



## Guidelines of the Rectorate for third-party funded agreements at TU Wien

Contract research and research cooperation agreements and agreements on educational and higher education management projects

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### 1. Preliminary remarks

Conducting research jointly with or for third parties and cooperation in the area of educational and higher education management belong to a university's central tasks. Such projects support the transfer of academic know-how to society and thus also constitute an important pillar of the universities' third mission.

When it comes to the financial and legal design of such agreements, universities are not in a legal vacuum. They are subject to, *inter alia*, requirements of state aid law and competition law and to the provisions of the Austrian Universities Act [*Universitätsgesetz/UG*], Section 2 of which embodies the principles of economy, efficiency and expediency. This includes the obligation to use TU Wien's resources (including know-how) in the best possible way, which should be reflected in the design of its contracts, among other things.

The purpose of these guidelines is to reasonably limit the risks to which TU Wien, its management and staff are exposed in connection with such agreements.

These guidelines do not apply to contracts with Austrian or international public funding agencies (e.g. European Commission, FFG, FWF, CDG, OEAD, etc.) or international organisations (e.g. ESA) or subcontracts adopting the arrangements of such contracts.

### 2. Material aspects in agreements on research, educational and higher education management projects

#### (a) Intellectual Property Rights (IPR) - Terms and conditions

- **Background IPR (pre-existing know-how):**  
Non-exclusive and free-of-charge rights to TUW Background IP may be granted for implementation and duration of a specific project.

The following shall apply to rights to TUW Background IP granted for the purpose of commercial use: the person who is authorised to sign is entitled to dispose of free-of-charge and non-exclusive rights in Background IP developed within the organisational unit, which implements



the relevant project; this does not apply to inventions/patents. In any case, rights to the Background IP of units other than the implementing one or to inventions/patents may only be granted against separate, reasonable consideration and only to the extent that TU Wien is entitled to do so. In any case, rights may be granted only to the extent that TUW Background IP is required for using the results of the respective project.

- **Foreground IPR (project results):**

TUW Foreground IP may be made available in accordance with and subject to the Rectorate's Guideline on reimbursement of costs for research projects. The requirements of state aid law must be observed for cooperation projects which are not subject to this Guideline (cooperation with no cash flow).

- **Compensation for inventions:**

Where inventions are assigned or where exclusive or non-exclusive rights to the inventions are granted, reasonable additional compensation will be agreed for such assignment or the rights granted, the amount of which shall take into consideration the respective project funding, which means that the fee will rather be higher, for example, for CD laboratories than for full-cost contract research.

**(b) Damages**

Claims for damages may not be expanded beyond the statutory requirements by contract (e.g. contractual penalties or any wording by which strict liability is established, such as "indemnify and hold harmless" or "guarantee"). Strict liability within a consortium to pay back public funds shall be exempt.

**(c) Publication of academic theses (diploma, master's or doctoral theses)**

Initially, publication of such papers may be blocked only for a period of 2 years. That period may be extended to a total of five years (2+3) only in accordance with the provisions of Section 86 *UG* and Section 23a of the "Study-law provisions" of the Charter of TU Wien.

**(d) Non-competition clauses (no parallel research) and other duties to refrain from actions**

Non-competition clauses (= clauses which prohibit TU Wien from carrying on research activities for or jointly with third parties in the field of the contract), if any, shall apply to the smallest organisational unit only and for not more than the institute carrying out the project, and in any case only for the term of the project concerned (Commission Regulation (EU) 2023/1066). This shall apply *mutatis mutandis* to other duties to refrain from any actions.

**(e) Logo use**

Contracting parties to a third-party funded project may be granted the right to use the name and logo of TU Wien, however only for the purpose of referring to this contractual relationship and only for the term of the contractual relationship. Prolonged use is permitted only up to a maximum period of 5



years after the end of the project, only for projects that receive public funds and only in connection with a project website specifically set up for the project.

**(f) Applicable law; Place of jurisdiction**

Exclusively European jurisdictions (including Ukraine and Turkey), that of the USA or Canada may be agreed as the applicable law. The place of jurisdiction for TU Wien as the defendant may only be a European state (including Ukraine and Turkey); there are no restrictions if TU Wien acts as the claimant. Arbitration can be an alternative. A contract may keep silent about applicable law and/or place of jurisdiction.

**(g) Code of Conduct**

In this context 'compliance' means the Code of Conduct and similar provisions the cooperation partners and customers intend to impose on TU Wien by contract. Provisions regulating compliance with human rights and other applicable statutory provisions (e.g. data protection, export control, anti-corruption, provisions of labour law, employment law and social security law) and putting project-related subcontractors under an obligation to comply with those provisions may be accepted. Arrangements containing sustainability duties, including but not limited to requirements of environmental protection and efficient use of resources, must be assessed on a case-by-case basis and, in cases of doubt, must be agreed with the Vice Rector responsible for research. Arrangements which put TU Wien under an obligation to provide internal training on such topics or to establish complaints offices beyond that which is required by law or to allow audits by the contracting party on such topics cannot be accepted.

**(h) Bidding consortia**

TU Wien's participation in bidding consortia will require examination on a case-by-case basis.