

# INCAMAIL

## GENERAL TERMS AND CONDITIONS

### 1. Scope of application

These IncaMail General Terms and Conditions (hereafter "IncaMail GTC") govern the relationship between the customers (hereafter "Customer") and Post CH Ltd (Wankdorfallée 4, 3030 Berne, Switzerland; hereafter "Swiss Post") with regard to the use of the IncaMail web interface service and related services (hereafter "IncaMail").

The IncaMail GTC shall apply to private and commercial use. "Customer" shall be deemed to include persons who are authorised to use IncaMail pursuant to contracts which third parties (e.g. employers) have concluded with Swiss Post.

The Customer accepts the IncaMail GTC whenever he uses IncaMail and in particular when registering.

### 2. Service description

The service description currently in force for IncaMail can be viewed at [www.swisspost.ch/incamail](http://www.swisspost.ch/incamail).

### 3. Subscriber conditions and terms of use

#### 3.1. Use without registration

It is possible to do two things without registration – firstly, read IncaMail messages using a security code and secondly, send messages, using a virtual mailbox, to IncaMail customers who have activated this service. The licence agreement for use without registration shall automatically come into effect upon completion of the online Customer confirmation. Within 180 days of the last use, returning customers do not need to accept the GTC again, on condition that these have not changed. Swiss Post may at any time extend or limit use without registration provided the changes or modifications are feasible for the Customer, taking account of the interests of Swiss Post.

#### 3.2. Use with registration

To open an IncaMail account and consequently be able to use IncaMail, the Customer must register once using his email and postal with Swiss Post at [www.incmail.com](http://www.incmail.com). An activation code will then be sent to the Customer's email address; the Customer must use this code to provide Swiss Post with verification of his data within 30 days. Swiss Post may waive its right to verification in the case of customers who have already been verified by other means (e.g. by means of SuisseID registration).

Online registration constitutes a legally binding offer by the Customer to conclude a contract for the use of IncaMail. A licence agreement shall not come into effect until the IncaMail account is activated by Swiss Post. Before this can happen the user must confirm his customer account to Swiss Post by completing the verification process.

Swiss Post may exceptionally authorise third-party service providers to accept registrations for IncaMail. Swiss Post shall ensure that the authorised third-party service providers do not have access to the Customer's IncaMail account. The list of the authorised third-party service providers is available at [www.swisspost.ch/incamail](http://www.swisspost.ch/incamail).

Swiss Post is free to refuse registration applications without stating reasons or to grant only limited access to IncaMail (e.g. enabling customers to only receive messages).

#### 3.3. Customer information

The Customer shall be obliged, in the case of registration and other actions performed when using the service (such as changes of address), to provide complete and accurate information and to keep all information correct and up to date.

#### 3.4. Access to IncaMail

##### 3.4.1. General

IncaMail can be accessed via [www.incmail.com](http://www.incmail.com), Swiss Post Customer Centre login (hereafter "Customer Centre login") at [www.swisspost.ch](http://www.swisspost.ch) or through Swiss Post's IncaMail app, in each case following successful authentication of the Customer.

##### 3.4.2. Authentication, access tools

The access tools specified by the Customer for IncaMail (user name and password) are needed for the purpose of authentication.

Swiss Post may accept other access tools (such as Customer Centre login, SuisseID, Canton of Geneva ID, etc.). The use of these tools shall be in accordance with the provisions of the relevant services offered and is not the subject of this Contract.

Namely the use of the Customer Centre login is not part of the present service. The use thereof is subject inter alia to registration of the Customer for the Customer Centre login and consequent acceptance of the General Terms and Conditions of the Customer Centre login (which can be consulted at [www.swisspost.ch/gtc](http://www.swisspost.ch/gtc)).

##### 3.4.3. Duties of care and liability of the Customer; indemnification

The Customer shall be responsible for the careful retention of his access tools. In particular, he must keep his user name and password separate from each other and ensure that both they and any devices that are used are not misused by third parties. If third parties have access to his customer account, the Customer must be liable for their actions in the same way that he is for his own actions.

