

## **GENERAL TERMS AND CONDITIONS**

The Implementing Royal Decree dd. 14 January 2013 and any amendments apply to this contract, insofar as the procurement documents do not deviate from this Decree and no specific rules apply to bpost.

### **1. Lead official**

The lead official will lead and supervise the performance of the contract. The contractor will be notified of the name of the lead official when the contract is entered into or will be stated in the request.

The lead official or his/her representative has the right to request all additional information needed to check the performance of the contract. The contractor shall guarantee the lead official or his/her representative permanent unlimited access to the places of performance in order to check the performance of the contract, particularly with regard to the established performance terms and compliance with the contract documents and the conditions of performance and (technical) specifications they contain.

### **2. Subcontractors**

The contractor shall share the following details with bpost no later than the commencement of the performance of the contract: name, contact details and legal representatives of all subcontractors involved in the performance of the contract, regardless of their share or place in the subcontracting chain, insofar as these details are known at that time.

The contractor is obliged, during the entire term of the contract, to notify bpost immediately of all changes to the details referred to in the first paragraph, as well as the required details of any new subcontractors that it subsequently involves in the performance of the contract.

The contractor continues to be liable toward bpost if it entrusts the performance of its obligations in whole or in part to subcontractors. bpost does not deem itself bound by any contractual relationship with those subcontractors.

These subcontractors must not be in a situation that leads to exclusion, as referred to in article 67 of the Public Contract Law, except if the subcontractor, supplier or service provider in question is able to demonstrate to bpost, in accordance with article 70 of the law, that it has taken adequate steps to prove its reliability.

### **3. Performance term/delivery term**

The performance term/delivery term for this contract is expressed in working days or calendar days.

### **4. Price revisions**

The prices for supplies and services may only be revised from the second year of the agreement, in accordance with the formula the awarder has set out, if this is provided for by the awarder here.

### **5. Pricing**

Every price must cover all costs connected to the service in question.

The price also covers all costs resulting from the personal data and compliance with Data Protection Laws, being the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC, with its amendments and European Union implementing legislation and other European Union regulations including stipulations regarding data protection and privacy, as well as the applicable national legislation on data protection and privacy in the member states with its amendments and implementing decrees, including the approved codes of conduct that apply to the industry.

If the contractor, during the contract, grants better conditions to another customer for the same or similar services or supplies that are the subject of this contract, in the same or similar volumes, bpost shall immediately be granted those better conditions as well.

### **6. Invoicing and payment**

The contractor shall always invoice in euros and bpost shall always use the euro as currency. All invoices should be sent directly to:

bpost Source to Pay  
Department Accounts Payable  
Anspachlaan 1 Bus 1/Boulevard Anspach 1 Bte 1  
1000 Brussels

In addition to the statements required by law, each invoice shall state:

- The purchase order (PO) number;
- The contractor's number (as used in-house by bpost).

bpost reserves the right to reject invoices that are not in accordance with the stipulations of the procurement documents.

Correct, undisputed invoices shall be paid within fifty calendar days (contracts for supplies or services) or sixty calendar days (contracts for works). The first day of the payment term is the day following the date on which the invoice or, in the case of a contract for works, the detailed progress report of the works with the associated claim is correctly submitted.

If bpost does not dispute the invoice or progress report of the works during the first thirty calendar days of the payment term, it is deemed to have been correctly presented and to be undisputed. In the event that bpost does dispute the invoice or progress report of the works, the payment term will be suspended until the dispute has been resolved. If a new (corrected) invoice or progress report is presented following a dispute, a new payment term of fifty or sixty calendar days will apply for the supplies, services or works in question.

If the Products or Services are delivered in multiple instalments and the procurement documents do not establish specific rules on the periodicity of invoicing, the contractor may, from the date of receipt of the relevant Products or Services by bpost, send an invoice to bpost. In the case of a works contract, the contractor must draw up his progress reports on a monthly basis (last working day of the month), unless the procurement documents establish specific rules.

The payment can never be considered to be proof of acceptance of the delivered work, products or services.

Each printed invoice shall be accompanied by an electronic file, created in accordance with the specifications of bpost. The contractor shall not charge any additional cost for this service. The contractor shall not change the format of the electronic file unless bpost agrees.

