

CORPORATE PROCUREMENT & IT

GENERAL TERMS AND CONDITIONS OF CONTRACT

for Procurement of Machinery, Technical Equipment, Components and Products (Version: 01.04.2022)

1. Scope/Definition

- 1.1. These General Terms and Conditions of Contract (herein "GCC") apply to the contractual legal relationships governing the **work performance** of supplying, assembling or installing and commissioning machinery, technical equipment, components and products (herein "Services" or "Machinery" or "Work") between Österreichische Post AG (herein "Post" or "Principal") and the contractor (herein "Contractor") and to future offers/contracts between Post and the Contractor (herein jointly "Contracting Parties").
- 1.2. In particular, the GCC 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 GCC take precedence.
- 1.3. Third-party general terms and conditions of business/contract and/or industry-standard terms and conditions are expressly excluded. This even applies if the Contractor refers to them in an offer, correspondence or other documents.
- 1.4. "Work performance" means all material services and services accompanying a product, as well as both tangible and intangible services and **results must be achieved**, such as mechanical engineering and construction, maintenance, transport, repair services, printing services, or data processing, etc.
Machinery or technical equipment, components and products are (i) machinery within the meaning of Art 2 of the Machinery Directive 2006/42/EC and Sec 2 of the Austrian Federal Machine Safety Act (*Maschinen-Sicherheitsverordnung - MSV*) 2010, BGBl. II No. 282/2008 as amended or the statutory regulations replacing these provisions, as well as (ii) components that do not fall under the aforementioned provisions but are affixed to existing machinery/equipment of Post.

2. Obligations of the Contractor

- 2.1. The Contractor undertakes, based on the initial situation and objectives described, to advise Post comprehensively and professionally in accordance with the object of the contract and to protect the interests of Post; this includes keeping Post apprised of **opportunities and possibilities as well as risks and how to minimise them**. Insofar as the object of the contract so requires, the Contractor must submit to Post a complete, clearly structured and comprehensible final report in which all results including all documentation (the concept developed, reports on partial results of the studies carried out by the Contractor, further documentation, records of results, consulting reports, business plans, concepts, etc.) as well as the aspects underpinning them are presented. The Contractor must make available to Post all aspects that form the basis for the results. The Contractor undertakes to properly perform the Services in accordance with the object of the contract and/or in a manner that is suitable and fit for the agreed purpose.
- 2.2. Being self-employed, the Contractor is not bound when performing the Services; the Contractor organises the contractual Services themselves and does not work exclusively for Post. In particular, there is no obligation to personally provide the Services, meaning that the Contractor may generally and at any time appoint suitable third parties to represent them or enlist the services of vicarious agents (primarily their own employees, subcontractors,



etc.), see also Sec 2.6.

In this regard, the following applies pursuant to the **Austrian Federal Act Governing the Employment of Foreign Nationals** (*Ausländerbeschäftigungsgesetz – AuslBG*):

The Contractor undertakes to only deploy such employees who are not subject to the *AuslBG* or who have obtained the necessary work permit in accordance with the *AuslBG*. When engaging subcontractors, the Contractor must ensure that these comply with the obligation set out in the sentence above.

If the Contractor appoints representatives or uses the Contractor's own employees and/or subcontractors to perform the Services, the Contractor bears the cost and risk therefor and is liable to Post for the proper performance of the Services on the part of their employees and subcontractors. This applies, in particular, to complying with all statutory regulations, as well as to obtaining any necessary permits, and the Contractor will fully indemnify and hold harmless Post in this regard. The Contractor undertakes to notify the Principal without delay of any and all foreign nationals engaged by the Contractor or their subcontractors to perform the Services, as well as their work permits pursuant to the *AuslBG*.

If the Contractor employs staff or makes contracts for work and services, the Contractor is an employer or a commissioner of work and signs the employment contracts or contracts for work and services on the Contractor's own behalf and account.

- 2.3. If the Contractor culpably violates their obligations in a manner described in Sec 32.2(d), Post is entitled to a penalty of 50% (fifty percent) of the agreed remuneration. Similarly, in the event of violation of the obligation specified in Section 32.2(e), the Contractor must pay the Principal a penalty of 50% of the gross total order value. In the case of recurring violations, the Contractor is obliged to pay a penalty equivalent to the gross annual fee per contract year.
 - 2.4. 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 object of the contract requires certain employees to be in charge of the performance of Services, the Contractor must bind these with main responsibility for the performance of Services over the entire term of the contract and is responsible for replacing them if absolutely necessary and appointing someone else to the position in coordination with Post. Post will render its consent in cases in which the Contractor proves that the incoming staff member is just as qualified and professionally experienced as the outgoing staff member.
 - 2.5. As soon as the Contractor becomes aware of any circumstances which impair the performance of the agreement, the Contractor must immediately inform Post in writing within 48 hours of becoming aware of these circumstances and suggest ways of resolving them.
 - 2.6. If the Contractor intends to engage subcontractors, the Contractor must demonstrably notify Post thereof by the time the offer is obtained or the contract awarded and may only proceed to engage such subcontractors with the prior written consent of Post.
If, at some point after conclusion of the agreement, the Contractor intends to change subcontractors or engage a subcontractor that was not disclosed in the offer or during the awarding procedure, the Contractor is obliged to provide Post with the reasons for this change and the name of the intended subcontractor. If the Contractor was required to fulfil suitability criteria, the Contractor must provide, when notifying Post, all paperwork necessary to substantiate the suitability of the subcontractor in question. A change in subcontractor or appointment of a new subcontractor requires the prior written consent of Post, whereby the consent is deemed given if Post does not reject the proposed subcontractor within three weeks of receiving notification; the three-week period only commences upon provision of all paperwork. Post will not withhold its consent unreasonably. No consent is, however, required for the conclusion of contracts with subcontractors with which the Contractor is affiliated within the meaning of Sec 189a of the Austrian Companies Act (*Unternehmensgesetzbuch – UGB*).
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The Contractor is not entitled to engage subcontractors who in turn engage other subcontractors to partly or fully perform the contractual Services; i.e. the Contractor's agreement with subcontractors must include a clause prohibiting the use of subcontractors; i.e. the Contractor is obliged to check that the subcontractors engaged by the Contractor comply with this obligation and, in particular, to agree a right of extraordinary termination with the subcontractors.

