

## General Terms and Conditions governing conveyor systems and plant systems

### 1. Subject matter and scope

1.1 These General Terms and Conditions (GTCs) shall govern the conclusion, content and execution of contracts concerning the procurement of conveyor systems and plant systems (mechanical and electrical part), for the production of individual plant components, spare parts and documentation and for other contractual works and services in relation to conveyor and sorting systems.

### 2. Bid

2.1 The bid, including any presentation, shall be made free of charge unless otherwise stipulated in writing 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 state the value added tax (VAT) 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 six months from receipt of the bid shall apply.

2.5 Unless agreed otherwise, the bid submitted by the service provider (including all enclosures) shall be retained on file by Swiss Post without remuneration. The service provider shall have no entitlement to the surrender of the bid submitted.

### 3. Definitions

3.1 Conveyor system: conveyor systems are fixed installations used for the transportation of goods.

3.2 Plant system: a plant system is comprised of plant or machinery and software that process the goods on an automated basis.

3.3 Standard software: software that is manufactured to cater for a majority of different customers without taking into account specified requirements of Swiss Post at code level.

3.4 Stand-alone software: software that is developed for a specific purpose of Swiss Post, including any modifications and further developments of any type of software that have been commissioned by Swiss Post.

### 4. Scope of services

4.1 The scope of the services to be provided by the service provider and the scheduling requirements shall be based on the individual agreement as set out in the contract.

4.2 The provision of the service may be divided into analysis, design, implementation and introduction phases and these phases may overlap in time. The contractually agreed obligations may also involve only one or some of these phases.

4.3 During the introduction phase, the service provider's duties shall also include in particular the installation of the hardware and/or software and the provision of support for the commissioning of the conveyor system or the plant system.

### 5. Duty to provide information

5.1 Unless specified otherwise in the contract, the service provider shall inform Swiss Post in writing, at least every 30 days, 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.

5.2 The service provider shall also inform Swiss Post of any developments that for technical or economic reasons lead it to believe that a change in the contractually agreed service would be appropriate.

### 6. Rights of control

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

6.2 The governing officers authorised by Swiss Post shall, provided that they are accompanied by representatives of the service provider, have free access in order to carry out checks to all premises on which the contractual object (or parts thereof) is produced, controlled or stored. If so requested, these governing officers shall be provided with any information sought in relation to technical calculations, the construction, structure, assembly, inspection and material of the contractual object and shall be allowed access to the documentation requested. This duty shall also apply *mutatis mutandis* for any sub-contractors and sub-suppliers of the service provider.

6.3 Any controls carried out by Swiss Post shall have no influence on the liability of the service provider for fulfilment of the service according to contract.

### 7. Documentation

7.1 Before the joint test referred to in Article 20, the service provider shall promptly provide Swiss Post electronically or in writing with a complete, reproducible set of documentation concerning all technical specifications and functions and the requirements applicable to servicing and maintenance in the agreed languages and in the agreed quantity.

7.2 Swiss Post may copy the documentation for usage in accordance with the contract.

7.3 If any defects need to be rectified, the service provider shall update the documentation insofar as necessary (until the end of the guarantee period).

## **8. Deployment of employees and involvement of third parties**

8.1 The service provider shall deploy only carefully selected and well trained employees, who shall hold the licences necessary in order to provide the services. 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. 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).

8.2 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. The service provider shall subject the third parties involved to the duties set forth in the present Article (8) in addition to the duties contained in Articles 9 (health and safety regulations, terms of employment and equal pay for men and women), 18 (confidentiality) and 19 (data protection and postal secrecy).

8.3 Swiss Post may require the service provider to involve a particular sub-contractor, provided that the latter fulfils the contractual, functional and performance prerequisites.

8.4 The service provider shall give notice of its suppliers and subcontractors if so requested.

## **9. Health and safety regulations, working conditions and equality of pay for women and men**

9.1 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.

## **10. Instruction and training**

10.1 The service provider shall provide initial instruction to the staff of Swiss Post. The scope of initial instruction shall be described in greater detail in the contract and is included in the fee.

10.2 The service provider warrants that it is able to offer training in relation to the optimal use of conveyor

systems and plant systems and of the related hardware and software.

## **11. Supply of spare parts**

11.1 The service provider warrants the supply of spare parts to Swiss Post for at least 5 years after acceptance of the conveyor system or the plant system.

## **12. Fee and invoicing**

12.1 The fee agreed under contract shall cover all services required for proper contractual performance. In particular, the fee shall cover the costs of the production, supply, assembly and commissioning of the entire contractual object, packaging, transport, insurance and unloading costs and tools and auxiliary materials along with public charges (e.g. value added tax, advance disposal charges, customs duties). With regard to the other matters, the Incoterms 2010: DDP shall apply. The prices offered shall also cover the costs of the disposal of packaging and auxiliary material by the service provider. In the event that installation, instruction and maintenance and assistance have been agreed to, the fee shall also cover the costs and expenses arising in this regard, although such cost items must be reported separately in the bid and in invoices.

