

Information Technology

General Terms and Conditions governing the Procurement of Standard 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 purchase and use of standard 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 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 which have been commissioned by Swiss Post.

4. Nature and scope of use

4.1 Unless agreed otherwise by the parties in the contract, the right to use the standard software shall be permanent, non-exclusive and temporally and geographically unlimited. It shall not be associated with any particular hardware.

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

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

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

4.5 The standard software may be used as described in Articles 4.1 - 4.4 by Swiss Post companies (direct and indirect equity interests of at least 50 percent).

4.6 Swiss Post shall be entitled to resell the standard software, to the extent that it ceases to use it.

5. Documentation

5.1 The service provider shall provide Swiss Post electronically or in writing, together with the standard software, with 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. Installation

6.1 The service provider shall install the standard software on the hardware designated by Swiss Post.

7. Instruction

7.1 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.

8. Deployment of employees and involvement of third parties

8.1 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).

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 impose on any third parties involved the duties set out in this Article 8 and the duties arising from Articles 9 (Health and safety regulations, working conditions and equality of pay for women and men), 15 (Confidentiality clause) and 16 (Data protection and postal secrecy).

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 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. Place of performance and transfer of benefits and risks

10.1 Swiss Post shall designate the place of performance. If this has not been determined, the location where the software has been installed shall be deemed to be the place of performance.

10.2 Benefits and risks shall be transferred to Swiss Post upon delivery and/or installation of the software.

11. Fees and invoicing

11.1 The contractually agreed fee shall cover all services required for contractual performance. In particular, the fee shall cover the granting of all usage rights, documentation and shipping costs and public charges (e.g. value added tax, customs duties). Where it has been agreed that installation and instruction will be provided, the fee shall also cover the resulting charges and expenses. These cost items shall be stated separately in bids and invoices. When the fee is determined, a distinction shall be made between development, test and production systems.

11.2 The fee shall be invoiced after delivery of the standard software and/or its installation by the service provider. Value added tax shall be stated separately on the invoice and may not be charged retrospectively.

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

11.4 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.

11.5 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.

12. Maintenance

12.1 The service provider shall, subject to agreement, carry out maintenance of the standard software. Swiss Post's General Terms and Conditions governing the Maintenance of Hardware and Software (IT GTC/M) shall apply.

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

13. Import regulations

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

14. Protective rights

14.1 The protective rights over the standard software shall remain with the service provider or with third parties.

14.2 All protective rights (intellectual property rights and related rights as well as the prospective entitlement to such rights) acquired as described in Article 4.2 shall lie in full with Swiss Post.

14.3 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.

14.4 If, as a result of claims made in exercise of protective rights, it is impossible for Swiss Post to use the contractually agreed service in full or in part, the service provider may at its choosing replace the standard software 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.

15. Confidentiality clause

- 15.1 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.
- 15.2 This duty of confidentiality shall also apply prior to conclusion of the contract and shall continue beyond termination of the contractual relationship.
- 15.3 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.
- 15.4 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.
- 15.5 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.
- 15.6 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 15.
- 15.7 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.

16. Data protection and postal secrecy

- 16.1 The parties undertake to comply with the provisions of Swiss data protection laws.
- 16.2 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.
- 16.3 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.

- 16.4 The parties shall subject their employees and other auxiliary persons to the obligations arising from this Article 16.
- 16.5 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.

17. Default

- 17.1 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.
- 17.2 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 per 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.

18. Warranty

- 18.1 The service provider warrants that the standard software will be delivered with all 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 handover or installation of the standard software. 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.
- 18.2 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.
- 18.3 Where a defect is found, Swiss Post may choose either to deduct the value of the defect from the fee or, where provided in the contract, for the standard software to be repaired. Where substantial defects are found, Swiss Post shall be entitled to withdraw from the contract. Where the defect concerns the data media or documentation supplied by the service provider, Swiss Post shall also be able to claim an error-free replacement.
- 18.4 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, undertake 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 arrange for this to be done by third parties.

18.5 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 19.

19. Liability

19.1 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.

19.2 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.

20. Assignment and pledging

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

21. Amendments to the contract, discrepancies and partial invalidity

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

21.2 In the event of any discrepancies, the terms of the contract shall prevail over the GTCs the GTCs shall prevail over the bid.

21.3 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.

22. Applicable law and place of jurisdiction

22.1 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.

22.2 The sole place of jurisdiction is Bern.