- 2.7. The Contractor must comply with all applicable regulations, in particular the Austrian Federal Trade, Commerce and Industry Regulation Act 1994 (*Gewerbeordnung – GewO 1994*, BGBl. N° 194/1994), the applicable labour and social law regulations, such as the Austrian Federal Anti-Wage and Social Dumping Act (*Lohn- und Sozialdumping-Bekämpfungsgesetz LSD-BG 2016*, BGBl. N° 44/2016 as amended from time to time), the Austrian Federal Act on the Employment of Foreign Nationals (*Ausländerbeschäftigungsgesetz – AuslBG 1975*, BGBl. N° 218/1975 as amended from time to time) etc., and to prove their compliance by submitting the relevant documents and evidence, in particular the latest account confirmation or certificate of good standing issued by the competent social insurance company, the latest back tax certificate pursuant to Sec 229a Austrian Federal Fiscal Code (*Bundesabgabenordnung – BAO*), a copy of the licensing certificate and/or business licence, entitlement to employ foreign nationals pursuant to the *AuslBG*, etc.
The Contractor must prove, without request, that they have complied with these laws by submitting to Post the relevant documents/certificates upon conclusion of the contract and, in case of long-term contracts, on a quarterly basis. The Contractor undertakes to ensure minimal disruption of operations and to comply with the Code of Conduct for Contractors, (for short, "Code of Conduct"), see Annex ./2, and the relevant operational regulations of Post, in particular safety regulations, working time regulations, house rules, etc., see Sec 2.10.
- 2.8. 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 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.
- 2.9. The Supplier confirms that all electrical and electronic equipment to be supplied, to the extent that the object of the contract so requires, complies with the provisions of the Austrian Ordinance Regulating the Handling of Waste Electrical Equipment (*Elektroaltgeräteverordnung – EAG-VO*), BGBl. II N° 121/2005, as amended from time to time, and with Directive 2011/65/EU and Directive (EU) 2015/863 on the restriction of the use of certain hazardous substances in electrical and electronic equipment.
- 2.10. Post and the Contractor work together to implement the health and safety regulations within the meaning of Sec 8 of the Austrian Federal Occupational Health and Safety Act (*ArbeitnehmerInnenschutzgesetz – ASchG*) and coordinate their hazard prevention activities (e.g. handling of heavy loads, **conduct on the company premises**). Post and the Contractor must share with each other all information on any potential hazards (e.g. **operating instructions, loading and unloading guidelines for distribution centres**, access to the health and safety documents).
The Contractor undertakes to comply with the **instructions for external companies** and to only deploy staff whom the Contractor has trained appropriately, in particular with regard to the handling of work equipment etc., and who have been, demonstrably and in writing, accordingly instructed on safety, risk avoidance and health protection (within the meaning of Sections 12 and 14 of the Austrian Federal Occupational Health and Safety Act [*ArbeitnehmerInnenschutzgesetz – ASchG*]). Furthermore, the Contractor is obliged to always request the currently valid version of the documents such as operating instructions, operating manuals, guidelines, etc., from Post, to ensure that the Contractor's training on hazard
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prevention and avoidance is always based on the current documents.

If the Contractor does not personally carry out the contractual Services but uses subcontractors, the Contractor undertakes, in their capacity as principal, to demonstrably impose this provision upon the subcontractors or to demonstrably pass on to the subcontractors all hazard-specific information relevant to the performance of the activity and to demonstrably instruct them on the hazards.

The Contractor is obliged to regularly check that the instructions are complied with.

Should an employee of the Contractor, or a subcontractor or employee of a subcontractor, suffer an occupational accident on any premises of Post, the Contractor is obliged to fully indemnify and hold harmless Post irrespective of fault. This also applies to any administrative and legal proceedings, any attendant costs including costs of legal representation and penalties of all kinds. Post will not pay damages of any kind for material losses or other losses, in particular due to theft, on any premises of Post during the term of the assembly/installation.

- 2.11. In accordance with the obligation to protect the interests of Post, the Contractor is prohibited from enticing away employees of Post, either for themselves or for third parties and 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.

3. Offers / Cost estimates

- 3.1. The Contractor bears the costs relating to offers, including any contract establishment costs and cost estimates; the accuracy of any cost estimate submitted by the Contractor is deemed guaranteed (Sec 1170a Austrian Civil Code [*Allgemeines bürgerliches Gesetzbuch – ABGB*]).
- 3.2. The Contractor guarantees that they 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, the Contractor may not omit any elements, components or ancillary services 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.

4. Conclusion of the agreement / Placing orders

- 4.1. Performance of the service is based on a written agreement that is concluded through Post's prior written placement of an order and/or acceptance of the offer. Any changes or amendments to the offer must also be made in writing. The Supplier is not entitled to remuneration for any services provided prior to conclusion of the agreement.
- 4.2. Any amendments to the scope or adjustments require the prior written approval of Post.
- 4.3. The award of a contract to the Contractor in the course of an award procedure also constitutes the conclusion of a contract.

