



## CORPORATE PROCUREMENT & IT

**GENERAL TERMS AND CONDITIONS OF CONTRACT**  
**of**  
**Österreichische Post AG**  
**for**  
**IT Software Solutions, Developments and Services**  
(Version: 31.07.2020)

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## **1. Scope**

- 1.1 These General Terms and Conditions of Contract (herein "GTC") are applicable to the contractual relations between Österreichische Post AG (herein "Post" or "Principal") and the contractor (herein "Contractor") for IT software solutions and the associated IT developments and IT services, and to future offers/contracts between the Contracting Parties.

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.

- 1.2 "Individual software" means a software solution developed specially for the Principal in accordance with its specifications (among other things, on the basis of requirements (= performance specifications) and functional specifications).
- 1.3 "IT developments and services" means, above all, programming services, maintenance services, ASP, consulting services, and training services.
- 1.4 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. Secrecy / Confidentiality / Data protection**

- 2.1 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.
- 2.2 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.
- 2.3 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.



- 2.4 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 N° 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 an integral part of the contract.
- 2.5 The obligation of secrecy and data protection continues to apply even after full performance by the Contractor or after end of contract.
- 2.6 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. The payment of a contractual penalty does not release the Contractor from his obligation to fulfil his contractual obligations.
- 3 Offer / Cost estimate / Completeness**
- 3.1 The Contractor bears the costs of offers, including any contract establishment costs and cost estimates; the accuracy of any cost estimate submitted by the Contractor is deemed guaranteed (Sec 1170a ABGB).
- 3.2 The Contractor guarantees that he will prepare for Post the cost estimate and the offer from the point of view of full operability and suitability based on the requirements of Post (concept, requirements, functional specifications, etc.); in particular, no elements, components or ancillary services may be omitted that are necessary for the proper and defect-free functionality as usually assumed or contractually agreed upon, even if they were not expressly mentioned in the tender or contract.
- 3.3 Should elements, components or ancillary services be missing, these must subsequently be supplied at no cost; and, in the event that their maintenance is part of the contract, this must also be carried out within the framework of the agreed maintenance. Warranty and compensation claims remain unaffected.
- 3.4 If the work is to be provided in parts, the Contractor must perform the work in such a way that the individual partial services can be connected to the specified interfaces without interruption and with full functionality.
- 4 Delivery schedule / Delivery**
- 4.1. The Contractor has assessed the requirements of Post (with regard to concept, requirements, technical specifications, etc.).
- 4.2. Unless expressly excluded, the Contractor is obliged to document the technical specifications made together with Post upon award of contract, on the basis of the requirements of Post.
- 4.3. Based on the requirements of Post (with regard to concept, requirements, technical specifications, etc.), the Contractor will deliver a complete and functional software or perform a service that corresponds with the state of the art. He must pay particular attention to appropriate dimensions.



4.4. The delivery of the software 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. The place of assembly/installation is deemed the place of performance. The Contractor 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 Contractor confirms that all electrical and electronic equipment to be supplied, to the extent that the subject matter of the contract 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 – EAG-VO).

4.5. The delivery schedule also includes the date of delivery as per Section 8.

## **5 Test run (IF AGREED)**

5.1. If a test run (in a test environment) is carried out by employees of the Principal before the trial operations (in the production environment), the conditions stated here apply, unless otherwise agreed. The start and end times of the test run will be mutually agreed between the Contractor and the Principal.

5.2. The Principal will nominate a test manager; this person will plan and coordinate all test activities of the Principal and is also the primary contact person of the Contractor for all test activities planned by the Principal.

5.3. The test run will take place in a test environment that is separate from the development environment.

5.4. The following entry criteria apply for the test run:

- The Contractor provides proof of the successful execution of the component tests and component integration tests (on the test system of the Contractor);
- Approval for release from the Contractor;
- Handover of the release notes (list of the new/changed functionalities, list of the remedied defects of a previous version, list of the anomalies in the startup operations and the smoke test) by the Contractor;
- Successful installation and startup operations of the software on the test system by the Contractor;
- A short handover meeting including a brief presentation of the release contents by the Contractor for the employees of the Principal who will carry out the tests;
- Successfully executed smoke test (test of testability). This test is defined and executed by the Principal. The running time for a fully successful execution may not take a longer than three hours.

5.5. During the ongoing test run, changes to the software status of the test environment may only be made upon prior approval of the test manager.

