



1. Subject matter of the terms and conditions

- 1.1 Deutsche Post Direkt GmbH ('Post Direkt') provides the ANALYSISFACTORY, Adressvermietung (address leasing) and microdialog 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 in 1.1 only for entrepreneurs, legal entities under public law and special funds under public law.

2. Prices and payment

- 2.1 The prices for the use of the services can be found in the current price lists.
- 2.2 (For ANALYSISFACTORY only): the prices for enriching the consumer addresses analysed using selected criteria are calculated from the proposal of Post Direkt and not from Item 2.1.
- 2.3 All prices are quoted net and subject to statutory value added tax (VAT) at the applicable rate.
- 2.4 Invoices and partial invoices from Post Direkt are payable in full immediately after receipt of the invoice.
- 2.5 In case of default on payment or deferral, interest is payable at nine percentage points above the applicable base interest rate under Section 247 (1) of the *Bürgerliches Gesetzbuch* (BGB - German civil code). Post Direkt may demand higher rates of interest on other legal grounds. The right to claim further damages is not excluded.
- 2.6 In the case of a delay in payment, Post Direkt is entitled to suspend further partial deliveries until outstanding invoices have been paid.
- 2.7 Post Direkt is entitled to provide any commissioned services only against advance payment or security if, after concluding the Agreement and/or after commissioning of individual services, circumstances come to Post Direkt's attention which are able to substantially reduce the creditworthiness of the Customer and which jeopardise the payment of Post Direkt's outstanding receivables by the Customer from individual orders under this or other agreements with Post Direkt. Until full payment is made by the Customer, Post Direkt is entitled to exercise its right to withhold performance (*Leistungsverweigerungsrecht*) pursuant to Section 320 of the *Bürgerliches Gesetzbuch* (BGB - German civil code).

3. Warranty, liability

- 3.1 The Customer bears sole responsibility for the equipment it uses (hardware and software) and its fitness for the transfer of data with Post Direkt. A failure or fault in the Customer's equipment does not release it 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 The data used by Post Direkt for address leasing are subject to daily changes (e.g., relocations, deaths, changes of name, changes of street names etc.) so that the database used for address leasing in mass data processing cannot reflect reality with regard to correctness, completeness and deliverability with 100% accuracy. Error tolerances will therefore not be deemed as defects if within the normal market and sectoral scope.

Post Direkt carries out data analyses and target group selections based upon the normal market and sectoral statistical and mathematical procedures and knowledge. This relates in particular to estimated values and forecasts. The completeness and correctness of the analysed results and target group selections with regard to the Customer's particular commercial objectives such as possible orders, response quotas etc. can therefore not be guaranteed on this basis.

- 3.4 Complaints due to obvious defects must be made in writing to Post Direkt within ten days of receipt of the data in question. Section 377 of the *Handelsgesetzbuch* (HGB - German commercial code) will remain unaffected. Violation of the obligation to report defects will lead to exclusion of the warranty.

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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 event of minor 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 cases of minor negligence is otherwise excluded.
- 3.6 Notwithstanding the provisions set out under Item 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 that 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 event of a violation of data protection law provisions, for which the lessee is responsible, the lessee undertakes to release Post Direkt upon Post Direkt's initial request from all third party claims, both internal and, as far as possible, external and reimburse Post Direkt for all damage it incurs - including any fines and appropriate expenses for conducting a legal defence.

4. Statute of limitations

- 4.1 Contractual claims for damages of the Customer and its 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 its 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 event 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 delivery 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 (order processing). The data may only be passed on to third parties, where legally permissible, with the prior consent of Post Direkt. A third party in the meaning of the provision is any natural or legal entity, in particular companies with which the customer is affiliated in the meaning of Section 15 of the *Aktengesetz* (AktG - German stock corporation act). The commercial performance of address matching, address leasing and data enhancement and other services based upon data inventories which are performed using the data supplied by Post Direkt, also requires the prior agreement of Post Direkt.
- 5.2 Use of leased addresses (for address leasing only): unless there is an agreement to the contrary, all the addresses supplied may only be used once by the Customer for advertising purposes. Post Direkt will check compliance with this provision through the use of control addresses with every address delivery. As proof of inappropriate use, presentation of a control address will suffice, provided that it is clearly part of the inventory and has been handed over solely as part of a particular order and has been contacted beyond the contractually agreed scope of the service.

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- 5.3 Personal data from the consumer addresses area will not be provided to the lessee in the meaning of the General Data Protection Regulation (GDPR), unless individual agreements to this effect have been signed. Data are handed over for further processing (matching with other data collections, printing a label on the promotional material etc.) to an order processor who must undertake to comply with all the regulations under data protection law and with the agreed terms and conditions of use.
- 5.4 Handover of leased addresses (for address leasing only): 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 authorisation 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 contractual penalty amounting to ten times the total invoice for the order.

6. Conditions of service provision

- 6.1 (For address leasing only): the Customer must accept addresses to the extent of the minimum order value stated in the proposal, which will vary depending on 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 Term and termination (for microdialog only): the contract is for 36 months. It will be extended for a further twelve 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 privacy: Post Direkt will provide the ANALYSISFACTORY and microdialog services for the Customer as a processor in accordance with Article 28 of the EU General Data Protection Regulation (GDPR) and enter into a separate commissioned data processing agreement with the Customer. 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 Offsetting or retaining payments against claims by Post Direkt is only admissible if due counter-claims are undisputed, have been established by final and binding decision or are ready for decision, or are based on shortcomings in the underlying service.
- 8.2 Post Direkt may at any time transfer all its rights and obligations resulting from or in connection with this Agreement or this Agreement as a whole, without the Customer's consent, to companies with which Post Direkt is affiliated in the meaning of Section 15 et seq. of the 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 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.

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- 8.6 The exclusive place of jurisdiction for all disputes arising from this Agreement will be Bonn, Germany, provided the Customer is an entrepreneur, a legal entity 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 its 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.

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