5. Successor products

- 5.1. If it is not possible for the Contractor to deliver the commissioned machinery or parts thereof, the Contractor may offer to deliver successor products; these must at least correspond to the defined scope of performance and to the quality criteria, they must not lead to an increase in costs and must be compatible with the parts already supplied.
 - 5.2. Post has the right to demand delivery of the latest version of the machinery or parts thereof. New parts do not affect the price of the overall machinery.
 - 5.3. Should the price of new components be lower than the old ones, these price reductions must be passed on to Post in the same amount.
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6. Delivery schedule / Delivery

- 6.1. The Contractor has assessed the requirements of Post (with regard to concept, requirements, technical or contractual specifications, etc.).
- 6.2. Insofar as contractually agreed, the Contractor will draw up contract specifications documenting the technical specifications laid down jointly with Post after award of the contract or placement of the order.
- 6.3. Based on the requirements of Post (with regard to concept, requirements, contract specifications, etc.), the Contractor will deliver a complete and functional work that corresponds with the generally recognised standards of engineering and the state of the art, where particular attention must be paid to the appropriate dimensions.
- 6.4. The Contractor will create a delivery and installation schedule containing the key dates and contact persons including their contact details. The delivery schedule also includes the date of delivery as per Section 15.
- 6.5. The delivery of the work 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. Ownership of the delivered work will pass to Post upon acceptance. However, Post has the right to use the work prior to acceptance, from commencement of trial operation, if agreed and necessary, as specified in Section 12, at no additional cost to Post. A reservation of title of the Contractor as of acceptance is excluded.
- 6.6. It is the Contractor's sole responsibility to take all necessary measures to secure the place where the delivered work is assembled/installed, in accordance with the statutory, police, workers' protection and accident prevention provisions and other measures exclusively. The Contractor shall fully indemnify and hold harmless Post from and against all claims asserted by third parties in this connection; this also applies in the event that the Contractor's vicarious agents assert claims for damages against Post. Post will not provide any replacement of any kind for material and other loss, in particular due to theft, during the period of assembly/installation and during trial operations.

7. Data protection

The Contractor agrees that Post may use the data relevant to the contract and the personal data of the contact persons for the purpose of supplier management, and may pass such data on to companies affiliated with Post.

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 2021 (*Telekommunikationsgesetz – TKG*, BGBl. I No. 190/2021 as amended) or any statutory regulations replacing it. In the event that personal data are processed on behalf of Post, the Contracting Parties must conclude a data processing contract within the meaning of Article 28 GDPR, appended as an annex to the agreement as an integral part of the agreement.

8. Non-disclosure / Postal secrecy

- 8.1. During the course of the Contractor's performance of Services for Post, the Contractor will become aware of and receive access to information, data, business secrets and knowhow of Post (herein "Information") which must be kept confidential. The Contractor undertakes to keep secret all data, information, business secrets and knowhow of which the Contractor
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becomes aware, unless Post releases the Contractor from this obligation in writing.

- 8.2. The Contractor undertakes to take all appropriate measures to ensure secrecy and prevent the disclosure and unauthorised use of information; i.e. in particular, the Contractor must
- use this information exclusively for the purpose of fulfilling the orders placed with the Contractor by Post to the required extent;
 - limit access to this information to employees who are indispensable in fulfilling the object of the contract and contractually impose on them the non-disclosure obligations set out herein;
 - keep secret and confidential all information provided to the Contractor by Post in connection with the performance of the contract and/or information obtained in connection with the fulfilment of the Contractor's contractual obligations;
 - if the Contractor engages third parties or affiliated companies within the meaning of Sec 189a of the Austrian Companies Act (Unternehmensgesetzbuch – UGB) to perform the contract, impose on them in a legally binding and verifiable way the non-disclosure obligations 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 that information in any other way without the written permission of Post;
 - process replaced components that contain information in such a way that they are no longer readable or, at the request of Post, destroy these components in the presence of an employee of Post. The completed erasure or destruction must be confirmed in writing in each case at the request of Post.
- 8.3. The non-disclosure obligation 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 themselves.
- 8.4. Should the Contractor gain access to postal items of Post in the course of performance, the Contractor undertakes to maintain postal secrecy in accordance with Sec 5 of the Austrian Postal Market Act (*Postmarktgesetz – PMG*).
- 8.5. In each case of a breach of these obligations and of the obligation to impose the non-disclosure obligation on all vicarious agents, the Contractor must pay a contractual penalty in the amount of EUR 10,000.00 (ten thousand euros) to Post for each individual violation, irrespective of fault. Post retains the right to claim damages in excess of this amount. Payment of the contractual penalty does not release the Contractor from their obligation to fulfil the contractual obligations.
- 9. Site facilities (if required)**
- 9.1. Before beginning assembly on site, the Contractor must find out about the possibility of setting up site facilities. The Contractor is responsible for coordinating the execution of the site facilities with Post, taking into account regulatory requirements.
- 9.2. After consulting with Post, the Contractor will be assigned work areas and, if necessary, areas for material storage. The Contractor does not have a right to a certain location/space.
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- 9.3. Post has unrestricted access to all spaces/facilities, even if they are being used by the Contractor.
- 9.4 In the event that storerooms and storage areas are provided, these are made available to the Contractor at no charge, however until further notice at any time and without any liability on the part of Post. It is under no circumstances permitted to set up storage or work facilities without the approval of Post.
- 9.5 The Contractor must set up the site facilities and transfer the site supply lines during the construction period free of charge and on schedule, at the request of Post.
- 9.6 During installation or performance of the assembly work, the Contractor must make allowances for third parties carrying out parallel work (e.g. building services equipment). The Contractor will carry out the assembly in accordance with the specifications of and in coordination with Post.
- 9.7 After completing the work or upon revocation of consent, the Contractor must clear the work and storage spaces and restore them to their original condition at the Contractor's own expense.
- 9.8 It is prohibited for anyone to spend a night on site.

