



## CORPORATE PROCUREMENT & IT

### **GENERAL TERMS AND CONDITIONS OF CONTRACT of Österreichische Post AG for Services** (Version: 31.07.2020)

#### **1. Scope**

- 2.1. These General Terms and Conditions of Contract (herein "GTC") are applicable to the contractual relations with regard to **services** (herein "Services") between Österreichische Post AG (herein "Post") and the contractor (herein "Contractor") and to future offers/contracts between the Contracting Parties.
- 2.2. In particular, the GTC 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 GTC take precedence.
- 2.3. Third-party general terms and conditions of business/contract and/or standard terms and conditions are expressly excluded. This also applies if the Contractor refers to them in his offer, correspondence or other documents.

#### **2. Obligations of the Contractor**

- 2.4. The Contractor undertakes to provide Post with the agreed Services in accordance with the applicable national and European laws and standards and any guidelines and recommendations issued by the trade associations in a technically sound, comprehensive manner and to the best of his ability, while making the utmost effort to protect the interests of Post. This includes keeping Post apprised of opportunities and possibilities as well as risks and how to minimise them. The Contractor undertakes to perform the Services as agreed and/or in a manner that is suitable and fit for purpose.
- 2.5. The Contractor undertakes to ensure minimal disruption of operations and to comply with any applicable employment and social legislation as well as 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. All employees deployed by the Contractor (and thus also those of subcontractors, etc.) must be entitled to reside and take up employed work in Austria.
- 2.6. 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 persons 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.
- 2.7. 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.



- 2.8. 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 the written consent of Post prior to performance of this service. 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 scope without prior written consent and agreement of the remuneration, Post is not obliged to remunerate it.
- 2.9. 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.
- 2.10. 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 (*ArbeitnehmerInnen-schutzgesetz – 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 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, 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.
- 2.11. 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 dates/contract penalty**

- 3.1. The Services must be completed by the agreed date (completion date) and the designated interim deadlines (milestones) must be met.
- 3.2. For each calendar day or part thereof exceeding the deadline, the Contractor shall pay a contractual penalty irrespective of fault of 0.5% (zero point five per cent) of the agreed gross order value of the Services affected by the delay, however no more than 10% (ten per cent) 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.
- 3.3. In the event of continuing obligations a contractual penalty in the amount of 5% (five per cent) of the agreed remuneration per agreed period (day, week or month) will be charged if the agreed Services are not performed, or are performed incompletely or defectively, in the respective period.
- 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**

- 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 subject matter of the contract 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.

4.3. 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 2 as an integral part of the contract.

4.4. The obligation of secrecy and data protection continues to apply even after full performance by the Contractor or after end of contract.

4.5. In the event of infringement of this obligation or breach of the obligation to impose the obligation of secrecy on all relevant parties, the Contractor will, in each individual case of infringement, irrespective of fault, be liable to pay to Post a contractual penalty in the amount of EUR 10,000.00 (ten thousand euros). 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. General reductions in price including those of the Contractor after the date of signature of the contract are to be passed on to Post. All services are deemed compensated with 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.

5.3. Post will assume no ancillary costs, including in particular travel, accommodation and other expenses. Costs incurred for necessary travel must be agreed by contract.

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 VAT Act (*Umsatzsteuergesetz – UStG*). Invoices must be sent as a single copy to the central invoice receipts department (address below)

**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 of the net amount will be made within 30 days. The payment term begins on the date of receipt at our central invoice receipts department.
- 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 intellectual property**

- 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 (but not commercially – other than for tenders), free of charge, irrevocably and for an indefinite period of time. This right of utilisation also encompasses the right of reproduction and distribution. If services are developed for Post, these services may not be sold to other postal service providers, nor may they be transferred or made accessible to other postal service providers in whatever manner. The Contractor agrees that Post may make changes of any kind to the Services.
- 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 (*Allgemeines bürgerliches Gesetzbuch – ABGB*))**

- 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 needs of Post that have been communicated to the Contractor. The Contractor warrants that the resources required for the fulfilment of the Contract are available.
- 8.2. At the request of Post, defective services must be remediated or, if necessary, performed again without defect for no additional remuneration within a reasonable period.
- 8.3. In each case of a delay caused by the Contractor, Post is entitled to initiate performance by a substitute at the expense of the Contractor after a warning has been communicated and a reasonable grace period set; the setting of a grace period is not applicable for fixed-term contracts as defined in Sec 919 of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*).
- 8.4. Sec 377 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*) does not apply.





- 8.5. 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.

## **9. Damages**

- 9.1. The Contractor is liable for all damage, including consequential damage and lost profits, etc. caused by him as a result of intentional or grossly negligent acts. In the event of slight negligence, the Contractor is liable for all damage incurred; however, only up to a maximum of the respective gross order value for recurring performance with the gross annual fee. He is an expert within the meaning of Sec 1299 of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*).
- 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 of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – 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.

## **10. Grounds for extraordinary termination by Post**

- 10.1. The following grounds entitling Post to terminate the agreement without notice are deemed good cause:
- a. in the event of dismissal or commencement of insolvency proceedings for lack of 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 obviously delay performance of the Services by more than half of the originally agreed performance time, provided that these were not caused by Post itself;
  - d. if the Contractor engages a subcontractor without Post's consent;
  - e. if the Contractor directly or indirectly offers, promises or grants a pecuniary benefit to a body and/or an employee of Post or to a third party that is involved in the conclusion and execution of the contract;
  - 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 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;
  - k. the Contractor violates anti-corruption regulations or Section 2.4 hereof, respectively.
- 10.2. If the Contractor is responsible for the grounds for extraordinary termination, he must compensate Post for any additional costs incurred as a result of any re-award of the contract. The Contractor will lose any claim to remuneration and compensation, unless he has already provided part of a Service that is usable by Post. He must return to Post promptly any payments already made.

## **11. Miscellaneous**

- 11.1. It is stated that provisions in preambles have legal effects.
- 11.2. In the event of a dispute, the Contractor is not entitled to withhold Services and/or to cease



performance of Services.

- 11.3. 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.
- 11.4. 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.
- 11.5. 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.
- 11.6. It is agreed that all disputes will be referred to the local court responsible for commercial matters in 1030 Vienna.
- 11.7. 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.
- 11.8. 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.
- 11.9. 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.
- 11.10. All rights and obligations arising from the agreement will be transferred to any legal successors of either contracting party.
- 11.11. The most recent versions of all contractual supplements and annexes to the GTC form an integral part of the contract.

## **12. Costs and charges**

- 12.1 The costs, taxes and charges associated with the execution of the agreement will be borne by the Contractor.
- 12.2 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.
- 12.3 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.
- 12.4 The costs for the drafting of the agreement and for legal representation will be borne by each Contracting Party itself."

## **13. 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."



**Annexes:**

**Annex ./1**

**Annex 71 Code of Conduct for Suppliers**

**Annex ./2**

**Data Processing Contract within the meaning of Art 28 GDPR**