



CORPORATE PROCUREMENT & IT

GENERAL TERMS AND CONDITIONS OF CONTRACT

of

Österreichische Post AG

for

IT Services

Software as a Service

(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 with regard to IT services between Österreichische Post AG (herein "Post") and the contractor (herein "Contractor") 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 "IT services" primarily means programming services, maintenance services, ASP, consulting services, and training services.
- 1.3 Third-party general terms and conditions of business/contract and/or standard terms and conditions are expressly excluded. This also applies if the 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 per Annex ./1 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, the state of the art, appropriate dimensioning 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.
If elements, components or ancillary services are omitted, these must be provided by the Contractor free of charge. Warranty and compensation claims remain unaffected thereby.
- 3.3 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. Form of supply**
- 4.1 The Contractor, as the licensor, will provide the Principal, as the licensee, with "Software as a Service (SaaS)".
- 4.2 Unless expressly agreed, the Contractor is obliged to document the technical specifications made together with Post, on the basis of the requirements of Post.
- 4.3 The application is situated on the server of the Contractor, as the licensor. This constitutes the place of performance.
- 5. Acceptance**
- 5.1 Before the acceptance test, the Contractor must inform Post in writing of the completion of the service or parts thereof without delay and request Post to carry out the acceptance test; the acceptance test must be carried out after completion has been confirmed in writing.



- 5.2 If a significant defect is identified, Post may refuse acceptance. A penalty in accordance with the SLA (Service Level Agreement) is deemed to have been agreed.

Defects that are not significant will not prevent acceptance, but they must be rectified in accordance with the deadlines set out in the SLA (Service Level Agreement). Sec 377 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*) is excluded by mutual agreement.

- 5.3 If Post does not accept the defect-free performance object within 4 weeks of receipt of written confirmation, the performance object will be deemed accepted as defect-free four weeks from confirmation.

6. Takeover / Partial takeovers

- 6.1 The day of takeover is:

- the business day following the day on which the successful acceptance test is concluded upon signing of an acceptance report; 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.

- 6.2 Should more than one acceptance test be necessary for parts of the service, these will subsequently only be taken over as a whole. Point 5 applies analogously. Takeovers of parts of the service 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.

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

7. Exploitation rights / Utilisation of intellectual property

- 7.1. Unless otherwise agreed, the Contractor grants the Principal the simple right to use the software for the intended purposes of the Principal for an indefinite period.

- 7.2. If expressly agreed, this right of use 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*). 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.

- 7.3. Post will have the exclusive usage rights to any invention by employees of Post. In this case the Contractor must notify Post immediately of any new invention by the Contractor which is patentable or licensable as a patent or utility model. 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.



8. Freedom from third-party rights

- 8.1. The Contractor, as the licensor, will ensure that the software has been developed by him and/or that he is the owner and is exclusively entitled to all marketing, sales and licensing opportunities.
- 8.2. 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 utilisation, Post will inform the Contractor immediately and give the Contractor the opportunity of defending himself against the claim or of obtaining the full rights
- 8.3. 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.

9. Information / Presentation / Workshops

- 9.1. Should the Principal so desire, the Contractor must carry out visual presentations in order to optimise the parameters for the employees of the Principal; these must be included in the remuneration agreed.
- 9.2. Services that go beyond tips for use (such as training programmes) are not included in the licence or maintenance price; however, the Contractor is obliged to inform Post on request about other training programmes in a timely manner. 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.

10. Project management

- 10.1. If expressly agreed, before commencing work, the Contractor must notify Post of one person in charge designated as the project manager.
- 10.2. 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.

- 10.3. 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.
- 10.4. 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.



11. Additional obligations of the Contractor

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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, Annex ./2, 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.
- 11.5 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.



