

Adress.Check

General Terms and Conditions

Valid from 15/02/2008

GENERAL TERMS AND CONDITIONS FOR ADRESS.SHOP

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1 Scope of Applicability

- 1.1 These General Terms and Conditions of Adress.Shop (hereinafter referred to as "GTC Adress.Shop") provide for the legal relationships between Österreichische Post AG (hereinafter referred to as "Post") and its customers in the service segment of "Adress.Shop" under which Post provides its customers with the right to use private and business addresses.

The applicability of the customer's general terms and conditions and/or terms and conditions of delivery etc. is expressly excluded.

- 1.2 Post renders the services mentioned under 1.1 only for entrepreneurs as defined in the Bundesgesetz über besondere zivilrechtliche Vorschriften für Unternehmen (Federal Law on Special Provisions for Companies under Civil Law) (Unternehmensgesetzbuch (Company's Code); BGBl (Federal Gazette) I 120/2005 as amended).

2 Course of the Services

- 2.1 The customer sends Post on order for the provision of addresses of a certain target group (hereinafter referred to as "addresses"). Post issues an unbinding offer based on this order which the customer must return officially signed within a period of 6 weeks; the offer will become null and void after the end of this period of time; when Post receives the offer signed by the customer, an agreement is made between Post and the customer according to the provisions of these GTC.

- 2.2 In the framework of "Adress.Check", customers may order the following services either individually, in combination or in whole:

- **Comparison by Post:** Comparison of the addresses (post code, place, street, number) held by the customer with Post's lists of addresses, this means non-personalised data (hereinafter referred to as "Adress.Data") which are required to address mail; and submission of the result of such comparison.
- **Search for Duplicate Addresses:** search in the customer's data records (name, address, date of birth, if required, company) to find duplicates (records which might exist several times); these duplicates will be identified, the customer will be informed about the hit probability (probability that a data record exists several times) in form of a percentage rate and such will be transferred for further processing.

- **Search for people who moved, died:** comparison of the customer's addresses (name, addresses) with databases storing data on who moved or died and submission of the result.

- 2.3 The services mentioned under item 2.2 are offered according to the following options:

- **One time service:** data are compared or searched once;
- **Multiple comparisons or searches:** services are rendered several times, in certain intervals.

- 2.4 The following services can be ordered in the framework of "Mailing.Check":
one-time comparison of or search for addresses for one certain mailing where the addresses intended for this mailing will be compared or searched exclusively for this mailing action, including all services mentioned under item 2.2., where the hit rate in the addresses compared must not exceed 4 % and the number of addresses to be compared or searched for must be a minimum of 10,000.
In case of a higher hit rate, the offer will be based on the conditions applicable for Adress.Check.

- 2.5 Post is entitled to appoint third parties to render its contractual services for the customer.

- 2.6 Post is entitled to limit the scope of delivery and services, insofar as this is permitted under the Data Protection Law and will inform the customer in due time.

3 Fees / Invoicing

- 3.1 For the use of the Addresses provided by "Adress.Shop", the customer must pay the fee agreed based on the offer – by taking into account the number of addresses which were actually provided. The fees and minimum order values for "Adress.Shop" are specified in the currently applicable price lists. All fees are net prices, i.e. exclusive of all legally applicable taxes, in particular turnover tax.

- 3.2 The invoice amount will become due within 14 days after the date of the invoice. If the customer fails to comply with payment terms agreed with Post, Post is entitled to charge default interests in the amount of 12 % p.a. and reserves the right to claim further damages caused by delay, in particular bank expenses; the invoice amount which is still open after the end of the payment term will serve as the basis for calculation. Post has the right to invoice to the customer any and all dunning and collection expenses, in particular legal fees arising in this connection.

The customer must notify Post of any complaints against the fees invoiced within 4 weeks after receipt of the invoice, otherwise the prices demanded by Post will be deemed to be accepted. Complaints do not cause an extension of the maturity of the invoice amount.