5.6. The following defect classification applies for any defects found:



| Classification | Meaning   |
|----------------|---|
| Critical       | The functional use of a significant part of the system is not possible or limited to an unreasonable extent. The defect has a serious impact on business and/or security.<br>Examples: The system is down without restart; loss or destruction of data; time-critical mass processing of data yields incorrect results.           |
| High           | The functional use of a significant part of the system is greatly limited. The defect has an impact on business and/or security.<br>Examples: Wrong or inconsistent processing that subsequently leads to restrictions in ongoing operations but has no long-term consequences (e.g. Data cleansing through batches is possible). |
| Medium         | The functional use of a significant part of the system is slightly limited. The defect has an insignificant impact on business and/or security.<br>Example: User notifications that are logically wrong (e.g. error notifications)  |
| Low            | The functional use of the system is unlimited.<br><u>Example:</u> The graphic representation of contents is in need of improvement  |

- 5.7. The test run is only deemed completed if (at least) the following criteria are met:
- 100% of all planned test cases were executed;
  - There are no open defects in the "critical" or "high" defect classes (all remedied and re-tested);
  - Detailing can be carried out in a test concept. However, the minimum is 2 verifiably executed test cases per new functionality;
  - The Contractor will be provided with the Post software quality guidelines as amended and is obliged to comply with them.
- 5.8. The achievement of the exit criteria specified in Section 5.7 at the agreed end time of the test is a prerequisite if trial operations are to be carried out. An additional deadline for the removal of defects and subsequent retest can be agreed; in any case, however, the decision regarding an extension of the test run and/or start of the trial operations lies with the Principal.

## **6 Trial operations (IF AGREED)**

- 6.1 If expressly agreed, startup operations and functional testing are to be carried out after installation by the agreed start of trial operations; Post must be notified when the startup operations and functional testing have been successfully carried out.
- 6.2 The Contractor must provide the documents for a trial operation, in particular the operating instructions, in good time, but no later than one (1) week prior to the start of the trial operation, and submit them to Post.
- 6.3 The Contractor is responsible for carrying out the trial operations. Unless otherwise agreed, the Contractor must provide the technical personnel and the equipment for the trial operation under his responsibility.
- 6.4 The Contractor will carry out the removal of defects in accordance with the timing requirements of operation upon prior agreement with Post.
- 6.5. The defects found during the trial operation will be classified as per Section 5.6.



- 6.6 The reaction, defect removal and retesting times specified in the respective applicable SLA apply for the removal of defects.
- 6.7 In the event that impairments, defects, delays, etc., arise during trial operations and significantly interfere with the latter, at the request of Post the Contractor must carry out the trial operations again after rectifying the impairment, in such a way that the overall duration of the defect-free trial operation corresponds to the originally planned time for the trial operation.

## **7 Acceptance**

- 7.1. The acceptance test will take place after submission of a written readiness report following completion of any trial operations and rectification of any defects that occurred during the trial operation, where the Contractor must rectify the defects in accordance with the operational time requirements upon prior agreement with Post.
- 7.2. Acceptance serves to establish that the software or software components are free of defects and consists of a functional test, a performance test and trial live operations; it is carried out on the basis of the functional/performance specifications.
- **Functional test:** Testing whether the work features the functions as typically expected as well as the functions stipulated in the functional/performance specifications and contained in the offer;
  - **Performance test:** Testing whether the standard software or software components meets the defined performance requirements (e.g. response times and throughput) in the required quality under the defined or, in the absence of a definition, the customary load conditions;
  - **Trial live operations:** Testing of reliability in live operation; it is considered successfully completed if the availability over a period of 10 consecutive calendar days (0:00 to 24:00 h) or during the agreed period – this period can also already be started in trial operation – reaches at least the customary values or percentages specified in the manufacturer's announcements or otherwise agreed, while simultaneously complying with all other quality criteria.
- 7.3. Before the acceptance test, the Contractor must inform Post in writing of the completion of the software or parts thereof without delay and invite Post to carry out the acceptance; the acceptance test must be carried out no later than the agreed takeover date as specified in the schedule.
- 7.4. The defects found during the acceptance test will be classified as per Section 5.6.
- 7.5. The reaction, defect removal and retesting times specified in the respective applicable SLA apply for the removal of defects.
- 7.6. In the event that a serious defect is discovered ("critical" or "high" defect class), Post may refuse acceptance and the Contractor must, within 2 weeks, remove the defect notified in writing and again present the work for acceptance. If this is not the case, Post will demand a penalty in accordance with Section 19. Insignificant defects ("medium" or "low" defect classes) do not hinder acceptance, but must be remedied within a reasonable time.
- 7.7. The Contractor participates in the acceptance test – with the exception of the trial live operations – at his own cost. An acceptance report about the successful acceptance must be written and signed by Post and the Contractor. Sec 377 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*) does not apply.
- 7.8. If the acceptance of the defect-free subject matter of the contract is not carried out by Post within 4 weeks after submission of a written readiness report following the conclusion of any





trial operations or after the quality and function tests as specified in Section 6, the subject matter of the contract will be deemed to have been accepted and free of defects four weeks after submission of the readiness report or after the quality and function tests.