- 11.6 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.
- 11.7 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. If the Contractor assures Post in the offer or otherwise that specific persons will be responsible for provision of the service, these persons must be available to Post and take primary responsibility for service provision over the entire contract term. They may only be replaced if absolutely necessary. Any necessary replacement requires the prior consent of Post. Post will not withhold its consent unreasonably, providing the Contractor demonstrates that the person taking over service provision is as qualified and experienced as the person being replaced.
- 11.8 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.
- 11.9 Similarly, in the event of violation of the obligation specified in Section 17.1(**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.
- 11.10 The Contractor must inform Post of any technical improvement as well as possible further developments of the software and the service, and/or possible adaptations. Scheduled maintenance work or version updates are combined in advance.
- 11.11 For information about the obligation of maintenance, availability, response times, maintenance support and help desk / support, please refer to the SLA (**Service Level Agreement**).
- 11.12 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 N°11 "Capital Market Compliance Directive" of Österreichische Post AG), the contractor undertakes to provide Post with a contact person for capital market compliance matters. Furthermore, the contractor undertakes to keep a list of all persons involved in the processing of the order. In addition, the Contractor undertakes to provide evidence of all written mailings (e.g. concerning the aforementioned guidelines or blocking periods) which the Contractor receives from the Compliance department of Post to the persons on this list (e.g. by e-mail with read confirmation). In addition, the Contractor undertakes to provide Post with the list of persons as well as proof of the forwarding of the mailings at the request of Post.



- 11.13 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.

12. Remuneration

- 12.1. 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 contractual services are deemed compensated with the agreed remuneration.
- 12.2. If payment at an hourly or daily rate is agreed, the Contractor must submit with each invoice a detailed schedule of the services performed and their scope. Rights of utilisation and exploitation accruing to Post are covered by the agreed remuneration.
- 12.3. Additional ancillary costs – especially travel or accommodation and other expenses – must be included in the contract and/or offer and will be assumed by Post only if they were expressly agreed in advance in writing.
- 12.4. 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 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.

13. Invoicing / Terms of payment

- 13.1. 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

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

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



13.3. 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.

13.4. 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.

14. Performance dates/contract penalty

14.1. For information about performance dates, availability, response times, defect classifications and the relevant contract penalties and their due dates, please refer to the **SLA (Service Level Agreement)**.

14.2. The Contractor must pay a contractual penalty irrespective of fault of 0.5% of the agreed gross order value for each 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 fee per contract year. Section 11.9 remains unaffected thereby.

14.3. 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.

14.4. 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, by mutual agreement, 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.

14.5. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.

14.6. The payment of a contractual penalty does not release the Contractor from his obligation to fulfil the agreed Services.

15. Warranty (Secs 922 et seqq. Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*))

15.1. 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 demonstrably communicated to the Contractor. The Contractor warrants that the resources required for the fulfilment of the Contract are available.

15.2. 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. If the Contractor fails, within a reasonable period, to meet his obligation to remedy defects, or fails to meet it in a timely manner or completely, or if the remedy is also defective, Post will be entitled to reduce the remuneration commensurately, including to the point where the Contractor loses his entitlement to remuneration; the Contractor must repay any amounts already received, plus interest in the amount of 9.2% over the base rate (as defined in Sec 456 of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*), Sec 1333(2) of the Austrian Civil Code (*Allgemeines bürgerliches Gesetzbuch – ABGB*)), calculated from the date of receipt of the amounts.



- 15.3. 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.
- 15.4. 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.

16. Damages

- 16.1. The statutory provisions apply. The Contractor is liable for the culpability of all persons whose services he engages to fulfil his contractual obligations, in accordance with Sec 1313a of the Austrian Civil Code - ABGB). 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 this contract. 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.
- 16.2. 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 setting of a grace period is not applicable for fixed-term contracts (Sec 919 of the Austrian Civil Code (*ABGB*)).

17. Extraordinary termination

- 17.1. 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, a partial termination may also 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 11.3;
 - 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.
- 17.2. 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.
- 18. 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.
- 19. Costs and charges**
- 19.1. The costs, taxes and charges associated with the execution of the agreement will be borne by the Contractor.
- 19.2. 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.
- 19.3. 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.
- 19.4. Each of the contracting parties will bear its own costs for the drafting of the agreement and for legal representation.
- 20. Miscellaneous**
- 20.1. It is emphasised that the headings and subheadings in these GCC merely serve the purpose of providing structure and therefore have no legal effect.
- 20.2. 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.
- 20.3. 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.
- 20.4. 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.



20.5. 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 rules.

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

20.6. The Contractor waives his right to avoidance of the contract on grounds of unfair and unreasonable consideration (*laesio enormis*).

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

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

20.9. All rights and obligations arising from the agreement will be transferred to any legal successors of either Contracting Party.

Annexes:

Annex ./1	Data Processing Contract within the meaning of Art 28 GDPR
Annex ./2	Annex 71 Code of Conduct for Suppliers