If the Customer has reason to believe that an unauthorised third party knows or can access the access tools, he must change his password immediately or notify Swiss Post of this.

The Customer undertakes, when using IncaMail, not to breach any contractual or statutory obligations and in particular not to send messages with illegal content, viruses or spam.

The Customer shall be liable for loss or damage incurred by Swiss Post or third parties as a result of the content of the electronic messages transmitted by the Customer using IncaMail or as a result of the misuse or the non-contractual or illegal use of IncaMail.

If, as a result of culpable breaches by the Customer of the above obligations, third parties make claims directly against Swiss Post, the Customer undertakes to fully indemnify Swiss Post in particular for litigation costs. Swiss Post shall inform the Customer immediately if such claims are made.

### 3.5. Blocking of access

Swiss Post shall be authorised to block the Customer's access to IncaMail without prior notice and without compensation if the Customer contravenes these GTC, if he is in default with payment or if the overall security of the system is no longer guaranteed.

The Customer may have his access blocked at any time by the Swiss Post Customer Service department. The Customer shall not be liable for any payments to Swiss Post during the period when such access is blocked due to circumstances outside of the Customer's control.

## 4. Prices and payment methods

### 4.1. Prices

The prices and price models (Basic, Premium etc.) which are published on the website [www.swisspost.ch/incamail](http://www.swisspost.ch/incamail) shall apply to the use of IncaMail; prices are subject to change and shall be published in advance.

The costs for messages which are undeliverable for reasons not attributable to Swiss Post (e.g. typos in the e-mail address, unavailable receiver system) shall be borne by the Customer.

### 4.2. Payment methods

The Customer shall have a choice of the payment methods indicated to him during the payment process. The use of these payment methods offered by Swiss Post or third parties shall be subject to the provisions of the relevant services offered and is not the subject of this Contract.

The Customer acknowledges that, provided the Customer pays by credit card, Swiss Post shall be authorised to assign its claims to the corresponding credit card company. The provisions of the credit card agreement shall apply in this case.

### 4.3. Payment default

If a liability is due, the debtor shall be in default as soon as a formal reminder is issued, unless no formal reminder is required for the default to occur. The statutory provisions shall apply.

The Customer shall owe a flat fee of CHF 20 as compensation for expenses in each case for the second formal reminder and for any further action to collect the debt. The option of claiming additional costs (such as debt collection and legal costs) shall remain open. The Customer is permitted to demonstrate that Swiss Post did not suffer any damages or that the damage was considerably lower than the flat fee demanded.

### 4.4. Offset

The Customer may only offset claims by Swiss Post with counterclaims which have been established as legally binding or are undisputed by Swiss Post.

### 4.5. Assumption of costs by third parties

Use by customers authorised to use IncaMail pursuant to contracts which third parties (e.g. employers) have concluded with Swiss Post shall be billed to the third parties. The Customer shall be independently liable for loss or damage incurred by Swiss Post as a result of unlawful use of IncaMail.

## 5. Legal effect and admissibility of electronically transmitted messages

The information in section 5 is not binding or exhaustive. It is the exclusive responsibility of the Customer to undertake due diligence concerning the legal effect and admissibility of electronically transmitted messages in individual cases.

The legal effects of the electronic messages sent and received via IncaMail shall be governed in individual cases by the statutory provisions and judicial and institutional practice of the national jurisdiction responsible for adjudication, as well as by any private agreements which may exist.

The use of IncaMail, including, in particular, for the purpose of adhering to time limits, shall be exclusively for the benefit and at the risk of the Customer. In relation to adhering to time limits, it must be noted that delays may occur with electronic transmission.

### 5.1. Electronic transmission of legal communications with authorities in Switzerland

In Switzerland IncaMail is a recognized platform for secure delivery in proceedings to which the Swiss Civil Procedure Code (ZPO), the Debt Enforcement and Bankruptcy Act (SchKG), the Swiss Criminal Procedure Code (StPO) or the Federal Administrative Procedure Act (VwVG) apply. The details are set forth in the relevant statutes and implementing provisions.

