



# **Statute of the Hamburg University of Technology on the use of third-party funds and the implementation of third-party funded projects**

**from 27 September 2023 (published on 29 July 2024).**

*On the basis of § 85 Para. 1 No. 1 in conjunction with § 77 (7) of the Hamburg Higher Education Act (HmbHG) of 18 July 2001 (HmbGVBl. p. 171), last amended on 17 June 2021 (HmbGVBl. p. 468), the Academic Senate of Hamburg University of Technology adopted the following statute on the acquisition and use of third-party funds on 27 September 2023.*

## **Preamble**

Hamburg University of Technology supports and promotes the acquisition of third-party funds and the implementation of projects with third-party funds within the scope of its possibilities, the laws and these statutes.

With the aim of increasing the quality of research and teaching, additional private and public funds are to be raised in addition to the state funds. In addition to grants from the DFG, state and federal funds, this applies in particular to funds from the European Union as well as funds from private sources, including donations and sponsorship for research.

These statutes regulate the handling of third-party funds of any origin and are intended to contribute to creating transparency and legal certainty in the application, implementation and management in order to avoid the appearance of unfair intentions or cross-subsidization both in the financing of research

projects by industry and all other grants by public and private third parties and serves to ensure process clarity and transparency in the context of such services. It thus safeguards academic freedom and serves to protect employees.

## **§ 1 – Scope of application**

These statutes apply to the acquisition, administration and use of public and private third-party funds by authorized persons at the Hamburg University of Technology, hereinafter referred to as TUHH or the University. If third-party funds are not administered at the university due to special rules, e.g. due to the cooperation agreement with Tutech Innovation GmbH or in the special account procedure pursuant to § 77 IV HmbHG, only the rules on the obligation to notify third-party funded projects apply in this respect. The authorized person is free to use other service providers in the special account procedure.

## **§ 2 – Authorized persons**

In addition to professors of the TUHH, authorized academic staff members pursuant to § 27 HmbHG have the right to conduct externally funded research pursuant to § 77 HmbHG in agreement with the head of the institute/working group. Third-party funded research is an official duty; the obligation to fulfill other official duties remains unaffected. The persons authorized to carry out externally funded projects are hereinafter referred to as "authorized persons".

## **§ 3 – Definition**

- (1) Third-party funds within the meaning of these statutes are monetary, material and other contributions from third parties from unilaterally or mutually binding contracts or a grant from the Federal Government or the European Union, which are made available to the University to fulfill its tasks in addition to the budget funds. Third-party funds include in particular
1. Grants in cash and in kind or other services (e.g. for development, further education, other services)  
These funds are granted to the university for the purposes of research and teaching without any consideration being agreed or expected in return. Material, financial and scientific reports – so-called proof of use – do not constitute consideration.
  2. Cash payments from contracts are reciprocal contracts between third-party funding providers and the university in which the type, scope and timing of the service and consideration are specified (e.g. third-party funding contracts, cooperation agreements, contract research, services, sponsoring). A reciprocal contract with third parties also exists if the TUHH concludes a contract with Tutech Innovation GmbH.

3. Unilaterally binding contracts  
Target and purpose-oriented donations exist if no consideration in the sense of an exchange relationship is agreed for the donation, but the funds are made available to support a specific project, e.g. donations, endowed professorships, endowments.
  4. Donations  
Donations may not be earmarked for a specific purpose, although they may only be accepted and used if they pursue charitable purposes in accordance with §§ 51 ff. AO. A donation receipt will be issued if the necessary tax requirements are met.
  5. Loans  
from industry, foundations and the DFG, which are only made available to the University for a certain period of time, are not third-party funds, but also require a written contractual basis. In cases (3.1.3), (3.1.4) and (3.1.5), the Presidential Administration must be informed immediately in order to regulate the contractual basis.
- (2) Third-party donors are natural or legal persons who provide the University with financial or in-kind contributions for the purpose of research and teaching.
  - (3) Cash payments are made exclusively to the TUHH account. Payments to private accounts are not permitted. If an application is made for the university to refrain from administering the funds in accordance with § 77 IV HmbHG (special account procedure), provided this is compatible with the conditions of the donor, sentence 1 shall not apply in this case.

