

# Deutsche Post Direkt GmbH

## General Terms and Conditions for ANALYSISFACTORY, address leasing, listbroking and microdialog

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Deutsche Post 

DIALOG MARKETING

### 1. Subject matter of the terms and conditions

- 1.1 Deutsche Post Direkt GmbH ("Post Direkt") provides the ANALYSISFACTORY, address leasing, listbroking, microdialog and microdialog local services according to the following terms and conditions. Any provisions differing from these General Terms and Conditions (GT&Cs) are not applicable.
- 1.2 Post Direkt provides the services listed under 1.1 only for entrepreneurs, public law entities and public special funds.

### 2. Prices and payment

- 2.1 The prices for using the services can be found in the current price lists.
- 2.2 (For ANALYSISFACTORY only): The prices for enhancing the consumer addresses analyzed with selected criteria can be found in the Offer from Post Direkt, which differs from the prices in Section 2.1.
- 2.3 All prices are quoted net, and are subject to statutory value-added tax at the level currently in force.
- 2.4 Invoices and partial invoices from Post Direkt are payable in full within ten days of receipt of the invoice.
- 2.5 In case of default on payment or deferral, interest is payable at eight percentage points above the applicable base interest rate under Section 247 (1) of the Bürgerliches Gesetzbuch (German Civil Code, BGB). Post Direkt may demand higher rates of interest on other legal grounds. The right to claim further damages is not excluded.
- 2.6 In case of a deferral of payment, Post Direkt is authorised to suspend further deliveries until the unpaid bills are settled.

### 3. Warranty, liability

- 3.1 The Customer will bear sole responsibility for the equipment used (hardware and software) and its fitness for the transfer of data with Post Direkt. A failure of or fault in his equipment will not release him from the obligation to pay.
- 3.2 The Customer will bear the risk of loss of data when it is sent or during transmission.
- 3.3 Post Direkt passes on the addresses, telephone numbers and other information in the form and with the contents received by Post Direkt. Post Direkt has not checked the correctness and completeness of the data. The data and information made available by Post Direkt comes partly from Post Direkt and partly from cooperation partners of Post Direkt.
- 3.4 Complaints due to obvious defects must be made in writing vis-à-vis Post Direkt within ten working days of receipt of the data. Section 377 of the Handelsgesetzbuch (German Commercial Code, HGB) will be unaffected. Violation of the obligation to report defects will lead to exclusion of the warranty. Delayed use of the addresses does not release the user from the obligation to check the addresses supplied, in good time after they arrive.
- 3.5 In the case of slight negligence by Post Direkt, or a legal representative or vicarious agent of Post Direkt, the liability of Post Direkt where essential contractual duties are not performed is limited to the damage which could be typically foreseen. Liability of Post Direkt in case of minor negligence is otherwise excluded.
- 3.6 Without prejudice to the provisions set out under 3.5, Post Direkt will be liable for damage to life, limb or health arising from a deliberate or negligent dereliction of duty by Post Direkt or a deliberate or negligent dereliction of duty by a vicarious agent of Post Direkt.
- 3.7 In the case of faults, the Customer initially has the right to demand supplementary performance. If the supplementary performance fails, the Customer may choose to either reduce the payment or withdraw from the Agreement. The Customer's right to damages will be unaffected.
- 3.8 Cases of force majeure, which are circumstances and events which cannot be prevented by the exercise of due care, will suspend the contractual obligations of the Parties for the duration of the incident and to the extent of its effects. Should the resultant delays exceed a period of eight weeks, both Parties will be entitled to withdraw from the Agreement in relation to the scope of service affected. No further claims will apply. Force majeure also includes the consequences of an industrial dispute at Post Direkt or at a third party, for which Post Direkt is not responsible, where this affects the service provided by Post Direkt.
- 3.9 In the case of a breach of data protection provisions caused by the lessee, the lessee undertakes to release Post Direkt in interior relationships, and as far as possible in external relationships also, from all claims from third parties immediately on request by Post Direkt, and to compensate Post Direkt for all damage which it may suffer – including possible fines and the appropriate cost of its legal representatives.

### 4. Statute of limitation

- 4.1 Contractual claims for damages of the Customer and his claims for reimbursement of expenses incurred in vain will be time-barred after two years.
- 4.2 Notwithstanding Item 4.1, contractual claims for damages by the Customer and his claims for reimbursement of expenses incurred in vain which result from a defect and the right of the Customer to demand supplementary performance pursuant to Item 3.7 will be time-barred after one year.
- 4.3 Items 4.1 and 4.2 do not apply in the case of a violation of essential contractual duties or in the cases described under Item 3.6.

### 5. Scope of data use, contractual penalty

- 5.1 The contractual provision of data by Post Direkt is exclusively for the Customer's own use, or for the use of companies which are in a contractual relationship with the Customer (commissioned data processing). The data may only be passed on to third parties, to the extent that it is legally permissible, with the prior consent of Post Direkt. A third party in the meaning of this provision is any every natural or legal entity, in particular companies with which the Customer is affiliated in the meaning of Section 15 of the Aktiengesetz (German stock corporation act). The commercial performance of address comparisons, address leasing and data enhancements while making use of the data supplied by Post Direkt also requires the prior agreement of Post Direkt.
- 5.2 Use of leased addresses (only for address rentals and list broking): Providing nothing is agreed to the contrary, all addresses supplied by the Customer may be used only once for an advertising campaign. Post Direkt will check compliance by the use of control addresses in each address delivery. As proof of impermissible use, the presentation of a control address which is clearly taken from the inventory handed over exclusively within the framework of a particular order and contacted outside the agreed scope of the Agreement will suffice.