10. Setup/Assembly

- 10.1. Post and the Contractor must reach a separate agreement with regard to the power supply on the site. Normally, there are power connections on site. Any additional power connections must be set up by the Contractor themselves. The Contractor cannot derive any rights or other claims against Post from problems in the supply or from the use of certain connections by other companies. The Contractor must provide the connecting cables to the socket part of the power distributor to supply power to the individual assembly areas.
- 10.2. Unless otherwise specified, basic lighting is provided during setup. In any case, any additional workspace lighting is the responsibility of the Contractor.
- 10.3. A representative of the Contractor who is authorised to receive instructions from Post and to instruct the Contractor's employees must always be present at the site during the assembly time. The Contractor must notify Post of this representative immediately after conclusion of the contract. Post must be notified of any change of representative within 48 hours.
- 10.4. During assembly, the Contractor must take preventive fire protection measures in consultation with Post, in particular for work with open fire and welding work. Flammable waste must be removed from the site every day. Building materials that are still highly flammable after processing or installation must not be used.
- 10.5. The prior consent of Post must be obtained for the placement of company advertising of any kind.

11. Startup operations and functional test

- 11.1. After assembly/installation, if required by the performance object, startup operations and a functional test as well as contractually agreed quality and functional tests or such required by legal regulations or official orders must be carried out by the agreed date for start of trial operations; Post must be notified when startup operations and functional tests as well as the agreed and/or required quality and functional tests have been successfully carried out.
 - 11.2. Startup operations are a commissioning process that is carried out before the trial operations. During this time, the Contractor familiarises the employees of Post (in particular, technicians and operating personnel) with the machinery.
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- 11.3. The work of the Contractor comprises:
- Startup and testing of the assembled machinery by the Contractor.
 - Execution of all setting, adjustment and other work for the entire scope of delivery.
 - Testing of all interfaces from or to the machinery delivered by the Contractor.
- 11.4. The startup operations end with a functional test of the entire equipment and testing carried out by an accredited expert (e.g. TÜV) as to compliance with existing standards and legal requirements with regard to the health and safety of the operating personnel. The costs therefor are included in the total price. The Contractor must provide the accredited expert with all documents required for the testing at no charge and provide information.
- 11.5. The positive report of the expert is a prerequisite for the trial operations and must be submitted to Post.
- 12. Trial operations**
- 12.1. The Contractor must provide the documents for a trial operation (see Section 18), 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.
- 12.2. The Contractor is responsible for performing the trial operations. Unless otherwise agreed, the Contractor must provide the technical personnel and the equipment for the trial operations under the Contractor's responsibility. Post will provide the operating personnel. The Contractor will give the operating personnel the necessary instructions. The material for the trial operations can only be provided depending on availability.
- 12.3. The Contractor will rectify defects in accordance with the operational time requirements upon prior agreement with Post.
- 12.4. 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 perform 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.
- 12.5. The successful trial operations are the prerequisite for acceptance.
- 12.6. If the system does not reach the agreed values for e.g. function, performance and availability, the machinery must be improved and trial operations extended until the required values are reached within the required time (see Section 12 Acceptance). The Contractor will bear the costs thereof.
- 12.7. The result of the trial operation (e.g. throughput, operating times, problems, etc.) must be recorded in writing and in a comprehensible manner, and Post must be informed thereof.
- 13. Noise control / Glare protection / Emissions**
- 13.1. The Contractor must ensure that the machinery, equipment and components supplied by the Contractor do not release any harmful emissions and that the relevant regulations for the protection of employees are complied with.
- 13.2. All noise reduction measures required in order to comply with employee protection regulations, in particular with regard to noise and vibrations, must be taken. A noise measurement must be carried out prior to assembly. The machinery/components delivered must not exceed 75 dB(A), measured at a height of 1.50m at the workplaces. The upper exposure action value of 85 dB(A) may not be exceeded at any part of the equipment or its direct surroundings.
- 13.3. Where necessary, Post will measure the sound pressure at the workplaces in the course of
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acceptance. In the event of a dispute, it is agreed that an accredited expert (e.g. TÜV) will carry out the measurements. The party whose opinion is refuted must bear the costs thereof.

- 13.4. The machinery/components delivered must not have a glare effect (lighting, laser, etc.). If necessary, shields must be applied or other measures taken.

14. Acceptance

- 14.1. 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 run, where the Contractor must rectify the defects in accordance with the operational time requirements upon prior agreement with Post. If partial acceptance tests are agreed, the Contractor must invite Post to carry out the acceptance test of that part.
- 14.2. Acceptance serves to establish that the work or parts thereof are free of defects and consists of a functional test, a performance test and, if necessary, trial live operations; it is carried out on the basis of the contract specifications / specifications of services.
- Functional test: Testing whether the work features the functions as typically expected as well as the functions stipulated in the contract specifications / specifications of services and contained in the offer;
 - Performance test: Testing whether the work 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.
- 14.3. In the event that a substantial defect is discovered, Post may refuse acceptance and the Contractor must remove the defect notified in writing, within 2 weeks, and again present the work for acceptance. If this is not the case, Post will demand a penalty in accordance with Section 24.
- 14.4. A defect that makes the proper use of the machinery/equipment/components impossible, or which can only be compensated with additional personnel and operating time constitutes a "**substantial defect**". A substantial defect also exists if the required quality (e.g. distribution to correct targets) is not achieved. A lack of documentation (in particular, the instruction manual) is also a substantial defect.
- 14.5. The Contractor must rectify **immaterial defects** in accordance with the operational time requirements of Post as per defect list and agreed schedules. Although immaterial defects do not preclude acceptance, they do hinder the payout of any agreed liability escrow and do not release the Contractor from the obligation to rectify the defects within a reasonable period of time.
- 14.6. The Contractor will participate in the acceptance test as the Contractor's own expense. An acceptance report about the successful acceptance must be written and signed by Post and the Contractor.
- 14.7. If, for reasons attributable to the Contractor, more than two acceptance tests are required, the Contractor must compensate Post for the costs incurred by the provision of personnel and material.
- 14.8. If the acceptance of the defect-free object 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
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operations or after the quality and function tests as specified in Section 11.1, 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.

