

GENERAL TERMS AND CONDITIONS

BULK MAILING MANAGER

1. Scope

These Bulk Mailing Manager General Terms and Conditions (hereinafter GTC) govern the business relationship between the Customer and Post CH Ltd (Wankdorffallee 4, 3030 Berne, Switzerland; hereinafter Swiss Post) in connection with the use of the Bulk Mailing Manager. References to persons apply to both women and men as well as to more than one person. The "Postal Services for Business Customers" GTC and the "DataTransfer" Subscriber Conditions supplement the Bulk Mailing Manager GTC. In the event of any inconsistencies, the Bulk Mailing Manager GTC take precedence.

2. Service description

Bulk Mailing Manager is a software application that helps the Customer to prepare bulk mailings (B2, OTM and Expert Mail) in compliance with Swiss Post's requirements and in accordance with the rules applicable to the specific product, and to declare the relevant consignments. The Bulk Mailing Manager software is a client-server solution designed to be installed by the Customer and to be operated independently by the user.

Bulk Mailing Manager allows the Customer to create their bulk mailings himself electronically. He must enter the header data for the order such as the size and weight, etc. into the downloaded program along with the sender and mailer data. He also has to enter or import the addresses of the recipients.

Bulk Mailing Manager calculates the list price of the chosen product. The price can be reduced, for example if preliminary sorting is carried out by the Customer. This preliminary sorting is carried out with the help of a sorting algorithm which prepares the customer data in such a way that it allows the best possible postal delivery (optimal bundling and pallet distribution). The delivery documents, bundle and pallet notes and sorting log can be exported. The Customer declares their bulk mailings in the "Letters dispatch list" system by entering and electronically transferring the data.

More information can be found in the "Bulk Mailing Manager user manual".

3. Subscriber and usage requirements

3.1 Business customers

In principle, any business customer can use Bulk Mailing Manager provided that they have a billing relationship with Swiss Post. The Customer must register to use the "Letters dispatch list" postal service, and download and be able to use the street directory with sorting data.

3.2 Use

To use Bulk Mailing Manager, the program must be installed on the computer, or the user's own network must grant access to Bulk Mailing Manager.

The following operating systems are supported: Windows 7 x64, Windows 8 x64, Windows 10 x64, Windows Server 2008 R2, Windows Server 2012, Windows Server 2012 R2. NET Framework must also be installed on the system, and Microsoft SQL Server 2012 or later must be available on the target system for the server.

3.3 Delivery notes

The Customer undertakes to print the delivery notes created and provide them on handover (or collection) with the consignments.

4. Conclusion of the contract

When Bulk Mailing Manager is used for the first time, a user contract for the use of Bulk Mailing Manager is created and these GTC are deemed to be accepted. Use of Bulk Mailing Manager is free of charge. If the Customer presses the "binding order" button in Bulk Mailing Manager, the Customer makes Swiss Post an offer which can be accepted by Swiss Post. Only on handing in the consignments is the amount (list price or individually agreed price) settled via the monthly invoice from Swiss Post.

5. Customer obligations

5.1 Information

The Customer is obliged to provide accurate information and to keep all information correct and up to date.

5.2 Passwords, etc.

The Customer must protect passwords, identification codes, login data, etc., and not make these accessible to third parties.

5.3 Other obligations

The Customer may not copy, decompile, or redesign the software, or pass it on to third parties and/or distribute works derived from it or grant sublicences.

Given that Bulk Mailing Manager is installed and used entirely on the user side, the Customer is responsible for ensuring that all security-relevant framework conditions are met, for instance regarding data security, archiving and firewalls.

The Customer is responsible for the use and transfer of the data supplied. It is the Customer's responsibility to restrict access by third parties to this data to ensure that no breach of the conditions of the Bulk Mailing Manager service, postal secrecy and data protection regulations occurs.

The Customer may not operate the software in the US legal area or send data output or messages to or through the US legal area.

6. Blocking access

Swiss Post is entitled to block the Customer's access to Bulk Mailing Manager should the Customer violate these Subscriber Conditions, cease to guarantee the system's security or be late in paying invoices.

7. Warranty

The Customer is responsible for the availability of the data. Swiss Post is not liable for recipient addresses that are supplied by the Customer. The Customer is responsible for the correct input of the order data. Swiss Post is not obliged to check the data provided. In the event that it is determined subsequently that an order contains inadmissible content, Swiss Post can refuse to deliver the printed manner without any liability for damages. In this case, the Customer shall compensate Swiss Post for the work already performed and pay compensation for all costs yet to be incurred in this context, which result from the destruction of printed matter that has already been produced. Any relevant claim by Swiss Post shall be offset from the payment made by the Customer. Any remaining surplus shall be refunded to the Customer.

