

Terms and Conditions for Non-Proprietary User Access to the Experimental Photon Science Facilities of Deutsches Elektronen-Synchrotron DESY

Preamble

DESY is one of the world's leading accelerator centers for investigating the structure and function of matter located in Hamburg and Zeuthen, Germany. DESY offers a broad research spectrum of international standing focusing on four main areas: accelerator development, construction, and operation; photon science; particle physics; and astroparticle physics. DESY operates several experimental facilities which are made available to external *Users* based on peer-reviewed proposals for non-proprietary research. *User* access is offered via the DESY Online Office for Research with Photons 'DOOR'. The following *Terms and Conditions* shall be incorporated by reference and apply to all experiments conducted at the designated facilities, i.e. beamlines and/or other laboratory infrastructure within the division Photon Science at DESY (hereinafter denoted as 'facilities').

§ 1 Facilities and scope of work

- (1) DESY will make available to the scientific institution (referred to as *User*) its facilities for the purpose of performing experiments, which may include equipment, services, information and other material, with or without an onsite scientist collaboration.
- (2) Facilities operated by DESY's On-site partners as defined in Section 1(3) are part of these *Terms and Conditions* under the precondition that access to these facilities is administrated via DOOR.
- (3) On-site-partners are research institutions, which cumulatively meet the following criteria:
 - Contribution to the scientific case of DESY Photon Science facility PETRA III or FLASH,
 - Significant contribution (in-kind and financial) to beamlines at PETRA III or FLASH, and the respective experimental infrastructure (minimum: 0.5 Beamline Equivalent),
 - Personnel funded by partner is positioned at DESY assuming responsibility for operation and further development of beamlines at PETRA III or FLASH, and the respective experimental infrastructure, including user service¹, and
 - Confirmation issued by DESY, acknowledging the On-site partner status.

A current list of beamlines with the respective On-site partner operating them can be found in the DESY Photon Science Annual Report².

§ 2 Admission to Experimental Facilities

- (1) Access to the facilities is based on research proposals accepted by DESY Photon Science management. Submitted proposals are peer-reviewed by international review panels (PRPs) and

¹ Support and advise during experiments as well as preparation and data analysis as well as scientific support

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https://photonscience.desy.de/research/scientific_media/desy_photon_science_annual_reports/index_eng.html



acceptance criteria are scientific excellence, technical feasibility and available resources at the laboratory

(2) Should the proposals under (1), or parts of it, be funded by a commercially-driven company or institution, the *User* shall inform DESY on the involvement of the company or institution. DESY (and where appropriate On-site-partner) shall decide on a case-by-case basis whether a separate agreement beyond these *Terms and Conditions* is required.

(3) The *User* warrants that all research activities are conducted exclusively for peaceful purposes and in accordance with the 'Code of Conduct' defined by DFG (see: <https://doi.org/10.5281/zenodo.3923602>).

(4) Private individuals are excluded from access to experiments at DESY facilities.

§ 3 Conduction of Experiments, Local Contact

(1) After proposal acceptance, experiment time will be scheduled and a *Local Contact* for the experiment will be nominated. For an efficient and successful use of laboratory resources, *Users* are requested to discuss the preparation of their experiment with the *Local Contact* well before the scheduled experiment.

(2) The *Local Contact*

- offers support in the technical planning of the experiment including the use of onsite laboratories,
- ensures that the instrument is properly set-up to perform the experiment(s),
- provides adequate training and support for the *User* to efficiently and safely operate the equipment,
- assists the *User* in matters of the sample environment set-up provided at the beamline and in the laboratory and supports the *User* in the installation of equipment owned by the *User*.

These duties apply only to support and requirements that have been agreed upon between the *User* and the *Local Contact* beforehand.

(3) The *User* has to assure that a sufficient number of experimenters participate in onsite experiments in order to allow a safe and efficient execution of the experiment 24 hours a day covering the scheduled period of access. The number of participants may be regulated by additional DESY rules.