15. Takeover / Partial takeovers

15.1. 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 12.6); or
- in the event that Post dispenses with an acceptance test, the business day after which the work 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.

15.2. Should more than one acceptance be necessary for parts of the work, the work 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 list of defects from the individual acceptance tests. The takeover can only be concluded after trouble-free trial operations and (a) successful acceptance test(s).

15.3. Takeovers of parts of the work 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.

15.4. If, due to a longer time interval between the completion of all (partial) acceptance tests and the takeover owing to defects in the performance, 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 their representative according to the Contractor's specifications; if necessary, the Contractor will provide the technical personnel for the maintenance of the functions.

15.5. The Contractor will rectify the defects in accordance with the requirements of Post – based on operational time requirements.

15.6. If, after takeover by Post, a defect in the work is objected to during an official inspection in the course of obtaining an operating permit from the authorities, the Contractor is obliged to fulfil the requirements of the authority and rectify the defects without delay and at no cost to Post.

16. Duty to supply information

16.1. The Contracting Parties will continually share with each other important information regarding the performance object of the agreement.

16.2. The Contractor will inform Post of an impending termination of the production of spare parts and expiry of software versions at least one (1) year before the effective date.

16.3. The Contractor is not obliged to hold training sessions without additional remuneration; however, they 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.

17. Project management

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

17.2. Project management and reporting:



- 17.2.1. The Contractor must draw up a project plan in sufficient detail in accordance with the specifications of the contract and update it weekly in critical phases, otherwise every 14 days, in the agreed format, and send it to Post; a target/actual comparison must be included.
- 17.2.2. The Contractor must maintain a documentation in which the most important project management mechanisms (setup and workflow organisation, persons involved, rules for working together, quality assurance, etc.) are defined.
- 17.2.3. 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.
- 17.2.4. 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, if 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.
- 17.2.5. Any changes requested by Post of up to 1/10 of the total scope of the order do not affect the schedule, provided they are announced by Post within the first third of the term of the project.

18. Documentation

- 18.1. The documentation must correspond with the recognised rules of engineering and the applicable standards.
- 18.2. The Contractor will provide Post with preliminary documentation no later than the start of the trial operations, and with complete documentation for acceptance, and is obliged to incorporate changes and adjustments during performance of the service and the warranty period in such a way that the documentation is always up to date. Upon expiry of the warranty period, the duty to maintain documentation is transferred to Post. However, the Contractor must inform Post of any changes carried out on the machinery in the course of maintenance and repair, so that these can be incorporated in the documentation.
- 18.3. The documentation must be handed over in full. Employees of Post must be able to carry out maintenance and efficient trouble shooting with the help of this documentation.
- 18.4. The documentation includes, in particular:
 - inventory plans, general plans,
 - exploded view drawings of key parts,
 - operating instructions,
 - maintenance instructions, inspection plans,
 - care instructions,
 - lists of spare parts.
 - handbooks, etc.
- 18.5. The Contractor must provide Post with all documents, plans, descriptions and test reports for any official proceedings in due time and in the required form.
- 18.6. All documentation must be provided in German, as one copy in paper form and also in electronic form in a customary format (e.g. Microsoft Office, AutoCAD, PDF, etc.) on a data stick. The formats to be used must be coordinated with Post. Handbooks and operating instructions of purchased parts can also be delivered in English.

19. Remuneration

- 19.1. The remuneration is understood as a fixed package price with all statutory levies included; statutory VAT excluded. Any general price reductions, including reductions on the part of the Contractor, that are introduced after the date of contract signing are to be passed on
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to Post. All services are deemed compensated with the agreed remuneration.

- 19.2. Additional costs – especially travel and accommodation costs, other expenses, etc. – will only be paid by Post if they were expressly agreed in advance and in writing.
- 19.3. All software licences that are required in order to operate the work (regardless of whether direct control or interfaces to external systems) are included in the price. The Contractor is not entitled to restrict Post's use of the software (e.g. PLC programming) through safeguards such as passwords or the like. If such safeguards exist, the Contractor must hand over the access data to Post upon acceptance. Failing this, the work cannot be accepted.
- 19.4. The Contractor must include in the offer any software licences that are required to operate the system in their offer and state the price. Post will review these and then decide whether the licences are to be provided by the Contractor or whether Post will call them off through its own existing contracts. In the event that Post provides the licences, the Contractor will deduct the costs quoted from the price of the equipment. Should the Contractor fail to list the necessary licences, which subsequently incurs costs for Post, these costs are to be fully covered by the Contractor. This applies to direct licences to the same extent as to costs incurred due to measurements and any subsequent additional charges from the licensor.
- 19.5. If, in the course of performing the contract, it transpires that additional services are required or expedient – due to no fault of the Contractor and with no imminent danger – the Contractor must, demonstrably and without delay, notify Post in writing and obtain written consent from Post with regard to expanding or amending the object of the contract. If the necessity or expediency of this service / these services is determined by mutual agreement, the corresponding remuneration is to be agreed at the same time. Failing this, the Contractor is not entitled to any remuneration for the additional services, even if they are useful or expedient.

20. Invoicing / Terms of payment

- 20.1. The payment of orders with a total contract sum of ≤ EUR 100,000 is due in full upon acceptance and invoicing.

