



## 1. Subject matter of the terms and conditions

- 1.1 Deutsche Post Direkt GmbH ('Post Direkt') provides services from the ADDRESSFACTORY product range and other data processing 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 Post Direkt price lists.
- 2.2 The Customer also has to pay any charge arising from shared or unauthorised use of its access ID where it is responsible for this use.
- 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 event of a delay in payment, Post Direkt is entitled to block the access authorisation of subscribers to ADDRESSFACTORY without prior warning and to suspend 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 and liability

- 3.1 The Customer bears sole responsibility for the equipment used (hardware and software) and its fitness for the transfer of data with Post Direkt. A fault in the Customer's equipment does not release it from the obligation to pay.
- 3.2 Post Direkt will decide when an incomplete address cannot be matched and the Post Direkt service cannot be provided.
- 3.3 The Customer will bear the risk of loss of data during transmission.
- 3.4 The data used by Post Direkt for ADDRESSFACTORY are subject to daily changes (e.g., relocations, deaths, changes of names, changes of street names etc.) and so the database used for ADDRESSFACTORY in its mass data processing cannot reflect reality with regard to correctness, completeness and deliverability with 100% accuracy. Error tolerances are therefore not deemed as defects if within the normal market and sectoral scope.
- 3.5 Complaints due to obvious defects must be made in writing to Post Direkt within ten working days of receipt of the data in question. Section 377 of the *Handelsgesetzbuch* (HGB - German commercial code) will be unaffected. Delayed use of the addresses does not release the user from the obligation to check the addresses supplied, in good time after they arrive. Violation of the obligation to report defects will lead to exclusion of the warranty.

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- 3.6 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 case of minor negligence is otherwise excluded.
- 3.7 Without prejudice to the provisions set out under Item 3.6, 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 or legal representative of Post Direkt.
- 3.8 In the event 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.
- 3.9 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.

#### 4. Statute of limitations

- 4.1 Contractual claims for damages made by 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 made 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 3.8 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 3.7.

#### 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 (order processing). The data may only be passed on to third parties 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 *Aktiengesetz* (AktG - German stock corporation act).
- 5.2 The Customer may make copies of the data provided to it once only for backup purposes. The Customer may not use the data to provide services to third parties or supply the data to them on a commercial basis without the prior consent of Post Direkt. The provision of copies of the data to other third parties also requires 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 German stock corporation act.
- 5.3 The commercial provision of address matching, leasing and enhancement or other services using the data supplied by Post Direkt, or using databases that have been cleansed by data supplied by Post Direkt, also requires the prior consent of Post Direkt.
- 5.4 A prerequisite for the use of ADDRESSFACTORY is the existence of a legitimate interest. A legitimate interest exists where the matching is carried out exclusively using addresses from the Customer's own lawfully maintained customer/prospect file or the Customer is in a contractual relationship with the subject or the Customer is prosecuting documented civil claims against the persons requested



from Post Direkt. The Customer may not make a separate selection of the replacement addresses and use them, for example, for relocation-related advertising purposes.

