

General Terms and Conditions

Updating service and data management

1 Scope and area of application

- 1.1 These General Terms and Conditions (GTC) govern the conclusion, content and execution of contracts between customers (customer or client), as well as the Swiss Post (Post) for one-off or repeated updating or management of customer addresses by the Post using the Post's relocation data.
- 1.2 The GTC are an integral part of the contract and are enclosed with the contract. The customer accepts the GTC by signing the contract.
- 1.3 Any customer's GTC are expressly excluded.

2 Post services

- 2.1 The Post manages the client's Swiss addresses according to contractual agreements on its own systems. It exclusively supplies the client with any updated addresses for those (old) addresses which the client had prior to the Post's processing.
- 2.2 The Post updates those customer addresses for which it has more up-to-date information than the client.
- 2.3 The Post's updating data includes the most recent Swiss relocation addresses of physical persons which were reported to the Post and were used for address update purposes (relevant approval by the persons concerned), official address adjustments, as well as official death notices, insofar as these can be used to update the address.
- 2.4 Unless otherwise contractually ruled, the data carriers forwarded to the Post are stored for 30 days beyond order completion, and then destroyed. Without particular instruction from the client, the Post decides on the appropriate method of disposal.
- 2.5 The Post is responsible for complying with the agreed deadlines. A delivery delayed by a maximum of 5 working days is considered to have been made on time.

3 Duties of the client

- 3.1 Unless otherwise contractually agreed, the client commits to only providing the Post with addresses from its address book for processing.
- 3.2 The client ensures that the Post is exclusively provided with the data necessary to complete the assignment. The Post does not guarantee the security or availability of any further data.
- 3.3 Unless otherwise contractually agreed, the Post is not permitted to make prior additions to its own address book with third party addresses for updating purposes. Third party or external addresses are addresses which did not belong to the customer prior to the update. Addresses of the parent firm, partner firms, subsidiaries or affiliates, as well as associated enterprises within the group in particular are always considered third-party addresses.
- 3.4 The client is fundamentally free to use the updated addresses in its own address book. Unless otherwise contractually agreed, it is, however, not permitted to
 - make a mere compilation of all or part of its updated relocation addresses accessible to third parties,
 - use its own updated address book as the basis for updating third party addresses.
- 3.5 If the client breaches its duties stated in point 3 above, the Post is entitled to enforce a **penalty** of half the contractual total per breach, but no less than CHF 20,000.00. Payment of the penalty does not exempt the client from complying with the contractual obligations. It must be paid in addition to any damage compensation, irrespective of culpability.

4 Rights and scope of use

- 4.1 All rights to the updating data and comparison software (incl. documentation) remain the property of the Post. The Post only grants the customer the exclusive right to use the updated/managed address data to the contractually agreed extent.

5 Data transfer, place of execution, and transferral of benefits and risk

- 5.1 The place of execution is the headquarters of the Post's addresses centre in Kriens.
- 5.2 All data transfers (physically using data carriers or electronically) are made for the benefit and at the risk of the customer. The Post recommends data transfer using CD-ROM with registered mail.
- 5.3 Data transfer by CD-ROM forms the basis of the offers. If the client wishes a different type of data transfer (online, encrypted, via a courier, special data carriers, etc.), the parties jointly determine the necessary arrangements. The additional costs accrued are borne by the client.
- 5.4 The parties ensure they only use and transfer data and data carriers with no harmful software.

6 Prices and payment methods

- 6.1 The prices are determined in the contract, and are exclusive of VAT.
- 6.2 The basic fee (start-up cost) is payable upon contract conclusion and is not refunded in part or in full in the event of a termination.
- 6.3 The Post's address update is an automated volume process with tolerances. The Post does not charge a specific number of hits to balance these tolerances. If this number of hits is not achieved during an update, the number of free hits not yet obtained is forfeited without replacement.
- 6.4 The client bears the costs for providing the data to the Post, as well as the costs for destroying the data carriers supplied (packaging, transport and destruction itself).
- 6.5 The Post's invoices are payable strictly net within 30 days. The Post always has the right to ask the customer for an advance payment, without stating reasons, or to shorten the payment term.
- 6.6 If the customer is delayed in paying a debt, he must also pay a default interest of seven percent (7%) per annum.
- 6.7 The customer cannot offset the Post's claims against any counterclaims.

7 Guarantee

- 7.1 The Post has no influence over the completeness or quality of the updated data, as this is based on voluntary notifications from its customers and official death notices. It therefore excludes any guarantee for the completeness, topicality and postal accuracy of the updated data, and therefore particularly also for the deliverability of letters using the updated addresses.

8 Liability

- 8.1 The Post is liable for the careful and faithful rendering of the contractually agreed services. The Post is only liable in the event of deliberate acts or gross negligence. Any other liability, particularly also for subsequent damage or lost profit, is excluded.
- 8.2 The customer is liable to the Post for misuse of the update data or updated addresses. He must compensate the Post for any address update made illegally, including by third parties, for which it is responsible.

9 Data protection and confidentiality

- 9.1 The customer agrees that the Post may forward and process the customer data advised to it as part of the contractual relationship within the Post Group (Post head office, direct and indirect participations). The Post ensures that the data is not made accessible to third parties outside the Post Group.
- 9.2 The client remains liable to disclose information to persons affected by the Post's data processing throughout the entire process. He also remains the exclusive contact person for these persons regarding any other claims as per the data protection law.

- 9.3 For security and evidence purposes, the provision of data by the client, as well as the delivery of data to the client, remains recorded in one of the Post's back-up systems for one year.
- 9.4 Both parties treat all facts and information confidentially that are not obviously or generally accessible. The duty of non-disclosure continues after termination of the contractual relationship, subject to legal duties of disclosure.

10 Commencement, duration and end of the contract

- 10.1 The contract takes effect upon signature by both parties on the contractually agreed day, and applies – as contractually agreed – for one or more update(s) or management of the client's addresses.
- 10.2 The contract ends once the Post has completed its task, and does not require an official termination.
- 10.3 A withdrawal by the client prior to conventional completion by the Post is considered an unscheduled withdrawal. In this case, the client owes the Post the value of the already rendered services as per the contractually agreed prices, plus a flat compensation of 30% of the agreed or expected order total.
- 10.4 The right to termination without notice for good reason is always reserved. Good reasons particularly include:
- the occurrence of events or circumstances which make it infeasible for the terminating party to continue the contractual relationship, in particular the breach of the obligations in point 3 by the customer;
 - the official publication of initiated bankruptcy proceedings or moratorium on debt enforcement on one of the parties.

11 Changes and additions

- 11.1 Changes and additions to the contract require written form.
- 11.2 Should individual clauses of this contract be incomplete or legally invalid, or infeasible for legal reasons, this does not affect the validity of the rest of the contract. In this case, the parties will reach an agreement to replace the clause concerned with a valid clause as economically similar as possible to the former clause.

12 Applicable law and place of jurisdiction

- 12.1 Swiss law is exclusively applicable.
- 12.2 **The place of jurisdiction is Bern.**

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