- 20.2. The payment of orders with a total contract sum of > EUR 100,000 is due according to the following plan:

- Upon award of contract:

30% of the contract sum

upon submission of the signed order confirmation, signed contract and an advance payment guarantee of 30% of the contract sum with a term up to the delivery of the equipment plus 6 weeks.

- Upon delivery of the equipment:
contract sum
- After acceptance:

30% of the

contract sum

35% of the

- Liability escrow:

5% of the contract sum over the warranty period

in accordance with Section 26 plus one (1) month; a bank guarantee can be offered in lieu of the liability escrow.

Bank guarantees must correspond with the sample in **Annex ./1**. These bank guarantees must bear the order number / reference number and the ordering/contracting department



of Post in the cover letter and must be sent to the invoice receipts department at Post.

- 20.3. Invoices will only be accepted for processing if they contain the order (commission) number or reference number, the ordering/contracting department of Post, the name of the orderer, and the invoice elements specified in Sec 11 of the Austrian Value Added Tax Act (Umsatzsteuergesetz – UStG). Invoices must be sent as a single copy to the central invoice receipts department at

**Österreichische Post AG Rech-
nungseingangsstelle
Business Center 590
1000 Wien**

- 20.4. If the Services are performed on the basis of an individual confirmation of services rendered, the latter must be appended to the invoice.
- 20.5. 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, or of the net amount (without discount) within 60 days. The payment term begins on the date of receipt at our central invoice receipts department.
- 20.6. Invoices with substantive 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.
- 20.7. Unless otherwise agreed, all fees/prices are stated as net amounts with statutory VAT excluded. In the event of offers from a third country, the net amounts must include any import duties (customs and other import duties), but exclude import sales tax.

21. Liability escrow

- 21.1. If the liability escrow is not specified in the tender or contract, 5% of the lump-sum package price will be withheld as a liability escrow.
- 21.2. The liability escrow will be released within one (1) month after the defect-free final acceptance or improvement of all defects that were still to be rectified on the basis of the final acceptance carried out in accordance with Section 29.
- 21.3. If Post gives its approval, a bank guarantee can be offered in lieu of the liability escrow. Bank guarantees must correspond with the sample in **Annex ./1**.

22. Exploitation rights / Patents

- 22.1. The Contractor will hand over the work including all work results required for putting into service, ongoing operations, maintenance and support of the work by Post.
- 22.2. In case of **standard machinery**, Post has the non-exclusive right to use the work to be provided to Post by the Contractor and the associated work results, including the knowhow included therein, in any manner, free of charge, irrevocably and for an indefinite period of time. Unless otherwise agreed, this does not encompass the right of commercial exploitation and publication, except for the purpose of executing invitations to tender. Standard machinery is such machinery produced by the Contractor in serial production and sold to various customers without any or without any significant changes.
- 22.3. In the case of **custom machinery produced specifically for Post**, Post has the exclusive, unrestricted right to use the work to be provided to Post by the Contractor and the associated work results, including the knowhow included therein, in any manner, free of charge, irrevocably and for an indefinite period of time. This right also encompasses the right of reproduction for own purposes. 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
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exploitation and publication, except for the purpose of executing invitations to tender.

- 22.4. The knowhow made available by Post to the Contractor for performance of the contract, in particular for completion of the contractual work results, belongs to Post and may not be used by the Contractor in any other way without the express consent of Post.
- 22.5. Post is in any case entitled to carry out maintenance and repair work on the work or have it carried out by third parties after expiry of the warranty period and, in so doing, to infringe on the aforementioned industrial property rights or have a third party infringe on them. This does not apply to the source code of the system control. Furthermore, Post is entitled to sell the machinery to third parties as a functional unit (hardware and software).

23. Default in performance

- 23.1. 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 work 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 24; or
 - without prejudice to its right to assert a penalty pursuant to Section 24, 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.

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 or, alternatively, of all parts that are still outstanding.

- 23.2. 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 (*ABGB*).

24. Contractual penalties

- 24.1. Unless one of the following points was agreed:

- Setup,
- Trial operations,
- Throughput and/or
- Availability

the following subsections / contractual penalties are not applicable.

24.2. Failure to meet deadlines

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. The contractual penalty due in the event of violation of the non-disclosure clause as specified in Section 2.10 is not covered by the aforementioned cap. In the event of default, Post 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.

- 24.3. 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. The contractual penalty is also payable if the work is performed with defects. Defects exist, in particular, if an agreed throughput and/or agreed availability is not achieved. In the event of defective performance, such as in the event of delayed performance, the penalty will be charged until the day of delivery of the defect-free replacement or until completion of the improvement or substitute performance; i.e. the Contractor is in default.



