



## 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 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. 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 0 – 0 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 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.

8.2 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.

8.3 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 (Occupational health and safety regulations, working conditions and the principle of equal pay for men and women), 15 (Confidentiality) and 16 (Data protection and postal secrecy).



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

9.1 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.

## **10. Place of performance and transfer of benefits and risk**

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. Remuneration and invoicing**

11.1 The contractually agreed remuneration shall cover all services required to fulfil the contract properly. 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). If 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 deadlines 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 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. Property 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 0 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 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.

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.

## **15. Confidentiality**

15.1 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 as well as technically and organizationally feasible measures to ensure that confidential facts and information are effectively protected against unauthorized access and disclosure.



- 15.2 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.
- 15.3 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.
- 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 staff to the obligations arising from this Article 15.
- 15.7 If either party breaches the aforementioned duties of confidentiality, it shall pay a contractual penalty to the other party unless it can be proved that it was not at fault. This shall amount to 10% of the total remuneration for each violation, but not more than CHF 50,000 per case. Payment of the contractual penalty shall not provide exemption from compliance with the confidentiality obligations. The contractual penalty shall be paid in addition to any compensation claims.

## **16. Data protection and postal secrecy**

### **16.1 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.

### **16.2 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.

### **16.3 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.

### **16.4 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.

### **16.5 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.

### **16.6 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.

### **16.7 Imposition of obligations**

The parties shall impose the obligations arising from this Article 16 on their employees and any additional auxiliary staff.

## **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 enters into default, it will be liable to pay a contractual penalty unless it can prove that it is not at fault. This shall amount to 0.5% per day of delay, but not more than 10% of the total remuneration. It shall also be payable if the services are accepted. Payment of the contractual penalty shall not release the service provider from the requirement to comply with its contractual obligations. The contractual penalty shall be paid in addition to any compensation claims.



## **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. The service provider shall also be required after expiry of the guarantee period to settle any claims arising from the warranty rights below, provided that the deficiencies were reported within the guarantee period.
- 18.2 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 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 material 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 repair or replacement, the service provider shall rectify the defects within the stated period and bear all 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 or 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 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 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.
- 19.2 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.

## **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 Amendments and additions to the contract must be made in writing.
- 21.2 In the event of any discrepancies, the terms of the contract shall prevail over the GTCs and the GTCs shall prevail over the bid.
- 21.3 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.

## **22. Applicable law and place of jurisdiction**

- 22.1 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) do not apply.
- 22.2 The sole place of jurisdiction is Bern.

Swiss Post Ltd, June 2024