



CORPORATE PROCUREMENT & IT

GENERAL CONDITIONS OF PURCHASE

Österreichische Post AG
(Version: 31.07.2020)

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 AG (hereafter "Post") and the supplier (hereafter "Supplier") and to future offers/contracts between the Contracting Parties.
- 1.2 In particular, the GCP are appended to offers, orders and contracts and are legally effective as an integral part of the contract between the Contracting Parties, whereas any contractual provisions deviating from these GCP take precedence.
- 1.3 Third-party general terms and conditions of business/contract and/or standard terms and conditions are expressly excluded. This also applies if the Supplier refers to them in his offer, correspondence or other documents.

2. Obligations of the Supplier

- 2.1 The Supplier bears the costs of offers, including any costs for contract drafting and for cost estimates.
- 2.2 As soon as the Supplier becomes aware of any circumstances which impair delivery as contractually agreed, he must immediately notify Post thereof in writing. The Supplier's notification must state the reasons preventing performance, the expected duration of delay, and it must suggest ways of resolving the situation.
- 2.3 Any packaging materials are to be removed and disposed of by the Supplier at his own expense and in accordance with the appropriate legal regulations. The Supplier or his sub-suppliers are to arrange for exemption under a collection and recycling system of the packaging materials delivered by the Supplier and subject to the (Austrian) Packaging Ordinance (Verpackungsverordnung) 2014 as amended from time to time. This is to be confirmed to Post in writing in the form of a legally binding declaration.
- 2.4 The Supplier confirms that all electrical and electronic equipment to be supplied, to the extent that the subject matter of the performance so requires, complies in particular with the provisions of Directive 2002/95/EC, as amended from time to time, on the restriction of the use of certain hazardous substances in waste electrical and electronic equipment or the provisions of the Austrian Waste Electrical Equipment Ordinance (Elektroaltgeräteverordnung).
- 2.5 Upon the request of Post, the Supplier shall provide any and all documentation on the origin of goods including all data and documents (eg. certificates of origin) required therefor.
- 2.6 The Supplier undertakes (i) to ensure that his legal representatives, employees and engaged and/or commissioned subcontractors comply with all applicable legal provisions relating to anti-corruption regulations and (ii) to take appropriate measures to ensure compliance with the anti-corruption regulations. In the event of a violation of anti-corruption regulations, the Principal is entitled – without prejudice to other rights of withdrawal and termination – to terminate the agreement without notice and to assert any claims for damages.
- 2.7 The Supplier is liable for any culpable acts of all persons whose services he engages to fulfil his contractual obligations to the same extent as for his own fault. He shall fully indemnify and hold harmless Post from and against all claims asserted by third parties with regard with his contractual obligations;



- 2.8 Post and the Supplier work together to implement the health and safety regulations within the meaning of Sec 8 of the Austrian Occupational Health and Safety Act (*ArbeitnehmerInnenschutzgesetz – ASchG*) and coordinate their hazard prevention activities (e.g. handling of heavy loads, conduct on the company premises). Post and the Supplier must share with each other all information on potential hazards (e.g. operating instructions, inspection of health and safety documents).
The Supplier undertakes to comply with Post's instructions for external companies.
The Supplier undertakes to only deploy staff who have been trained appropriately, in particular with regard to the handling of work equipment etc., and who have been instructed accordingly, in writing and verifiably, on safety, risk avoidance and health protection (within the meaning of Sections 12, 14 and 14 *ASchG*). Furthermore, he is obliged to always request the currently valid version of documents such as operating instructions, operating manuals, guidelines, etc., from Post, so that he can always base his training on hazard prevention and avoidance on the current documents.
- If the Supplier does not carry out the commissioned activities himself but uses subcontractors, he undertakes, in his capacity as principal, to verifiably impose this provision upon the subcontractor or to verifiably pass on all hazard-specific information relevant to the performance of the activity to the subcontractors and to verifiably instruct them on the hazards.
The Supplier is obliged to check compliance with the instructions on a regular basis.
Should an employee of the Supplier or his subcontractor or an employee of a subcontractor suffer an occupational accident on premises of Post, the Supplier is obliged to fully indemnify and hold harmless Post with regard thereto. This also applies to any administrative and legal proceedings, any attendant costs including costs of legal representation and penalties of all kinds.
- 2.9 The Supplier undertakes to ensure minimal disruption of operations and to comply with the Code of Conduct for Suppliers, (Suppliers Codex), Annex. /1, and the relevant operational regulations of Post, in particular the safety regulations, the working time regulations, the house rules, etc.
- 2.10 In the event that the contractor or his subcontractors are accepted into a permanent or temporary confidentiality area of Post (item 2.11 of Directive N°11 "Capital Market Compliance Directive" of Österreichische Post AG), the contractor undertakes to provide Post with a contact person for capital market compliance matters. Furthermore, the contractor undertakes to keep a list of all persons involved in the processing of the order. In addition, the Contractor undertakes to provide evidence of all written mailings (e.g. concerning the aforementioned guidelines or blocking periods) which the Contractor receives from the Compliance department of Post to the persons on this list (e.g. by e-mail with read confirmation). In addition, the Contractor undertakes to provide Post with the list of persons as well as proof of the forwarding of the mailings at the request of Post.
- 2.11 The intended involvement of subcontractors must already be verifiably disclosed to Post by the Contractor as part of the tender procedure and may only take place with the prior written consent of Post.
If the Contractor intends to change a subcontractor or to engage a subcontractor not disclosed in the offer or in the tender procedure after conclusion of the contract, the Contractor undertakes to disclose to Post the reasons for the change and the intended subcontractor in writing. If the Contractor had to fulfil suitability criteria, the disclosure shall include all supporting documents required to verify the suitability of the subcontractor concerned.
A change or the addition of a subcontractor is only permitted with the prior written consent of Post, whereas such consent shall be deemed to have been granted if Post has not rejected the subcontractor within three weeks of receipt of the disclosure; the three-week period shall not be triggered until the complete supporting documents have been submitted. Post will not refuse its consent without a reason.
However, the conclusion of subcontracts with companies affiliated with the Contractor as defined in Section 189a of the Austrian Commercial Code (UGB) shall not require consent.
The Contractor is liable for the fault of all persons whose services he engages to fulfil his contractual obligations to the same extent as for his own fault and will hold harmless and indemnify Post in this regard.



