



KONZERN-EINKAUF & IT

GENERAL CONDITIONS OF CONTRACT of Österreichische Post AG for Consulting Services (Version: 31.07.2020)

1. Scope

- 1.1 These General Conditions of Contract (hereinafter referred to as "GCC") are applicable to the contractual relations with regard to consulting services (hereinafter referred to as "Services") between Österreichische Post AG (hereinafter "Post") and the contractor (hereinafter "Contractor") and to future offers/contracts between the Contracting Parties.
- 1.2 In particular, the GCC will be 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 GCC take precedence.
- 1.3 The application of any general business and contractual conditions not issued by Post and/or of industry-standard business conditions is expressly excluded. This also applies if the Contractor refers to them in his offer, correspondence or other documents.
- 1.4 "Consulting services" mean creative, intellectual services characterised by an especially high level of creativity and a large creative scope of the Contractor; an essential element of these services is the original, creative element of the solution. Another way of describing them is that the essential content of the service is not the manufacture and delivery of a physical object or the performance of work on such an object, nor the performance of standardised testing and planning services, as with all planning services related to real estate (in particular traffic, noise protection, noise protection, emission, immission and waste water assessments; and real estate valuations), but rather an intellectual, conceptual activity, irrespective of whether the Contractor makes it accessible in the form of a physical work (e.g. in a drawing, a research report, a written opinion). Accordingly, this includes studies, concepts, solutions, strategies, competitions, expert opinions and consulting in the field of management consultancy and related activities, architecture, urban development, facility management, advertising, research and development, market and opinion research and IT.

2. Obligations of the Contractor

- 2.1 The Contractor undertakes, based on the initial situation and objectives described, to advise Post comprehensively and professionally in accordance with the performance object and to protect the interests of Post; this includes keeping Post apprised of opportunities and possibilities as well as risks and how to minimise them. Unless expressly agreed otherwise, the Contractor must submit to Post a complete, clearly structured and comprehensible final report in which all consulting results including documents (concept developed, reports on partial results of the examinations carried out by the Contractor, further documentation, records of results, consulting reports, business plans, concepts, etc.) as well as the underlying aspects are presented.
- 2.2 The Contractor only engages carefully selected and well-trained staff. Staff who do not have the necessary expertise or are otherwise detrimental to the fulfilment of the contract are to be removed at the request of Post within an appropriate period of time. If the subject matter of the contract requires certain employees to be in charge of the performance of Services, the Contractor must bind these with main responsibility for the performance of services over the entire term of the contract and is responsible for replacing them if absolutely necessary and making a new appointment to the position in coordination with Post. Post will render its consent in cases in which the Contractor proves that the incoming staff member is just as qualified and professionally experienced as the outgoing staff member.



- 2.3 If, during performance of the contract, a service is required that is not included in the contract, the Contractor must obtain the written consent of Post regarding the extension/amendment of the contract prior to the execution of that service, and at the same time agree on the appropriate adjustment of the remuneration.
- 2.4 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.
- 2.5 Unless otherwise agreed for certain parts of the Services or unless the presence of the Contractor is required for specific reasons relating to the subject matter, the Contractor has the right to choose his place of performance. As a rule, presentations and meetings with Post will take place in Vienna.
- 2.6 The Contractor 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 Contractor undertakes to comply with the applicable labour and social legislation as well as the Code of Conduct for Suppliers (Supplier Code), **Annex./1**.
All employees deployed by the Contractor must be entitled to reside and to take up employment in Austria.
- 2.8 As soon as the Contractor becomes aware of any circumstances which impair performance of the contract, he must immediately inform Post in writing within 48 hours of becoming aware of these circumstances and suggest ways of resolving them.
- 2.9 If, during performance of the contract, a service that was not covered by the initial situation and objectives described proves to be necessary, the Contractor must obtain, prior to performance, the written consent of Post for the extension or alteration of the performance object. If the necessity or expediency of this service is determined by mutual agreement, the corresponding remuneration is to be agreed at the same time. If the Contractor carries out a service that is not part of the performance object without prior written consent and agreement of the remuneration, Post is not obliged to remunerate it.