§ 4 Scheduling

DESY and its On-site partners will inform the *User* in due time about the acceptance of their proposal and the access time allocated. An access schedule for each facility will be published on the DESY Photon Science web pages. DESY and its On-site partners have the sole responsibility and discretion for allocating and scheduling usage of the facilities and equipment needed for the experiments.

The *User* shall inform the DESY Photon Science Users' Office as soon as possible if for any reason scheduled beamtime has to be cancelled.



§ 5 Confidentiality

(1) In connection with experiments under these *Terms and Conditions*, it may be appropriate and necessary for the Parties to have access to certain technical and scientific information and/or materials of the other Party, hereinafter referred to as “Information”. The Parties will consider as confidential any and all Information, which will be provided to them orally or in a written form or of which they gain knowledge of otherwise in the frame of the experiments.

(2) The Parties are required to maintain confidential and secure all Information belonging to the other Party for a period of 3 years (with option for prolongation for up to 2 additional years) after completion of the experiment. The Parties are required not to disclose such Information to third parties, under any circumstances, unless a further written agreement is first signed between the Parties.

(3) The confidentiality obligation stipulated above shall not extend to any part of the Information that:

- a) can be demonstrated to have been in the public domain or publicly known and readily available prior to its communication by the disclosing Party, or
- b) can be demonstrated to have been in the possession of, or that can be demonstrated to have been readily available to the other Party or its subsidiaries receiving the Information from another source prior to the disclosure, or
- c) becomes part of the public domain or publicly known by publication or otherwise, not due to any unauthorized act by the other Party, or
- d) is required to be disclosed by law or regulations or with a court or administrative order provided that the other Party provides reasonable prior notice of such required disclosure.

§ 6 Property and Materials

(1) After consultation with the *Local Contact*, the *User* may be permitted by DESY and/or the On-site-partner to install equipment, tooling, test apparatus, or materials necessary to assist in the conduction of its experiments at the facility. In this process DESY may also offer different support (e.g. transport services, samples shipping, workshop services) to enable the conduction of the experiments. Such items shall remain the property of the *User* and have to conform to DESY safety regulations. Unless the Parties (DESY, On-site-partner (where relevant) and *User*) agree otherwise, all such property installed by the *User* or equipment and test apparatus provided by the *User* will be removed by the *User* immediately after the experiment from the experimental station and at the latest within fourteen (14) days from DESY premises or will be disposed of as directed by the *User* at its own expense if not otherwise agreed upon. Samples and consumables brought or sent to DESY have to be taken home or disposed of properly in accordance with safety regulations. Heavy equipment must be delivered and retrieved during core working time.

(2) The *User* must provide DESY and On-site partner with all information concerning the materials for the conduction of the experiments. In particular, the *User* must prepare all requested declarations of samples, substances, chemicals, lasers, radioactive substances, apparatus etc. as well as registration of participants at least 4 weeks prior to arrival at DESY. Samples, chemicals and equipment to be brought or sent to DESY must be identical with those mentioned in the accepted



proposal and in the respective declaration forms. Any changes have to be approved by DESY and On-site partners (where relevant) prior to the conduction of the experiment.

(3) Upon completion of the experiments, the *User* shall restore all used facilities and areas to the condition found on arrival.

(4) DESY and On-site partners shall have no responsibility for the *User's* property in DESY's/On-site partners' possession other than loss or damage caused by willful misconduct or gross negligence of DESY/On-site partners or its employees.

§ 7 Intellectual Property

(1) Each Party is and remains the owner of any know-how and intellectual property made by it prior to the conduction of experiments under these *Terms and Conditions*.

(2) Legal title to any and all working results (including, but not limited to know-how, test and development reports, proposals, ideas, drafts, designs, suggestions, samples, models, etc.) reached by the *User* within the context of experiments under these *Terms and Conditions* shall be vested in the *User*, who shall grant DESY and the relevant On-site partner a non-exclusive and non-transferable right of use free of charge for its own research and non-commercial purposes.

(3) In the event that joint inventions arise during the conduction of the experiments and the shares in the invention cannot be divided up according to each of the relevant Parties for the purpose of filing for legal protection, DESY and the On-site partners and the *User* shall come to an agreement on a case-by-case basis. However, the *User* grants DESY and On-site-partners at least a non-exclusive right of use free of charge for its own research and non-commercial purposes in each case.