## **8 Takeover / Partial takeovers**

### **8.1. The day of takeover is:**

- the business day following the day on which the successful acceptance test is concluded upon signing of the acceptance report (Section 7.7); or
- in the event that Post dispenses with an acceptance test, the business day after which the software was installed in an operational condition in accordance with the acceptance report signed by Post and is in full compliance with the contract, free of defects and ready for use by Post; or
- if an acceptance test is ruled out due to the nature of the subject matter, the business day on which the work was delivered in compliance with the contract and free of defects.

### **8.2. Should more than one acceptance be necessary for parts of the software, it will subsequently only be taken over as a whole. The takeover is concluded upon written confirmation of takeover stating the parts of the work taken over and the lists of defects from the individual acceptance tests. The takeover can only be concluded after trouble-free trial operations and (a) successful acceptance test(s).**

### **8.3. Takeovers of parts of the software will only be carried out with the express prior approval of Post. If partial takeovers are carried out, then Post only takes over the part in question.**

### **8.4. If, due to a longer time interval between the completion of all (partial) acceptance tests and the takeover owing to defects in the subject matter, special measures are required to maintain the faultless condition of the work until takeover and thus until the beginning of the warranty period. These must be carried out by the Contractor or his representative according to his specifications; if necessary, the Contractor will provide the technical personnel for the maintenance of the functions.**

### **8.5. The Contractor will carry out this removal of defects in accordance with the requirements of Post – based on operational time requirements.**

## **9 Requirements**

### **9.1. Should the creation of documents be part of the contract, the Contractor undertakes to ensure that they**

- are compiled in correspondence with the standards of engineering and state of the art in accordance with the requirements of Post;
- have a clear, straightforward structure;
- contain a management summary at the end; and
- show the respective version status of the chapters, sources of statements and quotes.

### **9.2. Should a requirement analysis and creation of technical specifications be part of the contract, the Contractor undertakes to ensure that**

- the requirement analysis investigates all important processes needing technical support;
- the technical specifications present all processes of Post needing technical support “as is” with their organisational and technical weaknesses as found in the analysis, as well as their target state in a continuous and – if necessary – graphic format;
- the technical specifications document the necessary changes in such a way that these can be understood by the specialist divisions at Post on the one hand, and can be used as reference material on which to base the technical implementation without requiring any further processes on the other.
- the technical specifications have been examined as to their logical consistency and workability;



- the components comply with the provisions of the relevant laws, regulations, technical guidelines in Austria and the EU.
- 9.3. Furthermore, the Contractor undertakes to deliver software components that
- are free of viruses and other software anomalies, especially Trojans and malware;
  - have a comprehensible operating design, where in particular similar commands/tasks are done in a comprehensibly similar way;
  - the work to be provided was not only tested as to its functionality, but also as to its behaviour in borderline cases (incorrect entries, number of simultaneous transactions, data quantities) that are to be expected in the application area;
  - the functions commonly expected and agreed are reliably fulfilled;
  - there is a safeguard against operating errors that can be expected; and
  - the configuration settings can be easily changed by Post.
- 9.4. If the creation and delivery of individual software is part of the agreement, the Contractor undertakes to ensure that
- the source code only uses the standard language features of the contractually agreed programming language;
  - it can be easily adapted to a different environment (e.g. changes in the organisation, legislation and the market, operating system versions, database systems), i.e. it is as independent as possible of the platform or operating system;
  - it is user friendly, i.e. the readability and structure of the components are simple and can be used easily after the introductory training; that it displays a uniform menu design and function key assignment;
  - each module possesses exactly one entry point and, preferably, one exit point;
  - the function and the input and output parameters of each module are described in understandable terms in a comment in the source code, following the header of the module;
  - the source code contains sufficient explanatory comments;
  - corresponding documentation is available;
  - use does not require any changes to the source code;
  - it was comprehensively tested, not only by the programmer, but also by other employees of the Contractor;
  - defined and documented test cases (including execution steps and the test data / input parameters used) are made available to Post;
  - any test automation implemented as part of the software development is made available to Post for unrestricted use and further development.
- 9.5 8.3 applies correspondingly to adaptation programming.
- 9.6 With respect to user-specific adaptations or modifications to standard software it must be ensured that no version capability is lost. If this should not be possible for any reason, the Contractor must inform Post promptly in advance.
- 9.7 When developing object-oriented software the Contractor is obliged to deliver complete software components with a structured and documented class hierarchy, encapsulated variables, objects that communicate with messages and methods that are defined polymorphically.
- 9.8 The Contractor must ensure that any internet applications can be used in common versions and are browser-independent at the time of acceptance. In addition they must be accessible (see WCAG standard), extremely user-friendly, have optimal page layout (in terms of speed), use standard technologies and have a clear structure.





