



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 supplier 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 supplier shall point this out explicitly.

2.3 The supplier 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. Swiss Post shall 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 will only deploy carefully selected and well-trained employees who possess the required authorization to provide the services. The service provider undertakes to comply with Swiss Post's internal regulations, rules of conduct and other regulatory requirements, in particular those relating to the information security, data protection and data security of Swiss Post.

7.2 The service provider may involve third parties to provide its services (e.g. suppliers, subcontractors) after informing Swiss Post in writing in advance, provided Swiss Post does not object to their involvement. The service provider will remain responsible for the contractual performance of the services provided by the engaged third parties. 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 (Occupational health and safety regulations, working conditions and the principle of equal pay for men and women), 13 (Confidentiality) and 14 (Data protection and postal secrecy).



8. Occupational health and safety regulations, working conditions and the principle of equal pay for men and women

8.1 If the service provider has its head offices or branch offices in Switzerland, it will comply with the provisions on health and safety and working conditions that apply in Switzerland as well as with the principle of equal pay for men and women. 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. If the service provider has its head office abroad, it will comply with the applicable provisions at the place where the service is performed.

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. Remuneration and invoicing

10.1 The contractually agreed remuneration shall cover all services required to fulfil the contract properly. 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 deadlines 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 the costs (including damages payments) incurred by Swiss Post as a result of court action and/or any out-of-court settlement of the legal dispute. In the event of an out-of-court settlement, the service provider need only make the agreed payment to the third party provided it has approved the payment 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 under all circumstances hold Swiss Post harmless in all respects.

13. Confidentiality

13.1 The parties undertake to treat all facts and information that are neither evident nor publicly accessible as strictly confidential. In case of doubt, the facts and information shall be treated confidentially. The parties undertake to implement all economically reasonable and technically and organizationally feasible measures to ensure that confidential facts and information are effectively protected against unauthorized access and disclosure.

13.2 The duty to maintain confidentiality shall also be adhered to prior to concluding the agreement, and will continue to apply after termination of the contractual relationship.



- 13.3 In the event that Swiss Post discloses confidential information within its own Group or to third parties involved, no breach of the duty of confidentiality shall be deemed to have occurred. 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 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.
- 13.5 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.
- 13.6 The parties shall subject their employees and other auxiliary staff to the obligations arising from this Article 13.
- 13.7 If either party breaches the aforementioned duty of confidentiality, it shall pay a contractual penalty 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 General

Data protection and information security precautions are based on the relevant data protection legislation (specifically, the Swiss Federal Act on Data Protection, the Data Protection Ordinance and, where applicable, the GDPR). The parties undertake to comply with the applicable provisions in each case. Personal data may be processed solely for the purpose of, and to the extent required for, the performance and execution of the contract. Data processing must be proportionate, based on good faith and transparent. The service provider shall inform Swiss Post in advance of any disclosure of data.

In the event of any contradictions, any potential DPA shall take precedence over the GTC and the underlying contract, unless the DPA specifies otherwise.

14.2 Technical and organizational measures

Measures must be in place to protect personal data from unauthorized processing, unintentional deletion, loss, destruction, alteration or damage by means of appropriate technical and organizational measures. This includes both technical, i.e. digital, measures, as well as the guarantee that the premises where the data is processed are protected against access by unauthorized parties.

14.3 Rights of data subjects

The service provider undertakes to assist Swiss Post on request and as far as feasible with meeting the entitlements of data subjects under data protection law, in particular in cases of entitlements to disclosure, rectification and deletion of data, and to inform Swiss Post if a data subject contacts the service provider directly regarding data held by Swiss Post.

14.4 Data protection impact assessment

In cases that present high risk to the rights of the data subject, in particular in cases specified as such under the law, the service provider must carry out a data protection impact assessment and notify Swiss Post of the assessment and its results. The service provider shall assist Swiss Post where necessary and feasible for carrying out the assessment, in drawing up a data protection impact assessment for Swiss Post and in the drafting of other relevant documentation.

14.5 Disclosure of data abroad

In the event that data is disclosed in a third country, the service provider must take all necessary measures. In particular, in the case of insecure third countries, the service provider shall conclude all necessary contracts, specifically standard contractual clauses, and present all measures taken on request by Swiss Post.

14.6 Postal secrecy

If the service provider gains knowledge of matters concerning Swiss Post and the payment transactions of Swiss Post's customers, it undertakes to comply with postal secrecy in accordance with article 321ter of the Swiss Criminal Code.

14.7 Imposition of obligations

The parties shall impose the obligations arising from this Article 14 on their employees and any additional auxiliary staff.

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 enters into default, it will be liable to pay a contractual penalty in accordance with Article 16 unless it can prove that it is not at fault.



16. Contractual penalties

- 16.1 Duty of confidentiality
The contractual penalty will amount to 10% of the annual remuneration for each violation, but not more than CHF 50,000 per case.
- 16.2 Failure to meet deadlines
The contractual penalty shall amount to 0.5 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 the contractual penalty does not provide exemption from compliance with the contractual obligations. The contractual penalty will be paid in addition to any compensation claims.
- 16.4 Annual remuneration is the agreed fixed price for the year concerned. Where no fixed price has been agreed, the calculation of the contractual penalty 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 be liable for any damages they cause to the other party if they fail to prove that they are not at fault. Liability for personal injury is unlimited.
- 18.2 The parties shall be liable for the conduct of their agents and any third parties engaged (e.g. subcontractors, suppliers) as well as for their own staff.

19. Servicing and 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. Commencement and duration

- 20.1 This contract takes effect upon signature by both parties, unless a different inception date has been stipulated in the contract. 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 three months' notice in writing.
- 20.2 The right to termination without notice on serious grounds is always reserved. Serious grounds include in particular:
- The occurrence of events or circumstances which make the continuation of the contractual relationship unacceptable to the terminating party, in particular the serious or repeated violation of contractual obligations
 - The official publication of initiated bankruptcy proceedings or moratorium on debt enforcement on one of the parties

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 ten 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 Amendments and additions to the contract must be made in writing.

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

23.3 Should any individual provision of the contract be deemed invalid or unlawful, the validity of the contract itself will not be affected. In such cases, the relevant provision shall be replaced, as far as possible, by a valid provision that is of equal value economically.

24. Applicable law and place of jurisdiction

24.1 Swiss law will apply exclusively. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention) shall not apply.

24.2 The sole place of jurisdiction is Bern.

Swiss Post Ltd, June 2024