

# General Conditions for Use of Facilities and Equipment

## National Institute for Materials Science

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## **Article1: Scope of Application**

These General Conditions shall apply to the case where the facilities and equipment (hereinafter referred to as “shared facilities and equipment”) owned by the National Institute of Materials Science (hereinafter referred to as “the Institute”) are made available to external researchers performing research and development in science and technology (hereinafter referred to as “user”) for shared use.

A user of the shared facilities and equipment shall be obliged to conform to these General Conditions when using the shared facilities and equipment. The user shall be considered to have agreed to these General Conditions, the site policies (<http://www.nims.go.jp/siteinfo/site-policy.html>) and the privacy policies (<http://www.nims.go.jp/siteinfo/privacy-policy.html>) of the Institutes’ official website by registering to use the shared facilities and equipment.

Additionally, general guidelines shall be provided separately to be applied to a creep test and a creep-rupture test using a creep-testing machine, the use of the MatNavi database system, additional services for the MatNavi database system, and the AtomWork-Adv database system.

## **Article 2: Definitions**

1. In these General Conditions, “use” shall mean that the shared facilities and equipment are available to the user inside and outside the Institute with or without compensation for the research and development performed by the user independently or in cooperation with the Institute on the premise that the user maintains and manages the shared facilities and equipment while in use, obtains experiment data, and processes experimental samples on his/her own.

2. In these General Conditions, “confidential information” shall be the information other than the technical information disclosed by the Institute or a user to the other party, or technical information pertaining to own business or operation. It shall be a collective term for a document, electromagnetic record (including their copies), and orally disclosed information indicating that it is confidential, for which it has been clearly specified that the information is confidential at the time of disclosure, and it is communicated by the discloser in writing within thirty days from disclosure with the content of disclosure specifying that the information is confidential. However, the information applicable to any of the following items shall not be confidential.

- (1) Information that had been already publicly known when it came to the knowledge of the other party, or information that has become publicly known after it came to the knowledge of the other party through no fault of the receiving party.

- (2) Information rightfully obtained from a third party without obligation of confidentiality.
  - (3) Information for which it can be proven in writing that it had already been in the receiving party's possession when it came to the knowledge of the other party.
  - (4) Item of which it can be proven in writing that it has been independently created without the information obtained from the other party.
  - (5) Item that is independently created after disclosure from the other party without confidential information.
  - (6) Item obliged to be disclosed by law or court order.
3. In these General Conditions, "intellectual property rights" shall mean the following as listed in each item below.
- (1) Patent rights, utility model rights, design rights, and layout-design exploitation rights provided in the Act on Circuit Layout of Semiconductor Integrated Circuits (Act No. 43 of 1985, hereinafter referred to as the "Circuit Layout of Semiconductor Integrated Circuit Act"), breeder's rights provided in the Plant Variety Protection and Seed Act (Act No. 83 of 1998, hereinafter referred to as the "Seed Act"), and the rights equivalent to these rights in foreign countries.
  - (2) Rights to obtain patent rights, rights to obtain utility model rights, rights to obtain design rights, rights to be registered to establish layout-design exploitation rights, status to obtain variety registration, and rights equivalent to these rights in foreign countries.
  - (3) Copyrights of works of computer programming and database works (hereinafter referred to as the "programming, etc.") provided in the Copyright Act (Act No. 48 of 1970, hereinafter referred to as the "Copyright Act"), and rights equivalent to these rights in foreign countries.
  - (4) Technical information not falling under the rights listed in the preceding three items (including experiment data, samples and drawings) that may be hidden and have property value, and specifically designated by mutual consent of the Institute and a user (hereinafter referred to as the "know-how.")

### **Article 3: Shared Facilities and Equipment**

Shared facilities and equipment shall be determined by the Institute.

### **Article 4: Application for Use**

1. A user who wishes to use shared facilities and equipment shall apply by the method separately provided by the Institute, clearly stating the following items.

- (1) Name, affiliation and contact information of all users.