## **10 Source code (IF PART OF THE AGREEMENT)**

- 10.1 The Contractor must provide the individual software and individual software adaptations (including database scripts or java scripts, etc.), in the source language and translated into the machine code, on a data carrier that can be read on Post's system, and install the application software on Post's system.
- 10.1 After installation, the Contractor will hand over to Post this data carrier with the source code including the corresponding documentation (content and structure of the data carrier, programme and data flow diagrams, test cases, test procedures and test programmes, error handling, etc.).
- 10.2 The data carrier must contain the individual software in the original programming languages at the time of installation, including all changes made since then, as well as the documentation, insofar as it has a machine-readable form. Part descriptions that are not machine readable must be enclosed in a format that can be read without any aids. In any case, however, the Contractor must enclose a list of the deposited items that can be read without any aids, and instructions on how the data carrier must be read on Post's system and how the delivered work must be installed.
- 10.3 This must be deposited / handed over every time a new version of the software is delivered.
- 10.4 If the Contractor is incapable of acting (this includes, in particular, liquidation, if the opening of insolvency proceedings is rejected on the grounds of insufficient assets, liquidation resolution by the general assembly, and suspension of the Contractor's business activities without appointing a successor company authorised to receive or render performance), or the Contractor refuses for any other unjustified reason to properly maintain, process or adapt the software or to have a third party maintain, process or adapt it, then Post is entitled to break the seals of the deposited data carrier and use the work in the source code together with the documentation or commission a third party to use it; Section 21.2 applies correspondingly.
- 10.4 The Contractor must also prepare and submit to Post documentation of the development steps of the software, on the basis of which further development of the individual software and/or individual software adaptations is possible without requiring any additional research on the part of Post. This documentation must not only contain detailed information about the development environment (programme; version number) that was used to develop the supplied individual software and which compiler/interpreter (programme; version number) was used, but the Contractor must also disclose all other developer tools, components and testing tools that were used to create and test the software. If the Contractor makes use of freeware ("open source components"), he must not only state the respective names, version numbers and sources and attach to the documentation a copy of the open source components used in the version, but he must also document any modifications made to the freeware for the creation of the individual software. If the individual programme contains components (programmes, software routines, algorithms, etc.) that were not specifically developed for Post by the Contractor or his subcontractors, but which are used or will be used in the future in software solutions or test solutions intended for other customers, the Contractor agrees in advance that Post can continue to use these components, but only for the purpose of adapting, maintaining, further developing and testing the individual software supplied to Post by the Contractor. In this respect, the Contractor undertakes to indemnify and hold harmless Post against any claims by third parties arising from and in relation to the use of these components, insofar as they are used in the course of adaptation, maintenance and further development.
- 10.5 The information in the documentation must be presented in such a way that it is comprehensible even for a software engineer / programmer or tester not involved in the development who does not have the company-specific knowledge of the Contractor.



## **11 Documentation**

- 11.1. Part of the subject matter of the agreement is the supply of documentation based on statutory provisions (e.g. operating instructions) and – if agreed – the supply and update during the term of the agreement of all documentation necessary and appropriate for the use of the subject matter of the agreement in physical or machine-readable form, with Post specifying the medium for this documentation in each case; this documentation consists of the following:
- for software components:  
at least one set of user documentation, a short description, a set of technical documentation and a list of the test cases prepared or executed including test steps and the test data or input parameters used (concerns black and white box testing);
  - for individual software:  
a set of documentation for installation and administration, as well as a set for users, each in German language; this must also be supplied in a machine-readable format. The documentation must describe all processes necessary for the ongoing work in such a way that they are understandable and comprehensible for a trained person; in particular, it must describe typical and foreseeable error situations and how to remedy them.
- 11.2. The technical documentation must comply with the usual standards at the time of installation and be presented in such a way that it can be understood and implemented by an expert familiar with comparable components. In addition, documentation of all test cases prepared or executed (including test steps and the test data or input parameters used) and the testing tools used must be provided.  
Post may copy and use the supplied documentation as it wishes.

## **12 Additional obligations of the Contractor**

- 12.1. The Contractor undertakes to state the order number and the reference number of Post on all papers relating to an order, in particular on delivery orders and invoices.
- 12.2. 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, 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.
- 12.3. 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.
- 12.4. Furthermore, the Contractor undertakes to provide Post with any agreed services in accordance with the applicable national and European laws and standards and the employee protection regulations within the meaning of the Austrian Occupational Health And Safety Act (*ArbeitnehmerInnenschutzgesetz – ASchG*) 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. Unless expressly agreed otherwise, the Contractor owes Post a service that can be used by Post for the contracted purpose.