If the delivery relates to more than one purchase order, the contractor shall draw up one invoice for each purchase order.

Where necessary, the aforementioned procedure can be changed in consultation with the contractor.

Any sums that the contractor owes bpost, including (but not limited to) price adjustments and compensation, shall be deducted from the invoices.

Credit notes must be settled within thirty (30) calendar days.

Pursuant to the continuity principle of the public service tasks and assignments of bpost, the failure of bpost to meet one or more payment terms or the (partial) nonpayment by bpost of one or more invoices due to the supposed incorrect content of such invoices or the inadequacy of the work, supplies or services invoiced, does not give the contractor the right to delay the rate of performance or to suspend or end its performance in whole or in part. bpost should not pay disputed amounts until the dispute is settled.

## **7. Warranty term (only applicable to supplies)**

The warranty term for these supplies is 24 calendar months, commencing at the time of provisional acceptance.

## **8. Provisional acceptance**

At the end of the verification term, a provisional acceptance report or a rejection report shall be drawn up, as applicable.

## **9. Final acceptance**

The final acceptance shall occur at the end of the warranty period. It shall be tacit if delivery has given no grounds for complaint during this term.

If the delivery does give grounds for complaint during the warranty term, a final acceptance report or a rejection report, as applicable, shall be drawn up fifteen days before the end of this warranty term.

#### **10. The acceptance (points 8 and 9 do not apply to the contract if there is only one acceptance)**

An acceptance report or a rejection report, as applicable, shall be drawn up for the contract at the end of the term of 30 days following the date set for the completion of all services or supplies.

If the services or supplies are ended before or after this date, the subcontractor must notify the lead official by registered letter or email that guarantees the exact date of the sending in a comparable way, asking the lead official to proceed to acceptance. An acceptance report or a rejection report shall be drawn up, as applicable, within 30 days of the receipt of the request.

#### **11. Nature of the obligation**

The contractor shall always give due consideration to the duties and functions of public service designated to bpost and not compromise them.

Unless otherwise agreed, the contractor's obligations are considered to be obligations to achieve a given result.

The contractor undertakes to perform the contract in strict compliance with the provisions of this contract. In any event, all points of the contract shall be performed in accordance with accepted practice and good craftsmanship.

The contractor shall assure bpost that the work, products and services used in the performance of the contract are fit for purpose and facilitate the proper performance of the contract.

The purpose set out shall prevail over the means or activities set out for all supplies or services. The activities or processes as set out in this contract, are indicative. The contractor shall perform activities that are not stated but are deemed necessary by a specialised contractor without being able to claim extra costs or a price revision.

The contractor shall be liable for its own actions and omissions, and those of its employees, hired hands and subcontractors, within the framework of the performance of this contract. The contractor shall also remain liable in the event of an inspection by bpost before, during or after the delivery. Without prejudice to the other rights of bpost granted by law or the contract documents, the contractor shall undertake to immediately rectify any failings observed. The contractor is also obliged to repair all damage caused to bpost, its customers or third parties.

#### **12. Staff**

The contractor shall undertake to appoint a contact person in its stead to maintain formal contacts with bpost's lead official and bpost itself. bpost must be notified of the details of the contractor's contact person at the earliest opportunity after the contract is entered into. The contact person can be replaced provided bpost is notified of this in writing.

The staff of the contractor shall always work under the exclusive responsibility of the contractor. No member of staff of the contractor shall be under the authority or hierarchical supervision of bpost. bpost shall never be considered to be the legal or actual employee of the deployed staff and the contractor shall indemnify bpost for all costs and fines (of any nature) if bpost is nevertheless considered to be the legal or actual employer of the deployed staff. The same shall apply mutatis mutandis to the lead official and to other bpost members of staff that provide assistance to the contractor within the framework of the performance of this contract.

If shortcomings of the contractor are caused by its members of staff, bpost shall address a request with reasons to the contractor, who shall replace or correct these members of staff or hired hands. Where applicable, the contractor shall replace and/or correct the member of staff or hired hand in question without delay. Replacement shall occur after approval by bpost of the new staff member or hired hand, who must possess at least the same skills as the replaced staff member or hired hand, unless bpost communicates otherwise. In the event of replacement or correction, the contractor is responsible for the efforts required to bring this member of staff or hired hand up to the same level of knowledge. The contractor shall do its utmost to ensure the consistency of the members of staff involved in the performance of the contract, particularly with regard to the contractor's contact person.