- 2.10 The Contractor bears the costs of offers, including any contract drafting costs, and cost estimates.
- 2.11 Post and the Contractor 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 Contractor must share with each other all information on potential hazards (e.g. operating instructions, inspection of health and safety documents).
The Contractor undertakes to comply with Post's instructions for external companies.
The Contractor 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 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 hazard prevention and avoidance training on the current documents. If the Contractor 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 Contractor is obliged to check compliance with the instructions on a regular basis. Should an employee of the Contractor or his subcontractor or an employee of a subcontractor suffer an occupational accident on premises of Post, the Contractor is obliged to fully indemnify and hold harmless Post. This also applies to any administrative and legal proceedings, any attendant costs including costs of legal representation, and penalties of all kinds.
- 2.12 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 No. 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.
- 3. Performance deadlines / Contractual penalty**
- 3.1 The consulting service is to be completed by the agreed deadline (completion date). Interim milestones are set at the beginning of the performance phase.
- 3.2 The Contractor must pay a contractual penalty irrespective of fault of 0.5% of the agreed gross order value for calendar day or part thereof exceeding the deadline, or EUR 120.00, however no more than 10% of the total gross order value, provided that Post is not solely responsible for causing the delay. In the event of default, the Principal can demand the larger of the two amounts. In the case of recurring services, the contractual penalty is 10% of the gross annual remuneration per contract year.
- 3.3 The contractual penalty will be charged from the day the Contractor falls into default until the day of full performance of the service; proof of damage is not required.
In the event that Post withdraws from the contract on the grounds of default of the Contractor – without prejudice to other consequences of the withdrawal – the contractual penalty is to be charged only until the day the Contractor has been served the notice of withdrawal.



- 3.4 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 Contractor from his obligation to fulfil the agreed Services.

4. Secrecy / Data protection

- 4.1 The Contractor undertakes to keep secret all data, information, business secrets and knowhow of which he becomes aware, unless Post releases him from this obligation in writing in a specific case.
- 4.2 The Contractor undertakes to take all appropriate measures to ensure secrecy and prevent the disclosure and unauthorised use of information; i.e. in particular, he must
- use this information exclusively for the purpose of fulfilling the orders placed with him by Post to the required extent;
 - limit access to this information to employees who are indispensable in fulfilling the performance object and contractually impose on them the obligations of secrecy set out herein;
 - keep secret and confidential all information provided by Post in connection with the fulfilment of the performance object and/or information obtained in connection with the fulfilment of his contractual obligations;
 - if he engages third parties to fulfil the performance object, impose on them in a legally binding and verifiable way the obligations of secrecy before disclosing this information – in the case of other liability for damages – and to support Post in every way in asserting its claims against them;
 - refrain from passing on, processing or exploiting this information in any other way without the written permission of Post.
- 4.3 The obligation of secrecy does not apply if and to the extent that
- disclosure is necessary within the scope of the fulfilment and performance of the contract, or due to rulings passed by courts or administrative authorities, a valid legal stipulation, or a legally binding order rendered by an official body;
 - the information is publicly known, and its disclosure is not attributable to a violation of this obligation of secrecy by the Contractor or by third parties attributable to the Contractor;
 - the information was already known to the Contractor prior to conclusion of the contract;
 - the information was passed on to the Contractor by a third party without violating contractual or legal obligations;
 - the information in question was developed autonomously and independently by the Contractor himself.
- 4.4 The Contractor 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. In the event that personal data are processed on behalf of the Principal, the Contracting Parties must conclude a data processing contract within the meaning of Article 28 GDPR as per Annex 72 as an integral part of the contract.
- 4.5 The obligation of secrecy and data protection continues to apply even after full performance of the Service by the Contractor or after end of contract.



- 4.6 In each case of a breach of these obligations and of the obligation to impose the obligation of secrecy on all relevant parties, the Contractor must pay a contractual penalty amounting to EUR 10,000.00 (ten thousand euros) to Post.