4 Liability

4.1 Warranty

4.1.1 The allocation of the individual Addresses to a certain target group is made based on determinations made by Post itself or by third parties of which Post was informed. On account of the peculiarity of the address publishing industry, Post is unable to check whether the addressee is actually the person who they are said to be or who they themselves pretend to be. Therefore, Post may neither give a warranty for the correct allocation of an Address nor for the completeness of a target group. Furthermore, Post will not give a warranty that the Addresses are correct, complete or up-to-date.

4.1.2 Please note in particular, that the obligation to give notice of defects (Art. 377, 378 UGB (*Austrian Companies Code*)) applies.

The warranty period is 3 months.

4.1.3 In the event of a warranty, Post must repair defects or add missing parts. The customer may declare to reduce the fees or to withdraw from the Agreement if two attempts made by Post to eliminate the failure of the performance have failed, even though the customer has granted a reasonable grace period. If, in such an event, the customer does not use his right to reduce the fee or to withdraw from the Purchase Agreement, Post may itself withdraw from the Agreement.

4.1.4 In cases of force majeure – this means circumstances and incidents which cannot be prevented even with the diligence of an adequate management – the contractual partners' obligations will be suspended for the duration of such event of force majeure and to the extents of its effect. If the delay resulting therefrom exceeds a period of eight weeks, both contractual partners are entitled to withdraw from the Agreement with regard to the scope of the services affected. No further claims exist. Force majeure are also consequences of labour disputes in Post or in a third party for which Post is not responsible, if such disputes have an effect on Post's services.

4.1.5 The customer is solely responsible for devices (hardware and software) used by him and their fitness

for data transmission with Post. A failure of such devices does not relieve him from his obligation to make payments.

4.2 Damages

4.2.1 Post will only be liable to the customer for damage caused by intent or gross negligence on its part. The damages will be limited to the fees agreed in each case, however to a max. of EUR 3,000.00. A liability for slight negligence is excluded.

4.2.2 Returns are unavoidable, due to changes which occur to the contents of data which differ widely among the individual target groups.

Die If the number of such returns exceed 10 %, Post will be liable for the part exceeding the 10 %, if the envelops or cards identified with the relating postal information are sent to Post within six weeks after provision of the Addresses, in order to determine the number of returns and to correct these addresses in the data records. Post's liability is limited to the fee agreed per Address. Any liability for further damage, in particular for consequential damage is excluded.

4.2.3 The replacement of – other – indirect damage, consequential damage and property damage, not achieved savings, loss of interests, damage from third party claims, etc. is excluded – at least insofar as permitted by law.

4.2.4 Post will not accept any liability for any and all damage resulting from the fact that the Addresses were changed by third parties or by the customer himself.

4.3 The risk of loss of data will be borne by the customer.

5 Scope of the Data Usage

5.1 Post offers Addresses of the following categories which differ by the fact that different authorisations for usage are connected with each category:

- **Category A:** the customer is authorised to use the Addresses once against payment.
- **Category B:** the customer is entitled to use the Addresses against payment within one year after signing the offer.
- **Category C:** the customer is entitled to use the Addresses against payment for an unlimited period of time.

5.2 The data may be used exclusively for promotional and marketing purposes as defined in Art. 151 GewO (GewO (*Industrial Code*) 1994, Federal Gazette I 194/1994 as amended).

5.3 As regards Addresses of the categories A and B, the customer is prohibited to copy (apart from a back-up copy), duplicate, distribute the Addresses received by Post or to use them to prepare own or external data carriers or to provide them to third parties against payment or for free in any form or shape, where third parties also means customers in which the customer holds a participation and which hold a participation in the customer.

5.4 In case of Addresses of the category C, the customer is not permitted to provide them to third parties in any form or shape, either against payment or for free, where third parties are also companies in which the customer holds a participation or which hold a participation in the customer; however the customer is allowed to use the Addresses to establish or supplement databases holding its own customer data.