### **13. Working with third parties**

The contractor shall provide assistance in accordance with the highest professional standards and at no extra costs if bpost asks the contractor to work with third parties.

The contractor must notify bpost of any problem occurring in this cooperation with third parties and/or of any other remarks with respect to this third party.

If one of the parties deems it useful or necessary or if the collaboration with third parties is structural or prolonged, they shall set down the rules of the collaboration with third parties in a supplementary document.

### **14. Prevention and protection at work**

If the contractor is permitted to use the premises, facilities and office equipment designated by bpost within the framework of this contract, the contractor undertakes to use the premises, facilities and office equipment with due care and to comply with the health and safety provisions applicable to these premises as provided to it in writing.

bpost shall not make any office consumables available as part of the use of such premises.

The contractor undertakes to establish and maintain safety measures and procedures in accordance with the standards applicable in the industry. Furthermore, the safety measures and procedures must be at least equal to those measures and procedures that apply at bpost and/or at the locations designated by bpost.

Where applicable, bpost shall provide a badge or other access documents to the staff members and any subcontractors of the contractor to permit them to enter the places they need to perform their tasks. These badges and other access documents shall remain the property of bpost and shall be returned to bpost at the end of the performance of the contract.

The contractor shall give bpost prior notification of the date and time it wishes to have access to the premises, as well as the services that will be provided on bpost's premises. The contractor shall organise the performance in such a way that the impact on bpost's activities is minimised.

### **15. Insurance**

The contractor shall take out insurance at its own expense against all risks ensuing from the performance of the contract.

All insurance policies taken out by the contractor shall contain a waiving of the right of redress to the advantage of bpost, its affiliated/associated companies and its employees. The contractor shall fulfil all obligations ensuing from the taking out of these insurance policies, especially in the event of a claim. The contractor shall be fully liable for the consequences if these obligations are not fulfilled. The fact that the contractor has taken out the aforementioned insurance shall not release the contractor from its responsibilities.

The contractor shall take out insurance to cover its liability for occupational accidents and third-party liability when performing the contract.

The contractor shall demonstrate, within thirty days of entering into the contract, that it has taken out this insurance, by means of a certificate proving that liability is covered to the extent required by the contract documents.

During the performance of the contract, the contractor shall present this certificate within fifteen days of receiving a request to do so from bpost.

### **16. Quality – warranty**

Over the whole term of the contract, the supplies or services must be of at least the same quality as that offered in the proposal. Product innovations shall always be passed on to bpost as quickly as possible.

Furthermore, the materials must always comply with all applicable guidelines.

The contractor shall ensure that the supplies and services are in line with the description and/or technical specifications, as stated by the contractor and are in accordance with accepted practice and prevailing standards in the industry. Failure to achieve the agreed quality shall constitute a breach of the contractor's contractual obligation.

The contractor shall provide assurances that it holds the required permits, official authorisations and useful insurance with regard to supplies and services.

In the event of the supply of goods, the contractor shall ensure that the goods are ready to use and free of any visible or hidden defects. It shall declare that the goods fulfil the normal requirements of useability, reliability and service life and existing safety standards, and are in line with the contractor's, importer's or manufacturer's advertisements and publicity, as well as the applicable legislation and accepted practice.

In the event of provision of services, the contractor shall provide assurances that the services fulfil the normal requirements of useability, reliability and service life and the existing safety standards, and are in line with the applicable legislation and accepted practice.

With the exception of the aforementioned cases, neither party shall be liable toward the other party for damage arising from force majeure.

Furthermore, the supplied goods (including packaging, product descriptions, manuals and certificates) shall comply with all applicable European Union and Belgian legislation with regard to safety, trademarks and logos, environmental and health provisions and the regulations for the use of certain dangerous substances.

Lastly, the contractor shall give assurances that it will use competent staff to perform the contract.

#### **17. Supplier code of conduct**

The contractor shall agree to perform the contract in accordance with the provisions of the Supplier Code of Conduct, as published on the website of the awarder.