The penalty is not subject to judicial mitigation. Post retains the right to claim damages in excess of this amount. Payment of the contractual penalty does not release the Contractor from his obligation to fulfil the contractual obligations.

5. Remuneration

- 5.1 The remuneration is understood as a fixed package price or a fixed hourly/daily or flat rate with all statutory levies included; statutory VAT excluded. Rights of utilisation and exploitation accruing to Post are covered by the agreed remuneration.

- 5.2 Should an hourly or daily rate be agreed for remuneration, the Contractor is obliged to submit to Post comprehensible work time records and detailed lists of the services to be authorised by Post. For consulting services, the Contractor must state the name of the employee, the consultant category and the agreed daily rate in the work time record.

- 5.3 Additional ancillary costs – especially travel or accommodation and other expenses – will be assumed by Post only if they were expressly agreed in advance in writing.

- 5.4 If, in the course of performance of the agreed services, it transpires that additional services are required or expedient - due to no fault of the Contractor and with no imminent danger - the Contractor is to notify Post verifiably and without delay, and reach an agreement. If he fails to do so, he is not entitled to remuneration for his Services, not even if they are useful or expedient.

6. Invoicing / Terms of payment

- 6.1 Invoices will only be accepted for processing if they contain the order (commission) 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 Wien.

If the Services are performed on the basis of an individual confirmation of services rendered, the latter must be appended to the invoice.

- 6.2 Following completed performance without defects and issue of an invoice without objection, payment will be made within 30 days without discount. The payment term begins on the date of receipt at our central invoice receipts department (*Rechnungseingangsstelle*).

- 6.3 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.

7. Exploitation rights / Utilisation of knowhow

- 7.1 Post has the exclusive right to use the services to be provided to Post by the Contractor and the associated work results, including the knowhow included therein, throughout the Group, in whatever manner, free of charge, irrevocably and for an indefinite period of time. This right of utilisation also encompasses the right of reproduction and distribution. Unless otherwise agreed, it does not encompass the right of commercial exploitation and publication, except for the purpose of executing invitations to tender.



7.2 The knowhow made available by Post to the Contractor for performance of the contract belongs to Post, and the Contractor may not make any other use of it without the express consent of Post. The same applies to the data supplied to the Contractor by Post.

8. Warranty (Secs 922 et seqq. Austrian Civil Code)

8.1 The Contractor warrants that all of his services are professionally sound, have the qualities usually assumed and contractually agreed upon and, in particular, meet the requirements and needs of Post. The Contractor warrants that the resources required for the fulfilment of the Contract are available.

8.2 Deficient reports, documentation or evaluations are to be remedied by the Contractor within a reasonable period.

8.3 Sec 377 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*) does not apply.

9. Damages

9.1 The Contractor is liable in accordance with the statutory provisions. He is an expert within the meaning of Sec 1299 of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*). In particular, the Contractor is liable for ensuring that his services are free from any third-party rights and that his indications of source are correct, and he holds harmless and indemnifies Post.

9.2 The Contractor is liable for any culpable acts of all persons whose services he engages to fulfil his contractual obligations, in accordance with Sec 1313a (Austrian) Civil Code (*ABGB*).

9.3 In the event that Post commissions more than one contractor, these are jointly and severally liable to Post for the fulfilment of all obligations arising from the contract.

9.4 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.

10. Extraordinary termination

10.1 Post has the right of extraordinary termination of the contract at any time. Should there be no grounds for extraordinary termination, Post must compensate the Contractor for the proven cash expenditure and pay an appropriate part of the remuneration for the Services already performed by the Contractor.

