

General Terms and Conditions of Business for Data Matching using moversPLUS

I. General Terms for Data Matching using moversPLUS

§1 Area of application

The terms of use of Post Adress will apply exclusively. Any contrary terms of the client will not apply. If Post Adress performs services in whole or in part without expressly rejecting such contrary terms, this shall not be deemed to be acceptance of such terms.

§ 2 Conclusion of the agreement

The agreement comes into existence

1. when the client confirms the order after receiving an e-mail from Post Adress; or
2. to the extent the client has granted a power of attorney in favour of the service provider to enter into the agreement on its behalf, when accepted by Post Adress.

The client will be notified about the coming into effect of the agreement.

§ 3 Requirements for data matching

The data matching may only be carried out by the Post Adress service provider specified on the reverse. This requires the client to provide the address data that is to be matched to the aforementioned service provider online and/or offline, in order for the matching to take place.

§ 4 Monitoring rights of Post Adress / contractual penalty

1. Post Adress is entitled to monitor compliance with the terms of use contained in §§ 3, 10 and 12, either by itself or through a professional advisor (lawyer, tax advisor, auditor) appointed by Post Adress and who is sworn to a professional duty of confidentiality.
2. In the event of a culpable breach of the specified terms of use, the client undertakes to pay a contractual penalty to Post Adress for each case of non-compliance. The contractual penalty is an amount equal to ten times the invoice amount for the corresponding order, subject to a minimum amount of €10,000. Post Adress reserves the right to claim for further damages.
3. To the extent that the client matches data using the online process, Post Adress is also entitled to save the following data in the online database for verification purposes for a period of up to one year:
 1. time and date of each request sent by the client to the database
 2. all permanently expurgated inventory addresses in the client's files

As each address has an internal identification number, the retrieval of each address can be allocated to the respective clients.

§ 5 Warranty/Liability

1. Information concerning changes of address is acquired with the help of data processing. Post Adress assumes no responsibility for the accuracy of the information concerning changes of

address and, in particular, it makes no representation that the new addresses are actually the relocation addresses.

2. The information concerning changes of address is free from defects for the purposes of statutory warranty legislation, provided that they contain sufficient information so as to be able to deliver post to them.
3. The client shall notify Post Adress, immediately upon becoming aware, of every case of any complaints as a result of defective services. Before making further claims for damages, Post Adress is to be given the opportunity to rectify the situation.
4. Claims by the client for damages or a reimbursement of expenses are excluded, irrespective of their legal basis, with the following exceptions:
Post Adress shall have unlimited liability to the extent that Post Adress, its legal representative or one of its vicarious agents is liable for wilful intent or gross negligence, or where personal injury has occurred.
In the case of simple negligence, Post Adress is liable only for the breach of material contractual obligations. Liability for loss of profit, consequential loss or unforeseeable loss is, however, also excluded in the event of simple negligence.
Liability in accordance with the German Product Liability Act is not affected.

§ 6 Price increase

If the client has placed an order for the regular, long-term revision of its inventory data or for revising its own inventory data, or if it has placed an order for the one-off commercial use of addresses that have been acquired for commercial purposes, Post Adress is entitled to adjust the price for each revised address during the term of the agreement at its reasonable discretion.

§ 7 Costs

1. To the extent that the same are incurred, the client will bear the technical implementation costs of the service provider. The service provider specified in the order is revocably authorised by Post Adress to collect monies on behalf of Post Adress. To this extent, the client will pay to the service provider the current hit price for each enhanced address in accordance with the invoice issued by the service provider on behalf of Post Adress. The net amount of the invoice is due and payable within 14 days of being received by the client.
2. If Post Adress revokes the service provider's authorisation to collect monies on its behalf, Post Adress will notify the client of this immediately in writing. After receiving notice of revocation, the client may only settle invoices with Post Adress directly, even if the invoice has been issued by the service provider itself.

§ 8 Termination of the agreement

If the client has placed an order for the regular revision of its inventory data, the agreement will end automatically provided that the client has not had any matching undertaken for a period of one year or more. If the client wishes to have its inventory data revised once again in this situation, a new order is to be placed.

§ 9 Supplementary contractual terms

1. Post Adress is entitled to restrict the scope of delivery and services if this is required from a data protection law perspective. Post Adress will promptly notify the client in advance about any reduction to the scope of delivery and services which is brought about by data protection law.
2. The place of performance and the place of jurisdiction is Gütersloh.

II. Special terms for the long-term revision of own inventory data using moversPLUS

§ 10 Client's usage rights for the ongoing revision of its own inventory data

1. The client may match its inventory data using moversPLUS as a one-off event or on a regular basis and incorporate the updated addresses into its own file of customers/interested parties. The client may use the updated addresses without restriction within the context of its normal course of business, in particular for normal business post and advertising campaigns, as well as to enforce receivables to which it is entitled. Any special selection of the updated addresses, whether in whole or in part, for marketing to or for otherwise providing to third parties, is excluded. In this context, "third party" includes any natural person and any separate legal entities, including in particular group companies that are separate legal entities (affiliated companies). If the client intends to pass data on to its affiliated companies, this requires the express consent of Post Adress.
2. If the client is a member of a group which is sworn by law to professional secrecy (lawyers, doctors, tax advisors, etc.) or a debt collection agency, usage may also be made on behalf of third parties (clients). However, this client-driven usage is only permitted if it can be demonstrated that the clients have also acknowledged the terms of use of Deutsche Post Adress GmbH & Co. KG which are set out here. If usage is made on behalf of third parties and if batch matches are to be performed against moversPLUS, in each individual case it must be notified for whom this usage is being undertaken, provided that no party's own inventory data are not actually being transmitted for matching. Post Adress reserves the right to refuse to carry out matching for individual clients (also refer to § 2).
If usage is made within the context of the online dialogue request and/or using the ASP process, notification of for whom the usage is being made can be omitted if no more than ten requests are made for the same client between 00.00 hours and 24.00 hours. Irrespective of whether usage for third parties takes place in the online dialogue/ASP or in the batch process, before usage for a customer takes place, the client is obliged to be released from its duty of non-disclosure by the customer so that it can disclose to Post Adress the name of the customer and the legal relationship between the customer and the person on whom the query has been performed for data protection-related audit purposes.
3. If the client updates addresses on behalf of third parties, it may only and exclusively use the newly acquired addresses for the purposes of the third party, in the name of which the matching has been carried out. The usage of addresses acquired in this way using moversPLUS for the client's own purposes or for the purposes of other third parties is expressly prohibited unless otherwise agreed with the client on a case-by-case basis.

§11 Forfeiture of the contractual penalty

The contractual penalty in accordance with § 4 Section 2 is forfeited if the client passes to the service provider, for matching, any addresses that are not its own inventory data.

III. Special terms for data matching of own inventory data or purchased address inventories using moversPLUS for one-off commercial use

§ 12 Usage rights of the client for matching for one-off commercial use

The updated addresses may only be used once for sending out a mailshot for commercial purposes. Furthermore, it is not permitted to incorporate the addresses that have been updated using moversPLUS into purchased address lists, nor is it permitted to (permanently) include updated addresses in one's own inventory data.

If the client intends for the addresses to be used more than once, the special written agreement of Post Adress is required for this purpose.