(4) The *User* has to inform DESY and On-site-partner of any patent application resulting from experiments at experimental facilities of DESY under these *Terms and Conditions*.

§ 8 Publication

(1) In accordance with the principle of providing open access to information, the *User* shall strive to publish the results of experiments under these *Terms and Conditions* in peer-reviewed scientific journals.

(2) *Users* and beamline scientists who wish to collaborate on a topic related to the experiment should define relevant agreements including co-authorship of DESY Photon Science and On-site partner's staff of resulting publications prior to the experiment.

(3) In case of publication the *User* shall acknowledge the support of DESY, including the beamline(s) and experimental station(s) used, supporting staff also of On-site partners or any other assistance, in all published material (including conference contributions and press releases) arising from work carried out wholly or partially at DESY by using the following: "Parts of this research were carried out at (name of facility) at DESY, a member of the Helmholtz Association. We would like to thank (Names of the beamline staff in case that they are not co-authors) for assistance in using beamline (Name of the beamline)." Technical aspects related to the experimental facility should be checked with staff of DESY prior to publication.



(4) The *User* will inform DESY of any scientific publication resulting from the use of the DESY Photon Science facilities and submit the bibliographical information and upload a PDF of the publication to the DESY Publication Data Base 'PubDB'.

(5) The *User* has to submit the mandatory *Experiment Report* three months after completion of the experiment at the latest. The timely delivery of these reports will be considered for future beamtime allocation.

§ 9 Personnel Relationship

(1) Personnel of the *User* shall remain employed by the *User* at all times during the conduction of the experiments, and shall not be considered employees of DESY or On-site partners for any purpose.

(2) The *User* is obligated to have appropriate health, accident insurance and general liability insurance coverage during its travel to and from as well as its stay at the DESY premises, which provides coverage while the *User* is engaged in research activities related to the conduction of experiments under these *Terms and Conditions*. The *User* holds DESY free and harmless from any liability in this respect, including as may arise in case of failure to keep any part of the insurance coverage defined above in place during the association.

§ 10 Access and safety regulations

(1) Access to the experimental facilities is granted in accordance with the procedure and company regulations of DESY. The respective access systems at DESY requires the collection and processing of personally identifiable information according to the DOOR Data Privacy Policy (https://door.desy.de/help/DOOR_data_privacy_policy.pdf). As a precondition to using experimental facilities of DESY, the employees of the *User* and persons acting on behalf of the *User* shall complete all access documents and meet all safety requirements of DESY. Beyond that, DESY warrants that DESY will not collect or handle any personally identifiable information as a result of the service performed.

(2) Employees of the *User* and persons acting on behalf of the *User* shall complete necessary safety training courses and participate in all required on-site instructions related specifically to the workplace before starting the experiment.

(3) Employees of the *User* and persons acting on behalf of the *User* are subject to the administrative and technical supervision and control of DESY and will comply with all applicable rules of DESY with regard to admission to and use of the experimental facility, including but not limited to safety, radiation protection, environment protection, access to information, cyber-security, conduct and the specific requirements of the experimental facilities. DESY reserves the right to withdraw access to experimental facilities if the *User* or persons acting on its authority do not use the facilities in a safe manner or do not comply with said regulations and requirements or other reasonable instructions of DESY.

(4) The *User* shall adhere strictly to the emergency management of DESY. In particular, in the case of an emergency, the *User* shall inform the technical emergency services of DESY which is authorized to coordinate the emergency case.