- 12.5. 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. Furthermore, 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 of the Austrian Occupational Health and Safety Act). 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.
- 12.6. Should written elaborations be part of the contract, the Contractor is obliged to carry them out in accordance with Section 9.1.
- 12.7. In addition, the Contractor is obliged to state in writing the extent to which the product supplied by him can be used by disabled persons ("Accessibility Statement") and to name a contact person for accessibility issues.
- 12.8. As soon as the Contractor becomes aware of any circumstances which may impair the 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.
- 12.9. If, during performance of the contract, a service not covered by the contract proves to be necessary, the Contractor must reach an agreement with Post in this regard prior to performance. 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 not covered by the contract without prior written consent and agreement of the remuneration, Post is not obliged to remunerate the Contractor for it.
- 12.10. The Contractor undertakes to only deploy staff who have been trained appropriately with regard to the contractual requirements. Should Post so demand, the Contractor will replace, within an appropriate period of time, employees who do not possess the requisite expertise or who impair the fulfilment of the contract.
- 12.11. In accordance with the obligation to protect the interests of the Principal, the Contractor is prohibited from enticing away employees of Post, either for himself or for third parties. He is obliged to refrain from taking any enticement actions of any kind. Furthermore, he undertakes to refrain from employing employees of Post during the term of the contract and for a period of 12 months after termination of the contract. In the event of a violation thereof, the Contractor is obliged to pay a contractual penalty to Post amounting to the gross annual salary of the employee enticed away. The right to assert further claims for damages remains unaffected thereby.



- 12.12. Similarly, in the event of violation of the obligation specified in Section 23.1(**Fehler! Verweisquelle konnte nicht gefunden werden.**), the Contractor must pay the Principal a lump-sum compensation of 50% of the gross total order value. In the case of recurring violations, the Contractor is obliged to pay a lump-sum compensation equivalent to the gross annual fee per contract year.
- 12.13. The Contractor must ensure maintenance of the software for at least 5 years (from the day of takeover); the specific maintenance period must be mutually agreed in a separate agreement. Maintenance includes, above all, troubleshooting, setting up and operating a hotline, further development and provision of advice to Post on the use of IT components. Errors are diagnosed and remedied by remote or on-site maintenance. The maintenance obligation also includes the obligation to continuously update the documentation of the software and to supply or keep available for Post the most up-to-date manuals and online aids for standard software at no extra charge.
- 12.14. The Contractor must inform Post of any technical improvement as well as possible further developments of the software and/or possible adaptations. Scheduled maintenance work or version updates are combined in advance.
- 12.15. The Contractor is obliged to operate maintenance facilities and to set up a hotline to coordinate the ongoing services, all in an appropriate scope, which must be available, at the very least, on business days from Monday to Thursday between 8am and 5pm and on Fridays between 8am and 3.30pm. In addition, the Contractor must set up either an email address or a trouble ticket system that Post can access at no extra charge. The malfunction notifications and the communication regarding software questions must also be made via this alternative communication channel without any significant extension of the response time for maintenance or troubleshooting.
- 12.16. If expressly requested by the Principal, the Contractor is obliged to offer a help desk / support process.
- 12.17. Outside the on-call times for maintenance, the Contractor must perform maintenance, unless this is unreasonable after weighing the interests of Post and his own interests. In any case, it is deemed reasonable if the malfunction belongs to defect classes A or B. The assignment of malfunctions to defect classes is made by mutual agreement, but at least in accordance with the classification of Post.
- 12.18. The following defect classes apply:  
**Defect class "A"** ("critical malfunction") includes malfunctions that make it impossible to use the IT system or significant parts thereof, or that limit the use to an unreasonable extent, that have a serious effect on the business activities of Post or compromise safety. Non-exhaustive examples of this defect group include data loss/destruction, system shutdowns that cannot be remedied by rebooting, time-critical mass processing yields incorrect results, etc.  
If a malfunction is assigned to defect class "A", the Contractor must ensure that the defect is dealt with by qualified personnel during the on-call time, but no later than within the agreed reaction time, and must promptly at least provide a workaround (in principle within 8 working hours from commencement of troubleshooting). This obligation also includes measures not directly related to software, including in particular the replacement of hardware components, services such as software reconfiguration and fixing software problems with patches. If the Contractor suspects that third-party components may have caused or contributed towards the defect, he must to report the defect to the manufacturer concerned without delay.
- Defect class "B"** ("high malfunction") includes malfunctions that significantly limit the use of the IT system or parts thereof, however – despite having a serious effect on the business



activities or safety – generally allow work to continue under limited, but not unreasonable conditions. Examples of this defect group include incorrect or inconsistent processing, noticeable shortfalls of the agreed performance data of the IT system, higher frequency of short malfunctions, etc.