#### **§ 4 - Principles**

- (1) The administration of third-party funds is carried out by the university in accordance with § 7 of these statutes.
- (2) The employees of the administration and the employees of the institutes work together cooperatively and supportively during the implementation of externally funded projects; the administration provides the complete commercial and financial project mapping, while the institutes perform their project-specific specialist tasks. Further information is provided by the Finance Department (Third-Party Funding Management Unit).
- (3) The current guidelines of the third-party funding providers for the implementation of third-party funded projects as well as the applicable guidelines for safeguarding good scientific practice at the University must be observed by the beneficiaries.
- (4) The TUHH University Board can issue general rules of responsibility for the administration of externally funded projects, considering the requirements of the funding bodies/clients.
- (5) The University only accepts third-party funding that complies with the principles of these statutes. These have been defined in detail as follows:

1. Transparency principle: The persons authorized by the Executive Board may request information and inspect the documents at any time during a third-party funding project.
  2. Principle of documentation: Arrangements and agreements, in particular agreements on mutual services, must be documented in writing.
  3. Four-eye principle: The management of third-party funds is subject to the four-eye principle, i.e. contracts, invoices etc. must always be signed by the beneficiary together with the person responsible in the Third-Party Funding Management unit or on the administrative side.
  4. Separation principle: The acceptance and use of third-party funds of any kind must not be dependent on past, present or future sales transactions, e.g. orders, recommendations and the like. Third-party funds may not be used to influence procurement decisions. In particular, no conflict of interest may be created that is contrary to the ethos of integrity and knowledge-driven science.
  5. Budgetary accuracy and clarity: Third-party funds are posted in full to the accounts set up for this purpose in accordance with the applicable accounting principles, e.g. balance sheet accuracy, imparity principle and the provisions of the German Commercial Code (HGB).
- (6) It is not permitted to carry out parts of a third-party funded project as secondary employment (splitting ban). Secondary employment does not constitute externally funded research within the meaning of the Hamburg Higher Education Act or these statutes and must be reported to the Human Resources Department.
- (7) If a beneficiary leaves the University, the ongoing third-party funded projects as well as any items procured from them and rights of use to the results obtained from the third-party funded projects can be transferred to the new employer, provided that this does not conflict with the provisions of the third-party funding provider. Residual funds from externally funded projects completed by the University remain with the University.
- (8) Third-party funded projects started by the beneficiary before retirement can be completed by the beneficiary. In addition, the entitled person may, upon request, be authorized to submit applications for new externally funded projects by the Kanzler and with the approval of a cost center manager, e.g. head of institute, of the TUHH. This activity does not constitute a claim to remuneration from the University.
- (9) Contracts with private clients (economic activity) may only be concluded in compliance with the Union framework for state aid for research, development and innovation if the contract remuneration is at least cost-covering in accordance with § 10 of these statutes and contains an appropriate profit margin or has been calculated according to market price. The implementation of the economic activity may only be agreed and commenced after approval

by the University on the basis of the documents submitted (see guidelines: Separation calculation).

- (10) In principle, contract research projects are to be handled by the subsidiary Tutech Innovation GmbH. The sale of project results is generally subject to VAT. The university decides on commercial activity and offers support in calculating an appropriate market price. Corresponding circulars and work templates are published.
- (11) Research results are published, provided this does not conflict with the rights of third parties.
- (12) The University Board reserves the right to reject externally funded projects that clearly violate ethical or humanitarian principles and cannot be reconciled with Article 5 (3) of the Basic Law. The Ethics Committee shall be consulted in the case of externally funded projects that concern ethically relevant issues in order to advise the University Board in accordance with Section 13 of these statutes.

## **§ 5 - Notification of the application for a project**

- (1) The authorized person informs the application processing office of the Third-Party Funding Management at the earliest possible point in time, submitting all existing and required documents, about the planned acquisition of external funding and about ongoing preliminary negotiations with the external funding provider. Applications for third-party funding must be submitted via this department. For EU third-party funding applications, Tutech Innovation GmbH must also be commissioned. The application office must also be notified of applications submitted via online procedures. The notification obligation pursuant to § 77 para. 3 sentence 1 HmbHG is thus fulfilled.
- (2) In the case of strategic projects, e.g. Collaborative Research Centers, Research Training Groups, DFG Research Units, Clusters of Excellence or similar, the University Board or the member of the University Board responsible for research must be involved in the concept phase.
- (3) If third-party funding projects with structural effects are applied for, the institutes and departments concerned must be involved.
- (4) Project management and application processing endeavor to obtain the best possible funding for all applications, including possible project lump sums for indirect costs (so-called overhead).
- (5) Participation in networks of any kind must be reported to the body processing the application if this requires a written agreement.
- (6) The University Board reserves the right to reject projects, e.g. if the principle of economic efficiency cannot be complied with.

## **§ 6 - Cooperation agreements**

- (1) Legal contract negotiations or the legal review of the draft contracts, which must be submitted as an accessible editable document (not a pdf file), are carried out by the administration. Sample contracts are provided on a case-by-case basis. In order to achieve the best possible negotiation result, the beneficiary is requested to provide all documents necessary for the negotiation, e.g. the draft contract of the third party, at an early stage and to inform about deadlines agreed between the cooperation partners.
- (2) EU cooperation agreements for research must be submitted to Tutech Innovation GmbH and the third-party funding department for review.

