

Information Technology

General Terms and Conditions governing the Cession of Right to Use and Usage of Hardware or Hardware/ Software

1. Subject matter and scope

1.1 These General Terms and Conditions (GTCs) shall govern the conclusion, content and implementation of contracts concerning the cession of right to use and use of hardware or of hardware with installed software (hardware/ software).

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 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. Nature and scope of use and usage

3.1 The hardware or hardware/software forming the subject matter of this contract is defined in the contract. Use and usage are not subject to geographical limits.

3.2 Swiss Post may configure the software for use under the terms of the contract and make it legally interoperable with third-party software.

3.3 During any failure of the hardware, Swiss Post shall be entitled to use the software on replacement hardware at no additional charge.

3.4 Swiss Post may make a number of copies of software at no additional charge for back-up and archival purposes, in particular with a view to operating redundant systems.

3.5 Swiss Post shall be entitled to arrange for the hardware or hardware/software to be operated – solely for its own purposes – on the premises of a third party as part of an outsourcing operation.

3.6 The hardware or hardware/software may be used as described in Articles 3.1 - 3.5 by Swiss Post companies (direct and indirect equity interests of at least 50 percent).

4. Delivery, installation and testing

4.1 Hardware or hardware/software shall be delivered against signature of the delivery slip at the place of performance.

4.2 The service provider shall install the hardware or hardware/software at Swiss Post's request.

4.3 Swiss Post shall test the hardware or hardware/software ceded for use and usage within 30 days of delivery or installation and report to the service provider any defects found.

5. Documentation

5.1 The service provider shall provide Swiss Post electronically or in writing, together with the hardware or hardware/software, a complete, reproducible set of documentation (installation and user manual) in the agreed languages and in the agreed quantity.

5.2 Swiss Post may copy the documentation for use under the terms of the contract.

6. Instruction

6.1 The service provider shall at Swiss Post's request provide a level of instruction to be agreed on the basis of capacity and the number of persons involved.

7. Deployment of employees and involvement of third parties

7.1 The service provider shall deploy only carefully selected and well trained employees who hold the necessary authorizations to provide the services. 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).

7.2 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 impose on any third parties involved the duties set out in this Article 7 and the duties arising from Articles 8 (Health and safety regulations, working conditions and equality of pay for women and men), 13 (Confidentiality clause) and 14 (Data protection and postal secrecy).

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

8.1 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.

9. Place of performance

9.1 Swiss Post shall designate the place of performance. If this has not been determined, the place of installation shall be deemed to be the place of performance.

10. Fees and invoicing

10.1 The fee set under contract shall cover all services required for proper contractual performance. In particular, the fee shall cover the cost of ceding the hardware or hardware/software for use and usage, documentation costs, packing, transport, insurance and unloading costs and public charges (e.g. value added tax). If it has been agreed that installation, instruction and maintenance will be provided, the fee shall also cover the resulting charges and expenses. These cost items shall be stated separately in bids and invoices.

10.2 The service provider shall issue invoices in accordance with a payment schedule or after providing the service. Value added tax shall be stated separately on the invoice and may not be charged retrospectively.

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

10.4 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.

10.5 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.

11. Import regulations

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

12. Infringement of protective rights

12.1 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.

12.2 If, as a result of claims made in exercise of protective rights, it is impossible for Swiss Post to use or enjoy the hardware or the hardware/software in full or in part, the service provider may at its choosing replace the hardware or the hardware/software with a different type, to 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 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 at all events hold Swiss Post harmless under all circumstances, irrespective of fault.

13. Confidentiality clause

13.1 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.

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

13.3 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.

13.4 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.

13.5 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 13.

13.6 If either party breaches the aforementioned duty of confidentiality, it shall pay liquidated damages as specified in Article 16 to the other party unless it can be proved that it was not at fault.

14. Data protection and postal secrecy

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

14.2 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.

14.3 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.

14.4 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 14.

14.5 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.

15. Default

15.1 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.

15.2 If the service provider is in default, it shall pay liquidated damages as specified in Article 16 unless it can be proved that it was not at fault.

16. Liquidated damages

16.1 Duty of confidentiality

Liquidated damages shall amount to 10 percent of the annual fee for each instance of infringement, up to a maximum of CHF 50,000 per occurrence.

16.2 Failure to meet deadlines

Liquidated damages shall amount to 0.05 percent for each day of delay, subject to a maximum total of 10 percent of the annual fee per occurrence, for failure to comply with the deadlines specified in Article 15.

16.3 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.

16.4 The annual fee shall be deemed to be the fixed price agreed for the year in question. Where no fixed price

has been agreed, the calculation of liquidated damages shall be based on the fee paid for the previous year; in the first year of the contractual relationship this will be the fee payable for the current year.

17. Warranty

17.1 The service provider warrants that the hardware or hardware/software ceded for use and usage will be supplied with all of the agreed and warranted characteristics and that it will be suitable for use for the intended purpose and comply with the relevant legal requirements. The service provider shall maintain the hardware or hardware/software in this condition throughout the term of the contract.

17.2 The service provider guarantees that it holds all of 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 hardware or hardware/software to the extent laid down in the contract.

17.3 The service provider undertakes to rectify within a reasonable time and at its own cost any defects which may have emerged. If necessary, it shall provide Swiss Post with a suitable replacement for the hardware or hardware/software while any defect is being rectified.

17.4 If the service provider fails to rectify the defects within a reasonable time and/or to provide Swiss Post with the necessary replacement, 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 expense and risk or withdraw from the contract.

17.5 If 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 18.

18. Liability

18.1 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.

18.2 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.

19. Maintenance

19.1 The service provider agrees to maintain the hardware and software beyond the warranty period. Swiss Post's General Terms and Conditions governing the Maintenance of Hardware and software (IT GTC/M) shall apply.

20. Inception and duration

20.1 This contract shall take effect upon signature by both parties, unless a different date of inception has been stipulated in the contract.

- 20.2 If a contract has been entered into for an indefinite period, unless agreed otherwise, it may be terminated by the service provider at the end of a calendar month by giving 3 months' notice in writing.
- 20.3 The contract may be terminated at any time without notice for good cause. "Good cause" shall include the following in particular:
- the occurrence of an event or state of affairs that renders the continuation of the contractual arrangement unreasonable for the terminating party, such as a serious or repeated breach of contractual duties;
 - an official publication of the opening of bankruptcy proceedings or of a composition moratorium in relation to a party.

21. Consequences of termination

- 21.1 Upon termination of the contractual relationship, the service provider shall collect the hardware or hardware/software ceded for use and usage. Any arrangements applicable to their return must be stated in the contract.
- 21.2 A joint test of the hardware or hardware/software shall be carried out at the time of return. If, exceptionally, no test is carried out, the service provider must notify Swiss Post in writing of any defects for which Swiss Post is demonstrably at fault. If no defects are reported within 10 days of return, the hardware or hardware/software shall be deemed to have been returned in proper condition.

22. Assignment and pledging

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

23. Amendments to the contract, discrepancies and partial invalidity

- 23.1 Any amendments or supplements to this contract must be adopted in writing.
- 23.2 In the event of any discrepancies, the terms of the contract shall prevail over the GTCs the GTCs shall prevail over the bid.
- 23.3 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.

24. Applicable law and place of jurisdiction

- 24.1 Swiss law shall be exclusively applicable.
- 24.2 The sole place of jurisdiction is Bern.