If a malfunction is assigned to defect class "B", the Contractor must ensure that qualified personnel begins to deal with the defect during the on-call time, and provides a workaround in the medium term and, as far as possible, a correction of the cause of the defect in the medium term. This obligation also includes measures not directly related to software, including the replacement of hardware components, services such as software reconfiguration and fixing software problems with patches. If the Contractor suspects that third-party components may have caused or contributed towards the defect, he must report the defect to the manufacturer concerned without delay.

**Defect class "C"** ("low malfunction") includes malfunctions that slightly impede the functional use of the IT system or parts thereof, the malfunction only has an insignificant effect on business activities or safety, work can be continued without restriction. Demonstrative examples of this defect group are incorrect defect notifications / programme goes into a standby mode and must be activated manually by the user, etc.

If a malfunction is assigned to defect class "C", the Contractor must ensure that qualified personnel begins to deal with the defect within a reasonable period, and that the cause of the defect is corrected as quickly as possible e.g. by replacing hardware components, reconfiguring software, fixing software errors within the scope of the release policy, etc. In addition, the Contractor notifies a manufacturer other than Post of the defect.

- 12.19. 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 №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.
- 12.20. 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.





### **13 Duty to supply information**

- 13.1. The Contracting Parties will continually share with each other important information regarding the subject matter of the agreement.
- 13.2. The Contractor is not obliged to hold training sessions without additional remuneration; however, he must inform Post, at Post's request, of any other training programmes in good time. This duty to supply information encompasses further training measures, participation costs, training dates and training venue. Post must be given the opportunity to participate in these training programmes at usual market terms.
- 13.3. 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.

### **14 Project management**

- 14.1. Before commencing work, the Contractor must notify Post of one person in charge designated as the project manager.

14.2. Project management and reporting:

In accordance with the specifications of the contract the Contractor must draw up a project plan in sufficient detail and update it weekly in critical phases, otherwise every 14 days, in the agreed format, and send it to the Principal; a target/actual comparison must be included.

The Contractor must maintain documentation in which the most important project management mechanisms (setup and workflow organisation, persons involved, rules for working together, quality assurance, etc.) are defined.

The Contractor must draw up a report of the results of each meeting in the agreed format of the MS Office system used by Post and send it to all parties involved within one week after the respective meeting at the latest.

14.3. Changes to the provisions

Changes that become necessary due to defects in the result of an already completed phase of the project must be carried out at the full expense of the Contractor, providing he also carried out this phase of the project; they must be compensated for by additional work or similar measures in such a way that the deadlines in the schedule are kept.

Changes requested by Post within the first third of the project's duration that make up no more than 1/10 of the total contract volume have no impact on the schedule.

### **15 Remuneration**

- 15.1. The remuneration is understood as a fixed package price with all statutory levies included; import sales tax / VAT excluded. In the event of general price reductions, including those of the Contractor, after the date of signing of the contract, these must be passed on to Post. All services are deemed compensated with the agreed remuneration. Any maintenance work for which a recurring maintenance fee has been agreed is subject to the rules of price adjustment in accordance with the Maintenance Contract.
- 15.2. Post will assume no ancillary costs, including in particular travel, accommodation and other expenses. Costs incurred for necessary travel must be included in the contract/offer and be contractually agreed.
- 15.3. If, in the course of project execution, it becomes apparent, through no fault of the Contractor, that additional services are necessary or expedient, the Contractor must notify Post of this in accordance with Section 12.6 and come to an agreement. If he fails to do so, he is not entitled to remuneration for his work, not even if it is useful or expedient. Liability for unjust enrichment





(e.g. Sec 1041f ABGB) or liability from the title of negotiorum gestio (i.e. conducting another's affairs without authority to do so) (Sec 1035f ABGB), whether in direct or analogous application of the law of unjust enrichment or negotiorum gestio, is excluded in this case with the exception of imminent danger.

## **16 Invoicing / Terms of payment**

- 16.1. 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 Sec11 of the Austrian VAT Act (Umsatzsteuergesetz – UStG). Invoices must be sent as a single copy to the central invoice receipts department

**Österreichische Post AG  
Rechnungseingangsstelle  
Business Center 590  
1000 Wien**

- 16.2. If the Services are performed on the basis of an individual confirmation of services rendered, the latter must be appended to the invoice.
- 16.3. Following completed performance without defects and issue of an invoice without objection, payment of the net amount with a 3% discount will be made within 30 days. The payment term begins on the date of receipt at our central invoice receipts department.
- 16.4. 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.