### **§ 7 - Management of third-party funds**

- (1) The administration of third-party funds and the financial processing shall be carried out by the university; § 77 para. 4 HmbHG remains unaffected by this.
- (2) The use of third-party funds is determined by the guidelines of the funding provider. These take precedence over state administrative regulations, provided they do not conflict with statutory or collectively agreed provisions or the principles set out in Section 4 of these Articles of Association.
- (3) Third-party funds are managed and used in accordance with the provisions of the Hamburg State Budget Code, considering the following principles: necessity, economy and efficiency, unless the guidelines of the third-party funding provider specify otherwise. Income and expenditure from third-party funds must be reported accordingly in the university budget.
- (4) Unless otherwise specified by the third-party funding provider, the items procured as part of the third-party funding project shall become the property of the University.
- (5) Financial income from third-party funded projects is available to the respective institutes of the University for the fulfillment of their tasks. The income as remuneration for the use of university infrastructure, personnel and material resources is available to the university for the fulfillment of its tasks. Financial income from third-party funded projects managed by Tutech Innovation GmbH may only be used for the tasks of the respective TUHH institutes.

### **§ 8 - Personnel in third-party funded projects**

- (1) The law on fixed-term employment contracts in science (Wissenschaftszeitvertragsgesetz - WissZeitVG) in the currently valid version applies to the scientific staff to be employed at the university from third-party funds, including the labor and collective bargaining law and the existing regulations at the university.

- (2) The Part-Time and Fixed-Term Employment Act (Teilzeit- und Befristungsgesetz), including the regulations already listed under (1), applies to non-scientific staff who are financed from third-party funds.
- (3) The necessary employment contracts are drawn up by the Human Resources Department. The Human Resources Department and the External Funding Department must be involved as early as possible in order to ensure that work commences on the desired recruitment date. The circulars of the Human Resources Department must be observed.

## **§ 9 - Procurement**

- (1) The current provisions of public procurement law apply.
- (2) An explicit or tacit link between the granting of funds by third parties and an obligation on the part of the university to purchase certain products is not permitted.
- (3) TUHH staff must observe and comply with the anti-corruption guidelines; for civil servants, the special provisions of the Civil Servants Status Act (BeamtStG) and the State Civil Servants Act apply.

## **§ 10 - Economic activity - Implementation of the segregated accounts at the TUHH**

The TUHH is a corporation under public law. There is no tax liability in the performance of its sovereign tasks, e.g. research activities from third-party funds. In addition, universities are permitted to engage in commercial activities. In these cases, the TUHH is subject to tax.

Support with the preliminary calculation and the implementation of the economic activity on the basis of the documents submitted is provided by the university office responsible for this; the activity may only begin after approval by this office.

If an economic activity is sought, the following procedure applies at the TUHH:

The TUHH must provide evidence in its annual financial statements that no subsidies were provided by the state grant for commercial projects. Personnel who are financed from state funds must therefore clearly record their working hours in commercial projects. This is only possible through time records. This also applies in particular to cases where TUHH staff are deployed in contract research projects at Tutech Innovation GmbH.

To prove that the project has covered its costs, a post-calculation is prepared annually and after completion of the project, considering the costs incurred and the hours actually worked on the project.

The allocation of the profit mark-up and the overhead share is decided annually based on a current evaluation of the cost and performance accounting.

### **§ 11 – Scientific lecturing or consulting activities**

If this activity is not carried out by the employee as a secondary occupation, the lecturer/consultant may accept an appropriate fee for the University. The fee must be paid to the University. If an employee applies to carry out this activity as secondary employment, the provisions on secondary employment law shall apply.

Applications are accepted by the Human Resources Department.

### **§ 12 – Research and teaching allowance**

In the case of third-party funded projects from private donors, which are generally managed by Tutech Innovation GmbH (Section 4 (10) of these Articles of Association), it is possible to agree a research and teaching allowance in accordance with the statutory provisions of the Hamburg Remuneration Act (currently Section 39 HmbBesG).

The beneficiary shall notify the TUHH of the agreed allowance so that it can be collected by Tutech Innovation GmbH and paid out by the university.

### **§ 13 – Ethical issues**

The Ethics Committee is responsible for assessing ethical issues relating to third-party funding or scientific projects. Such issues are referred to this committee. On request, the internal audit department or another person from the administration can be consulted in an advisory capacity.

### **§ 14 – Entry into force**

These statutes enter into force on the day after their publication at the TUHH. It replaces the TUHH statutes on the implementation of externally funded projects dated February 1, 2018

*Hamburg, 27.09.2023*

*Hamburg University of Technology*



COURTESY TRANSLATION WITHOUT LEGALLY BINDING EFFECT.

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