



CORPORATE PROCUREMENT & IT

GENERAL CONDITIONS OF PURCHASE

Österreichische Post AG

(Version: 01.04.2022)

1. Scope

- 1.1. These General Terms and Conditions of Purchase (hereafter referred to as "GCP") govern the legal relationships out of contracts of purchase between Österreichische Post Aktiengesellschaft (herein "Post") and the supplier (herein "Supplier") and to future offers from the Supplier and contracts between Post and the Supplier (herein "Contracting Parties").
- 1.2. The GCP will be appended, in particular, to offers from the Supplier, orders from Post, contracts between the Contracting Parties, etc., and form an integral part of the agreement between the Contracting Parties, whereby any deviating provisions in the contractual documents have primacy over these GCP.
- 1.3. Third-party general terms and conditions of business/contract and/or industry-standard terms and conditions are expressly excluded. This even applies if the Supplier refers to them in an offer, correspondence or other documents.

2. Obligations of the Supplier

- 2.1. The Supplier bears the costs of offers, including any contract drafting costs, and cost estimates.
- 2.2. As soon as the Supplier becomes aware of any circumstances which impair the delivery as contractually agreed, the Supplier must immediately inform Post in writing within 48 hours of becoming aware of these circumstances and suggest ways of resolving them.
- 2.3. Upon the request of Post, the Supplier must provide any and all documentation on the origin of goods, including all data and documents (e.g. certificates of origin) required therefor.
- 2.4. The Supplier is liable for the fault of all persons they engage to fulfil the Supplier's contractual obligations to the same extent as for their own fault. The Supplier shall fully indemnify and hold harmless Post from and against all claims asserted by third parties with regard with the contractual obligations.
- 2.5. The Supplier undertakes to comply with Österreichische Post AG's Code of Conduct for Contractors (for short, "Code of Conduct"), see Annex ./I, and all relevant operational regulations of Post, in particular safety regulations, house rules, etc.
- 2.6. The Supplier declares in a legally binding manner that all packaging or all contractual packaging purchased with packaged goods is fully licensed or exempted from licensing and has been approved by a collection and recycling system in Austria that is registered in the EDM



portal of the Federal Environment Agency; the Supplier must provide Post with confirmation of this once a year in form of a legally binding declaration.

- 2.7. The Supplier confirms that all electrical and electronic equipment to be supplied, to the extent that the object of the contract so requires, complies with the provisions of the Austrian Ordinance Regulating the Handling of Waste Electrical Equipment (Elektroaltgeräteverordnung – EAG-VO), BGBl. II № 121/2005, as amended from time to time, and with Directive 2011/65/EU and Directive (EU) 2015/863 on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

3. Conclusion of the agreement / Placing orders

- 3.1. Performance of the service is based on a written agreement that is concluded through Post's prior written placement of an order and/or acceptance of the offer. Any changes or amendments to the offer must also be made in writing. The Supplier is not entitled to remuneration for any services provided prior to conclusion of the agreement.
- 3.2. The Supplier must confirm in writing any and every order or change/amendment to an order within 7 days of the order date. Should the Supplier fail to provide written confirmation within this deadline, their silence is construed as unconditional assent to Post's order. **However, Section 3.2. does not apply in the case of orders or call-offs placed by Post under pre-existing agreements or framework contracts/agreements between the Contracting Parties.**

