

General Terms and Conditions for Updating of Internal Databases with Austrian Post's Relocation Database for Permanent Use

§ 1 Scope

Post Adress' terms of use shall apply exclusively. Any contrary conditions of the Customer shall have no legal force. Post Adress performance of services, be it complete or partial, may not be construed as acceptance of such contrary conditions.

§ 2 Acceptance of Agreement

The Agreement shall take effect with Post Adress' acceptance of the offer. Acceptance shall be declared in writing. Countersigning of the order is sufficient.

Customer will keep save and not pass on to third parties passwords which it has received in the way of online use. Customer is liable for any misuse of the passwords.

§ 3 Prerequisites of Data Synchronisation

The Customer may have its database synchronised one-time or repeatedly with the relocation database of the Austrian Post AG provided there is a justified interest. For the purpose of this provision, justified interest pertains to the synchronisation exclusively of addresses which the Customer maintains in its own Customer/prospective Customer file in a legally permissible manner. A justified interest is also present if the Customer has a contractual relation with the queried party or is pursuing demonstrable civil claims against persons being queried.

§ 4 Rights and Restrictions of Use of the Converted Addresses

1. Customer may use the relocation database if it needs the new addresses for purposes of mail traffic.

In this meaning Customer is entitled to have updated with Austrian Post's relocation database all addresses which Customer maintains in its own Customer/prospective Customer file in a legally permissible manner.

A justified interest is also present if the Customer is in a contractual or quasi-contractual confidence relationship (e.g. guarantor or beneficiary from an insurance relationship) to the queried party or is pursuing provable civil claims against persons being queried in Austrian Post's relocation database.

2. Lawyers, tax advisors, auditors and other members of a group legally obliged to the professional discretion and collection agencies may also use the relocation database if their clients have commissioned them.

This client-related use, however, is only permitted as far as the clients also have accepted Post Adress' General Terms and Conditions provably.

If clients have commissioned the Customer to use database for purposes of updating, Customer must inform in every individual case, if and as far as Batch comparisons shall be carried out, for which client it uses the relocation database of the Austrian Post AG unless it only transmits its internal data for purposes of updating.

If the synchronisation is carried out by means of an online interactive inquiry or under use of the ASP procedure the notification for whom the use is concrete carried out can cease at all events then if Customer does not put respectively for one and the same client between 0.00 hours and 24.00 hours any more than ten queries.

The Customer independently of whether the synchronisation with relocation database is

carried out for third parties in the on-line dialog/ASP or in the Batch procedure is obliged to let itself in this respect release from its pledge of secrecy, that it can disclose Post Adress the name of the client and the facts of the case in which the client arises to the questioned so that Post Adress can check whether the regulations of the protection of data privacy are observed.

3. The Customer may take on the updated addresses into its own Customer/prospective Customer database.

The use of the updated addresses won in the way just described is only permitted in the context of usual business mail and advertising campaigns of the Customer or in order to pursue provable civil claims.

The Customer is not permitted to make a separate selection of converted addresses and use this separate selection for purposes of marketing or other passing on to third parties.

For the purposes of this agreement, a third party is any legally independent, juridical person or any natural person, even an enterprise which is in a relationship of dependence with the Customer within the meaning of Articles 15 ff. of AktG (German Stock Corporation Law) or the parent company, as long as the Customer is a dependent or controlled company. If the Customer intends to pass on converted addresses to an associated company, it must obtain Post Adress' express consent.

4. If and as far as the Customer updates addresses on behalf of a third party (client), it may use updated addresses only and exclusive for purposes of the client who has placed the order. The use of the updated addresses won through the processing against the relocation database of the Austrian Post AG for own purposes or for purposes of other third parties than the client who has given an order for updating is forbidden unless something else is agreed with the Customer in the individual case.
5. In addition to definite matches, indefinite matches (addresses) will also be selected during the synchronisation process. If requested, the Customer will also receive the indefinite matches. The Customer is entitled to check the addresses during a four-week period. If these addresses can be assigned to the Customer's own data file, these matches shall be settled with Post Adress as definite matches. The addresses which cannot be assigned to the Customer's database shall be returned completely to the service provider.

§ 5 Post Adress' Right to Examine / Contract Penalty

1. Post Adress is authorized to check by itself whether the Customer adheres to the use regulations or to have checked this by a commissioned member of an advisory profession (lawyer, tax adviser, auditor) which is bound to observe confidentiality. The examination can also be carried out in writing.
2. As far as the Customer updates its addresses by use of the online dialog procedure, Post Adress is authorized to save the following data in the online database for control purposes (in this case, data may at the most be saved for a period of a year):
 1. time and date of every Customer enquiry to the database
 2. all addresses in the files of the Customer which were updated

Since every address has an internal identity number, the query of every address can be assigned to the respective Customers.

3. In case of culpable violation of the aforementioned obligations, the Customer agrees to pay a contract penalty to Post Adress for each case of non-compliance. The contract penalty shall be ten times the amount invoiced for the corresponding order, however, no less than EUR 10,000. This in no way affects Post Adress' right to assert more extensive damages.
The disprovable presumption of improper use of the relocation database is established, if Post Adress can substantiate the presumption of an unlawful use of address(es) even by presenting only one address obtained during audit.
4. The contract penalty is also incurred, if the Customer supplies the service provider with external addresses and not Customer/prospective Customer files for the purpose of synchronisation.

§ 6 Post Adress' Liability

1. Post Adress ensures that the addresses have been collected with utmost care and attention. Since it is not entirely possible to eliminate recording errors completely, Post Adress does not guarantee the deliverability of every individual address. If an address change enquired over through the relocation database of the Austrian Post AG turns out to be undeliverable (for proof of undeliverability it is necessary to present the corresponding returned letter), Post Adress assumes liability only up to the amount of the agreed match price (1,50 Euros), provided that the undeliverability can be attributed of a recording error of the Austrian Post AG.
2. Post Adress does not assume liability for the deliverability of an indefinite address match.
3. The limitation of liability lapses if Post Adress has acted wilfully or carelessly or has caused personal injuries.
 3. Liability for consequential damages is limited to typically foreseeable damage.

§ 7 Price Increase

Provided that the Customer has placed an order to the regular update of its internal data, Post Adress is authorized to increase price per updated internal address at its equitable discretion during the contract period.

§ 8 Costs

1. The Customer bears the costs which are incurred, if any, by the service provider for technical performance. The service provider indicated in the order is revocable authorised by Post Adress to collect payments on behalf of Post Adress. The Customer shall pay the service provider the current match price for each address updated in its database as pursuant to the invoices rendered by the service provider on behalf of . The invoice is due and payable net without any discounts within fourteen (14) days after receipt by the Customer.
2. Should Post Adress revoke the service provider's authority to collect, Post Adress will inform the Customer in this regard immediately. After receipt of the revocation, the Customer may settle invoices only with Post Adress directly, even if the invoice was rendered by the service provider.

§ 9 Automatical End of Contract

If the Customer has placed an order to the regular update of its internal data, the contract ends automatically provided that it has not updated its data for a period of a year or more than a year. If in this case the Customer wants to have its internal data updated once more, a new order has to be placed.

§ 10 Additional Provisions

1. Post Adress is entitled to limit the scope of supply and services, provided data protection legislation makes this necessary. Post Adress shall inform the Customer in advance about this reduced scope of supply and services.
2. This agreement is governed by the laws of the Federal Republic of Germany. Place of jurisdiction is Gütersloh, Germany.