#### **18. Intellectual property**

The results of the contract as well as all intellectual and industrial property rights with respect, among other things, to software, databases, literary works and/or documents, drawings, models, methods, know-how, concepts and other developments that the contractor and/or the subcontractors employed by bpost produce as part of the performance of the contract are the exclusive property of bpost from their creation and shall be supplied with all appurtenances (such as source code and manuals).

The contractor shall grant at least a transferable, worldwide, irrevocable licence that may be sub-licensed for the software, databases, literary works and/or documents, drawings, models as well as the methods, knowhow, concepts and other developments that the contractor uses or supplies as part of the contract and that are the intellectual property of the contractor, the subcontractors used by the contractor and/or third parties (hereinafter: "the standard works") for the duration of the legal protection of copyright (lasting no fewer than twenty years), in order that bpost and the companies affiliated to and associated with bpost are able to use, adapt, translate, manage and maintain the standard works for their usual purposes and/or the purposes described in the contract documents. The remuneration for the transfer of property and the licence are included in the remuneration for the performance of the contract.

The contractor shall obtain and retain at its own expense for the duration of the contract all approvals and licences needed to perform the contract in accordance with the provisions and (technical) specifications of the contract documents. The contractor shall give assurances that the products and/or services for which approvals and/or licences must be obtained do not breach any legislation, regulations or rules that apply to the contractor or bpost.

#### **19. Information provided by the contractor**

bpost shall, insofar as necessary, provide additional information to the best of its ability. If the information provided is incorrect, incomplete or unusable, the contractor shall promptly notify bpost or shall be unable to cite this as a reason for the non-fulfilment of its obligations.

#### **20. Delivery of products and services**

The contractor shall provide bpost with all documents and manuals, in both electronic form and in hard copies, in Dutch and French, required for the use and management of the performed work, the supplied products and/or the provided services.

The contractor guarantees:

- (i) that products supplied and services provided under the contract shall remain available for the full term of the contract; and
- (ii) (in the event of products) that spare parts shall remain available for at least ten (10) years, commencing on the date of each delivery.

If it becomes clear that a product, service or spare part can no longer be delivered, the contractor shall notify bpost in writing no less than six (6) months in advance. The contractor shall propose a replacement product, service or spare part that is of equal or better technical quality and has equal or better functionality than the original product, service or spare part. bpost reserves the right to accept or reject the replacement product, service or spare part. bpost shall be entitled in the event of such rejection to cancel the contract at no cost and with immediate effect (or other term indicated by bpost).

The contractor undertakes to deliver all products and services ordered by bpost. No minimum purchase obligation shall apply to bpost.

The transfer of ownership of the products supplied as part of the performance of the contract shall occur at the moment of delivery. The risk of loss and damage shall be transferred only at the time of the provisional acceptance at the agreed place of delivery.

bpost has the right to extend the subject of this contract to supplies and/or services similar to the supplies and/or services that are the subject of the contract. This extension shall occur in accordance with the provisions of the Implementing Royal Decree of 14 January 2013.

If the departures from non-essential conditions of the contract are minimal and cannot cause any great obstruction with regard to use, processing or the service life, bpost may accept the work, subject to a discount due to inferior value.

## **21. Inspections**

All prior and subsequent inspection costs shall be payable by the contractor.

## **22. Penalties**

Any substandard performance of the contract for which no special penalty is provided shall result in a general penalty in accordance with article 45 of the Royal Decree of 14 January 2013.

## **23. Fines due for late performance**

The late performance of the public contract shall automatically lead to the application of a late performance fine. This fine shall be calculated in accordance with articles 46 and 86 in conjunction with article 123 in the event of supplies and article 154 in the event of services of the Royal Decree of 14 January 2013.

The late performance fine shall depend on the general penalties in articles 45 of the Royal Decree of 17 January 2013. It shall be due without notice of default if the performance term ends without a report being drawn up and shall be automatically applied for the total number of calendar days of the delay.

Without prejudice to the application of the late performance fine, the contractor shall indemnify bpost for any compensation it owes to third parties due to its late performance of the contract.

## **24. Retention of documents**

The contractor shall, for the duration of the contract and a term of twelve (12) months after its ending, carefully retain all books, lists, schedules, records and other documents that enable bpost to verify in sufficient detail the work and costs charged to bpost for the products and services.

## **25. Termination and dissolution**

Unless expressly stated otherwise in the present contract, bpost shall have the right to cancel the contract in whole or in part at any time, subject to notice of three (3) months, without the contractor being entitled to any compensation.

