



1. Subject matter of the terms and conditions

- 1.1 Deutsche Post Direkt GmbH (hereinafter referred to as “Post Direkt”), sells the products DATAFACTORY (hereinafter referred to as “products”) under the following General Terms and Conditions. Any provisions differing from these General Terms and Conditions (GT&Cs) are not applicable.
- 1.2 Post Direkt provides the services specified under 1.1 only for entrepreneurs, public law entities and public special funds.
- 1.3 In the event of the further distribution or further processing of the products, the Customer is obliged to ensure the application of these provisions, including with reference to its end customers.

2. Prices and payment

- 2.1 All prices are net and the statutory VAT and shipment costs must be added (postage and packing).
- 2.2 Invoices and partial invoices from Post Direkt are payable in full immediately after receipt of the invoice.
- 2.3 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 German Civil Code (*Bürgerliches Gesetzbuch*, BGB). Post Direkt may demand higher rates of interest on other legal grounds. The right to claim further damages is not excluded.
- 2.4 In the case of a delay in payment, Post Direkt is entitled to suspend further deliveries to subscribers until outstanding bills have been paid.
- 2.5 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 A warranty for minor software errors is excluded. Post Direkt accepts no responsibility for the compatibility of the products with other programs selected by the Customer.
- 3.2 Complaints due to obvious defects must be made in writing vis-à-vis Post Direkt within ten working days of receipt of the product. 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.
- 3.3 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.
- 3.4 Notwithstanding the provisions set out under 3.3, 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.
- 3.5 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.

Deutsche Post Direkt GmbH
Customer Management
Junkersring 57
53844 Troisdorf, Germany

Telephone: +49 2241 2661-0
Fax: +49 2241 2661-1111
E-Mail: info@postdirekt.de
postdirekt.de

Managing Directors:
Petra Weber, Christian Ilg, Martina Sander
Registered office: Bonn
Registration Court: Bonn, HRB 13849

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3.6 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.

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 4.5 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 3.4.

5. Retention of title

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

6. Extent of use

- 6.1 The products are protected under copyright law. The Customer will receive the right, which is not transferrable and not exclusive, to use the product solely for his own purposes, in relation to the number of licences acquired. The product is regarded as having been used if it is loaded into the RAM or on to a storage medium (e.g. hard disk, CD-ROM or another storage medium) and stored there.
- 6.2 The Customer shall be granted a license to use the ordered product on a computer/within a network and, if the product DATAFACTORY BASIC has also been ordered, also within its Internet application, exclusively for purposes within its company, for processing addresses or in geoinformation systems. The type of data access (batch operations – mass data processing – or individual matching) and any further rights of use, such as the granting of extended product use within an Internet application, shall be explicitly regulated in the contract. To the extent provided for in the license agreement for the product ordered, the Customer is obligated to inform Post Direkt of the current volume of addresses in its final customer database or the current number of clients upon request.
- 6.3 Irrespective of the type and number of the licences acquired, the Customer may only make copies of the products on one occasion, for back-up purposes.
- 6.4 The use of the products supplied by Post Direkt for other purposes than those agreed in the Agreement is not permissible. The Customer may not provide services with the products to third parties or supply the product to them on a commercial basis without the prior consent of Post Direkt. The provision of copies of the product to other third parties also requires the prior consent of Post Direkt. A third party within the meaning of this provision is any natural or legal entity, in particular companies with which the Customer is affiliated within the meaning of section 15 of the Stock Corporation Act (*Aktiengesetz*, AktG). Third parties within the meaning of this provision are integration service providers not commissioned by the Customer that process and use the data for the products DATAFACTORY BASIC, DATAFACTORY STREETCODE and DATAFACTORY BUILDINGS exclusively for the Customer within the framework of the additional option own Internet application. The Customer shall also be liable in this case for compliance by the integration service provider with all provisions of the agreement, in particular the terms of use. The commercial performance of



address matching, address leasing, data enhancement and other services based on data inventories which are performed using the products supplied by Post Direkt also requires the prior agreement of Post Direkt.

- 6.5 If the Customer culpably violates the obligations arising from this Section 6, Post Direkt shall 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. In the case of on-going license fees, the contractual penalty shall be ten times the annual total license fee.

7. Term and termination of Agreement

- 7.1 If the Customer purchases products as part of a subscription, the term of the Agreement will be 24 months and begin when the order is accepted by Post Direkt. The agreement will then be extended by a further twelve months if nothing to the contrary is agreed in the said Agreement and if the Agreement is not terminated three months before the end of the Agreement. The right to terminate the Agreement for good cause will remain unaffected.
- 7.2 Upon completion of the Agreement, the Customer may not use the product any longer, for whatever reason. The products supplied must be deleted by the Customer and physical data media must be destroyed.
- 7.3 The use of products supplied after the Agreement has expired, requires the prior agreement of Post Direkt and will only be granted if additional user fees are paid.

8. Miscellaneous provisions

- 8.1 Offsetting or retaining payments against claims by Post Direkt is only admissible if due counterclaims 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 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 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 shall 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 shall bear the costs of this inspection, unless during the inspection a violation of the conditions for use is discovered; in this case, the Customer shall bear the costs.

Translation from German to English

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Customer Management
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Managing Directors:
Petra Weber, Christian Ilg, Martina Sander
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