- (2) Overview of research topics.
  - (3) Name or purpose of the shared facilities and equipment that the user wishes to use.
  - (4) Whether the user wishes to have services, technical assistance or technical surrogate provided.
  - (5) Agreement to rules to be observed for use.
  - (6) Other necessary requirements for use.
2. The application in the preceding paragraph shall be addressed to an individual as stipulated in the following items (1) to (3) based on the category of shared facilities and equipment in (1) to (3).
- (1) Shared facilities and equipment owned by Nanotechnology Platform: Platform Director of Nanotechnology Platform
  - (2) Shared facilities and equipment owned by Battery Research Platform: Platform Director of Battery Research Platform
  - (3) Shared facilities and equipment other than the preceding two items: Director of Research Network and Facility Services Division

#### **Article 5: Acceptance of Use**

1. The Institute shall accept the use of shared facilities and equipment in the case where all of the following requirements are satisfied:
- (1) The user wishes to use the shared facilities and equipment specified in Article 3.
  - (2) The use of the shared facilities and equipment helps promote science and technology, contributes to society and to the economy, or is of a different public nature.
  - (3) The use of the shared facilities and equipment does not present a risk of causing a hindrance to the research work of the Institute.
  - (4) The user agrees to the General Conditions and special agreement in the case where the Institute presents the special agreement particular to the shared facilities and equipment.
  - (5) The user is not likely to violate the compliance matters provided in Article 7.
  - (6) The user or his/her affiliated institute has the ability to pay the usage fee provided in Article 9.
  - (7) The user or his/her affiliated institute has the ability to compensate for the damage provided in Article 15.
2. The Institute shall decline the use of shared facilities and equipment in the case where any of the requirements provided in each of the preceding items are not satisfied.

## **Article 6: Cancellation and Termination of Use**

1. The Institute may order to cancel the acceptance of use of shared facilities and equipment or to terminate the use of shared facilities and equipment in the case where any of the requirements stipulated in each item of Paragraph 1 of the preceding article become unsatisfied.
2. Notwithstanding the provision of the preceding paragraph, the Institute may order a user to terminate the use of shared facilities and equipment in the case where the Institute deems it necessary for management purposes.

## **Article 7: Rules to Be Observed**

A user shall comply with the following matters.

- (1) Items prescribed in the General Conditions.
- (2) Instructions from a person responsible for management and matters to be observed for the use specified for each shared facilities and equipment.
- (3) A user shall not perform any act that causes danger.
- (4) A user shall not perform any act that violates Japanese laws and regulations.
- (5) A user shall not perform any act that may damage shared facilities and equipment.
- (6) A user shall not perform any act that may be a hindrance to the operation of the Institute.
- (7) A user shall return shared facilities and equipment to the original state when ending the use.
- (8) Other matters stipulated by the Institute pertaining to the use of shared facilities and equipment.

## **Article 8: Provision of Services, Technical Assistance and Technical Surrogate**

1. A user may receive provision of services from an Institute employee regarding how to use and operate the shared facilities and equipment, after consultation with a person responsible for management.
2. A user may receive technical assistance from an Institute employee regarding how to use and operate the shared facilities and equipment, how to create experiment samples, and how to analyze experiment data, etc. after consultation with a person responsible for management.
3. A user may receive technical support performed by an Institute employee regarding observation, examination, analysis, processing and creation of samples after consultation with a person responsible for management.

### **Article 9: Payment of Usage Fee**

A user shall pay the usage fee based on the invoice sent by the Institute by the due date specified by the Institute. The usage fee shall be the total of each of the following items added to the consumption tax.

- (1) Usage fee of shared facilities and equipment
- (2) Actual cost of supplies and services
- (3) Actual cost of labor (share of the cost pertaining to Paragraph 1 of the preceding article.)
- (4) Research base fee (share of the fee pertaining to Paragraph 2 or Paragraph 3 of the preceding article)
- (5) Indirect costs
- (6) Other costs necessary to use shared facilities and equipment.

### **Article 10: Return of Usage Fee**

The Institute shall not return the usage fee paid by a user. However, all or part of the fee shall be returned if either of the following items applies:

- (1) The Institute has ordered to terminate the use pursuant to the provision in Article 6, Paragraph 2.
- (2) It has become impossible to use shared facilities and equipment due to unavoidable circumstances including failure and natural disasters, not attributable to the user.