- 24.4. The contractual penalty is not charged if the availability and the throughput are sufficient at the time of takeover by Post despite failure to meet previous deadlines. This leniency is only possible if the testing and trial operations were successfully carried out according to schedule. However, the takeover may not take place any later than 2 weeks after the scheduled date.
- 24.5. In case of doubt, the determination will be made by an expert appointed by Post. Post will bear the costs if the expert report confirms the opinion of the Contractor. Otherwise, the Contractor will bear the costs.
- 24.6. The payment of a contractual penalty does not release the Contractor from their obligation to deliver the agreed work by the agreed deadlines. If the Contractor is in default and incurs a contractual penalty therefor, the Contractor is obliged to deliver the work in the shortest possible time.
- 24.7. In the event of default in delivery/performance, the agreed payment deadline is automatically deemed extended by the delivery/performance delay.
- 24.8. However, the penalty is not applicable in the case of force majeure, which makes it impossible to meet the performance deadline (in particular if the procurement of a technically and financially feasible replacement is not possible; the Contractor must provide proof thereof).
- 24.9. 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 within the sphere of the Contractor justifying withdrawal, 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.
- 24.10. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.
- 25. Insurance**
- 25.1. Business liability insurance:
With regard to the liability assumed within the scope of the contract/these GCC, the Contractor must take out business liability insurance with an insured sum of at least EUR 2 million per insured event and must maintain it for the full performance period. If the net contract value is EUR 5 million or more, insurance coverage must be no less than EUR 5 million.
- 25.2. Machinery assembly insurance:
If the net contract value is EUR 1 million or more, the Contractor must take out machinery assembly insurance for their works and must maintain it for the full performance period. The coverage must comply with the General Terms and Conditions of Machinery Assembly (AMMB) 2010 of the Austrian Association of Insurance Companies (*Versicherungsverband Österreich – VVO*) and quantitatively encompass the restoration value of the performance owed including any ancillary costs incurred (e.g. cleanup and demolition costs).
- 25.3. Obligation to produce supporting documents:
Prior to the conclusion of the contract, the Contractor must produce at least one provisional confirmation of cover from an insurer for all insurance requirements. The Contractor undertakes to provide proof of the existence of the required insurance policies at any time in the form of insurance confirmations, upon request of the Post.
- 25.4. Should the Contractor fail to provide evidence of an existing insurance within 14 days upon



the Principal's request, this constitutes grounds for withdrawal in accordance with Section 3.

26. Warranty (Sec 922 et seqq. ABGB)

26.1. The warranty period is 2 years, unless the law prescribes a longer warranty period or a longer period was agreed. The period commences on the day of acceptance. Should any defects emerge within said period, it is assumed that they already existed on the day of acceptance. The limitation period commences upon expiration of the warranty period and is two years.

26.2. 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.

26.3. If the Contractor fails to meet the 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 their 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 UGB), Sec 1333(2) 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.

26.4. Sec 377 UGB does not apply.

26.5. The burden of proof lies with the Contractor, who must prove the absence of a defect or the insignificance thereof and must bear all costs and expenses incurred in connection therewith.

27. Warranty

27.1. The Contractor guarantees, for the duration of the warranty period, that all parts are faultless and function properly, and that the agreed availability as well as the material and construction correspond to the application profile described in the performance specifications. The guarantee does not apply to wear parts with a shorter service life, of which the Contractor informed Post.

27.2. If a machine part is not properly dimensioned, does not behave properly or shows signs of premature wear, the Contractor is obliged to repair the machinery on site until it is in proper condition as described in the performance specifications. If the agreed condition is not achieved within 14 calendar days or by a deadline agreed separately with the Contractor in writing, Post is entitled to charge a penalty of 10% of the machine part in question or a penalty agreed separately with the Contractor in writing.

28. Supply of spare parts

The Contractor must guarantee that he will supply Post with all spare parts for a period of 10 years; IT spare parts are excluded – 5 years are agreed for the latter.

29. Final acceptance test

29.1. At the end of the warranty period and before payout of the liability escrow for orders > EUR 100,000.00 as described in Section 20, Post and the Contractor can carry out together a final acceptance test in order to verify the absence of defects; if defects are discovered, the warranty period is extended until such defects are rectified.



- 29.2. This final acceptance test must be documented and the report must be signed by Post and the Contractor.

30. Damages

- 30.1. The Contractor is liable for all damage, including consequential damage and lost profits, etc. caused by the Contractor as a result of intentional or grossly negligent acts. In the event of slight negligence, the Contractor is liable for all damage incurred; however, only up to a maximum of double the gross order value.
- 30.2. Pursuant to Sec 1313a ABGB the Contractor is liable for the fault of all persons whose services the Contractor engages to fulfil the contractual obligations (including subcontractors) and indemnifies and holds harmless Post in this respect irrespective of fault.
- 30.3. In the event that Post commissions more than one contractor (grouping of tenderers), these are jointly and severally liable to Post for the fulfilment of all obligations arising from the contract.
- 30.4. The Contractor is liable as an expert within the meaning of Sec 1299 ABGB.
- 30.5. The agreement of a contractual penalty as defined by Sec 1336 ABGB does not affect the assertion of the right to claim damages exceeding the contractual penalty.

31. Freedom from third-party rights

- 31.1. 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 themselves against the claim or of obtaining the full rights.
- 31.2. 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 payments made for the settlement of disputes out of court, which Post may make subject to the Contractor's consent; the Contractor will not unreasonably withhold consent.