3. Orders

- 3.1 Performance by the Supplier requires the prior written order of Post. The Supplier is not entitled to remuneration for any service or delivery effected prior to having received a written order (purchase order). The same applies to amendments and additions to orders.
- 3.2 Each order/amendment/addition must be confirmed by the Supplier within 7 days in writing. If the Supplier issues no objection the order is deemed accepted without reservations.

4. Delivery / Passage of ownership and of 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 Ownership of the goods will not pass to Post before the delivery has been accepted (ie. delivery accepted without objections); the same applies to the time of passage of risk. A reservation of title of the Supplier as of acceptance is excluded.
- 4.3 Delivery must be made at the delivery time or within the delivery period as agreed. The Supplier must pay a contractual penalty irrespective of fault of 0.5% (point five percent) of the gross order value, however no more than 10% of the gross order value, provided that Post is not solely responsible for causing the delay. The contractual penalty will be charged from the day the Supplier falls into default until the day of full performance of the service; should Post withdraw from the contract before this time and if the circumstances justifying Post's withdrawal are within the sphere of the Supplier, the contractual penalty will – without prejudice to any other consequences of the withdrawal – only be charged until the date on which the Supplier has received the notice of withdrawal. Proof of damage is not required. The right to assert further claims for damages remains unaffected thereby.
- 4.4 In the event of delay, Post may withdraw its order at any time; if delivery in instalments has been agreed, Post may declare withdrawal with regard to individual or all outstanding part deliveries; no grace period needs to be set.
- 4.5 The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.
- 4.6 The payment of contractual penalties does not release the Supplier from his obligation to perform on the contract.

5. Remuneration / Invoicing

- 5.1 The remuneration is understood as a fixed lump sum inclusive of all statutory levies and exclusive of statutory value added tax. General reductions in price including those of the Supplier after the date of signature of the contract are to be passed on to Post. The services are deemed compensated with the agreed remuneration.
- 5.2 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.
- 5.3 Following completed performance without defects and 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*).



- 5.4 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.

6. Warranty / Damages / Product liability

- 6.1 The Supplier warrants for delivery in accordance with the contract. In particular, he shall warrant that the delivery corresponds with all appropriate standards as well as the conditional and typically expected properties, underlying samples and patterns, descriptions etc, and that the delivered items may be used as specified in the contract. 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 unobjectioned acceptance (see Sec 4.2 above).
- 6.2 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 contract.
- 6.3 The Supplier has the burden to prove the absence of a defect or the insignificance thereof, and will bear all costs and expenses incurred in connection therewith.
- 6.4 The Supplier is liable for all damage, including consequential damage and lost profits, etc. caused by him as a result of intentional, 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.
- 6.5 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.
- 6.6 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 his 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.

7. Secrecy

- 7.1 The Supplier undertakes to maintain secrecy concerning the order and all data, information, business secrets and knowhow etc. pertaining to the order or made known to the Supplier, unless Post releases the Supplier from this obligation in writing with regard to a specific case; this also applies to referring to Post as a reference client.
- 7.2 Should the obligation be violated, 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.
- 7.3 The obligation to maintain secrecy continues to exist after due performance/delivery.

8. Utilisation and protection of data

The Supplier consents that his order-relevant data will be used by Post for purposes of supplier management and passed on to affiliated companies of 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 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) and the Austrian Telecommunications Act 2003 (*Telekommunikationsgesetz – TKG*, BGBl I No. 70/2003 as amended) or any statutory regulations replacing it.



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 all 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 and/or to cease performance of the contract. The set-off of amounts payable to the Supplier by amounts payable to the Principal is not permitted.
- 10.2 The transfer of rights and obligations arising from the agreement and the assignment of the agreement by the Supplier requires the prior approval of Post.
- 10.3 The Supplier waives his 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.

Annex ./1 Supplier Code