

General Terms and Conditions governing the Provision of Services

A General provisions

1. Subject matter and scope

1.1 These General Terms and Conditions (GTCs) shall govern the conclusion, content and implementation of contracts concerning the provision of services, especially in the fields of consultancy, planning, support and training.

2. Bid

2.1 The bid, including a demonstration, shall be made free of charge unless otherwise stipulated in the invitation to tender.

2.2 The bid shall be based on Swiss Post's invitation to tender. The service provider may submit additional alternatives if they offer better value for money, are more environmentally friendly or are otherwise in the interests of Swiss Post. If the bid differs from the invitation to tender, the service provider shall indicate this clearly.

2.3 The service provider shall show the value added tax separately in the bid.

2.4 The bid shall be binding for the period stated in the invitation to tender. If this is not stated, a period of three months from receipt of the bid shall apply.

3. Execution and information

3.1 The service provider undertakes to perform the contract diligently, loyally and competently and warrants that all the services provided will comply with the contractual conditions and specifications, are consistent with the current state of the art and satisfy all legal requirements. Substitution shall be excluded, unless expressly agreed otherwise.

3.2 Swiss Post shall notify the service provider in good time of all specifications required to perform the contract. Any other cooperation requirements of Swiss Post shall be set out in writing in the contract.

3.3 The service provider shall inform Swiss Post regularly of the progress of the work. In addition, it shall immediately report in writing any circumstances noted by it or apparent to it that could compromise or jeopardize the timely performance of the contract.

3.4 Swiss Post shall be entitled at any time to verify the progress of the performance of the contract and request information in this regard.

3.5 The service provider may not establish obligations for Swiss Post towards third parties.

4. Deployment of employees

4.1 The service provider shall deploy only carefully selected and well trained employees. It shall replace employees who do not have the necessary specialist expertise or who otherwise affect or jeopardize performance of the contract. In particular, it shall take Swiss Post's interest in maintaining continuity into account.

4.2 The service provider shall deploy only employees who have the necessary authorizations to provide the services.

4.3 The service provider shall inform Swiss Post in writing upon request of the names and job titles of the employees deployed to perform the contract.

4.4 The service provider shall not replace the employees deployed, who have been designated by the parties as key persons, without the written approval of Swiss Post. Swiss Post shall only withhold such approval for good cause.

4.5 The service provider undertakes to comply with Swiss Post's internal regulations, rules of conduct and security measures (in particular those relating to computer and data security).

4.6 The provisions of this Article 4 shall also apply to other personnel of the service provider deployed to perform the contract, such as self-employed staff.

5. Involvement of third parties

5.1 The service provider may not involve third parties to provide its services (e.g. suppliers, subcontractors) without the prior written approval of Swiss Post. It shall remain responsible for ensuring that the third parties involved provide the services in accordance with the provisions of the contract.

5.2 The service provider shall impose on any third parties involved the duties arising from Articles 4 (Deployment of employees), 6 (Social insurance schemes), 7 (Health and safety regulations, working conditions and equality of pay for women and men), 11 (Confidentiality clause) and 12 (Data protection and postal secrecy).

6. Social insurance schemes

6.1 If the service provider is a legal entity, it shall as an independent company attend to the necessary registration of itself and its employees with social insurance schemes. If he/she is not a legal entity, the person must provide evidence that he/she is registered with a compensation fund as a self-employed person.

6.2 Swiss Post shall have no obligation to provide social benefits (Old Age and Survivors' Insurance (AHV), disability insurance (IV), unemployment insurance (ALV), etc.) or other forms of compensation, especially in the event of accident, illness, disability or death.

7. Health and safety regulations, working conditions and equality of pay for women and men

- 7.1 Service providers with their registered office or a branch office in Switzerland shall comply with Swiss health and safety regulations, working conditions and the principle of equality of pay for women and men. Working conditions shall be those set forth in the collective and standard employment contracts or, in their absence, the customary working conditions that apply at the location and to the occupation in question. Service providers with their registered office outside Switzerland shall comply with the relevant regulations that apply at the place where the service is provided.
- 7.2 If the service provider seconded employees to Switzerland from abroad in order to provide the service, the provisions of the Swiss Employee Secondment Act of 8 October 1999 shall apply.

8. Place of performance

- 8.1 Swiss Post shall designate the place of performance. If this has not been determined, the place of supply shall be deemed to be the place of performance.

9. Fees and invoicing

- 9.1 The service provider shall provide the services
- at fixed prices; or
 - on a time and materials basis, subject to an upper limit for remuneration (cost ceiling).
- 9.2 The fee set under contract shall cover all services required for proper contractual performance. In particular, the fee shall cover the assignment of rights, the cost of all documentation and materials, expenses and public charges (e.g. value added tax).
- 9.3 The service provider shall issue invoices in accordance with a payment schedule or after the services have been provided. Value added tax shall be stated separately on the invoice and may not be charged retrospectively.
- 9.4 The contractually agreed payment conditions and payment periods shall apply.
- 9.5 Advance payments may only be made in exceptional circumstances and provided that it has been agreed that the service provider will furnish Swiss Post at its own cost with security in the form of a bank or insurance guarantee from a bank of primary standing.
- 9.6 Where Swiss Post and/or Swiss Post companies (direct and indirect equity interests of at least 50 percent) use the services of the service provider, the relative fees shall be cumulated for the purposes of calculating discounts.