10.2 In particular, Post has the right of extraordinary termination:

- a) insolvency proceedings against the Contractor have been rejected on the grounds of insufficient assets;
- b) if the Contractor is in default with the agreed Services and/or the Services have significant quality defects; if, according to the agreement, the Services are to be provided in parts, and the Contractor is in default with one part of the Services only, a partial termination may be made in respect of those parts for which the Services have not yet been performed, or termination of the entire contract;
- c) if there are circumstances that make it obviously impossible to perform the Services in time and delay completion by more than half of the originally agreed performance time, provided that these were not caused by Post itself;
- d) if the Contractor enters into an agreement with a subcontractor without Post's consent;



- e) if the Contractor offers, promises or guarantees, directly or indirectly, a pecuniary advantage to an institution and/or employee of Post that is involved with the conclusion and implementation of the contract, or to a third party, and/or violates anti-corruption regulations or Section 2.3;
- f) if the Contractor himself, or a third party engaged by the Contractor for performance, breaches the obligation of secrecy;
- g) if it becomes known after the fact that the Contractor made incorrect statements in the course of the tender or when submitting his offer, and this had an impact on the award decision or acceptance of the bid;
- h) if the Contractor restricted or unfairly influenced free competition in the award or tender process in contravention of the law or of good morals;
- i) if a non-appealable judgment has been passed against the Contractor or persons working on the Contractor's management for serious acts or omissions in connection with his professional activity by the competent criminal court;
- j) if the Contractor loses his official (commercial) licence.

If the Contractor is at fault for the extraordinary termination, he must compensate Post for any additional costs incurred by subcontracting the commission to a third party, unless such costs are already covered by lump-sum damages. The Contractor loses all entitlement to remuneration and damages if he has not yet executed an agreed partial performance that can be used by Post; payments already made are to be paid back without delay.

11. Retention and performance obligation

In the event of a dispute, the Contractor is not entitled to withhold Services and/or to cease performance of Services.

12. Exclusion of set-off

The set-off of amounts payable to the Contractor by amounts payable to the Principal is not permitted.

13. Exclusion of the right of transfer

The transfer of rights and obligations arising from the agreement and the transfer of the agreement by the Contractor requires the prior approval of Post. The prohibition of assignment for payment claims was negotiated individually within the meaning of Sec 1396a ABGB as amended. In the event of violation of this provision, the Principal has the right to demand from the Contractor a penalty regardless of fault amounting to 80% (eighty percent) of the transferred claim, however no more than EUR 2,000 (two thousand euros) in each case.

14. Waiver of right to avoidance

The Contractor 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 Contractor.

15. Reference customer

The Contractor is not permitted to make any reference, whether directly or indirectly, to his work for Post without Post's prior written consent, i.e. in particular, to name Post as a reference customer.

16. Applicable law / Court of jurisdiction

- 16.1 Any and all disputes arising out of and in connection with the agreement are subject to Austrian law, with the exclusion of the UN Convention on the International Sale of Goods and conflict of law rules.



16.2 It is agreed that disputes will be referred to the court having competence in the subject matter and for Vienna's third district.

17. Costs and charges

17.1 The costs, taxes and charges associated with the execution of the agreement will be borne by the Contractor.

17.2 In the event that liability for charges arises from the agreement in accordance with the Austrian Fees and Duties Act 1957 (*Gebührengesetz – GebG*, BGBl. 1957/267 as amended) and duties are levied, these are borne solely by the Contractor.

17.3 If a claim is asserted against Post as a tax debtor or liable party and/or especially, pursuant to Sec 28 of the Austrian Fees and Duties Act 1957 as amended, as debtor of fees, for tax debts of the Contractor by federal, provincial or regional tax authorities, the Contractor undertakes to compensate the payments made by Post and fully indemnifies and holds harmless Post in this regard.

17.4 The costs for the drafting of the agreement and for legal representation will be borne by each Contracting Party itself.

18. Miscellaneous

18.1 It is stated that provisions in preambles have legal effects.

18.2 Only written agreements are of binding effect; no verbal ancillary agreements exist. 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.

18.3 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.

18.4 All rights and obligations arising from the agreement will be transferred to any legal successors of either Contracting Party.
The Contractor consents that his order-relevant data will be used by Post for purposes of supplier management and passed on to affiliated companies of Post.

Annexes:

Annex 71 Code of Conduct for Suppliers

Annex 72 Data Processing Contract within the meaning of Art 28 GDPR