The addresses of the participating authorities are published in the directory of the Federal Chancellery ([www.ch.ch/ejustice](http://www.ch.ch/ejustice)).

The Customer acknowledges that generally (a) **only IncaMail which is sent as "Registered" is permitted for proper service to authorities as defined in said statutes** and (b) it is

mandatory for communications to be sent with a qualified electronic signature pursuant to the Federal Act on Electronic Signatures. Additional preconditions for admissibility may be stipulated in the relevant laws and implementing provisions.

Products for creating qualified electronic signatures are not the subject of this offer of services. The Customer may obtain corresponding products e.g. at [www.swissid.ch/en](http://www.swissid.ch/en).

## 5.2. Foreign law proviso

The Customer acknowledges that the exchange of data with a (qualified) signature and/or encrypted data outside Switzerland is subject to foreign jurisdictions and that therefore different effects may result which may be more or less extensive than is the case under Swiss law. The exchange of encrypted messages is also subject to statutory restrictions in certain foreign states.

## 6. Availability of IncaMail

If the Customer sends communications via IncaMail which are subject to deadlines, he must take steps to ensure that the deadlines can still be adhered to even if there is a system interruption.

Minor maintenance work can be performed at any time without prior notice outside business hours. Business hours shall be deemed to be Monday to Friday from 8.00 am to 5.00 pm CET. The Customer shall be informed of upcoming maintenance work where it can be anticipated by Swiss Post that the down time caused by the maintenance work will last more than 3 hours.

## 7. Involvement of third parties

Swiss Post may engage third parties at any time to perform its services.

## 8. Warranties

Swiss Post warrants that any messages sent via IncaMail have the following characteristics: integrity, non-repudiability, confidentiality and authenticity. (More information at [www.swisspost.ch/customer-center/all-online-services/incamail/info](http://www.swisspost.ch/customer-center/all-online-services/incamail/info)).

Swiss Post warrants that messages sent via IncaMail within the contractual term can be decrypted for 24 months after the date on which they are sent. Swiss Post may, if it informs the Customer accordingly, allow decryption after said period or in exceptional cases shorten the period on grounds of security.

## 9. Liability of Swiss Post

Swiss Post shall not be liable for ordinary negligence. If the Customer incurs loss or damage, he shall be reimbursed no more than the price which would have to be paid to send the cancelled or damaged message, as specified in the price list.

Any liability to customers who use IncaMail without registration or who are registered to only receive messages shall be excluded.

Nothing in the IncaMail GTC will operate to exclude or restrict one party's liability (if any) to the other:  
for death or personal injury; or  
for its fraud or fraudulent misrepresentation; or  
for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

## 10. Third-party Disclosure

The Customer may register in the directory "eGov Directory Switzerland" and the "IncaMail Registered Directory" and can adjust the searchability settings.

Using the option "Connector Member Only", Customers with business solutions may check whether a particular e-mail address is registered with IncaMail before sending an IncaMail message. The Customer can also choose to block such searches for his e-mail address(es).

No information will be disclosed to third parties unless Swiss Post is required to do so by law or in response to a lawful request of a competent authority or a law enforcement agency.

## 11. Data protection and data security

Swiss Post observes the provisions of Swiss and European data protection legislation and the Postal Services Act when recording and processing personal data. It safeguards customer data with suitable technical and organizational measures and treats it confidentially. The following data protection information concerns the processing of personal data in connection with the use of IncaMail. Information on data processing on our websites is available in the data privacy policies of the websites in question ([www.incmail.com](http://www.incmail.com) at [www.incmail.com/datenschutzerklaerung](http://www.incmail.com/datenschutzerklaerung); [www.swisspost.ch/incamail](http://www.swisspost.ch/incamail) at [www.swisspost.ch/data-privacy-statement](http://www.swisspost.ch/data-privacy-statement)).

It collects, processes and stores personal data only to the extent necessary to provide these services, for invoicing, and to manage and maintain customer relationships, namely to ensure a high quality of service, or by virtue of consent granted by the Customer. Provided the Customer resides in the European Union, Art. 6 Para. 1 Section 1.b of the DSGVO shall form the legal basis for the processing, so long as the data is collected for contractual purposes, as shall Art. 6 Abs. 1 Section 1.a of the DSGVO if the data is processed by virtue of consent from the Customer.