### **Article 11: Usage Report**

1. A user shall submit a usage report after the use of shared facilities and equipment ends by the day designated at the time of application. The usage report may remain undisclosed except in the cases specified in the following paragraph.
2. A usage report stipulated by the Nanotechnology Platform shall be disclosed by the method stipulated for MEXT-commissioned projects, and a usage report stipulated by the Battery Research Platform shall be disclosed by the method specified separately.

### **Article 12: Handling of Information**

1. Management, storage and deletion of information obtained as a result of the use of shared facilities and equipment shall be performed by a user.
2. Notwithstanding the provisions in Paragraph 3, Paragraph 4 and Paragraph 6 of this article, a user shall disclose all necessary information to the Institute upon request, in the case where the user has violated the rules to be observed stipulated in Article 7, where there is a rightful reason for the Institute to believe that the user has violated the

rules to be observed, where the user has used confidential information for the purpose other than its intended purposes in violation of Paragraph 4 of this Article, where the user falls under Paragraph 5, or where the Institute deems it necessary for the purpose of management of shared facilities and equipment.

3. A recipient of confidential information (hereinafter referred to as “recipient”) shall not disclose or provide confidential information to a third party. However, this shall not apply to the cases where it is done to attain the objective of disclosure, and the recipient has obtained prior consent in writing from a discloser. In the case where a recipient discloses or provides confidential information to a third party with consent from a discloser, the recipient shall oblige the third party to maintain confidentiality in the same way as the recipient is obliged to maintain confidentiality under these General Conditions.

4. A recipient shall not use or exploit confidential information for any purposes other than the intended purpose of the use. Additionally, a recipient may not reproduce all or part of confidential information for any purposes other than the purpose of disclosure. Creation of intellectual property rights by using confidential information of the other party shall not be the usage purpose.

5. In the case where a recipient is ordered to disclose confidential information by a court or an administrative entity based on laws and regulations, the recipient may disclose the confidential information to the court or administrative entity under the condition that each of the following measures are taken:

- (1) The content of the disclosure is communicated to the discloser in advance.
- (2) Only the part legally ordered to be disclosed is disclosed.
- (3) The confidentiality of the confidential information is clearly indicated in writing at the time of disclosure.

6. A recipient shall disclose confidential information only to each executive employee involved in the usage purpose, and clearly indicate that the information is a matter of confidentiality.

7. A recipient shall assume all the responsibility for the fact that the executive employee involved in the disclosure in the preceding paragraph shall be responsible for the same obligation assumed by the recipient based on these General Conditions.

8. The Institute and a user shall not hold each other responsible for any responsibility including defect liability even in the case where confidentiality information has defects, and shall not guarantee explicitly or implicitly that the information is without defect.

### **Article 13: Handling of Intellectual Property Rights**

The intellectual property rights that have been newly obtained as a result of the use

of shared facilities and equipment without using the “confidential information” stipulated in Article 2, Paragraph 2 shall belong to the user.

#### **Article 14: Exemption from Accident Compensation**

1. The Institute shall not be liable for compensation for injuries due to an accident caused by willful misconduct or negligence of a user.
2. The Institute shall not be liable for compensation for damages of a user caused by failure of the facilities and equipment.
3. The Institute shall not be liable for compensation for damages of a user in the case where the user has been ordered to terminate the use of shared facilities and equipment pursuant to the provision in Article 6 Paragraph 2.
4. The Institute shall not be liable for loss or damage of samples brought by a user, except for the case where the loss or damage has been caused by willful misconduct or gross negligence by the Institute.
5. A user shall be responsible for resolving any dispute with a third party at his/her own expense in the case where a dispute occurs as a result of the use of shared facilities and equipment. The Institute shall not be responsible for resolving the dispute.

#### **Article 15: Obligation of Compensation**

In the case where a user causes damage to the Institute including breakage of shared facilities and equipment through willful misconduct, or through negligence in violation of the rules stipulated in Article 7, the user and his/her affiliated organization shall jointly compensate the Institute for the damage.

#### **Article 16: Validity Period of the General Conditions and Measures after Expiration**

The validity period of these General Conditions shall be from the date of acceptance of use of shared facilities to either the last date of use, or the date when the usage report described in Article 11 is submitted, whichever occurs last (hereinafter referred to as “the last day of use”). However, the provision of Paragraph 2 of Article 12 of these General Conditions shall remain effective for five years after the last day of use, and Article 14 and Article 15 shall remain effective after the last day of use.