§ 11 Warranty, Liability

- (1) DESY and On-site partner make no express or implied warranty as to the conditions of the facility furnished hereunder. In addition, the Parties provide no warranty, including but not limited to those of fitness for purpose and non-infringement of intellectual property rights held by third parties, in respect of research results exchanged or the information communicated in course of the cooperation under this *Terms and Conditions*. The receiving Party shall hold the providing Party free and harmless from any liability arising from its use (including, if permitted, any sub-licensing) of such research results.
- (2) Claims for damages by the Parties against each other are excluded unless they are based on intent or gross negligence. In case of breach of essential contractual obligations ("Kardinalpflichten"), i.e. obligations the fulfilment of which makes the due performance of the *Terms and Conditions* possible in the first place or on the fulfilment of which the Partners have relied and could rely, the Parties are liable for intent and any negligence, in case of simple negligence, however, limited to the foreseeable, contract typical damage. In case of gross negligence, liability for consequential damages is excluded.
- (3) The aforementioned exclusions and limitations of liability shall not apply to claims under the Product Liability Act ("Produkthaftungsgesetz"), for fraudulent conduct, from liability for guaranteed characteristics and from injury to life, body or health.
- (4) The aforementioned limitations of liability also apply to the liability of the respective Party for its employees, organs, representatives and vicarious agents as well as for their personal liability.
- (5) The Parties agree that in the event of claims by third parties, they shall only be liable internally in accordance with their fault and undertake to indemnify the respective other Party from any further claims.
- (6) The *User* is obliged to notify DESY and On-site partner of any damages of equipment caused by its employees or persons acting on its behalf.
- (7) If necessary maintenance, urgent work or operational faults of the facility lead to a delay of experiments or partial or complete loss of allocated beamtime, DESY/On-site partners will attempt to reassign measurement time to affected *Users*. However, claims for damages against DESY and On-site partner are excluded.

§ 12 Import / Export

The *User* shall comply with all applicable export control laws and regulations, and shall follow all necessary procedures required by these laws and regulations, particularly applying for required export approvals. Completion and execution of the contract (making available DESY facilities for the purpose of performing experiments) are subject to export control legal admissibility. Before shipping the goods (e.g. equipment, samples) from abroad, the *User* must check, if necessary, with the help of DESY, whether special import regulations have to be complied with for the import of the goods to Germany (e.g. import permits, veterinary certificates, phytosanitary certificates, etc.).

If the goods (e.g. equipment, samples) are to be returned after the experiment, the *User* must follow the relevant export regulations.

§ 13 Force Majeure

(1) No Party shall be liable for a delay in performance or failure to perform its obligations under this *Terms and Conditions* if such delay or failure is as a result of force majeure or any other event beyond the control of the Parties, including but not limited to armed conflict, terrorist attack, civil war, riots, toxic hazards, epidemics, pandemics, natural disasters, extreme weather, fire, explosion, failure of utility service, labor disputes, breakdown of infrastructure, transport delays, or any public restrictions following any of the incidents above, or any other force majeure occurrence.

(2) In the event of a force majeure occurrence, the affected party shall notify the other Party without undue delay of the particulars of the situation and the estimated duration.

§ 14 Disputes

In the event of disagreement, the Parties shall seek to resolve their differences amicably.

§ 15 Concluding Provisions

(1) Alterations of and additions to these *Terms and Conditions* have to be agreed upon in writing. DESY reserves the right to change these *Terms and Conditions* at any time. DESY will inform the User about such changes in text form (e.g. via e-mail). The change shall be deemed accepted and agreed by the User unless the User objects the change in text form within 6 (six) weeks from receipt of DESY's change notice. DESY will inform the User upon this consequence in the change notice.

(2) These *Terms and Conditions* shall also apply for any future use of DESY's infrastructure by the User within the scope according to § 1, even if the Terms and Conditions should not be explicitly incorporated again.

(3) These *Terms and Conditions* will be governed by and constructed in accordance with the laws of the Federal Republic of Germany. Exclusive jurisdiction is given to the appropriate Courts of Hamburg.

(4) If one or more provisions of these *Terms and Conditions* shall be invalid or unenforceable, the validity and enforceability of the other provisions of these *Terms and Conditions* shall not be affected. In such case the invalid or unenforceable provision shall be deemed to have been replaced by such valid and enforceable provision or provisions that reflect as closely as possible the intention of the Parties as regards the invalid or unenforceable provision.

(5) Sections 7, 8, 11 and 15 (2) of this *Terms and Conditions* shall survive the termination of the experiment.