12.2 The service provider shall issue invoices in accordance with a payment schedule or after the services have been provided and accepted. Value added tax shall be stated separately on the invoice and may not be charged retrospectively. It shall be for the service provider to establish whether it is liable to pay value added tax in Switzerland and, if necessary, to file the requisite registration in this regard.

12.3 The contractually agreed payment conditions and payment periods shall apply.

12.4 Advance payments may only be agreed upon in exceptional circumstances and provided that the service provider will furnish Swiss Post at its own cost with security in the form of a first class bank or insurance guarantee.

12.5 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.

## **13. Import regulations**

13.1 The service provider guarantees that any import regulations have been complied with and the necessary permits have been obtained.

## **14. Variations to the services**

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

14.2 If Swiss Post wishes to make a variation, the service provider shall advise in writing within 20 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 20 days of receipt of the communication whether the variation is to be implemented.

- 14.3 If the service provider wishes to make a variation, Swiss Post shall be entitled to accept or reject such a proposal within 20 days of receipt of the communication.
- 14.4 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.
- 14.5 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.

#### **15. Surrender and escrow of the source code**

- 15.1 The service provider undertakes to present the source code for stand-alone software promptly to Swiss Post for examination.
- 15.2 The service provider undertakes upon request by Swiss Post to conclude an escrow contract in relation to any standard software incorporated into the contractual object. The service provider shall surrender the source code to Swiss Post irrespective of any escrow contract in the event that Swiss Post holds the rights to make alterations or further developments in accordance with Article 16.3 and in the situations referred to in Article 22.4.

#### **16. Protective rights and usage rights**

- 16.1 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 (e.g. analyses, plans, stand-alone software including the relevant documentation, hardware development) 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 waive this right.
- 16.2 Swiss Post and its companies (cf. Article 12.5) 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.
- 16.3 The protective rights over standard software shall remain vested in the service provider or third parties. Swiss Post and its companies (cf. Article 12.5) shall receive a temporarily and geographically unlimited,

non-terminable and non-exclusive right of usage, which shall not be associated with any specific hardware.

Swiss Post and its companies may configure standard software for use under the terms of the contract and to render it interoperable with third-party software within the legal frame. They shall have the right to change and further develop the standard software, provided that this has been agreed to under contract. Rights to such changes and further developments shall be determined in accordance with Article 16.1.

Swiss Post and its companies may create multiple copies of the standard software at no additional fee for backup and archival purposes, in particular in order to operate redundant systems.

Swiss Post and its companies shall be entitled to arrange for the standard software to be operated by a third party on an outsourced basis, although exclusively for its own purposes.

- 16.4 Swiss Post may sell the results of work falling under Article 16.2 and standard software falling under Article 16.3 to the extent that it no longer has any need for them.

#### **17. Infringement of protective rights**

- 17.1 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.
- 17.2 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 replace the components concerned with others or 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.

**18. Confidentiality clause**

- 18.1 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.
- 18.2 This duty of confidentiality shall also apply prior to conclusion of the contract and shall continue beyond termination of the contractual relationship.
- 18.3 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.
- 18.4 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.
- 18.5 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 18.
- 18.6 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.

**19. Data protection and postal secrecy**

- 19.1 The parties undertake to comply with the provisions of Swiss data protection laws.
- 19.2 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.
- 19.3 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<sup>ter</sup> of the Swiss Criminal Code.
- 19.4 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 19.
- 19.5 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.

**20. Acceptance**

- 20.1 Acceptance shall be deemed to have been concluded upon the successful completion of the joint inspection, to which the service provider shall invite Swiss Post to attend in good time and in writing.
- 20.2 The system to be inspected must be identical to the system covered by the contract in terms of content and function and must have been fully tested by the service provider beforehand.
- 20.3 The principles of the acceptance procedure shall be stipulated under contract. Partial acceptance shall be possible by mutual agreement. However, this shall in all cases be subject to subsequent successful completion of acceptance of the overall system.
- 20.4 The service provider shall be required to cooperate and assist in the acceptance. Swiss Post shall make the necessary test data available for the acceptance process.
- 20.5 An acceptance report, to be signed by both parties, shall be issued for each acceptance inspection. The acceptance report must include at least the following details:
- the system inspected,
  - the date or period of acceptance,
  - persons involved in the acceptance,
  - acceptance criteria applied,
  - any defects found and whether they were classed as significant or insignificant,
  - acceptance result: unqualified acceptance, qualified acceptance, refusal of acceptance and
  - further steps, responsibilities and deadlines.
- 20.6 If significant defects are found, the acceptance shall be deemed to have failed. The service provider shall rectify these defects without delay and invite Swiss Post in good time to attend a new test. Swiss Post shall be entitled to require the service provider to provide security to cover the cost of rectifying any defects.
- 20.7 If acceptance has failed and the contractually agreed acceptance deadline has been breached as a result, the service provider shall automatically be deemed to be in default.
- 20.8 If defects are found, Swiss Post shall be entitled to withhold payment. The right to withhold payment shall lapse as soon as the service provider has successfully rectified the defect.
- 20.9 The use in production of the subject matter of the contract or parts thereof shall not constitute acceptance until such time as a inspection as described in this Article has been carried out.