32. Extraordinary termination

- 32.1. Post has the right of extraordinary termination of the contract at any time. Should there be no grounds for extraordinary termination, Post must compensate the Contractor for the proven cash expenditure and pay an appropriate part of the remuneration for the work already performed by the Contractor.
- 32.2. In particular, Post has the right of extraordinary termination if:
- a) in the event of dismissal of commencement of insolvency proceedings for lack of assets or the Contractor goes into liquidation;
 - b) the Contractor is in default with the performance of the agreed Services or Work and/or the Services have significant quality defects; if, according to the agreement, the Work/Services are to be provided in parts, and the Contractor is in default with one part only, Post is entitled to terminate only those parts for which the Services/Work have not yet been performed or, alternatively, the entire contract;
 - c) there are circumstances that subsequently make it obviously impossible to perform the Services/Work in time and that delay completion by more than half of the originally agreed performance time, provided that these were not caused by Post itself;
 - d) the Contractor engages subcontractors without Post's consent or if a subcontractor engaged by the Contractor with Post's consent in turn engages subcontractors to perform partial services or work;
 - e) the Contractor offers, promises or guarantees, directly or indirectly, a pecuniary advantage to a body and/or vicarious agent, e.g. an employee of Post, etc., who is involved with the conclusion and/or handling of the contract, or a third party who is involved with the conclusion and/or handling of the contract, and/or violates anti-
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- corruption regulations;
- f) the Contractor themselves, or a vicarious agent engaged by the Contractor for performance of the Services, or a third party breaches the non-disclosure obligation;
 - g) 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 could have had an impact on the award decision or acceptance of the bid;
 - h) the Contractor has entered into agreements with other business owners that are detrimental to Post and, in particular, are in contravention of good morals or the law, or that restrict or unfairly influence free competition;
 - i) the Contractor and/or the physical person(s) on the executive board of the Contractor – if the Contractor is a legal entity, a partnership under commercial law, a registered trade partnership and syndicate – has/have been finally penalised or convicted by the competent administrative authority and/or the competent criminal court for serious acts or omissions in connection with their professional activity(-ies), in particular for
 - violation of provisions of the Austrian Federal Act on the Employment of Foreign Nationals (*AuslBG*), labor law, social law or environmental law, or
 - a criminal association or organisation (Sec 278 and 278a Austrian Criminal Code [*Strafgesetzbuch – StGB*]), terrorist association, terrorist offences or terrorist financing (Sec 278b to 278d *StGB*), corruptibility, accepting an advantage, bribery, granting of advantage or prohibited intervention (Sec 304 to 309 *StGB* and Sec 10 Austrian Unfair Competition Act [*Gesetz gegen den unlauteren Wettbewerb – UWG*]), fraud (Sec 146 to 148 *StGB*), embezzlement (Sec 153 *StGB*), acceptance of gifts (Sec 153a *StGB*), misuse of public funds (Sec 153b *StGB*), money laundering (Sec 165 *StGB*), slavery, human trafficking or cross-border trafficking for the purpose of sex work (Sec 104, 104a and 217 *StGB*), etc.;
 - j) if the Contractor does not have or loses their official (commercial) licence.
 - k) the Contractor has not fulfilled their obligations to pay social insurance contributions or taxes and duties in Austria;
 - l) the Contractor violates anti-corruption regulations, the Act on the Employment of Foreign Nationals (*AuslBG*), labour and social laws, the Code of Conduct or Sections 2.2 and 2.7;
 - m) the Contractor is no longer able to perform the Services owing to a substantiated case of *force majeure* through no fault of the Contractor, or if the Contractor is not able to perform the Services within 10 business days.
- 32.3. Both in the event of withdrawal from the contract on the part of Post and in the event of extraordinary termination in accordance with this section, the Contractor loses all entitlement to remuneration and compensation of expenses if the Contractor 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.
- 32.4. A waiver of an extraordinary termination on the part of Post – even in multiple instances – does not constitute a precedent for Post to waive its right to extraordinary termination in any future incidences of grounds for extraordinary termination. The agreement is terminated upon receipt of the notice of extraordinary termination. Furthermore, it is emphasised that Post may also be entitled to extraordinary termination in the event of circumstances that do not constitute good cause, if the contract has been grossly and repeatedly violated in the past and it cannot therefore be reasonably expected for Post to continue the contract.
- 32.5. After the end of the agreement, the provisions set out in Sections **7, 8, 22, 31** and **34–40** of the GCC remain in effect.

33. 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.

34. Exclusion of set-off

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

35. 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.

36. Waiver of right to avoidance

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

37. Reference client

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

38. Applicable law / Court of jurisdiction

38.1. Any and all disputes resulting from and in connection with the agreement are subject to Austrian law, with the exclusion of the UN Convention on the International Sale of Goods and conflict of law provisions.

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

39. Costs and charges

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

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

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

39.4. Each of the Contracting Parties will bear its own costs for the drafting of the agreement and for legal representation.

40. Miscellaneous

40.1. It is emphasised that the headings and subheadings in these GCC merely serve the purpose of providing structure and therefore have no legal effect.

40.2. Only written agreements are of binding effect; no verbal ancillary agreements exist. Amendments and additions to this Agreement must be made in writing to take legal effect; the same applies to waiving the formal requirement of the written form.

40.3. Should one or more provisions of this Agreement be found to be or become invalid or unenforceable, the parties will jointly define a new valid and enforceable provision that comes closest to the goal and purpose of the invalid or unenforceable provision. The invalidity or unenforceability of individual provisions does not impair the validity or enforceability of the entire GCC.



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

Annexes:

Annex ./1 Bank guarantee

Annex ./2 Code of Conduct for Contractors (version as of June 2022)



Annex ./1
Bank guarantee template

Österreichische Post Aktiengesellschaft
Rochusplatz 1
1030 Vienna

Re: "Subject, ref.no"
Guarantee

We are aware that our customer has entered into a contract with Österreichische Post AG
..... f
or which a down payment in the amount of EUR has been agreed.

On behalf of our customer, we irrevocably provide an abstract guarantee that – upon your first request, without examination of the underlying legal relationship and waiving any defence and objection – we will pay an amount of up to EUR (EUR) within business days upon receiving written notification from you that our customer fails to meet their obligations arising out of this contract of and that you are therefore requesting payment from us. This guarantee also applies to claims according to Sections 21 and 22 of the Austrian Insolvency Code (*Insolvenzordnung – IO*).

The payment can only be made to an account at an Austrian bank, which is to be communicated to us.

This guarantee will be deemed to have been claimed in good time if your written request is received no later than the last day of validity; transmission by fax is sufficient.

The guarantee expires on: 20...
It is not necessary to return this guarantee after its expiry.

This guarantee is subject to Austrian law, with the exclusion of the conflict of law rules. All disputes regarding the bringing about, effectiveness and other legal effects arising out of this guarantee will be referred to the court having competence in the subject matter and for Vienna's third district.

(Place, Date)

Signature

Bank