

## Information Technology

# General Terms and Conditions governing the Analysis, Design, Production and Introduction of Overall IT Systems and Stand-Alone 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 analysis, design, production and introduction of overall IT systems and stand-alone 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 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 Where standard software and/or open source software forms part of the service offered, this must be expressly stated in the bid.

2.5 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. Definitions

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

3.2 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.

3.3 Overall IT system: IT solution consisting in a number of structurally and/or functionally connected hardware and software components. In the case of individual components, these may be pre-existing components or components developed or modified for 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, production and introduction phases and these phases may overlap in time. The contractually agreed services may also involve only one 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 overall IT 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 fulfilment of the contract. Swiss Post shall be entitled at any time to verify the progress of the performance of the contract and request information in this regard.

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. Documentation

6.1 Before the joint test referred to in Article 13, the service provider shall provide Swiss Post electronically or in writing with a complete, reproducible set of documentation (installation and user manual) in the agreed languages and in the agreed quantity. Where maintenance work is to be carried out by Swiss Post, the service provider shall also supply maintenance documentation.

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

### 7. Instruction

7.1 Unless provided otherwise in the contract, the service provider shall instruct Swiss Post employees to use the overall system and the stand-alone software for their intended purpose.

### 8. Supplies of spare parts

8.1 The service provider shall guarantee Swiss Post a supply of spare parts for the hardware for at least 5 years after the purchase of the overall IT system.

## **9. Issuing of and lodging of source codes**

- 9.1 The service provider undertakes to hand over the source code for the stand-alone software to Swiss Post in good time for testing.
- 9.2 The service provider undertakes, at Swiss Post's request, to conclude an escrow agreement in respect of the standard software integrated into the overall IT system. Insofar as Swiss Post is entitled to alter or further develop the software in accordance with Article 18.3 and in the situations referred to in Article 23.4, the service provider must hand over the source code to Swiss Post irrespective of any escrow agreement.

## **10. Deployment of employees**

- 10.1 The service provider shall deploy only carefully selected and well trained employees. It shall replace employees who do not have the necessary specialist knowledge or who otherwise affect or jeopardize performance of the contract. In particular, it shall take account of Swiss Post's interest in maintaining continuity.
- 10.2 The service provider shall deploy only employees who have the necessary authorizations to provide the services.
- 10.3 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.
- 10.4 The service provider shall only replace the employees deployed who have been designated by the parties as key persons with the written approval of Swiss Post. Swiss Post shall only withhold such approval for good cause.
- 10.5 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).
- 10.6 The provisions of this Article 10 shall also apply to other personnel of the service provider deployed to perform the contract, such as self-employed staff.

## **11. Involvement of third parties**

- 11.1 The service provider may not involve third parties to provide its services (e.g. subcontractors, suppliers) 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.
- 11.2 The service provider shall impose on any third parties involved the duties set out in this Article 11 and the duties arising from Articles 12 (Health and safety regulations, working conditions and equality of pay for women and men), 20 (Confidentiality clause) and 21 (Data protection and postal secrecy).

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

- 12.1 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 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.

## **13. Acceptance**

- 13.1 Acceptance shall not be deemed to have occurred until successful completion of the joint test, to which the service provider shall invite Swiss Post in good time.
- 13.2 The system to be tested 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.
- 13.3 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.
- 13.4 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.
- 13.5 An acceptance report, to be signed by both parties, shall be issued for each acceptance test. The acceptance report must include at least the following details:
  - the system tested,
  - 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.
- 13.6 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.
- 13.7 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.

13.8 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.

13.9 The use in production of the subject matter of the contract or parts thereof shall not constitute acceptance until such time as a test as described in this Article 13 has been carried out.

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

14.1 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.

14.2 Benefits and risks shall be transferred to Swiss Post upon successful completion of acceptance.

#### **15. Fees and invoicing**

15.1 The service provider shall perform the services on a time and materials basis, subject to an upper limit for remuneration (cost ceiling).

15.2 The fee set under contract shall cover all services required for proper contractual performance. In particular, the fee shall cover the assignment/granting of all rights, installation, documentation, escrow and instruction costs, expenses, packing, transport, insurance and unloading costs and public charges (e.g. value added tax, waste disposal charges, customs duties).

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

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

15.5 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.

15.6 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.

#### **16. Service and maintenance**

16.1 The service provider shall, subject to agreement, carry out service and maintenance of the overall IT system or parts thereof and/or maintenance of stand-alone software. Swiss Post's General Terms and Conditions governing the Maintenance of Hardware and software (IT GTC/M) shall then apply.

16.2 Irrespective of any duty to conduct servicing and provide maintenance, the service provider shall inform Swiss Post of any defects and the options for rectifying them and any further developments of hardware and software.

#### **17. Import regulations**

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

#### **18. Protective rights and usage rights**

18.1 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 also waive this right.

18.2 Swiss Post and its companies (cf. Article 15.6) shall have a permanent temporally, 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.

18.3 The protective rights over standard software shall remain vested in the service provider or third parties. Swiss Post and its companies (cf. Article 15.6) shall acquire a permanent temporally and geographically unlimited non-exclusive right of use, which shall not relate to specific hardware.

18.4 Swiss Post and its companies may configure standard software for use under the terms of the contract and to render it legally interoperable with third-party software. They shall have the right to change and further develop the standard software, provided that this has been agreed under contract. Rights to such changes and further developments shall be determined in accordance with Article 18.1.

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

18.6 Swiss Post and its companies shall be entitled to arrange for standard software to be operated – solely for its own purposes – on the premises of a third party as part of an outsourcing operation.

18.7 Swiss Post shall be entitled to resell the results as referred to in Article 18.2 and standard software as referred to in Article 18.3, to the extent that it ceases to use them.

## 19. Infringement of protective rights

19.1 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.

19.2 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 a different type, 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 under all circumstances hold Swiss Post harmless in all respects, irrespective of fault.

## 20. Confidentiality clause

20.1 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.

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

20.3 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.

20.4 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.

20.5 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.

20.6 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 20.

20.7 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.

## 21. Data protection and postal secrecy

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

21.2 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.

21.3 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.

21.4 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 21.

21.5 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.

## 22. Default

22.1 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.

22.2 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.

### **23. Warranty**

- 23.1 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. It shall provide a guarantee for at least 24 months from acceptance of the overall IT system or installation of stand-alone software. If partial acceptances have been agreed to, the guarantee period shall not commence until overall acceptance as described in Article 13.3. 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.
- 23.2 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.
- 23.3 Where a defect is found, Swiss Post may choose either to deduct the value of the defect from the fee or to demand the supply of fault-free hardware and software or for such hardware or software to be repaired. Where substantial defects are found, Swiss Post shall be entitled to withdraw from the contract.
- 23.4 If Swiss Post demands a replacement 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 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.
- 23.5 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 24.

### **24. Liability**

- 24.1 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.
- 24.2 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.

### **25. Variations**

- 25.1 The parties shall be entitled to submit a proposal to vary the services in writing at any time.
- 25.2 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.
- 25.3 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.
- 25.4 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.
- 25.5 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.

### **26. Assignment and pledging**

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

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

- 27.1 Any amendments or supplements to this contract must be adopted in writing.
- 27.2 In the event of any discrepancies, the terms of the contract shall prevail over the GTCs and the GTCs shall prevail over the bid.
- 27.3 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.

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

28.1 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.

28.2 The sole place of jurisdiction is Bern.

Die Schweizerische Post AG, June 2021