4. Delivery / Passage of ownership and risk / Contractual penalties

- 4.1. Delivery will be effected DDP in accordance with INCOTERMS 2020 to the place of assembly/installation, whereby all ancillary services, in particular transport, connection, installation, startup operations, etc., are included therein, at the points in time previously specified in the delivery schedule/order/call and at the location specified in the order (place of performance).
- 4.2. The ownership of the item delivered is transferred to Post upon its acceptance of the item without objections; the same applies to the transfer of the price risk.
- 4.3. Delivery must be made at the agreed delivery time or within the delivery period agreed. In the event of delay, the Supplier must pay, for each calendar day or part thereof exceeding the deadline, a contractual penalty irrespective of fault amounting to 0.5% (point five percent), however no more than 10% (ten percent), of the gross value of the delivery affected by the delay, provided that Post is not responsible for causing the delay.
- 4.4. The contractual penalty will be charged from the day the Supplier falls into default until the day of full performance of the contract.
- 4.5. This does not affect the right of Post to withdraw from the contract; in the event that Post withdraws from the contract due to circumstances within the sphere of the Supplier justifying withdrawal, the contractual penalty will – without prejudice to any other consequences of the withdrawal – only be charged until the date on which the Supplier receives the notice of withdrawal.
- 4.6. If delivery in instalments has been agreed, and the Supplier is in default with only one part delivery, Post may declare withdrawal with regard to the individual part delivery or to all part deliveries that are still outstanding; no grace period is required.



- 4.7. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby. The payment of a contractual penalty does not release the Supplier from their obligation to perform the contract.

5. Data protection

The Supplier agrees that Post may use the data relevant to the contract and the personal data of the contact persons for the purpose of managing contractors and may pass such data on to companies affiliated with Post.

The Supplier undertakes to comply with the statutory provisions on data protection, such as the Austrian Federal Act concerning the Protection of Personal Data (*Datenschutzgesetz – DSG*, BGBl I N° 120/2017 as amended), in particular the provision of Sec 6 *DSG*, and the EU General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data – GDPR), as well as the Austrian Telecommunications Act 2021 (*Telekommunikationsgesetz – TKG*, BGBl I N° 190/2021 as amended) or any statutory regulations replacing it. In the event that personal data are processed on behalf of Post, the Contracting Parties must conclude a data processing contract within the meaning of Article 28 GDPR, appended to the agreement as an annex as an integral part of the agreement.

6. Secrecy

- 6.1. The Supplier undertakes to maintain secrecy concerning the order and all data, information, business secrets and knowhow etc. that pertain to the order or that the Supplier became aware of, unless, under certain circumstances, Post releases the Supplier from this obligation in writing; this also applies to naming Post as a reference client.
- 6.2. Should the Supplier violate this obligation, the Supplier is liable, regardless of fault, to pay Post a penalty of EUR 10,000.00 (ten thousand euros) in each individual case of such violation. Post retains the right to claim damages in excess of this amount.
- 6.3. The obligation to maintain secrecy continues to exist after due performance/delivery.

7. Remuneration/Invoicing

- 7.1. The remuneration is understood as a fixed lump sum inclusive of all statutory levies and exclusive of statutory value added tax. General price reductions, including those of the Supplier after the date of contract signing are to be passed on to Post. All services are deemed compensated with the agreed remuneration.
- 7.2. Invoices will only be accepted for processing if they contain the order (purchase order) number or reference number, the ordering/contracting department of Post, the name of the orderer, and the invoice elements specified in Sec 11 of the Austrian Value Added Tax Act (*Umsatzsteuergesetz – UStG*). Invoices must be sent as a single copy to the central invoice receipts department at: Österreichische Post AG, Rechnungseingangsstelle, Business Center 590,1000 Vienna.
- 7.3. Following submission of an invoice without objection, payment will be made within 30 days subject to a discount of 3%. The payment term begins on the date of receipt of the invoice by the central invoice receipts department of Post (*Rechnungseingangsstelle*).
- 7.4. Invoices with factual or calculation errors will not form the basis of any payment obligation until they have been rectified, and may be returned by Post at any time. In the latter case, a payment obligation will only be constituted upon receipt of the corrected invoice.