#### **Article 17: Revision of General Conditions**

1. If deemed necessary, the Institute shall reserve the right to revise, cancel or terminate all or part of the content of these General Conditions for use of shared facilities and equipment at any time without prior notice to the user. The user shall accept the



Institute's action.

2. Even in the case where the Institute revises, cancels or terminates the content of these General Conditions or use of shared facilities and equipment pursuant to the provision in the preceding paragraph, the Institute shall not assume any responsibility incumbent on a user, and the user shall accept this. The same applies to the case where the Institute terminates the provision of use of shared facilities and equipment pursuant to the provision in the preceding paragraph.

3. In the case where the Institute terminates the provision of use of shared facilities and equipment, the Institute shall not assume any responsibility, and the user shall accept this.

### **Article 18: Governing Law and Jurisdiction**

1. Unless otherwise specified, construction, validity, enforcement and interpretation of these General Conditions shall be governed by Japanese laws.

2. The Tokyo District Court shall be the exclusive court of first instance for all disputes regarding use of these General Conditions and shared facilities and equipment.

3. Notwithstanding the provision in the preceding paragraph, in the case where a domicile of a non-corporate user or a location of the head office of a corporate user is outside Japan, disputes between the user and the Institute pertaining to these General Conditions and use of shared facilities and equipment shall be settled at the Japan Commercial Arbitration Association solely by the arbitration based on the arbitration regulations of the association. The arbitral award at the association shall be final and binding upon both the user and the Institute.

3. The costs of arbitration including agent and attorney's fees shall be borne by the losing party unless otherwise specified in the arbitral award.

### **Supplementary Provision**

These General Conditions shall be applied starting from May 23, 2002.

### **Supplementary Provision (January 26, 2005)**

These General Conditions shall come into force as from January 26, 2005, and applied starting from December 1, 2004.

### **Supplementary Provision (May 19, 2005)**

These General Conditions shall come into force as from May 19, 2005.

### **Supplementary Provision (March 28, 2006)**

These General Conditions shall come into force as from April 1, 2006.

**Supplementary Provision (March 20, 2007)**

These General Conditions shall come into force as from April 1, 2007.

**Supplementary Provision (March 17, 2008)**

These General Conditions shall come into force as from April 1, 2008.

**Supplementary Provision (March 25, 2008)**

These General Conditions shall come into force as from April 1, 2008.

**Supplementary Provision (March 2, 2009)**

These General Conditions shall come into force as from March 10, 2009.

**Supplementary Provision (April 27, 2010)**

These General Conditions shall come into force as from April 27, 2010.

**Supplementary Provision (April 27, 2011)**

These General Conditions shall come into force as from April 27, 2011, and applied starting from April 1, 2011.

**Supplementary Provision (July 31, 2012)**

These General Conditions shall come into force as from August 1, 2012.

**Supplementary Provision (March 26, 2013)**

These General Conditions shall come into force as from March 26, 2013.

**Supplementary Provision (September 2, 2014)**

These General Conditions shall come into force as from September 2, 2014.

**Supplementary Provision (March 24, 2015)**

These General Conditions shall come into force as from April 1, 2015.

**Supplementary Provision (April 21, 2015)**

These General Conditions shall come into force as from April 21, 2015.

**Supplementary Provision (July 28, 2015)**

These General Conditions shall come into force as from July 28, 2015.

**Supplementary Provision (March 29, 2016)**

These General Conditions shall come into force as from April 1, 2016.

**Supplementary Provision (May 24, 2016)**

These General Conditions shall come into force as from May 24, 2016 and applied starting from April 1, 2016.

**Supplementary Provision (March 28, 2017)**

These General Conditions shall come into force as from April 1, 2017.

**Supplementary Provision (January 30, 2018)**

These General Conditions shall come into force as from April 1, 2018.

**Supplementary Provision (March 26, 2019)**

These General Conditions shall come into force as from April 1, 2019.

**Supplementary Provision (March 10, 2020)**

These General Conditions shall come into force as from March 10, 2020.

**Supplementary Provision (October 20, 2020)**

These General Conditions shall come into force as from October 20, 2020.