



CORPORATE PROCUREMENT & IT

GENERAL TERMS AND CONDITIONS OF CONTRACT Österreichische Post AG for Contract for Work Performance (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 provision of **work performance** (herein "Services" or "Work") between Österreichische Post AG (herein "Post") and the contractor (herein "Contractor") as well as 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 (e.g. General Austrian Carrier Terms [*Allgemeine Österreichische Spediteur-Bedingungen – AÖSp*]) 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 maintenance, transport, construction, cleaning services, printing services, data processing, expert opinions, preparation of balance sheets and legal documents, conveyance of passengers or freight, etc.

2. Obligations of the Contractor

- 2.1. The Contractor undertakes, based on the initial situation and objectives described, to advise Post comprehensively and professionally in accordance with the performance object and to protect the interests of Post; this includes keeping Post apprised of **opportunities and possibilities as well as risks and how to minimize them**. Insofar as the performance object 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 owes Post to properly perform the Services in accordance with the performance/contractual object 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 organizes 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 (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 relevant 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 Post 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*.

- 2.3. If the Contractor culpably violates their obligations in a manner described in **Sec 13.2(e)**, Post is entitled to a penalty of 50% (fifty percent) of the agreed remuneration (in case of "obligation of result") or annual gross monthly remuneration (in case of a long-term contract).
- 2.4. The Contractor only engages carefully selected and well-trained staff. Staff who do not have the necessary expertise or are otherwise detrimental to the fulfilment of the contract are to be removed at the request of Post within period of time. If the performance object 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 necessary supporting documents to substantiate the suitability of the subcontractor concerned. 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 shall not be triggered until the complete supporting documents have been submitted. 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*).



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 clearance certificate 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 license, 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 ./1, and the relevant operational regulations of Post, in particular safety regulations, working time regulations, house rules, etc., see Sec 2.11.
- 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.
- 2.9. The Supplier confirms that all electrical and electronic equipment to be supplied, to the extent that the performance object 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. In the event that Post gives the Contractor or their subcontractors access to a permanent or temporary confidential area (Sec 2.11 of Post's Policy N° 11 "Capital Market Compliance Policy"), the Contractor undertakes to give Post the name of a designated contact person for capital market compliance matters. The Contractor also undertakes to keep a list of all persons involved in handling the order and to keep this list up to date. In addition, the Contractor undertakes to demonstrably notify the persons (e.g. in the form of email with read receipts) on said list of all written communications (e.g. regarding the aforementioned policy or blocking periods) that the Contractor receives from Post's Compliance Department. In addition, the Contractor undertakes to forward to Post, at its request, both the list of persons and proof that the communications were forwarded.
- 2.11. To the extent required by the performance object, 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.



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 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 *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 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 the compliance with the instructions.

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.

3. Successor products

3.1. If the object of performance requires, Post has the right to demand delivery of successor products of parts of the work up to 6 weeks before the agreed delivery date at list price, less the discount granted to Post.

3.2. If it is not possible for the Contractor to deliver parts of the work commissioned, he may offer the delivery of 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. Price reductions between old and new components must be passed on to Post to the same extent.

4. Delivery / Deadlines / Contractual penalties

4.1. 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, assembly, commissioning, 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, at no additional cost to Post. A reservation of title of the Contractor as of acceptance is excluded.

4.2. The Services are indivisible and must be completed by the agreed deadline (completion date) Interim milestones are set at the beginning of the performance phase.



- 4.3. For each calendar day or part thereof exceeding the deadline, the Contractor shall pay a contractual penalty irrespective of fault of 0.5% of the agreed gross order value of the service affected by the delay, 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, 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.
- 4.4. The contractual penalty will be charged from the day the Contractor falls into default until the day of full performance of the Services; proof of damage is not required.
- 4.5. 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 that justify 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.
- 4.6. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby. The payment of a contractual penalty does not release the Contractor from their obligation to perform the contract.

5. 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 managing contractors, 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 N° 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.

6. Non-disclosure / Postal secrecy

- 6.1. 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 becomes aware, unless Post releases the Contractor from this obligation in writing.
- 6.2. 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 performance object 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 object 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 demonstrable way the non-disclosure obligations before disclosing that 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.
- 6.3. 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 himself.
- 6.4. 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*).
- 6.5. In each case of a breach of the non-disclosure and data protection 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.
- 7. Remuneration**
- 7.1. The Contractor bears the costs of offers, including any contract drafting costs, and cost estimates. If the Contractor submits a cost estimate, the correctness thereof is deemed guaranteed (Sec 1170a Austrian Civil Code [*Allgemeines bürgerliches Gesetzbuch – ABGB*]).
- 7.2. The remuneration is understood as a fixed package price or a fixed hourly/daily or flat rate with all statutory levies included; statutory VAT excluded. General price reductions, including reductions on the part of the Contractor, that are introduced after the date of contract signing are to be passed on to Post. All services are deemed compensated with the agreed remuneration.
- 7.3. Should an hourly or daily rate be agreed for remuneration, the Contractor is obliged to submit to Post clearly comprehensible time records and detailed lists of services, which are to be approved by Post. If the object of the contract so requires, the Contractor must state the name of the employee, the consultant category and the agreed daily rate in the work time record.