8. Warranty / Damages / Product liability



- 8.1. The Supplier is liable for the delivery in accordance with the agreement and, in particular, warrants that the delivery corresponds with all appropriate standards as well as the conditional and typically expected qualities, underlying samples/patterns, descriptions etc, and that the delivered items may be used as specified in the agreement. The warranty period is 2 years, unless the law prescribes a longer warranty period or a longer period was agreed. The period commences on the day of acceptance without objections (see Sec 4.2 above). Should any defects arise within this period, it is assumed that they already existed on the day of handover. The limitation period commences upon expiration of the warranty period and is two years.
- 8.2. Sec 377 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*) does not apply. In the event of a warranty case, Post may choose between a reduction in price, cost-free subsequent correction or exchange of the faulty delivery, substitute performance by a third party at the expense of the Supplier, or – if the defect is significant and irreparable – withdrawal from the agreement.
- 8.3. The burden of proof lies with the Supplier, who must prove, in particular, the absence of a defect or the insignificance thereof and must bear all costs and expenses incurred in connection therewith.
- 8.4. The Supplier is liable for all damage, including consequential damage and lost profits, etc. caused by the Supplier as a result of intentional or grossly negligent acts. In the event of slight negligence, the Supplier is liable for all damage incurred; however, only up to a maximum of the respective gross order value.
- 8.5. The agreement of a contractual penalty as defined by Sec 1336 *ABGB* does not affect the assertion of the right to claim damages exceeding the contractual penalty.

Should a customer or another third party lodge a claim for product liability against Post, the Supplier shall indemnify and hold harmless Post if the damage occurred as a result of a defective product for which the Supplier or their pre-suppliers, etc. are responsible; the Supplier also undertakes to provide Post with all proper information and documents that are relevant to the delivery of flawless goods (warning labels, licensing regulations, etc.); any circumstances concerning defectiveness of the product etc. of which the Supplier becomes aware at a later time must be related to Post in writing and without delay.

9. Applicable law / Court of jurisdiction

Any and all disputes arising out of and in connection with this agreement are subject to Austrian law, with the exclusion of the UN Convention on the International Sale of Goods and conflict of law rules. It is agreed that disputes will be referred to the local court responsible for commercial matters in 1030 Vienna.

10. Miscellaneous

- 10.1. In the event of a dispute, the Supplier is not entitled to withhold deliveries/services and/or to cease performance of the contract. The set-off of amounts payable to the Supplier by amounts payable to Post is not permitted.
- 10.2. The transfer of rights and obligations arising from the agreement and the transfer of the agreement by the Supplier requires the prior approval of Post. The prohibition of assignment for payment claims was negotiated individually between the Contracting Parties within the meaning of Sec 1396a *ABGB* as amended. In the event of violation of this provision, Post has the right to demand from the Supplier a penalty regardless of fault amounting to 80% (eighty percent) of the transferred claim; however, up to no more than EUR 2,000 (two thousand



euros) in each case. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.

- 10.3. The Supplier waives their right to avoidance of the contract on grounds of unfair and unreasonable consideration (*laesio enormis*). In addition, the right to avoidance of the contract on grounds of error is excluded for the Supplier.
- 10.4. Only written agreements are of binding effect (transmission per telefax or email is admissible); there are no verbal ancillary agreements. Amendments and additions to this agreement must be made in writing to take legal effect; the same applies to waiving the requirement of the written form.
- 10.5. Should one or more provisions of this agreement be found to be or become invalid or unenforceable, the parties will jointly define a new valid and enforceable provision that comes closest to the goal and purpose of the invalid and unenforceable provision. The invalidity or unenforceability of individual provisions does not impair the validity or enforceability of the entire Agreement.
- 10.6. All rights and obligations arising from the agreement will be transferred to any legal successors of either Contracting Party.
- 10.7. The agreement is drawn up in duplicate upon physical signing by the Contracting Parties, who each receive one copy. If the Contracting Parties sign the agreement electronically, the Contracting Parties will each digitally receive the PDF document signed by all Parties. Should only one Contracting Party sign the agreement electronically, the Contracting Parties will each receive the PDF document digitally signed by that one Party, and the PDF document signed by the one Party will then be physically signed by the other Party in duplicate, and each Contracting Party will receive one copy.

Annex ./I

Code of Conduct for Contractors

