle complaints in compliance with the requirements of the certification criteria.

#### **Severability**

Should individual clauses of an agreement or these GTC be void or inexecutable, or should they become so after conclusion of the agreement, the validity of the



remaining clauses of the agreement shall not be affected. In such a case, the parties shall commit to immediately replace the clause in question with a valid and executable clause which shall correspond to the contents of the original intention as closely as possible. The same shall apply to any contractual omission.

**Final Provisions**

All changes and additions to agreements must be made in writing. Agreements are subject to Swiss Law (excluding its conflict of law provisions and the Vienna Convention on the International Sale of Goods). Exclusive venue of jurisdiction is Bern. The parties shall make efforts to amicably settle any disputes which might arise in the course of an agreement.

8 June 2021