7.4. Ancillary 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.

7.5. 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. If the Contractor fail to do so, the Contractor is not entitled to any remuneration for the additional services, even if they are useful or expedient.

8. Invoicing / Terms of payment

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*). A single copy of the invoice must be sent to the central invoice receipts department at

Österreichische Post AG Rechnungseingangsstelle Business Center 590 1000 Wien

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

8.1. Following completed performance without defects and issue of an invoice without objection, payment will be made within 30 days subject to a discount of 3%. The payment term begins on the date of receipt of the invoice by the central invoice receipts department of Post (*Rechnungseingangsstelle*).

8.2. 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.

9. Exploitation rights / Patents

9.1. The Contractor will hand over the Work including all work results required for commissioning, ongoing operations, maintenance and supervision of the Work by Post.

9.2. Post has the exclusive right to use the Work to be provided to Post by the Contractor and the associated work results, including the knowhow included therein, throughout the Group, in any manner, free of charge, irrevocably and for an indefinite period of time. The right of utilisation also encompasses the right of reproduction and transmission to third parties. The Contractor agrees that Post may make changes of any kind to the work. Unless otherwise agreed, this does not encompass the right of commercial exploitation and publication, except for the purpose of executing invitations to tender.



- 9.3. If the Work created by the Contractor is patentable/licensable as a patent or utility model, the Contractor must notify Post thereof without delay. 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.
- 9.4. 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. The same applies to non-personal data of Post provided to the Contractor.
- 10. Freedom from third-party rights**
- 10.1. 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 utilisation, Post will inform the Contractor immediately and give the Contractor the opportunity of defending themselves against the claim or of obtaining the full rights.
- 10.2. The Contractor will compensate Post for any damage resulting from or in connection with the infringement of rights of third parties associated with the Contractor's deliveries or services and will indemnify and hold harmless Post irrespective of fault. 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.
- 11. Warranty (Sec 922 et seqq. ABGB)**
- 11.1. The Contractor warrants that all Services are professionally sound and have the qualities usually expected, objectively necessary (i.e. in particular such that are usually expected or that are expected on the basis of a sample, specimen or trial version) and contractually agreed upon and meet the contractual requirements, in particular the needs of Post with regard to the objectives of the agreement. The Contractor will reliably carry out all functions specified under the agreement. The Contractor warrants that the resources required for the fulfilment of the Contract are available.
- 11.2. After completion of performance, the Contractor is obliged to remedy all defects upon request by Post within reasonable time and without entitlement to any further remuneration. 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.
- 11.3. 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:
- a) 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 in the amount of 9.2% above the base interest rate applicable (as provided by Sec 456 Austrian Companies Act (*Unternehmensgesetzbuch – UGB*), Sec 1333(2) *ABGB* as amended from time to time), calculated from the date of receipt of the amounts.



- b) 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. The requirement of setting a grace period is not applicable if it is a fixed-date contracts as defined in Sec 919 *ABGB*.
 - c) If the value of the Work provided to Post is lessened and if an improvement by a third party is impossible, Post is entitled to an appropriate reduction of the fee.
- 11.4. 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 *ABGB*.
- 11.5. Sec 377 *UGB* does not apply.
- 11.6. The burden of proof lies with the Contractor, who must prove, in particular, the absence of a defect or the insignificance thereof and must bear all costs and expenses incurred in connection therewith.
- 12. Damages**
- 12.1. 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 the respective gross order value for recurring performance with the gross annual fee.
- 12.2. The Contractor is liable as an expert within the meaning of Sec 1299 *ABGB*.
- 12.3. 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 and indemnifies and holds harmless Post in this respect irrespective of fault.
- 12.4. In the event that Post commissions more than one contractor, these are jointly and severally liable to Post for the fulfilment of all obligations arising from the contract.
- 12.5. 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.
- 13. Extraordinary termination**
- 13.1. Post has the right of extraordinary termination of the contract at any time. Should there be no grounds for extraordinary termination, Post must compensate the Contractor for the proven cash expenditure and pay an appropriate part of the remuneration for the Services already performed by the Contractor.
- 13.2. In particular, Post has the right of extraordinary termination if:
- a) insolvency proceedings against the Contractor have been rejected on the grounds of insufficient assets;
 - b) the Contractor is in default with the performance of the agreed Services and/or the Services have significant quality defects; if, according to the agreement, the Services are to be provided in parts, and the Contractor is in default with one part only, Post is entitled to terminate only those parts for which the Services 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 benefit to a body and/or vicarious agent, e.g. an employee of Post, etc., who is involved with the conclusion and/or execution /or handling of the contract, or a third party, and/or violates anti-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 that are detrimental to Post, with other business owners 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 *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) the Contractor loses their official (trade) permit or driving licence, if the Contractor is a sole proprietor;
- 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 *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.