5.5 Telephone Addresses

Addresses identified as telephone addresses (these are addresses, including the relating telephone numbers) must be used exclusively in the context of telephone marketing actions, i.e. for telephone use, where the customer is allowed to use them several times for telephone calls. The written use of the telephone addresses as well as their storage or disclosure to third parties is not permitted, where third parties also includes companies in which the customer holds a participation or which hold a participation in the customer.

5.6 The customer is exclusively responsible for complying with the legal provisions on the use of telephone addresses, in particular the Telecommunication Act (Federal Gazette no. I 70/2003) as amended.

5.7 The compliance with the terms of use will be monitored by the entry of control addresses. The presentation of a control address suffices as evidence of an infringement.

6 Contractual Penalty

6.1 In case of an infringement of the provisions of these GTC, the customer is obliged to pay a penalty of ten times the agreed fee irrespective of who is responsible for the infringement. This applies even if

third parties use addresses of Post due to the customer's infringement. The court's right to reduce or abate the penalty is excluded.

6.2 The Post's right to claim damages will remain unaffected by the payment of a penalty.

7 Data Protection

7.1 Post complies with the provisions of the Bundesgesetz über den Schutz personenbezogener Daten (*Federal Act on the Protection of Personal Data*) (Datenschutzgesetz (*Data Protection Act*) 2000 – DSG; Federal Gazette I 165/1999 as amended), it complies, in particular with the data secrecy as defined in Art. 15 DSG 2000 and will only use the data to perform the customer's order.

7.2 Post declares that it has met the required measures for data security in accordance with Art. 14 DSG 2000 as amended in order to ensure that data are protected against accidental or illegal destruction or loss, that they are used in a due manner and that the data are not accessible by unauthorised third parties.

7.3 The customer is obliged to comply with the provisions of the Federal Act on the Protection of Personal Data (Data Protection Act 2000 – DSG; Federal Gazette I 165/1999 as amended) and must indemnify and hold Post fully harmless in case of claims being raised by third parties.

8 Applicable Law / Place of Jurisdiction

8.1 Austrian law applies to any and all disputes arising from or in connection with the Agreement, the UN convention on contracts for the international sale of goods and conflict of law provisions are excluded.

8.2 Exclusive place of jurisdiction is the court competent for 1010 Vienna.

9 Miscellaneous Provisions

9.1 Each type of setoff or retention by the customer vis-à-vis Post is excluded, unless Post has expressly agreed to this setoff in writing.

9.2 Post is entitled to transfer any and all of its rights and obligations arising from an agreement with "Adress.Shop" made under these GTC to third parties

with which Post is associated in the sense of Articles 15 et seq. Aktiengesetz (*Stock Corporation Act*) (Federal Gazette I 68/1965 as amended), without the customer's consent.

- 9.3 Only written agreements are binding, oral ancillary agreements are not valid.
- 9.4 If parts of these GTC are legally ineffective, the effectiveness of the remaining provisions will remain unaffected. The legally ineffective parts shall be replaced by legally effective provisions which are most favourable for Post and come closest to the economic result of the ineffective provisions.
- 9.5 Unless the customer proves to have a special interest in the compliance with secrecy, Post is entitled to verify the compliance with the terms of use itself or to have it verified in reasonable intervals by professional consultants (lawyers, tax consultants,

auditors) who are professionally bound by secrecy; for this purpose the customer undertakes to grant access to his premises within the normal business hours. The costs for such verification will be borne by Post, unless an infringement of the terms of use is found during the verification; in this case, the costs shall be borne by the customers.

These General Terms and Conditions have been translated into the English language for information purposes only.

In the event of discrepancies concerning the language versions, the German version of the General Terms and Condition has priority.

Österreichische Post AG

Central Information Office of Post

Tel.: 0800 / 010 100

(The local rate applies for calls from all over Austria.)

www.post.at

We deliver for you.

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