- 5.5 Data matching of leased address databases for one-off promotional use. It is forbidden to copy the data updated by Post Direkt into leased address lists or the Customer's own databases. Multiple use of the data requires the prior written consent of Post Direkt.
- 5.6 Post Direkt will be notified by Deutsche Post AG and/or Deutsche Post Adress GmbH & Co. KG of address changes from mail redirection requests arising from relocations, providing that consent is given to replace old with new in the address matching process. Post Direkt will only use relocation address changes for address matching where these are less than two years old. The responsible authority is in all cases Deutsche Post Adress GmbH & Co. KG. In addition, Post Direkt will also receive, both from Deutsche Post Adress GmbH & Co. KG and from SAZ Services AG, information regarding changes of address from extended relocation sources.
- 5.7 Regulations in connection with the relocation database of Deutsche Post Adress GmbH & Co. KG in the Move Professional module. The Customer authorises Post Direkt, in connection with the contractual address maintenance services using relocation address information from redirection requests and extended relocation sources, to conclude address maintenance agreements in the Customer's name with Deutsche Post Adress GmbH & Co. KG, Am Anger 33, 33332 Gütersloh, Germany, ('Post Adress'), subject to agreement from Post Adress, and to charge for these on behalf of Post Adress. The Customer therefore becomes the direct contracting party of Post Adress. The Customer thereby accepts the GT&Cs of Post Adress for the matching of its own data or leased address databases with the Post Adress relocation database. The Customer accepts in particular the usage restrictions, which are subject to contractual penalties, regarding the data transferred. Post Adress is authorised, on its own behalf or through a member of the consulting professions commissioned by it (lawyers, accountants, auditors), pledged to maintain secrecy, to check compliance with these usage provisions. The relevant GT&Cs of Post Adress can be downloaded in complete form at [www.postadress.de](http://www.postadress.de).
- 5.8 Regulations in connection with the smartADDRESS relocation database of SAZ Services AG in the Move Professional module. The Customer authorises Post Direkt to enter, in the name of the Customer, into address maintenance service agreements with SAZ Services AG, Davidstraße 38, 9000 St. Gallen, Switzerland, ('SAZ'), as part of the contractual address maintenance services including address changes based upon extended relocation sources, subject to consent from SAZ. The Customer therefore becomes the direct contracting party of SAZ. The Customer thereby accepts the GT&Cs of SAZ for the matching of its own data or leased address databases with the smartADDRESS address change file. The Customer accepts in particular the usage restrictions, which are subject to contractual penalties, regarding the data transferred. SAZ is authorised to ensure compliance with the conditions of use by employing a security and control system, by summary procedures, control addresses or mystery shoppers. The relevant GT&Cs of SAZ can be retrieved in full at <http://www.address-services.saz.com/de/terms-and-conditions.html>. The invoicing of the charges is carried out by Post Direkt on its own behalf.
- 5.9 If the Customer uses the Geo Match module, the following additional conditions set out in Item 5.10 will apply in addition to the provisions made under these GT&Cs - including Items 5.1 to 5.5.
- 5.10 Agreements on the use of the Geo Match module in ADDRESSFACTORY are made directly between the Customer and Post Direkt. The Customer will receive the non-exclusive and non-transferrable right to use the data provided solely for its own in-house purposes. The Customer therefore also has the right to import the data into a local network of the Customer for the agreed number of screen workplaces and to copy the data for in-house purposes. If the use of the data is limited to a particular number of screen workplaces, prior consent is required from Post Direkt before any usage that goes beyond this number may be undertaken. Any technical unit where the Customer's data are used is deemed to be a screen workplace. The Customer must take appropriate measures to ensure that no third parties can access the data and that the Customer's employees cannot use the data for

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personal purposes or make them available to third parties. Upon request, the Customer must inform Post Direkt regarding the measures taken. With the exception of the personal data, the Customer may present the data at exhibitions and similar events in which it is participating as an exhibitor or organiser. With the exception of personal data, the Customer may publish a section of the data on the internet in the form of grid data, provided that access to the website page is free of charge, the data per website (internet domain) does not exceed ten static images of no more than one million pixels each and the source is stated in line with the description below. This does not apply to web mapping services or similar presentations. The Customer undertakes, during every public reproduction, dissemination or presentation of the data and every publication or re-use of processed or redesigned material, to attach a clearly visible statement of the source, in the following format:

© GeoBasis-DE/Geobasis NRW YYYY.

- 5.11 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. In the case of on-going licence fees, the contractual penalty will be ten times the annual total licence fee.

## 6 Data protection

- 6.1 Post Direkt will provide the service for the Customer as a processor in accordance with Article 28 of the EU General Data Protection Regulation (GDPR) and will 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.
- 6.2 Applies to services provided in conjunction with P. O. box addresses from Deutsche Post AG: Post Direkt will provide the service for the Customer as a processor on behalf of Deutsche Post AG 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 Deutsche Post AG, whose data inventory is used by Post Direkt as part of data processing.

## 7. Miscellaneous provisions

- 7.1 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.
- 7.2 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.
- 7.3 The Customer may only transfer the rights and obligations from this Agreement to third parties with the prior consent of Post Direkt.
- 7.4 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.
- 7.5 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.
- 7.6 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.

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7.7 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.

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