The personal data shall be stored in Switzerland. There is an EU Commission adequacy ruling for the transfer of personal data in Switzerland.

Data that is marked as compulsory information is either legally or contractually required by law or necessary to conclude the agreement. Failure to provide the data requested may have legal or economic disadvantages for you. For example, it may result in

a rejection of the agreement or less favourable contractual conditions.

The personal data relevant for an agreement, especially data relevant for tax law, shall be deleted once the legal retention periods expire, but no later than ten years after the termination of the Agreement. In exceptional cases, the general retention period for personal data may be up to 30 years, provided this is required to enforce, exercise or defend legal rights.

The Customer acknowledges that the postal address verified by him may be provided to the recipient of a message as an automatic part of the message and on acknowledgments of receipt, and may also be provided to the sender of a message as an automatic part on acknowledgments of receipt.

Provided the Customer expressly agrees to Swiss Post collecting and processing personal data for advertising purposes, Swiss Post is entitled to contact the Customer via any channel for advertising purposes. This applies until the Customer exercises his right to expressly object to the processing of his data for the purposes of direct advertising. The consent also includes Swiss Post's right to collect and process personal data for market research (e.g. customer satisfaction surveys) and consultation purposes.

In the event that Swiss Post engages third parties to provide the services, it will be authorised to make available to them the data necessary for this purpose. These third parties are subject to the same obligations with regard to data protection as Swiss Post itself. The third party may – subject to differing legal regulations – not process the data for his own purposes and only on behalf and on the instructions of Swiss Post.

In certain cases, individual personal data (especially address data) may be disclosed to third parties to the extent that it is legally permissible or with the prior consent of the Customer and within the context of the purpose of processing such data having been previously communicated.

The Customer has the right to request information on or the correction, deletion or destruction and transferability of his data and complain to a regulatory authority. He may block the processing and disclosure of his data and revoke all consent.

If neither the correctness nor the incorrectness of the data can be determined, the Customer may request a note of objection to be added.

All legal provisions which oblige or entitle Swiss Post to process or disclose data remain reserved. If the deletion of the data is not permitted for legal reasons, the data will be blocked instead of deleted.

If you wish to have your data corrected, blocked or deleted, you need to apply and submit your passport or ID card.

To exercise his rights, the Customer should contact the following address: Post CH Ltd, Swiss Post Contact Centre, Wankdorfallee 4, 3030 Berne, Switzerland; IncaMail message or email to support@incamail.ch. As e-mails are not encrypted, they are exposed to the typical security risks for this means of communication. If the Customer processes third-party data using the Customer Center, the Online Services or Apps, he shall

remain exclusively responsible in respect of the persons concerned.

## 12. Effective date, term, termination

The Contract shall come into effect as described in section [3.1](#) sentence 2 and section [3.2](#) paragraph 2.

The contract for the use of IncaMail Basic shall be concluded for an indefinite period. It shall end by notice of termination subject to compliance with the following notice periods and deadlines. The Customer may terminate the contract at any time without complying with a notice period. Swiss Post shall comply with a notice period of 10 days to take effect at the end of the month.

The contract for the use of IncaMail Premium shall end without notice of termination upon expiry of the contractual term. IncaMail Basic shall continue to be available after the end of the contractual term.

All contractual relationships may be terminated at any time with immediate effect for important reasons.

Notice of termination must be given in writing (e.g. using IncaMail). Deletion of the IncaMail account by the Customer shall be deemed to be notice of termination.

## 13. Cancellation right

If the Customer is a consumer and a paid agreement has been concluded between him and Swiss Post regarding the use of IncaMail, he has the right to cancel subject to the following conditions:

### Cancellation policy

#### Cancellation right

You have the right to cancel this agreement within 14 days without giving reasons.

The cancellation period is 14 days from the day the agreement is concluded.

In order to exercise your cancellation right, you must inform us of your decision to cancel the agreement by sending a clear statement to

Post CH Ltd, Wankdorfallee 4, 3030 Berne, Switzerland.