Although the functions of Bulk Mailing Manager have been examined thoroughly, incompleteness or errors in the software cannot be completely ruled out. Swiss Post therefore excludes any warranty for the software and its availability at any time, as far as this is legally permitted.

8. Rights to intellectual property / copyrights and usage rights

All copyrights, trademarks or other rights to intellectual property that exist in relation to the software or are used in connection with the latter are and will remain the sole property of Swiss Post. Swiss Post grants the Customer a non-exclusive (simple) usage right to the software it makes accessible.

If Swiss Post uses third party software, the third party retains all rights to it, unless other provisions have been agreed between the third party, Swiss Post, and/or the Customer. The licence provisions of the respective software manufacturer and all additional Swiss Post provisions shall apply.

The provider shall refrain from violating any copyright claims of third parties. Should this nonetheless occur, the provider shall indemnify Swiss Post and any service providers it appoints for the provision of services against any third-party copyright claims.

9. Liability

As permitted by law, Swiss Post does not accept any liability for damage or loss as the result of incidental or ordinary negligence. Swiss Post does not accept liability – to the extent permitted by law – for direct, indirect or consequential damage such as loss of profit, loss of data or damage as a result of downloads.

Swiss Post does not accept any liability for damage or loss caused by auxiliary personnel and third parties engaged by it (e.g. sub-contractors, suppliers, etc.) as a result of incidental or ordinary negligence.

To the extent permitted by law, Swiss Post does not accept liability for damage or loss as a result of improper use of its services (in breach of contract or law).

Claims in respect of product liability and personal injury remain reserved.

Swiss Post does not accept liability to the extent that is permissible by law for losses arising from force majeure or disruptions occurring particularly due to lack of Internet connectivity, unlawful interventions in telecommunication devices and networks, overloading of the network, wilful blockage of electronic channels by third parties or interruptions.

10. Data protection

The general data protection provisions of the GTC postal services for business customers apply (www.swisspost.ch/gtc).

The data privacy statement on the website www.swisspost.ch/data-privacy-statement provides further information about data processing at Swiss Post.

11. Involvement of third parties (processors)

The Customer agrees to Swiss Post involving third parties to render services and supplying the necessary data to the third parties involved. The processor is subject to the same obligations as regards guaranteeing data protection as Swiss Post itself and may not – unless otherwise provided by law – process the data for its own purposes and only on behalf of and on instruction from Swiss Post. Swiss Post is obliged to carefully select, instruct and monitor its service providers.

12. Duration and termination

The contract is of indefinite duration. It can be terminated subject to a period of three months' notice. The contractual relationship may be cancelled with immediate effect at any time if the Customer repeatedly breaches his contractual obligations despite having received a warning from Swiss Post, or for any other compelling reason.

At the end of the contract, the Customer must immediately, and without being requested to do so, return to Swiss Post all software, documentation and other documents provided to it as part of the contractual relationship, as well as destroy any copies. Upon receiving the first request from Swiss Post, the Customer shall confirm in writing that it has returned all documents and destroyed all copies. Swiss Post has the right to monitor the destruction at any time three years after the end of the contract.

13. Changes to the GTC or the service offer

Swiss Post can amend the GTC at any time and can modify or stop the services. Except in the case of urgency, the amendments shall be announced in a suitable manner beforehand. In the absence of written objection within one month of notification, the amendments shall be deemed to have been approved. In the case of objection the Customer shall be free to terminate the business relationship with immediate effect.

14. Severability clause

Should individual provisions of these GTC be invalid, incomplete or unlawful, or should performance be impossible, this shall not adversely affect the effectiveness of the other parts of the contract. In this case, the Parties shall undertake to immediately replace the clause in question by an admissible effective clause which in terms of content comes closest to the original intention, unless this conflicts with consumer protection provisions.

15. Assignment of rights

The assignment of the contract or of rights or obligations pertaining to the contract shall require written consent from both parties. Swiss Post may assign the present contract or rights and obligations arising from it to another company without the Customer's consent provided Swiss Post controls the company directly or indirectly. Furthermore, Swiss Post is entitled to transfer or assign contracts or claims arising from it to third parties for collection purposes without the Customer's consent.

16. Applicable law and place of jurisdiction

The contract is governed by Swiss law. The UN Convention on Contracts for the International Sale of Goods (CISG, SR 0.221.211.1) shall not apply.

The place of jurisdiction is Berne. This is subject to the proviso of a partially or fully mandatory place of jurisdiction (cf. in particular Articles 32 and 35 of the Code of Civil Procedure for consumers).

17. Legal form of publication

The legally binding GTC which constitute an integral part of the contract are published electronically and can be viewed at www.swisspost.ch/gtc.

In particular cases, Swiss Post can provide customers with a physical version of the GTC on request. The Customer acknowledges that paper versions are only copies of the current, legally binding GTC published via electronic media and that paper versions of the GTC are legally binding only if they correspond fully to the electronic version.

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