Without any disadvantageous acknowledgement with respect to other rights, bpost shall be entitled to dissolve the contract automatically without recourse to the courts if the contractor:

- Fails to comply with one or more obligations stated in the contract documents, insofar as no corrective measures have been taken within ten (10) working days of the receipt of the written notification hereof;
- Fails to properly perform the contract and this failure can no longer be corrected;
- is guilty of fraud or any behaviour contrary to commercial practice; or
- Ends or threatens to end its activities.

Each party is entitled to dissolve the contract with immediate effect and without recourse to the courts by registered mail if:

- A liquidator or administrator shall be appointed to administer the property or assets of the other party;
- The other party is declared bankrupt, is in danger of being declared bankrupt, is clearly unable to pay or suspends payment;
- The other party is liquidated (with the exception of a liquidation as part of a reorganisation that occurs in such a way that the solvent company established as a consequence continues to be bound by the obligations imposed by the other party as part of the contract).
- The other party finds itself in circumstances analogous to the aforementioned facts under the law applicable to it; or
- There is a situation of force majeure that lasts for more than three (3) months.

Unless otherwise agreed, the contractor shall, free of charge and following the cancellation or dissolution of the contract (for whatever reason and by any party):

- share the works, the products, the results of the services and the documentation with bpost in the condition they are in at that moment; and
- arrange the transfer of knowledge to bpost.

The risk of loss and damage shall be transferred at the moment of delivery at the venue agreed by the parties.

## **26. Transfer of the contract**

The contractor shall not be permitted to transfer the obligations resulting from this contract to third parties without prior written permission from bpost.

bpost may transfer this contract in whole or in part to its companies affiliated and/or associated with bpost at any time. The contractor shall recognise the right of each company affiliated to and/or associated with the company to enter into an agreement with the contractor with the same subject as the contract, at conditions that are at least as attractive.

## **27. Force majeure**

Parties shall not be liable for a delay or shortcoming in the fulfilment of the obligations under the contract, in accordance with the stipulations of the present contract, if this delay or shortcoming is brought about by force majeure. This Party shall cooperate with the affected party and help it minimise the impact of the circumstances on the affected Party. In the event of force majeure, both parties shall have the right to suspend in whole or in part the fulfilment of their obligations for the duration of this force majeure, without being obliged to pay any compensation.

If the period of force majeure lasts longer than three (3) months or it is established in advance that this period will reasonably last longer than three (3) months, bpost shall have the right to terminate the contract (or the relevant part or the subcontract), immediately by registered letter, without parties being obliged to pay any compensation to each other.

## **28. Public communication and references**

The contractor must obtain prior permission from bpost before circulating any public communication or a press release about the award and/or performance of the contract. This concerns not only consent for the communication itself but also for the content of the communication.

Permission must also be requested from bpost before the contractor uses the contract as a reference for another contract. The contractor shall in that event be able to request a certificate of good performance.

The contractor shall contact the lead official for the contract to request such permission.

If the contractor fails to fulfil these obligations, bpost reserves the right to impose a specific sanction. A special fixed penalty of 5,000 euros per breach is provided for in accordance with article 45, §1 of the Implementation Royal Decree of 14 January 2013.

### **29. Confidentiality declaration**

Each party undertakes to invest all reasonable efforts to protect the confidential nature of the confidential information, among other things by:

- using this confidential information only for the performance of this contract;
- Not disseminating or making available this confidential information wholly or partly, in writing or verbally, other than to its employees or subcontractors that must have direct knowledge of it for the performance of this contract. They shall be notified of the content of this article by, for example, insertion of the content of the provisions of this article in the contract of employment or contracting agreement. Each party is liable toward the other party for any failure to fulfil this obligation by one of its hired hands, employees or subcontractors;
- Not disseminating or making available this confidential information to third parties without the prior written agreement of the other party;
- Returning to the other party or completely destroying this confidential information, when they are no longer needed within the context of this contract or on the request of the other party.

These provisions in no way prejudice the right of bpost to use or allow the use of the confidential information transferred within the framework of the performance of this contract (even after the end of the contract) if this is needed to enable bpost to use and/or adapt the products, services, special developments and/or any other result of the contract.