## **17 Exploitation rights / Patents**

- 17.1. The Contractor will hand over the individual software and/or software components including all work results required for putting into service, ongoing operations, maintenance and support of the work by Post.
- 17.2. Unless otherwise agreed, the Principal has the non-exclusive, unrestricted right to use the work to be provided for Post by the Contractor and the associated work results, including the knowhow included therein, in whatever manner, Post has the right to do so free of charge, irrevocably and for an indefinite period of time. The Contractor agrees that Post may make changes of any kind to the work. Unless otherwise agreed, this does not encompass the right of commercial exploitation and publication, except for the purpose of executing invitations to tender.
- 17.3. Post may use the software referred to in Sections 17.1 and 17.2 in the agreed scope; this also includes the right of reproduction (for backup and archiving purposes) and free distribution to group companies pursuant to Section 15 of the Austrian Stock Corporation Act (*Aktiengesetz – AktG*).
- 17.4. Post will have the exclusive usage rights to any invention by employees of Post. The Contractor has the right to use the invention to provide the agreed service.
- 17.5. If any work on the agreed work leads to a new invention by the Contractor which is patentable or licensable as a patent or utility model, the Contractor will immediately notify Post thereof. Post may, at its own discretion, while naming the inventor in accordance with the applicable legal provisions, apply for industrial property rights on its own behalf in any country, and pursue these rights further or drop them at any time. The Contractor will not be entitled to any additional remuneration for giving such invention to Post or for granting Post the rights of utilisation



thereof, as the agreed remuneration sufficiently covers adequate remuneration for the invention.

## **18 Default in performance**

- 18.1. Should, for reasons within the purview of the Contractor, a deadline specified in the schedule not be met, or the performance of a service, the submission of the readiness report or the real operations of the custom software or a part to be accepted separately be delayed, Post is entitled, at its own discretion:
- to demand performance and at the same time a penalty for each calendar day or part thereof exceeding the deadline in accordance with Section 19; or
  - without prejudice to its right to assert a penalty pursuant to Section 19, to withdraw from the contract after setting a reasonable grace period; in this case Post may demand a penalty that corresponds to the number of days of the actual delay, but no less than 90 days.
- 18.2. If, according to the agreement, the individual software is to be provided in parts, and the Contractor is in default with one part of the work only, the withdrawal may only be made in respect of the individual part, or of all parts that are still outstanding.

## **19 Contractual penalty**

- 19.1. For each calendar day or part thereof exceeding the deadline, the Contractor must pay a contractual penalty irrespective of fault of 0.5% of the agreed gross order value 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 fee per contract year. Section 21 remains unaffected thereby.
- 19.2. 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.
- 19.3. 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 for which the Contractor is responsible, the contractual penalty will – without prejudice to any other consequences of the withdrawal – only be charged until the date on which the Contractor receives the notice of withdrawal. If the agreed contractual penalty is not specified per day but per week or month, then a calendar day will be 1/7 of a week or 1/30 of a month in the calculation. The Contractor bears the full costs of decommissioning and dismantling machinery.
- 19.4. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.
- 19.5. The payment of a contractual penalty does not release the Contractor from his obligation to fulfil the agreed Services.

## **20 Warranty (Secs 922 et seqq. Austrian Civil Code)**

- 20.1. ABGB) Unless a longer warranty period is provided for by law, the warranty period is 2 years and begins on the day of takeover; if notice of defects is given within this period, they are deemed to have been present on the day of takeover.
- 20.2. After completion of performance, the Contractor is obliged to remedy all defects upon request by Post within a reasonable grace period – without entitlement to any further remuneration. If the Contractor fails to meet his obligation to remedy defects even after a reasonable grace period, or fails to do so on time or in full, or if the remedy is also defective, the following applies:
- If the work is unusable for Post and cannot be improved, even by a third party, the Contractor loses his entitlement to remuneration; the contractor shall repay any amounts already received plus interest of 9.2% above the base interest rate applicable (as provided by Sec



456 (Austrian) Companies Act (*Unternehmensgesetzbuch – UGB*), Sec 1333(2) (Austrian) Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*) as amended from time to time), calculated from the date of receipt of the amounts.

- If an improvement of the work by a third party is possible, Post is entitled to claim reimbursement of all costs of improvement from the Contractor.
- If the value of the work provided to Post has been diminished and if an improvement by a third party is impossible, Post is entitled to reduce the remuneration appropriately.

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

20.4. 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.