**21. Default**

- 21.1 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.

- 21.2 If the service provider is in default and as a result the agreed deadline for the start of operations is not respected, it shall pay liquidated damages, unless it can be proved that it was not at fault. These shall amount to 1 percent for each week of delay or part thereof, subject to a maximum total of 10 percent of the total fee. Liquidated damages shall also be payable if the services are accepted unconditionally. 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.
- 21.3 Swiss Post may withdraw from the Contract in the event that the deadline agreed to for the start of operations is breached by more than 10 weeks.

## **22. Warranty**

- 22.1 The service provider warrants that its services have the agreed and warranted characteristics suitable for use for the intended purpose and comply with the relevant legal requirements.
- 22.2 The guarantee period shall extend to 24 months, irrespective of daily operational usage, calculated from the completion of acceptance of the contractual object by Swiss Post. If partial acceptances have been agreed to, the guarantee period shall not commence until overall acceptance as described in Article 20. Swiss Post may object to defects at any time during the guarantee period. Following expiry of the guarantee period, the service provider shall remain obliged to honour any claims under the guarantee rights of Swiss Post specified below, upon condition that the defects were objected to during the guarantee period. If and insofar as longer guarantee periods have been granted to the service provider by sub-contractors or sub-suppliers in relation to individual services or equipment, these shall also apply in favour of Swiss Post.
- 22.3 The service provider guarantees that it holds all the rights required to provide its services in accordance with the contract. In particular, it is authorized to grant Swiss Post the right to use the standard software to the extent laid down in the contract.
- 22.4 In the event that the conveyor system or plant system is defective (mechanical or electrical part), Swiss Post may in the first instance request only that it be repaired free of charge. If the defect can only be rectified by (partial) remanufacture, the right to repair shall extend to the right to remanufacture. Where substantial defects are found, Swiss Post shall be entitled to withdraw from the contract.
- 22.5 If Swiss Post demands remanufacture or repair, the service provider shall rectify the defects within the stated period and bear the resulting costs. If the service provider has failed to complete the required remanufacture/replacement or repair, or has not done so successfully, Swiss Post may at its choosing deduct the value of the defect from the fee, carry out the

necessary measures itself, arrange for this to be done by a third party at the service provider's cost and risk or withdraw from the contract. The service provider shall allow Swiss Post or third parties appointed by it access to the source code, where this is necessary for the repair. If the service provider fails to hand over the required source code within a period of 30 days of a request to do so, Swiss Post shall be entitled to open the source code itself by decompiling it or to arrange for this to be done by third parties.

- 22.6 If any loss, damage or injury occurs as the result of a defect, the service provider shall also be liable for this loss, damage or injury as described in Article 23.
- 22.7 The time limits for the parts repaired shall start to run again after the rectification of any defects. Intentionally concealed defects may be invoked within ten years of acceptance.

## **23. Liability**

- 23.1 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.
- 23.2 The parties shall bear liability for the conduct of the auxiliary persons and third parties whom they involve (e.g. subcontractors, suppliers) in the same manner as for their own.

## **24. Place of performance and transfer of benefits and risks**

- 24.1 Swiss Post shall designate the place of performance. If this has not been determined, the location of installation shall be deemed to be the place of performance.
- 24.2 The benefits and risks shall be transferred to Swiss Post upon completion of acceptance.

## **25. Assignment and pledging**

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

## **26. Amendments to the contract, discrepancies and partial invalidity**

- 26.1 Any amendments or supplements to this contract must be adopted in writing.
- 26.2 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.
- 26.3 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.

**27. Applicable law and place of jurisdiction**

27.1 Swiss law shall be exclusively applicable. The provisions of the United Nations Convention on the International Sale of Goods of 11 April 1980 (Vienna Sales Convention) shall not apply.

27.2 Unless required otherwise by mandatory law, the place of jurisdiction is Bern.

Post CH Ltd, September 2018