13.3. In the event that the shareholder structure of the Contractor changes during the term of the agreement to the extent that a shareholder obtains or loses a controlling position, or a shareholder obtains or loses minority rights as a result, or a shareholder achieves or loses a quorum of voting rights under the articles of association, Post is entitled to terminate the agreement immediately for good cause.



- 13.4. 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 emphasized 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.
- 13.5. If the Contractor is at fault for the extraordinary termination, the Contractor must compensate Post for any additional costs incurred by passing on of the order to a third party, unless such costs are already covered by liquidated damages. The Contractor loses all entitlement to remuneration and damages if the Contractor has not yet executed an agreed partial performance that can be used by Post; payments already made are to be paid back to Post without delay.
- 13.6. After the end of the agreement, the provisions set out in Sections **5, 6, 9, 10** and **15–21** of the GCC remain in effect.
- 14. Retention and performance obligation**
In the event of a dispute, the Contractor is not entitled to withhold Services and/or to cease performance of Services.
- 15. Exclusion of set-off**
The set-off of amounts payable to the Contractor by amounts payable to Post is not permitted.
- 16. Prohibition of assignment**
The transfer of rights and obligations arising from the agreement and the transfer of the entire agreement to a third party by the Contractor requires the prior approval of Post. The **prohibition of assignment for payment claims** was negotiated individually between the Contracting Parties within the meaning of Sec 1396a ABGB as amended. In the event of violation of this provision, Post has the right to demand from the Contractor a penalty regardless of fault amounting to 80% (eighty percent) of the transferred claim; however, up to no more than EUR 2,000 (two thousand euros) in each case. The right to assert claims for damages in excess of the contractual penalty remains unaffected thereby.
- 17. Waiver of right to avoidance**
The Contractor waives their right to avoidance of the contract on grounds of unfair and unreasonable consideration (*laesio enormis*). In addition, the right to avoidance of the contract on grounds of error is excluded for the Contractor.
- 18. Post as a reference customer**
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 customer.
- 19. Applicable law / Court of jurisdiction**
- 19.1. 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.
- 19.2. It is agreed that disputes will be referred to the local court responsible for commercial matters in 1030 Vienna.



20. 19. Costs and charges

- 20.1. The costs, taxes and charges associated with the execution of the agreement will be borne by the Contractor.
- 20.2. 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.
- 20.3. If a claim is asserted against Post as a tax debtor or liable party and/or especially, pursuant to Sec 28 *GebG* as amended, as debtor of fees, for tax debts of the Contractor by federal, provincial or regional tax authorities, the Contractor undertakes to compensate the payments made by Post and fully indemnifies and holds harmless Post in this regard irrespective of fault.
- 20.4. The costs for the drafting of the agreement and for legal representation will be borne by each Contracting Party itself.

21. Miscellaneous

- 21.1. It is emphasized that provisions in preambles are legally effective and that the headings and subheadings of all contractual provisions merely serve the purpose of providing a clearer structure and therefore have no legal effect.
- 21.2. Only written agreements are of binding effect; no verbal ancillary agreements exist. Amendments and additions to this agreement must be made in writing to take legal effect; the same applies to waiving the requirement of the written form.
- 21.3. Should one or more provisions of this agreement be found to be or become invalid or unenforceable, the parties will jointly define a new valid and enforceable provision that comes closest to the goal and purpose of the invalid and unenforceable provision. The invalidity or unenforceability of individual provisions does not impair the validity or enforceability of the entire agreement.
- 21.4. All rights and obligations arising from the agreement will be transferred to any legal successors of either Contracting Party.
- 21.5. The most recent versions of all contractual supplements and annexes to the GCC form an integral part of the contract.
- 21.6. The agreement is drawn up in duplicate upon physical signing by the Contracting Parties, who will each receive one copy.
If the Contracting Parties sign the agreement electronically, the Contracting Parties will each digitally receive the PDF document signed by all Parties.
Should only one Contracting Party sign the agreement electronically, the Contracting Parties will each receive the PDF document digitally signed by that one Party, and the PDF document signed by the one Party will then be physically signed by the other Party in duplicate, and each Contracting Party will receive one copy.

Annex ./1 Code of Conduct for Contractors (version as of June 2022)