## **21 Damages**

21.1. The statutory provisions apply. Liability for damage caused by slight negligence is limited to the gross total contract value per contract year; in the case of recurring services, liability is limited to the gross annual fee per contract year.

21.2. 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. In the case of a default in performance caused by the Contractor, Post is entitled to initiate execution by substitution at the expense of the Contractor after a warning has been communicated and a reasonable grace period set. The requirement of setting a grace period is not applicable if it is a fixed-date contracts as defined in Sec 919 (Austrian) Civil Code (*ABGB*).

## **22 Freedom from third-party rights**

22.1. If a claim is made or may be made against Post on the grounds of the infringement of the intellectual property rights of a third party as a result of the utilisation of components, Post will inform the Contractor without delay and give the Contractor the opportunity of defending himself against the claim or of obtaining the full rights.

22.2. The Contractor will compensate Post for any damage resulting from or in connection with the infringement of industrial property rights of third parties associated with the Contractor's delivery or performance. The damage to be compensated includes any payment made for any settlement of disputes out of court, which Post may make subject to the Contractor's approval, which the Contractor will not unreasonably withhold.

## **23 Extraordinary termination**

23.1. Post is entitled to terminate the contract for good cause at any time by unilateral declaration and with immediate effect. 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 work already performed by the Contractor. Good cause exists, in particular:

- a) if insolvency proceedings against the Contractor have been rejected on the grounds of insufficient assets;
- b) if the Contractor's work has significant quality defects or the Contractor is in default with the agreed work; if, according to the agreement, the work is to be provided in parts, and the Contractor is in default with one part of the work only, the withdrawal may only be made in respect of the individual part, or of all parts that are still outstanding. Post is not required to grant a grace period;



- c) if there are circumstances that make it obviously impossible to fulfil the contract in time and delay completion by more than half of the originally agreed delivery 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 or a third party that is involved with the conclusion and implementation of the contract at Post, and/or violates anti-corruption regulations or Section 12.3;
- f) if the Contractor himself, or a person engaged by the Contractor for fulfilment of the contract, 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 by the (regional) criminal court against the Contractor or the persons working under the Contractor's management for serious acts or omissions in connection with his professional activity;
- j) if the Contractor loses his official (commercial) licence.

23.2. Both in the event of withdrawal from the contract on the part of the Principal and in the event of extraordinary termination in accordance with this section, the Contractor loses all entitlement to remuneration and compensation of expenses if he has not yet executed an agreed partial performance that is free of defects and can be used by Post; payments already made are to be paid back without delay. The Contractor must compensate Post for any additional costs incurred by subcontracting the commission to a third party, unless such costs are already covered by liquidated damages.

**24 Retention / Performance obligation / Retention of title**

In the event of a dispute, the Contractor is not entitled to withhold deliveries and/or to cease performance of work. A reservation of title of the Contractor as of acceptance is excluded.

**25 Exclusion of set-off**

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

**26 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 of payment claims was negotiated individually within the meaning of Sec 1396a Austrian Civil Code (ABGB) as amended. In the event of violation of this provision, the Principal has the right to demand a penalty regardless of fault amounting to 80% of the transferred claim, however, up to no more than EUR 2,000.00 in each case.

**27 Applicable law / Court of jurisdiction**

Any and all disputes arising out of and in connection with this Agreement / Framework Agreement are subject to Austrian law, with the exclusion of the UN Convention on the International Sale of Goods and conflict of law provisions.

It is agreed that all disputes will be referred to the local court responsible for commercial matters in 1030 Vienna.



## **28 Costs and charges**

- 28.1. The costs, taxes and charges associated with the execution of the agreement will be borne by the Contractor.
- 28.2. In the event that liability for charges arises from the agreement in accordance with the Austrian Fees and Duties Act 1957 (*Gebührengesetz – GebG*, Official Gazette 194/267 as amended) and duties are levied, these are borne solely by the Contractor.
- 28.3. 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 1999 as amended, as debtor of fees, for tax debts of the Contractor by federal, provincial or regional tax authorities, the Contractor undertakes to compensate Post for the payments made and fully indemnifies and holds harmless Post in this regard.
- 28.4. Each of the contracting parties will bear its own costs for the drafting of the agreement and for legal representation.

## **29 Miscellaneous**

- 29.1. It is emphasised that the headings and subheadings in these GTC merely serve the purpose of providing structure and therefore have no legal effect.
- 29.2. 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 any deviation from the formal requirement of the written form.
- 29.3. 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 economic 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.
- 29.4. The Contractor waives his right to avoidance of the contract on grounds of unfair and unreasonable consideration (*laesio enormis*).
- 29.5. All rights and obligations arising from the agreement will be transferred to any legal successors of either Contracting Party.