- 5.3 Personal data from the fields of consumer addresses, list broking and lifestyle will not be supplied to the lessee as defined by the Bundesdatenschutzgesetz (BDSG – German federal data protection act). The transfer of data for further processing (comparison with other data collections, imprint on advertising media etc.) will only take place to a commissioned data processor who must be made to promise compliance with all regulations under data protection legislation and with the agreed conditions of use.
- 5.4 Acceptance of leased addresses (only for address leasing): Importing the leased addresses into the Customer's own data inventory is only permissible if the consumer has entered into contact with the Customer.
- 5.5 If the advertising of the lessee contains any hint of the origins of the data, this requires authorization from Post Direkt.
- 5.6 If the Customer culpably violates the obligations arising from this Section 5, Post Direkt will be entitled, without prejudice to the assertion of other rights, to demand for each case of violation a contract penalty amounting to ten times the invoiced total of the order.

### 6. Conditions of service provision

- 6.1 (For address leasing only): The Customer must accept addresses to a minimum order value specified in the Offer, which will vary according to the type of addresses leased.
- 6.2 (For ANALYSISFACTORY only): The analysis of the consumer data will take place within three weeks of the arrival of the data at Post Direkt.
- 6.3 Agreement term and notice of termination (for microdialog only): The contract is for 36 months. It will be extended for a further 12 months unless notice of termination is given three months before the end of the Agreement. The right to terminate the Agreement for good cause will remain unaffected.
- 6.4 Data protection: Post Direkt will provide the services in the areas of ANALYSISFACTORY and microdialog for the Customer as a commissioned data processor in the meaning of Section 11 of the Bundesdatenschutzgesetz (BDSG – German federal data protection act). The responsibility for ensuring that the processing and use of the data are permissible, and for safeguarding the rights of those affected (disclosure, correction, locking, deletion) rests with the Customer whose data inventory is used by Post Direkt as part of the data processing.

### 7. Retention of title

Until full payment of the purchase price, the goods delivered will remain the property of Post Direkt.

### 8. Miscellaneous provisions

- 8.1 The right of offsetting or withholding against claims of Post Direkt can only be permitted if the counterclaim falling due is established on a legally binding basis or is undisputed.
- 8.2 Post Direkt may transfer all its rights and obligations resulting from or in connection with this Agreement or this Agreement as a whole to companies with which Post Direkt is affiliated in the meaning of Section 15 et seq. of the Aktiengesetz (German stock corporation act).
- 8.3 The Customer may only transfer the rights and obligations from this Agreement to third parties with the prior consent of Post Direkt.
- 8.4 Post Direkt may terminate this Agreement without notice if a competitor of Deutsche Post AG or the companies with which Deutsche Post AG is affiliated in the meaning of Section 15 et seq. of the Aktiengesetz (German stock corporation act) directly or indirectly acquires a controlling interest in the Customer.
- 8.5 For all legal relations between the Parties, German law will apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 8.6 The place of jurisdiction for all disputes arising from this Agreement will be Bonn, provided the Customer is a merchant, a legal person under public law or a special fund under public law.
- 8.7 Providing the Customer does not claim special confidentiality interests, Post Direkt will have the right, either itself or through members of professions sworn in law to professional secrecy (a lawyer, tax consultant or accountant), to check for compliance with these conditions of use at appropriate intervals. The Customer undertakes to provide access to his business premises for this purpose during normal working hours. Post Direkt will bear the costs of this inspection, unless during the inspection a violation of the conditions for use is discovered; in this case, the Customer will bear the costs.

### Supplementary business conditions of Post Direkt for the transfer of rights of use of personal data (list broking)

For the transfer of lists with personal data of a data owner (lessor) to a customer (lessee) for advertising purposes, the following regulations will apply:

9. Post Direkt, as an advertising broker, passes on lists of addresses for advertising purposes. As a result of this, the rental Agreement – without prejudice to any right of Post Direkt to collect monies for the lessor – will apply only between the lessor and the lessee. Post Direkt is not liable for the correctness of the information of the lessor, for inaccurate personal data or for other defects in the data material.
10. The lessor is solely responsible for all claims arising from or in connection with the Agreement between the lessor and lessee on terms of use, including possible claims for damages on the part of the lessee. Providing that no other conditions are agreed between the lessee and lessor, these General Terms and Conditions of Post Direkt (Items 1 to 8) will apply to the contractual relationship between lessor and lessee in their most up-to-date version.
11. The personal data transferred will remain the property of the lessor.
12. Offers made by Post Direkt in the name of the lessor are subject to confirmation. The conclusion of the contract requires the written agreement of the lessor. The lessor reserves the right to reject orders without explanation, or can make his agreement dependent on the submission of an advertising sample or the agreement of additional conditions.