

## 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 AG (Wankdorffallee 4, 3030 Bern, 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. 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 with Swiss Post at [www.incmail.com](http://www.incmail.com), using his email and postal address. 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.post.ch/en](http://www.post.ch/en) 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.

In particular, the use of the customer centre login is not the subject of this offer of services. 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.post.ch/en/gtc](http://www.post.ch/en/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 through 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 email 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.

### **4.4 Offset**

The Customer may not offset claims by Swiss Post with any counterclaims.

### **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 this 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 recognised 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 the 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.swisspost.ch/suisseid](http://www.swisspost.ch/suisseid).

### 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

Swiss Post ensures a high level of availability of the IncaMail platform but cannot guarantee either an unlimited or a specific availability. 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 authentication (website <http://www.post.ch/en/business/a-z-of-subjects/incamail/product-information/security>).

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 email address is registered with IncaMail before sending an IncaMail message. The Customer can also choose to block such searches for his email 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

With regard to data processing, Swiss Post and the third parties engaged by it to provide services shall comply with Swiss data protection legislation and Swiss postal and telecommunications secrecy.

The Customer acknowledges that the home address entered 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.

The European Commission has confirmed that the level of data protection in Switzerland is adequate. The requirement for the lawful transmission of data from member states of the European Union to Switzerland, namely that there is an adequate level of data protection in the location where the data is received, has been met.

## 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 good cause.

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. 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.

Upon termination of the Contract, the options of accessing the IncaMail account and decrypting the messages and acknowledgments of receipt shall lapse. 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.

## 14. 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 website. The amended IncaMail GTC shall be deemed to be approved provided the Customer does not object within one month in writing (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.

## 15. Jurisdiction

Bern (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), Bern (Switzerland) shall be deemed to be the place of enforcement and exclusive jurisdiction for all proceedings.

## 16. Applicable law

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

## 17. Legally valid form of publication

Mail 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.post.ch/en/gtc](http://www.post.ch/en/gtc).

## 18. 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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