“Confidential information” means all information, in whatever form, explicitly described as confidential by parties or that should reasonably be handled as confidential, based on its nature. Confidential information shall be deemed not to include information:

- That is made public without breaching the provisions of the contract documents;
- that was lawfully obtained from a third party that is not bound by a confidentiality obligation;
- that must be released by one of the parties as part of a dispute settlement or an arbitration or judicial procedure or in accordance with a law, decree or regulation;
- that has been developed or discovered entirely independently by a party, provided this can be proven beyond all reasonable doubt by the party that invokes this argument;
- That must be shared with the auditor as part of an audit; or
- That is necessary for any new round of competitive tenders and/or is shared with bpost as a result of any new round of competitive tenders.

Each tenderer shall acknowledge that the information referred to in this article remains the property of the party that shares it.

Each tenderer shall undertake, both during the performance of the contract and for a period of 5 years after the end of the contract, to protect the strict confidentiality of the information referred to in this article, not to make it public and not to use it for its own benefit or the benefit of a third party or for other purposes than for which it was made known to it, being the performance of the contract.

In the event of a breach of the provisions of this article, the tenderer in question shall be jointly and severally bound to pay a fixed amount of 2,500 euros on request, without prejudice to the right of bpost to claim a larger sum in compensation if the actual damage is greater.

In turn, bpost shall respect the confidential nature of the proposals.

### **30. Data protection**

All applicable data protection laws must be complied with (including but not limited to Regulation (EU) 2016/679) for the performance of the contract.

bpost shall act as controller and the contractor shall act as processor of the personal data processed under the contract.



The contractor undertakes to:

(a) not permit or employ any third party, sub-processor or other subcontractor to process personal data without prior specific written permission from bpost;

(b) Process personal data only as processor in accordance with the provisions of the contract documents or otherwise pursuant to the instructions of bpost, unless bound by a law of the European Union or of a member state that applies to the contractor; in such cases, the contractor must notify bpost of such a legal obligation before the processing, unless that law prohibits the sharing of data for important reasons of general interest;

(c) Ensure that employees who are authorised to process personal data are subject to a contractual or legal confidentiality obligation;

(d) Take appropriate technical and organisational security measures to protect the personal data from unauthorised access, change, destruction, removal etc., with due consideration for the state of the art, the costs of implementation and the nature, the scope, the context and the purposes of the processing, as well as the probability and seriousness of various risks for the rights and obligations of the natural persons;

(e) Return personal data to bpost on the request of bpost and to remove all existing copies;

(f) Assist bpost in the fulfilment of its obligations as controller (1) to respond to the requests of data subjects (GDPR Chapter III) and (2) to report personal data breaches and conduct the data protection impact assessment (GDPR articles 32-36). The contractor shall make available all information that is needed to show that these obligations have been fulfilled, and shall permit and contribute to audits to be performed by bpost or the auditor appointed by bpost or another third party.

The contractor shall undertake not to transfer any personal data to a subsidiary or another third party located in a country outside the European Economic Area or to make personal data from such a country accessible without the express prior written permission of bpost.

The contractor shall undertake to indemnify bpost against all claims and legal procedures instituted by a competent authority and/or a data subject against bpost in connection with the processing by the processor of personal data under this contract. The processor shall indemnify bpost for all costs and fines related to a personal data breach as a result of the processing of personal data by the processor under this contract.

### **31. Foreign nationals staying in the country illegally**

If the contractor or subcontractor receives the copy referred to in article 49/2, fourth paragraph, of the Social Criminal Code notifying it that it employs in Belgium one or more foreign nationals staying in the country illegally in accordance with the law of 11 February 2013 establishing the sanctions and measures for employed foreign nationals staying in the country illegally, this company shall immediately refrain from entering the place at which the contract is performed or performing the contract until bpost issues an order to the contrary.

The same applies if the aforementioned contractor or subcontractor is notified:

- either by the contractor or by bpost, that it has received the notification that relates to this company, as referred to in article 49/2, first or second paragraph, of the Social Criminal Code;
- or by means of the bill referred to in article 35/12 of the law of 12 April 1965 on the protection of the wage of employees, that it employs in Belgium one or more foreign nationals staying in the country illegally.