Email: [incamail@swisspost.ch](mailto:incamail@swisspost.ch)

(e.g. a letter sent via post, a fax or an e-mail).

You can use the attached sample cancellation form, but it is not mandatory.

To observe the cancellation period, it is sufficient to send the message regarding the decision to exercise the cancellation right before the cancellation period expires.

#### Consequences of cancelling

If you cancel this agreement, we must reimburse you for all payments we have received from you, including the delivery costs (excluding additional charges resulting if you choose a different form of delivery to the cheapest standard delivery we offer), promptly and no later than 14 days from the day upon which we receive the message regarding your cancellation of

this agreement. For the reimbursement, we use the same payment method which you used for the original transaction, unless something else was expressly agreed with you; under no circumstances will you be charged due to this reimbursement. If you have requested for the services to begin during the cancellation period, you must pay us an appropriate amount that corresponds to the proportion of the services we have already provided up to the point at which you inform us of your decision to exercise your cancellation right compared to the total extent of the services envisaged in the agreement.

#### **Sample cancellation form**

(If you wish to cancel the agreement, please complete this form and return it to us.)

To Post CH Ltd, Wankdorffallee 4, 3030 Berne, Switzerland  
Email: [incamail@swisspost.ch](mailto:incamail@swisspost.ch)

I/we (\*) hereby cancel the agreement I/we (\*) concluded on the purchase of the following goods (\*)/the provision of the following services (\*)

Ordered on (\*) / Received on (\*)

Name of the consumer(s)

Address of the consumer(s)

Signature of the consumer(s) (only for messages on paper)

Date

(\*) Cross out as applicable.

#### **End of the cancellation policy**

### **14. Effect of termination, expiry of decryption option**

If the Customer terminates the Contract or if his conduct is reason for terminating the Contract, any remaining term shall lapse without compensation.

With the end of the agreement, the possibility to access the IncaMail account and the encryption option for the messages and receipts expires. It is therefore the Customer's responsibility to save messages and acknowledgments of receipt on an ongoing basis in unencrypted form on his own systems.

### **15. Amendment of IncaMail GTC**

Swiss Post reserves the right to amend the IncaMail GTC at any time. The Customer shall be notified of the relevant new version in good time before it comes into effect and the new version shall additionally be published on Swiss Post websites. The amended IncaMail GTC shall be deemed to be approved provided the Customer does not object in writing within one month (e.g. using IncaMail). An objection shall be deemed to be notice of termination of the Contract and shall automatically result in its dissolution. The Customer shall be notified of these rights and consequences in the amendment notice.

Post CH Ltd  
IncaMail  
Wankdorffallee 4  
Postfach  
3030 Berne

[incamail@swisspost.ch](mailto:incamail@swisspost.ch)  
[swisspost.ch/incamail](http://swisspost.ch/incamail)

### **16. Jurisdiction**

Berne (Switzerland) shall be deemed to have jurisdiction.

In the case of disputes arising from consumer contracts, the court at the place of residence or registered office of one of the parties shall have jurisdiction for claims brought by the Customer, and the court at the place of residence of the defendant shall have jurisdiction for claims brought by Swiss Post. Consumer contracts shall be deemed to be contracts which the Customer concludes for a purpose which cannot be attributed to the Customer's professional or commercial activities.

In the case of foreign-domiciled customers (who have their place of residence or registered office abroad), Berne (Switzerland) shall be deemed to be the place of enforcement and exclusive jurisdiction for all proceedings.

### **17. Applicable law**

The contractual relationship shall be governed exclusively by Swiss law; the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

### **18. Legally valid form of publication**

The IncaMail GTC, which are the sole legally binding terms and constitute an integral part of the contract, are published electronically and can be viewed at [www.incamail.com](http://www.incamail.com) and [www.swisspost.ch/gtc](http://www.swisspost.ch/gtc).

### **19. IncaMail customer service**

IncaMail customer service is available in accordance with the information at [www.swisspost.ch/incamail](http://www.swisspost.ch/incamail).

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