10. Protective rights and usage rights

- 10.1 All protective rights (intellectual property rights and related rights as well as the prospective entitlement to such rights) pertaining to the results of work done in performance of the contract shall lie in full with Swiss Post. In particular, the service provider shall also assign to Swiss Post all of its moral rights under copyright. Where legal limits have been placed on such assignment, the service provider shall waive its right to exercise its moral rights and warrants that all persons involved in the work shall also waive this right.
- 10.2 Swiss Post and its companies (cf. Article 9.6) shall have a permanent temporarily, geographically and substantively unlimited right to use results comprising the content of the contract that did not arise as a result of performance of the contract (in particular, pre-existing results of work). This shall include all current and possible future forms of usage and the right to sell and process the results.
- 10.3 The service provider warrants that it and third parties involved by it in relation to the provision of services and the results of the work shall not infringe any protective rights. It warrants the lawful and legally valid assignment of protective rights and the grant of usage rights to Swiss Post as set out in these GTCs and the contract. Insofar as Swiss Post is itself responsible for the infringement of protective rights, no claims may be made against the service provider.
- 10.4 The service provider shall mount a defence against third-party claims arising from infringement of protective rights without delay at its own cost and risk. It shall notify Swiss Post immediately of such claims in writing and shall not object to any intervention by Swiss Post in any legal proceedings. If the third party makes the claims directly against Swiss Post, the service provider shall at Swiss Post's first request participate in the dispute to the extent permitted under the relevant procedural rules. The service provider undertakes to bear all costs (including damages payments) incurred by Swiss Post as a result of court action and/or any out of court settlement of a legal dispute. In the event of an out of court settlement, the service provider need only make the agreed payment to the third party if it has consented to the settlement beforehand.
- 10.5 If, as a result of claims made in exercise of protective rights, it is impossible for Swiss Post to use the contractually agreed services in full or in part, the service provider may at its choosing change its services so as to ensure that they do not infringe third-party rights while still maintaining the scope of services agreed under the contract, or at its own cost to procure a licence from the third party. If the service provider fails to exercise any of these options within a reasonable period, Swiss Post shall be entitled to withdraw from the contract with immediate effect. The service provider must under all circumstances hold Swiss Post harmless in all respects, irrespective of fault.

10.6 All documents made available by Swiss Post to the service provider, including those in electronic form, may only be used and copied for the purpose of providing the service. In this regard, Swiss Post warrants that the use of the documents by the service provider does not infringe the protective rights of third parties.

11. Confidentiality clause

11.1 Any facts and information that are not in the public domain or generally accessible shall be treated as confidential by both parties. In case of doubt, facts and information should be treated as confidential. Both parties undertake to take all financially reasonable and technically and organizationally feasible precautions in order to protect confidential facts and information effectively against access by and disclosure to unauthorized persons.

11.2 This duty of confidentiality shall also apply prior to conclusion of the contract and shall continue beyond termination of the contractual relationship.

11.3 No breach of the duty of confidentiality shall be deemed to have occurred in the event that confidential information has been disclosed by Swiss Post within its own group or to third parties involved. This shall apply to the service provider insofar as disclosure is necessary for the performance of the contract or provisions of the contract are disclosed by it within the group.

11.4 The duty of confidentiality does not apply if an obligation to disclose the confidential information exists due to an enforceable official or judicial order or mandatory law. The other party must be informed beforehand, insofar as this is legally permissible. No prior information is required in the case of announcements by Swiss Post within the scope of public procurement law.

11.5 The service provider may not publicize the fact that a business relationship exists or has existed with Swiss Post, and shall not cite Swiss Post as a reference without written consent.

11.6 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 11.

11.7 If either party breaches the aforementioned duties of confidentiality, it shall pay liquidated damages to the other party unless it can be proved that it was not at fault. This shall amount to 10 percent of the total fee for each instance of infringement, up to a maximum of CHF 50,000 per occurrence. Payment of liquidated damages shall not release the service provider from the requirement to comply with its duties of confidentiality. Liquidated damages shall be payable in addition to any damages due.

12. Data protection and postal secrecy

12.1 The parties undertake to comply with the provisions of Swiss data protection laws.

12.2 Personal data may be processed solely for the purpose of and to the extent required for the performance and execution of the contract. The service provider shall inform Swiss Post in advance of any disclosure of data.

12.3 Insofar as the service provider has access to the postal and payment transactions of Swiss Post's customers, it undertakes to comply with the requirement of postal secrecy as described in Article 321^{ter} of the Swiss Criminal Code.

12.4 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 12.

12.5 When required by Swiss Post, in particular when the European Data Protection Ordinance (EU-DSGVO) applies or when personal data is transferred outside Switzerland, the processing of personal data by the service provider is based on an additional data protection agreement.