Furthermore, the contractor and subcontractor shall be bound to include a clause in any subcontracting agreement that they enter into, on which ground:

1° The subcontractor shall refrain from entering the place at which the contract is performed or performing the contract if the notification drawn up in compliance with article 49/2 of the Social Criminal Code shows that this subcontractor employs in Belgium one or more foreign nationals staying in the country illegally;

2° The non-fulfilment of the obligation set out in 1° shall be deemed a serious shortcoming by the subcontractor, on which basis the company is authorised to terminate the agreement;

3° The subcontractor shall be bound to include in the subcontracting agreement a similar clause to the one set out in 1° and 2° and to ensure that such clauses are included in subsequent subcontracting agreements.

### **32. Wages owed to employees**

If the contractor or subcontractor receives the copy of the notification referred to in article 49/1, third paragraph, of the Social Criminal Code notifying it that it has committed a serious failure to fulfil the obligation to pay its employees the wage they have a right to, it shall immediately refrain from entering the place at which the contract is performed or performing the contract until it provides bpost with proof that the employees in question have been paid in full. The same applies if the aforementioned contractor or subcontractor is notified:

- either, depending on the situation, by the contractor or by bpost, that it has received the notification that relates to this contractor or subcontractor, as referred to in article 49/1, first paragraph, of the Social Criminal Code;
- or by means of the bill referred to in article 35/4 of the law of 12 April 1965 on the protection of the wage of employees.

Furthermore, the contractor or subcontractor shall be bound to include a clause in any subcontracting agreement that they enter into, on which ground:

1° The subcontractor shall refrain from entering the place at which the contract is performed or performing the contract if the notification drawn up in compliance with article 49/1 of the Social Criminal Code shows that this subcontractor has seriously failed to fulfil its obligation to pay its employees their wages on time;

2° The non-fulfilment of the obligation set out in 1° shall be deemed a serious shortcoming by the subcontractor, on which basis the contractor is authorised to terminate the agreement;

3° The subcontractor shall be bound to include in the subcontracting agreement a similar clause to the one set out in 1° and 2° and to ensure that such clauses are included in subsequent subcontracting agreements.

### **33. Claims and indemnifications**

The contractor shall indemnify bpost against any expense, cost and/or compensation for damage that is payable by bpost to third parties due to a violation of legal provisions, infringement of intellectual property rights or rights of third parties and/or due to a delay or a failure of the contractor by virtue of the contract. The contractor shall undertake to notify bpost as the case arises at the earliest opportunity.

Any claim by the contractor must be sent to bpost immediately by registered mail as soon as the facts on which it is based have been established and, in any case, within thirty (30) calendar days of the facts occurring. If the contractor does not initiate any claim within this term, it shall be deemed to have waived this right.

The contractor has a term of thirty (30) calendar days to provide bpost with all claim documents, unless parties agree another term. If the contractor fails to provide all claim documents within this term, it shall be deemed to waive this right to file a claim (regardless of whether a claim has been filed). The claims must be filed within a term of thirty months of the serving of the provisional acceptance report, on pain of lapse.

The filing and/or handling of a claim shall never suspend the fulfilment of the obligations of the parties under the contract, unless otherwise agreed in writing.

### **34. Final provisions**

If a party fails to enforce a right granted by virtue of the contract documents or applicable law, it shall not be deemed to have waived that right or the legal remedies hereto, nor shall this affect the applicability of the contract.

The general or special commercial, supply or payment conditions of the contractor and/or its subcontractors shall not apply.

Unless expressly instructed or authorised to do so by bpost, the contractor shall have no authority to enter into obligations on behalf of or at the expense of bpost. In entering into and performing this contract, each party acts as an independent entity. No provision of the contract or the conduct of the parties in performing this contract shall give rise to or presume to give rise to the establishment of a partnership, association, temporary combination, joint venture or any other form of cooperation between the parties.

All services and notifications within the framework of the contract must be sent to the addresses stated in the contract, or in subsequent official communication (e.g. closure letter) by registered letter or email, unless stated otherwise in the contract.

bpost and the contractor shall always endeavour to settle any disputes amicably. The settlement of a dispute shall not prejudice the obligations to continue the performance of the contract, unless otherwise agreed in writing.

This contract is governed by Belgian law.

Any disputes arising between the parties with regard to the contract shall be presented to the courts with jurisdiction in Brussels, Brussels section.