13. Default

13.1 If the service provider fails to comply with firmly agreed deadlines (expiration date transactions), it shall automatically be deemed to be in default, and in other cases after being sent a reminder.

13.2 If the service provider is in default, it shall pay liquidated damages, unless it can be proved that it was not at fault. These shall amount to 0.5 percent for each day of delay, subject to a maximum total of 10 percent of the total fee. They shall also be payable if the services are accepted. Payment of liquidated damages shall not release the service provider from the requirement to comply with its contractual obligations. Liquidated damages shall be payable in addition to any damages due.

14. Liability

14.1 The parties shall bear liability for any loss, damage or injury caused to the other party, unless it can be proved that the relevant party was not at fault. Liability for personal injury shall be unlimited.

14.2 The parties shall bear liability for the conduct of the auxiliary persons and third parties whom they involve (e.g. subcontractors, suppliers) and substitutes in the same manner as for their own.

15. Assignment and pledging

15.1 The service provider shall neither assign nor pledge any amounts owed to it by Swiss Post without the written approval of Swiss Post.

16. Amendments to the contract, discrepancies and partial invalidity

16.1 Any amendments or supplements to this contract must be adopted in writing.

16.2 In the event of any discrepancies, the terms of the contract shall prevail over the GTCs and the terms of the GTCs shall prevail over those of the bid.

16.3 If individual terms of the contract are found to be invalid or unlawful, this shall not affect the validity of the contract. Should this occur, the term in question shall be replaced by a valid term that is commercially equivalent as far as possible.

17. Applicable law and place of jurisdiction

17.1 Swiss law shall be exclusively applicable.

17.2 The sole place of jurisdiction is Bern.

B Supplementary terms governing aspects of the service with the status of a contract for work and services

18. Variations to the services

18.1 The parties shall be entitled to submit a proposal to vary the services in writing at any time.

18.2 If Swiss Post wishes to make a variation, the service provider shall advise in writing within 10 days whether the variation is possible and the effects that it will have on the services to be provided and on the fee and any deadlines. It may not withhold consent to a variation proposed by Swiss Post if the variation is objectively possible and the overall nature of the services to be provided is preserved. Swiss Post shall decide within 10 days of receipt of the communication whether the variation is to be implemented.

18.3 If the service provider wishes to make a variation, Swiss Post shall be entitled to accept or reject such a proposal within 10 days of receipt of the communication.

18.4 Variations, especially variations of the scope of the services, the fee and the deadlines, must be set out in an addendum to the contract before work commences.

18.5 The service provider shall continue to work in accordance with the contract while the variations proposed are being considered, unless Swiss Post gives instructions to the contrary.

19. Acceptance

19.1 Acceptance shall be conditional on a test conducted by Swiss Post or, where contractually agreed, jointly by the parties. The service provider shall notify Swiss Post promptly once the agreed services have been completed.

19.2 Swiss Post shall test the services as soon as feasible according to the normal course of business and shall notify the service provider of any defects.

19.3 If a minor defect is found, acceptance shall in any case occur on conclusion of the test. If the defect is significant, Swiss Post may postpone acceptance and require the service provider to rectify the defect immediately.

19.4 Services may not be approved tacitly.

20. Warranty

20.1 The service provider warrants that its services have the agreed and warranted characteristics and such characteristics as Swiss Post is likely to require without a specific agreement. It shall provide a guarantee of one year from acceptance of the fully completed services required under contract. Swiss Post may report deficiencies at any time during the guarantee period. After expiry of the guarantee period, the service provider shall also be required to settle any claims arising under warranty rights set forth below, provided that the deficiencies were reported within the guarantee period.

20.2 If a defect is found, Swiss Post may require that it be repaired or that the fee be reduced. If the defect is significant, Swiss Post shall be entitled to withdraw from the contract, where:

- a) the services provided are unusable by Swiss Post;
- b) or Swiss Post knows from the outset that any attempt to repair the defect will be unsuccessful;
- c) or acceptance of the services provided is otherwise unreasonable for Swiss Post. This shall apply in particular in the event that repair would require an unreasonably long period of time.

20.3 If Swiss Post requires that the defect be repaired, the service provider shall rectify it within the reasonable period set by Swiss Post and shall bear all of the resulting costs. If the defect can only be rectified by a repeat provision of the service, the right to repair shall include the right to the repeat provision of the service.

20.4 If the subsequent test shows that the service provider has failed to complete the required repair, or has not done so successfully, Swiss Post may at its choosing:

- a) deduct the value of the defect from the fee;
- b) carry out the necessary measures itself or arrange for this to be done by a third party at the service provider's cost and risk;
- c) or withdraw from the contract.

20.5 If any loss, damage or injury occurs as the result of a defect, the service provider shall also be liable to pay compensation as described in Article 14.

21. Vienna Sales Convention

21.1 The provisions of the United Nations Convention on the International Sale of Goods of 11 April 1980 (Vienna Sales Convention) shall not apply.

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